Hearing Date and Time: To Be Determined
Objection Deadline: December 16, 2014
Reply Deadline: January 16, 2015

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
MOTORS LIQUIDATION COMPANY, *et al.*,	:	**Case No.: 09-50026 (REG)**
f/k/a General Motors Corp., *et al.*	:	
Debtors.	:	**(Jointly Administered)**

APPENDIX OF EXHIBITS FOR OPENING BRIEF BY GENERAL MOTORS LLC ON THRESHOLD ISSUES CONCERNING ITS MOTIONS TO ENFORCE THE SALE ORDER AND INJUNCTION

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Exhibit 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	Case No.: 09-50026 (REG)
Debtors.	:	(Jointly Administered)

DECLARATION OF SCOTT I. DAVIDSON

I, Scott I. Davidson, hereby declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge, information and belief.

1. I am counsel in the law firm of King & Spalding LLP, attorneys for General Motors LLC ("**New GM**") in the above-captioned matter. I am familiar with the statements set forth below based on my personal knowledge, and my review of relevant documents. I submit this declaration in support of the *Opening Brief By General Motors LLC On Threshold Issues Concerning Its Motions To Enforce The Sale Order And Injunction*, filed simultaneously herewith.

2. On June 1, 2009, General Motors Corporation (now known as Motors Liquidation Company) ("**Old GM**") filed for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"). On June 12, 2009, Old GM sought approval from the Bankruptcy Court to retain and employ The Garden City Group ("**GCG**") as Old GM's claim and noticing agent. *See Application Of Debtors For Entry Of Order Pursuant To 28 U.S.C. § 156(C) Authorizing Retention And Employment Of The Garden*

City Group, Inc. As Notice And Claims Agent Nunc Pro Tunc To The Commencement Date, dated June 12, 2009 [Dkt. No. 953] ("**GCG Application**").[1]

3. GCG's engagement letter (attached as Exhibit "A" to the GCG Application) sets forth certain fees GCG was proposing to charge Old GM for various tasks. Included in the proposal was a charge for mailing notices ("**Sale Notice**") of the sale ("**363 Sale**") of substantially all of the assets from Old GM to New GM. Specifically, Schedule "A" attached to GCG's engagement letter provides as follows:

> The notice of commencement, which is usually a 2-4 page document, would be quoted in the range of $0.15 per packet plus postage if mailed to 1.5 million addresses and within these specifications. ***The notice of sale, assuming it is 4-6 pages, is quoted at $.20 per packet.*** This is an "all in" price and there are no extra charges for labor, copy charges, envelopes, labels. stuffing, etc. All of our volume discount quotes will be "all in." ***The only additional cost will be postage*** and we will do a zip code presort to get the best postage discount rate for the mailing. [emphasis added]

4. On June 25, 2009, the Bankruptcy Court authorized Old GM to retain GCG as its claims and noticing agent. *See Order Pursuant To 28 U.S.C. § 156(C) Authorizing Retention And Employment Of The Garden City Group, Inc. As Notice And Claims Agent Nunc Pro Tunc To The Commencement Date*, dated June 25, 2009 [Dkt. No. 2549] ("**GCG Order**").[2]

5. According to an inquiry I made to GCG in June 2014, GCG informed me that direct mail notice of the Sale Notice was provided to approximately 4,350,000 individuals and entities at a cost of approximately $3 million. *See* E-mail ("**Gargan E-Mail**")[3] from Kimberly Gargan (from GCG) to Scott Davidson, dated June 16, 2014 at 5:11 p.m. According to the

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[1] A true and correct copy of the GCG Application is annexed hereto as Exhibit "A."

[2] A true and correct copy of the GCG Order is annexed hereto as Exhibit "B."

[3] A true and correct copy of the Gargan E-Mail is annexed hereto as Exhibit "C."

Gargan E-mail, printing labor and materials for the three-page Sale Notice cost $0.175 per notice; postage for the notice was $0.44, for a total of $0.615 per notice.

6. According to the Declaration of Michael Yakima, which is being filed with the Bankruptcy Court simultaneously herewith, there were a total of 70,535,565 Old GM manufactured vehicles in operation in the United States as of June 30, 2009.

7. Assuming the same GCG pricing structure, if Old GM had provided direct mail notice of the Sale Notice to all owners of Old GM manufactured vehicles in operation in the United States as of June 30, 2009, it would have cost Old GM approximately $43.4 million – or more than 14 times greater than what it actually cost Old GM to provide direct mail notice of the 363 Sale.

Dated: November 5, 2014

SCOTT I. DAVIDSON

Exhibit A

Hearing Date and Time: June 25, 2009 at 9:45 a.m. (Eastern Time)
Objection Date and Time: June 19, 2009 at 4:00 p.m. (Eastern Time)

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and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

APPLICATION OF DEBTORS FOR ENTRY OF ORDER PURSUANT TO 28 U.S.C. § 156(c) AUTHORIZING RETENTION AND EMPLOYMENT OF THE GARDEN CITY GROUP, INC. AS NOTICE AND CLAIMS AGENT *NUNC PRO TUNC* TO THE COMMENCEMENT DATE

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

General Motors Corporation and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), respectfully represent:

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

2. By this Application, the Debtors seek entry of an order pursuant to 28 U.S.C. § 156(c) to approve the retention and employment The Garden City Group, Inc. ("**GCG**") as notice and claims agent ("**Agent**") of the Clerk of the Bankruptcy Court ("**Court**") *nunc pro tunc* to the Commencement Date, and to approve the assumption of a related agreement, in order to assume full responsibility for the distribution of notices and proofs of claim, to maintain, process and docket proofs of claim filed in the chapter 11 cases, and to perform such other services as the Debtors and the Court require. The Debtors' selection of GCG to act as the Agent has satisfied the Court's protocol for the retention of GCG, where the Debtors have obtained and reviewed engagement proposals from other Court approved claims agents to ensure selection through a competitive process. Moreover, the Debtors submit that based on all engagement proposals obtained and reviewed, that GCG would provide the most cost effective and efficient service as Agent in these chapter 11 cases.

3. In view of the complexity of these chapter 11 cases and the anticipated number of entities to be noticed, the Debtors submit that the appointment of an Agent is both necessary and in the best interests of the Debtors' estate and their creditors. GCG is one of the country's leading Chapter 11 administrators with expertise in noticing, claims processing, balloting administration and distribution. GCG has also acted as the Agent in several cases which are currently pending in this Court. GCG is well qualified to provide experienced noticing, claims processing and balloting administration services in connection with these chapter 11 cases.

Services To Be Provided

4. GCG is authorized and directed to perform all related tasks to process the proofs of claims and maintain a claims register including, without limitation:

a. notify all potential creditors of the filing of the bankruptcy petition and of the setting of the first meeting of creditors, pursuant to §341(a) of the Bankruptcy Code, under the proper provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure;

b. maintain an official copy of the Debtors' schedules of assets and liabilities and statement of financial affairs (collectively, "**Schedules**"), listing the Debtors' known creditors and the amounts owed thereto;

c. notify all potential creditors of the existence and amount of their respective claims as evidenced by the Debtors' books and records and set forth in the Schedules;

d. furnish a notice of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court;

e. file with the Court a copy of the notice, a list of persons to whom it was mailed (in alphabetical order), and the date the notice was mailed, within ten (10) days of service;

f. docket all claims received and maintain the official claims register (the "**Claims Register**") on behalf of the Court;

g. specify, in the Claims Register, the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, and (iv) the classification(s) of the claim (e.g., secured, unsecured, priority, etc.);

h. record all transfers of claims and provide any notices of such transfers required by Rule 3001 of the Federal Rules of Bankruptcy Procedure;

i. make changes in the Claims Register pursuant to Court Order;

j. maintain the official mailing list for the Debtors of all entities that have filed a proof of claim, which list shall be available upon request by a party-in-interest or the Court;

k. assist with, among other things, solicitation and calculation of votes and distribution as required in furtherance of confirmation of a plan of reorganization;

l. thirty (30) days prior to the close of these chapter 11 cases, an Order dismissing GCG shall be submitted terminating the services of the GCG upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases; and

m. at the close of these chapter 11 cases, box and transport all original documents in proper format, as provided by the Court, to the Federal Records Center.

5. In connection with retention as Agent, GCG will not employ any past or present employees of the Debtors in connection with its work as Agent. The terms of GCG's retention are set forth in Exhibit A annexed hereto.

6. As more fully described in the Affidavit of Neil L. Zola, President and Chief Operating Officer of GCG, annexed hereto as Exhibit B, neither GCG nor any of its employees have any connection with or any interest adverse to the Debtors, their creditors, or any other party in interest, or their professionals.

7. GCG has received a retainer in the amount of $1,850,000.00 from the Debtors and will apply same first against all pre-petition fees and expenses and then against the last bill for fees and expenses that GCG will render in these chapter 11 cases.

Notice

8. Notice of this Application has been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the United States Department of the Treasury, (iii) the attorneys for Export Development Canada, (iv) the attorneys for the agent under GM's prepetition secured term loan agreement, (v) the attorneys for the agent under GM's prepetition amended and restated secured revolving credit agreement, (vi) the attorneys for the statutory committee of unsecured creditors appointed in these chapter 11 cases, (vii) the attorneys for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (viii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America, (ix) the United States Department of Labor, (x) the attorneys for the National

Automobile Dealers Association, (xi) the attorneys for the ad hoc bondholders committee, (xii) the U.S. Attorney's Office, and (xiii) all entities that requested notice in these chapter 11 cases under Fed. R. Bankr. P. 2002. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

9. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York
June 12, 2009

GENERAL MOTORS CORPORATION
(for itself and on behalf of its affiliated
Debtors and Debtors in Possession)

/s/ Walter G. Borst
NAME: Walter G. Borst

TITLE: Treasurer

EXHIBIT A
(Engagement Letter)

The Garden City Group, Inc.

COURT ADMINISTRATION AGREEMENT

This Court Administration Agreement, dated as of May 19, 2009, is between The Garden City Group, Inc., a Delaware corporation (the "Company"), and Chevrolet-Saturn of Harlem, Inc., General Motors Corporation, Saturn, LLC and Saturn Distribution Corporation, Debtors (the "Clients").

The Clients desire to retain the Company to perform certain noticing, claims processing and other administration services for the Clients in their Chapter 11 cases anticipated to be filed in the United States Bankruptcy Court for the Southern District of New York (such Court or such other Bankruptcy Court where said case may actually be filed in lieu thereof), (the "Bankruptcy Court"), and the Company desires to be so retained, in accordance with the terms and conditions of this Agreement.

In consideration of the mutual covenants herein contained, the parties hereby agree as follows:

1. Services. The Company agrees to provide the services necessary to perform the tasks specified in the pricing schedule that has been supplied to the Clients and which has been attached hereto as Schedule A. Such services are hereinafter referred to as "Services." The Clients agree and understand that none of the Services constitute legal advice. The Company designates Angela Ferrante as the Project Team Leader of this case and the Company represents that it will, in performing its services and while following any and all court instructions and orders, take its day to day directions from AlixPartners LLP and Weil, Gotshal & Manges LLP or any other professionals designated by those entities in this case.

2. Payment for Services; Expenses.

2.1 Compensation. As full compensation for the Services to be provided by the Company, the Clients agree to pay the Company its fees as outlined in the pricing schedule that has been supplied to the Clients and which has been attached hereto as Schedule A (subject to Bankruptcy Court approval in the event of an unresolved dispute). Billing rates may be adjusted from time to time by the Company in its reasonable discretion, although billing rates generally are changed on an annual basis. The Clients agree to pay the Company a retainer of $1.85 million, to be applied first against the pre-petition fees and expenses incurred by the Clients in connection with Services rendered by the Company and then against the final bill that will be rendered by the Company to the Clients for the post-petition fees and expenses incurred by the Clients in connection with Services rendered by the Company.

2.2 Expenses. In addition to the compensation set forth in Section 2.1, the Clients shall reimburse the Company for all out-of-pocket expenses reasonably incurred by the Company in connection with the performance of the Services (subject to Bankruptcy Court determination in the event of an unresolved dispute). The out-of-pocket expenses will be billed on the expense (non-fee) portion of the Company's invoice to the Clients and may include, but are not limited to, postage, banking fees, brokerage fees, costs of messenger and delivery service, travel, filing fees, staff overtime meal expenses and other similar expenses. In some cases, the Company may receive a rebate at the end of a year from a vendor.

2.3 Billing and Payment. Except as provided in Section 2.2, the Company shall bill the Clients for its fees and expenses on a monthly basis, and the Clients shall pay the Company within thirty (30) days of its receipt of each such bill in the ordinary course of business (subject to Bankruptcy Court approval in the event of an unresolved dispute). Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) as well as certain expenses such as postage must be paid at least three (3) business days in advance of those fees and expenses being incurred. Each of the Clients is jointly and severally liable for the Company's fees and expenses. Nothing contained in this Agreement shall obligate the clients to pay the Company for any fees or expenses incurred by the Company in connection with work performed negligently, with willful or wanton misconduct or outside the scope of services requested by the Clients, AlixPartners LLP or Weil, Gotshal & Manges LLP, or in connection with correcting any such identified work, except that in the event Company has to redo a project it shall be entitled to charge and be paid once for said project or work.

3. Term and Termination.

3.1 Term. The term of this Agreement shall commence on the date hereof and shall continue until performance in full of the Services, unless earlier terminated as set forth herein.

3.2 Termination.

(a) In the event of any material breach of this Agreement by either party hereto, either party may apply to the Bankruptcy Court for an order allowing termination of the Agreement. Grounds for termination include: (i) failure to cure a material breach within thirty (30) days after receipt of the notice by the non-breaching party or (ii) in the case of any breach which requires more than thirty (30) days to effect a cure, failure to commence and continue in good faith efforts to cure such breach, provided that such cure shall be effected no later than ninety (90) days after receipt of such notice of such breach. Waiver of any such default or material breach by either party hereto shall not be construed as limiting any right of termination for a subsequent default or material breach.

(b) The Company shall be entitled to an administrative claim for all fees and expenses outstanding at the time of termination (subject to Bankruptcy Court approval in the event of an unresolved dispute).

4. Independent Contractor. It is understood and agreed that the Company, through itself or any of its agents, shall perform the Services as an independent contractor. Neither the Company nor any of its employees shall be deemed to be an employee of the Clients. Neither the Company nor any of its employees shall be entitled to any benefits provided by the Clients to their employees, and the Clients will make no deductions from any of the payments due to the Company hereunder for state or federal tax purposes. The Company agrees that the Company shall be responsible for any and all taxes and other payments due on payments received hereunder by the Company from the Clients. Nothing in this Agreement requires the Clients to use the Company for any future work relating to the Services and, in the event the Clients decide to use another party for such future work, the Company agrees to cooperate fully with the Clients to ensure a smooth transition to the new party.

5. Accuracy of Client Supplied Information. The Clients are responsible for the accuracy of all programs, data and other information it submits to the Company (including all information for schedule and statement preparation) and for the output of such information. The Company may undertake to place that data and information into certain systems and programs, including in connection with the generation of Schedules of Assets and Liabilities ("Schedules") and Statements of Financial Affairs ("Statements"). The Company does not verify information provided by the Clients and, with respect to Schedules and Statements preparation, all decisions are at the sole discretion and direction of the Clients.

All Schedules and Statements filed on behalf of, or by, the Clients are reviewed and ultimately approved by the Clients, and the Company bears no responsibility for the accuracy or contents therein.

6. Confidential Information.

6.1 Confidentiality. In connection with this Agreement, each of the Clients and the Company (as the case may be, the "Disclosing Party") may disclose to the Company or the Clients (as the case may be, the "Receiving Party") certain information (a) that is marked or otherwise identified in writing as confidential or proprietary information of the Disclosing Party ("Confidential Information") prior to or upon receipt by the Receiving Party; or (b) which the Receiving Party reasonably should recognize from the circumstances surrounding the disclosure to be Confidential Information. The Receiving Party (x) shall hold all Confidential Information in confidence and will use such information only for the purposes of fulfilling the Receiving Party's obligations hereunder and for no other purpose, and (y) shall not disclose, provide, disseminate or otherwise make available any Confidential Information to any third party other than for the purposes of fulfilling the Receiving Party's obligations hereunder, in either case without the express prior written permission of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information pursuant to a validly issued subpoena or order of a court of competent jurisdiction.

6.2 Protection of Intellectual Property. The Clients acknowledge that the Company's intellectual property, including, without limitation, the Company's inventions (whether or not patentable), processes, trade secrets and know how are of ultimate importance to the Company. Accordingly, the Clients agree to use their best efforts to protect such intellectual property, and shall not, either during the term of this Agreement or subsequent to its termination, utilize, reveal or disclose any of such intellectual property. The Clients understand that the software programs and other materials furnished by the Company pursuant to this Agreement and/or developed during the course of this Agreement by the Company are the sole property of the Company. The term "program" shall include, without limitation, data processing programs, check printing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. The Clients further agree that any ideas, concepts, know-how or techniques relating to the claims management software used or developed by the Company during the course of this Agreement shall be the exclusive property of the Company.

6.3 Scope. The foregoing obligations in Sections 6.1 and 6.2 shall not apply to (a) information that is or becomes generally known or available by publication, commercial use or otherwise through no fault of the Receiving Party; (b) information that is known by the Receiving Party prior to the time of disclosure by the Disclosing Party to the Receiving Party; (c) information that is obtained from a third party who, to the Receiving Party's knowledge, has the right to make such disclosure without restriction; (d) any disclosure required by applicable law; or (e) information that is released for publication by the Disclosing Party in writing. The obligations set forth under Sections 6.1 and 6.2 shall survive the termination of this Agreement.

7. Limitation on Damages. The Company shall be without liability to the Clients with respect to anything done or omitted to be done, in accordance with the terms of this Agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct. In no event shall liability to the Clients for any claims, losses, costs, fines, penalties or damages, including court costs and reasonable attorneys' fees (collectively, "Losses"), whether direct or indirect, arising out of or in connection with or related to this Agreement, exceed the total amount billed or billable to the Clients for the portion of the particular work which gave rise to the Losses. Under no circumstances will the Company be liable to the Clients for any special, consequential or incidental damages incurred by the Client relating to this Agreement or the performance of Services hereunder, regardless of whether the Clients' claim is for breach of warranty, contract, tort (including negligence),

strict liability or otherwise. To the extent there is any conflict between this provision and paragraph 2.3, the terms of paragraph 2.3 control.

8. Indemnification. The Clients, jointly and severally, hereby indemnify and hold harmless the Company and its directors, officers, employees, affiliates and agents against any Losses incurred by the Company arising out of or in connection with or related to (a) any gross negligence or willful misconduct by Clients, their employees, agents or representatives, or any misrepresentations made by such persons to third parties in connection with the Company's acts or omissions in connection with its rendition of the Services; (b) any breach of this Agreement by any of the Clients; or (c) any erroneous instructions or information provided to the Company by any of the Clients for use in providing the Services. To the extent there is any conflict between this provision and paragraph 2.3, the terms of paragraph 2.3 control.

9. Jurisdiction. This Agreement is subject to the approval of the Bankruptcy Court, and such Court shall retain jurisdiction over all matters regarding this Agreement.

10. Force Majeure. Whenever performance by the Company of any of its obligations hereunder is substantially prevented by reason of any act of God, strike, lock-out or other industrial or transportational disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions, or by reason of any other matter beyond the Company's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

11. Notice. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier. Any such notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in the United States mail, or, if sent by overnight courier, one business day after delivery to such courier, as follows: if to the Company, to The Garden City Group, Inc., 105 Maxess Road, Melville, New York 11747-3836, Attention: David Isaac, President; and if to the Clients, to Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: Stephen Karotkin, Esquire.

12. Governing Law. This contract will be governed by and construed in accordance with the laws of the State of New York (without reference to its conflict of laws provisions).

13. Severability. All clauses and covenants contained in this Agreement are severable and in the event any of them are held to be invalid by any court, such clause or covenant shall be valid and enforced to the maximum extent as to which it may be valid and enforceable, and this Agreement will be interpreted as if such invalid clauses or covenants were not contained herein.

14. Assignment. This Agreement and the rights and obligations of the Company and the Clients hereunder shall bind and inure to the benefit of any successors or assigns thereto.

15. General. This Agreement supersedes and replaces any existing agreement entered into by the Company and the Clients relating generally to the same subject matter, and may be modified only in a writing signed by the Company and the Clients. The paragraph headings in this Agreement are included only for convenience, do not in any manner modify or limit any of the provisions of this Agreement and may not be used in the interpretation of this Agreement. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. The Clients shall file an application with the Bankruptcy

Court seeking approval of this Agreement (the "Application"). If an order is entered approving such Application (the "Order"), any discrepancies between this Agreement, the Application and the Order shall be controlled by the Application and Order.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

THE GARDEN CITY GROUP, INC.

By: _____
Name: Karin Thaler
Title: EVP + GC

GENERAL MOTORS CORPORATION

By: _____
Name: Ray G. Young
Title: Executive Vice President & CFO

Schedule A

GCG Fees

Service	**Claims Agent Pricing**
Matter and database set-up	Waived
Transfer of data from company/AlixPartners to claims agent database	$.02 per creditor
Storage of data	$.002 per electronic record/image per month; $1.50 per box (capped at $100,000 for electronic storage)
Tailoring of proof of claim form by creditor/schedules, including bar coding	$100 per hour
Intake of creditor proofs of claim and scanning to claims agent electronic system	$.11 per image scanned $.15 per claim associated to database
Application of message codes and processing non-conforming claims	$55 per hour
Claims or Docket Reports	$150 per hour
Copy charges for mailings	$.10 per page for copy jobs of under 5,000 addresses or where document is less than 8 pages. Volume discount quotes for larger jobs. See Note below.
Preparation of mailings (folding, etc.)	Standard Hourly Rates for smaller jobs under 5,000 pieces. For larger jobs, in excess of 5,000 pieces, no hourly rate for prep, including folding, insertion, etc. Those tasks are included in the volume discount quote.
Address labels and envelopes for mailings	No charge for any mailing to more than 5,000 people. For smaller mailings, the charge is $.05 per label or window envelope (we do not

	charge for both).
Email Noticing	$100 per 1,000 names
Fax notice	$.10 per page
Website design	$3,500
Website hosting	$200 per month
Charges for public to access web site	No
Website updates (docket; claims register)	$125 per hour
Incoming mail sorting	$.45 each
Accepting data from AlixPartners for creation of Schedules and SOFAs	$150 per hour
Handling undeliverable mail & recording in database	$.25 each
Handling remails & forwarding notices	$.55 each
Supervisory Review by Project Manager leaders	Standard hourly rates
Quality Assurance Review	Standard hourly rates
Beneficial Stockholder search	Standard hourly rates
Balloting and Solicitation	Standard hourly rates
Call Center Set-up	$10,000
IVR Set-up and monthly fee - IVR minutes - Live Operators	Waived .32 cents per minute 1-74 $34.50 per hour 75-100 $32.50 per hour 75-101 $30.00 per hour 151 plus $28.50 per hour
Call Center Training and Managers	Standard hourly rates

Note: The notice of commencement, which is usually a 2-4 page document, would be quoted in the range of $0.15 per packet plus postage if mailed to 1.5 million addresses and within these specifications. The notice of sale, assuming it is 4-6 pages, is quoted at $.20 per packet. This is an "all in" price and there are no extra charges for labor, copy charges, envelopes, labels, stuffing, etc. All of our volume discount quotes will be "all in." The only additional cost will be postage and we will do a zip code-presort to get the best postage discount rate for the mailing.

If the bar date notice is about 6 pages, including a 2 page personalized POC, and is mailed to 1.5 million addresses, the likely quote would be around $0.20 per packet. Again, these quotes are provided to demonstrate the volume discounts we provide and the "all in" nature of our quotes. Actual quotes are provided once set specifications are provided.

The Garden City Group, Inc. Standard Hourly Billing Rates

GCG will cap the hourly rates of its Senior Management at $250 and there will be no charge for overtime.

Administrative	$45-$70
Data Entry Processors	$55
Mailroom and Claims Control	$55
Customer Service Rep's	$57
Project Administrators	$70-$85
Quality Assurance Staff	$80-$125
Project Supervisors	$95-$110
Systems & Technology Staff	$100-$200
Graphic Support	$125
Project Managers, Senior Project Managers, and Department Managers	$125-$150
Directors, Senior Consultants, and Assistant Vice Presidents	$175-$250
Senior Management	$250

EXHIBIT B
(Affidavit of Neil L. Zola)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

AFFIDAVIT OF NEIL L. ZOLA IN SUPPORT OF THE APPLICATION FOR ORDER UNDER 28 U.S.C. § 156(c) AUTHORIZING THE RETENTION OF THE GARDEN CITY GROUP, INC. AS NOTICE AND CLAIMS AGENT AND APPROVING ASSUMPTION OF RELATED AGREEMENT

Neil L. Zola, being duly sworn, deposes and says:

1. I am the President and Chief Operating Officer of The Garden City Group, Inc. ("**GCG**"), and I am authorized to make and submit this affidavit on behalf of GCG. This affidavit is submitted in support of the application (the "**Application**") of Chevrolet-Saturn of Harlem, Inc., General Motors Corporation, Saturn, LLC and Saturn Distribution Corporation, debtors and debtors in possession (collectively, the "**Debtors**"), for authorization to retain GCG as official notice and claims agent ("**Claims Agent**") for the above-captioned Chapter 11 case (the "**Case**"), pursuant to 28 U.S.C. § 156(c) and to approve the assumption of a related agreement. The statements contained herein are based upon personal knowledge.

2. GCG is one of the country's leading Chapter 11 administrators with expertise in noticing, claims processing, balloting administration and distribution. GCG is well qualified to provide experienced noticing, claims processing and balloting administration services in connection with this Case. Among the large Chapter 11 cases in which GCG is or was retained as noticing and claims agent to debtors are: In re BearingPoint, Inc., Case No. 09-10691

(REG), In re Fortunoff Holdings, LLC, Case No. 09-10497 (RDD), In re Star Tribune Holdings Corp., Case No. 09-10244 (RDD), In re Lenox Sales, Inc., Case No. 08-14679 (ALG), In re IBP Corp., Case No. 08-11181 (AJG), In re Alper Holdings USA, Inc., Case No. 07-12148 (BRL), In re The New York Racing Ass'n Inc., Case No. 06-12618 (JMP), In re Our Lady of Mercy Med. Ctr., Case No. 07-10609 (REG), In re Saltire Industrial, Inc., Case No. 04-15389 (BRL), In re Sure Fit, Inc., Case No. 04-11495 (BRL) and In re General Media, Inc., Case No. 03-15078 (SMB), which were filed in the Southern District of New York; In re Forward Foods LLC, case no. 09-10545 (KJC), In re Nailite International, Inc., case no. 09-10526 (MFW), In re Foothills Texas, Inc., case no. 09-10452 (CSS), In re Jancor Companies Inc., et al., case no. 08-12556 (MFW), In re Comfort Co., Inc., case no. 08-12305 (MFW), In re DG Liquidation Corp., case no. 08-10601 (CSS), In re KCMVNO, Inc., case no. 08-10600 (BLS), In re Supplements LT Inc., case no. 08-10446 (KJC), In re ProRhythm, Inc., case no. 07-11861 (KJC), In re S-Tran Holdings, Inc., et al., case no. 05-11391 (RB), In re Flintkote Company, case no. 04-11300 (JKF), In re Factory 2-U Stores, Inc., case no. 04-10111 (PJW), In re Magnatrax Corporation, case no. 03-11402 (PJW), In re HQ Global Holdings, Inc., et al., case no. 02-10760 (MFW), In re Federal-Mogul Global, Inc., case no. 01-10578 (AMW) and In re ACandS, Inc., case no. 02-12687 (RJN), which were filed in the District of Delaware; In re Commercial Mortgage & Finance Co., case no. 08-73242 (MB), In re Printers Row, LLC, case no. 08-17301 (ERW) and In re Gateway Home Care Inc., et al., case no. 03-17457 (JPC), which were filed in the Northern District of Illinois; In re Zurich Depository Corp., case no. 07-71352 (JBR), In re Copperfield Investment, LLC, case no. 07-71327 (JBR), In re The Brunswick Hospital Center, Inc., case no. 07-40290 (CEC), In re Photocircuits Corporation, case no. 05-89022 (SB), In re MetroTec Communications, Inc., et al., case no. 05-20953 (DEM), In re Allou Distributors Inc., et al., case no.03-82321 (ESS) and In re

CyberRebate.com, Inc., case no. 01-16534 (CEC), which were filed in the Eastern District of New York; In re Foxtons, Inc., et al., case no. 07-24496 (MBK), In re NJ Affordable Homes Corp., case no. 05-60442 (DHS), In re Omne Staffing Inc., et al., case no. 04-22316 (RG), In re NorVergence, Inc., case no. 04-32079 (RG), In re Muralo Company, Inc., case no. 03-26723 (MS) and In re AremisSoft, case no. 02-32621 (RG), which were filed in the District of New Jersey; In re O'Sullivan Industries, Inc., et al., case no. 05-83049 (CRM) and In re Galey & Lord, Inc., et al., case no. 04-43098 (MGC), which were filed in the Northern District of Georgia; In re SENCORP, Case No. 09-12869 (JVA) and In re United Producers, Inc., case no. 05-55272 (CMC), which were filed in the Southern District of Ohio; In re Boyds Collection, Ltd., et al., case no. 05-43793 (DWK), which was filed in the District of Maryland; In re Romacorp, Inc., case no. 05-86818 (BJH), which was filed in the Northern District of Texas; In re Mercury Companies, Inc., case no. 08-23125 (MER), which was filed in the District of Colorado; and In re Hawaiian Airlines, Inc., case no. 03-00817 (RJF), which was filed in the District of Hawaii.

3. The Debtors selected GCG to serve as the Claims Agent for the Debtors' estates, as set forth in more detail in the Application filed contemporaneously herewith. To the best of my knowledge, neither GCG, nor any of its professional personnel, have any relationship with the Debtors that would impair GCG's ability to serve as Claims Agent. Although certain GCG personnel may own or lease certain automobiles produced and/or sold by the Debtors, may have utilized repair facilities operated by the Debtors, may have automotive warranties issued by the Debtors or may own General Motors Corporation ("**GM**") stock, these relationships are merely personal in nature and in no way affect GCG's ability to serve as Claims Agent in the Case. In addition, GCG does have relationships with some of the Debtors' creditors, but they are in matters completely unrelated to this Case, either as vendors or in cases where GCG serves in a

neutral capacity as a class action settlement claims administrator. In addition, GCG has acted as a class action settlement claims administrator for GM. GCG's assistance in the cases where GCG acts as a class action settlement claims administrator has been primarily related to the design and dissemination of legal notice and other administrative functions in class actions. At the time of the filing of this Case, GCG was acting as a settlement claims administrator for GM in two class actions matters. For its work in the first of those two cases, Sadowski v. GM, which is pending in California state court (with a companion Missouri state court case), as of the date of the filing of this Case, GCG was owed $19,381.631. For its work in the second of those two cases, Soders v. GM, which is pending in a Pennsylvania state court, as of the date of the filing of this Case, GCG was owed $2,737.71. GCG agrees to waive payment for any and all unpaid pre-petition sums owed by Debtors; that waived sum totals $22,119.34. GCG has working relationships with certain of the professionals retained by the Debtors and other parties herein but such relationships are completely unrelated to this Case. Two Directors at GCG, Craig Johnson and Angela Ferrante, are attorneys formerly associated with the Debtors' bankruptcy counsel, Weil, Gotshal & Manges LLP ("**WGM**"). Mr. Johnson and Ms. Ferrante were employed by WGM from October 2001 through September 2005 and October 2000 through May 2003, respectively. I have also been advised that while employed at WGM, neither Mr. Johnson nor Ms. Ferrante worked on any matters involving the Debtors. Mr. Johnson and Ms. Ferrante were not employed by WGM when this Case was filed. I have further been advised that Jeffrey Stein, a Vice President at GCG, was employed by WGM as a paralegal from June 1977 through August 1978, and was a summer associate at WGM from June 1979 through August 1979. Mr. Stein was not employed by WGM when this Case was filed. I have also been advised that William A. Brandt, Assistant Vice President, Compliance at GCG, is an attorney formerly associated with

Davis Polk & Wardwell ("**Davis Polk**"), a law firm employed by the Debtors. Mr. Brandt was employed by Davis Polk from 1989 to 1996. I have also been advised that while employed at Davis Polk, Mr. Brandt did not work on any matters involving the Debtors. Mr. Brandt was not employed by Davis Polk when this Case was filed. I have been further advised that Donna Zeiser, a Bankruptcy Consultant hired by GCG on June 1, 2009, was formerly employed as a Senior Bankruptcy Paralegal at Sonnenschein Nath & Rosenthal LLP, which represents the United States Treasury in connection with its recent dealings with GM. I have been advised that Ms. Zeiser performed certain ministerial tasks in connection therewith. Ms. Zeiser will not be working on the Case while employed by GCG. In addition, GCG personnel may have relationships with some of the Debtors' creditors; however, such relationships are of a personal, financial nature and completely unrelated to this Case. GCG has and will continue to represent clients in matters unrelated to this Case and has had and will continue to have relationships in the ordinary course of its business with certain vendors and professionals in connection with matters unrelated to this Case.

4. Since 1999, GCG has been a wholly owned subsidiary of Crawford & Company ("**Crawford**"). I have been advised that Crawford is one of the Debtors unsecured creditors in the amount of approximately $2,650.50. I am also advised that KPMG and Ernst & Young LLP are professionals retained by the Debtors. More than fifteen years ago, certain employees of GCG worked with a practice group at KPMG, which was spun off in 1994 and renamed GCG. From time to time, GCG retains KPMG to provide tax consulting advice in connection with its settlement administrative and related work, which is completely unrelated to this Case. Ernst & Young LLP serves as Crawford's auditor in matters completely unrelated to this Case. I am advised that Crawford & Company has no material relationship with the Debtors,

and while it may have rendered services to certain creditors or have a vendor relationship with some creditors, such relationships were (or are) in no way connected to GCG's representation of the Debtors in this Case.

5. GCG is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code, in that GCG and its professional personnel:

(a) are not creditors, equity security holders or insiders of the Debtors;

(b) are not and were not, within two years before the date of the filing of this Case, directors, officers or employees of the Debtors; and

(c) do not have an interest materially adverse to the interests of the Debtors' estates or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors.

6. GCG has not been retained to assist any entity or person other than the Debtors on matters relating to, or in connection with, this Case. If GCG's proposed retention is approved by this Court, GCG will not accept any engagement or perform any service for any entity or person other than the Debtors in this Case. GCG may, however, provide professional services to entities or persons that may be creditors or parties in interest in this Case, which services do not relate to, or have any direct connection with, this Case or the Debtors.

7. GCG represents, among other things, that:

(a) It will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Claims Agent;

(b) By accepting employment in this Case, GCG waives any right to receive compensation from the United States government;

(c) In its capacity as Claims Agent, GCG will not be an agent of the United States and will not act on behalf of the United States; and

(d) GCG will not employ any past or present employees of the Debtors in connection with its work as Claims Agent.

8. Subject to the Court's approval, the Debtors have agreed to compensate GCG for professional services rendered in connection with this Case pursuant to the retention agreement by and between the Debtors and GCG, a true and correct copy of which is attached as Exhibit A. Payments are to be based upon the submission to the Debtors by GCG of a billing statement, which includes a detailed listing of services and expenses, at the end of each calendar month. GCG has received a $1,850,000.00 retainer from the Debtors and will apply same first against all pre-petition fees and expenses and then against the first post-petition invoice for fees and expenses that GCG will render in this Case.

9. GCG will comply with all requests of the Clerk of the Court and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

/s/ Neil L. Zola
Neil L. Zola
President and Chief Operating Officer

Sworn and subscribed to
before me this 12th day
of June, 2009

/s/ Allison Hassett (Sciortino)
ALLISON HASSETT (SCIORTINO)
NOTARY PUBLIC, State of New York
01HA NO. 4940286
Qualified in Nassau County
Commission Expires August 8, 2010

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ORDER PURSUANT TO 28 U.S.C. § 156(c) AUTHORIZING RETENTION AND EMPLOYMENT OF THE GARDEN CITY GROUP, INC. AS NOTICE AND CLAIMS AGENT *NUNC PRO TUNC* TO THE COMMENCEMENT DATE

Upon the Application, dated June 12, 2009 (the "**Application**"),[1] of General Motors Corporation and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, "**Debtors**"), pursuant to 28 U.S.C. § 156(c) to approve the retention and employment The Garden City Group, Inc. ("**GCG**") as notice and claims agent ("**Agent**") of the Clerk of the Bankruptcy Court ("**Court**") in the above chapter 11 cases (the "**Chapter 11 Cases**") *nunc pro tunc* to the Commencement Date and to approve the assumption of a related agreement, pursuant to the terms of the Claims Agent Agreement annexed to the Application as Exhibit A ("**Agency Agreement**") to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket and otherwise administer the proofs of claims filed in the chapter 11 cases, (iii) assist in the tabulation of acceptances and rejections of the Debtors' plan of reorganization, and (iv) provide such other administrative services that the Debtors may require; and upon the affidavit of Neil L. Zola, President and Chief Operating Officer of GCG submitted in support of the Application; and the

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

Debtors having estimated that there are in excess of 1,000 creditors in these chapter 11 cases, many of which are expected to file proofs of claims, and it appearing that the receiving, docketing and maintaining of proofs of claims would be unduly time consuming and burdensome for the Court; and the Court being authorized under 28 U.S.C. §156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that GCG has the capability and experience to provide such services and that GCG does not hold an interest adverse to the Debtors or their estate with respect to the matters upon which they are to be engaged; and due and proper notice of the Application having been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the United States Department of the Treasury, (iii) the attorneys for Export Development Canada, (iv) the attorneys for the agent under GM's prepetition secured term loan agreement, (v) the attorneys for the agent under GM's prepetition amended and restated secured revolving credit agreement, (vi) the attorneys for the statutory committee of unsecured creditors appointed in these chapter 11 cases, (vii) the attorneys for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (viii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America, (ix) the United States Department of Labor, (x) the attorneys for the National Automobile Dealers Association, (xi) the attorneys for the ad hoc bondholders committee, (xii) the U.S. Attorney's Office, S.D.N.Y., and (xiii) all entities that requested notice in these chapter 11 cases under Fed. R. Bankr. P. 2002; and no other or further notice being required; and it appearing that the employment of GCG is in the best interests of the Debtors, their estate and creditors; and sufficient cause appearing therefor; it is hereby

ORDERED, that the Debtors are authorized to retain GCG, *nunc pro tunc* to the Commencement Date, to perform the noticing and other services set forth in the Application and to receive, maintain, record and otherwise administer the proofs of claim filed in these Chapter 11 Cases; and it is further

ORDERED, that GCG is appointed as Agent for the Court and custodian of court records and, as such, is designated as the authorized repository for all proofs of claims filed in these Chapter 11 Cases and is authorized and directed to maintain the official claims register for the Debtors; and it is further

ORDERED, that GCG is authorized and directed to perform all related tasks to process the proofs of claims and maintain a claims register including, without limitation:

a. notify all potential creditors of the filing of the bankruptcy petition and of the setting of the first meeting of creditors, pursuant to §341(a) of the Bankruptcy Code, under the proper provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure;

b. maintain an official copy of the Debtors' schedules of assets and liabilities and statement of financial affairs (collectively, "**Schedules**"), listing the Debtors' known creditors and the amounts owed thereto;

c. notify all potential creditors of the existence and amount of their respective claims as evidenced by the Debtors' books and records and set forth in the Schedules;

d. furnish a notice of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court;

e. file with the Court a copy of the notice, a list of persons to whom it was mailed (in alphabetical order), and the date the notice was mailed, within ten (10) days of service;

f. docket all claims received, maintain the official claims register (the "**Claims Register**") for the Debtors on behalf of the Court;

g. specify, in the applicable Claims Register, the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, and (iv) the classification(s) of the claim (e.g., secured, unsecured, priority, etc.);

h. record all transfers of claims and provide any notices of such transfers required by Rule 3001 of the Federal Rules of Bankruptcy Procedure;

i. make changes in the Claims Registers pursuant to Court Order;

j. maintain the official mailing list for the Debtors of all entities that have filed a proof of claim, which list shall be available upon request by a party-in-interest or the Court;

k. assist with, among other things, solicitation and calculation of votes and distribution as required in furtherance of confirmation of plan(s) of reorganization;

l. thirty (30) days prior to the close of these chapter 11 cases, an Order dismissing GCG shall be submitted terminating the services of GCG upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases; and

m. at the close of the chapter 11 cases, box and transport all original documents in proper format, as provided by the Court, to the Federal Records Center; and it is further

ORDERED, that GCG is authorized to take such other action to comply with all duties set forth in the application; and it is further

ORDERED, that the Debtors are authorized to compensate GCG on a monthly basis, in accordance with the Agency Agreement, upon the receipt of reasonably detailed invoices setting forth the services provided by GCG in the prior month and the rates charged for each, and to reimburse GCG for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation; and it is further

ORDERED, if these Chapter 11 Cases convert to cases under Chapter 7, GCG will continue to be paid for its services until the claims filed in the Chapter 11 Cases have been completely processed; if claims agent representation is necessary in the converted chapter 7 cases, GCG will continue to be paid in accordance with 28 U.S.C. §156(c) under the terms set out herein; and it is further

ORDERED, that in the event GCG is unable to provide the services set out in this order, GCG will immediately notify the Court and the Debtors' attorney and cause to have all

original proofs of claim and computer information turned over to another claims agent with the advice and consent of the Court and Debtors' attorney; and it is further

ORDERED, that the Debtors are granted a waiver of the requirement, under Local Bankruptcy Rule 9013-1(b), that a memorandum of law be submitted.

Dated: New York, New York
June 12, 2009

United States Bankruptcy Judge

Exhibit B

gardenUNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ORDER PURSUANT TO 28 U.S.C. § 156(c) AUTHORIZING RETENTION AND EMPLOYMENT OF THE GARDEN CITY GROUP, INC. AS NOTICE AND CLAIMS AGENT *NUNC PRO TUNC* TO THE COMMENCEMENT DATE

Upon the Application, dated June 12, 2009 (the "**Application**"),[1] of General Motors Corporation and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, "**Debtors**"), pursuant to 28 U.S.C. § 156(c) to approve the retention and employment The Garden City Group, Inc. ("**GCG**") as notice and claims agent ("**Agent**") of the Clerk of the Bankruptcy Court ("**Court**") in the above chapter 11 cases (the "**Chapter 11 Cases**") *nunc pro tunc* to the Commencement Date and to approve the assumption of a related agreement, pursuant to the terms of the Claims Agent Agreement annexed to the Application as Exhibit A ("**Agency Agreement**") to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket and otherwise administer the proofs of claims filed in the chapter 11 cases, (iii) assist in the tabulation of acceptances and rejections of the Debtors' plan of reorganization, and (iv) provide such other administrative services that the Debtors may require; and upon the affidavit of Neil L. Zola, President and Chief Operating Officer of GCG submitted in support of the Application; and the

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

Debtors having estimated that there are in excess of 1,000 creditors in these chapter 11 cases, many of which are expected to file proofs of claims, and it appearing that the receiving, docketing and maintaining of proofs of claims would be unduly time consuming and burdensome for the Court; and the Court being authorized under 28 U.S.C. §156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that GCG has the capability and experience to provide such services and that GCG does not hold an interest adverse to the Debtors or their estate with respect to the matters upon which they are to be engaged; and due and proper notice of the Application having been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the United States Department of the Treasury, (iii) the attorneys for Export Development Canada, (iv) the attorneys for the agent under GM's prepetition secured term loan agreement, (v) the attorneys for the agent under GM's prepetition amended and restated secured revolving credit agreement, (vi) the attorneys for the statutory committee of unsecured creditors appointed in these chapter 11 cases, (vii) the attorneys for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (viii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America, (ix) the United States Department of Labor, (x) the attorneys for the National Automobile Dealers Association, (xi) the attorneys for the ad hoc bondholders committee, (xii) the U.S. Attorney's Office, S.D.N.Y., and (xiii) all entities that requested notice in these chapter 11 cases under Fed. R. Bankr. P. 2002; and no other or further notice being required; and it appearing that the employment of GCG is in the best interests of the Debtors, their estate and creditors; and sufficient cause appearing therefor; it is hereby

ORDERED, that the Debtors are authorized to retain GCG, *nunc pro tunc* to the Commencement Date, to perform the noticing and other services set forth in the Application and to receive, maintain, record and otherwise administer the proofs of claim filed in these Chapter 11 Cases; and it is further

ORDERED, that GCG is appointed as Agent for the Court and custodian of court records and, as such, is designated as the authorized repository for all proofs of claims filed in these Chapter 11 Cases and is authorized and directed to maintain the official claims register for the Debtors; and it is further

ORDERED, that GCG is authorized and directed to perform all related tasks to process the proofs of claims and maintain a claims register including, without limitation:

a. notify all potential creditors of the filing of the bankruptcy petition and of the setting of the first meeting of creditors, pursuant to §341(a) of the Bankruptcy Code, under the proper provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure;

b. maintain an official copy of the Debtors' schedules of assets and liabilities and statement of financial affairs (collectively, "**Schedules**"), listing the Debtors' known creditors and the amounts owed thereto;

c. notify all potential creditors of the existence and amount of their respective claims as evidenced by the Debtors' books and records and set forth in the Schedules;

d. furnish a notice of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court;

e. file with the Court a copy of the notice, a list of persons to whom it was mailed (in alphabetical order), and the date the notice was mailed, within ten (10) days of service;

f. docket all claims received, maintain the official claims register (the "**Claims Register**") for the Debtors on behalf of the Court;

g. specify, in the applicable Claims Register, the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, and (iv) the classification(s) of the claim (e.g., secured, unsecured, priority, etc.);

h. record all transfers of claims and provide any notices of such transfers required by Rule 3001 of the Federal Rules of Bankruptcy Procedure;

i. make changes in the Claims Registers pursuant to Court Order;

j. maintain the official mailing list for the Debtors of all entities that have filed a proof of claim, which list shall be available upon request by a party-in-interest or the Court;

k. assist with, among other things, solicitation and calculation of votes and distribution as required in furtherance of confirmation of plan(s) of reorganization;

l. thirty (30) days prior to the close of these chapter 11 cases, an Order dismissing GCG shall be submitted terminating the services of GCG upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases; and

m. at the close of the chapter 11 cases, box and transport all original documents in proper format, as provided by the Court, to the Federal Records Center; and it is further

ORDERED, that GCG is authorized to take such other action to comply with all duties set forth in the application; and it is further

ORDERED, that the Debtors are authorized to compensate GCG on a monthly basis, in accordance with the Agency Agreement, upon the receipt of reasonably detailed invoices setting forth the services provided by GCG in the prior month and the rates charged for each, and to reimburse GCG for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation; and it is further

ORDERED, if these Chapter 11 Cases convert to cases under Chapter 7, GCG will continue to be paid for its services until the claims filed in the Chapter 11 Cases have been completely processed; if claims agent representation is necessary in the converted chapter 7 cases, GCG will continue to be paid in accordance with 28 U.S.C. §156(c) under the terms set out herein; and it is further

ORDERED, that in the event GCG is unable to provide the services set out in this order, GCG will immediately notify the Court and the Debtors' attorney and cause to have all

original proofs of claim and computer information turned over to another claims agent with the advice and consent of the Court and Debtors' attorney; and it is further

ORDERED, that the Debtors are granted a waiver of the requirement, under Local Bankruptcy Rule 9013-1(b), that a memorandum of law be submitted.

Dated: New York, New York
June 25, 2009

/s/ Robert E. Gerber
United States Bankruptcy Judge

Exhibit C

Davidson, Scott

From: Kimberly Gargan <Kimberly.Gargan@gcginc.com>
Sent: Monday, June 16, 2014 5:11 PM
To: Davidson, Scott; Angela Ferrante
Cc: Steinberg, Arthur
Subject: RE: GM - Request

Scott,

As per yesterday's email exchange below, please find our updated numbers in regard to the Sale Notice mailing handled in June, 2009. As an update, the original cost provided to you on Friday did include the printing, labor and materials costs. Below please find the additional cost of postage and the costs for Broadridge (which include labor, postage, and materials).

Printing, Labor and Materials for the 3 pg. Sale Notice :
Quantity - 4,350,000
Rate - $0.175
Cost - $761,250.00

Postage for 3 pg. Sale Notice
Quantity - 2,000,000 (to the creditor matrix)
Rate - $0.44
Cost - $880,000.00

Broadridge – To equity and bondholders
Quantity – 2,350,000
Cost - $1,358.008.59 (excluding printing and related costs captured above)

Total (printing, postage, labor & materials)- $2,999,258.59

Please let us know if you need anything further at this time. Thank you

Kimberly Gargan
Senior Project Manager, Bankruptcy

GCG The Garden City Group, Inc.
1985 Marcus Ave. Lake Success, NY 11042
T:631-470-6802
Kimberly.Gargan@gcginc.com | www.gcginc.com

Exhibit 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	Case No.: 09-50026 (REG)
Debtors.	:	(Jointly Administered)

DECLARATION OF MICHAEL YAKIMA

I, Michael Yakima, hereby declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge, information and belief.

1. I am currently employed as a product manager for R. L. Polk & Co., recently acquired by IHS Global, Inc. (hereinafter referred to as "**Polk**"). Prior to my current position, I was a PolkInsight Advisor assigned to the General Motors ("**GM**") account, and I maintained an office at GM's Headquarters in The Renaissance Center in Detroit, Michigan. I have been employed by Polk for approximately ten years. Unless otherwise stated, all of the information contained herein is based on my personal knowledge, or the review of information contained within Polk's books and records.

2. Polk compiles and maintains a proprietary database of motor vehicle registrations, which includes registration transfers and renewals throughout the United States ("Polk Database").

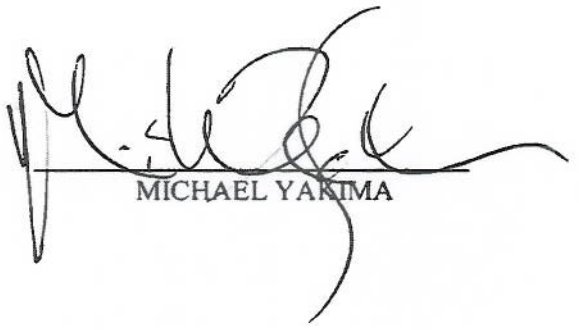
3. In 2009, one of my job responsibilities, pursuant to a service contract which existed between Polk and General Motors Corporation (n/k/a Motors Liquidation Company) ("**Old GM**"), was to serve as an on-site advisor to Old GM to act as the primary Polk point-

person to provide assistance with reporting (including the provision of supporting information for such), application usage and analysis of the Polk system from which Old GM would use to pull statistical analyses of automotive information. The total number of Old GM manufactured vehicles that were in operation in the United States was among the information provided to Old GM. This data is sometimes referred to as "vehicles in operation" or "VIO". Polk assembles VIO information from various sources, including the information from the Polk Database. Polk provides the VIO information to various vehicle manufactures and this data is routinely relied on in the automotive industry for a variety of business purposes.

4. Under Polk's arrangement with Old GM, Polk provided Old GM (and then General Motors LLC ("**New GM**") after it acquired substantially all of the assets of Old GM in July 2010) with the VIO information for GM manufactured vehicles on a quarterly basis.

5. Attached hereto as Exhibit "A" is a true and accurate copy of a spreadsheet I provided to Old GM in early July 2009 which shows the total number of Old GM manufactured vehicles in operation in the United States in the second quarter of 2009 (ending June 30 2009). There were a total of 70,535,565 Old GM manufactured vehicles in operation in the United States as of that date.

Dated: August 27, 2014



MICHAEL YAKIMA

Exhibit A

Sum of Vehicle Count SUM	
Make	Total
BUICK	6695230
CADILLAC	3652036
CHEVROLET	36901522
GM ELECTRIC	591
GMC	7289793
HUMMER	241745
ISUZU	214
OLDSMOBILE	4086499
OTHER - ISUZU	192012
PONTIAC	7575672
SAAB	565749
SATURN	3330156
TRANS MFG CORP	4346
Grand Total	70535565

Exhibit 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	Case No.: 09-50026 (REG)
Debtors.	:	(Jointly Administered)

DECLARATION OF HERB KIEFER

I, Herb Keifer, hereby declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct.

1. I am currently employed by General Motors LLC ("**New GM**") as Controller of the Americas. Prior to July 2009, I was employed by the former General Motors Corporation ("**Old GM**") in various financial and accounting-related positions. My employment with Old GM began in 1983. I am familiar with the statements set forth below based on my personal knowledge, and my review of relevant materials. I submit this declaration in support of the *Opening Brief By General Motors LLC On Threshold Issues Concerning Its Motions To Enforce The Sale Order And Injunction*, filed simultaneously herewith.

2. As part of my current job responsibilities, I have access to the accounting records of New GM. In addition, I have access to the accounting records of Old GM, a copy of which New GM has maintained since the sale of certain of Old GM's assets to New GM in July 2009. With respect to records showing the creditors of Old GM as of June 2009, the General Ledger provides the total dollar amounts of Old GM's obligations. The Payable Ledger provides the name of the entity or individual to which a particular amount or obligation was due. In addition, Old GM's system (and New GM's system since July 2009) for paying obligations due third

parties is called the DACOR system. The DACOR system contains the names of entities or individuals who were due a payment as of a specific time.

3. In the normal course of business, neither the General Ledger nor Payable Ledger for Old GM for June 2009 would include any of the named plaintiffs in the Ignition Switch Actions and Non-Ignition Switch Actions, or any owner of any Old GM vehicle, as being listed as a creditor of Old GM in June 2009 by reason of the fact that they were an owner of an Old GM vehicle.

4. In addition, a review of records in the DACOR system was undertaken for both June 1st and July 1st 2009 for the names which New GM counsel provided that are the named plaintiffs in the Ignition Switch Actions and Non-Ignition Switch Actions, most of which are in the MDL Litigation pending in federal court in New York. That review showed only that a person named "Steve Berry" was sent a check on June 22, 2009 for $195.85 as a result of a goodwill reimbursement of repair expenses for a 2002 Chevrolet Impala with a vehicle identification number of 2G1WF52E929290383.

Dated: November 5, 2014

Herb Kiefer

Exhibit 4

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	Case No.: 09-50026 (REG)
Debtors.	:	(Jointly Administered)

DECLARATION OF ANDREW B. BLOOMER IN SUPPORT OF NEW GM'S MOTION TO ENFORCE SALE ORDER AND INJUNCTION

I, Andrew B. Bloomer, hereby declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge, information and belief.

1. I am a partner of the law firm Kirkland & Ellis LLP. I am one of the counsel of record in this action for General Motors LLC ("**New GM**"). I submit this declaration in support of New GM's Motion to Enforce the Court's July 5, 2009 Sale Order and Injunction. Unless otherwise indicated, I have personal knowledge of the matters set forth below. If called as a witness, I could and would testify competently as follows:

2. Old GM filed for Chapter 11 bankruptcy on June 1, 2009. Between June 1, 2009 and July 10, 2009, more than 1,250 media articles reporting on Old GM's prospective or actual bankruptcy were published in virtually every major newspaper in each of the fifty United States and the District of Columbia, each of the national wire services, as well as in many leading foreign newspapers. These newspapers and wire services include but are not limited to: The New York Times, The Wall Street Journal, USA Today, The Washington Post, Chicago Tribune, Daily News, New York Post, Chicago Sun-Times, Los Angeles Times, Associated Press, Reuters, The Independent, and The Guardian.

3. Media articles between June 1, 2009 and July 10, 2009 reporting on Old GM's prospective or actual bankruptcy can be identified by using the following search criteria in LexisNexis databases such as "US Newspapers and Wires," "MegaNews, US News," "Mega News, Major Newspapers," and "Global publications: Non-US database": "headline ((caps(general motors) or allcaps(gm)) w/25 (restructur! or bankrupt! or insolven!)) and date (geq(6/1/2009) and leq(7/11/2009))."

4. Attached as **Exhibit 1** are true and accurate screenshots of abstracts from articles identified using the databases and search criteria described above. Below are examples of articles located using such databases and search criteria.

5. Attached as **Exhibit 2** is a true and correct copy of a June 4, 2009 article entitled *Accident Victims Fight For Carmaker Payouts; Chrysler, GM Bankruptcies Affect Liability*, published in The Washington Times. The article reported that "Accident victims and their lawyers descended on Capitol Hill on Wednesday [June 3, 2009], urging Congress and the Obama administration to guarantee their ability to seek medical reimbursement from Chrysler and General Motors. The companies' Chapter 11 filings treat victims as unsecured creditors who must wait in line to receive their payouts." (John P. Krudy, *Accident Victims Fight For Carmaker Payouts; Chrysler, GM Bankruptcies Affect Liability*, The Washington Times, June 4, 2009.)

6. Attached as **Exhibit 3** is a true and correct copy of a June 19, 2009 article entitled *Bondholders, Unions Object to GM Asset Sale*, published by the Associated Press. On June 19, 2009, the Associated Press reported that a group of bondholders and some of the automaker's labor unions filed objections to Old GM's proposed Section 363 sale and that "additional objections filed by consumer groups, a handful of states and cities, and individual retirees,

shareholders and bondholders, threaten[ ] to put the brakes on what has so far been a speedy trip through the Chapter 11 process." (Bree Fowler, *Bondholders, Unions Object to GM Asset Sale*, Associated Press, June 19, 2009.)

7. Attached as **Exhibit 4** and **Exhibit 5** are true and correct copies of a June 22, 2009 article entitled *Missouri Challenges GM Bankruptcy Plan*, published in the St. Louis Business Journal, and a June 23, 2009 article entitled *37 States Claim GM Using Court to Skirt State Laws; AGs File Objection in Bankruptcy Proceedings*, published in The Washington Times. The articles reported that 37 state Attorney Generals objected to Old GM's bankruptcy plan on the ground that the plan "would free the automaker of lemon law and product liability requirements, hurting customers who recently bought cars." (Kelsey Volkmann, *Missouri Challenges GM Bankruptcy Plan*, St. Louis Business Journal, June 22, 2009; William Ehart, *37 States Claim GM Using Court To Skirt State Laws; AGs File Objection In Bankruptcy Proceedings*, The Washington Times, June 23, 2009.)

8. Attached as **Exhibit 6** is a true and correct copy of a June 29, 2009 article entitled *GM Agrees to Liability for Defects After Bankruptcy — Auto Maker's Decision Comes Amid Pressure from States, Consumer Advocates in Advance of Tuesday Hearing*, published in The Wall Street Journal. The article reported that "victims with pending lawsuits, those who won damages against [Old] GM before it filed for bankruptcy and those who get in accidents while the auto maker is under bankruptcy protection will still be unable to bring claims against the new GM. They would remain with other unsecured creditors making claims against the old GM. Those victims are likely to recover little or nothing." (Mike Spector, *GM Agrees to Liability for Defects After Bankruptcy — Auto Maker's Decision Comes Amid Pressure from States, Consumer Advocates in Advance of Tuesday Hearing*, The Wall Street Journal, June 29, 2009.)

9. Attached as **Exhibit 7** is a true and correct copy of a July 1, 2009 article entitled *GM Faces July 10 Liquidation if Asset Sale Is Denied*, published in The Detroit News. The article reported that "[m]otorists injured in crashes and accidents involving General Motors Corp. vehicles protested outside U.S. Bankruptcy Court this morning ahead of this key hearing in the automaker's bankruptcy case. The victims and their relatives, who have pending lawsuits against GM, likely will be left with no opportunity to collect damages if a judge, as expected, allows the automaker to sell its best assets to a government-sponsored company. The judge's approval could come this week." (Robert Snell, *GM Faces July 10 Liquidation if Asset Sale Is Denied*, The Detroit News, July 1, 2009.)

10. Attached as **Exhibit 8** is a true and correct copy of a July 2, 2009 article entitled *GM Says Approval of Restructuring is Urgent*, published in The Washington Post. The article reported that "the new GM would assume responsibility for claims arising from accidents that occur after the sales transaction, even if they involve GM vehicles made before the sale of the company. Those who suffered injuries before that would have to pursue the old GM, which means they would probably recover little, if any, money." (Tomoeh Murakami Tse, *GM Says Approval of Restructuring is Urgent*, The Washington Post, July 2, 2009.)

11. Attached as **Exhibit 9** is a true and correct copy of a July 7, 2009 article entitled *GM Ruling Blow to Crash Victims; Bankruptcy Plan Would Limit Existing Liability Claims*, published in the Sacramento Bee. The article reported that "Attorney Christine Spagnoli, president of the Sacramento-based Consumer Attorneys of California, said if the judge's ruling stands, consumers with existing claims are 'pretty much going to be out of luck, pennies on the dollar.'" (Mark Glover, *GM Ruling Blow to Crash Victims; Bankruptcy Plan Would Limit Existing Liability Claims*, Sacramento Bee, July 7, 2009.)

12. Attached as **Exhibit 10** is a true and correct copy of a July 7, 2009 article entitled *Car Accident Plaintiffs Scurry to File Appeals vs. GM Plan; They Say Bankruptcy Strategy Would Free Automaker from Liability*, published in the Grand Rapid Press. The article reported that "Steve Jakubowski, who filed the appeal notice for the accident litigants, said his appeal would assert the bankruptcy judge overstepped his authority by preventing victims from pursuing litigation under their state product liability laws." (*Car Accident Plaintiffs Scurry to File Appeals vs. GM Plan; They Say Bankruptcy Strategy Would Free Automaker from Liability*, Grand Rapid Press, July 7, 2009.)

Dated: November 5, 2014

Andrew B. Bloomer

Exhibit 1

4. Mega News, Major Newspapers: (run 10/29/2014)

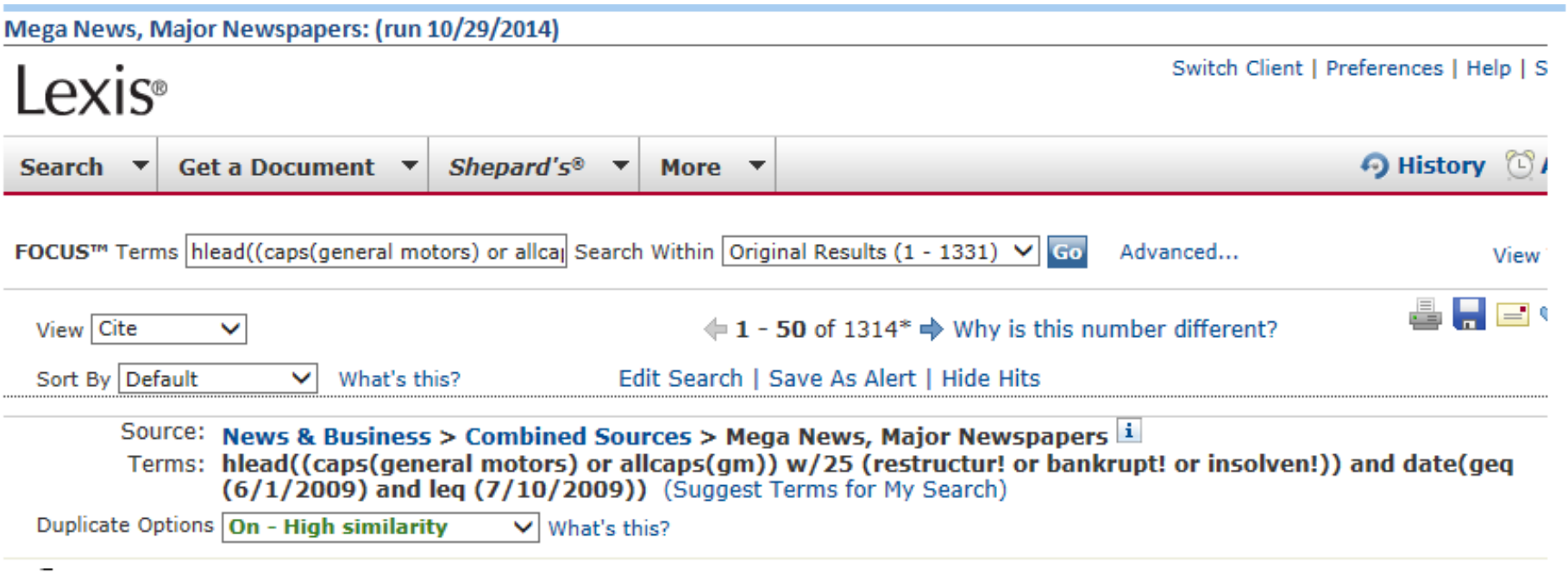


Exhibit 2

225 of 662 DOCUMENTS

The Washington Times

June 4, 2009 Thursday

SECTION: BUSINESS; A10

LENGTH: 560 words

HEADLINE: Accident victims fight for carmaker payouts;
Chrysler, GM bankruptcies affect liability

BYLINE: By John P. Krudy, THE WASHINGTON TIMES

BODY:

Accident victims and their lawyers descended on Capitol Hill on Wednesday, urging Congress and the Obama administration to guarantee their ability to seek medical reimbursement from Chrysler and General Motors. The companies' Chapter 11 filings treat victims as unsecured creditors who must wait in line to receive their payouts.

"Our tax dollars are now being used to take away our right for compensation," said Jeremy Warriner of Indianapolis, who lost both of his legs in 2005 after suffering severe burns when his Jeep Wrangler crashed. "I'm here to make certain this is fixed, and other Americans don't have to fight this fight."

Bankruptcy Judge Arthur Gonzalez overruled the objections of the Ad Hoc Committee of Consumer-Victims of Chrysler LLC on Monday when he approved the company's sale to Fiat. The group sought a fund or a retroactive insurance policy to cover the cost of lawsuits and medical treatment. A policy like that would cost $300 million a year, enough to cover the $250 million Chrysler paid last year in medical settlements, according to the group.

"This is an unprecedented use of the bankruptcy system, to not pass on successor liability [to Fiat]," said James Lowe, an attorney for the group. "This filing was obviously prepackaged, pre-engineered and backed by the White House. It went through that judge like butter."

Mr. Lowe said a rushed bankruptcy could cause a similar loss of rights in GM's case.

Clarence Ditlow, director of the Center for Auto Safety, said Fiat "was willing to assume the liabilities" of Chrysler.

"When [Chrysler and Fiat] met with the auto task force, that changed," he told reporters at a Capitol news briefing Wednesday. "The [task force] is guiding this bankruptcy, and it left the consumers out in the cold."

Victims and their families at the news conference said they were surprised to lose their rights in bankruptcy.

"I want to go to court and plead our case," said Bob Dinnigan, whose daughter Amanda suffered spinal cord injuries and is now a paraplegic after what Mr. Dinnigan described as a "seat-belt defect" injured her in a February 2007 crash.

A spokesman for Chrysler defended the decisions made by the bankruptcy court.

"The other option - liquidation - would have had far more dire consequences for employees, retirees, dealers, suppliers and creditors - including unsecured tort claimants," Chrysler spokesman Michael Palese said. "All these people are considered unsecured creditors, and they can bring their complaints to the bankruptcy process."

Some observers described Wednesday's media event, in the Rayburn House Office Building, as a publicity stunt staged by trial lawyers who wish to ignore bankruptcy law.

"The Obama administration is abusing bankruptcy process, but the bar on these legal claims is the same whatever type of bankruptcy you use," said Andrew Grossman, senior legal policy analyst for the Heritage Foundation, a conservative D.C. think tank. "That's the case in all bankruptcies: It cleanses the company of existing obligations."

"Those who in fact were injured and can make a plausible case should do so," said Darren McKinney, director of communications for the American Tort Reform Association, which seeks to reduce the number of lawsuits clogging the civil justice system. "But the bankruptcy judge takes that into account, and that's the way the cookie crumbles."

GRAPHIC: Shaun Doss, 6, of Gilbert, Ariz., listens to other accident victims Wednesday during a Capitol Hill news conference urging a guarantee on medical reimbursements from Chrysler and General Motors. [Photo by Barbara L. Salisbury/The Washington Times]

LOAD-DATE: June 4, 2009

Exhibit 3

FOCUS - 40 of 162 DOCUMENTS

June 19, 2009 Friday

SECTION: DOMESTIC NEWS

LENGTH: 755 words

HEADLINE: Bondholders, unions object to GM asset sale

BYLINE: By BREE FOWLER, AP Auto Writer

DATELINE: NEW YORK

BODY:

A group of General Motors Corp. bondholders and some of the automaker's labor unions filed objections Friday to GM's plan to sell its assets to a new company that can emerge from bankruptcy protection.

Their opposition, along with additional objections filed by consumer groups, a handful of states and cities, and individual retirees, shareholders and bondholders, threatens to put the brakes on what has so far been a speedy trip through the Chapter 11 process.

The Unofficial Committee of Family & Dissident GM Bondholders claim they are being treated unfairly compared with the automaker's other stakeholders and deserve more than the 10 percent stake in the new company that they would receive if the sale goes through.

In its motion, the bondholders group accused GM and the U.S. government of unjustly speeding the case through the bankruptcy process at the expense of the bondholders and dividing the new company's assets "among a few select favored classes."

"GM's bondholders appear to be the most disfavored and discriminated class in the scheme," the group wrote, pointing to the larger 17.5 percent stake the United Auto Workers union is slated to get under the sale.

The group claims to represent about 1,500 bondholders with holdings worth more than $400 million. It's also asking the court to grant it permission to form a formal committee that would be able to negotiate with GM separately from larger bank and investment firm bondholders. A hearing on that request is

scheduled for Tuesday.

GM spokeswoman Renee Rashid-Merem declined to comment on the group's objection, saying that the company doesn't discuss specific claims or possible outcomes that will be determined by the bankruptcy court.

As part of GM's restructuring plan, the automaker wants to sell the bulk of its assets to a new company in which the U.S. government will take a 60 percent ownership stake. The Canadian government would get 12.5 percent of the new GM, with the UAW taking a 17.5 percent share and unsecured bondholders receiving 10 percent. Existing GM shareholders are expected to be wiped out.

The support of bondholders is seen as a key step toward moving the bankruptcy process along quickly and allowing GM to meet its goal of emerging from court oversight in 60 to 90 days.

The day before GM's June 1 bankruptcy protection filing, a group of ad hoc institutional bondholders said that 54 percent of the automaker's bondholders had agreed to exchange their shares of automaker's $27 billion in unsecured bonds for the 10 percent stake and warrants to purchase a greater stake in the new company later.

Chrysler LLC also tried to hammer out a deal in the days leading to its April 30 Chapter 11 filing, but it faced heavy resistance from debtholders representing a fraction of its $6.9 billion in secured debt.

That group objected to Chrysler's plan to sell the bulk of its assets to Italy's Fiat Group SpA, and took the case all the way to the U.S. Supreme Court before the sale ultimately went through. Attorneys for consumer groups and people with product liability lawsuits against Chrysler also appealed the sale to the high court.

Several of the same consumer groups are also objecting to the GM sale, because like in the case of Chrysler, the new company would not be responsible for product liability claims related to vehicles produced and sold by the old company.

Consumers would be left to file claims against the assets remaining after the sale, and it is unlikely that there will be anything left to pay those claims.

Meanwhile, the IUE-CWA, United Steelworkers and International Union of Operating Engineers claimed Friday that the GM sale will ultimately take away the health care benefits of their 50,000 retirees.

Before it filed for bankruptcy protection, GM reached a deal to give the UAW a stake in the new company to help fund retiree heath care benefits, but no such agreement has been reached with the other unions.

"If GM succeeds in leaving behind these union-represented retirees and dependents, they will be left with only an unsecured claim against old GM for more than $3 billion in retiree health care and hundreds of millions more for retirement life insurance," the unions said in their objection.

Rashid-Merem said discussions related to the non-UAW health care benefits are ongoing, and the company hopes to reach final decisions about their future soon.

A hearing on the sale of GM's assets to the new government-led entity is scheduled for June 30. The deadline to file objections with the court was 5 p.m. Friday.

LOAD-DATE: June 20, 2009

Exhibit 4

63 of 662 DOCUMENTS

St. Louis Business Journal

June 22, 2009 Monday

LENGTH: 290 words

HEADLINE: Missouri challenges GM bankruptcy plan

BYLINE: Kelsey Volkmann

BODY:

Missouri Attorney General Chris Koster is challenging General Motors Corp.'s bankruptcy plan, calling it unfair for both consumers and dealerships.

GM's plan would free the automaker of lemon law and product liability requirements, hurting customers who recently bought cars, Koster's office said Monday.

Attorneys general from Connecticut, Kentucky, Maryland, Minnesota, Missouri, Nebraska, North Dakota and Vermont filed an objection about the provision Friday in U.S. Bankruptcy Court in New York.

But Chrysler emerged from bankruptcy earlier this month free of the same liabilities for vehicle defects.

Koster said he also is concerned about how GM's bankruptcy plan treats automobile dealerships.

The current agreement allows the post-bankruptcy GM to decide unilaterally what contractual provisions to insert into dealership contracts and requires the dealerships to accept the contracts as written by the automaker.

The agreement takes away the dealerships' right to object, even if the contract does not give them the protections they have in state law, Koster's office said.

"The current agreement is terribly unfair to these dealership owners, many of whom have been loyal GM dealers for decades and have invested their life savings in these family businesses," Koster said in a statement. "It is unconscionable to force a dealership to waive its rights under Missouri law simply because GM has floundered."

Sam Barbee, president and chief executive officer of the Missouri Automobile Dealers Association, praised Koster's objections to GM's bankruptcy plan. "His efforts are focused not just on ensuring the legal rights of affected Missouri dealers and their businesses, but also protecting Missouri's consumers," he said in a statement.

LOAD-DATE: June 22, 2009

Exhibit 5

49 of 662 DOCUMENTS

The Washington Times

June 23, 2009 Tuesday

SECTION: THE SECOND FRONT; A03

LENGTH: 457 words

HEADLINE: 37 states claim GM using court to skirt state laws;
AGs file objection in bankruptcy proceedings

BYLINE: By William Ehart, THE WASHINGTON TIMES

BODY:

General Motors came under attack Monday from another quarter when 37 states, including Maryland and Virginia, filed an objection in the automaker's bankruptcy proceedings.

The objection, filed by Nebraska Attorney General Jon Bruning on behalf of the other states, argues that the company should not be able to use bankruptcy court to skirt state laws, including franchise laws protecting dealers' relationship with the automaker.

The states find fault not just with GM's 1,350 dealer terminations, but with the terms it is forcing continuing dealers to accept.

"The attorneys general have grave concerns over what GM is doing," said Mr. Bruning, a Republican. "Ignoring state law is not only illegal, it's just plain bad business, and we're going to try and stop it."

The objection also covers such ground as environmental and personal-injury liability and consumer warranty claims.

Mr. Bruning is president of the National Association of Attorneys General.

GM is also under fire from its dealers, some of its bondholders and Congress, which has introduced legislation on the dealer issue.

The states filed objections in Chrysler's bankruptcy case without success, though Mr. Bruning said some of their concerns were addressed. The issue of continuing dealers was not a factor in Chrysler's proceedings.

"In the GM case, we also are objecting to the treatment of the dealers being retained," said Raquel Guillory, a spokeswoman for Maryland Attorney General Douglas F. Gansler, a Democrat. "They want them to sign away any rights they have under state law.

"We don't think they should ask them to do that, and we don't think that they should be allowed to ask the dealers to do that."

States involved in the objection also include California, Massachusetts, Michigan, New Jersey and Pennsylvania. Texas filed a similar objection on its own.

Mr. Bruning said later Monday that he and representatives from four other states had a "very productive" conference call with Matt Feldman, a bankruptcy lawyer for President Obama's auto task force.

"I said the closings need to be a transparent process, that if there are metrics, those metrics need to be clear," Mr. Bruning said. "He agreed that transparency would be useful in the process, and he wants to be more transparent going forward.

"He assured me that the government was not involved in choosing which of the dealers would be closed."

Mr. Bruning said there are examples of GM dealer closings in his state that put the fairness of the process in doubt.

"One dealer bought his dealership for $2 million four years ago. He has tripled his sales, and they are shutting him down and giving him $70,000," he said. "They relocate the franchise in the same town, and the new dealer doesn't have to pay anything."

GRAPHIC: Nebraska Attorney General Jon Bruning filed an objection in GM's bankruptcy proceedings Monday on behalf of 37 states. [Photo by Associated Press]

LOAD-DATE: June 23, 2009

Exhibit 6

FOCUS - 33 of 208 DOCUMENTS

Dow Jones Factiva

THE WALL STREET JOURNAL.
The **Wall Street Journal**

June 29, 2009 Monday

SECTION: Pg. B3

LENGTH: 710 words

HEADLINE: Corporate News: GM Agrees to Liability for Defects After Bankruptcy --- Auto Maker's Decision Comes Amid Pressure From States, Consumer Advocates in Advance of Tuesday Hearing

BYLINE: By Mike Spector

BODY:

General Motors Corp., under pressure from state attorneys general, agreed to assume legal responsibility for injuries drivers suffer from vehicle defects after the auto maker emerges from U.S. bankruptcy protection.

The concession means consumers who are injured in car accidents after GM emerges from bankruptcy protection will be able to bring product-liability claims against the government-owned auto maker.

Under GM's original bankruptcy plan, the auto maker planned to leave such liabilities behind after selling its "good" assets to a new GM owned by the government. That meant future car-accident victims who believe that faulty manufacturing by the old GM caused their injuries would be unable to sue the new GM. Instead, they would have been treated as unsecured creditors, fighting over the remains of GM's old bankruptcy estate.

GM's agreement to take responsibility for future product-liability claims, outlined in a court filing late Friday, represents a partial victory for more than a dozen state attorneys general and several consumer-advocacy groups. They had objected to GM's original plan to shed these liabilities, arguing it would

rob future car-accident victims of their legal rights because they would have no way of knowing they might be entitled to claims.

GM advisers, members of President Barack Obama's auto task force and the attorneys general negotiated for several days to address concerns about product-liability claims, among other issues. The talks heated up Friday ahead of GM's Tuesday court date, when it will ask a judge to approve the auto maker's plan to create a new GM by selling its desirable assets to the government.

An administration official recently said the government had become concerned about murky legal precedent surrounding the issue of future product-liability claims. The official said case law was "unclear and ambiguous on the issue of future product-liability claims" making it sensible "for both sides to settle."

GM maintained in court papers that it wasn't legally required to take on the claims, saying federal pre-emption meant the bankruptcy code overrode state laws governing the rights of car-accident victims to sue the new GM. It also noted that Chrysler Group LLC, which recently emerged from bankruptcy in a deal with Fiat SpA, wouldn't be responsible for such claims, after a bankruptcy judge dismissed objections to its plan.

GM said it ultimately agreed to take on future product-liability claims "to alleviate certain concerns that have been raised on behalf of consumers."

Car-accident victims with pending lawsuits, those who won damages against GM before it filed for bankruptcy and those who get in accidents while the auto maker is under bankruptcy protection will still be unable to bring claims against the new GM. They would remain with other unsecured creditors making claims against the old GM. Those victims are likely to recover little or nothing.

Attorneys general were expected to "keep pressing" for the new GM to take on those liabilities ahead of Tuesday's court hearing, a person involved in the discussions said. But the person said GM and the government were unlikely to capitulate further.

An ad hoc committee representing car-accident victims who have sued GM said there are more than 300 people with personal-injury claims exceeding $1.25 billion.

A committee representing GM and Chrysler car-accident victims called GM's move "a positive development."

The committee said new GM should take on claims from victims already hurt from defective GM vehicles. It said Chrysler also should take responsibility for future claims as well as those with pending lawsuits and successful cases brought against Chrysler before it filed for bankruptcy.

The committee said Chrysler's unwillingness to take on future claims as GM has represented "an unacceptable double standard."

A Chrysler spokeswoman declined to comment. A GM spokesman declined to comment beyond the auto maker's court filing.

Separately, talks were expected to continue over further compensation for dealers whose contracts were terminated as part of GM's bankruptcy. GM so far

has signaled it won't compensate dealers beyond programs the auto maker already outlined.

NOTES:
PUBLISHER: Dow Jones & Company, Inc.

LOAD-DATE: May 31, 2010

Exhibit 7

FOCUS - 153 of 167 DOCUMENTS

The Detroit News (Michigan)

July 1, 2009 Wednesday
no-dot Edition

SECTION: BUSINESS

LENGTH: 650 words

HEADLINE: Henderson: GM faces July 10 liquidation if asset sale is denied

BYLINE: Robert Snell

BODY:

The Detroit News

New York - General Motors Corp. will face liquidation July 10 unless a federal bankruptcy judge approves the sale of the automaker's best assets to a new company, President and CEO Fritz Henderson testified today.

The U.S. Treasury Department has told GM it will provide no additional financing if the assets are not sold by July 10, Henderson said during early testimony in U.S. Bankruptcy Court.

If that deadline is missed, "we will liquidate," Henderson testified.

After a late court start, Henderson was questioned by attorneys representing GM creditors such as asbestos claimants and their families, and dissident bondholders.

Henderson also said that once a new GM emerges from bankruptcy court, the company will not change its operating name: It will still be called General Motors.

Henderson's testimony could last several days.

Motorists injured in crashes and accidents involving General Motors Corp. vehicles protested outside U.S. Bankruptcy Court this morning ahead of this key hearing in the automaker's bankruptcy case.

The victims and their relatives, who have pending lawsuits against GM, likely will be left with no opportunity to collect damages if a judge, as expected,

allows the automaker to sell its best assets to a government-sponsored company. The judge's approval could come this week.

The protestors, along with a parade of union workers chanting "Save our benefits," added drama at the start of a historic day for GM, which is trying to emerge from bankruptcy court as a new, largely debt-free company.

"GM is trying to weasel out of its obligations," said Missouri resident Terry Cole, 53, who sued after a fiery accident involving his Cadillac Escalade two years ago left the wheelchair-bound man with third-degree burns. He sued, but the lawsuit was put on hold after GM filed Chapter 11 bankruptcy June 1.

The start of today's hearing was delayed by more than an hour, as technical issues were worked out to ensure that the proceedings could be broadcast to overflow rooms.

During the delay, Judge Robert Gerber also told participants - including Henderson - that the heat and rising temperatures in the courtroom didn't warrant strict adherence to formal protocol. Typically, men are not allowed to remove their suit coats in the courtroom, but that rule was waived today.

"Anything you want to do to be more comfortable," Gerber said.

Henderson then took off his jacket.

GM on Friday agreed to cover future liability claims no matter when the vehicles involved were built, but liability claims pending before GM filed for bankruptcy are still likely to be classified as bad assets and left behind in bankruptcy.

"They want to leave us in the gutter," Cole said. "I can't believe the president would let GM be this immoral."

Minutes later, dozens of retirees from Ohio marched past, carrying yellow signs reading "Save the Middle Class," in a show of protest against GM's attempt to terminate retiree health care benefits. The groups clogged the entrance to the U.S. Bankruptcy Court, where dozens of lawyers, reporters and the curious waited in line to witness GM's court hearing.

Outside the courthouse, it was a sea of sad tales, like Jones, and the surreal.

A busker dressed as a bright yellow ball milled about, advertising tonight's $94 million MegaMillions lottery.

U.S. Homeland Security agents and NYPD officers stood guard outside while subway riders spilled from a station just outside the courthouse entrance.

Nearby, newspaper peddlers rubbed shoulders with a guy hawking bootleg CDs alongside vendors selling farm-fresh green beans and beets, and pound cake.

GM is using Section 363 of the Chapter 11 bankruptcy code that allows for assets to be divided into the good ones that will be assumed by a new automaker and the bad that are deemed of little value and will remain in court to be liquidated.

Come back to www.detnews.com for updates throughout the day.

LOAD-DATE: July 23, 2009

Exhibit 8

FOCUS - 142 of 167 DOCUMENTS

The Washington Post

July 2, 2009 Thursday
Suburban Edition

SECTION: FINANCIAL; Pg. A11

DISTRIBUTION: Maryland

LENGTH: 804 words

HEADLINE: GM Says Approval of Restructuring Is Urgent

BYLINE: Tomoeh Murakami Tse; Washington Post Staff Writer

DATELINE: NEW YORK, July 1

BODY:

General Motors mounted a final push for its historic restructuring plan, arguing before a federal bankruptcy judge Wednesday that the U.S. government would cut off funding -- in effect risking liquidation of the automaker -- unless it won quick approval for the turnaround proposal.

The government has "no intention to further fund this company if the sale order is not entered by July 10," said Harry Wilson, a member of the Obama administration's auto task force who oversaw the government's day-to-day dealings with GM.

Wilson's testimony came during the second day of hearings on a request to approve the sale of the automaker's assets to a "new" GM that would be 61 percent owned by the U.S. government.

Wilson told the court that he expected an initial public offering of the new GM's stock in 2010. That would allow the Obama administration, which has said it

does not want to run private companies, to sell its GM stake.

In closing arguments, attorneys for GM, and the governments of the United States and Canada, which has also provided funding, urged Judge Robert Gerber to approve the sale quickly. Speed, they said, was of the essence, because GM's assets -- as well as consumer confidence -- are fragile.

Under the proposed agreement, the government can walk away if the judge does not approve the deal by July 10 or if the sale is not completed by Aug. 15.

According to a source familiar with the matter, GM and the Obama administration's auto task force are aiming to close the sale Tuesday. That would mean GM would emerge from bankruptcy 37 days after seeking court protection, or five days faster than Chrysler managed the same feat.

Unlike the Chrysler case, GM has faced no major threat to its sale, in part because the legal path for the type of speedy bankruptcy being sought had been tested by Chrysler.

Despite the more than 700 objections that have been filed by bondholders, unions and other GM stakeholders, no one has seriously questioned the fundamental merits of the government-orchestrated plan to revitalize the largest U.S. automaker, attorneys for GM and the federal government said during closing arguments. Under the proposed sale, GM would sell its profitable assets to the new GM. Left behind in bankruptcy with the "old" GM would be liabilities and assets that would be a drag on the new, leaner company, they said.

"No party has come forward with another source of financing or proposed higher value for assets to be sold," said bankruptcy lawyer Harvey Miller, who is representing GM.

The objectors, Miller said, largely want more money, or more time to gain negotiating leverage.

Aside from the precedent set by Chrysler, there are several factors contributing to GM's fast trip through bankruptcy proceedings so far.

Last week, the Treasury Department struck a deal with a number of state attorneys general who had objected to the sale of GM assets "free and clear" of liens, removing a potential hurdle.

Under the plan, the new GM would assume responsibility for claims arising from accidents that occur after the sales transaction, even if they involve GM vehicles made before the sale of the company. Those who suffered injuries before that would have to pursue the old GM, which means they would probably recover little, if any, money. Some of those claimants showed up in court in wheelchairs or with pictures of loved ones lost.

Under repeated questioning from attorneys for people who would be forced to seek claims against the old company, Wilson of the auto task force said GM's commercial viability was the sole factor the government used when deciding which liabilities the new automaker would assume.

"This entity that's going forward has a challenge before it," Miller told the court. "It has to materially increase sales. It has to lower its costs of operations. It cannot afford to take on unnecessary liabilities."

GM also faced no court objections from dealers it is seeking to shed. GM is allowing more time than Chrysler for the dealers to wind down their operations. In addition, the company has set up a system for dealers to appeal, Miller said. Sixty dealers have successfully won reversals, the company has said.

GM and the federal government had also secured agreements before the June 1 bankruptcy filing with more than half of GM's bondholders, a group that collectively holds $27 billion in unsecured loans. They are to receive a 10 percent stake in the new company, plus warrants for an additional 15 percent if certain conditions are met.

Michael Richman, an attorney for three dissenting bondholders, plans to offer his closing argument Thursday. GM's Miller challenged the bondholders' standing in court, arguing that those individuals hold a mere $2.3 million in bonds purchased for no more than $20 per $1,000 in face value.

The judge overruled Miller on the matter.

GRAPHIC: IMAGE; By Paul Sakuma -- Associated Press; General Motors' sales last month were down 33 percent from June 2008. The drop was sharper than the overall decline in U.S. auto sales by the same measure.
IMAGE; By Brendan Mcdermid -- Reuters; GM chief executive Fritz Henderson enters U.S. Bankruptcy Court in New York, where attorneys asked for quick approval of the company's reorganization.
IMAGE

LOAD-DATE: July 2, 2009

Exhibit 9

FOCUS - 81 of 167 DOCUMENTS

Sacramento Bee (California)

July 7, 2009 Tuesday
METRO FINAL EDITION

SECTION: BUSINESS; Pg. B6

LENGTH: 783 words

HEADLINE: GM ruling blow to crash victims;
BANKRUPTCY PLAN WOULD LIMIT EXISTING LIABILITY CLAIMS

BYLINE: Mark Glover mglover@sacbee.com

BODY:

The head of a Sacramento-based consumer advocacy group says a judge's ruling Sunday in the General Motors bankruptcy case is a stinging blow to those who have been injured by defective GM cars but is still a better deal for consumers than the plan for Chrysler.

"It's a partial victory for consumers," said Rosemary Shahan, president of the Sacramento-based nonprofit Consumers for Auto Reliability and Safety.

U.S. Bankruptcy Judge Robert Gerber late Sunday approved a crucial step of GM's reorganization plan, allowing the troubled automaker to sell its assets to a new company. Gerber said the deal was in the best interest of both the automaker and its creditors, who would get nothing if GM was forced to liquidate.

The plan would free the "new GM" from liability for people injured by a defective GM product before June 1. People injured before that date would have to seek compensation from the "old GM," a collection of assets left over from the sale.

Shahan, who has been at the center of numerous battles between the auto industry and consumers, said Gerber's ruling is "better than what we saw with Chrysler, because it (protects) consumers injured in the future, including those who are in (GM) vehicles produced prior to the bankruptcy."

Shahan said covering future claims is important because of the large volume of GM vehicles on the roadways, compared with Chrysler.

She said CARS would not appeal Sunday's ruling, "because we're focused on future claims."

However, she said the ruling's lack of consumer protection on existing claims against GM, which Shahan said is in the $1.25 billion range, was a major shortfall and something worth challenging by other groups.

"No, we don't accept that," Shahan said. "Consumers deserve those protections. The other thing I'm concerned about is I hope (GM) doesn't go bankrupt again."

Attorney Christine Spagnoli, president of the Sacramento-based Consumer Attorneys of California, said if the judge's ruling stands, consumers with existing claims are "pretty much going to be out of luck, pennies on the dollar."

A Chicago law firm representing people who have sued GM has announced plans to appeal the judge's ruling. The deadline to appeal the case to the U.S. District Court is noon Thursday, after which point Gerber's order takes effect and the sale is free to close.

Steve Jakubowski, who filed the appeal notice for the accident litigants, said his appeal would assert that the bankruptcy judge overstepped his authority by preventing victims from pursuing litigation under their state product liability laws.

He estimated that about 1,000 lawsuits could be pending with potential damages in the range of hundreds of millions of dollars.

Robert Dinnigan, whose 10-year-old daughter, Amanda, was paralyzed from the neck down in an accident aboard a 2003 GMC Envoy two years ago, said the court decision may have doomed the chances of a lawsuit he filed against GM after the February 2007 crash.

"Our only recourse is the old GM. There isn't going to be anything left even if we get a chance to go to court," said Dinnigan, who faces medical bills of around $500,000 per year. It cost about $100,000 to retrofit Dinnigan's Smithtown, N.Y., home to accommodate Amanda's needs, he said.

To date, the courts have sided primarily with the beleaguered carmakers rather than consumer groups.

In May, CARS and other advocacy groups asked a federal bankruptcy court to bar a restructured Chrysler from escaping liability in connection with past and future consumer claims of defective cars produced by the automaker.

Shahan said advocates were "giddy with hope" before their proposals ultimately were turned aside by the U.S. Supreme Court.

Steve Rattner, the head of the Obama administration's auto task force, said the government was "confident that (Gerber's) decision will stand and the sale of GM's assets to new GM will proceed expeditiously."

The bankruptcy judge's ruling followed a three-day hearing that wrapped up Thursday. GM and government officials had urged a quick approval of the sale, saying it was needed to keep the automaker from selling itself off piece by

piece. The Treasury Department, which is expected to provide about $50 billion to the automaker, has vowed to cut off funding to GM if the sale doesn't go through by Friday.

GM will leave bankruptcy court with significantly reduced debt and labor costs, as well as fewer dealerships and brands. But the automaker still faces a challenging U.S. auto market, where auto companies are on pace to sell around 9.7 million vehicles this year compared with sales of more than 16 million vehicles in 2007.

The Associated Press contributed to this report. Call The Bee's Mark Glover, (916) 321-1184.

LOAD-DATE: July 8, 2009

Exhibit 10

FOCUS - 76 of 167 DOCUMENTS

Grand Rapid Press (Michigan)

July 7, 2009 Tuesday
ALL S EDITION

SECTION: BUSINESS; Pg. A11

LENGTH: 704 words

HEADLINE: Car accident plaintiffs scurry to file appeals vs. GM plan; They say bankruptcy strategy would free automaker from liability

BODY:

NEW YORK -- Groups representing plaintiffs in car accidents said Monday they would oppose General Motors' attempt to quickly exit bankruptcy protection, arguing hundreds of victims could be hurt by the government-led plan.

U.S. Judge Robert Gerber approved a crucial step of the plan late Sunday, allowing the troubled automaker to sell its assets to a new company and saying the deal was in the best interest of the automaker and its creditors, who would get nothing if the automaker was forced to liquidate.

The Detroit carmaker's Chapter 11 filing June 1 was the fourth-largest in U.S. history. Under Chapter 11 reorganization, a company can stay in operation under court protection while it sheds debts and unprofitable assets.

General Motors and the Obama administration praised the judge's decision, but opponents readied an appeal to the U.S. District Court in New York. A Chicago law firm representing people who have sued GM in several auto accident cases said they objected to parts of the plan that would free the "new GM" from liability for people injured by a defective GM product before June 1.

Steve Jakubowski, who filed the appeal notice for the accident litigants, said his appeal would assert the bankruptcy judge overstepped his authority by preventing victims from pursuing litigation under their state product liability laws.

He estimated about 1,000 lawsuits could be pending with potential damages in the range of hundreds of millions of dollars.

"It affects ... virtually every walk of life in this country," he said.

The deadline to appeal the case to the District Court is noon Thursday, after which point Gerber's order takes effect and the sale can close.

Steve Rattner, the head of the Obama administration's auto task force, said the government was "confident that (Gerber's) decision will stand and the sale of GM's assets to new GM will proceed expeditiously."

The bankruptcy judge's ruling followed a three-day hearing that wrapped up Thursday. GM and government officials urged a quick approval of the sale, saying it was needed to keep the automaker from selling itself off piece by piece. The Treasury Department, which is expected to provide about $50 billion in aid to the automaker, has vowed to cut off funding to GM if the sale doesn't go through by Friday.

"Now, it's our responsibility to fix this business and place the company on a clear path to success without delay," GM CEO Fritz Henderson said.

Litigants injured by a defective GM product before June 1 would have to seek compensation from the "old GM," the collection of assets leftover from the sale, where they would be less likely to receive compensation.

Robert Dinnigan, whose 10-year-old daughter Amanda was paralyzed from the neck down in an accident aboard a 2003 GMC Envoy two years ago, said the court decision may have doomed the chances of a lawsuit he filed against GM after the February 2007 crash.

"Our only recourse is the old GM. There isn't going to be anything left even if we get a chance to go to court," said Dinnigan, who faces medical bills of about $500,000 per year. It cost about $100,000 to retrofit Dinnigan's Smithtown, N.Y., home to accommodate Amanda's needs.

Last month, objectors to Chrysler LLC's sale plan failed to convince an appellate court and the Supreme Court to block the automaker's sale to Italy's Fiat in appeals that lasted about a week after the bankruptcy judge cleared the deal.

Jakubowski said the 2nd Circuit's ruling in the Chrysler case created "a big hurdle" that may require an appeal to the Supreme Court. "At the end of the day, I think we're going to need Supreme Court review of this issue," he said.

David Neier, a New York-based bankruptcy lawyer who has followed the auto industry cases, said it was possible the court could determine the amount of consumer liability the new GM should be responsible for.

The new GM has agreed to take on responsibility for future product liability claims involving vehicles made by the old company.

In related news, The Lansing State Journal today reported the new GM will retain two Lansing-area assembly plants and a parts warehouse but four other area GM properties, sites of former metal stamping, assembly and engine plants, will be sold.

LOAD-DATE: July 10, 2009

Exhibit A

Hearing Date and Time: To Be Determined
Objection Deadline: To Be Determined
Reply Deadline: To Be Determined

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Attorneys for General Motors LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**Case No.: 09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

MOTION OF GENERAL MOTORS LLC PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION

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INTRODUCTION

In June 2009, General Motors LLC ("**New GM**") was a newly formed entity, created by the U.S. Treasury, to purchase substantially all of the assets of Motors Liquidation Company, formerly known as General Motors Corporation ("**Old GM**"). Through a bankruptcy-approved sale process, New GM acquired Old GM's assets, free and clear of all liens, claims, liabilities and encumbrances of Old GM, other than liabilities expressly assumed by New GM under a June 26, 2009 Amended and Restated Master Sale and Purchase Agreement ("**MSPA**").[1] The Bankruptcy Court approved the asset purchase transaction and the terms of the MSPA in its "**Sale Order and Injunction**," dated July 5, 2009.[2]

This Motion to Enforce does not address any litigation involving an accident or incident causing personal injury, loss of life or property damage. Further, this Motion to Enforce does not involve whether New GM should repair the ignition switch defect. New GM has committed to replacing the defective ignition switch as a result of the recall being conducted under the supervision of the National Highway Traffic Safety Administration ("**NHTSA**"), the government agency with jurisdiction over recalls. Instead, this Motion to Enforce involves *only* litigation in which the plaintiffs seek economic losses against New GM relating to an Old GM vehicle or part, including, for example, for the claimed diminution in the vehicle's value, and for loss of use, alternative transportation, child care or lost wages for time spent in seeking prior repairs. Those types of claims were never assumed by New GM and are barred by the Court's Sale Order and Injunction.

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1 *See* Exhibit A, MSPA. Exhibits to this Motion are contained in the Compendium of Exhibits, filed simultaneously herewith.

2 *See* Exhibit B, "Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (iii) Granting Related Relief, entered by the Court on July 5, 2009."

Under the MSPA approved by the Court, New GM assumed only three expressly defined categories of liabilities for vehicles and parts sold by Old GM: (a) post-sale accidents involving Old GM vehicles causing personal injury, loss of life or property damage; (b) repairs provided for under the "Glove Box Warranty"— a specific written warranty, of limited duration, that only covers repairs and replacement of parts and (c) Lemon Law claims essentially tied to the failure to honor the Glove Box Warranty.[3] All other liabilities relating to vehicles and parts sold by Old GM were legacy liabilities that were retained by Old GM. *See* MSPA § 2.3(b).

New GM's assumption of just these limited categories of liabilities was based on the independent judgment of U.S. Treasury officials as to which liabilities, if paid, would best position New GM for a successful business turnaround. It was an absolute condition of New GM's purchase offer that New GM not take on all of Old GM's liabilities. That was the bargain struck by New GM and Old GM, and approved by the Court as being in the best interests of Old GM's bankruptcy estate and the public interest.

The primary objections to the sale were made by prepetition creditors who essentially wanted New GM to assume their liabilities. But the Court found that, if not for New GM's purchase offer, which provided for a meaningful distribution to prepetition unsecured creditors, Old GM would have liquidated and those creditors would have received nothing. Indeed, had the objectors been successful in opposing the Sale Order and Injunction, it would have been a pyrrhic victory, and disaster not only for them but for thousands of others who relied on the continued viability of the business being sold to New GM. Judge Lewis Kaplan aptly summarized the point: "No sentient American is unaware of the travails of the automobile

[3] *See also* MSPA § 1.1, at p. 11 (defining "Lemon Laws" as "a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.").

industry in general and of General Motors Corporation ([Old] GM) in particular. As the Bankruptcy Court found, [Old] GM will be forced to liquidate — with appalling consequences for its creditors, its employees, and our nation — unless the proposed sale of its core assets to a newly constituted purchaser is swiftly consummated." *In re Gen. Motors Corp.*, No. M 47 (LAK), 2009 WL 2033079, at *1 (S.D.N.Y. July 9, 2009).

One of the most vigorous groups that objected to Old GM's asset sale motion was a coalition representing Old GM vehicle owners. That group included State Attorneys General, individual accident victims, the Center for Auto Safety, Consumer Action and other consumer advocacy groups. The gist of their objections was: as long as New GM was assuming any of Old GM liabilities, then it should assume *all* vehicle owner liabilities as well. In particular, the objectors argued, unsuccessfully, that New GM should assume successor liability claims, all warranty claims (express and implied), economic damages claims based upon defects in Old GM vehicles and parts, and tort claims, in addition to the limited categories of claims that New GM already agreed to assume.

A critical element of protecting the integrity of the bankruptcy sale process, however, was to ensure that New GM, as the good faith purchaser for substantial value, received the benefit of its Court-approved bargain. This meant that New GM would be insulated from lawsuits by Old GM's creditors based on Old GM liabilities it did not assume. The MSPA and the Sale Order and Injunction were expressly intended to provide such protections. The Order thus enjoined such proceedings against New GM, and expressly reserved exclusive jurisdiction to this Court to ensure that the sale transaction it approved would not be undermined or collaterally attacked.

As this Court undoubtedly is aware, New GM recently sent notices to NHTSA concerning problems with ignition switches and ignition switch repairs in certain vehicles and parts manufactured by Old GM. Shortly after New GM issued the recall notice, numerous plaintiffs throughout the country sued New GM for claimed economic losses allegedly resulting from ignition switch defects in Old GM vehicles and parts — the very type of claims retained by Old GM for which New GM has no liability.

GM's Motion to Enforce thus presents a single, simple, overarching question for the Court to decide:

> **May New GM be sued in violation of this Court's Sale Order and Injunction for economic damages relating to vehicles and parts sold by Old GM?**

To ask the question is to answer it. In all of the cases based on the ignition switch defect that are the subject of this Motion to Enforce, plaintiffs assert claims for liabilities that, under the Sale Order and Injunction, were retained by Old GM. Plaintiffs apparently decided to not appear in this Court to challenge the Sale Order and Injunction — and with good reason: this Court has rejected prior challenges to that Order and it is now too late, as the Order has been affirmed by the appellate courts and has been a final Order for several years. Faced with a fundamental bar to many of their claims against New GM, the ignition switch plaintiffs simply have decided to ignore the Court's Sale Order and Injunction, and proceed as though it never existed. The law is settled, however, that persons subject to a Court's injunction do not have that option. As the United States Supreme Court explained in *Celotex Corp. v. Edwards*, the rule is "well-established" that "'persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.'" 514 U.S. 300, 306 (1995).

Based on this Court's prior proceedings and Orders, New GM has brought this Motion to Enforce to require the plaintiffs (collectively, the "**Plaintiffs**") in the actions listed in Schedule 1 attached hereto ("**Ignition Switch Actions**") to comply with the Court's Sale Order and Injunction by directing Plaintiffs to (a) cease and desist from further prosecuting against New GM claims that are barred by the Sale Order and Injunction, (b) dismiss with prejudice those void claims because they were brought by the Plaintiffs in violation of the Sale Order and Injunction, and (c) show cause whether they have any claims against New GM not otherwise already barred by the Sale Order and Injunction.[4]

BACKGROUND STATEMENT OF FACTS

1. In June 2009, in the midst of a national financial crisis, Old GM was insolvent with no alternative other than to seek bankruptcy protection to sell its assets. New GM, a newly created, government-sponsored entity, was the only viable purchaser, but it would not purchase Old GM's assets unless the sale was free and clear of all liens and claims (except for the claims it expressly agreed to assume). The Court approved this sale transaction, which set the framework for New GM to begin its business operations. During the last five years, New GM has operated its business based on the fundamental structure of the MSPA and Sale Order and Injunction — that its new business enterprise would not be burdened with liabilities retained by Old GM. The Ignition Switch Actions represent a collateral attack on this Court's Sale Order and Injunction. The Plaintiffs may not rewrite, years later, the Court-approved sale to a good faith purchaser, which was affirmed on appeal, and which has been the predicate ever since for literally millions of transactions between New GM and third parties.

[4] New GM reserves the right to supplement the list of Ignition Switch Actions contained in Schedule 1 in the event additional cases are brought against New GM after the filing of this Motion to Enforce that implicate similar provisions of the Sale Order and Injunction.

I. OLD GM FILED FOR PROTECTION UNDER THE BANKRUPTCY CODE IN JUNE 2009.

2. On June 1, 2009, Old GM and certain of its affiliates filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Old GM simultaneously filed a motion seeking approval of the original version of the MSPA ("**Original MSPA**"), pursuant to which substantially all of Old GM's assets were to be sold to New GM ("**Sale Motion**"). The Original MSPA (like the MSPA) provided that New GM would assume only certain specifically identified liabilities (*i.e.*, the "**Assumed Liabilities**"); all other liabilities would be retained by Old GM (*i.e.*, the "**Retained Liabilities**").

A. Objectors to the Sale Motion Argued that New GM Should Assume Additional Liabilities of the Type Plaintiffs Now Assert in the Ignition Switch Actions.

3. Many objectors, including various State Attorneys General, certain individual accident victims ("**Product Liability Claimants**"), the Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizens (collectively, the "**Consumer Organizations**"), the Ad Hoc Committee of Consumer Victims, and the Official Committee of Unsecured Creditors challenged various provisions in the Original MSPA relating to actual and potential tort and contract claims held by Old GM vehicle owners. These objectors argued that the Court should not approve the Original MSPA unless New GM assumed additional Old GM liabilities (beyond the Glove Box Warranty), including those now being asserted by the Plaintiffs in the Ignition Switch Actions.

4. The Original MSPA was amended so that New GM would assume (for vehicles and parts sold by Old GM) Lemon Law claims, as well as personal injury, loss of life and

property damage claims for accidents taking place after the closing of the sale.[5] Product Liability Claimants and the Consumer Organizations were not satisfied and pressed their objections, arguing that New GM should assume broader warranty-related claims as well as successor liability claims.[6] Representatives from the U.S. Treasury declined to make further changes. *See* Hr'g Tr. 151:1 – 10, July 1, 2009. The Court found that New GM would not have consummated the "[t]ransaction (i) if the sale . . . was not free and clear of all liens, claims, encumbrances, and other interests . . . , including rights or claims based on any successor or transferee liability or (ii) if [New GM] would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the 'Retained Liabilities'), other than, in each case, the Assumed Liabilities." *See* Sale Order and Injunction ¶ DD. The Court ultimately overruled the objectors on these issues. *See id.*, ¶ 2.

B. The Court Issued Its Sale Order And Injunction, And The Product Liability Claimants And Others Appealed Because They Objected to the Fact That New GM Was Not Assuming *Their* Liabilities

5. The Court held a three-day hearing on the Sale Motion, then issued its Sale Decision on July 5, 2009, finding that the only alternative to the immediate sale to New GM pursuant to the MSPA was a liquidation of Old GM, in which case unsecured creditors, such as the Plaintiffs now suing New GM, would receive nothing. *See In re Gen. Motors Corp.*, 407

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[5] Assumption of the Glove Box Warranty was provided for in the Original MSPA.

[6] As noted in the Court's *Castillo* decision, numerous State Attorneys General also objected, seeking to expand the definition of New GM's Assumed Liabilities to include implied warranty claims. *Castillo v. Gen. Motors LLC (In re Motors Liquidation Co.),* Adv. Proc. No. 09–00509, 2012 WL 1339496, at *5 (Bankr. S.D.N.Y. April 17, 2012), *aff'd*, 500 B.R. 333 (S.D.N.Y. 2013).

B.R. 463, 474 (Bankr. S.D.N.Y. 2009). The Court analyzed the law of successor liability, devoted several pages of its opinion to this issue (*id.* at 499-506), and ruled that: "[T]he law in this Circuit and District is clear; the Court will permit (Old) GM's assets to pass to the purchaser (New GM) ***free and clear of successor liability claims***, and in that connection, will issue the requested findings and associated injunction." *Id*. at 505-06 (emphasis added).

6. In approving the sale, the Court specifically found that New GM was a "good faith purchaser, for sale-approval purposes, and also for the purpose of the protections section 363(m) provides." *Id.* at 494 (citing 11 U.S.C. § 363(m)). The Sale Order and Injunction expressly enjoined parties (like the Plaintiffs in the Ignition Switch Actions) from proceeding against New GM with respect to Retained Liabilities at any time in the future. *See* Sale Order and Injunction, ¶¶ 8, 47. This Court well understood the circumstances of accident victims (who are not the subject of this Motion to Enforce), and that if they could not look to New GM as an additional source of recovery, they would recover only modest amounts on their claims from Old GM. *See Gen. Motors*, 407 B.R. at 505. But the Court also recognized that if a Section 363 purchaser like New GM did not obtain protection against claims against Old GM, like successor liability claims, it would pay less for the assets because of the risks of known and unknown liabilities. *Id.* at 500; *see* 11 U.S.C. § 363. The Court further recognized that, under the law, a Section 363 purchaser could choose which liabilities of the debtors to assume, and not assume (*id.* at 496), and that the U.S. Treasury, on New GM's behalf, could rightfully condition its purchase offer on its refusal to assume the liabilities now being asserted by Plaintiffs in the Ignition Switch Actions.

7. Old GM, the proponent of the asset sale transaction, presented evidence that established that if the MSPA was not approved, Old GM would liquidate. If it did, objecting

creditors seeking incremental recoveries would end up with nothing, given that the book value of Old GM's global assets was $82 billion, the book value of its global liabilities was $172 billion (s*ee Gen. Motors*, 407 B.R. at 475), and that, in a liquidation, the value of Old GM's assets was probably less than 10% of stated book value (*id.*).

8. Objectors also presented evidence that the book value of certain contingent liabilities was about $934 million. *Id.* at 483. The Court noted that contingent liabilities were "difficult to quantify." *Id.* And, if the book value of all contingent liabilities was understated, that simply meant Old GM was even more insolvent — an even greater reason for New GM to decline to assume the liabilities retained by GM.

9. Whether Old GM presented evidence regarding a particular claim or specific defect was not germane to this Court's approval of the Sale Order and Injunction. Indeed, as the Court found in the Sale Order and Injunction, the proper analysis for approving the asset sale is whether Old GM obtained the "highest or best" available offer for the Purchased Assets. *See* Sale Order and Injunction, ¶ G. In contrast, the quantification of liabilities left behind with Old GM (*i.e.*, the Retained Liabilities) was pertinent to a different phase of the bankruptcy case (the claims process) which did not involve New GM.

10. New GM's refusal to assume a substantial portion of Old GM's liabilities was fundamental to the sale transaction and was widely disclosed by Old GM to all interested parties. Indeed, the Product Liability Claimants objected to and appealed the Sale Order and Injunction to specifically challenge this aspect of the sale. *See Callan v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010). Although on appeal, the District Court focused on the appellants' failure to seek a stay of the Sale and on equitable mootness principles, the District Court also found that this Court had jurisdiction to enjoin successor liability claims.

See id. at 59-60. Indeed, the Sale Order and Injunction was affirmed on appeal by two different District Court Judges. *Id.; Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.),* 430 B.R. 65 (S.D.N.Y. 2010). There were no further appeals.

C. Upon Approval Of The MSPA And Issuance Of The Sale Order And Injunction, New GM Assumed Certain Narrowly Defined Liabilities, But The Bulk Of Old GM's Liabilities Remained With Old GM.

11. Under the MSPA and the Sale Order and Injunction, New GM became responsible for "Assumed Liabilities." *See* MSPA § 2.3(a). These included New GM's assumption of liability claims for post-sale accidents and Lemon Law claims, as well as the Glove Box Warranty—a written warranty of limited duration (typically three years or 36,000 miles, whichever comes first) provided at the time of sale, for repairs and replacement of parts. The Glove Box Warranty expressly excludes economic damages.[7] New GM assumed no other Old GM warranty obligations, express or implied:

> The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." ***The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials.***

Sale Order and Injunction, ¶ 56 (emphasis added).

12. Independent of the Assumed Liabilities under the MSPA, New GM covenanted to perform Old GM's recall responsibilities under federal law. *See* MSPA ¶ 6.15(a). But there were no third party beneficiary rights granted under the MSPA with respect to that covenant (*see* MSPA § 9.11), and there is no private right of action for third parties to sue for a breach of a

[7] A copy of a typical Glove Box Warranty is annexed in the Compendium of Exhibits as Exhibit C.

recall obligation. *See Ayers v. Gen. Motors*, 234 F.3d 514, 522-24 (11th Cir. 2000); *Handy v. Gen. Motors Corp*., 518 F.2d 786, 787-88 (9th Cir 1975). Thus, New GM's recall covenant does not create a basis for the Plaintiffs to sue New GM for economic damages relating to a vehicle or part sold by Old GM.

13. All liabilities of Old GM not expressly defined as Assumed Liabilities constituted "Retained Liabilities" that remained an obligation of Old GM. MSPA §§ 2.3(a), 2.3(b). Retained Liabilities include economic damage claims relating to vehicles and parts manufactured by Old GM (the primary claims asserted by the Plaintiffs in the Ignition Switch Actions) such as:

(a) liabilities "arising out of, relating to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to Sellers." MSPA § 2.3(b)(xvi), *see also* MSPA ¶ 6.15(a). This would include liability based on state consumer statutes, except Lemon Law claims.

(b) All liabilities (other than Assumed Liabilities) of Old GM based upon contract, tort or any other basis. MSPA § 2.3(b)(xi). This covers claims based on negligence, concealment and fraud.

(c) All liabilities relating to vehicles and parts sold by Old GM with a design defect (*i.e*., the ignition switch).[8]

(d) All Liabilities based on the conduct of Old GM including any allegation, statement or writing attributable to Old GM. This covers fraudulent concealment type claims. *See* Sale Order and Injunction, ¶ 56.

(e) All claims based on the doctrine of "successor liability." *See*, *e.g.*, Sale Order and Injunction, ¶ 46.

D. The Court's Sale Order And Injunction Expressly Protects New GM From Litigation Over Retained Liabilities.

14. On July 10, 2009, the parties consummated the Sale. New GM acquired substantially all of the assets of Old GM free and clear of all liens, claims and encumbrances,

[8] *See* Sale Order and Injunction, ¶ AA; *see also Trusky v. Gen. Motors LLC (In re Motors Liquidation Co.),* Adv. Proc. No. 09–09803, 2013 WL 620281, at *2 (Bankr. S.D.N.Y. Feb. 19, 2013).

except for the narrowly defined Assumed Liabilities. In particular, paragraphs 46, 9 and 8 of the Sale Order and Injunction provide that New GM would have no responsibility for any liabilities (except for Assumed Liabilities) relating to the operation of Old GM's business, or the production of vehicles and parts before July 10, 2009:

> Except for the Assumed Liabilities expressly set forth in the [MSPA] . . . [New GM] . . . shall [not] have any liability for any claim that arose prior to the Closing Date, ***relates to the production of vehicles prior to the Closing Date***, or otherwise is assertable against [Old GM] . . . prior to the Closing Date . . . . Without limiting the foregoing, [New GM] shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity . . . and products . . . liability, ***whether known or unknown*** as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated.

Sale Order and Injunction, ¶ 46 (emphasis added); *see also id.*, ¶ 9(a) ("(i) no claims other than Assumed Liabilities, will be assertable against the Purchaser; (ii) the Purchased Assets [are] transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances) . . ."); and *id.*, ¶ 8 ("All persons and entities . . . holding claims against [Old GM] or the Purchased Assets arising under or out of, in connection with, or in any way relating to [Old GM], the Purchased Assets, ***the operation of the Purchased Assets*** prior to the Closing . . . are forever barred, estopped, and permanently enjoined . . . from asserting [such claims] against [New GM]. . . .") (emphasis added).

15. Anticipating the possibility that New GM might be wrongfully sued for Retained Liabilities, the Sale Order and Injunction contains an injunction permanently enjoining claimants from asserting claims of the type made in the Ignition Switch Actions:

> [A]ll persons and entities . . . holding liens, claims and encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against [Old GM] or the Purchased Assets (whether legal or equitable, secured or unsecured, ***matured or unmatured***, ***contingent or noncontingent***, senior or subordinated), ***arising under or out of, in connection with, or in any way relating to [Old GM], the Purchased Assets, the***

> ***operation of the Purchased Assets prior to the Closing*** *. . .* ***are forever barred, estopped, and permanently enjoined . . . from asserting against [New GM] . . . such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability***.

Sale Order and Injunction, ¶ 8 (emphasis added); *see also id.*, ¶ 47.

16. The Court specifically found that the provisions of the Sale Order and Injunction, as well as the MSPA, were binding on all creditors, ***known and unknown*** alike. *See* Sale Order and Injunction, ¶ 6 ("This [Sale] Order and M[S]PA "shall be binding in all respects upon the Debtors, their affiliates, ***all known and unknown creditors*** of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including rights or claims based on any successor or transferee liability . . . ." (emphasis added)); *see also id.*, ¶ 46. In short, except for Assumed Liabilities, claims based on Old GM vehicles and parts remained the legal responsibility of Old GM, and are not the responsibility of New GM.

17. Finally, paragraph 71 of the Sale Order and Injunction makes this Court the gatekeeper to enforce its own Order. It provides for this Court's ***exclusive jurisdiction*** over matters and claims regarding the Sale, including jurisdiction to protect New GM against any Retained Liabilities of Old GM:

> ***This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the M[S]PA,*** all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, . . ., in all respects, including, but not limited to, ***retaining jurisdiction to . . . (c) resolve any disputes arising under or related to the M[S]PA,*** except as otherwise provided therein, (d) ***interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities*** or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets . . . . (Emphasis added.)

II. NEW GM HAS RECALLED CERTAIN VEHICLES AND IN RESPONSE, PLAINTIFFS HAVE FILED MULTIPLE IGNITION SWITCH ACTIONS.

18. Consistent with its obligations under the Sale Order and Injunction, New GM informed NHSTA on February 7, 2014, of a problem with ignition switches in certain vehicles and parts manufactured by Old GM, and that a recall would be conducted by New GM to replace the ignition switches (at no cost to the owners). (*See* Exhibit D.) A short time later, New GM sent NHTSA a second letter, dated February 24, 2014, which gave NHTSA additional information about the ignition switch and the defect, and what owners should do to ameliorate the problem while waiting for their vehicles to be repaired. (*See* Exhibit E.) GM sent recall notices approved by NHTSA to all vehicle owners subject to the recall (Exhibit F), which informed owners about how to safely drive the vehicles prior to the recall.

19. In March 2014, New GM sent another notice to NHTSA concerning a problem with Old GM ignition switches that may have been installed during repairs to certain Old GM and New GM vehicles, and that a recall would be conducted for those vehicles. (Exhibit G.) The notice contained the same safety instruction, and the same repair and reimbursement statements made by New GM for the earlier recall. New GM expects that only a small fraction of the cars being recalled for potentially faulty repairs actually have the defective ignition switch part in them at this time.[9]

20. The recall is underway and New GM already has started to replace the ignition switches. NHTSA, as the government agency responsible for overseeing the technical and highly-specialized domain of automotive safety defects and recalls, administers the rules concerning the content, timing, and means of delivering a recall notice to affected motorists and

[9] In April 2014, New GM sent a recall notice to NHTSA concerning an ignition cylinder lock issue that is different than the issue presented in the Ignition Switch Actions.

dealers. *See* 49 C.F.R. § 554.1; 49 U.S.C. § 30119. Other governmental agencies and the Congress are also examining various issues relating to the ignition switch recall.

21. Since the recall was announced, numerous Ignition Switch Actions have been filed against New GM based upon vehicles and parts sold by Old GM, and virtually each day, additional cases are being filed. (*See* Schedule 1, attached to this Motion.) These cases include over 50 class actions and two individual actions. The Ignition Switch Actions have been brought in over 20 federal courts and two state courts. Plaintiffs in some of those actions have filed motions with the Judicial Panel for Multidistrict Litigation ("**MDL**") to consolidate at least 19 actions for pre-trial purposes. It is expected that the number of Ignition Switch Actions identified to the MDL Panel for consolidation will grow.[10]

22. The Ignition Switch Actions assert claims that are barred by the MSPA and the Sale Order and Injunction. The primary claims at issue are for economic losses premised on alleged defects in vehicles and components designed and sold by Old GM, which are unrelated to any accident causing personal injury, loss of life or property damage. In their complaints, the Plaintiffs conflate Old GM and New GM, but the Sale Order and Injunction is clear that New GM is a separate entity from Old GM (*see* Sale Order and Injunction, ¶ R), and is not liable for successor liability claims (*see, e.g., id.*, ¶¶ 46, 47). To be sure, the causes of action asserted by the Plaintiffs in the Ignition Switch Actions are varied, and in some instances, because of the imprecise factual allegations, it is unclear whether there might be a viable cause of action (of the many) being asserted against New GM. What is clear, however, is that the crux of virtually all of Plaintiffs' claims is a problem in the ignition switch in vehicles and parts sold by Old GM.

[10] The MDL Panel has scheduled a hearing on the motions for May 29, 2014.

Claims based on that factual predicate are Retained Liabilities and may not be brought against New GM.[11]

23. This Court is uniquely situated to enforce its own Order and interpret what the parties to the MSPA agreed to, and what issues were raised and resolved in connection with the asset sale. This Motion to Enforce respectfully requests that the Court enforce the Sale Order and Injunction by directing Plaintiffs to cease and desist from pursuing claims for Retained Liabilities of Old GM against New GM, direct Plaintiffs to dismiss with prejudice those void claims that are barred by the Sale Order and Injunction, and direct Plaintiffs to show cause whether there is any claim that they may properly pursue against New GM that is not in violation of the Court's Sale Order and Injunction.

NEW GM'S ARGUMENT TO ENFORCE THE COURT'S SALE ORDER AND INJUNCTION

24. The Plaintiffs do not have the choice of simply ignoring the Court's Sale Order and Injunction. As the Supreme Court expressed in its *Celotex* decision: "If respondents believed the Section 105 Injunction was improper, they should have challenged it in the Bankruptcy Court, like other similarly situated bonded judgment creditors have done . . . Respondents chose not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court's Section 105 Injunction in the federal courts in Texas. This they cannot be permitted to do without seriously undercutting the orderly process of the law." 514 U.S. at 313. These settled principles bind Plaintiffs in the Ignition Switch Actions. Those who purchased vehicles or parts from Old GM before the Sale, whether they were a known or unknown creditor

[11] The allegations and claims asserted in the Ignition Switch Actions include Retained Liabilities, such as implied warranty claims, successor liability claims, and miscellaneous tort and statutory claims premised in whole or in part on the alleged acts or omissions of Old GM. *See* para. 39 *infra*, and Schedule 2, attached to this Motion to Enforce, for a sample of such statements, allegations and/or causes of action.

at the time, are subject to the terms of the Court's Sale Order and Injunction, and are barred by this Court's Injunction from suing New GM on account of Old GM's Retained Liabilities.

I. THIS COURT'S SALE ORDER AND INJUNCTION SHOULD BE ENFORCED.

25. It is well settled that a "Bankruptcy Court plainly ha[s] jurisdiction to interpret and enforce its own prior orders." *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *In re Wilshire Courtyard*, 729 F.3d 1279, 1290 (9th Cir. 2013) (affirming bankruptcy court's post-confirmation jurisdiction to interpret and enforce its orders; "[i]nterpretation of the Plan and Confirmation Order is the only way for a court to determine the essential character of the negotiated Plan transactions in a way that reflects the deal the parties struck in chapter 11 proceedings"); *In re Cont'l Airlines, Inc.*, 236 B.R. 318, 326 (Bankr. D. Del. 1999) ("In the bankruptcy context, courts have specifically, and consistently, held that the bankruptcy court retains jurisdiction, *inter alia*, to enforce its confirmation order."); *U.S. Lines, Inc. v. GAC Marine Fuels, Ltd. (In re McClean Indus., Inc.)*, 68 B.R. 690, 695 (Bankr. S.D.N.Y. 1986) ("[a]ll courts, whether created pursuant to Article I or Article III, have inherent contempt power to enforce compliance with their lawful orders. The duty of any court to hear and resolve legal disputes carries with it the power to enforce the order."). In addition, Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out" the Bankruptcy Code's provisions, and this section "codif[ies] the bankruptcy court's inherent power to enforce its own orders." *Back v. LTV Corp. (In re Chateaugay Corp.)*, 213 B.R. 633, 640 (S.D.N.Y. 1997); 11 U.S.C. § 105(a).

26. Consistent with these authorities, this Court retained subject matter jurisdiction to enforce its Sale Order and Injunction. Indeed, this is not the first time that this Court has been asked to enforce its injunction against plaintiffs improperly seeking to sue New GM for Old GM's Retained Liabilities. *See In re Motors Liquidation Co.*, No. 09-50026 (REG), 2011 WL

6119664 (Bankr. S.D.N.Y. 2011) (ordering various plaintiffs to dismiss with prejudice civil actions in which they had brought claims against New GM that are barred by the Sale Order and Injunction); *Castillo v. Gen. Motors Co. (In re Motors Liquidation Co.)*, Adv. Proc. No. 09-00509 (Bankr. S.D.N.Y.), Hr'g Tr. 9:3-9:14, May 6, 2010 ("when you are looking for a declaratory judgment on an agreement that I approved [*i.e.*, the MSPA] that was affected by an order that I entered [*i.e.*, the Sale Order and Injunction], and with the issues permeated by bankruptcy law as they are, and which also raise issues as to one or more injunctions that I entered, how in the world would you have brought this lawsuit in Delaware Chancery Court. I'm not talking about getting in personam jurisdiction or whether you can get venue over a Delaware corporation in Delaware. I'm talking about what talks and walks and quacks like an intentional runaround of something that's properly on the watch of the U.S. Bankruptcy Court for the Southern District of New York."); *Castillo*, 2012 WL 1339496 (entering judgment in favor of New GM) (affirmed by 500 B.R. 333, 335 (S.D.N.Y. 2013)); *see also Trusky*, 2013 WL 620281, at *2 (finding that "claims for design defects [of 2007-2008 Chevrolet Impalas] may not be asserted against New GM and that "New GM is not liable for Old GM's conduct or alleged breaches of warranty").

27. Contrary to New GM's bargained for rights under the MSPA and the Court's Sale Order and Injunction, Plaintiffs in the Ignition Switch Actions are suing New GM for defects in Old GM vehicles and/or parts in courts across the country. Plaintiffs may not simply ignore the Court's injunction through these collateral attacks, especially when the Sale Order and Injunction is a final order no longer subject to appeal. *See Celotex Corp.*, 514 U.S. at 306, 313 ("'persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed'") (quoting *GTE Sylvania, Inc. v. Consumers Union of U. S., Inc.*,

445 U.S. 375, 386 (1980)); *Pratt v. Ventas, Inc.*, 365 F.3d 514, 520 (6th Cir. 2004) (applying doctrine to dismiss suits filed in violation of injunction in confirmation order entered by bankruptcy court); *In re McGhan*, 288 F.3d 1172, 1180-81 (9th Cir. 2002) (applying doctrine to enforce discharge order in favor of debtors and holding that only the bankruptcy court could grant relief from the order); *see also In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (applying this doctrine in the context of an automatic stay entered by the bankruptcy court); *Spartan Mills v. Bank of Am. Ill.*, 112 F.3d 1251, 1255 (4th Cir. 1997) (applying doctrine to bankruptcy court order approving sales of assets free and clear of liens).

II. NEW GM CANNOT BE HELD LIABLE FOR OLD GM'S ALLEGED CONDUCT, EITHER DIRECTLY OR AS OLD GM'S ALLEGED "SUCCESSOR."

28. Plaintiffs acknowledge that most of the vehicles and parts at issue in the Ignition Switch Actions were manufactured, marketed, and sold by Old GM prior to the Sale Order and Injunction. *See, e.g.*, *Benton* Compl., ¶ 31 (discussing Plaintiff's alleged review of Old GM advertisements and purchase of a 2005 Chevy Cobalt); *Ponce* Compl., ¶ 35 ("In or about 2007 or early 2008, Plaintiff purchased a 2007 Chevrolet HHR in Southern California."); *Maciel* Compl., ¶¶ 21, 25, 33, 38, 46, 50, 58, 62 (alleging named plaintiffs own, among other vehicles, 2005, 2007 and 2008 Chevrolet Cobalts; a 2007 Chevrolet HHR; and 2003, 2004, 2006 Saturn Ions); *Jawad* Compl., ¶ 8; *Jones* Compl., preamble paragraph at p. 1; *Maciel* Compl., ¶¶ 1, 196-97.

29. Many of the complaints in the Ignition Switch Actions are similar, and while several reflect an effort to plead around the Court's Sale Order and Injunction, in fact they all generally assert the same underlying allegations made about Old GM: that it designed and sold vehicles with a defective ignition switch. (*See* Schedules 1 and 2 attached hereto.) And, they all seek to hold New GM liable for economic damages based on Old GM's conduct — claims that are prohibited by the Sale Order and Injunction. In short, New GM did not agree, and this Court

previously held, that New GM did not assume any economic injury liabilities based on design defects in any of Old GM's vehicles and parts. *See Trusky*, 2013 WL 620281, at *2.

30. Similarly, various Plaintiffs attempt to impose "successor" liability upon New GM, but New GM is not a successor to Old GM and did not assume any liabilities in connection with successor or transferee liability. This is expressly provided by the Court's Sale Order and Injunction:

> ***The Purchaser shall not be deemed***, as a result of any action taken in connection with the M[S]PA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, ***to: (i) be a legal successor***, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchased Assets from and after the Closing); ***(ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors***. Without limiting the foregoing, the Purchaser (New GM) shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated.

Sale Order and Injunction ¶ 46 (emphasis added); *see also id.*, ¶¶ AA, BB, DD, 6, 7, 8, 10 and 47; MSPA § 9.19.

31. Plaintiffs' express successor liability allegations are simply a violation of this Court's Sale Order and Injunction. But whether or not Plaintiffs' claims expressly allege successor liability, their claims against New GM based on Old GM's conduct are essentially successor liability claims cast in a different way and are precluded by that Order.

III. PLAINTIFFS' WARRANTY ASSERTIONS AND STATE LEMON LAW ALLEGATIONS DO NOT ENABLE THEM TO CIRCUMVENT THE COURT'S SALE ORDER AND INJUNCTION.

A. The Limited Glove Box Warranty is Not Applicable. But As a Practical Matter, Plaintiffs Already Are Obtaining Such Relief As Part of the Recall.

32. The Glove Box Warranty is for a limited duration and virtually all of the vehicles that are the subject of the Ignition Switch Actions were sold more than three years ago. Thus, the Glove Box Warranty has expired. In any event, the Glove Box Warranty provides only for repairs and replacement parts; the economic losses asserted by Plaintiffs in the Ignition Switch Actions are of an entirely different character and are expressly barred by the Glove Box Warranty. This distinction is not unique to Old GM's Sale. In the Chrysler bankruptcy case, the court likewise found that the assumed liabilities were limited to the standard limited warranty of repair issued in connection with sales of vehicles. *See, e.g., Burton v. Chrysler Group, LLC (In re Old Carco LLC)*, 492 B.R. 392, 404 (Bankr. S.D.N.Y. 2013) ("New Chrysler did agree to honor warranty claims — the Repair Warranty. None of the statements attributed to New Chrysler state or imply that it assumed liability to pay consequential or other damages based upon pre-existing defects in vehicles manufactured and sold by Old Carco.").[12] Finally, as a practical matter, New GM will make the necessary ignition switch repairs as part of the recall, which is all that the Glove Box Warranty would have required New GM to do anyway. Hence, any claims, if they existed, are moot.

33. Similarly, the MSPA and the Sale Order and Injunction provide that the implied warranty and other implied obligation claims asserted by Plaintiffs here are Retained Liabilities for which New GM is not responsible. *See* Sale Order and Injunction, ¶ 56 (New GM "is not

[12] *See also*; *Tulacro v. Chrysler Group LLC, et al.*, Adv. Proc. No. 11-09401 (Bankr. S.D.N.Y. Oct. 28, 2011) [Dkt. No. 18] (Exhibit H, Compendium of Exhibits); *Tatum v. Chrysler Group LLC*, Adv. Proc. No. 11-09411 (Bankr. S.D.N.Y. Feb. 15, 2012) [Dkt. No. 73] (Exhibit I, Compendium of Exhibits).

assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, ***including implied warranties*** and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs and point of purchase materials." (emphasis added)); *see also* MSPA § 2.3(b)(xvi) (one of the Retained Liabilities of Old GM was any liabilities "arising out of, related to or in connection with any (A) ***implied warranty*** or other ***implied obligation arising under statutory or common law*** without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to [Old GM]." (emphasis added)).

34. In short, any breach of warranty claims Plaintiffs pursue relating to Old GM vehicles or parts (whether express or implied) improperly seek damages against New GM in violation of the Sale Order and Injunction.

B. Any Purported State Lemon Law Claims Are Premature At Best, And Cannot Be Adequately Pled.

35. In an apparent attempt to circumvent the Court's Sale Order and Injunction, certain of the Ignition Switch Actions purport to assert claims based on alleged violations of state Lemon Laws. But merely referencing state Lemon Laws is not sufficient. Plaintiffs must actually plead facts giving rise to Lemon Law liability as defined by the MSPA. Even a cursory review of the complaints reveals they have not done so.

36. New GM agreed to assume Old GM's "obligations under state 'lemon law' statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a ***reasonable number of attempts*** as further defined in the statute, and other related regulatory obligations under such statutes." Sale Order and Injunction, ¶ 56 (emphasis added). None of the Plaintiffs has alleged that New GM has not conformed the vehicle "after a reasonable number of

attempts." And not only is New GM in the process of conforming the vehicles (through the recall), but the statutes of limitations on Lemon Law claims as defined in the MSPA have expired.

37. As Judge Bernstein found in *Old Carco*, whether claimants can assert a valid Lemon Law claim "depends on the law that governs each plaintiff's claim and whether the plaintiff can plead facts that satisfy the requirements of the particular Lemon Law." 492 B.R. at 406. He further held as follows:

> With some variation, the party asserting a Lemon Law claim must typically plead and ultimately prove that (1) the vehicle does not conform to a warranty, (2) the nonconformity substantially impairs the use or value of the vehicle, and (3) the nonconformity continues to exist after a reasonable number of repair attempts.[13]

Judge Bernstein ultimately found that the claimants there did "not plead that any of the[m] brought their vehicles in for servicing, or that New Chrysler was unable to fix the problem after a reasonable number of attempts." *Id.* at 407. As was the case in *Old Carco*, none of the Plaintiffs here have pled that they brought their vehicles in to be fixed and, after a reasonable number of attempts, that they could not be fixed. They merely base their claims on the recall notices and letters to owners that New GM previously issued.

CONCLUSION

38. New GM was created to purchase the assets of Old GM pursuant to the MSPA. The limited category of liabilities it agreed to assume as part of the purchase was the product of a negotiated bargain, which was approved by this Court in July 2009. Plaintiffs in the Ignition Switch Actions have essentially ignored this; they wrongfully treat New GM and Old GM

[13] *Old Carco*, 492 B.R. at 406 (citing *Sipe v. Fleetwood Motor Homes of Penn., Inc.*, 574 F. Supp. 2d 1019, 1028 (D. Minn. 2008); *McLaughlin v. Chrysler Corp.*, 262 F. Supp. 2d 671, 679 (N.D.W. Va. 2002); *Baker v. Chrysler Corp.*, Civ. A. No. 91–7092, 1993 WL 18099, at *1–2 (E.D. Pa. Jan. 25, 1993); *Palmer v. Fleetwood Enterp., Inc.*, Nos. C040161, C040765, 2003 WL 21228864, at *4 (Cal. Ct. App. May 28, 2003); *Iams v. DaimlerChrysler Corp.*, 174 Ohio App. 3d 537, 883 N.E.2d 466, 470 (2007); *DiVigenze v. Chrysler Corp.*, 345 N.J. Super. 314, 785 A.2d 37, 48 (App. Div. 2001)).

interchangeability and are pursuing Old GM claims that they cannot lawfully pursue against New GM.

39. Schedule 2 provides examples of allegations that on their face relate to the Retained Liabilities asserted by the Plaintiffs in the Ignition Switch Actions. Set forth below are illustrations of what Plaintiffs have improperly alleged in such Actions.

(a) **Express Warranty, other than the Glove Box Warranty**. *See, e.g.*, Ashbridge Compl., ¶¶ 164-65 (New GM's "express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act" and New GM "breached these express . . . warranties as described in more detail above."); Maciel Compl., ¶¶ 212-13 (same) and fifth, eleventh, thirteenth, and fifteenth, seventeenth, and nineteenth causes of action assert claims for beach of express warranty); Balls Compl., ¶¶ 137-141 (alleging a breach of an express warranty); Cox Compl., ¶¶ 124-127 (the third cause action asserts a breach of express warranty).

(b) **Implied Warranty**. *See, e.g.*, DePalma Compl. (Count IV asserts a breach of implied warranty of merchantability); Jawad Compl. ¶¶ 41, 42 (alleging New GM "breached its implied warranty in the design of the Defective GM Vehicles" and that New GM "breached its implied warranty in the manufacturing of Defective GM Vehicles"); Ross Compl., ¶¶ 124-125 (asserting that "GM gave an implied warranty . . . namely, the implied warranty of merchantability" and that GM "breached the implied warranty of merchantability"); Maciel Compl., ¶¶ 274 (New GM "breached the implied warranty of merchantability by manufacturing and selling Defective Vehicles that are defective.").

(c) **Implied Obligations under Statute or Common Law**. *See, e.g.*, Heuler Compl. (asserting causes of action under state consumer protection statutes); Jones Compl. (asserting violations of numerous state consumer protection and unfair competition statutes); Benton Compl., (asserting violations of numerous state consumer protection and unfair competition statutes); Maciel Compl., (asserting violations of numerous state consumer protection and unfair competition statutes).

(d) **Successor Liability**. *See, e.g.*, Malaga Compl., ¶ 117 (alleging that New GM "has successor liability for GM Corporation's acts and omissions in the marketing and sale of the Defective Vehicles"); McConnell Compl., ¶ 12 (alleging that New GM "has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the ignition switch defect"); Phillip Compl., ¶ 50 (alleging that "[b]ecause GM acquired and operated Old GM and ran it as a continuing business enterprise, and because GM was aware from its inception of the ignition switch defects in the Defective Vehicles, GM is liable through successor liability . . ."); Maciel Compl. ¶¶ 70, 80 ("GM, which is the successor GM entity resulting from

the GM chapter 11 bankruptcy proceeding, contractually assumed liability [in the MSPA] for the claims in this lawsuit" and "is liable under theories of successor liability in addition to, or in the alternative to, other bases of liability.").

(e) **Design Defect**. *See, e.g.*, Brown Compl. (the fifth cause of action is premised on a design defect theory); Stafford Compl. (the fifth cause of action is premised on a design defect theory); Ramirez Compl., ¶ 150(f) (alleging that had "Plaintiff and other Class Members known that the Class Vehicles had the Ignition Switch Defect, they would not have purchased a Class Vehicle"); Maciel Compl. ¶¶ 213, 232, 257, 271, 282, 310, 336, 362 (first, third, fifth, sixth, seventh, ninth, twelfth, and fourteenth causes of action are premised on claim that "the Defective Vehicles share a common design defect").

(f) **Tort, Contract or Otherwise**. *See, e.g.*, Ashworth Compl., ¶¶ 519-523 (second cause of action asserts a claim based on, among other things, common law breach of contract); Ratzlaff Compl. (Count II asserts a fraudulent concealment theory); Shollenberger Compl., ¶ 69 (alleging that New GM "breached its contractual duties by, inter alia, selling Class Vehicles with a known safety defect and failing to timely recall them"); Maciel Compl. ¶¶ 218-28 (second cause of action asserts fraudulent concealment theory).

(g) **The Conduct of Old GM**. *See, e.g.*, Brandt Compl., ¶ 48 (asserting that "GM knew at the time they sold the vehicles to the Plaintiffs that such vehicles would be used for" a specific purpose); Darby Compl., ¶ 131 (alleging that "Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and the Class to purchase Vehicles at a higher price for the vehicles, which did not match the vehicles' true value"); DeSutter Compl., ¶¶ 12, 67(e) (alleging that the Named Plaintiffs own a 2006 Saturn Ion or a 2006 Chevrolet Cobalt, that such vehicles were purchased new, and that "GM intended for Plaintiffs, Class Members, the public, and the government to rely on its misrepresentations and omissions, so that Plaintiffs and Class Members would purchase or lease the Defective Vehicles"); Maciel Compl. ¶ 155 (alleging that "neither old GM, nor GM disclosed its knowledge about the dangerous Key System defects to its customers."

40. New GM has no liability or responsibility for these Retained Liability claims and, under the Sale Order and Injunction, Plaintiffs in the Ignition Switch Actions are enjoined from bringing them against New GM. *See, e.g.,* Sale Order and Injunction, ¶¶ 8, 47. Accordingly, the Court should enforce the terms of its Sale Order and Injunction by ordering Plaintiffs to promptly dismiss all of their claims that violate the provisions of that Order, to cease and desist from all efforts to assert such claims against New GM that are void because of the Sale Order

and Injunction, and to show cause whether they have any claims that are not already barred by this Court's Sale Order and Injunction.

NOTICE AND NO PRIOR REQUESTS

41. Notice of this Motion to Enforce has been provided to (a) counsel for Plaintiffs in each of the Ignition Switch Actions, (b) counsel for Motors Liquidation Company General Unsecured Creditors Trust, and (c) the Office of the United States Trustee. New GM submits that such notice is sufficient and no other or further notice need be provided.

42. No prior request for the injunctive relief sought in this Motion has been made to this or any other Court.

WHEREFORE, New GM respectfully requests that this Court: (i) enter an order substantially in the form set forth as Exhibit "J" in the Compendium of Exhibits, granting the relief sought herein; and (ii) grant New GM such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 21, 2014

Respectfully submitted,

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SCHEDULE "1"

CHART OF IGNITION SWITCH ACTIONS

	Name	Class Models	Plaintiffs' Model[1]	Court	Filing Date
1	Silvas[2]	N/A	2006 Chevy Cobalt	Southern District of Texas 2:14-cv-00089	2/27/2014[3]
2	Brandt (Class Action)[4]	Various models from 2003 to 2007	2007 Chevy Cobalt	Southern District of Texas 2:14-cv-00079	3/13/14
3	Woodward (Class Action)[5]	Various models from 2003 to 2007	2007 Chevy HHR	Northern District of Illinois 1:14-cv-01877	3/17/14
4	Jawad (Class Action)[6]	Various models from 2003 to 2007	2007 Chevy Cobalt	Eastern District of Michigan 4:14-cv-11151	3/19/14
5	McConnell (Class Action)[7]	Various models from 2003 to 2007	2007 Saturn Ion	Central District of California 8:14-cv-00424	3/19/14
6	Jones (Class Action)[8]	Various models from 2003 to 2007	2006 Saturn Ion	Eastern District of Michigan 4:14-cv-11197	3/21/14

[1] The purported class in an alleged class action should not be greater in scope than the claims related to the named representative plaintiffs. Except for a portion of four Ignition Switch Actions (Camlan, Maciel, McCarthy, and Saclo), the proposed representative plaintiffs all owned vehicles designed and manufactured by Old GM. In Camlan, Maciel, McCarthy, and Saclo, the overwhelming majority of the named plaintiffs claim to own vehicles designed and manufactured by Old GM.

[2] A copy of the complaint filed in the Silvas Action is contained in the Compendium of Exhibits as Exhibit "K."

[3] The Silvas Action was originally commenced in State Court in Texas. New GM removed the Silvas Action to the Southern District of Texas on March 21, 2014.

[4] A copy of the complaint filed in the Brandt Action is contained in the Compendium of Exhibits as Exhibit "L."

[5] A copy of the complaint filed in the Woodward Action is contained in the Compendium of Exhibits as Exhibit "M."

[6] A copy of the complaint filed in the Jawad Action is contained in the Compendium of Exhibits as Exhibit "N."

[7] A copy of the complaint filed in the McConnell Action is contained in the Compendium of Exhibits as Exhibit "O."

[8] A copy of the complaint filed in the Jones Action is contained in the Compendium of Exhibits as Exhibit "P."

7	Ponce (Class Action)[9]	Various models from 2003 to 2007	2007 Chevy HHR	Central District of California 2:14-cv-02161	3/21/14
8	Maciel (Class Action)[10]	Various models from 2003 to 2007, and 2005 to 2010 Chevrolet Cobalts	2010 Chevy Cobalt 2007 Chevy Cobalt 2008 Chevy Cobalt 2010 Chevy Cobalt 2005 Chevy Cobalt 2003 Saturn Ion 2010 Chevy Cobalt 2004 Saturn Ion 2007 Chevy HHR 2006 Saturn Ion	Northern District of California 4:14-cv-01339	3/24/14
9	Benton (Class Action)[11]	Various models from 2003 to 2007	2005 Chevy Cobalt	Central District of California 5:14-cv-00590	3/26/14
10	Kelley (Class Action)[12]	Various models from 2003 to 2007	2007 Chevy Cobalt 2007 Chevy HHR	Central District of California 8:14-cv-00465	3/26/14
11	Shollenberger (Class Action)[13]	Various models from 2003 to 2007	2006 Chevy Cobalt	Middle District of Pennsylvania 1:14-cv-00582	3/27/14
12	Ramirez (Class Action)[14]	Various models from 2003 to 2007	2007 Saturn Ion 2006 Saturn Ion 2007 Saturn Sky 2007 Saturn Sky 2007 Chevy Cobalt 2005 Chevy Cobalt 2005 Saturn Ion 2004 Saturn Ion 2006 Chevy Cobalt 2007 Chevy Cobalt 2007 Chevy Cobalt	Central District of California 2:14-cv-02344	3/27/14

[9] A copy of the complaint filed in the Ponce Action is contained in the Compendium of Exhibits as Exhibit "Q."
[10] A copy of the complaint filed in the Maciel Action is contained in the Compendium of Exhibits as Exhibit "R."
[11] A copy of the complaint filed in the Benton Action is contained in the Compendium of Exhibits as Exhibit "S."
[12] A copy of the complaint filed in the Kelley Action is contained in the Compendium of Exhibits as Exhibit "T."
[13] A copy of the complaint filed in the Schollenberger Action is contained in the Compendium of Exhibits as Exhibit "U."
[14] A copy of the complaint filed in the Ramirez Action is contained in the Compendium of Exhibits as Exhibit "V."

			2007 Pontiac G5		
13	Grumet (Class Action)[15]	Various models from 2003 to 2007	2004 Saturn Ion 2006 Saturn Ion 2007 Chevy HHR 2007 Saturn Ion 2006 Chevy Cobalt 2007 Chevy Cobalt	Southern District of California 3:14-cv-00713	3/27/14
14	Deushane (Class Action)[16]	2005 to 2010 Chevy Cobalts	2005 Chevy Cobalt	Central District of California 8:14-cv-00476	3/28/14
15	Ratzlaff (Class Action)[17]	Various models from 2003 to 2011	2005 Chevy Equinox 2005 Saturn Ion	Central District of California 2:14-cv-2424	3/31/14
16	Satele (Class Action)[18]	Various models from 2003 to 2011	2006 Chevy Cobalt 2006 Chevy Cobalt	Central District of California 8:14-cv-00485	3/31/14
17	Santiago (Class Action)[19]	Various models from 2003 to 2007	2007 Saturn Ion	Southern District of Florida 1:14-cv-21147	3/31/14
18	Elliott[20]	N/A	2006 Trailblazer SS Chevy Cobalt SS	Superior Court of the District of Columbia 2014 CA 1980 B	4/1/14
19	Heuler (Class Action)[21]	Various models from 2003 to 2011	2006 Chevy Cobalt	Central District of California 8:14-cv-00492	4/1/14

[15] A copy of the complaint filed in the Grumet Action is contained in the Compendium of Exhibits as Exhibit "W."

[16] A copy of the complaint filed in the Deushane Action is contained in the Compendium of Exhibits as Exhibit "X."

[17] A copy of the complaint filed in the Ratzlaff Action is contained in the Compendium of Exhibits as Exhibit "Y."

[18] A copy of the complaint filed in the Satele Action is contained in the Compendium of Exhibits as Exhibit "Z."

[19] A copy of the complaint filed in the Santiago Action is contained in the Compendium of Exhibits as Exhibit "AA."

[20] A copy of the complaint filed in the Elliott Action is contained in the Compendium of Exhibits as Exhibit "BB."

[21] A copy of the complaint filed in the Heuler Action is contained in the Compendium of Exhibits as Exhibit "CC."

20	Balls (Class Action)[22]	Various models from 2003 to 2011	2007 Saturn Ion	Central District of California 2:14-cv-02475	4/1/14
21	Hamid (Class Action)[23]	Various models from 2003 to 2007	2007 Chevy Cobalt	District of Colorado 1:14-cv-00953	4/2/14
22	Ashworth (Class Action)[24]	Various models from 2003 to 2007	2005 Chevy Cobalt 2005 Saturn Ion 2005 Saturn Ion 2007 Pontiac Solstice 2003 Saturn Ion 2006 Chevy HHR 2007 Pontiac G5	Northern District of Alabama 2:14-cv-00607	4/2/14
23	Phillip (Class Action)[25]	Various models from 2003 to 2011	2006 Saturn Ion 2009 Chevy HHR 2007 Chevy Cobalt 2007 Saturn Ion	District of Arizona 3:14-cv-08053	4/2/14
24	Robinson (Class Action)[26]	Various models from 2003 to 2011	2005 Saturn Ion 2009 Chevy HHR 2007 Chevy Cobalt 2005 Saturn Ion 2009 Chevy Cobalt	Central District of California 2:14-cv-02510	4/3/14
25	Ross (Class Action)[27]	Various models from 2003 to 2011	2007 Chevy Cobalt 2006 Saturn Ion 2007 Chevy Cobalt 2005 Chevy Cobalt	Eastern District of New York 1:14-cv-02148	4/3/14
26	Darby (Class Action)[28]	Various models from 2003 to 2011	2006 Chevy HHR	Central District of California 5:14-cv-00676	4/4/14

[22] A copy of the complaint filed in the Balls Action is contained in the Compendium of Exhibits as Exhibit "DD."

[23] A copy of the complaint filed in the Hamid Action is contained in the Compendium of Exhibits as Exhibit "EE."

[24] A copy of the complaint filed in the Ashworth Action is contained in the Compendium of Exhibits as Exhibit "FF."

[25] A copy of the complaint filed in the Phillip Action is contained in the Compendium of Exhibits as Exhibit "GG."

[26] A copy of the complaint filed in the Robinson Action is contained in the Compendium of Exhibits as Exhibit "HH."

[27] A copy of the complaint filed in the Ross Action is contained in the Compendium of Exhibits as Exhibit "II."

[28] A copy of the complaint filed in the Darby Action is contained in the Compendium of Exhibits as Exhibit "JJ."

27	Roush (Class Action)[29]	Various models from 2003 to 2011	2007 Chevy Cobalt	Western District of Missouri 2:14-cv-04095	4/4/14
28	Forbes (Class Action) [30]	Various models from 2003 to 2011	Chevy Cobalt (purchased in 2007)	Eastern District of Pennsylvania 2:14-cv-02018	4/4/14
29	Camlan (Class Action)[31]	Various models from 2003 to 2011	2007 Chevy HHR 2008 Chevy HHR 2006 Chevy HHR 2011 Chevy HHR 2006 Chevy HHR	Central District of California 8:14-cv-00535	4/7/14
30	Cox (Class Action)[32]	Various models from 2003 to 2011	2007 Saturn Ion	Central District of California 2:14-cv-02608	4/7/14
31	Hurst (Class Action)[33]	Various models from 2003 to 2011	2005 Chevy Cobalt	Central District of California 2:14-cv-02619	4/7/14
32	Malaga (Class Action)[34]	Various models from 2003 to 2011	2006 Chevy Cobalt 2006 Chevy Cobalt	Central District of California 8:14-cv-00533	4/7/14
33	Groman (Class Action)[35]	Various models from 2003 to 2011	2008 Chevy HHR	Southern District of New York 1:14-cv-02458	4/7/14
34	DePalma (Class Action)[36]	Various models from 2003 to 2007	2007 Chevy Cobalt 2006 Chevy Cobalt 2007 Chevy Cobalt	Middle District of Pennsylvania 1:14-cv-00681	4/8/14

[29] A copy of the complaint filed in the Roush Action is contained in the Compendium of Exhibits as Exhibit "KK."

[30] A copy of the complaint filed in the Forbes Action is contained in the Compendium of Exhibits as Exhibit "LL."

[31] A copy of the complaint filed in the Camlan Action is contained in the Compendium of Exhibits as Exhibit "MM."

[32] A copy of the complaint filed in the Cox Action is contained in the Compendium of Exhibits as Exhibit "NN."

[33] A copy of the complaint filed in the Hurst Action is contained in the Compendium of Exhibits as Exhibit "OO."

[34] A copy of the complaint filed in the Malaga Action is contained in the Compendium of Exhibits as Exhibit "PP."

[35] A copy of the complaint filed in the Groman Action is contained in the Compendium of Exhibits as Exhibit "QQ."

[36] A copy of the complaint filed in the DePalma Action is contained in the Compendium of Exhibits as Exhibit "RR."

35	Deighan (Class Action)[37]	Various models from 2003 to 2007	2004 Saturn Ion	Western District of Pennsylvania 2:14-cv-00458	4/9/14
36	Ashbridge (Class Action)[38]	Various models from 2003 to 2011	2003 Saturn Ion	Western District of Pennsylvania 2:14-cv-00463	4/10/14
37	Henry (Class Action)[39]	Various models from 2003 to 2011	2004 Saturn Ion 2005 Chevy Cobalt	Eastern District of Texas 4:14-cv-00218	4/10/14
38	DeSutter (Class Action)[40]	Various models from 2003 to 2007	2006 Saturn Ion 2006 Chevy Cobalt	Southern District of Florida 9:14-cv-80497	4/11/14
39	Salerno (Class Action)[41]	Various models from 2003 to 2011	2006 Saturn Ion	Eastern District of Pennsylvania 2:14-cv-02132	4/11/14
40	Stafford (Class Action)[42]	Various models from 2003 to 2011	2004 Saturn Ion	Northern District of California 3:14-cv-01702	4/11/14
41	Brown (Class Action)[43]	Various models from 2003 to 2011	2006 Chevy HHR	Central District of California 2:14-cv-02828	4/13/14
42	Coleman (Class Action)[44]	Various models from 2003 to 2011	2007 Pontiac G5	Middle District of Louisiana 3:14-cv-00220	4/13/14

[37] A copy of the complaint filed in the Deighan Action is contained in the Compendium of Exhibits as Exhibit "SS."

[38] A copy of the complaint filed in the Ashbridge Action is contained in the Compendium of Exhibits as Exhibit "TT."

[39] A copy of the complaint filed in the Henry Action is contained in the Compendium of Exhibits as Exhibit "UU."

[40] A copy of the complaint filed in the DeSutter Action is contained in the Compendium of Exhibits as Exhibit "VV."

[41] A copy of the complaint filed in the Salerno Action is contained in the Compendium of Exhibits as Exhibit "WW."

[42] A copy of the complaint filed in the Stafford Action is contained in the Compendium of Exhibits as Exhibit "XX."

[43] A copy of the complaint filed in the Brown Action is contained in the Compendium of Exhibits as Exhibit "YY."

[44] A copy of the complaint filed in the Coleman Action is contained in the Compendium of Exhibits as Exhibit "ZZ."

43	Ruff (Class Action)[45]	Various models from 2003 to 2011	2009 Chevy Cobalt 2007 Chevy Cobalt 2006 Chevy Cobalt	District of New Jersey 3:14-cv-02375	4/14/14
44	Lewis (Class Action)[46]	Various models from 2003 to 2007	2007 Chevy HHR	Southern District of Indiana 1:14-cv-00573	4/14/14
45	Roach (Class Action)[47]	Various models from 2003 to 2011	2008 Chevy Malibu	Southern District of Illinois 3:14-cv-00443	4/15/14
46	Letterio (Class Action)[48]	Various models from 2003 to 2011	2007 Pontiac Solstice	Western District of Pennsylvania 2:14-cv-00488	4/15/14
47	Bedford (Class Action)[49]	Various models from 2003 to 2011	27 Chevy Cobalts 7 Saturn Ions 2 Chevy HHRs	Eastern District of Michigan 2:14-cv-11544	4/16/14
48	DeLuco (Class Action)[50]	Various models from 2003 to 2011	2006 Saturn Ion	Southern District of New York 1:14-cv-02713	4/16/14
49	Saclo (Class Action)[51]	Various models from 2003 to 2011	15 Chevy Cobalts 5 Saturn Ions 3 Chevy HHRs 1 Pontiac Sky 1 Pontiac G5	Central District of California 8:14-cv-00604	4/16/14

[45] A copy of the complaint filed in the Ruff Action is contained in the Compendium of Exhibits as Exhibit "AAA."

[46] A copy of the complaint filed in the Lewis Action is contained in the Compendium of Exhibits as Exhibit "BBB."

[47] A copy of the complaint filed in the Roach Action is contained in the Compendium of Exhibits as Exhibit "CCC."

[48] A copy of the complaint filed in the Letterio Action is contained in the Compendium of Exhibits as Exhibit "DDD."

[49] A copy of the complaint filed in the Bedford Action is contained in the Compendium of Exhibits as Exhibit "EEE."

[50] A copy of the complaint filed in the DeLuco Action is contained in the Compendium of Exhibits as Exhibit "FFF."

[51] A copy of the complaint filed in the Saclo Action is contained in the Compendium of Exhibits as Exhibit "GGG."

50	Mazzocchi (Class Action)[52]	Various models from 2003 to 2011	2003 Saturn Ion	Southern District of New York 7:14-cv-02714	4/16/14
51	McCarthy (Class Action)[53]	Various models from 2003 to 2011	2010 Chevy Cobalt	Eastern District of Louisiana 2:14-cv-00895	4/17/14
52	Leval (Class Action)[54]	Various models from 2003 to 2011	2007 Chevy HHR	Eastern District of Louisiana 2:14-cv-00901	4/18/14
53	Foster (Class Action)[55]	Various models from 2003 to 2011	2006 Chevy Cobalt	Northern District of Ohio 1:14-cv-00844	4/18/14
54	Burton (Class Action)[56]	Various models from 2003 to 2011	2007 Saturn Ion	Western District of Oklahoma 5:14-cv-00396	4/18/14

[52] A copy of the complaint filed in the Mazzocchi Action is contained in the Compendium of Exhibits as Exhibit "HHH."

[53] A copy of the complaint filed in the McCarthy Action is contained in the Compendium of Exhibits as Exhibit "III."

[54] A copy of the complaint filed in the Leval Action is contained in the Compendium of Exhibits as Exhibit "JJJ."

[55] A copy of the complaint filed in the Foster Action is contained in the Compendium of Exhibits as Exhibit "KKK."

[56] A copy of the complaint filed in the Burton Action is contained in the Compendium of Exhibits as Exhibit "LLL."

SCHEDULE "2"

SAMPLE ALLEGATIONS/CAUSES OF ACTION IN IGNITION SWITCH COMPLAINTS[1]

Lead Plaintiff	Allegations
Ashbridge	"In addition to the liability arising out of the statutory obligations assumed by GM, it is also subject to successor liability for the deceptive and unfair acts and omissions of Old GM because, as described below, Defendant has continued the business enterprise of Old GM with full knowledge of the ignition switch defects. In light of this continuing course of business, GM and Old GM together will be referred to as 'GM' hereafter, unless noted otherwise." Compl., ¶ 8. Alleging Named Plaintiffs own a 2003 Saturn ION, purchased in 2002, and that Plaintiff would not have purchased the vehicle if she knew about the defect. Compl., ¶ 15. "Because GM acquired and operated Old GM and ran it as a continuing business enterprise, and because GM was aware from its inception of the Vehicles' ignition switch defects, GM is liable through successor liability for the deceptive and unfair acts and omissions of Old GM, as alleged herein." Compl., ¶ 114. A few of the Class questions are: (i) "Whether Defendants were negligent in the design, manufacturing, and distribution of the Vehicles" (Compl., ¶ 119(c)); (ii) "Whether Defendants designed, advertised, marketed, distributed, leased, sold, or otherwise placed defectively designed Vehicles into the stream of commerce in the United States" (Compl., ¶ 119(d)); and (iii) "Whether Class members overpaid for their Vehicles as a result of the defects alleged herein (Compl., ¶ 119(h)). "Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and the Class to purchase Vehicles at a higher price for the vehicles, which did not match the vehicles' true value." Compl., ¶ 131. "GM's express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301(6). The Vehicles' implied warranties are covered under 15 U.S.C. §2301(7)." Compl., ¶ 164. "GM breached these express and implied warranties as described in more detail above . . . ." Compl., ¶ 165.
Ashworth	"Defendant, GM and its predecessor [footnote omitted], manufactured and distributed the [subject] vehicles [various models from 2003 through 2007] during the class period . . . ." Compl., ¶ 2.

[1] Due to space limitations and the ever increasing number of Ignition Switch Actions, this chart contains only a ***sample*** of statements, allegations and/or causes of action contained in certain complaints filed in the Ignition Switch Actions. This chart does ***not*** contain ***all*** statements, allegations and/or causes of action that New GM believes violates the provisions of the Court's Sale Order and Injunction and the MSPA.

	"GM and its predecessor marketed, warranted and sold the Class Models as safe and reliable." Compl., ¶ 3. There are well over 50 individuals identified in the Complaint, all of whom either purchased or leased a vehicle that was designed and manufactured by Old GM prior to the closing of the 363 Sale, and an allegation that they would not have purchased or leased the vehicle if they knew about the defect. "GM is liable through successor liability for the deceptive and unfair acts and omissions of GM Corp., as alleged in the Compliant." Compl., ¶ 469. Alleging that GM breached express warranties. Compl., ¶¶ 513-14. Asserting causes of Action for breach of contract and breach of warranty. Compl., ¶ 519-523.
Balls	Alleging Named Plaintiffs own a 2007 Saturn ION and that Plaintiffs would not have purchased the vehicle if they knew about the defect. Compl., ¶ 31. Discussing Old GM's promotion and marketing of vehicles. Compl., ¶¶ 80-87. Asserting that New GM "has successor liability for Old GM's acts and omissions in the marketing and sale of the Subject Vehicles . . . ." Compl., ¶ 96; *see also* Compl., ¶ 145. Asserting that the "sale of the Subject Vehicles to Plaintiffs and the Class occurred within 'trade and commerce' within the meaning of" the Michigan Consumer Protection Act ("**MCPA**"). Compl., ¶ 115. Alleging numerous violations of the MCPA by Old GM. *See* Compl., ¶¶ 119-123. Alleging a breach of an express warranty. *See* Compl., ¶¶ 137-141.
Bedford	"In addition to the liability arising out of the statutory obligations assumed by GM, GM also has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the ignition switch defects." Compl., 12; *see also* Compl., ¶¶ 34, 86, 97(j). Allegations that Old GM promoted the Defective Vehicles as safe and reliable, referring to advertisements from 2001, 2003 and 2006. Compl., ¶¶ 70-75. Count II concerns a "breach of implied warranty," and Count III concerns a "breach of implied warranty of fitness for a particular purpose."
Benton[2]	Asserting that if Plaintiff and others knew about the defect, she would not have purchased the vehicle (a 2005 Chevy Cobalt). Compl., ¶ 31. Asserting that "GM is liable through successor liability for deceptive and unfair acts and omissions of Old GM, as alleged in the Compliant." Compl., ¶ 35; *see also* Compl., ¶ 88. One of the Class questions is "[w]hether, and to what extent, GM has successor liability for the acts and omissions of Old GM." Compl., ¶ 100(i).

[2] The *Ratzlaff* Action was commenced by the same attorneys as those that commenced the *Benton* Action, and the complaints are very similar.

Brandt	Discussing "implied terms of sale" (Compl., ¶ 35) and referencing "advertising and marketing materials emphasizing the safety quality of its vehicles" (Compl., ¶ 36). Stating "GM knew at the time they sold the vehicles to the Plaintiffs that such vehicles would be used for" a specific purpose. Compl., ¶ 48.
Brown	"In addition to the liability arising out of the statutory obligations assumed by GM, GM also has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the ignition switch defects." Compl., ¶ 15; *see also* Compl., ¶ 104. Alleging that in connection with their purchase of a 2006 HHR, the Named Plaintiffs "saw advertisements for Old GM vehicles before they purchased the HHR. Plaintiffs do recall that safety and quality were consistent themes in the advertisements they saw. These representations about safety and quality influenced Plaintiffs' decision to purchase the HHR." Compl., ¶ 35. "Had Old GM and/or Defendant disclosed the ignition switch defects, Plaintiffs would not have purchased the HHR, or would have paid less than they did, and would not have retained the vehicle." Compl., ¶ 35. A Class question is "whether Defendant is liable for a design defect." Compl., ¶ 114(f). "At all times relevant, Defendant sold, marketed, advertised, distributed, and otherwise placed Defective Vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public." Compl., ¶ 143. The Fifth Cause of Action is premised on a design defect theory. "As a direct and proximate result of Defendant's breach of written warranties, Plaintiffs and Class members sustained damages and other losses." Compl., ¶ 171. "Defendant breached the implied warranty of merchantability by manufacturing and selling Defective Vehicles containing the ignition switch defects." Compl., ¶ 182.
Burton	Alleging that the Named Plaintiff's 2007 Saturn Ion was "manufactured, sold, distributed, advertised, marketed, and warranted by GM." Compl., ¶ 17. "At all times relevant herein, General Motors Corporation and its successor in interest General Motors LLC were engaged in the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Class Vehicles, and other motor vehicles and motor vehicle components throughout the United States." Compl., ¶ 22. Two Class questions are: (i) "whether the defective nature of the Class Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a GM Vehicle" (Compl., ¶ 106 (c)), (ii) "whether the Class Vehicles were unfit for the ordinary purposes for which they were used, in violation of the implied warranty of merchantability" (Compl., ¶ 106 (j)).

	"In furtherance of its scheme to defraud, GM's February 28, 2005 Service Bulletin was issued in furtherance of its scheme to defraud." Compl., ¶ 123. "In June of 2005, GM issued a public statement through the mail and wires in furtherance of its scheme to defraud." Compl., ¶ 124. "Defendants intended that Plaintiff and Class Members rely on their misrepresentations and omissions, so that Plaintiff and other Class Members would purchase or lease the Class Vehicles." Compl., ¶ 140(h). "Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and Class Members to purchase Class Vehicles at a higher price for the vehicles, which did not match the vehicles' true value." Compl., ¶ 149. "GM breached its implied warranty of merchantability to Plaintiff and the Nationwide, Multi-State and Oklahoma Class because the Class Vehicles were not fit for the ordinary purposes for which they are used - a safe passenger motor vehicle." Compl., ¶ 164. The Fifth Claim for Relief is based on a "breach of implied warranty."
Camlan	Class questions include: (i) "whether and to what extent GM breached its express warranties relating to the safety and quality of its vehicles" (Compl., ¶ 32(b)), and (ii) "whether and to what extent GM breached any implied warranties relating to the safety and quality of its vehicles (Compl., ¶ 32(c)). Allegations that New GM is liable to Plaintiffs on a successor liability theory. Compl., ¶¶ 121-125. Allegation that New GM's "business practices include, without limitation: (a) Selling to Plaintiffs and the Class vehicles which contain defects or design flaws which make them inherently more dangerous than other similar vehicles . . . ." Compl., ¶ 135(a). "Defendant engaged in the advertising and the failure to disclose the defects and design flaws in its products herein alleged with the intent to induce Plaintiffs and the Class to purchase Defendant's products." Compl., ¶ 147.
Coleman	"In addition to the liability arising out of the statutory obligations assumed by GM, GM also has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the ignition switch defects." Compl., ¶ 12; *see also* Compl., ¶84. Alleging that in connection with her purchase of a 2007 Pontiac G5, the Named Plaintiff "saw advertisements for Old GM vehicles before she purchased the G5, and, although she does recall the specifics of the advertisements, she does recall that safety and quality were consistent themes across the advertisements she saw. These representations about safety and quality influenced Plaintiff's decision to purchase the G5.." Compl., ¶ 30. "Had Old GM disclosed the ignition switch defects, Plaintiff would not have purchased her G5, or would have paid less than she did, and would not have retained the vehicle."

	Compl., ¶ 30. Allegations that Old GM promoted the Defective Vehicles as safe and reliable, referring to advertisements from 2001, 2003 and 2006. Compl., ¶¶ 70-75. Three Class questions are (i) "Whether GM's practices in connection with the promotion, marketing, advertising, packaging, labeling and sale of the Defective Vehicles unjustly enriched GM at the expense of, and to the detriment of, Plaintiffs and the other members of the Class" (Compl., ¶ 94(i)); (ii) "Whether GM breached implied warranties in its sale and lease of the Defective Vehicles, thereby causing harm to Plaintiffs and the other members of the Class" (Compl., ¶ 94(j)); and (iii) "Whether, and to what extent, GM has successor liability for the acts and omissions of Old GM" (Compl., ¶ 94(m)). "GM's express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Defective Vehicles' implied warranties are covered under 15 U.S.C. § 2301(7). MG [sic] breached these warranties as described in more detail above." Compl., ¶¶ 107-108. "The sale of the Defective Vehicles to Plaintiffs and the Class occurred within 'trade and commerce' within the meaning of" the MCPA. Compl., ¶ 116. "While Old GM knew of the ignition switch defects by 2001, it continued to design, manufacture, and market the Defective Vehicles until 2007." Compl., ¶ 123. Count IV concerns a breach of implied warranty.
Cox	Old GM and New GM "are the alter-egos of one another and [Old GM] exercised decision-making and control over [New GM] with respect to the conduct giving rise to Plaintiffs' claims." Compl., ¶ 6. "Because GM is a mere continuation of Old GM, GM has successor liability for the conduct of Old GM as alleged herein." Compl., 15. A Class question is "whether GM has successor liability for the acts of Old GM." Compl., ¶ 92(p). A cause of action asserts a breach of express warranty. Compl., ¶¶124-127
Darby	Alleging Named Plaintiff owns a 2006 Chevy HHR and that Plaintiff would not have purchased the vehicle if he knew about the defect. Compl., ¶ 15. "Because GM acquired and operated Old GM and ran it as a continuing business enterprise, and because GM was aware from its inception of the Vehicles' ignition switch defects, GM is liable through successor liability for deceptive and unfair acts and omissions of Old GM, as alleged herein." Compl., ¶ 114. Class questions include (i) "[w]hether GM was negligent in the design, manufacturing, and distribution of the Vehicles" (Compl., ¶ 119(c)); and (ii) "[w]hether GM designed, advertised, marketed, distributed, leased, sold, or otherwise placed defectively designed Vehicles into the stream of commerce in the United States" (Compl., ¶ 119(d)). "Defendants actively concealed and/or suppressed these material facts, in whole or in

	part, with the intend to induce Plaintiff and the Class to purchase Vehicles at a higher price for the vehicles, which did not match the vehicles' true value." Compl., ¶ 131
DeLuco	The Named Plaintiff purchased a new 2006 Saturn Ion in 2006 after seeing advertisements for G.M. vehicles . . . and, although she does not recall the specifics of the advertisements, she recalls that safety and quality were consistent themes across the advertisements she saw before making the purchase of her 2006 Saturn Ion. She also recalls seeing promotional materials about the Saturn at the dealership where she purchased her 2006 Saturn Ion and spoke with Saturn salespeople who told her that the Saturn Ion was one of the safest vehicles in its class." Compl., ¶¶ 11-12. "Because G.M. acquired and operated Old G.M. and ran it as a continuing business enterprise, and because G.M. was aware from its inception of the ignition switch defects in the Defective Vehicles G.M. is liable through successor liability for the deceptive and unfair acts and omissions of Old G.M., as alleged in this Complaint." Compl., ¶ 17; *see also* Compl., ¶¶ 56, 80, 89, 107, 124. Two Class questions are: (i) "Whether G.M. and its predecessor breached its applicable warranties" and (ii) "Whether G.M. bears successor liability for Defective Vehicles that Class Members purchased or leased before July 10, 2009, the date G.M. acquired substantially all of the assets of its predecessor." Compl., ¶ 65. "As more fully described above, G.M. breached its express and implied warranties to Plaintiff and the members of the Class . . . ." Compl., ¶ 78. "Old G.M. and G.M. caused to be made or disseminated in New York, through advertising, marketing and other publications, statements regarding the quality, safety and reliability of the Defective Vehicles that were untrue or misleading." Compl., ¶ 120
DePalma	"This case arises from GM's breach of express warranties, as well as its obligations and duties, including GM's failure to disclose . . . ." Compl., ¶ 8. "Plaintiffs and the Class were also damaged by the acts and omissions of Old GM for which GM is liable through successor liability because the defective Vehicles they purchased are worth less than they would have been without the ignition switch defect." Compl., ¶ 19. Allegations that Old GM promoted the Defective Vehicles as safe and reliable, referring to advertisements from 2001, 2003 and 2006. Compl., ¶¶ 74-77. Allegations that "GM has successor liability for Old GM's acts and omissions in the marketing and sale of" the vehicles "because it continued the business enterprise of Old GM . . . ." Compl., ¶ 91. "Concealment of the known ignition switch defects at the time of sale denied the Class an opportunity to refuse delivery of the Defective Vehicles." Compl., ¶ 123. Count IV asserts a breach of implied warranty of merchantability, and Counts VI and VII assert breaches of express warranty.

DeSutter	Alleging Named Plaintiffs own a 2006 Saturn Ion or a 2006 Chevrolet Cobalt, each purchased new, and that Plaintiffs would not have purchased the vehicles if he knew about the defect. Compl., ¶ 12. GM is also liable through successor liability for the deceptive and unfair acts and omissions of Old GM, as alleged in this Complaint, because GM acquired and operated Old GM and ran it as a continuing business enterprise, utilizing substantially the same brand names, logos, plants, offices, leadership, personnel, engineers, and employees, GM was aware from its inception of the Ignition Switch Defect and Power Steering Defect in the Defective Vehicles, and GM and Old GM concealed both Defects from the public, regulators, and the bankruptcy court. Because GM is liable for the wrongful conduct of Old GM, there is no need to distinguish between the conduct of Old GM and GM, and the complaint will hereinafter simply refer to GM as the corporate actor when describing the relevant facts." Compl., ¶ 16. "GM intended for Plaintiffs, Class Members, the public, and the government to rely on its misrepresentations and omissions, so that Plaintiffs and Class Members would purchase or lease the Defective Vehicles." Compl., ¶ 67(e); *see also* Compl., ¶ 89(e). "GM actively concealed and/or suppressed these material facts, in whole or in part, to induce Plaintiffs and Class Members to purchase or lease the Defective Vehicles at high prices, and to protect its profits and avoid a costly recall, and it did so at the expense of Plaintiffs and the Class." Compl., ¶ 78.
Deushane	"Through advertising, marketing, and other publications, GM caused statements to be disseminated that were untrue or misleading . . . ." Compl., ¶ 31. "Had Plaintiff and the other California Sub Class members known this, they would not have purchased or leased their Defective Cobalts and/or paid as much for them." Compl., ¶ 34. "GM made express warranties to Plaintiff" (Compl., ¶ 44), the "Defective Cobalts are covered by GM's express warranties" (Compl., ¶ 46), and "GM breach[ed] its express warranties . . . . (Compl., ¶ 47). Asserting that "GM is a 'manufacturer' of the Defective Vehicles" (Compl., ¶ 54) and that "GM impliedly warranted" to Plaintiff and the Class that the vehicles were "merchantable" (Compl., ¶ 55).
Deighan	"In addition to the liability arising out of the statutory obligations assumed by GM, it is also subject to successor liability for the deceptive and unfair acts and omissions of Old GM because, as described below, Defendant has continued the business enterprise of Old GM with full knowledge of the ignition switch defects. In light of this continuing course of business, GM and Old GM together will be referred to as 'GM' hereafter, unless noted otherwise." Compl., ¶ 8. "Because GM acquired and operated Old GM and ran it as a continuing business enterprise, and because GM was aware from its inception of the Vehicles' ignition switch defects, GM is liable through successor liability for the deceptive and unfair acts and

	omissions of Old GM, as alleged herein." Compl., ¶ 114.
Forbes	"Plaintiff and the Class either paid more for the Defective Vehicles than they would have had they known of the ignition switch defects, or they would not have purchased the Defective Vehicles at all had they known of the defects." Compl., ¶ 34. "GM has successor liability for Old GM's acts and omissions in the marketing and sale of the Defective Vehicles because it continued the business enterprise of Old GM, for the following reasons . . ." Compl., ¶ 36.
Foster	Alleging that the Named Plaintiff's 2006 Chevrolet Cobalt was "manufactured, sold, distributed, advertised, marketed, and warranted by GM." Compl., ¶ 17. "At all times relevant herein, General Motors Corporation and its successor in interest General Motors LLC were engaged in the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Class Vehicles, and other motor vehicles and motor vehicle components throughout the United States." Compl., ¶ 22. Two Class questions are: (i) "whether the defective nature of the Class Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a GM Vehicle" (Compl., ¶ 104 (c)), (ii) "whether the Class Vehicles were fit for their ordinary and intended use, in violation of the implied warranty of merchantability" (Compl., ¶ 106 (h)). "Defendants intended that Plaintiff and Class Members rely on their misrepresentations and omissions, so that Plaintiff and other Class Members would purchase or lease the Class Vehicles." Compl., ¶ 116(h). "GM is liable to Plaintiff and the Nationwide Class pursuant to 15 U.S.C. § 2310(d)(1), because it breached the implied warranty of merchantability." Compl., ¶ 127. "GM breached its implied warranty of merchantability to Plaintiff and the Nationwide, Class because the Class Vehicles were not fit for the ordinary purposes for which they are used – namely a safe passenger motor vehicle." Compl., ¶ 128. The Third Claim for Relief is based on a "breach of implied warranties" and the Sixth Claim for Relief is based on a "tortious breach of warranty." "Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and Class Members to purchase Class Vehicles at a higher price for the vehicles, which did not match the vehicles' true value." Compl., ¶ 153. "Defendants violated the CSPA when they represented, through advertising, warranties, and other express representations, that the Class Vehicles had characteristics and benefits that they did not actually have." Compl., ¶ 163. "Defendants failed to use appropriate design, engineering, and parts in manufacturing the Class Vehicles, and in other respects, Defendants breached its duties by being wantonly reckless, careless, and negligent." Compl., ¶ 185.

Groman	Referencing a 2008 Chevrolet HHR, "Groman saw advertisements for G .M. vehicles before he purchased the car and . . . safety and quality were consistent themes across the advertisements . . . . These representations about safety and quality influenced Groman's decision to purchase the 2008 Chevrolet HHR. . . . Had G.M. disclosed the ignition switch defects , he would not have purchased the vehicle and would not have paid as much for it." Compl., ¶ 12. "G.M. actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and the other members of the Class to purchase Defective Vehicles at a higher price for the Defective Vehicles. Compl., ¶ 98. "Plaintiff and the other members of the Class reasonably relied on G.M.'s statements in its marketing and advertising that the Defective Vehicles were safe, and would not have purchased or leased the Defective Vehicles had they known of the defects in the ignition switches, or would not have paid as much as they did." Compl., ¶ 100, 129. "Old G.M. and G.M. caused to be made or disseminated . . . through advertising, marketing and other publications, statements regarding the quality, safety and reliability of the Defective Vehicles that were untrue or misleading." Compl., ¶ 124. With respect to the breach of express warranty of merchantability count, "at the time that Old G.M. and G.M. warranted, sold and leased the Defective Vehicles, it knew that the Defective Vehicles did not conform to the warranties and were inherently defective, and wrongfully and fraudulently misrepresented and/or concealed material facts regarding the Defective Vehicles." Compl., ¶ 142. "G.M. has successor liability for Old G.M.'s acts and omissions in the marketing and sale of the Defective Vehicles during the Class Period because G.M. has continued the business enterprise of Old G.M., for the following reasons . . ." Compl., ¶ 60.
Grumet	Referencing the Saturn Ion and a 2007 advertisement that the car was "safe and sound", "G.M. knew this flaw existed from the moment the car hit dealers' floors . . . ." Compl., ¶ 45. G.M. breached its express and implied warranties . . . by, among other things: selling and/or leasing the Defective Vehicles in an unmerchantable condition; selling and/or leasing the Defective Vehicles when they were not fit for the ordinary purposes for which vehicles are used, and which were not fully operational, safe or reliable." Compl., ¶ 88. "Plaintiffs and the other members of the Class reasonably relied on G.M.'s statements in its marketing and advertising that the Defective Vehicles were safe, and would not have purchased or leased the Defective Vehicles had they known of the defects in the ignition switches, or would not have paid as much as they did." Compl., ¶ 106, 139. Referencing the express warranty of merchantability, "[t]he Defective Vehicles are covered by Old G.M.'s and G.M.'s express warranties." Compl., ¶ 152.

	"Old G.M. and G.M. breached the implied warranty of merchantability by manufacturing and selling the Defective Vehicles with defective ignition switch systems." Compl., ¶ 168. "G.M. has successor liability for Old G.M.'s acts and omissions in the marketing and sale of the Defective Vehicles during the Class Period because G.M. has continued the business enterprise of Old G.M., for the following reasons . . ." Compl., ¶ 65.
Hamid	"Had Plaintiff known of the ignition problem, he would not have purchased his Cobalt or, at a minimum, would have paid less than he did." Compl., ¶ 10. With respect to consumer protection act count, "GM had a statutory duty to refrain from misleading and confusing unfair or deceptive acts in the manufacture, marketing and/or sale or leasing of the recalled vehicles . . . ." Compl., ¶ 16. "GM expressly warranted that the recalled vehicles were safe and were merchantable and fit for use for particular purposes at the time of purchase and sale." Compl., ¶ 21. "GM implicitly warranted that the recalled vehicles were safe and were merchantable and fit for use for particular purposes at the time of purchase and sale." Compl., ¶ 26.
Henry	"In addition to the liability arising out of the statutory obligations assumed by GM, GM also has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the ignition switch defects." Compl., ¶ 12; *see also* Compl., ¶ 86. Alleging Named Plaintiffs own a 2004 Saturn Ion and a 2005 Chevrolet Cobalt and that Plaintiffs would not have purchased their vehicle if they knew about the defect. Compl., ¶¶ 30, 31. Alleging that Old GM promoted the Defective Vehicles as safe and reliable. Compl., ¶¶ 71-75. Two Class questions are: (i) "Whether GM's practices in connection with the promotion, marketing, advertising, packaging, labeling and sale of the Defective Vehicles unjustly enriched GM at the expense of, and to the detriment of, Plaintiffs and the other members of the Class" (Compl., ¶ 97(i)), and (ii) "Whether GM breached implied warranties in its sale and lease of the Defective Vehicles, thereby causing harm to Plaintiffs and the other members of the Class" (Compl., ¶ 97(j)). Count IV concerns breach of implied warranty.
Heuler	Alleging Named Plaintiff owns a 2006 Chevy Cobalt and that Plaintiffs would not have purchased the vehicle if they knew about the defect. Compl., ¶ 31. "GM is liable through successor liability for the deceptive and unfair acts and omissions of GM Corp., as alleged in the Compliant." Compl., ¶ 35; *see also* Compl., ¶ 87. One of the Class questions is "[w]hether, and to what extent, GM has successor liability for the acts and omissions of Old GM." Compl., ¶ 99(k).

	Alleging that Old GM promoted the Defective Vehicles as safe and reliable. Compl., ¶¶ 70-75
Hurst	"On information and belief, in marketing and advertising materials, Old GM consistently promoted the Defective Vehicles as safe and reliable." Compl., ¶ 39. "Purchasers and lessees paid more for the Defective Vehicles, through a higher purchase price or higher lease payments, than they would have had the ignition switch defects been disclosed, or they would not have purchased or leased the vehicle at all had they known the truth." Compl., ¶ 51. "Old GM and Defendant's nondisclosure about safety considerations of the Defective Vehicles while selling and advertising the products were material." Compl., ¶ 92. "GM has successor liability for Old GM's acts and omissions in the marketing and sale of the Defective Vehicles because it has continued the business enterprise of Old GM . . ." Compl., ¶ 62.
Jawad	In the negligence count, stating "GM designed, manufactured, tested, inspected, marketed, labeled and sold the Defective Vehicles . . . ." Compl., ¶ 30. "GM owed Plaintiff a duty of care in the design, manufacture, testing, inspecting, marketing, labeling and sale of its product." Compl., ¶ 31. "The Defective GM Vehicles was [sic] defective at the time it left GM's control . . . . Compl., ¶ 37. "GM breached its implied warranty in the design of the Defective GM Vehicles . . . . Compl., ¶ 41. "GM breached its implied warranty in the manufacturing of Defective GM Vehicles . . . ." Compl., ¶ 42. "An implied term of the sale . . . ." Compl., ¶ 53. "GM knew at the time they sold the vehicles to the Plaintiffs that such vehicles would be used for" a specific purpose. Compl., ¶ 59.

Jones	Asserting that if Plaintiff and others knew about the defect, she would not have purchased the vehicle (a 2006 Saturn Ion). Compl., ¶ 10. Referencing advertisements and promotion of the vehicles at issue which, according to the complaint were all manufactured prior to the closing of the 363 Sale. Compl., ¶¶ 2, 11. An advertisement for a 2006 Saturn Ion was attached to the Complaint as Exhibit "B." Plaintiff also references advertisements from 2003 through 2007. Compl., ¶ 29. Allegations that "GM has successor liability for GM Corp.'s acts and omissions in the marketing and sale of" the vehicles. Compl., ¶ 77. A question common to the class is "[w]hether GM and its predecessor breached its express or implied warranties." Compl., ¶ 87; *see also* ¶¶ 97, 101-106 (breach of express warranty), 107-166 (breach of contract and implied warranty). Alleging that Defendant "engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices with respect to the sale of" the vehicles in violation of statutes in numerous States. Compl., ¶¶ 132-177.
Letterio	"In addition to the liability arising out of the statutory obligations assumed by GM, it is also subject to successor liability for the deceptive and unfair acts and omissions of Old GM because, as described below, Defendant has continued the business enterprise of Old GM with full knowledge of the ignition switch defects. In light of this continuing course of business, GM and Old GM together will be referred to as "GM" hereafter, unless noted otherwise." Compl., ¶ 8; *see also* Compl., ¶ 114. "GM designed, manufactured, marketed, advertised, and warranted that all of its Vehicles were safe and reliable and fit for the ordinary purpose such Vehicles are used for, and were free from defects in materials and workmanship." Compl., ¶ 11. Named Plaintiff purchased a new 2007 Pontiac Solstice on November 30, 2007, and asserts that had "Defendants disclosed the ignition switch defect, Plaintiff would not have purchased her 2007 Pontiac Solstice." Compl., ¶ 15. A Class question includes "[w]hether Defendants were negligent in the design, manufacturing, and distribution of the Vehicles." Compl., ¶ 119(c). "Such misconduct materially affected the purchasing decisions of Plaintiff and the members of the Pennsylvania Subclass as Plaintiff and the Pennsylvania Subclass relied on Defendants' misstatements and omissions regarding the Vehicles' safety and/or reliability when purchasing or leasing the Vehicles." Compl., ¶ 156. "GM breached these express and implied warranties as described in more detail above . . . ." Compl., ¶ 165.
Leval	"In addition to the liability arising out of the statutory obligations assumed by GM, GM also has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the

	ignition switch defects." Compl., ¶ 12, *see also* Compl., ¶¶ 33, 84. The Named Plaintiff owns a 2007 Chevy HHR which was purchased "in part because she [sic] wanted a safely designed and manufactured vehicle. Plaintiff saw advertisements for Old GM vehicles before he purchased the HHR . . . ." Compl., ¶ 30. "Had Old GM disclosed the ignition switch defects, Plaintiff would not have purchased his HHR, or would have paid less than he did, and would not have retained the vehicle." Compl., ¶ 30. Allegations that Old GM promoted the Defective Vehicles as safe and reliable, referring to advertisements from 2001, 2003 and 2006. Compl., ¶¶ 70-75. A Class question is "[w]hether GM breached implied warranties in its sale and lease of the Defective Vehicles, thereby causing harm to Plaintiffs and the other members of the Class." Compl., ¶ 94(j). GM's express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Defective Vehicles' implied warranties are covered under 15 U.S.C. § 2301(7). GM breached these warranties as described in more detail above." Compl., ¶¶ 107-108. "While Old GM knew of the ignition switch defects by 2001, it continued to design, manufacture, and market the Defective Vehicles until 2007." Compl., ¶ 123. Count IV is based on a "breach of implied warranty." "Defendants, as manufacturer of the defective vehicle, are responsible for damages caused by the failure of its product to conform to well-defined standards." Compl., ¶ 148. "The vehicle as sold and promoted by Defendants possessed a redhibitory defect because it was not manufactured and marketed in accordance with industry standards and/or was unreasonably dangerous as described above, which rendered the vehicle useless or its use so inconvenient that it must presumed that a buyer would not have bought the vehicle had she known of the defect." Compl., ¶ 151.
Lewis	Plaintiffs 2007 Chevrolet HHR "was manufactured, sold, distributed, advertised, marketed, and warranted by GM . . . ." Compl., ¶ 12. "At all relevant times herein, General Motors Corporation and its successor in interest General Motors LLC were engaged in the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Class Vehicles, and other motor vehicles and motor vehicle components throughout the United States." Compl., ¶ 18. A Class question is "whether the defective nature of the Class Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a GM Vehicle." Compl., ¶ 87(c). "Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and Class Members to purchase Class Vehicles at

	a higher price for the vehicles, which did not match the vehicles' true value." Compl., ¶ 107.
Maciel	Certain of the Named Plaintiffs purchased a subject vehicle prior to the closing of the 363 Sale, and assert that they would not have purchased the vehicle if they knew about the defect. See, e.g., Compl., ¶¶ 23, 36, 48. "GM, which is the successor GM entity resulting from the GM chapter 11 bankruptcy proceeding, contractually assumed liability for the claims in this lawsuit and "is liable under theories of successor liability in addition to, or in the alternative to, other bases of liability." Compl., ¶¶ 70, 80. "[N]ew GM, the Defendant here, is the owner of all 'vehicles' and 'finished goods' (such as cars) of old GM, 'wherever [they are] located,' and including any such vehicles or finished goods in the 'possession of' 'customers.'" Compl., ¶ 74. Allegations regarding breaches of express warranties. *See, e.g.*, Compl., ¶¶ 212, 213. "By failing to disclose these material facts, GM intended to induce Plaintiffs and other Class members to purchase or lease the Defective Vehicles." Compl., ¶ 223.
Malaga	Referencing the 2006 Chevrolet Cobalt, ". . . Plaintiff bought a dangerous vehicle that was not of the quality that was advertised. . . . If GM had disclosed the nature and extent of its problems, Plaintiff would not have purchased a vehicle from GM, or would not have purchased that the vehicle for the price paid." Compl., ¶ 18, 21. "In leasing and/or purchasing the vehicles . . . Plaintiffs and the Class . . . reasonably believed and/or depended on the material false and/or misleading information . . . with respect to the safety and quality of the vehicles manufactured and sold by Defendant. . . . Defendant induced Plaintiffs and the Class to purchase the Defective Vehicles . . ." Compl., ¶ 136. "Defendant engaged in the advertising and the failure to disclose the defects and design flaws in its products herein alleged with the intent to induce Plaintiffs and the Class to purchase Defendant's products." Compl., ¶ 142. "Plaintiffs and the Class were exposed to Defendant's advertising and its false and misleading statements and were affected by the advertising in that Plaintiffs and the Class believed it to be true and/or relied on it when making purchasing decisions." Compl., ¶ 145. "At the time of the sale, Defendant had knowledge of the purpose for which its products were purchased and impliedly warranted the same to be, in all respects, fit and proper for this purpose." Compl., ¶ 167. With respect to the negligence count, "[d]efendant breached that duty by designing, manufacturing, and selling products to Plaintiffs and the Class that had a serious ignition switch defect without disclosing . . ." Compl., ¶ 187. "GM also has successor liability for GM Corporation's acts and omissions in the marketing and sale of the Defective Vehicles . . ." Compl., ¶ 117.

Mazzocchi	Named Plaintiff's vehicle is a 2003 Saturn Ion which "was manufactured, sold, distributed, advertised, marketed, and warranted by GM." Compl., ¶ 17. "At all times relevant herein, General Motors Corporation and its successor in interest General Motors LLC were engaged in the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Class Vehicles, and other motor vehicles and motor vehicle components throughout the United States." Compl., ¶ 21. Two Class question are: (i) "whether the defective nature of the Class Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a GM Vehicle" (Compl., ¶ 110(c)), and (ii) "whether the Class Vehicles were fit for their ordinary and intended use, in violation of the implied warranty of merchantability" (Compl., ¶ 110(i)). "In furtherance of its scheme to defraud, GM issued the February 28, 2005 Service Bulletin. It instructed GM's dealers to disseminate false and misleading information about the dangerous and defective condition of the Defective Vehicles to customers, including Plaintiff and other members of the Class." Compl., ¶ 127. "In June of 2005, GM issued a public statement through the mail and wires in furtherance of its scheme to defraud." Compl., ¶ 128. "GM is liable to Plaintiffs and the Nationwide Class pursuant to 15 U.S.C. § 2310(d)(l), because it breached the implied warranty of merchantability." Compl., ¶ 155. "GM breached its implied warranty of merchantability to Plaintiffs and the Nationwide Class because the Class Vehicles were not fit for the ordinary purposes for which they are used~namely, as a safe passenger motor vehicle." Compl., ¶ 156. The Fourth Claim for Relief is based on a "breach of implied warranty."
McCarthy	"At all times relevant herein, General Motors Corporation and its successor in interest General Motors LLC were engaged in the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Class Vehicles, and other motor vehicles and motor vehicle components throughout the United States." Compl., ¶ 20. Two Class questions are: (i) "whether the defective nature of the Class Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a GM Vehicle" (Compl., ¶ 100(c)), and (ii) "whether GM concealment of the true defective nature of the Class Vehicles induced Plaintiff and Class Members to act to their detriment by purchasing the Vehicles" (Compl., ¶ 100(f)). "Defendants designed, manufactured, sold and distributed the Class Vehicles which Defendants placed into the stream of commerce. Under Louisiana law, the seller warrants the buyer against redhibitory defects, or vices, in the thing sold. La. C.C. art. 2520." Compl., ¶ 108.

	Allegations that GM breached the implied warranty of merchantability." Compl., ¶¶ 117-121. The Third Claim for Relief is based on a "breach of implied warranties of merchantability and fitness," and the Fourth Claim for Relief is based on a "breach of warranty of fitness for ordinary use."
McConnell	"GM . . . has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the ignition switch defect." Compl., ¶ 12; *see also* Compl., ¶ 87. With reference to a 2007 Saturn Ion Coupe, "Plaintiff saw advertisements for Old GM vehicles before she purchased the Saturn" and would not have purchased it if she knew about the defect. Compl., ¶ 31. "On information and belief, in marketing and advertising materials, Old GM consistently promoted the Defective Vehicles as safe and reliable." Compl., ¶ 70. Referencing the "sale of the Defective Vehicle" in the cause of action alleging violations of the Michigan Consumer Protection Act. Compl., ¶ 108.
Phillip	"[H]ad Old GM or GM disclosed the ignition switch defects and safety risks presented sooner . . . Plaintiffs and members of the Class . . . would not have purchased the vehicles they did; would have paid less than they did. . ." Compl., ¶ 26. "Although it had actual knowledge of the ignition switch defects that it was concealing, Old GM continued to sell hundreds of thousands of Defective Vehicles . . ." Compl., ¶ 80. "GM and Old GM also expressly warranted through statements and advertisements that the Defective Vehicles were of high quality, and at a minimum, would actually work properly and safety." Compl., ¶ 292. "Contrary to the applicable implied warranties, Old GM's and GM's Defective Vehicles at the time of sale and thereafter were not fit for their ordinary and intended purpose." Compl., ¶ 319. "GM also has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the ignition switch defects." Compl., ¶ 11. "Because GM acquired and operated Old GM and ran it as a continuing business enterprise, and because GM was aware from its inception of the ignition switch defects in the Defective Vehicles, GM is liable through successor liability . . . ." Compl., ¶ 50.
Ponce	The Named Plaintiff purchased a 2007 Chevrolet HHR in "2007 or 2008" and, based on Chevrolet's reputation, representations and advertising," he alleges that had "he known about the defect, he would not have purchased this vehicle, would not have paid a premium price, and would not have retained the vehicle." Compl., ¶ 9; *see also* Compl., ¶¶ 35-36, 40.

	"GM is liable for both its own acts and omissions, and the acts and omissions of Old GM, as alleged in the Complaint." Compl., ¶ 14. Class questions include: (i) Whether Defendant's practices and representations made in connection with the labeling, advertising, marketing, promotion and sale of the Subject Vehicles" violated certain statutes. Compl., ¶¶ 46(e), 46(f) Count one asserts a breach of express and implied warranties with respect to the Subject Vehicles (which are various models manufactured from 2003 through 2007). *See* Compl., ¶¶ 56-62.
Ramirez	"Defendants intended that Plaintiffs and Class Members rely on their misrepresentations and omissions, so that Plaintiffs and other Class Members would purchase or lease the Class Vehicles . . ." Compl., ¶ 110(h). Defendant engaged in deceptive business practices in violation of California's Consumer Legal Remedies Act by, among other things, "advertising Class Vehicles with the intent not to sell or lease them as advertised . . ." Compl., ¶ 147(c). "Had Plaintiff and other Class Members known that the Class Vehicles had the Ignition Switch Defect, they would not have purchased a Class Vehicle." Compl., ¶ 150(f). "Defendants made express warranties to Plaintiffs and Class Members both in its warranty manual and advertising . . ." Compl., ¶ 190. Defendants allegedly violated the Maryland Consumer Protection Act "when it falsely represented, throughout its advertising, warranties and other express representations, that the Class Vehicles were of certain quality or standard when they were not." Compl., ¶ 210. Mentions that New GM expressly assumed certain liabilities, including statutory requirements, citing the MSA. *See* Compl., ¶ 27. "At all times relevant herein, General Motors Corporation and its successor in interest General Motors LLC were engaged in the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Class Vehicles, and other motor vehicles and motor vehicle components throughout the United States." Compl., ¶ 29.
Roach	"In addition to the liability arising out of the statutory obligations assumed by GM, it is also subject to successor liability for the deceptive and unfair acts and omissions of Old GM because, as described below, Defendant has continued the business enterprise of Old GM with full knowledge of the ignition switch defects. In light of this continuing course of business, GM and Old GM together will be referred to as "GM" hereafter, unless noted otherwise." Compl., ¶ 8; *see also* Compl., ¶ 114. "Had Defendants disclosed the ignition switch defect, Plaintiff would not have purchased his 2008 Chevy Malibu LS." Compl., ¶ 15. Two Class Questions are (i) "Whether Defendants were negligent in the design, manufacturing, and distribution of the Vehicles" (Compl., ¶ 119(c)), and (ii) "Whether

	Defendants designed, advertised, marketed, distributed, leased, sold, or otherwise placed defectively designed Vehicles into the stream of commerce in the United States" (Compl., ¶ 119(d)). "A reasonable consumer with knowledge of the defective nature of the defective GM Models ignition switch would not have purchased the defective GM Models equipped with a defective ignition switch or would have paid less for them." Compl., ¶ 158. "GM's express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301(6). The Vehicles' implied warranties are covered under 15 U.S.C. §2301(7). GM breached these express and implied warranties as described in more detail above . . . ." Compl., ¶ 169-170.
Robinson	Referencing alleged violation of the California False Advertising Law, "Defendants caused to be made or disseminated to consumers throughout California and the United States, advertising, marketing and other publications, statements about the Defective Vehicles that were untrue or misleading." Compl., ¶ 137. "Defendants violated Minn. Stat. § 325D.44(9) by advertising, marketing, and selling the Defective Vehicles as reliable and without a known defect while knowing those claims were false." Compl., ¶ 145. "GM also has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the ignition switch defects." Compl., ¶ 13. "Because GM acquired and operated Old GM and ran it as a continuing business enterprise, and because GM was aware from its inception of the ignition switch defects in the Defective Vehicles, GM is liable through successor liability for the deceptive and unfair acts and omissions of Old GM, as alleged in this Complaint." Compl., ¶ 27.
Ross	With respect to alleged violations of the Michigan Consumer Protection Act, "Defendants provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the safety, performance, reliability, quality, and nature of the Class Vehicles . . . " Compl., ¶114(b). "GM gave an implied warranty . . . namely, the implied warranty of merchantability." Compl., ¶ 124. "Defendants violated [New York's Deceptive Trade Practices Act] when they represented, through advertising, warranties, and other express representations, that the Class Vehicles had characteristics and benefits that they did not actually have." Compl., ¶ 161. "At all times relevant herein, General Motors Corporation and its successor in interest General Motors LLC were engaged in the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Class Vehicles . . . ." Compl., ¶ 22.

Roush	"Had Plaintiffs known of the defect, they would not have purchased the vehicle." Compl., ¶ 18. Referencing the alleged violation of Missouri's Merchandising Practices Act, "GM has used and/or continues to use unfair practices, concealment, suppression and/or omission of material facts in connection with the advertising, marketing, and offering for sale of Class Vehicles." Compl., ¶ 48.
Ruff	Alleging Named Plaintiffs own a 2009 Chevrolet Cobalt or a 2006 Chevrolet Cobalt, each of which were purchased new. With respect to the 2006 Chevrolet Cobalt, Plaintiffs assert that it "was manufactured, sold, distributed, advertised, marketed, and warranted by GM." Compl. ¶ 16. "At all times relevant herein, General Motors Corporation and its successor in interest General Motors LLC were engaged in the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Class Vehicles, and other motor vehicles and motor vehicle components throughout the United States." Compl., ¶ 21. A Class question is "whether the Class Vehicles were fit for their ordinary and intended use, in violation of the implied warranty of merchantability." Compl., ¶ 108(g). The second claim for relief asserts a breach of implied warranties. "Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiffs and Class Members to purchase Class Vehicles at a higher price for the vehicles, which did not match the vehicles' true value." Compl., ¶ 142.
Saclo	"GM breached these warranties as described in more detail above. Without limitation, the Defective Vehicles share a common design defect . . . ." Compl., ¶ 314. "By failing to disclose these material facts, GM intended to induce Plaintiffs and the other Class members to purchase or lease the Defective Vehicles." Compl., ¶ 325. Through advertising, marketing, and other publications, OM caused statements to be disseminated that were untrue or misleading, and that were known, or that by the exercise of reasonable care should have been known to GM, to be untrue and misleading to consumers, including Plaintiff Cohen and the other California State Class members." Compl., ¶ 346. "GM made express warranties to Plaintiff Cohen and the other California State Class members within the meaning of [California statutes] in its warranty, manual, and advertising, as described above." Compl., ¶ 359. "The Defective Vehicles are covered by GM's express warranties." Compl., ¶ 361. "GM breached the implied warranty of merchantability by manufacturing and selling Defective Vehicles that are defective." Compl., ¶ 377.

	"GM has defectively designed, manufactured, sold, or otherwise placed in the stream of commerce Defective Vehicles as set forth above. GM impliedly warranted that the Defective Vehicles were merchantable for the ordinary purpose for which they were designed, manufactured, and sold." Compl., ¶¶ 553-554.
Salerno	The Named Plaintiff alleges that she "owns a 2006 Saturn Ion," which was manufactured, sold, distributed, advertised, marketed, and warranted by GM." Compl., ¶ 15. One of the Class questions is "whether the Class Vehicles were fit for their ordinary and intended use, in violation of the implied warranty of merchantability." Compl., ¶ 101(g). "Defendants provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the safety, performance, reliability, quality, and nature of the Class Vehicles." Compl., ¶ 113(b). "Defendants intended that Plaintiff and Class Members rely on their misrepresentations and omissions, so that Plaintiff and other Class Members would purchase or lease the Class Vehicles." Compl., ¶ 113(h). "In connection with its sales of the Class Vehicles, GM gave an implied warranty as defined in IS U.S.C. § 2301(7); namely, the implied warranty of merchantability" (Compl., ¶ 123), and "GM is liable to Plaintiff and the Nationwide Class pursuant to 15 U.S.C. § 2310(d)(l), because it breached the implied warranty of merchantability" (Compl., ¶ 124). Count III concerns breach of implied warranty. "Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and Class Members to purchase Class Vehicles at a higher price for the vehicles, which did not match the vehicles' true value." Compl., ¶ 151.
Santiago	Alleging that New GM is liable under a successor liability theory, Plaintiffs allege: "Because GM is liable for the wrongful conduct of Old GM, there is no need to distinguish between the conduct of Old GM and GM, and the complaints will hereinafter simply refer to GM as the corporate actor when describing relevant facts." Compl., ¶ 16. Named Plaintiff bought a 2007 Saturn Ion Coupe new, and alleged that "[h]ad Plaintiffs and the Class known about the full extent of the Ignition Switch Defect, they would either not have purchased the vehicle at all or would have paid less for them . . . ." Compl., ¶ 102. "GM actively concealed and/or suppressed these material facts, in whole or in part, to induce Plaintiff and Class Members to purchase or lease the Defective Vehicles . . . ." Compl., ¶ 110.

Shollenberger	"GM expressly warranted that the Class Vehicles were of high quality and, at minimum, would actually work properly." Compl., ¶ 52. "Plaintiff relied on GM's express warranty when purchasing his Class Vehicles." Compl., ¶ 53. "GM breached this warranty by selling to Plaintiff and the Class members the Class Vehicles with known ignition switch defects . . ." Compl., ¶ 54. "GM manufactured and/or supplied the Class Vehicles, and prior to the time these goods were purchased by Plaintiff and the putative Class, GM impliedly warranted to Plaintiff that they would be merchantable." Compl., ¶ 60. "GM breached its contractual duties by, *inter alia*, selling Class Vehicles with a known safety defect and failing to timely recall them." Compl., ¶ 69.
Stafford	"In addition to the liability arising out of the statutory obligations assumed by GM, GM also has successor liability for the deceptive and unfair acts and omissions of Old GM because GM has continued the business enterprise of Old GM with full knowledge of the ignition switch defects." Compl., ¶ 15; *see also* Compl., ¶ 104. Alleging that in connection with his purchase of a 2004 Saturn Ion, the Named Plaintiff "saw advertisements for Old GM vehicles before he purchased the Ion. Plaintiff does recall that safety and quality were consistent themes in the advertisements he saw. These representations about safety and quality influenced Plaintiff's decision to purchase the Ion." Compl., ¶ 35. "Had Old GM and/or Defendant disclosed the ignition switch defects, Plaintiff would not have purchased the Ion, or would have paid less than he did." Compl., ¶ 35. A Class question is "whether Defendant is liable for design defect." Compl., ¶ 114(f). "As a direct and proximate result of Defendant's violations, Plaintiff suffered injury in fact and lost money because they purchased the Defective Vehicle and paid the price they paid believing it to be free of defects when it was not." Compl., ¶ 137. "At all times relevant, Defendant sold, marketed, advertised, distributed, and otherwise placed Defective Vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public." Compl., ¶ 143. The Fifth Cause of Action is premised on a design defect theory. "As a direct and proximate result of Defendant's breach of written warranties, Plaintiff and Class members sustained damages and other losses." Compl., ¶ 171. "Defendant breached the implied warranty of merchantability by manufacturing and selling Defective Vehicles containing the ignition switch defects." Compl., ¶ 182.

Exhibit B

Hearing Date and Time: To Be Determined
Objection Deadline: To Be Determined
Reply Deadline: To Be Determined

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
	:	
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**Case No.: 09-50026 (REG)**
	:	
Debtors.	:	**(Jointly Administered)**
	:	

MOTION OF GENERAL MOTORS LLC PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION (MONETARY RELIEF ACTIONS, OTHER THAN IGNITION SWITCH ACTIONS)

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INTRODUCTION

In June 2009, General Motors LLC ("**New GM**") was a newly formed entity, created by the U.S. Treasury, to purchase substantially all of the assets of Motors Liquidation Company, formerly known as General Motors Corporation ("**Old GM**"). Through a bankruptcy-approved sale process, New GM acquired Old GM's assets, free and clear of all liens, claims, liabilities and encumbrances, other than liabilities that New GM expressly assumed under a June 26, 2009 Amended and Restated Master Sale and Purchase Agreement ("**Sale Agreement**").[1] The Bankruptcy Court approved the sale ("**363 Sale**") from Old GM to New GM and the terms of the Sale Agreement in its "**Sale Order and Injunction**," dated July 5, 2009.[2]

This Motion does not address the approximately 90 lawsuits ("**Ignition Switch Actions**") against New GM that seek monetary relief (*i.e.*, where there was no accident causing personal injury, loss of life, or property damage) relating to allegedly defective ignition switches ("**Ignition Switch**") in certain vehicle models. New GM previously filed a motion with this Court on April 21, 2014 ("**Ignition Switch Motion to Enforce**") seeking to enforce the Sale Order and Injunction with respect to the Ignition Switch Actions, the Court held Scheduling Conferences on May 2, 2014 and July 2, 2014 with respect to that Motion, and the initial phase of that contested proceeding is being governed by Scheduling Orders entered by the Court on May 16, 2014 and July 11, 2014 ("**Scheduling Orders**")[3]

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[1] A copy of the Sale Agreement is annexed hereto as Exhibit "A."

[2] The full title of the Sale Order and Injunction is "Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (iii) Granting Related Relief, entered by the Court on July 5, 2009." A copy of the Sale Order and Injunction is annexed hereto as Exhibit "B."

[3] As New GM did when it filed the Ignition Switch Motion to Enforce, New GM will seek a conference before the Court upon filing this Motion to Enforce to discuss procedural issues raised by the relief sought herein, including the possibility of consolidating this Motion with the Ignition Switch Motion to Enforce.

At the time the Ignition Switch Motion to Enforce was filed, New GM had recently instituted a recall ("**Ignition Switch Recall**") covering vehicles that had an allegedly defective Ignition Switch, and New GM subsequently was named as a defendant in numerous lawsuits that referenced the Ignition Switch Recall. New GM later instituted various other recalls regarding vehicles and/or parts designed, manufactured and/or sold by Old GM. Like the plaintiffs in the actions that are covered by the Ignition Switch Motion to Enforce, other plaintiffs have filed actions against New GM based on these later recalls. These lawsuits were served on New GM beginning in late May 2014, and could not have been included in the Ignition Switch Motion to Enforce.

The timing of the filing of this Motion is dictated by the Scheduling Orders which set forth specific deadlines for the development of agreed upon factual stipulations, and the briefing of Threshold Issues (as defined in the Scheduling Orders). Generally, the Plaintiffs' counsel related to this Motion are already involved in the Ignition Switch Motion to Enforce.[4] However, to the extent there is not complete overlap, and to ensure that all parties in interest have an opportunity to address common issues before the Court, this Motion is being filed now.

This Motion to Enforce also does not address any litigation involving an accident or incident causing personal injury, loss of life or property damage. Any such lawsuits against New GM that concern accidents or incidents that occurred prior to the closing of the 363 Sale are the subject of a separate motion filed by New GM at this time.[5]

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[4] It is significant, and unexplainable that, in connection with the Ignition Switch Actions, Plaintiffs' attorneys entered into Voluntary Stay Stipulations recognizing the Court's exclusive jurisdiction to decide issues relating to the Sale Order and Injunction. Yet the same counsel continue to file law suits against New GM in other courts for Retained Liabilities as if the Sale Order and Injunction does not exist (thus necessitating the filing of this Motion and other motions to enforce).

[5] Liabilities related to accidents or incidents that occurred after the closing of the 363 Sale that allegedly caused personal injury, loss of life or property damage were assumed by New GM pursuant to the Sale Order and

Furthermore, New GM has committed to repairing (at no cost to the owners) such vehicles that are the subject of a recalls conducted by New GM under the supervision of the National Highway Traffic Safety Administration ("**NHTSA**"). This Motion does not involve those repairs or costs.

Instead, this Motion to Enforce involves *only* litigation in which Plaintiffs seek economic losses, monetary and other relief against New GM relating to an Old GM vehicle or part (other than the Ignition Switch). Like the Ignition Switch Actions, liabilities for these types of claims were never assumed by New GM and are barred by the Court's Sale Order and Injunction.[6]

Under the Sale Agreement approved by the Court, New GM assumed only three expressly defined categories of liabilities for vehicles and parts sold by Old GM: (a) post-sale accidents involving Old GM vehicles causing personal injury, loss of life or property damage; (b) repairs provided for under the "Glove Box Warranty"— a specific written warranty, of limited duration, that only covers repairs and replacement of parts; and (c) Lemon Law[7] claims essentially tied to the failure to honor the Glove Box Warranty. All other liabilities relating to vehicles and parts sold by Old GM were "Retained Liabilities" of Old GM. *See* Sale Agreement § 2.3(b).

New GM's assumption of just these limited categories of liabilities was based on the independent judgment of U.S. Treasury officials as to which liabilities, if paid, would best

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Injunction, and the Sale Agreement. Lawsuits based on such circumstances are not the subject of this or any other motion filed by New GM with the Bankruptcy Court.

[6] To the extent the lawsuits that are the subject of this Motion to Enforce concern vehicles that were manufactured solely by New GM, and do not concern any allegedly defective parts manufactured by Old GM or concern Old GM conduct, those portions of such lawsuits are not implicated by this Motion to Enforce.

[7] *See* Sale Agreement § 1.1, at p. 11 (defining "Lemon Laws" as "a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.").

position New GM for a successful business turnaround. It was an absolute condition of New GM's purchase offer that New GM not take on all of Old GM's liabilities. That was the bargain struck by New GM and Old GM, and approved by the Court as being in the best interests of Old GM's bankruptcy estate and the public.

The primary objections to the 363 Sale were made by prepetition creditors who essentially wanted New GM to assume their liabilities. But the Court found that, if not for New GM's purchase offer, which provided for a meaningful distribution to prepetition unsecured creditors, Old GM would have liquidated its assets and those unsecured creditors would have received nothing. Indeed, had the objectors been successful in opposing the Sale Order and Injunction, it would have been a pyrrhic victory, and disaster not only for them but for thousands of others who relied on the continued viability of the assets being sold to New GM. Judge Lewis Kaplan aptly summarized the point: "No sentient American is unaware of the travails of the automobile industry in general and of General Motors Corporation ([Old] GM) in particular. As the Bankruptcy Court found, [Old] GM will be forced to liquidate — with appalling consequences for its creditors, its employees, and our nation — unless the proposed sale of its core assets to a newly constituted purchaser is swiftly consummated." *In re Gen. Motors Corp.*, No. M 47 (LAK), 2009 WL 2033079, at *1 (S.D.N.Y. July 9, 2009).

One of the groups that objected most vigorously to the 363 Sale was a coalition representing Old GM vehicle owners. That group included State Attorneys General, individual accident victims, the Center for Auto Safety, Consumer Action, and other consumer advocacy groups. The gist of their objections was: as long as New GM was assuming any of Old GM liabilities, then it should assume *all* vehicle-owner liabilities as well. In particular, the objectors argued, unsuccessfully, that New GM should assume successor liability claims, all warranty

claims (express and implied), economic damages claims based upon defects in Old GM vehicles and parts, and tort claims, in addition to the limited categories of claims that New GM already agreed to assume.

A critical element of protecting the integrity of the bankruptcy sale process, however, was to ensure that New GM, as the good faith purchaser for substantial value, received the benefit of its Court-approved bargain. This meant that New GM would be insulated from lawsuits by Old GM's creditors based on Old GM liabilities it did not assume. The Sale Agreement and the Sale Order and Injunction were expressly intended to provide such protections. The Order thus enjoined such proceedings against New GM, and expressly reserved exclusive jurisdiction to this Court to ensure that the sale transaction it approved would not be undermined or collaterally attacked.

As this Court may be aware, New GM recently sent various recall notices to NHTSA concerning issues in certain vehicles and parts, many of which were manufactured by Old GM. Shortly after New GM issued these recall notices, various Plaintiffs sued New GM for claimed economic losses, monetary and other relief allegedly resulting from the issues addressed by the recalls. These lawsuits, in part, concern Old GM vehicles and/or parts—the very type of claims retained by Old GM for which New GM has no liability.

This Motion to Enforce, thus, presents the very same issue that the Court is addressing in the Ignition Switch Motion to Enforce:

> **May New GM be sued in violation of this Court's Sale Order and Injunction for economic losses, monetary and other relief relating to vehicles and parts manufactured and/or sold by Old GM?**

As is the case in the Ignition Switch Actions, Plaintiffs in the cases based on the later recalls assert claims, either in whole or in part, for liabilities that Old GM retained under the Sale

Order and Injunction. Plaintiffs apparently decided to not appear in this Court to challenge the Sale Order and Injunction; and with good reason: they know that this Court has previously enforced the Sale Order and Injunction, and they were seeking to evade this Court's injunction that bars them from suing New GM on account of liabilities retained by Old GM.

Simply put, Plaintiffs cannot ignore the Court's Sale Order and Injunction, and proceed in other courts as though it never existed. The law is settled that persons subject to a Court's injunction do not have that option. As the United States Supreme Court explained in *Celotex Corp. v. Edwards*, the rule is "well-established" that "'persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.'" 514 U.S. 300, 306 (1995).

Based on this Court's prior proceedings and Orders, New GM has brought this Motion to Enforce to require the plaintiffs (collectively, the "**Plaintiffs**") in the actions listed in Schedule 1 attached hereto ("**Monetary Relief Actions**") to comply with the Court's Sale Order and Injunction by directing Plaintiffs to (a) cease and desist from further prosecuting against New GM claims that are barred by the Sale Order and Injunction, (b) dismiss with prejudice those void claims brought in violation of the Sale Order and Injunction, and (c) specifically identify which claims against New GM they believe are not otherwise barred by the Sale Order and Injunction.[8]

[8] At this time, the following Monetary Relief Actions have been commenced against New GM: (i) *Yagman v. General Motors Company, et al.* (a copy of the *Yagman* Complaint is annexed hereto as Exhibit "C"); (ii) *Andrews v. General Motors LLC* (a copy of the *Andrews* Complaint is annexed hereto as Exhibit "D"); (iii) *Stevenson v. General Motors LLC* (a copy of the *Stevenson* Complaint is annexed hereto as Exhibit "E"); and (iv) *Jones v. General Motors LLC* (a copy of the *Jones* Complaint is annexed hereto as Exhibit "F).

New GM reserves the right to supplement the list of Monetary Relief Actions contained in Schedule 1 in the event additional cases are brought against New GM that implicate similar provisions of the Sale Order and Injunction.

BACKGROUND STATEMENT OF FACTS

1. In June 2009, in the midst of a national financial crisis, Old GM was insolvent with no alternative other than to seek bankruptcy protection to sell its assets. New GM, a newly created, government-sponsored entity, was the only viable purchaser, but it would not purchase Old GM's assets unless the sale was free and clear of all liens and claims (except for the claims it expressly agreed to assume). The Court approved this sale transaction, which set the framework for New GM to begin its business operations. During the last five years, New GM has operated its business based on the fundamental structure of the Sale Agreement and Sale Order and Injunction — a new business enterprise that would not be burdened with liabilities retained by Old GM. The Monetary Relief Actions represent a collateral attack on this Court's Sale Order and Injunction. The Plaintiffs may not rewrite, years later, the Court-approved sale to a good faith purchaser, which was affirmed on appeal, and which has been the predicate ever since for literally millions of transactions between New GM and third parties.

I. OLD GM FILED FOR PROTECTION UNDER THE BANKRUPTCY CODE IN JUNE 2009.

2. On June 1, 2009, Old GM and certain of its affiliates filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Old GM simultaneously filed a motion seeking approval of the original version of the Sale Agreement ("**Original Sale Agreement**"), pursuant to which substantially all of Old GM's assets were to be sold to New GM ("**Sale Motion**"). The Original Sale Agreement (like the Sale Agreement) provided that New GM would assume only certain specifically identified liabilities (*i.e.*, the "**Assumed Liabilities**"); all other liabilities would be retained by Old GM (*i.e.*, the "**Retained Liabilities**").

A. Objectors to the Sale Motion Argued that New GM Should Assume Additional Liabilities of the Type Plaintiffs Now Assert in the Monetary Relief Actions.

3. Many objectors, including various State Attorneys General, certain individual accident victims ("**Product Liability Claimants**"), the Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizens (collectively, the "**Consumer Organizations**"), the Ad Hoc Committee of Consumer Victims, and the Official Committee of Unsecured Creditors challenged various provisions in the Original Sale Agreement relating to actual and potential tort and contract claims held by Old GM vehicle owners. These objectors argued that the Court should not approve the Original Sale Agreement unless New GM assumed additional Old GM liabilities (beyond the Glove Box Warranty), including those now being asserted by the Plaintiffs in the Monetary Relief Actions.

4. The Original Sale Agreement was amended so that New GM would assume Lemon Law claims, as well as personal injury, loss of life and property damage claims for accidents taking place after the closing of the 363 Sale.[9] Product Liability Claimants and the Consumer Organizations were not satisfied and pressed their objections, arguing that New GM should assume broader warranty-related claims as well as successor liability claims.[10] Representatives from the U.S. Treasury declined to make further changes. *See* Hr'g Tr. 151:1 – 10, July 1, 2009. The Court found that New GM would not have consummated the "[t]ransaction (i) if the sale . . . was not free and clear of all liens, claims, encumbrances, and

[9] Assumption of the Glove Box Warranty was provided for in the Original Sale Agreement.

[10] Numerous State Attorneys General also objected, seeking to expand the definition of New GM's Assumed Liabilities to include implied warranty claims. *Castillo v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09–00509, 2012 WL 1339496, at *5 (Bankr. S.D.N.Y. April 17, 2012), *aff'd*, 500 B.R. 333 (S.D.N.Y. 2013). The *Castillo* decision has been appealed to the Second Circuit and that appeal remains pending.

other interests . . . , including rights or claims based on any successor or transferee liability or (ii) if [New GM] would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the 'Retained Liabilities'), other than, in each case, the Assumed Liabilities." *See* Sale Order and Injunction ¶ DD. The Court ultimately overruled the objectors on these issues. *See id.*, ¶ 2.

B. The Court Issued Its Sale Order And Injunction, And The Product Liability Claimants And Others Appealed Because They Objected To The Fact That New GM Was Not Assuming *Their* Liabilities.

5. The Court held a three-day hearing on the Sale Motion, then issued its Sale Decision on July 5, 2009, finding that the only alternative to the immediate sale to New GM pursuant to the Sale Agreement was a liquidation of Old GM, in which case unsecured creditors, such as the Plaintiffs now suing New GM, would receive nothing. *See In re Gen. Motors Corp.*, 407 B.R. 463, 474 (Bankr. S.D.N.Y. 2009). The Court analyzed the law of successor liability at length (*see id.* at 499-506), and ruled that: "[T]he law in this Circuit and District is clear; the Court will permit [Old] GM's assets to pass to the purchaser [New GM] ***free and clear of successor liability claims***, and in that connection, will issue the requested findings and associated injunction." *Id*. at 505-06 (emphasis added).

6. In approving the 363 Sale, the Court specifically found that New GM was a "good faith purchaser, for sale-approval purposes, and also for the purpose of the protections section 363(m) provides." *Id.* at 494 (citing 11 U.S.C. § 363(m)). The Sale Order and Injunction expressly enjoined parties (like the Plaintiffs in the Monetary Relief Actions) from proceeding against New GM with respect to Retained Liabilities at any time in the future. *See* Sale Order and Injunction, ¶¶ 8, 47. The Court recognized that if a Section 363 purchaser like New GM did not obtain protection from claims against Old GM, like successor liability claims, it would pay

less for the assets because of the risks of known and unknown liabilities. *Id.* at 500; *see* 11 U.S.C. § 363. The Court further recognized that, under the law, a Section 363 purchaser could choose which liabilities of the debtors to assume (*id.* at 496), and that the U.S. Treasury, on New GM's behalf, could rightfully condition its purchase offer on its refusal to assume the liabilities now being asserted by Plaintiffs in the Ignition Switch Actions.

7. Old GM, the proponent of the asset sale transaction, presented evidence establishing that if the Sale Agreement was not approved, Old GM would have liquidated. In a liquidation, objecting creditors seeking incremental recoveries would have ended up with nothing, given that the book value of Old GM's global assets was $82 billion, the book value of its global liabilities was $172 billion (s*ee Gen. Motors*, 407 B.R. at 475), and that, in a liquidation, the value of Old GM's assets was probably less than 10% of stated book value (*id.*).

8. Objectors also presented evidence that the book value of certain contingent liabilities was about $934 million. *Id.* at 483. The Court noted that contingent liabilities were "difficult to quantify." *Id.* And, if the book value of all contingent liabilities was understated, that simply meant Old GM was even more insolvent—an even greater reason for New GM to decline to assume the liabilities retained by GM.

9. Whether Old GM presented evidence regarding a particular claim or specific defect was not germane to this Court's approval of the Sale Order and Injunction. Indeed, as the Court found in the Sale Order and Injunction, the proper analysis for approving the asset sale was whether Old GM obtained the "highest or best" available offer for the Purchased Assets. *See* Sale Order and Injunction, ¶ G. In contrast, the quantification of liabilities left behind with Old GM (*i.e.*, the Retained Liabilities) was pertinent to a different phase of the bankruptcy case (the claims process) which did not involve New GM.

10. New GM's refusal to assume a substantial portion of Old GM's liabilities was fundamental to the sale transaction and was widely disclosed by Old GM to all interested parties. Indeed, the Product Liability Claimants objected to and appealed the Sale Order and Injunction to specifically challenge this aspect of the sale. *See Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010). On appeal, although the District Court focused on the appellants' failure to seek a stay of the Sale and on equitable mootness principles, it also found that this Court had jurisdiction to enjoin successor liability claims. *See id. at* 59-60Indeed, the Sale Order and Injunction was affirmed on appeal by two different District Court Judges. *Id. ; Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65 (S.D.N.Y. 2010). There were no further appeals.[11]

C. Upon Approval Of The Sale Agreement And Issuance Of The Sale Order And Injunction, New GM Assumed Certain Narrowly Defined Liabilities, But The Bulk Of Old GM's Liabilities Remained With Old GM.

11. Under the Sale Agreement and the Sale Order and Injunction, New GM became responsible for "Assumed Liabilities." *See* Sale Agreement § 2.3(a). These included liability claims for post-sale accidents and Lemon Law claims, as well as the Glove Box Warranty—a written warranty of limited duration (typically three years or 36,000 miles, whichever comes first) provided at the time of sale for repairs and replacement of parts. The Glove Box Warranty expressly excludes economic damages. New GM assumed no other Old GM warranty obligations, express or implied:

> The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components

[11] The Product Liability Claimants appealed the District Court's decision, but pursuant to a stipulation so-ordered by the Second Circuit Court of Appeals on September 23, 2010, the appeal was withdrawn. The *Parker* decision was also appealed, but that appeal was dismissed as equitably moot because the appellant had not obtained a stay pending appeal. *See Parker v. Motors Liquidation Company*, Case No. 10-4882-bk (2d Cir. July 28, 2011).

> prior to the Closing of the 363 Transaction and specifically identified as a "warranty." ***The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials.***

Sale Order and Injunction, ¶ 56 (emphasis added).

12. Independent of the Assumed Liabilities under the Sale Agreement, New GM covenanted to perform Old GM's recall responsibilities under federal law. *See* Sale Agreement ¶ 6.15(a). But there were no third party beneficiary rights granted under the Sale Agreement with respect to that covenant (*see* Sale Agreement § 9.11), and there is no private right of action for third parties to sue for a breach of a recall obligation. *See Ayers v. Gen. Motors*, 234 F.3d 514, 522-24 (11th Cir. 2000); *Handy v. Gen. Motors Corp.*, 518 F.2d 786, 787-88 (9th Cir 1975). Thus, New GM's recall covenant provides no basis for the Plaintiffs to sue New GM for economic losses, monetary or other relief relating to a vehicle or part sold by Old GM.

13. All liabilities of Old GM not expressly defined as Assumed Liabilities constituted "Retained Liabilities" that remained obligations of Old GM. *See* Sale Agreement §§ 2.3(a), 2.3(b). Retained Liabilities include economic losses and other monetary relief relating to vehicles and parts manufactured by Old GM (the primary claims asserted by the Plaintiffs in the Monetary Relief Actions) such as:

(a) liabilities "arising out of, relating to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to Sellers." Sale Agreement § 2.3(b)(xvi), *see also id.* ¶ 6.15(a). This would include liability based on state consumer statutes, except Lemon Law claims.

(b) All liabilities (other than Assumed Liabilities) of Old GM based upon contract, tort or any other basis. Sale Agreement § 2.3(b)(xi). This covers claims based on negligence, concealment and fraud.

(c) All liabilities relating to vehicles and parts sold by Old GM with a design defect.[12]

(d) All Liabilities based on the conduct of Old GM including any allegation, statement or writing attributable to Old GM. This covers fraudulent concealment type claims. *See* Sale Order and Injunction, ¶ 56.

(e) All claims based on the doctrine of "successor liability." *See, e.g.*, Sale Order and Injunction, ¶ 46.

D. The Court's Sale Order And Injunction Expressly Protects New GM From Litigation Over Retained Liabilities.

14. On July 10, 2009, the parties consummated the Sale. New GM acquired substantially all of the assets of Old GM free and clear of all liens, claims and encumbrances, except for the narrowly defined Assumed Liabilities. In particular, paragraphs 46, 9, and 8 of the Sale Order and Injunction provide that New GM would have no responsibility for any liabilities (except for Assumed Liabilities) relating to the operation of Old GM's business, or the production of vehicles and parts before July 10, 2009:

> Except for the Assumed Liabilities expressly set forth in the [Sale Agreement] . . . [New GM] . . . shall [not] have any liability for any claim that arose prior to the Closing Date, ***relates to the production of vehicles prior to the Closing Date***, or otherwise is assertable against [Old GM] . . . prior to the Closing Date . . . . Without limiting the foregoing, [New GM] shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity . . . and products . . . liability, ***whether known or unknown*** as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated.

Sale Order and Injunction, ¶ 46 (emphasis added); *see also id.*, ¶ 9(a) ("(i) no claims other than Assumed Liabilities, will be assertable against the Purchaser; (ii) the Purchased Assets [are] transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances) . . ."); and *id.*, ¶ 8 ("All persons and entities . . . holding claims against [Old GM]

[12] *See* Sale Order and Injunction, ¶ AA; *see also Trusky v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09–09803, 2013 WL 620281, at *2 (Bankr. S.D.N.Y. Feb. 19, 2013).

or the Purchased Assets arising under or out of, in connection with, or in any way relating to [Old GM], the Purchased Assets, ***the operation of the Purchased Assets*** prior to the Closing . . . are forever barred, estopped, and permanently enjoined . . . from asserting [such claims] against [New GM]. . . .") (emphasis added).

15. Anticipating the possibility that New GM might be wrongfully sued for Retained Liabilities, the Sale Order and Injunction permanently enjoins claimants from asserting claims of the type made in the Monetary Relief Actions:

> [A]ll persons and entities . . . holding liens, claims and encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against [Old GM] or the Purchased Assets (whether legal or equitable, secured or unsecured, ***matured or unmatured***, ***contingent or noncontingent***, senior or subordinated), ***arising under or out of, in connection with, or in any way relating to [Old GM], the Purchased Assets, the operation of the Purchased Assets prior to the Closing . . . are forever barred, estopped, and permanently enjoined . . . from asserting against [New GM] . . . such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability***.

Sale Order and Injunction, ¶ 8 (emphasis added); *see also id.*, ¶ 47.

16. The Court specifically found that the provisions of the Sale Order and Injunction, as well as the Sale Agreement, were binding on all creditors, ***known and unknown*** alike. *See* Sale Order and Injunction, ¶ 6 ("This [Sale] Order and [Sale Agreement] "shall be binding in all respects upon the Debtors, their affiliates, ***all known and unknown creditors*** of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including rights or claims based on any successor or transferee liability . . . ." (emphasis added)); *see also id.*, ¶ 46. In short, except for Assumed Liabilities, claims based on Old GM vehicles and parts remained the legal responsibility of Old GM, and are not the responsibility of New GM.

17. Finally, paragraph 71 of the Sale Order and Injunction makes this Court the gatekeeper to enforce its own Order. It provides for this Court's ***exclusive jurisdiction*** over matters and claims regarding the 363 Sale, including jurisdiction to protect New GM against any Retained Liabilities of Old GM:

> ***This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the [Sale Agreement],*** all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, . . ., in all respects, including, but not limited to, ***retaining jurisdiction to . . . (c) resolve any disputes arising under or related to the [Sale Agreement],*** except as otherwise provided therein, (d) ***interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities*** or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets . . . . (Emphasis added.)

II. NEW GM HAS RECALLED CERTAIN VEHICLES AND IN RESPONSE, PLAINTIFFS HAVE FILED MONETARY RELIEF ACTIONS.

18. Consistent with its obligations under the Sale Order and Injunction, New GM, over the last several months, has informed NHSTA of certain issues in various vehicles and parts, including those manufactured by Old GM, and that New GM would conduct recalls to remedy the problems (at no cost to the owners). New GM sent NHTSA-approved recall notices to all vehicle owners subject to the recalls. All of the recalls are underway and New GM already has started to fix the vehicles identified by the recalls. NHTSA, as the government agency responsible for overseeing the technical and highly-specialized domain of automotive safety defects and recalls, administers the rules concerning the content, timing, and means of delivering a recall notice to affected motorists and dealers. *See* 49 C.F.R. § 554.1; 49 U.S.C. § 30119.

19. Since the various recalls were announced, Monetary Relief Actions have been filed against New GM related to these recalls, including recalls of vehicles and parts sold or manufactured by Old GM (*see* Schedule 1, attached to this Motion); additional similar cases will likely be filed in the future. At this time, these cases include four class actions.

20. The non-ignition switch Monetary Relief Actions assert claims that are barred by the Sale Agreement and the Sale Order and Injunction. The claims at issue that are the subject of this Motion to Enforce are for economic losses, monetary and other relief premised on alleged defects in vehicles and components manufactured and/or sold by Old GM, which are unrelated to any accident causing personal injury, loss of life or property damage. In their complaints, the Plaintiffs, at times, conflate Old GM and New GM, but the Sale Order and Injunction is clear that New GM is a separate entity from Old GM (*see* Sale Order and Injunction, ¶ R), and is not liable for successor liability claims (*see, e.g.*, *id.*, ¶¶ 46, 47). To be sure, the claims asserted by the Plaintiffs in the Monetary Relief Actions are varied, and in some instances, because of the imprecise factual allegations, it is unclear whether there might be a viable cause of action (of the many) being asserted against New GM. What is clear, however, is that the crux of certain of the Plaintiffs' claims is a problem in vehicles and/or parts manufactured and/or sold by Old GM. Claims based on that factual predicate are Retained Liabilities and may not be brought against New GM.[13]

21. This Court is uniquely situated to enforce its own Order and interpret what the parties to the Sale Agreement agreed to, and what issues were raised and resolved in connection with the 363 Sale. This Motion to Enforce requests that the Court enforce the Sale Order and Injunction by directing Plaintiffs to cease and desist from pursuing claims against New GM for Retained Liabilities of Old GM, direct Plaintiffs to dismiss with prejudice those void claims that are barred by the Sale Order and Injunction, and direct Plaintiffs to specifically identify which

[13] The allegations and claims asserted in the Monetary Relief Actions include Retained Liabilities, such as implied warranty claims, successor liability claims, and miscellaneous tort and statutory claims premised in whole or in part on the alleged acts or omissions of Old GM. *See* Schedule 2 annexed hereto for a sample of such statements, allegations and/or causes of action.

claims they may properly pursue against New GM that are not in violation of the Court's Sale Order and Injunction.

NEW GM'S ARGUMENT TO ENFORCE THE COURT'S SALE ORDER AND INJUNCTION

22. The Plaintiffs do not have the choice of simply ignoring the Court's Sale Order and Injunction. As the Supreme Court expressed in its *Celotex* decision:

> If respondents believed the Section 105 Injunction was improper, they should have challenged it in the Bankruptcy Court, like other similarly situated bonded judgment creditors have done . . . Respondents chose not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court's Section 105 Injunction in the federal courts in Texas. This they cannot be permitted to do without seriously undercutting the orderly process of the law.

514 U.S. at 313. These settled principles bind Plaintiffs in the Monetary Relief Actions. Those who purchased vehicles or parts manufactured by Old GM, whether they were a known or unknown creditor at the time, are subject to the terms of the Court's Sale Order and Injunction, and are barred by this Court's Injunction from suing New GM on account of Old GM's Retained Liabilities.

I. THIS COURT'S SALE ORDER AND INJUNCTION SHOULD BE ENFORCED.

23. It is well settled that a "Bankruptcy Court plainly ha[s] jurisdiction to interpret and enforce its own prior orders." *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *In re Wilshire Courtyard*, 729 F.3d 1279, 1290 (9th Cir. 2013) (affirming bankruptcy court's post-confirmation jurisdiction to interpret and enforce its orders; "[i]nterpretation of the Plan and Confirmation Order is the only way for a court to determine the essential character of the negotiated Plan transactions in a way that reflects the deal the parties struck in chapter 11 proceedings"); *In re Cont'l Airlines, Inc.*, 236 B.R. 318, 326 (Bankr. D. Del. 1999) ("In the bankruptcy context, courts have specifically, and consistently, held that the bankruptcy court retains jurisdiction, *inter alia*, to enforce its confirmation order."); *U.S. Lines, Inc. v. GAC*

Marine Fuels, Ltd. (In re McClean Indus., Inc.), 68 B.R. 690, 695 (Bankr. S.D.N.Y. 1986) ("[a]ll courts, whether created pursuant to Article I or Article III, have inherent contempt power to enforce compliance with their lawful orders. The duty of any court to hear and resolve legal disputes carries with it the power to enforce the order."). In addition, Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out" the Bankruptcy Code's provisions, and this section "codif[ies] the bankruptcy court's inherent power to enforce its own orders." *Back v. LTV Corp. (In re Chateaugay Corp.)*, 213 B.R. 633, 640 (S.D.N.Y. 1997); 11 U.S.C. § 105(a).

24. Consistent with these authorities, this Court retained subject matter jurisdiction to enforce its Sale Order and Injunction. Indeed, this is not the first time that this Court has been asked to enforce its injunction against plaintiffs improperly seeking to sue New GM for Old GM's Retained Liabilities. *See In re Motors Liquidation Co.*, No. 09-50026 (REG), 2011 WL 6119664 (Bankr. S.D.N.Y. 2011) (ordering various plaintiffs to dismiss with prejudice civil actions in which they had brought claims against New GM that are barred by the Sale Order and Injunction); *Castillo v. Gen. Motors Co. (In re Motors Liquidation Co.)*, Adv. Proc. No. 09-00509 (Bankr. S.D.N.Y.), Hr'g Tr. 9:3-9:14, May 6, 2010 ("when you are looking for a declaratory judgment on an agreement that I approved [*i.e.*, the Sale Agreement] that was affected by an order that I entered [*i.e.*, the Sale Order and Injunction], and with the issues permeated by bankruptcy law as they are, and which also raise issues as to one or more injunctions that I entered, ***how in the world would you have brought this lawsuit in Delaware Chancery Court. I'm not talking about getting in personam jurisdiction or whether you can get venue over a Delaware corporation in Delaware. I'm talking about what talks and walks and quacks like an intentional runaround of something that's properly on the watch of the***

U.S. Bankruptcy Court for the Southern District of New York.") (emphasis added); *Castillo*, 2012 WL 1339496 (entering judgment in favor of New GM) (affirmed by 500 B.R. 333, 335 (S.D.N.Y. 2013)); *see also Trusky*, 2013 WL 620281, at *2 (finding that "claims for design defects [of 2007-2008 Chevrolet Impalas] may not be asserted against New GM and that "New GM is not liable for Old GM's conduct or alleged breaches of warranty").

25. This Court is also presently addressing New GM's Ignition Switch Motion to Enforce, which raises issues that overlap and are indistinguishable from the issues raised herein. Specifically, both this Motion to Enforce and the Ignition Switch Motion to Enforce concern Retained Liabilities stemming from vehicles and/or parts manufactured and/or sold by Old GM. This Court has exercised jurisdiction over the issues raised in the Ignition Switch Motion to Enforce; the Court should do the same here.

26. Contrary to New GM's bargained for rights under the Sale Agreement and the Court's Sale Order and Injunction, Plaintiffs in the Monetary Relief Actions are suing New GM, in part, for defects in Old GM vehicles and/or parts in various courts. As in the Ignition Switch Actions, Plaintiffs may not simply ignore the Court's injunction through these collateral attacks, especially when the Sale Order and Injunction is a final order no longer subject to appeal. *See Celotex Corp.*, 514 U.S. at 306, 313 ("'persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed'") (quoting *GTE Sylvania, Inc. v. Consumers Union of U. S., Inc.*, 445 U.S. 375, 386 (1980)); *Pratt v. Ventas, Inc.*, 365 F.3d 514, 520 (6th Cir. 2004) (applying doctrine to dismiss suits filed in violation of injunction in confirmation order entered by bankruptcy court); *In re McGhan*, 288 F.3d 1172, 1180-81 (9th Cir. 2002) (applying doctrine to enforce discharge order in favor of debtors and holding that only the bankruptcy court could grant relief from the order); *see also In re Gruntz*,

202 F.3d 1074, 1082 (9th Cir. 2000) (applying this doctrine in the context of an automatic stay entered by the bankruptcy court); *Spartan Mills v. Bank of Am. Ill.*, 112 F.3d 1251, 1255 (4th Cir. 1997) (applying doctrine to bankruptcy court order approving sales of assets free and clear of liens).

II. NEW GM CANNOT BE HELD LIABLE FOR OLD GM'S ALLEGED CONDUCT, EITHER DIRECTLY OR AS OLD GM'S ALLEGED "SUCCESSOR."

27. Many of the vehicles and parts at issue in the Monetary Relief Actions were manufactured, marketed, and sold by Old GM prior to the Sale Order and Injunction. *See, e.g.*, *Yagman* Compl., ¶ 5 (alleging the named plaintiff owns a 2007 Buick Lucerne); *Andrews* Compl., ¶ 25 (alleging that the class includes all persons who own or lease any new or used GM-branded vehicle sold between July 10, 2009, and April 1, 2014); *Stevenson* Compl., ¶ 17 (alleging that the named plaintiff purchased a 2007 Saturn Ion in or around November 2007).

28. Certain of the Monetary Relief Actions reflect an effort to plead around the Court's Sale Order and Injunction. In fact they all generally assert the same underlying allegations made about Old GM: that it manufactured and/or sold vehicles with some type of defect. (*See* Schedules 1 and 2 attached hereto.) And, they all seek, at least in part, to hold New GM liable for economic losses, monetary and other relief based on Old GM's conduct — claims that are prohibited by the Sale Order and Injunction.

29. For example, in *Andrews*, the Plaintiffs seek to limit their class to people who purchased GM vehicles after July 10, 2009. However, vehicles are not limited to only New GM vehicles; the "Affected Vehicles" as defined in the Andrews complaint encompasses all new and used GM vehicles subject to a recall (other than the Ignition Switch Recall). The Complaint specifically excludes from the class "owners and lessors of model year 2005-2010 Chevrolet Cobalts, 2005-2011 Chevrolet HHRs, 2007-2010 Pontiac G5s, 2003-2007 Saturn Ions, and 2007-

2010 Saturn Skys, whose vehicles were recalled for an ignition switch defect." Id., ¶ 25. There are no other specific exclusions from the purported class of plaintiffs and, thus, such class necessarily includes vehicles manufactured by Old GM.

30. In connection with the Ignition Switch Motion to Enforce, this Court addressed similar allegations by a group of plaintiffs (*i.e.*, the *Phaneuf* Plaintiffs) in an Ignition Switch Action. The *Phaneuf* Plaintiffs argued that the Sale Order and Injunction did not apply to them because the class was also limited to individuals who purchased GM vehicles after July 10, 2009. However, because the vehicles in question were not limited to New GM vehicles, but included Old GM vehicles as well, this Court ruled

> that the sale order now applies, though it is possible, without prejudging any issues, that, after I hear from the other 87 litigants, I might ultimately rule that it does not apply to some kinds of claims and that, even if the sale order didn't apply, that New GM would be entitled to a preliminary injunction temporarily staying the Phaneuf plaintiffs' action from going forward, pending a determination by me on the other 87 litigants' claims under the standards articulated by the circuit in Jackson Dairy and its progeny.

Hr'g Tr. 91:12-21, July 2, 2014. Accordingly, as was the case with the *Phaneuf* Plaintiffs, the Sale Order and Injunction applies to the *Andrews* Action in the first instances, subject to the rights of the *Andrews* Plaintiff – in this Court -- to argue that it should not apply.

31. Similarly, as in the Ignition Switch Actions, certain Plaintiffs attempt to impose "successor" liability upon New GM, but New GM is not a successor to Old GM and did not assume any liabilities in connection with successor or transferee liability. This is expressly provided by the Court's Sale Order and Injunction:

> ***The Purchaser shall not be deemed***, as a result of any action taken in connection with the [Sale Agreement] or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, ***to: (i) be a legal successor***, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchased Assets from and after the Closing); ***(ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial***

> ***continuation of the Debtors or the enterprise of the Debtors***. Without limiting the foregoing, the Purchaser (New GM) shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated.

Sale Order and Injunction ¶ 46 (emphasis added); *see also id.*, ¶¶ AA, BB, DD, 6, 7, 8, 10 and 47; Sale Agreement § 9.19.

32. Plaintiffs' successor liability allegations are simply a violation of this Court's Sale Order and Injunction. But whether or not Plaintiffs' claims expressly allege successor liability, their claims against New GM based on Old GM's conduct are essentially successor liability claims cast in a different way and are precluded by that Order.

III. PLAINTIFFS' WARRANTY ASSERTIONS AND STATE LEMON LAW ALLEGATIONS DO NOT ENABLE THEM TO CIRCUMVENT THE COURT'S SALE ORDER AND INJUNCTION.

A. The Limited Glove Box Warranty is Not Applicable. But As a Practical Matter, Plaintiffs Already Are Obtaining Such Relief As Part of the Recall.

33. The Glove Box Warranty is for a limited duration and many of the vehicles that are the subject of the Monetary Relief Actions were sold more than three years ago. Thus, the Glove Box Warranty has expired for those vehicles. In any event, the Glove Box Warranty provides only for repairs and replacement parts; the economic losses asserted by Plaintiffs in the Monetary Relief Actions are of an entirely different character and are expressly barred by the Glove Box Warranty. This distinction is not unique to Old GM's 363 Sale. In the Chrysler bankruptcy case, the court likewise found that the assumed liabilities were limited to the standard limited warranty of repair issued in connection with sales of vehicles. *See, e.g., Burton v. Chrysler Group, LLC (In re Old Carco LLC)*, 492 B.R. 392, 404 (Bankr. S.D.N.Y. 2013) ("New Chrysler did agree to honor warranty claims — the Repair Warranty. None of the

statements attributed to New Chrysler state or imply that it assumed liability to pay consequential or other damages based upon pre-existing defects in vehicles manufactured and sold by Old Carco.").[14] Finally, as a practical matter, New GM will make the necessary repairs as part of the various on-going recalls, which is all that the Glove Box Warranty would have required. Hence, any claims, if they existed, are moot.

34. Similarly, the Sale Agreement and the Sale Order and Injunction provide that the implied warranty and other implied obligation claims that Plaintiffs assert here are Retained Liabilities for which New GM is not responsible. *See* Sale Order and Injunction, ¶ 56 (New GM "is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, ***including implied warranties*** and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs and point of purchase materials." (emphasis added)); *see also* Sale Agreement § 2.3(b)(xvi) (one of the Retained Liabilities of Old GM was any liabilities "arising out of, related to or in connection with any (A) ***implied warranty*** or other ***implied obligation arising under statutory or common law*** without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to [Old GM]." (emphasis added)).

35. In short, any breach of warranty claims Plaintiffs pursue relating to Old GM vehicles or parts (whether express or implied) improperly seek damages against New GM in violation of the Sale Order and Injunction.

[14] *See also Tulacro v. Chrysler Group LLC, et al.*, Adv. Proc. No. 11-09401 (Bankr. S.D.N.Y. Oct. 28, 2011) [Dkt. No. 18] (Exhibit "G" annexed hereto); *Tatum v. Chrysler Group LLC*, Adv. Proc. No. 11-09411 (Bankr. S.D.N.Y. Feb. 15, 2012) [Dkt. No. 73] (Exhibit "H" annexed hereto).

B. Any Purported State Lemon Law Claims Are Premature At Best, And Cannot Be Adequately Pled.

36. In an apparent attempt to circumvent the Court's Sale Order and Injunction, certain of the Monetary Relief Actions purport to assert claims based on alleged violations of state Lemon Laws. But merely referencing state Lemon Laws is not sufficient. Plaintiffs must actually plead facts giving rise to Lemon Law liability as defined in the Sale Agreement. Even a cursory review of the complaints reveals they have not done so.

37. New GM agreed to assume Old GM's "obligations under state 'lemon law' statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a ***reasonable number of attempts*** as further defined in the statute, and other related regulatory obligations under such statutes." Sale Order and Injunction, ¶ 56 (emphasis added). None of the Plaintiffs has alleged that New GM has not conformed the vehicle "after a reasonable number of attempts." And, not only is New GM in the process of conforming the vehicles (through the various recalls), but the statutes of limitations on Lemon Law claims as defined in the Sale Agreement have expired for many of the Old GM vehicles referenced in the Monetary Relief Actions.

38. As Judge Bernstein found in *Old Carco*, whether claimants can assert a valid Lemon Law claim "depends on the law that governs each plaintiff's claim and whether the plaintiff can plead facts that satisfy the requirements of the particular Lemon Law." 492 B.R. at 406. He further held as follows:

> With some variation, the party asserting a Lemon Law claim must typically plead and ultimately prove that (1) the vehicle does not conform to a warranty, (2) the

> nonconformity substantially impairs the use or value of the vehicle, and (3) the nonconformity continues to exist after a reasonable number of repair attempts.[15]

Judge Bernstein ultimately found that the claimants there did "not plead that any of the[m] brought their vehicles in for servicing, or that New Chrysler was unable to fix the problem after a reasonable number of attempts." *Id.* at 407. As was the case in *Old Carco*, none of the Plaintiffs here have pled that they brought their vehicles in to be fixed and, after a reasonable number of attempts, that they could not be fixed. They merely base their claims on the recall notices and letters to owners that New GM previously issued.

CONCLUSION

39. New GM was created to purchase the assets of Old GM pursuant to the Sale Agreement. The limited category of liabilities that New GM agreed to assume as part of the purchase was the product of a negotiated bargain, which was approved by this Court in July 2009. Plaintiffs in the Monetary Relief Actions have essentially ignored this; they wrongfully treat New GM and Old GM interchangeably and are pursuing Old GM claims that they cannot lawfully pursue against New GM.

40. Schedule 2 provides examples of allegations that on their face relate to the Retained Liabilities asserted by the Plaintiffs in the Monetary Relief Actions. Set forth below are illustrations of what Plaintiffs have improperly alleged in such Actions.

(a) **Implied Warranty**. *See, e.g.*, *See, e.g.*, *Yagman* Compl., ¶ 16 ("defendants and each of them violated the warranty of merchantability . . . ."); *id.*, ¶ 17 ("defendants violated the warranty of fitness for a particular use of their product"); *Stevenson* Compl., ¶ 185 ("Old GM breached the implied warranty of

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[15] *Old Carco*, 492 B.R. at 406 (citing *Sipe v. Fleetwood Motor Homes of Penn., Inc.*, 574 F. Supp. 2d 1019, 1028 (D. Minn. 2008); *McLaughlin v. Chrysler Corp.*, 262 F. Supp. 2d 671, 679 (N.D.W. Va. 2002); *Baker v. Chrysler Corp.*, Civ. A. No. 91–7092, 1993 WL 18099, at *1–2 (E.D. Pa. Jan. 25, 1993); *Palmer v. Fleetwood Enterp., Inc.*, Nos. C040161, C040765, 2003 WL 21228864, at *4 (Cal. Ct. App. May 28, 2003); *Iams v. DaimlerChrysler Corp.*, 174 Ohio App. 3d 537, 883 N.E.2d 466, 470 (2007); *DiVigenze v. Chrysler Corp.*, 345 N.J. Super. 314, 785 A.2d 37, 48 (App. Div. 2001)).

merchantability by manufacturing and selling Defective Vehicles containing defects leading to the potential safety issues during ordinary driving conditions.").

(b) **Implied Obligations under Statute or Common Law**. *See, e.g.*, *Andrews* Compl. (asserting causes of action under California Consumer Legal Remedies Act and California Unfair Competition Law); *Stevenson* Compl. (asserting causes of action under California Consumer Legal Remedies Act and California Unfair Competition Law); *Jones* Complaint (asserting causes of action under States' consumer protection statutes).

(c) **Successor Liability**. *See, e.g.*, *Yagman* Compl. (not differentiating between Old GM and New GM); *Andrews* Compl., ¶ 59 ("GM inherited from Old GM a company that valued cost-cutting over safety . . . ."); *id.*, ¶ 24 (alleging that New GM knew "[f]rom its inception" about many of the defects that existed in Old GM vehicles); *Stevenson* Compl, ¶¶ 65, 72-74 (allegations discussing Old GM's conduct).

(d) **Design Defect**. *See, e.g.*, *Yagman* Compl., ¶ 12 ("Defendant GM manufactured a defective vehicle"); *id.*, ¶ 13 ("Defendant GM sold a defective vehicle."); *Andrews* Compl., ¶¶ 17-21 (alleging that vehicles manufactured by Old GM were sold with a defect); *id.*, ¶ 232 (asserting as a common class question "[w]hether numerous GM vehicles suffer from serious defects").

(e) **Tort, Contract or Otherwise**. *See, e.g.*, *Andrews* Compl. (asserting a cause of action based on fraudulent concealment); *Stevenson* Compl. (asserting causes of action based on fraudulent concealment and tortious interference with contract); *Jones* Complaint (asserting causes of action based on fraudulent concealment and tortious interference with contract).

(f) **The Conduct of Old GM**. *See, e.g.*, *Yagman* Compl., ¶ 14 ("Defendant GM knew the vehicle [*i.e.*, a 2007 Buick Lucerne] was defective at the time it was put into the stream of commerce for sale and was sold); *Andrews* Compl., ¶ 3 ("GM enticed Plaintiff and all GM vehicle purchasers [not differentiating between purchasers who bought from Old GM and New GM] to buy vehicles that have now diminished in value as the truth about the GM brand has come out, and a stigma has attached to all GM-branded vehicles."); *Stevenson* Compl., ¶¶ 65, 72-74 (allegations discussing Old GM's conduct); *Jones* Compl., ¶¶ 65, 72-74 (allegations discussing Old GM's conduct).

41. New GM has no liability or responsibility for these Retained Liability claims and, under the Sale Order and Injunction, Plaintiffs in the Monetary Relief Actions are enjoined from bringing them against New GM, and their pursuit of these claims violates the Court's injunction. *See, e.g.*, Sale Order and Injunction, ¶¶ 8, 47. Accordingly, the Court should enforce the terms

of its Sale Order and Injunction by ordering Plaintiffs to promptly dismiss all of their claims that violate the provisions of that Order, to cease and desist from all efforts to assert such claims against New GM that are void because of the Sale Order and Injunction, and to specifically identify which claims, if any, they might have which are not barred by this Court's Sale Order and Injunction.

NOTICE AND NO PRIOR REQUESTS

42. Notice of this Motion to Enforce has been provided to (a) counsel for Plaintiffs in each of the Monetary Relief Actions, (b) Designated Counsel and other lead counsel involved in the Ignition Switch Motion to Enforce, (c) counsel for Motors Liquidation Company General Unsecured Creditors Trust, and (d) the Office of the United States Trustee. New GM submits that such notice is sufficient and no other or further notice need be provided.

43. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, New GM respectfully requests that this Court: (i) enter an order substantially in the form set forth as Exhibit "I" annexed hereto, granting the relief sought herein; and (ii) grant New GM such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 1, 2014

Respectfully submitted,

/s/ Arthur Steinberg

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Exhibit C

Hearing Date and Time: TO BE DETERMINED
Objection Deadline: TO BE DETERMINED
Reply Deadline: TO BE DETERMINED

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
	:	
MOTORS LIQUIDATION COMPANY, *et al.*,	:	**Case No.: 09-50026 (REG)**
f/k/a General Motors Corp., *et al.*	:	
	:	
Debtors.	:	**(Jointly Administered)**
	:	

MOTION OF GENERAL MOTORS LLC PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THIS COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION AGAINST PLAINTIFFS IN PRE-CLOSING ACCIDENT LAWSUITS

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INTRODUCTION

In June 2009, General Motors LLC ("**New GM**") was a newly-formed entity, created by the U.S. Treasury, to purchase substantially all of the assets of Motors Liquidation Company, formerly known as General Motors Corporation ("**Old GM**"). Through a bankruptcy-approved sale process, New GM acquired Old GM's assets, free and clear of all liens, claims, liabilities and encumbrances of Old GM, other than a limited and defined set of liabilities that New GM expressly assumed under a June 26, 2009 Amended and Restated Master Sale and Purchase Agreement ("**Sale Agreement**").[1] The Bankruptcy Court approved the sale from Old GM to New GM ("**363 Sale**") and the terms of the Sale Agreement in its "**Sale Order and Injunction**," dated July 5, 2009.[2]

This Motion does not address the approximately 90 lawsuits ("**Ignition Switch Actions**") against New GM that seek economic losses (*i.e.*, where there was no post-363 Sale accident causing personal injury, loss of life, or property damage) against New GM relating to allegedly defective ignition switches in certain vehicle models. New GM previously filed a motion with this Court on April 21, 2014 ("**Ignition Switch Motion to Enforce**") seeking relief with respect to the Ignition Switch Actions, the Court held Scheduling Conferences on May 2, 2014, and July 2, 2014, with respect to that Motion, and the initial phase of that contested

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[1] A copy of the Sale Agreement is annexed hereto as Exhibit "A."

[2] The full title of the Sale Order and Injunction is "Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (iii) Granting Related Relief," entered by the Court on July 5, 2009. A copy of the Sale Order and Injunction is annexed hereto as Exhibit "B."

proceeding is being governed by Scheduling Orders entered by the Court on May 16, 2014, and July 11, 2014 (collectively, the "**Scheduling Orders**")[3]

This Motion also does not concern any litigation involving an accident that occurred ***after*** the closing of the 363 Sale that caused personal injury, loss of life, or property damage; New GM assumed such liabilities pursuant to the Sale Agreement and is addressing issues respecting those claims in appropriate non-bankruptcy forums.

Instead, this Motion involves ***only*** litigation in which Plaintiffs are asserting claims against New GM that emanate from an accident that occurred ***prior to*** the closing of the 363 Sale. Such claims do not involve New GM in any way, were never assumed by New GM as part of the Sale Agreement, and are barred by the Court's Sale Order and Injunction.

The subject matter of this Motion was not included in the Ignition Switch Motion to Enforce because, at the time that Motion was filed, New GM already had announced that it had retained Kenneth Feinberg to develop and design a protocol ("**Feinberg Protocol**")[4] for the submission, evaluation, and settlement of death or physical injury claims resulting from accidents allegedly caused by defective ignition switches in certain vehicles. New GM delayed filing this Motion so that the Feinberg Protocol could be developed, formally announced, and implemented. By filing this Motion in conjunction with the launch of the Feinberg Protocol, GM has provided eligible Plaintiffs with an alternative (*i.e.*, a source of recovery under the Feinberg Protocol) to the enforcement of the Sale Order and Injunction against them. Participation in the

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[3] As New GM did when it filed the Ignition Switch Motion to Enforce, New GM will seek a conference before the Court upon filing this Motion to Enforce to discuss procedural issues raised by the relief sought herein, including the possibility of consolidating this Motion and the Monetary Relief Motion to Enforce (as herein defined and discussed *infra*) with the Ignition Switch Motion to Enforce.

[4] A copy of the Feinberg Protocol is attached hereto as Exhibit "C". It can also be accessed at: http://www.gmignitioncompensation.com/docs/FINAL%20PROTOCOL%20June%2030%20%202014.pdf. The Feinberg Protocol encompasses claims resulting from accidents that occurred both before and after the closing of the 363 Sale that allegedly were caused by defective ignition switches in certain vehicles.

Feinberg Protocol is voluntary, and if eligible claimants decline to participate, New GM seeks by this Motion to enforce the Sale Order and Injunction against them.

The timing of the filing of this Motion is also dictated by the Scheduling Orders which set forth specific deadlines for the development of agreed upon factual stipulations, and the briefing of Threshold Issues (as defined in the Scheduling Orders). Generally, the Plaintiffs' counsel related to this Motion are already involved in the Ignition Switch Motion to Enforce.[5] However, to the extent there is not complete overlap, and to ensure that all parties in interest have an opportunity to address common issues before the Court at the same time, this Motion is being filed now.

It is also for this reason that, simultaneously with the filing of this Motion, New GM is filing a motion ("**Monetary Relief Motion to Enforce**") to enforce the Sale Order and Injunction with respect to other litigations brought against New GM for Retained Liabilities (as defined in the Sale Order and Injunction) of Old GM, that are unrelated to the alleged ignition switch issue. Since announcing the Ignition Switch recalls, New GM has announced other recalls unrelated to the alleged ignition switch defect with respect to vehicles manufactured and sold by Old GM. Notwithstanding the Sale Order and Injunction, New GM has been sued in other courts for such Retained Liabilities. Again, generally, counsel in those litigations are already involved in the Ignition Switch Motion to Enforce. But, to the extent there is not complete overlap, and to ensure that all parties in interest have an opportunity to address

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[5] It is significant and unexplainable that, in connection with the Ignition Switch Actions, Plaintiffs' attorneys entered into Voluntary Stay Stipulations recognizing the Court's exclusive jurisdiction to decide issues relating to the Sale Order and Injunction. Yet, the same counsel continue to file law suits against New GM in other courts for Retained Liabilities as if the Sale Order and Injunction does not exist (thus necessitating the filing of this Motion and the Monetary Relief Motion to Enforce.

common issues before the Court at the same time, the Monetary Relief Switch Motion to Enforce is also being filed now.

It must be emphasized that the Feinberg Protocol is strictly a voluntary action by New GM which addresses specific claims which New GM never assumed. New GM has nevertheless made this commitment to address a unique series of events involving the vehicles in the Cobalt/Ion Recall.

However, to be clear, the Feinberg Protocol does not modify New GM's protections under the Sale Agreement and the Sale Order and Injunction. Under the Sale Agreement approved by the Court, New GM assumed only three expressly defined categories of liabilities for vehicles sold by Old GM: (a) ***post-363 Sale*** accidents involving Old GM vehicles causing personal injury, loss of life or property damage; (b) repairs provided for under the "Glove Box Warranty"—a specific written warranty, of limited duration, that only covers repairs and replacement of parts; and (c) Lemon Law claims (as defined in the Sale Agreement) essentially tied to the failure to honor the Glove Box Warranty. All other liabilities relating to vehicles sold by Old GM were legacy liabilities that were retained by Old GM. *See* Sale Agreement § 2.3(b).

New GM's assumption of just these limited categories of liabilities was based on the independent judgment of U.S. Treasury officials as to which liabilities, if paid, would best position New GM for a successful business turnaround. It was an absolute condition of New GM's purchase offer that New GM not take on all of Old GM's liabilities. That was the bargain struck by New GM and Old GM, and approved by the Court as being in the best interests of Old GM's bankruptcy estate and the public interest.

Objections to the 363 Sale were made by, among others, prepetition product liability claimants who essentially wanted New GM to assume their liabilities. But the Court found that, if not for New GM's purchase offer, which provided for a meaningful distribution to prepetition

unsecured creditors, Old GM would have liquidated and those unsecured creditors—like the Plaintiffs that are the subject of this Motion—would have received nothing. Indeed, had the objectors been successful in opposing the Sale Order and Injunction, it would not only have been a pyrrhic victory for them, but a disaster for many thousands of others who relied on the continued viability of the assets being sold to New GM. Judge Lewis Kaplan aptly summarized the point:

> No sentient American is unaware of the travails of the automobile industry in general and of General Motors Corporation ([Old] GM) in particular. As the Bankruptcy Court found, [Old] GM will be forced to liquidate — with appalling consequences for its creditors, its employees, and our nation — unless the proposed sale of its core assets to a newly constituted purchaser is swiftly consummated.

In re Gen. Motors Corp., No. M 47 (LAK), 2009 WL 2033079, at *1 (S.D.N.Y. July 9, 2009).

One of the groups that most vigorously objected to Old GM's asset sale motion was a coalition representing Old GM vehicle owners. That group included State Attorneys General, individual accident victims, the Center for Auto Safety, Consumer Action and other consumer advocacy groups. The gist of their objections was: as long as New GM was assuming any of Old GM liabilities, then it should assume ***all*** vehicle owner liabilities as well. In particular, the objectors argued, unsuccessfully, that New GM should assume pre-363 Sale accident claims, based upon defects in Old GM vehicles and parts, in addition to the limited categories of claims that New GM already agreed to assume.

A critical element of protecting the integrity of the bankruptcy sale process was to ensure that New GM, as the good faith purchaser for substantial value, received the benefit of its Court-approved bargain. This meant that New GM would be insulated from lawsuits by Old GM's creditors based on Old GM liabilities that it did not assume. The Sale Agreement and the Sale Order and Injunction were expressly intended to provide such protections. The Order thus enjoined such proceedings against New GM, and expressly reserved exclusive jurisdiction to this

Court to ensure that the sale transaction it approved would not be undermined or collaterally attacked.

As has been widely reported (and as discussed in the Ignition Switch Motion to Enforce), beginning in February, 2014, New GM sent notices to NHTSA concerning problems with ignition switches and ignition switch repairs in certain vehicles and parts manufactured by Old GM. New GM has also recently issued recalls concerning other defects in other Old GM vehicles. Shortly after New GM issued the recall notices, Plaintiffs sought to use the recalls as a basis to commence actions against New GM for damages arising from accidents that occurred prior to the closing of the 363 Sale—claims expressly retained by Old GM for which New GM has no liability.

Thus, the issue to be addressed in this Motion is:

> **May New GM be sued, in clear violation of this Court's Sale Order and Injunction, for damages relating to vehicles sold by Old GM that were involved in accidents that occurred *prior* to the closing of the 363 Sale?**

A review of the Sale Agreement and previous decisions of this Court provide the unambiguous answer: Under the Sale Order and Injunction, all such claims were retained by Old GM, and not assumed by New GM. Plaintiffs' tactical decision to not appear in this Court to challenge the Sale Order and Injunction is telling: they know that this Court previously has enforced the Sale Order and Injunction, and they are seeking to evade this Court's injunction that bars them from suing New GM on account of pre-363 Sale accidents involving Old GM vehicles and parts.

Simply put, Plaintiffs cannot ignore the Court's Sale Order and Injunction, and proceed in other courts as though the Sale Order and Injunction never existed. The law is settled that persons subject to a Court's injunction simply do not have that option. As the United States Supreme Court explained in *Celotex Corp. v. Edwards*, the rule is "well-established" that "'persons subject to an injunctive order issued by a court with jurisdiction are expected to obey

that decree until it is modified or reversed, even if they have proper grounds to object to the order.'" 514 U.S. 300, 306 (1995). Plaintiffs and their counsel are bound by this rule of law and were required to seek and obtain relief from this Court before commencing any lawsuits against New GM. They did not.

Accordingly, based on this Court's prior proceedings and Orders, New GM brings this Motion to enforce the Sale Order and Injunction by:

(a) directing the Plaintiffs ("**Plaintiffs**") in lawsuits ("**Pre-Closing Accident Lawsuits**")[6] commenced against New GM that concern damages arising from accidents that occurred prior to the closing of the 363 Sale, to cease and desist from further prosecuting against New GM, or otherwise pursuing against New GM, the claims asserted in the Pre-Closing Accident Lawsuits, and

(b) directing Plaintiffs to dismiss the Pre-Closing Accident Lawsuits with prejudice immediately.

BACKGROUND STATEMENT OF FACTS

1. In June 2009, in the midst of a national financial crisis, Old GM was insolvent with no alternative other than to seek bankruptcy protection to sell its assets. New GM, a newly

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[6] The Pre-Closing Accident Lawsuits, at this time, include: (i) *Phillips, et al. v. General Motors Corporation, et al.*, pending in the United States District Court for the Southern District of Texas ("**Phillips Action**"); (ii) *Boyd, et al. v. General Motors LLC*, pending in the United States District Court for the Eastern District of Missouri ("**Boyd Action**"); (iii) *Vest v. General Motors LLC, et al.*, pending in the Circuit Court of Mercer County, West Virginia ("**Vest Action**"); and (iv) *Abney et al. v. General Motors LLC*, pending in the Southern District of New York ("**Abney Action**"). A copy of the complaint or petition in the foregoing Actions are annexed hereto as Exhibits "D" through "G" respectively.

Certain other lawsuits were previously commenced against New GM that related to accidents that occurred prior to the closing of the 363 Sale. The Plaintiffs have voluntarily dismissed those lawsuits, without prejudice, pending their review of the relief available to them under the Feinberg Protocol. These other lawsuits are not referenced herein because of such dismissal.

New GM reserves the right to supplement the list of Pre-Closing Accident Lawsuits set forth above in the event additional cases are brought against New GM that implicate similar provisions of the Sale Order and Injunction, including without limitation those lawsuits which have previously been dismissed without prejudice if they are re-filed in any court, and the Purported Edwards Plaintiffs discussed *infra*.

created, government-sponsored entity, was the only viable purchaser, but it would not purchase Old GM's assets unless the sale was free and clear of all liens and claims (except for the claims it expressly agreed to assume). After a contested hearing, the Court approved this sale transaction, which set the framework for New GM to begin its business operations. During the last five years, New GM has operated its business based on the fundamental structure of the Sale Agreement and Sale Order and Injunction — that its new business enterprise would not be burdened with liabilities retained by Old GM. The Pre-Closing Accident Lawsuits represent an impermissible collateral attack on this Court's Sale Order and Injunction. The Plaintiffs may not rewrite, years later, the Court-approved sale to a good faith purchaser, which was affirmed on appeal, and has been the predicate for literally millions of transactions between New GM and third parties.

A. Old GM Filed For Protection Under The Bankruptcy Code In June 2009

2. On June 1, 2009 ("**Petition Date**"), Old GM and certain of its affiliates filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Old GM simultaneously filed a motion seeking approval of the original version of the Sale Agreement ("**Original Sale Agreement**"), pursuant to which substantially all of Old GM's assets were to be sold to New GM ("**Sale Motion**"). The Original Sale Agreement (like the Sale Agreement) provided that New GM would assume only certain specifically identified liabilities (*i.e.*, the "**Assumed Liabilities**"); all other liabilities would be retained by Old GM (*i.e.*, the "**Retained Liabilities**").

B. Objectors To The Sale Motion Argued That New GM Should Assume Additional Liabilities Of The Type Plaintiffs Now Assert In The Pre-Closing Accident Lawsuits

3. Many objectors, including various State Attorneys General, certain individual accident victims ("**Product Liability Claimants**"), the Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizens (collectively, the "**Consumer Organizations**"), the Ad Hoc Committee of Consumer Victims, and the Official Committee of Unsecured Creditors challenged various provisions in the Original Sale Agreement relating to actual and potential tort and contract claims held by Old GM vehicle owners. These objectors argued that the Court should not approve the Original Sale Agreement unless New GM assumed additional Old GM liabilities, including those now being asserted by Plaintiffs in the Pre-Closing Accident Lawsuits.

4. The Original Sale Agreement was amended so that New GM would assume liabilities for personal injury, loss of life, and property damage claims for ***accidents taking place after the closing of the 363 Sale*** that concern vehicles manufactured and sold by Old GM. The Original Sale Agreement provided that New GM would only assume such liabilities for vehicles ***delivered*** to consumers after the closing of the 363 Sale. This change was negotiated with the State Attorneys General after the Petition Date, who sought the inclusion of additional liabilities as Assumed Liabilities. The U.S. Treasury agreed to make this change (and to assume Lemon Law claims), but would not go further. *See* Hr'g Tr. 194:13 – 18, July 2, 2009 (when discussing improvements to the Sale Agreement, counsel for the State Attorneys General referred to a change to "the assumption of the future product liability claims. Obviously, we -- you know, in a perfect world, we would not be distinguishing between those two categories, but certainly that's better than none of them. And it certainly goes a ways to addressing issues that were raised by the state Attorney Generals.").

5. However, the Product Liability Claimants and the Consumer Organizations were not satisfied and continued to press their objections, arguing that New GM should assume broader claims relating to pre-363 Sale accidents, as well as successor liability claims. Representatives from the U.S. Treasury declined to make further changes. *See* Hr'g Tr. 151:1 – 10, July 1, 2009. The Court found that New GM would not have consummated the "[t]ransaction (i) if the sale . . . was not free and clear of all liens, claims, encumbrances, and other interests . . . , including rights or claims based on any successor or transferee liability or (ii) if [New GM] would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the 'Retained Liabilities'), other than, in each case, the Assumed Liabilities." *See* Sale Order and Injunction ¶ DD. The Court ultimately overruled the objectors on these issues. *See id.*, ¶ 2.

C. The Court Issued Its Sale Order And Injunction, And The Product Liability Claimants And Others Appealed Because They Objected To The Fact That New GM Was Not Assuming *Their* Liabilities For Any Claims They Might Have Then Or In The Future

6. The Court held a three-day hearing on the Sale Motion, then issued its Sale Decision on July 5, 2009, finding that the only alternative to the immediate sale to New GM pursuant to the Sale Agreement was a liquidation of Old GM, in which case unsecured creditors, such as the Plaintiffs now suing New GM, would receive nothing. *See In re Gen. Motors Corp.*, 407 B.R. 463, 474 (Bankr. S.D.N.Y. 2009). The Court analyzed the law of successor liability at length (*see id.* at 499-506), and ruled that: "[T]he law in this Circuit and District is clear; the Court will permit [Old] GM's assets to pass to the purchaser [New GM] ***free and clear of successor liability claims***, and in that connection, will issue the requested findings and associated injunction." *Id*. at 505-06 (emphasis added).

7. In approving the 363 Sale, the Court specifically found that New GM was a "good faith purchaser, for sale-approval purposes, and also for the purpose of the protections section 363(m) provides." *Id.* at 494 (citing 11 U.S.C. § 363(m)). The Sale Order and Injunction expressly enjoined parties (like Plaintiffs in the Pre-Closing Accident Lawsuits) from proceeding against New GM with respect to Retained Liabilities at any time in the future. *See* Sale Order and Injunction, ¶¶ 8, 47. This Court well understood that accident victims—like Plaintiffs in the Pre-Closing Accident Lawsuits—would recover only modest amounts on their claims from Old GM if they could not look to New GM as an additional source of recovery. *See Gen. Motors*, 407 B.R. at 505.

8. But the Court also recognized that if a Section 363 purchaser like New GM did not obtain protection against claims against Old GM, like successor liability claims, it would pay less for the assets because of the risks of known and unknown liabilities. *Id.* at 500. The Court further recognized that, under the law, a Section 363 purchaser could choose which liabilities of the debtors to assume, and not assume (*id.* at 496), and that the U.S. Treasury, on New GM's behalf, could rightfully condition its purchase offer on its refusal to assume the liabilities now being asserted by Plaintiffs in the Pre-Closing Accident Lawsuits.

9. Old GM, the proponent of the asset sale transaction, presented evidence establishing that if the Sale Agreement was not approved, Old GM would have liquidated. If it did, objecting creditors seeking incremental recoveries would have ended up with nothing, given that the book value of Old GM's global assets was $82 billion, the book value of its global liabilities was $172 billion (s*ee Gen. Motors*, 407 B.R. at 475), and that, in a liquidation, the value of Old GM's assets was probably less than 10% of stated book value (*id.*).

10. Objectors also presented evidence that the book value of certain contingent liabilities was about $934 million. *Id.* at 483. As discussed at the trial, these contingent

liabilities concerned product liability claims, including both "reported cases" and "incurred but not reported cases." Hr'g Tr. 161:23 – 162:8, June 30, 2009. The Court noted in its Sale Decision that contingent liabilities were "difficult to quantify." *Gen. Motors*, 407 B.R. at 483. And, if the book value of all contingent liabilities was understated, that simply meant Old GM was even more insolvent—an even greater reason for New GM to decline to assume the liabilities retained by GM.

11. Whether Old GM presented evidence regarding a particular claim or specific defect was not germane to this Court's approval of the Sale Order and Injunction. Indeed, as the Court found in the Sale Order and Injunction, the proper analysis for approving the asset sale is whether Old GM obtained the "highest or best" available offer for the Purchased Assets. *See* Sale Order and Injunction, ¶ G. In contrast, the quantification of liabilities left behind with Old GM (*i.e.*, the Retained Liabilities) was only relevant to a different phase of the bankruptcy case (the claims process) which did not involve New GM.

12. New GM's refusal to assume a substantial portion of Old GM's liabilities was fundamental to the sale transaction and was widely disclosed by Old GM to all interested parties. Indeed, the Product Liability Claimants objected to and appealed the Sale Order and Injunction to specifically challenge this aspect of the 363 Sale. *See Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010). On appeal, although the District Court focused on the appellants' failure to seek a stay of the 363 Sale and on equitable mootness principles, it also found that this Court had jurisdiction to enjoin successor liability claims. *See id.* at 59-60. In its decision, the District Court further noted that the Sale Agreement and Sale Order and Injunction "made clear that [New GM] would not pursue the 363 Transaction unless the assets were sold free and clear of those liabilities [New GM] had not agreed to assume,

including the Existing Products Claims of Appellants . . . ." *Id.* at 48 (citing to Sale Order and Injunction, ¶ DD).

13. The Sale Order and Injunction was affirmed on appeal by two different District Court Judges. *Id.; Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65 (S.D.N.Y. 2010). There were no further appeals.[7]

D. Upon Approval Of The Sale Agreement And Issuance Of The Sale Order And Injunction, New GM Assumed Certain Narrowly Defined Liabilities, But The Bulk Of Old GM's Liabilities Remained With Old GM

14. Under the Sale Agreement and the Sale Order and Injunction, New GM only became responsible for "Assumed Liabilities." *See* Sale Agreement § 2.3(a). These included liability claims for ***post-363 Sale accidents***, as well as the Glove Box Warranty, a warranty of limited duration (typically three years or 36,000 miles, whichever comes first) provided at the time of sale for repairs and replacement of parts. New GM assumed no other Old GM warranty obligations, express or implied:

> The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." ***The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials.***

Sale Order and Injunction, ¶ 56 (emphasis added).

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[7] The Product Liability Claimants appealed the District Court's decision, but pursuant to a stipulation so-ordered by the Second Circuit Court of Appeals on September 23, 2010, the appeal was withdrawn. The *Parker* decision was also appealed, but that appeal was dismissed as equitably moot because the appellant had not obtained a stay pending appeal. *See Parker v. Motors Liquidation Company*, Case No. 10-4882-bk (2d Cir. July 28, 2011).

15. Independent of the Assumed Liabilities under the Sale Agreement, New GM covenanted to perform Old GM's recall responsibilities under federal law. *See* Sale Agreement ¶ 6.15(a). But, with respect to pre-363 Sale accidents, there was nothing for New GM to recall.[8] Thus, New GM's recall covenant does not create a basis for Plaintiffs to sue New GM for damages relating to a vehicle sold by Old GM that was involved in an accident prior to the closing of the 363 Sale—events that predated New GM's very existence.

16. All liabilities of Old GM that were not expressly defined as Assumed Liabilities constituted "Retained Liabilities" that remained obligations of Old GM. Sale Agreement §§ 2.3(a), 2.3(b). Retained Liabilities include the claims asserted by Plaintiffs in the Pre-Closing Accident Lawsuits such as:

i. "[A]ll Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date." Sale Agreement, § 2.3(b)(ix).

ii. [L]iabilities "arising out of, relating to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to Sellers." Sale Agreement § 2.3(b)(xvi), *see also id.* ¶ 6.15(a). This would include liability based on implied warranty and state consumer statutes (except Lemon Law claims).

iii. All liabilities (other than Assumed Liabilities) of Old GM based upon contract, tort or any other basis. Sale Agreement § 2.3(b)(xi). This covers claims based on, among others, negligence, conspiracy, concealment and fraud.

iv. All liabilities relating to vehicles sold by Old GM with a design defect.[9]

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[8] In any event, there are no third-party beneficiary rights granted under the Sale Agreement with respect to the covenant to comply with NHTSA (*see* Sale Agreement § 9.11), and there is no private right of action for third parties to sue for a breach of a recall obligation. *See Ayers v. Gen. Motors*, 234 F.3d 514, 522-24 (11th Cir. 2000); *Handy v. Gen. Motors Corp.*, 518 F.2d 786, 787-88 (9th Cir 1975). Thus, New GM's recall covenant does not create any basis for the Plaintiffs to sue New GM.

[9] *See* Sale Order and Injunction, ¶ AA; *see also Trusky v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09–09803, 2013 WL 620281, at *2 (Bankr. S.D.N.Y. Feb. 19, 2013).

v. All Liabilities based on the conduct of Old GM including any allegation, statement or writing attributable to Old GM. This covers fraudulent concealment type claims. *See* Sale Order and Injunction, ¶ 56.

vi. All claims based on the doctrine of "successor liability." *See*, *e.g.*, Sale Order and Injunction, ¶ 46.

E. The Court's Sale Order And Injunction Expressly Protects New GM From Litigation Over Retained Liabilities, And The Injunction Expressly Bars Plaintiffs From Initiating And Pursuing Litigation Against New GM.

17. On July 10, 2009, the parties consummated the Sale. New GM acquired substantially all of the assets of Old GM free and clear of all liens, claims and encumbrances, except for the narrowly defined Assumed Liabilities. In particular, paragraphs 46, 9, and 8 of the Sale Order and Injunction provide that New GM would have no responsibility for any liabilities (except for Assumed Liabilities) relating to the operation of Old GM's business, or the production of vehicles and parts before July 10, 2009:

> Except for the Assumed Liabilities expressly set forth in the [Sale Agreement] . . . [New GM] . . . shall [not] have any liability for any claim that arose prior to the Closing Date, ***relates to the production of vehicles prior to the Closing Date***, or otherwise is assertable against [Old GM] . . . prior to the Closing Date . . . . Without limiting the foregoing, [New GM] shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity . . . and products . . . liability, ***whether known or unknown*** as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated.

Sale Order and Injunction, ¶ 46 (emphasis added); *see also id.*, ¶ 9(a) ("(i) no claims other than Assumed Liabilities, will be assertable against the Purchaser; (ii) the Purchased Assets [are] transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances) . . ."); and *id.*, ¶ 8 ("All persons and entities . . . holding claims against [Old GM] or the Purchased Assets arising under or out of, in connection with, or in any way relating to [Old GM], the Purchased Assets, ***the operation of the Purchased Assets*** prior to the Closing . . .

are forever barred, estopped, and permanently enjoined . . . from asserting [such claims] against [New GM]. . . .") (emphasis added).

18. Anticipating the possibility that New GM might be wrongfully sued for Retained Liabilities, the Sale Order and Injunction permanently enjoins claimants from asserting claims of the type made in the Pre-Closing Accident Lawsuits:

> [A]ll persons and entities . . . holding liens, claims and encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against [Old GM] or the Purchased Assets (whether legal or equitable, secured or unsecured, ***matured or unmatured***, ***contingent or noncontingent***, senior or subordinated), ***arising under or out of, in connection with, or in any way relating to [Old GM], the Purchased Assets, the operation of the Purchased Assets prior to the Closing . . . are forever barred, estopped, and permanently enjoined . . . from asserting against [New GM] . . . such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability***.

Sale Order and Injunction, ¶ 8 (emphasis added); *see also id.*, ¶ 47.

19. The Court specifically found that the provisions of the Sale Order and Injunction, as well as the Sale Agreement, were binding on all creditors, ***known and unknown*** alike. *See* Sale Order and Injunction, ¶ 6 ("This [Sale] Order and [Sale Agreement] "shall be binding in all respects upon the Debtors, their affiliates, ***all known and unknown creditors*** of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including rights or claims based on any successor or transferee liability . . . ." (emphasis added)); *see also id.*, ¶ 46.

20. Because the Plaintiffs in the *Phillips* Action commenced a lawsuit against Old GM prior to the Petition Date, they were known creditors of Old GM and received notice of the Sale Motion and the relief requested therein.[10] *See* Certificate of Service, filed on June 15, 2009

[10] The Plaintiffs in the *Phillips* Action also filed four proofs of claim in Old GM's bankruptcy case and, after mediation, entered into a settlement with Old GM resolving those claims. Under the settlement, the Court

[Dkt. No. 973]. Upon information and belief, the Plaintiffs in the other Pre-Closing Accident Lawsuit had not filed a lawsuit against Old GM prior to the Petition Date, they were not listed as creditors on Old GM's books and records, and therefore they received notice of the 363 Sale by publication.

21. In short, except for Assumed Liabilities, claims based on Old GM vehicles remained the legal responsibility of Old GM, and are not the responsibility of New GM.

22. Finally, paragraph 71 of the Sale Order and Injunction makes this Court the gatekeeper to enforce its own Order. It provides for this Court's ***exclusive jurisdiction*** over matters and claims regarding the Sale, including jurisdiction to protect New GM against any Retained Liabilities of Old GM:

> ***This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the [Sale Agreement],*** all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, . . ., in all respects, including, but not limited to, ***retaining jurisdiction to . . . (c) resolve any disputes arising under or related to the [Sale Agreement],*** except as otherwise provided therein, (d) ***interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities*** or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets . . . . (Emphasis added.)

F. New GM Has Recalled Certain Vehicles And In Response, Plaintiffs Have Filed The Pre-Closing Accident Lawsuits

23. New GM informed NHTSA of a recall on February 7, 2014, of 2005-2007 model year (MY) Chevrolet Cobalt and 2007 Pontiac G5 vehicles. GM expanded this ignition switch recall on February 25, 2014 to include 2006-2007 MY Chevrolet HHR and Pontiac Solstice, 2003-2007 MY Saturn Ion, and 2007 MY Saturn Sky vehicles, and on March 27, 2014 to include certain Ignition & Start Switch service parts and Ignition & Start Switch Housing Kits that may

retained exclusive jurisdiction with respect to any claims thereunder. As part of their current lawsuit, the Plaintiffs in the *Phillips* Action are seeking to undo the settlement with Old GM.

have been installed during repairs in some 2008-2011 MY Chevrolet HHR, 2008-2010 MY Pontiac Solstice, 2008-2010 MY Pontiac G5, and 2008-2010 MY Saturn Sky vehicles (collectively referred to as the "**Cobalt/Ion Recall**"). This recall pertains to a problem with ignition switches in the above identified vehicles and parts manufactured by Old GM. Pursuant to the Cobalt/Ion Recall, New GM is to replace the ignition switches (at no cost to the owners). New GM sent recall notices approved by NHTSA to all vehicle owners subject to this recall.

24. The Cobalt/Ion Recall is underway and New GM already has started to replace the ignition switches. NHTSA, as the government agency responsible for overseeing the technical and highly-specialized domain of automotive safety defects and recalls, administers the rules concerning the content, timing, and means of delivering a recall notice to affected motorists and dealers. *See* 49 C.F.R. § 554.1; 49 U.S.C. § 30119. Other governmental agencies and Congress are also examining various issues relating to the Cobalt/Ion Recall.

25. Three of the four Pre-Closing Accident Lawsuits (as well as many of the Purported Edwards Plaintiffs (as defined below)) that are the subject of this Motion concerns vehicles that are the subject of the Cobalt/Ion Recall, and the Feinberg Protocol.

26. In addition to the Cobalt/Ion Recall, New GM has also instituted recalls for other model vehicles that concern different issues. The vehicle at issue in the *Phillips* Action is subject to a different ignition switch recall that is not eligible for the Feinberg Protocol. Moreover, while the Plaintiffs in the *Phillips* Action assert that the subject 2004 Chevrolet Malibu Classic was subject to recalls related to electric power steering and increased resistance in the Body Control Module, these recalls are inapplicable to the subject model vehicle. Even so, given the date of the accident in question, the Phillips' vehicle has not been in use since before the 363 Sale closed.

27. After the Cobalt/Ion Recall was announced, the Plaintiffs filed the Pre-Closing Accident Lawsuits against New GM, each of which has its genesis in accidents that occurred prior to the closing of the 363 Sale. It is expected that the number of Pre-Closing Accident Lawsuits will increase.

28. The Pre-Closing Accident Lawsuits assert claims that are barred by the Sale Agreement and the Sale Order and Injunction. Each of the Pre-Closing Accident Lawsuits are premised on an accident involving a vehicle manufactured and sold by Old GM that occurred prior to the closing of the 363 Sale. In their complaints, the Plaintiffs conflate Old GM and New GM, but the Sale Order and Injunction is clear that New GM is a separate entity from Old GM (*see* Sale Order and Injunction, ¶ R), and is not liable for successor liability claims (*see, e.g., id.*, ¶¶ 46, 47). Claims based on that factual predicate are Retained Liabilities and may not be brought against New GM.

29. This Court is uniquely situated to enforce its own Order. By this Motion, New GM requests that the Court enforce the Sale Order and Injunction by directing Plaintiffs (i) to cease and desist from pursuing claims for Retained Liabilities of Old GM against New GM, and (ii) to dismiss with prejudice the Pre-Closing Accident Lawsuits immediately.

G. <u>The Pre-Closing Accident Lawsuits</u>

30. While the Plaintiffs in the Pre-Closing Accident Lawsuits contort allegations in an effort to frame a cause of action against New GM, their efforts are futile. As demonstrated in the chart below, each of the complaints/petitions in the Pre-Closing Accident Lawsuits concern (i) a vehicle manufactured and sold ***by Old GM, and not New GM***, and (ii) an accident that occurred ***prior to the Closing Date of the 363 Sale***:[11]

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[11] As noted above, certain similar lawsuits not listed in the chart have been voluntarily dismissed, without prejudice, by the Plaintiffs, pending their review of the Feinberg Protocol.

	Plaintiff Name	Date of Accident[12]	Vehicle Year and Model
1	Phillips	October 18, 2005	2004 Chevy Malibu Classic
2	Boyd[13]	January 22, 2008 (Marino) September 13, 2008 (Suarez-Marquez)	2007 Chevy Cobalt 2006 Chevy Cobalt
3	Vest	May 2, 2006	2005 Chevy Cobalt
4	Abney[14]	July 4, 2009 (Gray) July 6, 2009 (Page, A.) July 6, 2009 (Page, S.) July 9, 2009 (Stivers)	2006 Chevy Cobalt 2008 Chevy Cobalt 2009 Chevy Cobalt 2006 Chevy Cobalt

31. In addition to the Plaintiffs set forth in the chart above, a group of over 150 would-be plaintiffs (collectively, the "**Purported Edwards Plaintiffs**"), who are represented by counsel already involved in the Ignition Switch Motion to Enforce and in the Multi-District Litigation ("**MDL**") currently pending in the Southern District of New York relating to the Ignition Switch Actions, filed a motion ("**Motion for Leave**") on July 31, 2014 with the MDL court – and ***not*** this Court -- seeking leave to file a consolidated complaint against New GM based on claims that emanate from accidents that occurred ***prior to*** the closing of the 363 Sale.

32. Also on July 31, 2014, the Purported Edwards Plaintiffs filed with this Court a *Notice of Filing of Motion for Leave to File Omnibus Complaint with MDL Court* [Dkt. No. 12796] ("**Notice of Filing**"), which discusses the Motion for Leave, but does not seek relief

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[12] Names in parentheses denote the individual plaintiffs that were in the referenced accidents.

[13] The *Boyd* Action concerns four different accidents, two that occurred prior to the closing of the 363 Sale and two that occurred after the closing of the 363 Sale. This Motion to Enforce concerns only the two accidents that occurred prior to the closing of the 363 Sale, and which are referenced in the chart above.

[14] The *Abney* Action was filed on behalf of 658 plaintiffs and concerns hundreds of different accidents, four of which occurred prior to the closing of the 363 Sale; the remainder occurred after the closing of the 363 Sale. This Motion to Enforce concerns only the four accidents that occurred prior to the closing of the 363 Sale, and which are referenced in the chart above.

from this Court.[15] In their Notice of Filing, the Purported Edwards Plaintiff clearly recognize that their purported claims are subject to the injunction provisions contained in the Sale Order and Injunction. *See* Notice of Filing, ¶ 3 (asserting that the Purported Edwards Plaintiffs are "mindful of this Court's sale order, plan injunction and various stay stipulations" and that if the Motion for Leave was granted, the Purported Edwards Plaintiffs "expect to enter into a stay stipulation" with respect to their claims so this Court can conduct an "orderly and coordinated process"). Yet, instead of filing the Motion for Leave in this Court – which would have been the proper procedure in view of the Court's exclusive jurisdiction over this issue -- they inexplicably filed the Motion for Leave with the MDL court. Given their actions, the Purported Edwards Plaintiffs are, for purposes herein, included within the defined term "Plaintiffs."

33. The Plaintiffs in the Pre-Closing Accident Lawsuits allege various facts based on New GM's recent recalls of various models of pre-closing date vehicles. However, such recalls do not change the fact that New GM did not assume these liabilities. All of the accidents and injuries at issue in these lawsuits occurred prior to the closing date of the 363 Sale and therefore relate solely to Old GM's conduct. Plaintiffs have not, and cannot, allege any cognizable facts against New GM that would form the basis of valid claims against New GM.

H. <u>New GM Has Adopted the Feinberg Protocol</u>

34. On April 1, 2014, New GM announced that it retained Kenneth Feinberg as a consultant to explore and evaluate actions it may take to assist families of accident victims whose vehicles were the subject of the Cobalt/Ion Recall. Mr. Feinberg was asked to consider, in an independent, balanced and objective manner, the options available to New GM for

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[15] A copy of the Notice of Filing is annexed hereto as Exhibit "H."

addressing issues related to the Cobalt/Ion Recall and possible compensation for accident victims.

35. On or about June 30, 2014, Mr. Feinberg presented his protocol to the public. The Feinberg Protocol sets forth the eligibility and process requirements for individual claimants to submit and settle claims alleging that a defective ignition switch subject to the Cobalt/Ion Recall caused a death or physical injury in an automobile accident. The individual on whose behalf a claim is filed must have been the driver, a passenger, a pedestrian, or the occupant of another vehicle in an accident involving one of the "Eligible Vehicles" (as defined in the Feinberg Protocol). Pursuant to the Feinberg Protocol, claims will be accepted beginning August 1, 2014.

36. The Feinberg Protocol creates a Claims Resolution Facility ("**Facility**") under which Mr. Feinberg (as an independent administrator) will process and evaluate claims to determine: (i) whether a submitted claim meets the eligibility requirements under the Feinberg Protocol, and (ii) the compensation to be paid for eligible claims. The Facility is authorized to process ***only*** those eligible claims involving death or physical injury (as defined in the Feinberg Protocol) caused by a defective ignition switch in an Eligible Vehicle. No claims for economic injury or other allegations of damage (whether based on a defective ignition switch or otherwise) are eligible under the Feinberg Protocol.

37. Accident victims who are eligible under the Feinberg Protocol may choose to participate in that program and, if their claims are accepted, will be compensated in an amount determined by the Facility. Claimant eligibility and compensation awards under the Feinberg Protocol are decided by Mr. Feinberg in his sole discretion. Eligible accident victims who fail or decline to opt into the Feinberg Protocol, and other parties who are not eligible under the

Feinberg Protocol, are barred pursuant to the Sale Order and Injunction from asserting claims against New GM that are based on Retained Liabilities of Old GM.[16]

NEW GM'S ARGUMENT TO ENFORCE THE COURT'S SALE ORDER AND INJUNCTION AGAINST THE PLAINTIFFS IN THE PRE-CLOSING ACCIDENT LAWSUITS

38. The Plaintiffs in the Pre-Closing Accident Lawsuits do not have the choice of simply ignoring the Court's Sale Order and Injunction. As the Supreme Court expressed in its *Celotex* decision:

> If respondents believed the Section 105 Injunction was improper, they should have challenged it in the Bankruptcy Court, like other similarly situated bonded judgment creditors have done . . . Respondents chose not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court's Section 105 Injunction in the federal courts in Texas. This they cannot be permitted to do without seriously undercutting the orderly process of the law.

514 U.S. at 313. These settled principles bind Plaintiffs in the Pre-Closing Accident Lawsuits. Those who purchased vehicles from Old GM and were involved in accidents that occurred before the 363 Sale are subject to the terms of the Court's Sale Order and Injunction, whether they were known or unknown by Old GM at the time, and are barred by this Court's Injunction from suing New GM on account of Old GM's Retained Liabilities.

A. This Court's Sale Order And Injunction Should Be Enforced

39. It is well settled that a "Bankruptcy Court plainly ha[s] jurisdiction to interpret and enforce its own prior orders." *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *In re Wilshire Courtyard*, 729 F.3d 1279, 1290 (9th Cir. 2013) (affirming bankruptcy court's post-confirmation jurisdiction to interpret and enforce its orders; "[i]nterpretation of the Plan and

---

[16] The Plaintiffs in the *Boyd*, *Vest* and *Abney* Actions, as well as many of the Purported Edwards Plaintiffs, may be eligible under the Feinberg Protocol. While the Plaintiffs in the *Philips* Action are not eligible under the Feinberg Protocol (as their accident did not concern an Eligible Vehicle), they have already received compensation from the Old GM bankruptcy estate pursuant to their previous settlement with Old GM.

Confirmation Order is the only way for a court to determine the essential character of the negotiated Plan transactions in a way that reflects the deal the parties struck in chapter 11 proceedings"); *In re Cont'l Airlines, Inc.*, 236 B.R. 318, 326 (Bankr. D. Del. 1999) ("In the bankruptcy context, courts have specifically, and consistently, held that the bankruptcy court retains jurisdiction, inter alia, to enforce its confirmation order."); *U.S. Lines, Inc. v. GAC Marine Fuels, Ltd. (In re McClean Indus., Inc.)*, 68 B.R. 690, 695 (Bankr. S.D.N.Y. 1986) ("[a]ll courts, whether created pursuant to Article I or Article III, have inherent contempt power to enforce compliance with their lawful orders. The duty of any court to hear and resolve legal disputes carries with it the power to enforce the order."). In addition, Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out" the Bankruptcy Code's provisions, and this section "codif[ies] the bankruptcy court's inherent power to enforce its own orders." *Back v. LTV Corp. (In re Chateaugay Corp.)*, 213 B.R. 633, 640 (S.D.N.Y. 1997); 11 U.S.C. § 105(a).

40. Consistent with these authorities, this Court retained subject matter jurisdiction to enforce its Sale Order and Injunction. Indeed, this is not the first time that this Court has been asked to enforce its injunction against plaintiffs improperly seeking to sue New GM for Old GM's Retained Liabilities. *See In re Motors Liquidation Co.*, No. 09-50026 (REG), 2011 WL 6119664 (Bankr. S.D.N.Y. 2011) (ordering various plaintiffs to dismiss with prejudice civil actions in which they had brought claims against New GM that are barred by the Sale Order and Injunction); *Castillo v. Gen. Motors Co. (In re Motors Liquidation Co.)*, Adv. Proc. No. 09-00509 (Bankr. S.D.N.Y.), Hr'g Tr. 9:3-9:14, May 6, 2010 ("when you are looking for a declaratory judgment on an agreement that I approved [*i.e.*, the Sale Agreement] that was affected by an order that I entered [*i.e.*, the Sale Order and Injunction], and with the issues permeated by bankruptcy law as they are, and which also raise issues as to one or more

injunctions that I entered, ***how in the world would you have brought this lawsuit in Delaware Chancery Court. I'm not talking about getting in personam jurisdiction or whether you can get venue over a Delaware corporation in Delaware. I'm talking about what talks and walks and quacks like an intentional runaround of something that's properly on the watch of the U.S. Bankruptcy Court for the Southern District of New York.***" (emphasis added)); *Castillo*, 2012 WL 1339496 (entering judgment in favor of New GM) (affirmed by 500 B.R. 333, 335 (S.D.N.Y. 2013)); *see also Trusky*, 2013 WL 620281, at *2 (finding that "claims for design defects [of 2007-2008 Chevrolet Impalas] may not be asserted against New GM and that "New GM is not liable for Old GM's conduct or alleged breaches of warranty").

41. New GM also recently filed a motion to enforce the Sale Order and Injunction against the plaintiffs who filed the Ignition Switch Actions. Recognizing its continuing jurisdiction over the issues raised in those actions, this Court entered Scheduling Orders on May 16, 2014 and July 11, 2014, establishing procedures for the resolution of the issues raised in that motion by this Court.

42. Much like the plaintiffs in the Ignition Switch Actions, and contrary to New GM's bargained for rights under the Sale Agreement and the Court's Sale Order and Injunction, Plaintiffs in the Pre-Closing Accident Lawsuits are suing New GM for alleged defects in Old GM vehicles. Plaintiffs may not simply ignore the Court's injunction through these collateral attacks, especially when the Sale Order and Injunction is a final order no longer subject to appeal. *See Celotex*, 514 U.S. at 306, 313 ("'persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed'") (quoting *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 386 (1980)); *Pratt v. Ventas, Inc.*, 365 F.3d 514, 520 (6th Cir. 2004) (applying doctrine to dismiss suits filed in violation of injunction in confirmation order entered by bankruptcy court); *In re McGhan*, 288

F.3d 1172, 1180-81 (9th Cir. 2002) (applying doctrine to enforce discharge order in favor of debtors and holding that only the bankruptcy court could grant relief from the order); *see also In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (applying this doctrine in the context of an automatic stay entered by the bankruptcy court); *Spartan Mills v. Bank of Am. Ill.*, 112 F.3d 1251 (4th Cir. 1997) (applying doctrine to bankruptcy court order approving sales of assets free and clear of liens).

B. New GM Is Not Liable For Damages Arising From Accidents That Took Place Prior to the Closing Of The 363 Sale

43. The Sale Order and Injunction could not be more clear. Retained Liabilities of Old GM for which New GM has no liability expressly include "all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date." Sale Agreement, § 2.3(b)(ix). "Product Liabilities" was defined by the Sale Agreement as

> all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities") . . .

Sale Agreement, § 2.3(a)(ix).

44. In its objection to the 363 Sale, the Ad Hoc Committee of Consumer Victims recognized that while New GM was agreeing to assume certain liabilities of Old GM, it was not agreeing to assume "Product Liabilities" arising out of accidents that took place prior to the 363 Sale. The Ad Hoc Committee of Consumer Victims argued, among other things, that New GM's refusal to "assume successor for pre-closing product liability claims . . . [was] not in good faith." Objection to 363 Sale by Ad Hoc Committee of Consumer Victims [Dkt. No. 1997], ¶ 33. As noted, the Court considered that and other objections, and after a contested hearing, overruled all

objections to the Sale Motion, including those raised by the Ad Hoc Committee of Consumer Victims.[17] *See* Sale Order and Injunction, ¶ 2.

45. In addition, the Court previously was asked to decide whether a claim against New GM that was based on a prepetition accident was barred by the Sale Order and Injunction. Specifically, after the Estate of Beverly Deutsch ("**Deutsch**") commenced a state court action against New GM that arose from an accident in June, 2007, New GM asked this Court to enjoin Deutsch from prosecuting the state court action because it was barred by the terms of the Sale Agreement and Sale Order and Injunction. While the issue in Deutsch concerned an interpretation of the difference between "accident" and "incident" (as Deutsch argued that the accident occurred before the 363 Sale, but the death of the driver was a separate "incident" that occurred after the 363 Sale), the end result is applicable here. Deutsch did not have a claim against New GM because the accident occurred prior to the closing of the 363 Sale.[18]

46. Like the claimant in Deutsch, Plaintiffs have no claims against New GM. The claims asserted by the Plaintiffs in each of the Pre-Closing Accident Lawsuits (i) concern a vehicle manufactured and sold by Old GM; (ii) arise directly from an accident that occurred prior to the Closing Date; and (iii) arise from the vehicles' operation or performance. Accordingly, Plaintiffs' claims in the Pre-Closing Accident Lawsuits fit squarely within the definition of Retained Liabilities in Section 2.3(b)(ix) of the Sale Agreement. Such claims were not assumed by New GM as part of the 363 Sale but were, for all purposes, retained by Old GM. Thus, Plaintiffs' prosecution against New GM of the Pre-Closing Accident Lawsuits is a direct

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[17] The Ad Hoc Committee of Consumer Victims had "more than 300 members who each have product liability tort claims involving personal injuries (including derivative claims and wrongful death claims) against GM." Objection to 363 Sale by Ad Hoc Committee of Consumer Victims, ¶ 4.

[18] *See* "Decision on New GM's Motion to Enforce Section 363 Order With Respect To Product Liability Claim of Estate of Beverly Deutsch," dated January 5, 2011 [Dkt. No. 8383] ("**Deutsch Decision**"). A copy of the Deutsch Decision is annexed hereto as Exhibit "I."

violation of the Sale Order and Injunction, and Plaintiffs should be barred from continuing to prosecute those cases.

C. New GM Cannot Be Held Liable For Old GM's Alleged Conduct, Either Directly Or As Old GM's Alleged "Successor"

47. Each of the Pre-Closing Accident Lawsuits involve vehicles manufactured and sold by Old GM prior to the Sale Order and Injunction. *See* Chart, *supra*, at ¶ 30. The complaints in the Pre-Closing Accident Lawsuits are similar, and while they reflect an effort to plead around the Court's Sale Order and Injunction, they in fact all make the same allegations concerning Old GM: it designed and sold vehicles with a defect that caused personal injuries prior to the closing of the 363 Sale. Additionally, they all seek to hold New GM liable for damages based on Old GM's conduct—claims that are prohibited by the Sale Order and Injunction. In short, as this Court previously held, New GM did not assume any liabilities based on Old GM's conduct or design defects in any of Old GM's vehicles. *See Trusky*, 2013 WL 620281, at *2.

48. Similarly, by conflating Old GM and New GM, Plaintiffs attempt to impose "successor" liability upon New GM, but New GM is not a successor to Old GM and did not assume any liabilities in connection with successor or transferee liability. This is expressly provided by the Court's Sale Order and Injunction:

> The Purchaser shall not be deemed, as a result of any action taken in connection with the [Sale Agreement] or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchased Assets from and after the Closing); (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser (New GM) shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability,

> de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated.

Sale Order and Injunction ¶ 46; *see also id.*, ¶¶ AA, BB, DD, 6, 7, 8, 10 and 47; Sale Agreement § 9.19.

49. **P**laintiffs' successor liability allegations are simply a violation of this Court's Sale Order and Injunction. But whether or not they expressly allege successor liability, Plaintiffs' claims against New GM based on Old GM's conduct are essentially successor liability claims cast in a different way and are precluded by that Order.

D. Plaintiffs' Warranty Assertions Do Not Enable Them To Circumvent The Court's Sale Order And Injunction

50. The Glove Box Warranty is for a limited duration and all of the vehicles that are the subject of the Pre-Closing Accident Lawsuits were sold considerably more than three years ago (the most recent accident occurred almost six years ago). Thus, the Glove Box Warranty for each vehicle at issue has expired. In any event, the Glove Box Warranty provides only for repairs and replacement parts.

51. This distinction is not unique to Old GM's Sale. In the *Chrysler* bankruptcy case, the court likewise found that the assumed liabilities were limited to the standard limited warranty of repair issued in connection with sales of vehicles. *See, e.g., Burton v. Chrysler Group, LLC (In re Old Carco LLC)*, 492 B.R. 392, 404 (Bankr. S.D.N.Y. 2013) ("New Chrysler did agree to honor warranty claims — the Repair Warranty. None of the statements attributed to New Chrysler state or imply that it assumed liability to pay consequential or other damages based upon pre-existing defects in vehicles manufactured and sold by Old Carco.").

52. Similarly, the Sale Agreement and the Sale Order and Injunction provide that the implied warranty claims asserted by Plaintiffs here are Retained Liabilities for which New GM is

not responsible. *See* Sale Order and Injunction, ¶ 56 (New GM "is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs and point of purchase materials." (emphasis added)); *see also* Sale Agreement § 2.3(b)(xvi) (one of the Retained Liabilities of Old GM was any liabilities "arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to [Old GM]." (emphasis added)).

53. In short, any breach of warranty claims Plaintiffs pursue relating to Old GM vehicles (whether express or implied) improperly seek damages against New GM in violation of the Sale Order and Injunction.

CONCLUSION

54. New GM was created to purchase the assets of Old GM pursuant to the Sale Agreement. The limited category of liabilities it agreed to assume as part of the purchase was the product of a negotiated bargain, which was approved by this Court in July 2009. Plaintiffs in the Pre-Closing Accident Lawsuits have completely ignored this; they improperly treat New GM and Old GM interchangeability and are pursuing Old GM claims that they cannot lawfully pursue against New GM; and they wrongfully have filed suit in violation of this Court's Sale Order and Injunction.

55. New GM has no liability or responsibility for the Retained Liability claims asserted in the Pre-Closing Accident Lawsuits and, under the Sale Order and Injunction, Plaintiffs in such Actions are enjoined from bringing them against New GM. *See, e.g.*, Sale Order and Injunction, ¶¶ 8, 47. Accordingly, the Court should enforce the terms of its Sale Order

and Injunction by ordering Plaintiffs to promptly dismiss the Pre-Closing Accident Lawsuits, and to cease and desist from all efforts to assert such claims against New GM that are barred by the Sale Order and Injunction. Of course, as noted, those Plaintiffs eligible to participate in the Feinberg Protocol may do so.

NOTICE AND NO PRIOR REQUESTS

56. Notice of this Motion has been provided to (a) counsel for Plaintiffs in each of the Pre-Closing Accident Lawsuits, (b) counsel for Motors Liquidation Company General Unsecured Creditors Trust, and (c) the Office of the United States Trustee. New GM submits that such notice is sufficient and no other or further notice need be provided.

57. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, New GM respectfully requests that this Court: (i) enter an order substantially in the form set forth as Exhibit "J" hereto, granting the relief sought herein; and (ii) grant New GM such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 1, 2014

Respectfully submitted,

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Exhibit D

EXECUTION COPY

AMENDED AND RESTATED

MASTER SALE AND PURCHASE AGREEMENT

BY AND AMONG

GENERAL MOTORS CORPORATION,

SATURN LLC,

SATURN DISTRIBUTION CORPORATION

AND

CHEVROLET-SATURN OF HARLEM, INC.,

as Sellers

AND

NGMCO, INC.,

as Purchaser

DATED AS OF

JUNE 26, 2009

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AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT (this "Agreement"), dated as of June 26, 2009, is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, on June 1, 2009 (the "Petition Date"), the Parties entered into that certain Master Sale and Purchase Agreement (the "Original Agreement"), and, in connection therewith, Sellers filed voluntary petitions for relief (the "Bankruptcy Cases") under Chapter 11 of Title 11, U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, pursuant to Sections 363 and 365 of the Bankruptcy Code, Sellers desire to sell, transfer, assign, convey and deliver to Purchaser, and Purchaser desires to purchase, accept and acquire from Sellers all of the Purchased Assets (as hereinafter defined) and assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities (as hereinafter defined), in each case, in accordance with the terms and subject to the conditions set forth in this Agreement and the Bankruptcy Code;

WHEREAS, on the Petition Date, Purchaser entered into equity subscription agreements with each of Canada, Sponsor and the New VEBA (each as hereinafter defined), pursuant to which Purchaser has agreed to issue, on the Closing Date (as hereinafter defined), the Canada Shares, the Sponsor Shares, the VEBA Shares, the VEBA Note and the VEBA Warrant (each as hereinafter defined);

WHEREAS, pursuant to the equity subscription agreement between Purchaser and Canada, Canada has agreed to (i) contribute on or before the Closing Date an amount of Indebtedness (as hereinafter defined) owed to it by General Motors of Canada Limited ("GMCL"), which results in not more than $1,288,135,593 of such Indebtedness remaining an obligation of GMCL, to Canada immediately following the Closing (the "Canadian Debt Contribution") and (ii) exchange immediately following the Closing the $3,887,000,000 loan to be made by Canada to Purchaser for additional shares of capital stock of Purchaser;

WHEREAS, the transactions contemplated by this Agreement are in furtherance of the conditions, covenants and requirements of the UST Credit Facilities (as hereinafter defined) and are intended to result in a rationalization of the costs, capitalization and capacity with respect to the manufacturing workforce of, and suppliers to, Sellers and their Subsidiaries (as hereinafter defined);

WHEREAS, it is contemplated that Purchaser may, in accordance with the terms of this Agreement, prior to the Closing (as hereinafter defined), engage in one or more related transactions (the "Holding Company Reorganization") generally designed to reorganize

Purchaser and one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Purchaser into a holding company structure that results in Purchaser becoming a direct or indirect, wholly-owned Subsidiary of a newly-formed Delaware corporation ("Holding Company"); and

WHEREAS, it is contemplated that Purchaser may, in accordance with the terms of this Agreement, direct the transfer of the Purchased Assets on its behalf by assigning its rights to purchase, accept and acquire the Purchased Assets and its obligations to assume and thereafter pay or perform as and when due, or otherwise discharge, the Assumed Liabilities, to Holding Company or one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Holding Company or Purchaser.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties (as hereinafter defined) hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below or in the Sections referred to below:

"Adjustment Shares" has the meaning set forth in **Section 3.2(c)(i)**.

"Advisory Fees" has the meaning set forth in **Section 4.20**.

"Affiliate" has the meaning set forth in Rule 12b-2 of the Exchange Act.

"Affiliate Contract" means a Contract between a Seller or a Subsidiary of a Seller, on the one hand, and an Affiliate of such Seller or Subsidiary of a Seller, on the other hand.

"Agreed G Transaction" has the meaning set forth in **Section 6.16(g)(i)**.

"Agreement" has the meaning set forth in the Preamble.

"Allocation" has the meaning set forth in **Section 3.3**.

"Alternative Transaction" means the sale, transfer, lease or other disposition, directly or indirectly, including through an asset sale, stock sale, merger or other similar transaction, of all or substantially all of the Purchased Assets in a transaction or a series of transactions with one or more Persons other than Purchaser (or its Affiliates).

"Ancillary Agreements" means the Parent Warrants, the UAW Active Labor Modifications, the UAW Retiree Settlement Agreement, the VEBA Warrant, the Equity Registration Rights Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Novation Agreement, the Government Related Subcontract Agreement, the Intellectual Property Assignment Agreement, the Transition Services Agreement, the Quitclaim Deeds, the

Assignment and Assumption of Real Property Leases, the Assignment and Assumption of Harlem Lease, the Master Lease Agreement, the Subdivision Master Lease (if required), the Saginaw Service Contracts (if required), the Assignment and Assumption of Willow Run Lease, the Ren Cen Lease, the VEBA Note and each other agreement or document executed by the Parties pursuant to this Agreement or any of the foregoing and each certificate and other document to be delivered by the Parties pursuant to **ARTICLE VII**.

"Antitrust Laws" means all Laws that (i) are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or the lessening of competition through merger or acquisition or (ii) involve foreign investment review by Governmental Authorities.

"Applicable Employee" means all (i) current salaried employees of Parent and (ii) current hourly employees of any Seller or any of its Affiliates (excluding Purchased Subsidiaries and any dealership) represented by the UAW, in each case, including such current salaried and current hourly employees who are on (a) long-term or short-term disability, military leave, sick leave, family medical leave or some other approved leave of absence or (b) layoff status or who have recall rights.

"Arms-Length Basis" means a transaction between two Persons that is carried out on terms no less favorable than the terms on which the transaction would be carried out by unrelated or unaffiliated Persons, acting as a willing buyer and a willing seller, and each acting in his own self-interest.

"Assignment and Assumption Agreement" has the meaning set forth in **Section 7.2(c)(v)**.

"Assignment and Assumption of Harlem Lease" has the meaning set forth in **Section 7.2(c)(xiii)**.

"Assignment and Assumption of Real Property Leases" has the meaning set forth in **Section 7.2(c)(xii)**.

"Assignment and Assumption of Willow Run Lease" has the meaning set forth in **Section 6.27(e)**.

"Assumable Executory Contract" has the meaning set forth in **Section 6.6(a)**.

"Assumable Executory Contract Schedule" means Section 1.1A of the Sellers' Disclosure Schedule.

"Assumed Liabilities" has the meaning set forth in **Section 2.3(a)**.

"Assumed Plans" has the meaning set forth in **Section 6.17(e)**.

"Assumption Effective Date" has the meaning set forth in **Section 6.6(d)**.

"Bankruptcy Avoidance Actions" has the meaning set forth in **Section 2.2(b)(xi)**.

"Bankruptcy Cases" has the meaning set forth in the Recitals.

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Benefit Plans" has the meaning set forth in **Section 4.10(a)**.

"Bidders" has the meaning set forth in **Section 6.4(c)**.

"Bids" has the meaning set forth in **Section 6.4(c)**.

"Bill of Sale" has the meaning set forth in **Section 7.2(c)(iv)**.

"Business Day" means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York, New York.

"CA" has the meaning set forth in **Section 6.16(g)(i)**.

"Canada" means 7176384 Canada Inc., a corporation organized under the Laws of Canada, and a wholly-owned subsidiary of Canada Development Investment Corporation, and its successors and assigns.

"Canada Affiliate" has the meaning set forth in **Section 9.22**.

"Canada Shares" has the meaning set forth in **Section 5.4(c)**.

"Canadian Debt Contribution" has the meaning set forth in the Recitals.

"Claims" means all rights, claims (including any cross-claim or counterclaim), investigations, causes of action, choses in action, charges, suits, defenses, demands, damages, defaults, assessments, rights of recovery, rights of set-off, rights of recoupment, litigation, third party actions, arbitral proceedings or proceedings by or before any Governmental Authority or any other Person, of any kind or nature, whether known or unknown, accrued, fixed, absolute, contingent or matured, liquidated or unliquidated, due or to become due, and all rights and remedies with respect thereto.

"Claims Estimate Order" has the meaning set forth in **Section 3.2(c)(i)**.

"Closing" has the meaning set forth in **Section 3.1**.

"Closing Date" has the meaning set forth in **Section 3.1**.

"Collective Bargaining Agreement" means any collective bargaining agreement or other written or oral agreement, understanding or mutually recognized past practice with respect to Employees, between any Seller (or any Subsidiary thereof) and any labor organization or other Representative of Employees (including the UAW Collective Bargaining Agreement, local agreements, amendments, supplements and letters and memoranda of understanding of any kind).

"Common Stock" has the meaning set forth in **Section 5.4(b)**.

"Confidential Information" has the meaning set forth in **Section 6.24.**

"Confidentiality Period" has the meaning set forth in **Section 6.24**.

"Continuing Brand Dealer Agreement" means a United States dealer sales and service Contract related to one or more of the Continuing Brands, together with all other Contracts between any Seller and the relevant dealer that are related to the dealership operations of such dealer other than Contracts identified on Section 1.1B of the Sellers' Disclosure Schedule, each of which Contract identified on Section 1.1B of the Sellers' Disclosure Schedule shall be deemed to be a Rejectable Executory Contract.

"Continuing Brands" means each of the following vehicle line-makes, currently distributed in the United States by Parent or its Subsidiaries: Buick, Cadillac, Chevrolet and GMC.

"Contracts" means all purchase orders, sales agreements, supply agreements, distribution agreements, sales representative agreements, employee or consulting agreements, leases, subleases, licenses, product warranty or service agreements and other binding commitments, agreements, contracts, arrangements, obligations and undertakings of any nature (whether written or oral, and whether express or implied).

"Copyright Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to reproduce, publicly display, publicly perform, distribute, create derivative works of or otherwise exploit any works covered by any Copyright.

"Copyrights" means all domestic and foreign copyrights, whether registered or unregistered, including all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship (including all compilations of information or marketing materials created by or on behalf of any Seller), acquired, owned or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States or any other country or any political subdivision thereof) and all reissues, renewals, restorations, extensions and revisions thereof.

"Cure Amounts" means all cure amounts payable in order to cure any monetary defaults required to be cured under Section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Purchaser of the Purchased Contracts.

"Damages" means any and all Losses, other than punitive damages.

"Dealer Agreement" has the meaning set forth in **Section 4.17**.

"Deferred Executory Contract" has the meaning set forth in **Section 6.6(c)**.

"Deferred Termination Agreements" has the meaning set forth in **Section 6.7(a)**.

"Delayed Closing Entities" has the meaning set forth in **Section 6.35**.

"Delphi" means Delphi Corporation.

"Delphi Motion" means the motion filed by Parent with the Bankruptcy Court in the Bankruptcy Cases on June 20, 2009, seeking authorization and approval of (i) the purchase, and guarantee of purchase, of certain assets of Delphi, (ii) entry into certain agreements in connection with the sale of substantially all of the remaining assets of Delphi to a third party, (iii) the assumption of certain Executory Contracts in connection with such sale, (iv) entry into an agreement with the PBGC in connection with such sale and (v) entry into an alternative transaction with the successful bidder in the auction for the assets of Delphi.

"Delphi Transaction Agreements" means (i) either (A) the MDA, the SPA, the Loan Agreement, the Operating Agreement, the Commercial Agreements and any Ancillary Agreements (in each case, as defined in the Delphi Motion), which any Seller is a party to, or (B) in the event that an Acceptable Alternative Transaction (as defined in the Delphi Motion) is consummated, any agreements relating to the Acceptable Alternative Transaction, which any Seller is a party to, and (ii) in the event that the PBGC Agreement is entered into at or prior to the Closing, the PBGC Agreement (as defined in the Delphi Motion) and any ancillary agreements entered into pursuant thereto, which any Seller is a party to, as each of the agreements described in clauses (i) or (ii) hereof may be amended from time to time.

"DIP Facility" means that certain Secured Superpriority Debtor-in-Possession Credit Agreement entered into or to be entered into by Parent, as borrower, certain Subsidiaries of Parent listed therein, as guarantors, Sponsor, as lender, and Export Development Canada, as lender.

"Discontinued Brand Dealer Agreement" means a United States dealer sales and service Contract related to one or more of the Discontinued Brands, together with all other Contracts between any Seller and the relevant dealer that are related to the dealership operations of such dealer other than Contracts identified on Section 1.1B of the Sellers' Disclosure Schedule, each of which Contract identified on Section 1.1B of the Sellers' Disclosure Schedule shall be deemed to be a Rejectable Executory Contract.

"Discontinued Brands" means each of the following vehicle line-makes, currently distributed in the United States by Parent or its Subsidiaries: Hummer, Saab, Saturn and Pontiac.

"Disqualified Individual" has the meaning set forth in **Section 4.10(f)**.

"Employees" means (i) each employee or officer of any of Sellers or their Affiliates (including (a) any current, former or retired employees or officers, (b) employees or officers on long-term or short-term disability, military leave, sick leave, family medical leave or some other approved leave of absence and (c) employees on layoff status or with recall rights); (ii) each consultant or other service provider of any of Sellers or their Affiliates who is a former employee, officer or director of any of Sellers or their Affiliates; and (iii) each individual recognized under any Collective Bargaining Agreement as being employed by or having rights to

employment by any of Sellers or their Affiliates. For the avoidance of doubt, Employees includes all employees of Sellers or any of their Affiliates, whether or not Transferred Employees.

"Employment-Related Obligations" means all Liabilities arising out of, related to, in respect of or in connection with employment relationships or alleged or potential employment relationships with Sellers or any Affiliate of Sellers relating to Employees, leased employees, applicants, and/or independent contractors or those individuals who are deemed to be employees of Sellers or any Affiliate of Sellers by Contract or Law, whether filed or asserted before, on or after the Closing. "Employment-Related Obligations" includes Claims relating to discrimination, torts, compensation for services (and related employment and withholding Taxes), workers' compensation or similar benefits and payments on account of occupational illnesses and injuries, employment Contracts, Collective Bargaining Agreements, grievances originating under a Collective Bargaining Agreement, wrongful discharge, invasion of privacy, infliction of emotional distress, defamation, slander, provision of leave under the Family and Medical Leave Act of 1993, as amended, or other similar Laws, car programs, relocation, expense-reporting, Tax protection policies, Claims arising out of WARN or employment, terms of employment, transfers, re-levels, demotions, failure to hire, failure to promote, compensation policies, practices and treatment, termination of employment, harassment, pay equity, employee benefits (including post-employment welfare and other benefits), employee treatment, employee suggestions or ideas, fiduciary performance, employment practices, the modification or termination of Benefit Plans or employee benefit plans, policies, programs, agreements and arrangements of Purchaser, including decisions to provide plans that are different from Benefit Plans, and the like. Without limiting the generality of the foregoing, with respect to any Employees, leased employees, and/or independent contractors or those individuals who are deemed to be employees of Sellers or any Affiliate of Sellers by Contract or Law, "Employment-Related Obligations" includes payroll and social security Taxes, contributions (whether required or voluntary) to any retirement, health and welfare or similar plan or arrangement, notice, severance or similar payments required under Law, and obligations under Law with respect to occupational injuries and illnesses.

"Encumbrance" means any lien (statutory or otherwise), charge, deed of trust, pledge, security interest, conditional sale or other title retention agreement, lease, mortgage, option, charge, hypothecation, easement, right of first offer, license, covenant, restriction, ownership interest of another Person or other encumbrance.

"End Date" has the meaning set forth in **Section 8.1(b)**.

"Environment" means any surface water, groundwater, drinking water supply, land surface or subsurface soil or strata, ambient air, natural resource or wildlife habitat.

"Environmental Law" means any Law in existence on the date of the Original Agreement relating to the management or Release of, or exposure of humans to, any Hazardous Materials; or pollution; or the protection of human health and welfare and the Environment.

"Equity Incentive Plans" has the meaning set forth in **Section 6.28**.

"Equity Interest" means, with respect to any Person, any shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, options or rights for the purchase or other acquisition from such Person of such shares (or such other ownership or profits interests) and other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting.

"Equity Registration Rights Agreement" has the meaning set forth in **Section 7.1(c)**.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is part of the same controlled group, or under common control with, or part of an affiliated service group that includes any Seller, within the meaning of Section 414(b), (c), (m) or (o) of the Tax Code or Section 4001(a)(14) of ERISA.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Assets" has the meaning set forth in **Section 2.2(b)**.

"Excluded Cash" has the meaning set forth in **Section 2.2(b)(i)**.

"Excluded Continuing Brand Dealer Agreements" means all Continuing Brand Dealer Agreements, other than those that are Assumable Executory Contracts.

"Excluded Contracts" has the meaning set forth in **Section 2.2(b)(vii)**.

"Excluded Entities" has the meaning set forth in **Section 2.2(b)(iv)**.

"Excluded Insurance Policies" has the meaning set forth in **Section 2.2(b)(xiii)**.

"Excluded Personal Property" has the meaning set forth in **Section 2.2(b)(vi)**.

"Excluded Real Property" has the meaning set forth in **Section 2.2(b)(v)**.

"Excluded Subsidiaries" means, collectively, the direct Subsidiaries of Sellers included in the Excluded Entities and their respective direct and indirect Subsidiaries, in each case, as of the Closing Date.

"Executory Contract" means an executory Contract or unexpired lease of personal property or nonresidential real property.

"Executory Contract Designation Deadline" has the meaning set forth in **Section 6.6(a)**.

"Existing Internal VEBA" has the meaning set forth in **Section 6.17(h)**.

"Existing Saginaw Wastewater Facility" has the meaning set forth in **Section 6.27(b)**.

"Existing UST Loan and Security Agreement" means the Loan and Security Agreement, dated as of December 31, 2008, between Parent and Sponsor, as amended.

"FCPA" has the meaning set forth in **Section 4.19**.

"Final Determination" means (i) with respect to U.S. federal income Taxes, a "determination" as defined in Section 1313(a) of the Tax Code or execution of an IRS Form 870-AD and, (ii) with respect to Taxes other than U.S. federal income Taxes, any final determination of Liability in respect of a Tax that, under applicable Law, is not subject to further appeal, review or modification through proceedings or otherwise, including the expiration of a statute of limitations or a period for the filing of Claims for refunds, amended Tax Returns or appeals from adverse determinations.

"Final Order" means (i) an Order of the Bankruptcy Court or any other court or adjudicative body as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending, or (ii) in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such Order of the Bankruptcy Court or any other court or adjudicative body shall have been affirmed by the highest court to which such Order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that no Order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed with respect to such Order.

"FSA Approval" has the meaning set forth in **Section 6.34**.

"G Transaction" has the meaning set forth in **Section 6.16(g)(i)**.

"GAAP" means the United States generally accepted accounting principles and practices as in effect from time to time, consistently applied throughout the specified period.

"GMAC" means GMAC LLC.

"GM Assumed Contracts" has the meaning set forth in the Delphi Motion.

"GMCL" has the meaning set forth in the Recitals.

"Governmental Authority" means any United States or non-United States federal, national, provincial, state or local government or other political subdivision thereof, any entity, authority, agency or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any supranational organization of sovereign states exercising such functions for such sovereign states.

"Government Related Subcontract Agreement" has the meaning set forth in **Section 7.2(c)(vii)**.

"Harlem" has the meaning set forth in the Preamble.

"Hazardous Materials" means any material or substance that is regulated, or can give rise to Claims, Liabilities or Losses, under any Environmental Law or a Permit issued pursuant to any Environmental Law, including any petroleum, petroleum-based or petroleum-derived product, polychlorinated biphenyls, asbestos or asbestos-containing materials, lead and any noxious, radioactive, flammable, corrosive, toxic, hazardous or caustic substance (whether solid, liquid or gaseous).

"Holding Company" has the meaning set forth in the Recitals.

"Holding Company Reorganization" has the meaning set forth in the Recitals.

"Indebtedness" means, with respect to any Person, without duplication: (i) all obligations of such Person for borrowed money (including all accrued and unpaid interest and all prepayment penalties or premiums in respect thereof); (ii) all obligations of such Person to pay amounts evidenced by bonds, debentures, notes or similar instruments (including all accrued and unpaid interest and all prepayment penalties or premiums in respect thereof); (iii) all obligations of others, of the types set forth in clauses (i)-(ii) above that are secured by any Encumbrance on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, but only to the extent so secured; (iv) all unreimbursed reimbursement obligations of such Person under letters of credit issued for the account of such Person; (v) obligations of such Person under conditional sale, title retention or similar arrangements or other obligations, in each case, to pay the deferred purchase price for property or services, to the extent of the unpaid purchase price (other than trade payables and customary reservations or retentions of title under Contracts with suppliers, in each case, in the Ordinary Course of Business); (vi) all net monetary obligations of such Person in respect of interest rate, equity and currency swap and other derivative transaction obligations; and (vii) all guarantees of or by such Person of any of the matters described in clauses (i)-(vi) above, to the extent of the maximum amount for which such Person may be liable pursuant to such guarantee.

"Intellectual Property" means all Patents, Trademarks, Copyrights, Trade Secrets, Software, all rights under the Licenses and all concepts, ideas, know-how, show-how, proprietary information, technology, formulae, processes and other general intangibles of like nature, and other intellectual property to the extent entitled to legal protection as such, including products under development and methodologies therefor, in each case acquired, owned or licensed by a Seller.

"Intellectual Property Assignment Agreement" has the meaning set forth in **Section 7.2(c)(viii)**.

"Intercompany Obligations" has the meaning set forth in **Section 2.2(a)(iv)**.

"Inventory" has the meaning set forth in **Section 2.2(a)(viii)**.

"IRS" means the United States Internal Revenue Service.

"Key Subsidiary" means any direct or indirect Subsidiary (which, for the avoidance of doubt, shall only include any legal entity in which a Seller, directly or indirectly, owns greater than 50% of the outstanding Equity Interests in such legal entity) of Sellers (other than trusts) with assets (excluding any Intercompany Obligations) in excess of Two Hundred and Fifty Million Dollars ($250,000,000) as reflected on Parent's consolidated balance sheet as of March 31, 2009 and listed on Section 1.1C of the Sellers' Disclosure Schedule.

"Knowledge of Sellers" means the actual knowledge of the individuals listed on Section 1.1D of the Sellers' Disclosure Schedule as to the matters represented and as of the date the representation is made.

"Law" means any and all applicable United States or non-United States federal, national, provincial, state or local laws, rules, regulations, directives, decrees, treaties, statutes, provisions of any constitution and principles (including principles of common law) of any Governmental Authority, as well as any applicable Final Order.

"Landlocked Parcel" has the meaning set forth in **Section 6.27(c)**.

"Leased Real Property" means all the real property leased or subleased by Sellers, except for any such leased or subleased real property subject to any Contracts designated as Excluded Contracts.

"Lemon Laws" means a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.

"Liabilities" means any and all liabilities and obligations of every kind and description whatsoever, whether such liabilities or obligations are known or unknown, disclosed or undisclosed, matured or unmatured, accrued, fixed, absolute, contingent, determined or undeterminable, on or off-balance sheet or otherwise, or due or to become due, including Indebtedness and those arising under any Law, Claim, Order, Contract or otherwise.

"Licenses" means the Patent Licenses, the Trademark Licenses, the Copyright Licenses, the Software Licenses and the Trade Secret Licenses.

"Losses" means any and all Liabilities, losses, damages, fines, amounts paid in settlement, penalties, costs and expenses (including reasonable and documented attorneys', accountants', consultants', engineers' and experts' fees and expenses).

"LSA Agreement" means the Amended and Restated GM-Delphi Agreement, dated as of June 1, 2009, and any ancillary agreements entered into pursuant thereto, which any Seller is a party to, as each such agreement may be amended from time to time.

"Master Lease Agreement" has the meaning set forth in **Section 7.2(c)(xiv)**.

"Material Adverse Effect" means any change, effect, occurrence or development that, individually or in the aggregate, has or would reasonably be expected to have a material adverse effect on the Purchased Assets, Assumed Liabilities or results of operations of Parent and its

Purchased Subsidiaries, taken as a whole; provided, however, that the term "Material Adverse Effect" does not, and shall not be deemed to, include, either alone or in combination, any changes, effects, occurrences or developments: (i) resulting from general economic or business conditions in the United States or any other country in which Sellers and their respective Subsidiaries have operations, or the worldwide economy taken as a whole; (ii) affecting Sellers in the industry or the markets where Sellers operate (except to the extent such change, occurrence or development has a disproportionate adverse effect on Parent and its Subsidiaries relative to other participants in such industry or markets, taken as a whole); (iii) resulting from any changes (or proposed or prospective changes) in any Law or in GAAP or any foreign generally accepted accounting principles; (iv) in securities markets, interest rates, regulatory or political conditions, including resulting or arising from acts of terrorism or the commencement or escalation of any war, whether declared or undeclared, or other hostilities; (v) resulting from the negotiation, announcement or performance of this Agreement or the DIP Facility, or the transactions contemplated hereby and thereby, including by reason of the identity of Sellers, Purchaser or Sponsor or any communication by Sellers, Purchaser or Sponsor of any plans or intentions regarding the operation of Sellers' business, including the Purchased Assets, prior to or following the Closing; (vi) resulting from any act or omission of any Seller required or contemplated by the terms of this Agreement, the DIP Facility or the Viability Plans, or otherwise taken with the prior consent of Sponsor or Purchaser, including Parent's announced shutdown, which began in May 2009; and (vii) resulting from the filing of the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by any Subsidiary of Parent) or from any action approved by the Bankruptcy Court (or any other court in connection with any such other proceedings).

"New VEBA" means the trust fund established pursuant to the Settlement Agreement.

"Non-Assignable Assets" has the meaning set forth in **Section 2.4(a)**.

"Non-UAW Collective Bargaining Agreements" has the meaning set forth in **Section 6.17(m)(i)**.

"Non-UAW Settlement Agreements" has the meaning set forth in **Section 6.17(m)(ii)**.

"Notice of Intent to Reject" has the meaning set forth in **Section 6.6(b)**.

"Novation Agreement" has the meaning set forth in **Section 7.2(c)(vi)**.

"Option Period" has the meaning set forth in **Section 6.6(b)**.

"Order" means any writ, judgment, decree, stipulation, agreement, determination, award, injunction or similar order of any Governmental Authority, whether temporary, preliminary or permanent.

"Ordinary Course of Business" means the usual, regular and ordinary course of business consistent with the past practice thereof (including with respect to quantity and frequency) as and to the extent modified in connection with (i) the implementation of the Viability Plans; (ii) Parent's announced shutdown, which began in May 2009; and (iii) the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of

Parent), in the case of clause (iii), to the extent such modifications were approved by the Bankruptcy Court (or any other court or other Governmental Authority in connection with any such other proceedings), or in furtherance of such approval.

"Organizational Document" means (i) with respect to a corporation, the certificate or articles of incorporation and bylaws or their equivalent; (ii) with respect to any other entity, any charter, bylaws, limited liability company agreement, certificate of formation, articles of organization or similar document adopted or filed in connection with the creation, formation or organization of a Person; and (iii) in the case of clauses (i) and (ii) above, any amendment to any of the foregoing other than as prohibited by **Section 6.2(b)(vi)**.

"Original Agreement" has the meaning set forth in the Recitals.

"Owned Real Property" means all real property owned by Sellers (including all buildings, structures and improvements thereon and appurtenances thereto), except for any such real property included in the Excluded Real Property.

"Parent" has the meaning set forth in the Preamble.

"Parent Employee Benefit Plans and Policies" means all (i) "employee benefit plans" (as defined in Section 3(3) of ERISA) and all pension, savings, profit sharing, retirement, bonus, incentive, health, dental, life, death, accident, disability, stock purchase, stock option, stock appreciation, stock bonus, other equity, executive or deferred compensation, hospitalization, post-retirement (including retiree medical or retiree life, voluntary employees' beneficiary associations, and multiemployer plans (as defined in Section 3(37) of ERISA)), severance, retention, change in control, vacation, cafeteria, sick leave, fringe, perquisite, welfare benefits or other employee benefit plans, programs, policies, agreements or arrangements (whether written or oral), including those plans, programs, policies, agreements and arrangements with respect to which any Employee covered by the UAW Collective Bargaining Agreement is an eligible participant, (ii) employment or individual consulting Contracts and (iii) employee manuals and written policies, practices or understandings relating to employment, compensation and benefits, and in the case of clauses (i) through (iii), sponsored, maintained, entered into, or contributed to, or required to be maintained or contributed to, by Parent.

"Parent SEC Documents" has the meaning set forth in **Section 4.5(a)**.

"Parent Shares" has the meaning set forth in **Section 3.2(a)(iii)**.

"Parent Warrant A" means warrants to acquire 45,454,545 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit A**.

"Parent Warrant B" means warrants to acquire 45,454,545 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit B**.

"Parent Warrants" means collectively, Parent Warrant A and Parent Warrant B.

"Participation Agreement" has the meaning set forth in **Section 6.7(b)**.

"Parties" means Sellers and Purchaser together, and "Party" means any of Sellers, on the one hand, or Purchaser, on the other hand, as appropriate and as the case may be.

"Patent Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to manufacture, use, lease, or sell any invention, design, idea, concept, method, technique or process covered by any Patent.

"Patents" means all inventions, patentable designs, letters patent and design letters patent of the United States or any other country and all applications (regular and provisional) for letters patent or design letters patent of the United States or any other country, including applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, and all reissues, divisions, continuations, continuations in part, revisions, reexaminations and extensions or renewals of any of the foregoing.

"PBGC" has the meaning set forth in **Section 4.10(a)**.

"Permits" has the meaning set forth in **Section 2.2(a)(xi)**.

"Permitted Encumbrances" means all (i) purchase money security interests arising in the Ordinary Course of Business; (ii) security interests relating to progress payments created or arising pursuant to government Contracts in the Ordinary Course of Business; (iii) security interests relating to vendor tooling arising in the Ordinary Course of Business; (iv) Encumbrances that have been or may be created by or with the written consent of Purchaser; (v) mechanic's, materialmen's, laborer's, workmen's, repairmen's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established; (vi) liens for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties); (vii) with respect to the Transferred Real Property that is Owned Real Property, other than Secured Real Property Encumbrances at and following the Closing: (a) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose, the existence of which, individually or in the aggregate, would not materially and adversely interfere with the present use of the affected property; (b) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Owned Real Property; (c) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Owned Real Property, which, individually or in the aggregate, would not materially and adversely interfere with the present use of the applicable Owned Real Property; and (d) such other Encumbrances, the existence of which, individually or in the aggregate, would not materially and adversely interfere with or affect the present use or occupancy of the applicable Owned Real Property; (viii) with respect to the Transferred Real Property that is Leased Real Property: (1) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose; (2) rights of the public, any Governmental Authority and adjoining property owners in streets and highways

abutting or adjacent to the applicable Leased Real Property; (3) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Leased Real Property or which have otherwise been imposed on such property by landlords; (ix) in the case of the Transferred Equity Interests, all restrictions and obligations contained in any Organizational Document, joint venture agreement, shareholders agreement, voting agreement and related documents and agreements, in each case, affecting the Transferred Equity Interests; (x) except to the extent otherwise agreed to in the Ratification Agreement entered into by Sellers and GMAC on June 1, 2009 and approved by the Bankruptcy Court on the date thereof or any other written agreement between GMAC or any of its Subsidiaries and any Seller, all Claims (in each case solely to the extent such Claims constitute Encumbrances) and Encumbrances in favor of GMAC or any of its Subsidiaries in, upon or with respect to any property of Sellers or in which Sellers have an interest, including any of the following: (1) cash, deposits, certificates of deposit, deposit accounts, escrow funds, surety bonds, letters of credit and similar agreements and instruments; (2) owned or leased equipment; (3) owned or leased real property; (4) motor vehicles, inventory, equipment, statements of origin, certificates of title, accounts, chattel paper, general intangibles, documents and instruments of dealers, including property of dealers in-transit to, surrendered or returned by or repossessed from dealers or otherwise in any Seller's possession or under its control; (5) property securing obligations of Sellers under derivatives Contracts; (6) rights or property with respect to which a Claim or Encumbrance in favor of GMAC or any of its Subsidiaries is disclosed in any filing made by Parent with the SEC (including any filed exhibit); and (7) supporting obligations, insurance rights and Claims against third parties relating to the foregoing; and (xi) all rights of setoff and/or recoupment that are Encumbrances in favor of GMAC and/or its Subsidiaries against amounts owed to Sellers and/or any of their Subsidiaries with respect to any property of Sellers or in which Sellers have an interest as more fully described in clause (x) above; it being understood that nothing in this clause (xi) or preceding clause (x) shall be deemed to modify, amend or otherwise change any agreement as between GMAC or any of its Subsidiaries and any Seller.

"Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, joint venture, limited liability company, Governmental Authority or other entity.

"Personal Information" means any information relating to an identified or identifiable living individual, including (i) first initial or first name and last name; (ii) home address or other physical address, including street name and name of city or town; (iii) e-mail address or other online contact information (e.g., instant messaging user identifier); (iv) telephone number; (v) social security number or other government-issued personal identifier such as a tax identification number or driver's license number; (vi) internet protocol address; (vii) persistent identifier (e.g., a unique customer number in a cookie); (viii) financial account information (account number, credit or debit card numbers or banking information); (ix) date of birth; (x) mother's maiden name; (xi) medical information (including electronic protected health information as defined by the rules and regulations of the Health Information Portability and Privacy Act, as amended); (xii) digitized or electronic signature; and (xiii) any other information that is combined with any of the above.

"Personal Property" has the meaning set forth in **Section 2.2(a)(vii)**.

"Petition Date" has the meaning set forth in the Recitals.

"PLR" has the meaning set forth in **Section 6.16(g)(i)**.

"Post-Closing Tax Period" means any taxable period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

"Preferred Stock" has the meaning set forth in **Section 5.4(b)**.

"Privacy Policy" means, with respect to any Person, any written privacy policy, statement, rule or notice regarding the collection, use, access, safeguarding and retention of Personal Information or "Personally Identifiable Information" (as defined by Section 101(41A) of the Bankruptcy Code) of any individual, including a customer, potential customer, employee or former employee of such Person, or an employee of any of such Person's automotive or parts dealers.

"Product Liabilities" has the meaning set forth in **Section 2.3(a)(ix)**.

"Promark UK Subsidiaries" has the meaning set forth in **Section 6.34**.

"Proposed Rejectable Executory Contract" has the meaning set forth in **Section 6.6(b)**.

"Purchase Price" has the meaning set forth in **Section 3.2(a)**.

"Purchased Assets" has the meaning set forth in **Section 2.2(a)**.

"Purchased Contracts" has the meaning set forth in **Section 2.2(a)(x)**.

"Purchased Subsidiaries" means, collectively, the direct Subsidiaries of Sellers included in the Transferred Entities, and their respective direct and indirect Subsidiaries, in each case, as of the Closing Date.

"Purchased Subsidiaries Employee Benefit Plans" means any (i) defined benefit or defined contribution retirement plan maintained by any Purchased Subsidiary and (ii) severance, change in control, bonus, incentive or any similar plan or arrangement maintained by a Purchased Subsidiary for the benefit of officers or senior management of such Purchased Subsidiary.

"Purchaser" has the meaning set forth in the Preamble.

"Purchaser Assumed Debt" has the meaning set forth in **Section 2.3(a)(i)**.

"Purchaser Expense Reimbursement" has the meaning set forth in **Section 8.2(b)**.

"Purchaser Material Adverse Effect" has the meaning set forth in **Section 5.3(a)**.

"Purchaser's Disclosure Schedule" means the Schedule pertaining to, and corresponding to the Section references of this Agreement, delivered by Purchaser immediately prior to the execution of the Original Agreement.

"Quitclaim Deeds" has the meaning set forth in **Section 7.2(c)(x)**.

"Receivables" has the meaning set forth in **Section 2.2(a)(iii)**.

"Rejectable Executory Contract" has the meaning set forth in **Section 6.6(b)**.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, discarding, burying, abandoning or disposing into the Environment of Hazardous Materials that is prohibited under, or reasonably likely to result in a Liability under, any applicable Environmental Law.

"Relevant Information" has the meaning set forth in **Section 6.16(g)(ii)**.

"Relevant Transactions" has the meaning set forth in **Section 6.16(g)(i)**.

"Ren Cen Lease" has the meaning set forth in **Section 6.30**.

"Representatives" means all officers, directors, employees, consultants, agents, lenders, accountants, attorneys and other representatives of a Person.

"Required Subdivision" has the meaning set forth in **Section 6.27(a)**.

"Restricted Cash" has the meaning set forth in **Section 2.2(a)(ii)**.

"Retained Liabilities" has the meaning set forth in **Section 2.3(b)**.

"Retained Plans" means any Parent Employee Benefit Plan and Policy that is not an Assumed Plan.

"Retained Subsidiaries" means all Subsidiaries of Sellers and their respective direct and indirect Subsidiaries, as of the Closing Date, other than the Purchased Subsidiaries.

"Retained Workers' Compensation Claims" has the meaning set forth in **Section 2.3(b)(xii)**.

"RHI" has the meaning set forth in **Section 6.30**.

"RHI Post-Closing Period" has the meaning set forth in **Section 6.30**.

"S Distribution" has the meaning set forth in the Preamble.

"S LLC" has the meaning set forth in the Preamble.

"Saginaw Landfill" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Metal Casting Land" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Nodular Iron Land" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Service Contracts" has the meaning set forth in **Section 6.27(b)**.

"Sale Approval Order" has the meaning set forth in **Section 6.4(b)**.

"Sale Hearing" means the hearing of the Bankruptcy Court to approve the Sale Procedures and Sale Motion and enter the Sale Approval Order.

"Sale Procedures and Sale Motion" has the meaning set forth in **Section 6.4(b)**.

"Sale Procedures Order" has the meaning set forth in **Section 6.4(b)**.

"SEC" means the United States Securities and Exchange Commission.

"Secured Real Property Encumbrances" means all Encumbrances related to the Indebtedness of Sellers, which is secured by one or more parcels of the Owned Real Property, including Encumbrances related to the Indebtedness of Sellers under any synthetic lease arrangements at the White Marsh, Maryland GMPT - Baltimore manufacturing facility and the Memphis, Tennessee (SPO - Memphis) facility.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Seller" or "Sellers" has the meaning set forth in the Preamble.

"Seller Group" means any combined, unitary, consolidated or other affiliated group of which any Seller or Purchased Subsidiary is or has been a member for federal, state, provincial, local or foreign Tax purposes.

"Seller Key Personnel" means those individuals described on Section 1.1E of the Sellers' Disclosure Schedule.

"Seller Material Contracts" has the meaning set forth in **Section 4.16(a)**.

"Sellers' Disclosure Schedule" means the Schedule pertaining to, and corresponding to the Section references of this Agreement, delivered by Sellers to Purchaser immediately prior to the execution of this Agreement, as updated and supplemented pursuant to **Section 6.5**, **Section 6.6** and **Section 6.26**.

"Series A Preferred Stock" has the meaning set forth in **Section 5.4(b)**.

"Settlement Agreement" means the Settlement Agreement, dated February 21, 2008 (as amended, supplemented, replaced or otherwise altered from time to time), among Parent, the UAW and certain class representatives, on behalf of the class of plaintiffs in the class action of

Int'l Union, UAW, et al. v. General Motors Corp., Civil Action No. 07-14074 (E.D. Mich. filed Sept. 9, 2007).

"Shared Executory Contracts" has the meaning set forth in **Section 6.6(d)**.

"Software" means all software of any type (including programs, applications, middleware, utilities, tools, drivers, firmware, microcode, scripts, batch files, JCL files, instruction sets and macros) and in any form (including source code, object code, executable code and user interface), databases and associated data and related documentation, in each case owned, acquired or licensed by any Seller.

"Software Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to use, modify, reproduce, distribute or create derivative works of any Software.

"Sponsor" means the United States Department of the Treasury.

"Sponsor Affiliate" has the meaning set forth in **Section 9.22**.

"Sponsor Shares" has the meaning set forth in **Section 5.4(c)**.

"Straddle Period" means a taxable period that includes but does not end on the Closing Date.

"Subdivision Master Lease" has the meaning set forth in **Section 6.27(a)**.

"Subdivision Properties" has the meaning set forth in **Section 6.27(a)**.

"Subsidiary" or "Subsidiaries" means, with respect to any Person, any corporation, limited liability company, partnership or other legal entity (in each case, other than a joint venture if such Person is not empowered to control the day-to-day operations of such joint venture) of which such Person (either alone or through or together with any other Subsidiary) owns, directly or indirectly, more than fifty percent (50%) of the Equity Interests, the holder of which is entitled to vote for the election of the board of directors or other governing body of such corporation, limited liability company, partnership or other legal entity.

"Superior Bid" has the meaning set forth in **Section 6.4(d)**.

"TARP" means the Troubled Assets Relief Program established by Sponsor under the Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, effective as of October 3, 2008, as amended by Section 7001 of Division B, Title VII of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, effective as of February 17, 2009, as may be further amended and in effect from time to time and any guidance issued by a regulatory authority thereunder and other related Laws in effect currently or in the future in the United States.

"Tax" or "Taxes" means any federal, state, provincial, local, foreign and other income, alternative minimum, accumulated earnings, personal holding company, franchise, capital stock,

net worth or gross receipts, income, alternative or add-on minimum, capital, capital gains, sales, use, ad valorem, franchise, profits, license, privilege, transfer, withholding, payroll, employment, social, excise, severance, stamp, occupation, premium, goods and services, value added, property (including real property and personal property taxes), environmental, windfall profits or other taxes, customs, duties or similar fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any Governmental Authority, including any transferee, successor or secondary liability for any such tax and any Liability assumed by Contract or arising as a result of being or ceasing to be a member of any affiliated group or similar group under state, provincial, local or foreign Law, or being included or required to be included in any Tax Return relating thereto.

"Tax Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Taxing Authority" means, with respect to any Tax, the Governmental Authority thereof that imposes such Tax and the agency, court or other Person or body (if any) charged with the interpretation, administration or collection of such Tax for such Governmental Authority.

"Tax Return" means any return, report, declaration, form, election letter, statement or other information filed or required to be filed with any Governmental Authority with respect to Taxes, including any schedule or attachment thereto or amendment thereof.

"Trademark Licenses" means all Contracts naming any Seller as licensor or licensee and providing for the grant of any right concerning any Trademark together with any goodwill connected with and symbolized by any such Trademark or Trademark Contract, and the right to prepare for sale or lease and sell or lease any and all products, inventory or services now or hereafter owned or provided by any Seller or any other Person and now or hereafter covered by such Contracts.

"Trademarks" means all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, designs, logos and other source or business identifiers, and all general intangibles of like nature, now or hereafter owned, adopted, used, acquired, or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof) and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by or associated with such marks.

"Trade Secrets" means all trade secrets or Confidential Information, including any confidential technical and business information, program, process, method, plan, formula, product design, compilation of information, customer list, sales forecast, know-how, Software, and any other confidential proprietary intellectual property, and all additions and improvements to, and books and records describing or used in connection with, any of the foregoing, in each case, owned, acquired or licensed by any Seller.

"Trade Secret Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any rights with respect to Trade Secrets.

"Transfer Taxes" means all transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the transactions contemplated hereby and not otherwise exempted under the Bankruptcy Code, including relating to the transfer of the Transferred Real Property.

"Transfer Tax Forms" has the meaning set forth in **Section 7.2(c)(xi)**.

"Transferred Employee" has the meaning set forth in **Section 6.17(a)**.

"Transferred Entities" means all of the direct Subsidiaries of Sellers and joint venture entities or other entities in which any Seller has an Equity Interest, other than the Excluded Entities.

"Transferred Equity Interests" has the meaning set forth in **Section 2.2(a)(v)**.

"Transferred Real Property" has the meaning set forth in **Section 2.2(a)(vi)**.

"Transition Services Agreement" has the meaning set forth in **Section 7.2(c)(ix)**.

"Transition Team" has the meaning set forth in **Section 6.11(c)**.

"UAW" means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

"UAW Active Labor Modifications" means the modifications to the UAW Collective Bargaining Agreement, as agreed to in the 2009 Addendum to the 2007 UAW-GM National Agreement, dated May 17, 2009, the cover page of which is attached hereto as **Exhibit C** (the 2009 Addendum without attachments), which modifications were ratified by the UAW membership on May 29, 2009.

"UAW Collective Bargaining Agreement" means any written or oral Contract, understanding or mutually recognized past practice between Sellers and the UAW with respect to Employees, including the UAW Active Labor Modifications, but excluding the agreement to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between Parent and the UAW, and the Settlement Agreement. For purpose of clarity, the term "UAW Collective Bargaining Agreement" includes all special attrition programs, divestiture-related memorandums of understanding or implementation agreements relating to any unit or location where covered UAW-represented employees remain and any current local agreement between Parent and a UAW local relating to any unit or location where UAW-represented employees are employed as of the date of the Original Agreement. For purposes of clarity, nothing in this definition extends the coverage of the UAW-GM National Agreement to any Employee of S LLC, S Distribution, Harlem, a Purchased Subsidiary or one of Parent's Affiliates; nothing in this Agreement creates a direct employment relationship with a Purchased Subsidiary's employee or an Affiliate's Employee and Parent.

"UAW Retiree Settlement Agreement" means the UAW Retiree Settlement Agreement to be executed prior to the Closing, substantially in the form attached hereto as **Exhibit D**.

"Union" means any labor union, organization or association representing any employees (but not including the UAW) with respect to their employment with any of Sellers or their Affiliates.

"United States" or "U.S." means the United States of America, including its territories and insular possessions.

"UST Credit Bid Amount" has the meaning set forth in **Section 3.2(a)(i)**.

"UST Credit Facilities" means (i) the Existing UST Loan and Security Agreement and (ii) those certain promissory notes dated December 31, 2008, April 22, 2009, May 20, 2009, and May 27, 2009, issued by Parent to Sponsor as additional compensation for the extensions of credit under the Existing UST Loan and Security Agreement, in each case, as amended.

"UST Warrant" means the warrant issued by Parent to Sponsor in consideration for the extension of credit made available to Parent under the Existing UST Loan and Security Agreement.

"VEBA Shares" has the meaning set forth in **Section 5.4(c)**.

"VEBA Note" has the meaning set forth in **Section 7.3(g)(iv)**.

"VEBA Warrant" means warrants to acquire 15,151,515 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit E**.

"Viability Plans" means (i) Parent's Restructuring Plan for Long-Term Viability, dated December 2, 2008; (ii) Parent's 2009-2014 Restructuring Plan, dated February 17, 2009; (iii) Parent's 2009-2014 Restructuring Plan: Progress Report, dated March 30, 2009; and (iv) Parent's Revised Viability Plan, all as described in Parent's Registration Statement on Form S-4 (Reg. No 333-158802), initially filed with the SEC on April 27, 2009, in each case, as amended, supplemented and/or superseded.

"WARN" means the Workers Adjustment and Retraining Notification Act of 1988, as amended, and similar foreign, state and local Laws.

"Willow Run Landlord" means the Wayne County Airport Authority, or any successor landlord under the Willow Run Lease.

"Willow Run Lease" means that certain Willow Run Airport Lease of Land dated October 11, 1985, as the same may be amended, by and between the Willow Run Landlord, as landlord, and Parent, as tenant, for certain premises located at the Willow Run Airport in Wayne and Washtenaw Counties, Michigan.

"Willow Run Lease Amendment" has the meaning set forth in **Section 6.27(e)**.

"Wind Down Facility" has the meaning set forth in **Section 6.9(b)**.

Section 1.2 Other Interpretive Provisions. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole (including the Sellers' Disclosure Schedule) and not to any particular provision of this Agreement, and all Article, Section, Sections of the Sellers' Disclosure Schedule and Exhibit references are to this Agreement unless otherwise specified. The words "include", "includes" and "including" are deemed to be followed by the phrase "without limitation." The meanings given to terms defined herein are equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to "Dollars" or "$" are deemed references to lawful money of the United States. Unless otherwise specified, references to any statute, listing rule, rule, standard, regulation or other Law (a) include a reference to the corresponding rules and regulations and (b) include a reference to each of them as amended, modified, supplemented, consolidated, replaced or rewritten from time to time, and to any section of any statute, listing rule, rule, standard, regulation or other Law, including any successor to such section. Where this Agreement states that a Party "shall" or "will" perform in some manner or otherwise act or omit to act, it means that the Party is legally obligated to do so in accordance with this Agreement.

ARTICLE II
PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets; Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, other than as set forth in **Section 6.30**, **Section 6.34** and **Section 6.35**, at the Closing, Purchaser shall (a) purchase, accept and acquire from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, free and clear of all Encumbrances (other than Permitted Encumbrances), Claims and other interests, the Purchased Assets and (b) assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities.

Section 2.2 Purchased and Excluded Assets.

(a) The "Purchased Assets" shall consist of the right, title and interest that Sellers possess and have the right to legally transfer in and to all of the properties, assets, rights, titles and interests of every kind and nature, owned, leased, used or held for use by Sellers (including indirect and other forms of beneficial ownership), whether tangible or intangible, real, personal or mixed, and wherever located and by whomever possessed, in each case, as the same may exist as of the Closing, including the following properties, assets, rights, titles and interests (but, in every case, excluding the Excluded Assets):

(i) all cash and cash equivalents, including all marketable securities, certificates of deposit and all collected funds or items in the process of collection at Sellers' financial institutions through and including the Closing, and all bank deposits, investment accounts and lockboxes related thereto, other than the Excluded Cash and Restricted Cash;

(ii) all restricted or escrowed cash and cash equivalents, including restricted marketable securities and certificates of deposit (collectively, "Restricted Cash") other than the Restricted Cash described in **Section 2.2(b)(ii)**;

(iii) all accounts and notes receivable and other such Claims for money due to Sellers, including the full benefit of all security for such accounts, notes and Claims, however arising, including arising from the rendering of services or the sale of goods or materials, together with any unpaid interest accrued thereon from the respective obligors and any security or collateral therefor, other than intercompany receivables (collectively, "Receivables");

(iv) all intercompany obligations ("Intercompany Obligations") owed or due, directly or indirectly, to Sellers by any Subsidiary of a Seller or joint venture or other entity in which a Seller or a Subsidiary of a Seller has any Equity Interest;

(v) (A) subject to **Section 2.4**, all Equity Interests in the Transferred Entities (collectively, the "Transferred Equity Interests") and (B) the corporate charter, qualification to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates and any other documents relating to the organization, maintenance and existence of each Transferred Entity;

(vi) all Owned Real Property and Leased Real Property (collectively, the "Transferred Real Property");

(vii) all machinery, equipment (including test equipment and material handling equipment), hardware, spare parts, tools, dies, jigs, molds, patterns, gauges, fixtures (including production fixtures), business machines, computer hardware, other information technology assets, furniture, supplies, vehicles, spare parts in respect of any of the foregoing and other tangible personal property (including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit) that does not constitute Inventory (collectively, "Personal Property"), including the Personal Property located at the Excluded Real Property and identified on Section 2.2(a)(vii) of the Sellers' Disclosure Schedule;

(viii) all inventories of vehicles, raw materials, work-in-process, finished goods, supplies, stock, parts, packaging materials and other accessories related thereto (collectively, "Inventory"), wherever located, including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit or that is classified as returned goods;

(ix) (A) all Intellectual Property, whether owned, licensed or otherwise held, and whether or not registrable (including any Trademarks and other Intellectual Property associated with the Discontinued Brands), and (B) all rights

and benefits associated with the foregoing, including all rights to sue or recover for past, present and future infringement, misappropriation, dilution, unauthorized use or other impairment or violation of any of the foregoing, and all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing;

(x) subject to **Section 2.4**, all Contracts, other than the Excluded Contracts (collectively, the "Purchased Contracts"), including, for the avoidance of doubt, (A) the UAW Collective Bargaining Agreement and (B) any Executory Contract designated as an Assumable Executory Contract as of the applicable Assumption Effective Date;

(xi) subject to **Section 2.4**, all approvals, Contracts, authorizations, permits, licenses, easements, Orders, certificates, registrations, franchises, qualifications, rulings, waivers, variances or other forms of permission, consent, exemption or authority issued, granted, given or otherwise made available by or under the authority of any Governmental Authority, including all pending applications therefor and all renewals and extensions thereof (collectively, "Permits"), other than to the extent that any of the foregoing relate exclusively to the Excluded Assets or Retained Liabilities;

(xii) all credits, deferred charges, prepaid expenses, deposits, advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating to the Purchased Assets or Assumed Liabilities, including all warranties, rights and guarantees (whether express or implied) made by suppliers, manufacturers, contractors and other third parties under or in connection with the Purchased Contracts;

(xiii) all Claims (including Tax refunds) relating to the Purchased Assets or Assumed Liabilities, including the Claims identified on Section 2.2(a)(xiii) of the Sellers' Disclosure Schedule and all Claims against any Taxing Authority for any period, other than Bankruptcy Avoidance Actions and any of the foregoing to the extent that they relate exclusively to the Excluded Assets or Retained Liabilities;

(xiv) all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, drawings, advertising and promotional materials, reports and other materials (in whatever form or medium), including Tax books and records and Tax Returns used or held for use in connection with the ownership or operation of the Purchased Assets or Assumed Liabilities, including the Purchased Contracts, customer lists, customer information and account records, computer files, data processing records, employment and personnel records, advertising and marketing data and records, credit records, records relating to suppliers, legal records and information and other data;

(xv) all goodwill and other intangible personal property arising in connection with the ownership, license, use or operation of the Purchased Assets or Assumed Liabilities;

(xvi) to the extent provided in **Section 6.17(e)**, all Assumed Plans;

(xvii) all insurance policies and the rights to the proceeds thereof, other than the Excluded Insurance Policies;

(xviii) any rights of any Seller, Subsidiary of any Seller or Seller Group member to any Tax refunds, credits or abatements that relate to any Pre-Closing Tax Period or Straddle Period; and

(xix) any interest in Excluded Insurance Policies, only to the extent such interest relates to any Purchased Asset or Assumed Liability.

(b) Notwithstanding anything to the contrary contained in this Agreement, Sellers shall retain all of their respective right, title and interest in and to, and shall not, and shall not be deemed to, sell, transfer, assign, convey or deliver to Purchaser, and the Purchased Assets shall not, and shall not be deemed to, include the following (collectively, the "Excluded Assets"):

(i) cash or cash equivalents in an amount equal to $950,000,000 (the "Excluded Cash");

(ii) all Restricted Cash exclusively relating to the Excluded Assets or Retained Liabilities;

(iii) all Receivables (other than Intercompany Obligations) exclusively related to any Excluded Assets or Retained Liabilities;

(iv) all of Sellers' Equity Interests in (A) S LLC, (B) S Distribution, (C) Harlem and (D) the Subsidiaries, joint ventures and the other entities in which any Seller has any Equity Interest and that are identified on Section 2.2(b)(iv) of the Sellers' Disclosure Schedule (collectively, the "Excluded Entities");

(v) (A) all owned real property set forth on **Exhibit F** and such additional owned real property set forth on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (including, in each case, any structures, buildings or other improvements located thereon and appurtenances thereto) and (B) all real property leased or subleased that is subject to a Contract designated as an "Excluded Contract" (collectively, the "Excluded Real Property");

(vi) all Personal Property that is (A) located at the Transferred Real Property and identified on Section 2.2(b)(vi) of the Sellers' Disclosure Schedule, (B) located at the Excluded Real Property, except for those items identified on Section 2.2(a)(vii) of the Sellers' Disclosure Schedule or (C) subject to a Contract

designated as an Excluded Contract (collectively, the "Excluded Personal Property");

(vii) (A) all Contracts identified on Section 2.2(b)(vii) of the Sellers' Disclosure Schedule immediately prior to the Closing, (B) all pre-petition Executory Contracts designated as Rejectable Executory Contracts, (C) all pre-petition Executory Contracts (including, for the avoidance of doubt, the Delphi Transaction Agreements and GM Assumed Contracts) that have not been designated as or deemed to be Assumable Executory Contracts in accordance with **Section 6.6** or **Section 6.31**, or that are determined, pursuant to the procedures set forth in the Sale Procedures Order, not to be assumable and assignable to Purchaser, (D) all Collective Bargaining Agreements not set forth on the Assumable Executory Contract Schedule and (E) all non-Executory Contracts for which performance by a third-party or counterparty is substantially complete and for which a Seller owes a continuing or future obligation with respect to such non-Executory Contracts (collectively, the "Excluded Contracts"), including any accounts receivable arising out of or in connection with any Excluded Contract; it being understood and agreed by the Parties hereto that, notwithstanding anything to the contrary herein, in no event shall the UAW Collective Bargaining Agreement be designated or otherwise deemed or considered an Excluded Contract;

(viii) all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, drawings, advertising and promotional materials, reports and other materials (in whatever form or medium) relating exclusively to the Excluded Assets or Retained Liabilities, and any books, records and other materials that any Seller is required by Law to retain;

(ix) the corporate charter, qualification to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates and any other documents relating to the organization, maintenance and existence of each Seller and each Excluded Entity;

(x) all Claims against suppliers, dealers and any other third parties relating exclusively to the Excluded Assets or Retained Liabilities;

(xi) all of Sellers' Claims under this Agreement, the Ancillary Agreements and the Bankruptcy Code, of whatever kind or nature, as set forth in Sections 544 through 551 (inclusive), 553, 558 and any other applicable provisions of the Bankruptcy Code, and any related Claims and actions arising under such sections by operation of Law or otherwise, including any and all proceeds of the foregoing (the "Bankruptcy Avoidance Actions"), but in all cases, excluding all rights and Claims identified on Section 2.2(b)(xi) of the Sellers' Disclosure Schedule;

(xii) all credits, deferred charges, prepaid expenses, deposits and advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating exclusively to the Excluded Assets or Retained Liabilities;

(xiii) all insurance policies identified on Section 2.2(b)(xiii) of the Sellers' Disclosure Schedule and the rights to proceeds thereof (collectively, the "Excluded Insurance Policies"), other than any rights to proceeds to the extent such proceeds relate to any Purchased Asset or Assumed Liability;

(xiv) all Permits, to the extent that they relate exclusively to the Excluded Assets or Retained Liabilities;

(xv) all Retained Plans; and

(xvi) those assets identified on Section 2.2(b)(xvi) of the Sellers' Disclosure Schedule.

Section 2.3 Assumed and Retained Liabilities.

(a) The "Assumed Liabilities" shall consist only of the following Liabilities of Sellers:

(i) $7,072,488,605 of Indebtedness incurred under the DIP Facility, to be restructured pursuant to the terms of **Section 6.9** (the "Purchaser Assumed Debt");

(ii) all Liabilities under each Purchased Contract;

(iii) all Intercompany Obligations owed or due, directly or indirectly, by Sellers to (A) any Purchased Subsidiary or (B) any joint venture or other entity in which a Seller or a Purchased Subsidiary has any Equity Interest (other than an Excluded Entity);

(iv) all Cure Amounts under each Assumable Executory Contract that becomes a Purchased Contract;

(v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Case through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers' Liabilities in clauses (A) and (B) above include Sellers' Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes), in each case, other than (1) Liabilities of the type described in

Section 2.3(b)(iv), **Section 2.3(b)(vi)** and **Section 2.3(b)(ix)**, (2) Liabilities arising under any dealer sales and service Contract and any Contract related thereto, to the extent such Contract has been designated as a Rejectable Executory Contract, and (3) Liabilities otherwise assumed in this **Section 2.3(a)**;

(vi) all Transfer Taxes payable in connection with the sale, transfer, assignment, conveyance and delivery of the Purchased Assets pursuant to the terms of this Agreement;

(vii) (A) all Liabilities arising under express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws;

(viii) all Liabilities arising under any Environmental Law (A) relating to conditions present on the Transferred Real Property, other than those Liabilities described in **Section 2.3(b)(iv)**, (B) resulting from Purchaser's ownership or operation of the Transferred Real Property after the Closing or (C) relating to Purchaser's failure to comply with Environmental Laws after the Closing;

(ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities"), which arise directly out of accidents, incidents or other distinct and discreet occurrences that happen on or after the Closing Date and arise from such motor vehicles' operation or performance (for avoidance of doubt, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including asbestos, silicates or fluids, regardless of when such alleged exposure occurs);

(x) all Liabilities of Sellers arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Seller, except for Retained Workers' Compensation Claims;

(xi) all Liabilities arising out of, relating to, in respect of, or in connection with the use, ownership or sale of the Purchased Assets after the Closing;

(xii) all Liabilities (A) specifically assumed by Purchaser pursuant to **Section 6.17** and (B) arising out of, relating to or in connection with the salaries and/or wages and vacation of all Transferred Employees that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date;

(xiii) (A) all Employment-Related Obligations and (B) Liabilities under any Assumed Plan, in each case, relating to any Employee that is or was covered by the UAW Collective Bargaining Agreement, except for Retained Workers Compensation Claims;

(xiv) all Liabilities of Sellers underlying any construction liens that constitute Permitted Encumbrances with respect to Transferred Real Property; and

(xv) those other Liabilities identified on Section 2.3(a)(xv) of the Sellers' Disclosure Schedule.

(b) Each Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability of any Seller, whether occurring or accruing before, at or after the Closing, other than the Assumed Liabilities. In furtherance and not in limitation of the foregoing, and in all cases with the exception of the Assumed Liabilities, neither Purchaser nor any of its Affiliates shall assume, or be deemed to have assumed, any Indebtedness, Claim or other Liability of any Seller or any predecessor, Subsidiary or Affiliate of any Seller whatsoever, whether occurring or accruing before, at or after the Closing, including the following (collectively, the "Retained Liabilities"):

(i) all Liabilities arising out of, relating to, in respect of or in connection with any Indebtedness of Sellers (other than Intercompany Obligations and the Purchaser Assumed Debt), including those items identified on Section 2.3(b)(i) of the Sellers' Disclosure Schedule;

(ii) all Intercompany Obligations owed or due, directly or indirectly, by Sellers to (A) another Seller, (B) any Excluded Subsidiary or (C) any joint venture or other entity in which a Seller or an Excluded Subsidiary has an Equity Interest (other than a Transferred Entity);

(iii) all Liabilities arising out of, relating to, in respect of or in connection with the Excluded Assets, other than Liabilities otherwise retained in this **Section 2.3(b)**;

(iv) all Liabilities (A) associated with noncompliance with Environmental Laws (including for fines, penalties, damages and remedies); (B) arising out of, relating to, in respect of or in connection with the transportation, off-site storage or off-site disposal of any Hazardous Materials generated or located at any Transferred Real Property; (C) arising out of, relating to, in respect of or in connection with third-party Claims related to Hazardous Materials that were or are located at or that migrated or may migrate from any Transferred Real Property, except as otherwise required under applicable Environmental Laws; (D) arising under Environmental Laws related to the Excluded Real Property; or (E) for environmental Liabilities with respect to real property formerly owned, operated or leased by Sellers (as of the Closing), which, in the case of clauses (A),

(B) and (C), arose prior to or at the Closing, and which, in the case of clause (D) and (E), arise prior to, at or after the Closing;

(v) except for Taxes assumed in **Section 2.3(a)(v)** and **Section 2.3(a)(vi)**, all Liabilities with respect to any (A) Taxes arising in connection with Sellers' business, the Purchased Assets or the Assumed Liabilities and that are attributable to a Pre-Closing Tax Period (including any Taxes incurred in connection with the sale of the Purchased Assets, other than all Transfer Taxes), (B) other Taxes of any Seller and (C) Taxes of any Seller Group, including any Liability of any Seller or any Seller Group member for Taxes arising as a result of being or ceasing to be a member of any Seller Group (it being understood, for the avoidance of doubt, that no provision of this Agreement shall cause Sellers to be liable for Taxes of any Purchased Subsidiary for which Sellers would not be liable absent this Agreement);

(vi) all Liabilities for (A) costs and expenses relating to the preparation, negotiation and entry into this Agreement and the Ancillary Agreements (and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, which, for the avoidance of doubt, shall not include any Transfer Taxes), including Advisory Fees, (B) administrative fees, professional fees and all other expenses under the Bankruptcy Code and (C) all other fees and expenses associated with the administration of the Bankruptcy Cases;

(vii) all Employment-Related Obligations not otherwise assumed in **Section 2.3(a)** and **Section 6.17**, including those arising out of, relating to, in respect of or in connection with the employment, potential employment or termination of employment of any individual (other than any Employee that is or was covered by the UAW Collective Bargaining Agreement) (A) prior to or at the Closing (including any severance policy, plan or program that exists or arises, or may be deemed to exist or arise, as a result of, or in connection with, the transactions contemplated by this Agreement) or (B) who is not a Transferred Employee arising after the Closing and with respect to both clauses (A) and (B) above, including any Liability arising out of, relating to, in respect of or in connection with any Collective Bargaining Agreement (other than the UAW Collective Bargaining Agreement);

(viii) all Liabilities arising out of, relating to, in respect of or in connection with Claims for infringement or misappropriation of third party intellectual property rights;

(ix) all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date;

(x) all Liabilities to third parties for death, personal injury, other injury to Persons or damage to property, in each case, arising out of asbestos exposure;

(xi) all Liabilities to third parties for Claims based upon Contract, tort or any other basis;

(xii) all workers' compensation Claims with respect to Employees residing in or employed in, as the case may be as defined by applicable Law, the states set forth on **Exhibit G** (collectively, "Retained Workers' Compensation Claims");

(xiii) all Liabilities arising out of, relating to, in respect of or in connection with any Retained Plan;

(xiv) all Liabilities arising out of, relating to, in respect of or in connection with any Assumed Plan or Purchased Subsidiaries Employee Benefit Plan, but only to the extent such Liabilities result from the failure of such Assumed Plan or Purchased Subsidiaries Employee Benefit Plan to comply in all respects with TARP or such Liability related to any changes to or from the administration of such Assumed Plan or Purchased Subsidiaries Employee Benefit Plan prior to the Closing Date;

(xv) the Settlement Agreement, except as provided with respect to Liabilities under Section 5A of the UAW Retiree Settlement Agreement; and

(xvi) all Liabilities arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to Sellers.

Section 2.4 Non-Assignability.

(a) If any Contract, Transferred Equity Interest (or any interest therein), Permit or other asset, which by the terms of this Agreement, is intended to be included in the Purchased Assets is determined not capable of being assigned or transferred (whether pursuant to Sections 363 or 365 of the Bankruptcy Code) to Purchaser at the Closing without the consent of another party thereto, the issuer thereof or any third party (including a Governmental Authority) ("Non-Assignable Assets"), this Agreement shall not constitute an assignment thereof, or an attempted assignment thereof, unless and until any such consent is obtained. Subject to **Section 6.3**, Sellers shall use reasonable best efforts, and Purchaser shall use reasonable best efforts to cooperate with Sellers, to obtain the consents necessary to assign to Purchaser the Non-Assignable Assets before, at or after the Closing; provided, however, that neither Sellers nor Purchaser shall be required to make any expenditure, incur any Liability, agree to any modification to any Contract or forego or alter any rights in connection with such efforts.

(b) To the extent that the consents referred to in **Section 2.4(a)** are not obtained by Sellers, except as otherwise provided in the Ancillary Documents to which one or more Sellers is a party, Sellers' sole responsibility with respect to such Non-Assignable Assets shall be to use reasonable best efforts, at no cost to Sellers, to (i) provide to Purchaser the benefits of any Non-Assignable Assets; (ii) cooperate in any

reasonable and lawful arrangement designed to provide the benefits of any Non-Assignable Assets to Purchaser without incurring any financial obligation to Purchaser; and (iii) enforce for the account of Purchaser and at the cost of Purchaser any rights of Sellers arising from any Non-Assignable Asset against such party or parties thereto; provided, however, that any such efforts described in clauses (i) through (iii) above shall be made only with the consent, and at the direction, of Purchaser. Without limiting the generality of the foregoing, with respect to any Non-Assignable Asset that is a Contract of Leased Real Property for which a consent is not obtained on or prior to the Closing Date, Purchaser shall enter into a sublease containing the same terms and conditions as such lease (unless such lease by its terms prohibits such subleasing arrangement), and entry into and compliance with such sublease shall satisfy the obligations of the Parties under this **Section 2.4(b)** until such consent is obtained.

(c) If Purchaser is provided the benefits of any Non-Assignable Asset pursuant to **Section 2.4(b)**, Purchaser shall perform, on behalf of the applicable Seller, for the benefit of the issuer thereof or the other party or parties thereto, the obligations (including payment obligations) of the applicable Seller thereunder or in connection therewith arising from and after the Closing Date and if Purchaser fails to perform to the extent required herein, Sellers, without waiving any rights or remedies that they may have under this Agreement or applicable Laws, may (i) suspend their performance under **Section 2.4(b)** in respect of the Non-Assignable Asset that is the subject of such failure to perform unless and until such situation is remedied, or (ii) perform at Purchaser's sole cost and expense, in which case, Purchaser shall reimburse Sellers' costs and expenses of such performance immediately upon receipt of an invoice therefor. To the extent that Purchaser is provided the benefits of any Non-Assignable Asset pursuant to **Section 2.4(b),** Purchaser shall indemnify, defend and hold Sellers harmless from and against any and all Liabilities relating to such Non-Assignable Asset and arising from and after the Closing Date (other than such Damages that have resulted from the gross negligence or willful misconduct of Sellers).

(d) For the avoidance of doubt, the inability of any Contract, Transferred Equity Interest (or any other interest therein), Permit or other asset, which by the terms of this Agreement is intended to be included in the Purchased Assets to be assigned or transferred to Purchaser at the Closing shall not (i) give rise to a basis for termination of this Agreement pursuant to **ARTICLE VIII** or (ii) give rise to any right to any adjustment to the Purchase Price.

ARTICLE III
CLOSING; PURCHASE PRICE

Section 3.1 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall occur on the date that falls at least three (3) Business Days following the satisfaction and/or waiver of all conditions to the Closing set forth in **ARTICLE VII** (other than any of such conditions that by its nature is to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or on such other date as the Parties mutually agree, at the offices of Jenner & Block LLP, 919 Third Avenue, New York City, New York 10022-3908, or at such other place or such other date as the Parties may agree in

writing. The date on which the Closing actually occurs shall be referred to as the "Closing Date," and except as otherwise expressly provided herein, the Closing shall for all purposes be deemed effective as of 9:00 a.m., New York City time, on the Closing Date.

Section 3.2 Purchase Price.

(a) The purchase price (the "Purchase Price") shall be equal to the sum of:

(i) a Bankruptcy Code Section 363(k) credit bid in an amount equal to: (A) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing pursuant to the UST Credit Facilities, and (B) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing under the DIP Facility, less $8,022,488,605 of Indebtedness under the DIP Facility (such amount, the "UST Credit Bid Amount");

(ii) the UST Warrant (which the Parties agree has a value of no less than $1,000);

(iii) the valid issuance by Purchaser to Parent of (A) 50,000,000 shares of Common Stock (collectively, the "Parent Shares") and (B) the Parent Warrants; and

(iv) the assumption by Purchaser or its designated Subsidiaries of the Assumed Liabilities.

(b) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (i) offset, pursuant to Section 363(k) of the Bankruptcy Code, the UST Credit Bid Amount against Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities and the DIP Facility; (ii) transfer to Parent, in accordance with the instructions provided by Parent to Purchaser prior to the Closing, the UST Warrant; and (iii) issue to Parent, in accordance with the instructions provided by Parent to Purchaser prior to the Closing, the Parent Shares and the Parent Warrants.

(c)

(i) Sellers may, at any time, seek an Order of the Bankruptcy Court (the "Claims Estimate Order"), which Order may be the Order confirming Sellers' Chapter 11 plan, estimating the aggregate allowed general unsecured claims against Sellers' estates. If in the Claims Estimate Order, the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against Sellers' estates exceed $35,000,000,000, then Purchaser will, within five (5) days of entry of the Claims Estimate Order, issue 10,000,000 additional shares of Common Stock (the "Adjustment Shares") to Parent, as an adjustment to the Purchase Price.

(ii) The number of Adjustment Shares shall be adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization,

merger, consolidation, reorganization or similar transaction with respect to the Common Stock, effected from and after the Closing and before issuance of the Adjustment Shares.

(iii) At the Closing, Purchaser shall have authorized and, thereafter, shall reserve for issuance the Adjustment Shares that may be issued hereunder.

Section 3.3 Allocation. Following the Closing, Purchaser shall prepare and deliver to Sellers an allocation of the aggregate consideration among Sellers and, for any transactions contemplated by this Agreement that do not constitute an Agreed G Transaction pursuant to **Section 6.16**, Purchaser shall also prepare and deliver to the applicable Seller a proposed allocation of the Purchase Price and other consideration paid in exchange for the Purchased Assets, prepared in accordance with Section 1060, and if applicable, Section 338, of the Tax Code (the "Allocation"). The applicable Seller shall have thirty (30) days after the delivery of the Allocation to review and consent to the Allocation in writing, which consent shall not be unreasonably withheld, conditioned or delayed. If the applicable Seller consents to the Allocation, such Seller and Purchaser shall use such Allocation to prepare and file in a timely manner all appropriate Tax filings, including the preparation and filing of all applicable forms in accordance with applicable Law, including Forms 8594 and 8023, if applicable, with their respective Tax Returns for the taxable year that includes the Closing Date and shall take no position in any Tax Return that is inconsistent with such Allocation; provided, however, that nothing contained herein shall prevent the applicable Seller and Purchaser from settling any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of such Allocation, and neither the applicable Seller nor Purchaser shall be required to litigate before any court, any proposed deficiency or adjustment by any Taxing Authority challenging such Allocation. If the applicable Seller does not consent to such Allocation, the applicable Seller shall notify Purchaser in writing of such disagreement within such thirty (30) day period, and thereafter, the applicable Seller shall attempt in good faith to promptly resolve any such disagreement. If the Parties cannot resolve a disagreement under this **Section 3.3**, such disagreement shall be resolved by an independent accounting firm chosen by Purchaser and reasonably acceptable to the applicable Seller, and such resolution shall be final and binding on the Parties. The fees and expenses of such accounting firm shall be borne equally by Purchaser, on the one hand, and the applicable Seller, on the other hand. The applicable Seller shall provide Purchaser, and Purchaser shall provide the applicable Seller, with a copy of any information described above required to be furnished to any Taxing Authority in connection with the transactions contemplated herein.

Section 3.4 Prorations.

(a) The following prorations relating to the Purchased Assets shall be made:

(i) Except as provided in **Section 2.3(a)(v)** and **Section 2.3(a)(vi)**, in the case of Taxes with respect to a Straddle Period, for purposes of Retained Liabilities, the portion of any such Tax that is allocable to Sellers with respect to any Purchased Asset shall be:

(A) in the case of Taxes that are either (1) based upon or related to income or receipts, or (2) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), other than Transfer Taxes, equal to the amount that would be payable if the taxable period ended on the Closing Date; and

(B) in the case of Taxes imposed on a periodic basis, or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire Straddle Period (after giving effect to amounts which may be deducted from or offset against such Taxes) (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction, the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period.

In the case of any Tax based upon or measured by capital (including net worth or long-term debt) or intangibles, any amount thereof required to be allocated under this clause (i) shall be computed by reference to the level of such items on the Closing Date. All determinations necessary to effect the foregoing allocations shall be made in a manner consistent with prior practice of the applicable Seller, Seller Group member, or Seller Subsidiary.

(ii) All charges for water, wastewater treatment, sewers, electricity, fuel, gas, telephone, garbage and other utilities relating to the Transferred Real Property shall be prorated as of the Closing Date, with Sellers being liable to the extent such items relate to the Pre-Closing Tax Period, and Purchaser being liable to the extent such items relate to the Post-Closing Tax Period.

(b) If any of the foregoing proration amounts cannot be determined as of the Closing Date due to final invoices not being issued as of the Closing Date, Purchasers and Sellers shall prorate such items as and when the actual invoices are issued to the appropriate Party. The Party owing amounts to the other by means of such prorations shall pay the same within thirty (30) days after delivery of a written request by the paying Party.

Section 3.5 Post-Closing True-up of Certain Accounts.

(a) Sellers shall promptly reimburse Purchaser in U.S. Dollars for the aggregate amount of all checks, drafts and similar instruments of disbursement, including wire and similar transfers of funds, written or initiated by Sellers prior to the Closing in respect of any obligations that would have constituted Retained Liabilities at the Closing, and that clear or settle in accounts maintained by Purchaser (or its Affiliates) at or following the Closing.

(b) Purchaser shall promptly reimburse Sellers in U.S. Dollars for the aggregate amount of all checks, drafts and similar instruments of disbursement, including

wire and similar transfers of funds, written or initiated by Sellers following the Closing in respect of any obligations that would have constituted Assumed Liabilities at the Closing, and that clear or settle in accounts maintained by Sellers (or their Affiliates) at or following the Closing.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as disclosed in the Parent SEC Documents or in the Sellers' Disclosure Schedule, each Seller represents and warrants severally, and not jointly, to Purchaser as follows:

Section 4.1 Organization and Good Standing. Each Seller and each Purchased Subsidiary is duly organized and validly existing under the Laws of its jurisdiction of organization. Subject to the limitations imposed on Sellers as a result of having filed the Bankruptcy Cases, each Seller and each Purchased Subsidiary has all requisite corporate, limited liability company, partnership or similar power, as the case may be, and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Each Seller and each Purchased Subsidiary is duly qualified or licensed or admitted to do business, and is in good standing in (where such concept is recognized under applicable Law), the jurisdictions in which the ownership of its property or the conduct of its business requires such qualification or license, in each case, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to have a Material Adverse Effect. Sellers have made available to Purchaser prior to the execution of this Agreement true and complete copies of Sellers' Organizational Documents, in each case, as in effect on the date of this Agreement.

Section 4.2 Authorization; Enforceability. Subject to the entry and effectiveness of the Sale Approval Order, each Seller has the requisite corporate or limited liability company power and authority, as the case may be, to (a) execute and deliver this Agreement and the Ancillary Agreements to which such Seller is a party; (b) perform its obligations hereunder and thereunder; and (c) consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which such Seller is a party. Subject to the entry and effectiveness of the Sale Approval Order, this Agreement constitutes, and each Ancillary Agreement, when duly executed and delivered by each Seller that is a party thereto, shall constitute, a valid and legally binding obligation of such Seller (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of Purchaser), enforceable against such Seller in accordance with its respective terms and conditions, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.3 Noncontravention; Consents.

(a) Subject, in the case of clauses (i), (iii) and (iv), to the entry and effectiveness of the Sale Approval Order, the execution, delivery and performance by each Seller of this Agreement and the Ancillary Agreements to which it is a party, and (subject to the entry of the Sale Approval Order) the consummation by such Seller of the

transactions contemplated hereby and thereby, do not (i) violate any Law to which the Purchased Assets are subject; (ii) conflict with or result in a breach of any provision of the Organizational Documents of such Seller; (iii) result in a material breach or constitute a material default under, or create in any Person the right to terminate, cancel or accelerate any material obligation of such Seller pursuant to any material Purchased Contract (including any material License); or (iv) result in the creation or imposition of any Encumbrance, other than a Permitted Encumbrance, upon the Purchased Assets, except for any of the foregoing in the case of clauses (i), (iii) and (iv), that would not reasonably be expected to have a Material Adverse Effect.

(b) Subject to the entry and effectiveness of the Sale Approval Order, no consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority (other than the Bankruptcy Court) is required by any Seller for the consummation by each Seller of the transactions contemplated by this Agreement or by the Ancillary Agreements to which such Seller is a party or the compliance by such Seller with any of the provisions hereof or thereof, except for (i) compliance with the applicable requirements of any Antitrust Laws and (ii) such consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority, the failure of which to be received or made would not reasonably be expected to have a Material Adverse Effect.

Section 4.4 Subsidiaries. Section 4.4 of the Sellers' Disclosure Schedule identifies each Purchased Subsidiary and the jurisdiction of organization thereof. There are no Equity Interests in any Purchased Subsidiary issued, reserved for issuance or outstanding. All of the outstanding shares of capital stock, if applicable, of each Purchased Subsidiary have been duly authorized, validly issued, are fully paid and nonassessable and are owned, directly or indirectly, by Sellers, free and clear of all Encumbrances other than Permitted Encumbrances. Sellers, directly or indirectly, have good and valid title to the outstanding Equity Interests of the Purchased Subsidiaries and, upon delivery by Sellers to Purchaser of the outstanding Equity Interests of the Purchased Subsidiaries (either directly or indirectly) at the Closing, good and valid title to the outstanding Equity Interests of the Purchased Subsidiaries will pass to Purchaser (or, with respect to any Purchased Subsidiary that is not a direct Subsidiary of a Seller, the Purchased Subsidiary with regard to which it is a Subsidiary will continue to have good and valid title to such outstanding Equity Interests). None of the outstanding Equity Interests in the Purchased Subsidiaries has been conveyed in violation of, and none of the outstanding Equity Interests in the Purchased Subsidiaries has been issued in violation of (a) any preemptive or subscription rights, rights of first offer or first refusal or similar rights or (b) any voting trust, proxy or other Contract (including options or rights of first offer or first refusal) with respect to the voting, purchase, sale or other disposition thereof.

Section 4.5 Reports and Financial Statements; Internal Controls.

(a) (i) Parent has filed or furnished, or will file or furnish, as applicable, all forms, documents, schedules and reports, together with any amendments required to be made with respect thereto, required to be filed or furnished with the SEC from April 1, 2007 until the Closing (the "Parent SEC Documents"), and (ii) as of their respective

filing dates, or, if amended, as of the date of the last such amendment, the Parent SEC Documents complied or will comply in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the Parent SEC Documents contained or will contain any untrue statement of a material fact or omitted or will omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, subject, in the case of Parent SEC Documents filed or furnished during the period beginning on the date of the Original Agreement and ending on the Closing Date, to any modification by Parent of its reporting obligations under Section 12 or Section 15(d) of the Exchange Act as a result of the filing of the Bankruptcy Cases.

(b) (i) The consolidated financial statements of Parent included in the Parent SEC Documents (including all related notes and schedules, where applicable) fairly present or will fairly present in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries, as at the respective dates thereof, and (ii) the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) in conformity with GAAP (except, in the case of the unaudited statements, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto), subject, in the case of Parent SEC Documents filed or furnished during the period beginning on the date of the Original Agreement and ending on the Closing Date, to any modification by Parent of its reporting obligations under Section 12 or Section 15(d) of the Exchange Act as a result of the filing of the Bankruptcy Cases.

(c) Parent maintains a system of internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for inclusion in the Parent SEC Documents in accordance with GAAP and maintains records that (i) in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of Parent and its consolidated Subsidiaries, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are made only in accordance with appropriate authorizations and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets. There are no (A) material weaknesses in the design or operation of the internal controls of Parent or (B) to the Knowledge of Sellers, any fraud, whether or not material, that involves management or other employees of Parent or any Purchased Subsidiary who have a significant role in internal control.

Section 4.6 Absence of Certain Changes and Events. From January 1, 2009 through the date hereof, except as otherwise contemplated, required or permitted by this Agreement, there has not been:

(a) (i) any declaration, setting aside or payment of any dividend or other distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to any Seller or any Key Subsidiary without receipt of fair value) with

respect to any Equity Interests in any Seller or any Key Subsidiary or any repurchase for value of any Equity Interests or rights of any Seller or any Key Subsidiary (except for dividends and distributions among its Subsidiaries) or (ii) any split, combination or reclassification of any Equity Interests in Sellers or any issuance or the authorization of any issuance of any other Equity Interests in respect of, in lieu of or in substitution for Equity Interests of Sellers;

(b) other than as is required by the terms of the Parent Employee Benefit Plans and Policies, the Settlement Agreement, the UAW Collective Bargaining Agreement or consistent with the expiration of a Collective Bargaining Agreement or as may be required by applicable Law, in each case, as may be permitted by TARP or under any enhanced restrictions on executive compensation agreed to by Parent and Sponsor, any (i) grant to any Seller Key Personnel of any increase in compensation, except increases required under employment Contracts in effect as of January 1, 2009, or as a result of a promotion to a position of additional responsibility, (ii) grant to any Seller Key Personnel of any increase in retention, change in control, severance or termination compensation or benefits, except as required under any employment Contracts in effect as of January 1, 2009, (iii) other than in the Ordinary Course of Business, adoption, termination of, entry into or amendment or modification of, in a material manner, any Benefit Plan, (iv) adoption, termination of, entry into or amendment or modification of, in a material manner, any employment, retention, change in control, severance or termination Contract with any Seller Key Personnel or (v) entry into or amendment, modification or termination of any Collective Bargaining Agreement or other Contract with any Union of any Seller or Purchased Subsidiary;

(c) any material change in accounting methods, principles or practices by any Seller, Purchased Subsidiary or Seller Group member or any material joint venture to which any Seller or Purchased Subsidiary is a party, in each case, materially affecting the consolidated assets or Liabilities of Parent, except to the extent required by a change in GAAP or applicable Law, including Tax Laws;

(d) any sale, transfer, pledge or other disposition by any Seller or any Purchased Subsidiary of any portion of its assets or properties not in the Ordinary Course of Business and with a sale price or fair value in excess of $100,000,000;

(e) aggregate capital expenditures by any Seller or any Purchased Subsidiary in excess of $100,000,000 in a single project or group of related projects or capital expenditures in excess of $100,000,000 in the aggregate;

(f) any acquisition by any Seller or any Purchased Subsidiary (including by merger, consolidation, combination or acquisition of any Equity Interests or assets) of any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeded $100,000,000;

(g) any discharge or satisfaction of any Indebtedness by any Seller or any Purchased Subsidiary in excess of $100,000,000, other than the discharge or satisfaction of any Indebtedness when due in accordance with its terms;

(h) any alteration, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of any Seller or any Key Subsidiary or any material joint venture to which any Seller or any Key Subsidiary is a party, or the adoption or alteration of a plan with respect to any of the foregoing;

(i) any amendment or modification to the material adverse detriment of any Key Subsidiary of any material Affiliate Contract or Seller Material Contract, or termination of any material Affiliate Contract or Seller Material Contract to the material adverse detriment of any Seller or any Key Subsidiary, in each case, other than in the Ordinary Course of Business;

(j) any event, development or circumstance involving, or any change in the financial condition, properties, assets, liabilities, business, or results of operations of Sellers or any circumstance, occurrence or development (including any adverse change with respect to any circumstance, occurrence or development existing on or prior to the end of the most recent fiscal year end) of Sellers that has had or would reasonably be expected to have a Material Adverse Effect; or

(k) any commitment by any Seller, any Key Subsidiary (in the case of clauses (a), (g) and (h) above) or any Purchased Subsidiary (in the case of clauses (b) through (f) and clauses (h) and (j) above) to do any of the foregoing.

Section 4.7 Title to and Sufficiency of Assets.

(a) Subject to the entry and effectiveness of the Sale Approval Order, at the Closing, Sellers will obtain good and marketable title to, or a valid and enforceable right by Contract to use, the Purchased Assets, which shall be transferred to Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The tangible Purchased Assets of each Seller are in normal operating condition and repair, subject to ordinary wear and tear, and sufficient for the operation of such Seller's business as currently conducted, except where such instances of noncompliance with the foregoing would not reasonably be expected to have a Material Adverse Effect.

Section 4.8 Compliance with Laws; Permits.

(a) Each Seller and each Purchased Subsidiary is in compliance with and is not in default under or in violation of any applicable Law, except where such non-compliance, default or violation would not reasonably be expected to have a Material Adverse Effect. Notwithstanding anything contained in this **Section 4.8(a)**, no representation or warranty shall be deemed to be made in this **Section 4.8(a)** in respect of

the matters referenced in **Section 4.5**, **Section 4.9**, **Section 4.10**, **Section 4.11** or **Section 4.13**, each of which matters is addressed by such other Sections of this Agreement.

(b) (i) Each Seller has all Permits necessary for such Seller to own, lease and operate the Purchased Assets and (ii) each Purchased Subsidiary has all Permits necessary for such entity to own, lease and operate its properties and assets, except in each case, where the failure to possess such Permits would not reasonably be expected to have a Material Adverse Effect. All such Permits are in full force and effect, except where the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect.

Section 4.9 Environmental Laws. Except as would not reasonably be expected to have a Material Adverse Effect, to the Knowledge of Sellers, (a) each Seller and each Purchased Subsidiary has conducted its business on the Transferred Real Property in compliance with all applicable Environmental Laws; (b) none of the Transferred Real Property currently contains any Hazardous Materials, which could reasonably be expected to give rise to an undisclosed Liability under applicable Environmental Laws; (c) as of the date of this Agreement, no Seller or Purchased Subsidiary has received any currently unresolved written notices, demand letters or written requests for information from any Governmental Authority indicating that such entity may be in violation of any Environmental Law in connection with the ownership or operation of the Transferred Real Property; and (d) since April 1, 2007, no Hazardous Materials have been transported in violation of any applicable Environmental Law, or in a manner reasonably foreseen to give rise to any Liability under any Environmental Law, from any Transferred Real Property as a result of any activity of any Seller or Purchased Subsidiary. Except as provided in **Section 4.8(b)** with respect to Permits under Environmental Laws, Purchaser agrees and understands that no representation or warranty is made in respect of environmental matters in any Section of this Agreement other than this **Section 4.9**.

Section 4.10 Employee Benefit Plans.

(a) Section 4.10 of the Sellers' Disclosure Schedule sets forth all material Parent Employee Benefit Plans and Policies and Purchased Subsidiaries Employee Benefit Plans (collectively, the "Benefit Plans"). Sellers have made available, upon reasonable request, to Purchaser true, complete and correct copies of (i) each material Benefit Plan, (ii) the three (3) most recent annual reports on Form 5500 (including all schedules, auditor's reports and attachments thereto) filed with the IRS with respect to each such Benefit Plan (if any such report was required by applicable Law), (iii) the most recent actuarial or other financial report prepared with respect to such Benefit Plan, if any, (iv) each trust agreement and insurance or annuity Contract or other funding or financing arrangement relating to such Benefit Plan and (v) to the extent not subject to confidentiality restrictions, any material written communications received by Sellers or any Subsidiaries of Sellers from any Governmental Authority relating to a Benefit Plan, including any communication from the Pension Benefit Guaranty Corporation (the "PBGC"), in respect of any Benefit Plan, subject to Title IV of ERISA.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each Benefit Plan has been administered in accordance with its terms, (ii) each

of Sellers, any of their Subsidiaries and each Benefit Plan is in compliance with the applicable provisions of ERISA, the Tax Code, all other applicable Laws (including Section 409A of the Tax Code, TARP or under any enhanced restrictions on executive compensation agreed to by Sellers with Sponsor) and the terms of all applicable Collective Bargaining Agreements, (iii) there are no (A) investigations by any Governmental Authority, (B) termination proceedings or other Claims (except routine Claims for benefits payable under any Benefit Plans) or (C) Claims, in each case, against or involving any Benefit Plan or asserting any rights to or Claims for benefits under any Benefit Plan that could give rise to any Liability, and there are not any facts or circumstances that could give rise to any Liability in the event of any such Claim and (iv) each Benefit Plan that is intended to be a Tax-qualified plan under Section 401(a) of the Tax Code (or similar provisions for Tax-registered or Tax-favored plans of non-United States jurisdictions) is qualified and any trust established in connection with any Benefit Plan that is intended to be exempt from taxation under Section 501(a) of the Tax Code (or similar provisions for Tax-registered or Tax-favored plans of non-United States jurisdictions) is exempt from United States federal income Taxes under Section 501(a) of the Tax Code (or similar provisions under non-United States law). To the Knowledge of Sellers, no circumstance and no fact or event exists that would be reasonably expected to adversely affect the qualified status of any Benefit Plan.

(c) None of the Parent Employee Benefit Plans and Policies or any material Purchased Subsidiaries Employee Benefit Plans that is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) has failed to satisfy, as applicable, the minimum funding standards (as described in Section 302 of ERISA or Section 412 of the Tax Code), whether or not waived, nor has any waiver of the minimum funding standards of Section 302 of ERISA or Section 412 of the Tax Code been requested.

(d) No Seller or any ERISA Affiliate of any Seller (including any Purchased Subsidiary) (i) has any actual or contingent Liability (A) under any employee benefit plan subject to Title IV of ERISA other than the Benefit Plans (except for contributions not yet due), (B) to the PBGC (except for the payment of premiums not yet due), which Liability, in each case, has not been fully paid as of the date hereof, or, if applicable, which has not been accrued in accordance with GAAP or (C) under any "multiemployer plan" (as defined in Section 3(37) of ERISA), or (ii) will incur withdrawal Liability under Title IV of ERISA as a result of the consummation of the transactions contemplated hereby, except for Liabilities with respect to any of the foregoing that would not reasonably be expected to have a Material Adverse Effect.

(e) Neither the execution of this Agreement or any Ancillary Agreement nor the consummation of the transactions contemplated hereby (alone or in conjunction with any other event, including termination of employment) will entitle any member of the board of directors of Parent or any Applicable Employee who is an officer or member of senior management of Parent to any increase in compensation or benefits, any grant of severance, retention, change in control or other similar compensation or benefits, any acceleration of the time of payment or vesting of any compensation or benefits (but not including, for this purpose, any retention, stay bonus or other incentive plan, program, arrangement that is a Retained Plan) or will require the securing or funding of any

compensation or benefits or limit the right of Sellers, any Subsidiary of Sellers or Purchaser or any Affiliates of Purchaser to amend, modify or terminate any Benefit Plan. Any new grant of severance, retention, change in control or other similar compensation or benefits to any Applicable Employee, and any payout to any Transferred Employee under any such existing arrangements, that would otherwise occur as a result of the execution of this Agreement or any Ancillary Agreement (alone or in conjunction with any other event, including termination of employment), has been waived by such Applicable Employee or otherwise cancelled.

(f) No amount or other entitlement currently in effect that could be received (whether in cash or property or the vesting of property) as a result of the actions contemplated by this Agreement and the Ancillary Agreements (alone or in combination with any other event) by any Person who is a "disqualified individual" (as defined in Treasury Regulation Section 1.280G-1) (each, a "Disqualified Individual") with respect to Sellers would be an "excess parachute payment" (as defined in Section 280G(b)(1) of the Tax Code). No Disqualified Individual or Applicable Employee is entitled to receive any additional payment (e.g., any Tax gross-up or any other payment) from Sellers or any Subsidiaries of Sellers in the event that the additional or excise Tax required by Section 409A or 4999 of the Tax Code, respectively is imposed on such individual.

(g) All individuals covered by the UAW Collective Bargaining Agreement are either Applicable Employees or employed by a Purchased Subsidiary.

(h) Section 4.10(h) of the Sellers' Disclosure Schedule lists all non-standard individual agreements currently in effect providing for compensation, benefits and perquisites for any current and former officer, director or top twenty-five (25) most highly paid employee of Parent and any other such material non-standard individual agreements with non-top twenty-five (25) employees.

Section 4.11 Labor Matters. There is not any labor strike, work stoppage or lockout pending, or, to the Knowledge of Sellers, threatened in writing against or affecting any Seller or any Purchased Subsidiary. Except as would not reasonably be expected to have a Material Adverse Effect: (a) none of Sellers or any Purchased Subsidiary is engaged in any material unfair labor practice; (b) there are not any unfair labor practice charges or complaints against Sellers or any Purchased Subsidiary pending, or, to the Knowledge of Sellers, threatened, before the National Labor Relations Board; (c) there are not any pending or, to the Knowledge of Sellers, threatened in writing, union grievances against Sellers or any Purchased Subsidiary as to which there is a reasonable possibility of adverse determination; (d) there are not any pending, or, to the Knowledge of Sellers, threatened in writing, charges against Sellers or any Purchased Subsidiary or any of their current or former employees before the Equal Employment Opportunity Commission or any state or local agency responsible for the prevention of unlawful employment practices; (e) no union organizational campaign is in progress with respect to the employees of any Seller or any Purchased Subsidiary and no question concerning representation of such employees exists; and (f) no Seller nor any Purchased Subsidiary has received written communication during the past five (5) years of the intent of any Governmental Authority responsible for the enforcement of labor or employment Laws to conduct an investigation of or

affecting Sellers or any Subsidiary of Sellers and, to the Knowledge of Sellers, no such investigation is in progress.

Section 4.12 Investigations; Litigation. (a) To the Knowledge of Sellers, there is no investigation or review pending by any Governmental Authority with respect to any Seller that would reasonably be expected to have a Material Adverse Effect, and (b) there are no actions, suits, inquiries or proceedings, or to the Knowledge of Sellers, investigations, pending against any Seller, or relating to any of the Transferred Real Property, at law or in equity before, and there are no Orders of or before, any Governmental Authority, in each case that would reasonably be expected to have a Material Adverse Effect.

Section 4.13 Tax Matters. Except as would not reasonably be expected to have a Material Adverse Effect, (a) all Tax Returns required to have been filed by, with respect to or on behalf of any Seller, Seller Group member or Purchased Subsidiary have been timely filed (taking into account any extension of time to file granted or obtained) and are correct and complete in all respects, (b) all amounts of Tax required to be paid with respect to any Seller, Seller Group member or Purchased Subsidiary (whether or not shown on any Tax Return) have been timely paid or are being contested in good faith by appropriate proceedings and have been reserved for in accordance with GAAP in Parent's consolidated audited financial statements, (c) no deficiency for any amount of Tax has been asserted or assessed by a Taxing Authority in writing relating to any Seller, Seller Group member or Purchased Subsidiary that has not been satisfied by payment, settled or withdrawn, (d) there are no audits, Claims or controversies currently asserted or threatened in writing with respect to any Seller, Seller Group member or Purchased Subsidiary in respect of any amount of Tax or failure to file any Tax Return, (e) no Seller, Seller Group member or Purchased Subsidiary has agreed to any extension or waiver of the statute of limitations applicable to any Tax Return, or agreed to any extension of time with respect to a Tax assessment or deficiency, which period (after giving effect to such extension or waiver) has not yet expired, (f) no Seller, Seller Group member or Purchased Subsidiary is a party to or the subject of any ruling requests, private letter rulings, closing agreements, settlement agreements or similar agreements with any Taxing Authority for any periods for which the statute of limitations has not yet run, (g) no Seller, Seller Group member or Purchased Subsidiary (A) has any Liability for Taxes of any Person (other than any Purchased Subsidiary), including as a transferee or successor, or pursuant to any contractual obligation (other than pursuant to any commercial Contract not primarily related to Tax), or (B) is a party to or bound by any Tax sharing agreement, Tax allocation agreement or Tax indemnity agreement (in every case, other than this Agreement and those Tax sharing, Tax allocation or Tax indemnity agreements that will be terminated prior to Closing and with respect to which no post-Closing Liabilities will exist), (h) each of the Purchased Subsidiaries and each Seller and Seller Group member has withheld or collected all Taxes required to have been withheld or collected and, to the extent required, has paid such Taxes to the proper Taxing Authority, (i) no Seller, Seller Group member or Purchased Subsidiary will be required to make any adjustments in taxable income for any Tax period (or portion thereof) ending after the Closing Date, including pursuant to Section 481(a) or 263A of the Tax Code or any similar provision of foreign, provincial, state, local or other Law as a result of transactions or events occurring, or accounting methods employed, prior to the Closing, nor is any application pending with any Taxing Authority requesting permission for any changes in accounting methods that relate to any Seller, Seller Group member or Purchased Subsidiary, (j) the Assumed Liabilities were incurred through the

Ordinary Course of Business, (k) there are no Tax Encumbrances on any of the Purchased Assets or the assets of any Purchased Subsidiary (other than Permitted Encumbrances for which appropriate reserves have been established (and to the extent that such liens relate to a period ending on or before December 31, 2008, the amount of any such Liability is accrued or reserved for as a Liability in accordance with GAAP in the audited consolidated balance sheet of Sellers at December 31, 2008)), (l) none of the Purchased Subsidiaries or Sellers has been a "distributing corporation" or a "controlled corporation" in a distribution intended to qualify under Section 355(a) of the Tax Code, (m) none of the Purchased Subsidiaries, Sellers or Seller Group members has participated in any "listed transactions" or "reportable transactions" within the meaning of Treasury Regulations Section 1.6011-4, (n) there are no unpaid Taxes with respect to any Seller, Seller Group member or Purchased Asset for which Purchaser will have liability as a transferee or successor and (o) the most recent financial statements contained in the Parent SEC Documents reflect an adequate reserve for all Taxes payable by Sellers, the Purchased Subsidiaries and the members of all Seller Groups for all taxable periods and portions thereof through the date of such financial statements.

Section 4.14 Intellectual Property and IT Systems.

(a) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Seller and each Purchased Subsidiary owns, controls, or otherwise possesses sufficient rights to use, free and clear of all Encumbrances (other than Permitted Encumbrances) all Intellectual Property necessary for the conduct of its business in substantially the same manner as conducted as of the date hereof; and (ii) all Intellectual Property owned by Sellers that is necessary for the conduct of the business of Sellers and each Purchased Subsidiary as conducted as of the date hereof is subsisting and in full force and effect, has not been adjudged invalid or unenforceable, has not been abandoned or allowed to lapse, in whole or in part, and to the Knowledge of Sellers, is valid and enforceable.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, all necessary registration, maintenance and renewal fees in connection with the Intellectual Property owned by Sellers have been paid and all necessary documents and certificates in connection with such Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or applicable foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining or renewing such Intellectual Property.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, no Intellectual Property owned by Sellers is the subject of any licensing or franchising Contract that prohibits or materially restricts the conduct of business as presently conducted by any Seller or Purchased Subsidiary or the transfer of such Intellectual Property.

(d) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the Intellectual Property or the conduct of Sellers' and the Purchased Subsidiaries' businesses does not infringe, misappropriate, dilute, or otherwise violate or conflict with the trademarks, patents, copyrights, inventions, trade secrets, proprietary

information and technology, know-how, formulae, rights of publicity or any other intellectual property rights of any Person; (ii) to the Knowledge of Sellers, no other Person is now infringing or in conflict with any Intellectual Property owned by Sellers or Sellers' rights thereunder; and (iii) no Seller or any Purchased Subsidiary has received any written notice that it is violating or has violated the trademarks, patents, copyrights, inventions, trade secrets, proprietary information and technology, know-how, formulae, rights of publicity or any other intellectual property rights of any third party.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, no holding, decision or judgment has been rendered by any Governmental Authority against any Seller, which would limit, cancel or invalidate any Intellectual Property owned by Sellers.

(f) No action or proceeding is pending, or to the Knowledge of Sellers, threatened, on the date hereof that (i) seeks to limit, cancel or invalidate any Intellectual Property owned by Sellers or such Sellers' ownership interest therein; and (ii) if adversely determined, would reasonably be expected to have a Material Adverse Effect.

(g) Except as would not reasonably be expected to have a Material Adverse Effect, Sellers and the Purchased Subsidiaries have taken reasonable actions to (i) maintain, enforce and police their Intellectual Property; and (ii) protect their material Software, websites and other systems (and the information therein) from unauthorized access or use.

(h) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Seller and Purchased Subsidiary has taken reasonable steps to protect its rights in, and confidentiality of, all the Trade Secrets, and any other confidential information owned by such Seller or Purchased Subsidiary; and (ii) to the Knowledge of Sellers, such Trade Secrets have not been disclosed by Sellers to any Person except pursuant to a valid and appropriate non-disclosure, license or any other appropriate Contract that has not been breached.

(i) Except as would not reasonably be expected to have a Material Adverse Effect, there has not been any malfunction with respect to any of the Software, electronic data processing, data communication lines, telecommunication lines, firmware, hardware, Internet websites or other information technology equipment of any Seller or Purchased Subsidiary since April 1, 2007, which has not been remedied or replaced in all respects.

(j) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the consummation of the transactions contemplated by this Agreement will not cause to be provided or licensed to any third Person, or give rise to any rights of any third Person with respect to, any source code that is part of the Software owned by Sellers; and (ii) Sellers have implemented reasonable disaster recovery and back-up plans with respect to the Software.

Section 4.15 Real Property. Each Seller owns and has valid title to the Transferred Real Property that is Owned Real Property owned by it and has valid leasehold or

subleasehold interests, as the case may be, in all of the Transferred Real Property that is Leased Real Property leased or subleased by it, in each case, free and clear of all Encumbrances, other than Permitted Encumbrances. Each of Sellers and the Purchased Subsidiaries has complied with the terms of each lease, sublease, license or other Contract relating to the Transferred Real Property to which it is a party, except any failure to comply that would not reasonably be expected to have a Material Adverse Effect.

Section 4.16 Material Contracts.

(a) Except for this Agreement, the Parent Employee Benefit Plans and Policies, except as filed with, or disclosed or incorporated in, the Parent SEC Documents or except as set forth on Section 4.16 of the Sellers' Disclosure Schedule, as of the date hereof, no Seller is a party to or bound by (i) any "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC); (ii) any non-compete or exclusivity agreement that materially restricts the operation of Sellers' core business; (iii) any asset purchase agreement, stock purchase agreement or other agreement entered into within the past six years governing a material joint venture or the acquisition or disposition of assets or other property where the consideration paid or received for such assets or other property exceeded $500,000,000 (whether in cash, stock or otherwise); (iv) any agreement or series of related agreements with any supplier of Sellers who directly support the production of vehicles, which provided collectively for payments by Sellers to such supplier in excess of $250,000,000 during the 12-month period ended December 31, 2008; (v) any agreement or series of related agreements with any supplier of Sellers who does not directly support the production of vehicles, which, provided collectively for payments by Sellers to such supplier in excess of $100,000,000 during the 12-month period ended April 30, 2009; (vi) any Contract relating to the lease or purchase of aircraft; (vii) any settlement agreement where a Seller has paid or may be required to pay an amount in excess of $100,000,000 to settle the Claims covered by such settlement agreement; (viii) any material Contract that will, following the Closing, as a result of transactions contemplated hereby, be between or among a Seller or any Retained Subsidiary, on the one hand, and Purchaser or any Purchased Subsidiary, on the other hand (other than the Ancillary Agreements); and (ix) agreements entered into in connection with a material joint venture (all Contracts of the type described in this **Section 4.16(a)** being referred to herein as "Seller Material Contracts").

(b) No Seller is in breach of or default under, or has received any written notice alleging any breach of or default under, the terms of any Seller Material Contract or material License, where such breach or default would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Sellers, no other party to any Seller Material Contract or material License is in breach of or default under the terms of any Seller Material Contract or material License, where such breach or default would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, each Seller Material Contract or material License is a valid, binding and enforceable obligation of such Seller that is party thereto and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws

relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.17 Dealer Sales and Service Agreements for Continuing Brands. Parent is not in breach of or default under the terms of any United States dealer sales and service Contract for Continuing Brands other than any Excluded Continuing Brand Dealer Agreement (each, a "Dealer Agreement"), where such breach or default would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Sellers, no other party to any Dealer Agreement is in breach of or default under the terms of such Dealer Agreement, where such breach or default would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, each Dealer Agreement is a valid and binding obligation of Parent and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.18 Sellers' Products.

(a) To the Knowledge of Sellers, since April 1, 2007, neither Sellers nor any Purchased Subsidiary has conducted or decided to conduct any material recall or other field action concerning any product developed, designed, manufactured, sold, provided or placed in the stream of commerce by or on behalf of any Seller or any Purchased Subsidiary.

(b) As of the date hereof, there are no material pending actions for negligence, manufacturing negligence or improper workmanship, or material pending actions, in whole or in part, premised upon product liability, against or otherwise naming as a party any Seller, Purchased Subsidiary or any predecessor-in-interest of any of the foregoing Persons, or to the Knowledge of Sellers, threatened in writing or of which Seller has received written notice that involve a product liability Claim resulting from the ownership, possession or use of any product manufactured, sold or delivered by any Seller, any Purchased Subsidiary or any predecessor-in-interest of any of the foregoing Persons, which would reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of Sellers and except as would not reasonably be expected to have a Material Adverse Effect, no supplier to any Seller has threatened in writing to cease the supply of products or services that could impair future production at a major production facility of such Seller.

Section 4.19 Certain Business Practices. Each of Sellers and the Purchased Subsidiaries is in compliance with the legal requirements under the Foreign Corrupt Practices Act, as amended (the "FCPA"), except for such failures, whether individually or in the aggregate, to maintain books and records or internal controls as required thereunder that are not

material. To the Knowledge of Sellers, since April 1, 2007, no Seller or Purchased Subsidiary, nor any director, officer, employee or agent thereof, acting on its, his or her own behalf or on behalf of any of the foregoing Persons, has offered, promised, authorized the payment of, or paid, any money, or the transfer of anything of value, directly or indirectly, to or for the benefit of: (a) any employee, official, agent or other representative of any foreign Governmental Authority, or of any public international organization; or (b) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any act or decision of such recipient in the recipient's official capacity, or inducing such recipient to use his, her or its influence to affect any act or decision of such foreign government or department, agency or instrumentality thereof or of such public international organization, or securing any improper advantage, in the case of both clause (a) and (b) above, in order to assist any Seller or any Purchased Subsidiary to obtain or retain business for, or to direct business to, any Seller or any Purchased Subsidiary and under circumstances that would subject any Seller or any Purchased Subsidiary to material Liability under any applicable Laws of the United States (including the FCPA) or of any foreign jurisdiction where any Seller or any Purchased Subsidiary does business relating to corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities, or lawful expenses.

Section 4.20 Brokers and Other Advisors. No broker, investment banker, financial advisor, counsel (other than legal counsel) or other Person is entitled to any broker's, finder's or financial advisor's fee or commission (collectively, "Advisory Fees") in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sellers or any Affiliate of any Seller.

Section 4.21 Investment Representations.

(a) Each Seller is acquiring the Parent Shares for its own account solely for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act or the applicable securities Laws of any jurisdiction. Each Seller agrees that it shall not transfer any of the Parent Shares, except in compliance with the Securities Act and with the applicable securities Laws of any other jurisdiction.

(b) Each Seller is an "Accredited Investor" as defined in Rule 501(a) promulgated under the Securities Act.

(c) Each Seller understands that the acquisition of the Parent Shares to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Each Seller and its officers have experience as an investor in the Equity Interests of companies such as the ones being transferred pursuant to this Agreement and each Seller acknowledges that it can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Parent Shares to be acquired by it pursuant to the transactions contemplated by this Agreement.

(d) Each Seller further understands and acknowledges that the Parent Shares have not been registered under the Securities Act or under the applicable securities Laws of any jurisdiction and agrees that the Parent Shares may not be sold, transferred, offered

for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or under the applicable securities Laws of any jurisdiction, or, in each case, an applicable exemption therefrom.

(e) Each Seller acknowledges that the offer and sale of the Parent Shares has not been accomplished by the publication of any advertisement.

Section 4.22 No Other Representations or Warranties of Sellers. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS **ARTICLE IV**, NONE OF SELLERS AND ANY PERSON ACTING ON BEHALF OF A SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, ANY OF THEIR AFFILIATES, SELLERS' BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLERS CONTAINED IN THIS **ARTICLE IV**, SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION, WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE (WHETHER BEFORE OR, IN CONNECTION WITH ANY SUPPLEMENT, MODIFICATION OR UPDATE TO THE SELLERS' DISCLOSURE SCHEDULE PURSUANT TO **SECTION 6.5**, **SECTION 6.6** OR **SECTION 6.26,** AFTER THE DATE HEREOF) TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, INCLUDING IN "DATA ROOMS" (INCLUDING ON-LINE DATA ROOMS), MANAGEMENT PRESENTATIONS, FUNCTIONAL "BREAK-OUT" DISCUSSIONS, RESPONSES TO QUESTIONS SUBMITTED ON BEHALF OF THEM OR OTHER COMMUNICATIONS BETWEEN THEM OR ANY OF THEIR REPRESENTATIVES, ON THE ONE HAND, AND SELLERS, THEIR AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, OR ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (C) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLERS' BUSINESS OR THE PURCHASED ASSETS.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers as follows:

Section 5.1 Organization and Good Standing. Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of

incorporation. Purchaser has the requisite corporate power and authority to own, lease and operate its assets and to carry on its business as now being conducted.

Section 5.2 Authorization; Enforceability.

(a) Purchaser has the requisite corporate power and authority to (i) execute and deliver this Agreement and the Ancillary Agreements to which it is a party; (ii) perform its obligations hereunder and thereunder; and (iii) consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party.

(b) This Agreement constitutes, and each of the Ancillary Agreements to which Purchaser is a party, when duly executed and delivered by Purchaser, shall constitute, a valid and legally binding obligation of Purchaser (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of each Seller that is a party thereto and the other applicable parties thereto), enforceable against Purchaser in accordance with its respective terms and conditions, except as may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 5.3 Noncontravention; Consents.

(a) The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which it is a party, and (subject to the entry of the Sale Approval Order) the consummation by Purchaser of the transactions contemplated hereby and thereby, do not (i) violate any Law to which Purchaser or its assets is subject; (ii) conflict with or result in a breach of any provision of the Organizational Documents of Purchaser; or (iii) create a breach, default, termination, cancellation or acceleration of any obligation of Purchaser under any Contract to which Purchaser is a party or by which Purchaser or any of its assets or properties is bound or subject, except for any of the foregoing in the cases of clauses (i) and (iii), that would not reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby or thereby or to perform any of its obligations under this Agreement or any Ancillary Agreement to which it is a party (a "Purchaser Material Adverse Effect").

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required by Purchaser for the consummation by Purchaser of the transactions contemplated by this Agreement or the Ancillary Agreements to which it is a party or the compliance by Purchaser with any of the provisions hereof or thereof, except for (i) compliance with the applicable requirements of any Antitrust Laws and (ii) such consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Governmental Authority, the failure of which to be received

or made would not, individually or in the aggregate, reasonably be expected to have a Purchaser Material Adverse Effect.

Section 5.4 Capitalization.

(a) As of the date hereof, Sponsor holds beneficially and of record 1,000 shares of common stock, par value $0.01 per share, of Purchaser, which constitutes all of the outstanding capital stock of Purchaser, and all such capital stock is validly issued, fully paid and nonassessable.

(b) Immediately following the Closing, the authorized capital stock of Purchaser (or, if a Holding Company Reorganization has occurred prior to the Closing, Holding Company) will consist of 2,500,000,000 shares of common stock, par value $0.01 per share ("Common Stock"), and 1,000,000,000 shares of preferred stock, par value $0.01 per share ("Preferred Stock"), of which 360,000,000 shares of Preferred Stock are designated as Series A Fixed Rate Cumulative Perpetual Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock").

(c) Immediately following the Closing, (i) Canada or one or more of its Affiliates will hold beneficially and of record 58,368,644 shares of Common Stock and 16,101,695 shares of Series A Preferred Stock (collectively, the "Canada Shares"), (ii) Sponsor or one or more of its Affiliates collectively will hold beneficially and of record 304,131,356 shares of Common Stock and 83,898,305 shares of Series A Preferred Stock (collectively, the "Sponsor Shares") and (iii) the New VEBA will hold beneficially and of record 87,500,000 shares of Common Stock and 260,000,000 shares of Series A Preferred Stock (collectively, the "VEBA Shares"). Immediately following the Closing, there will be no other holders of Common Stock or Preferred Stock.

(d) Except as provided under the Parent Warrants, VEBA Warrants, Equity Incentive Plans or as disclosed on the Purchaser's Disclosure Schedule, there are and, immediately following the Closing, there will be no outstanding options, warrants, subscriptions, calls, convertible securities, phantom equity, equity appreciation or similar rights, or other rights or Contracts (contingent or otherwise) (including any right of conversion or exchange under any outstanding security, instrument or other Contract or any preemptive right) obligating Purchaser to deliver or sell, or cause to be issued, delivered or sold, any shares of its capital stock or other equity securities, instruments or rights that are, directly or indirectly, convertible into or exercisable or exchangeable for any shares of its capital stock. There are no outstanding contractual obligations of Purchaser to repurchase, redeem or otherwise acquire any shares of its capital stock or to provide funds to, or make any material investment (in the form of a loan, capital contribution or otherwise) in, any other Person. There are no voting trusts, shareholder agreements, proxies or other Contracts or understandings in effect with respect to the voting or transfer of any of the shares of Common Stock to which Purchaser is a party or by which Purchaser is bound. Except as provided under the Equity Registration Rights Agreement or as disclosed in the Purchaser's Disclosure Schedule, Purchaser has not granted or agreed to grant any holders of shares of Common Stock or securities

convertible into shares of Common Stock registration rights with respect to such shares under the Securities Act.

(e) Immediately following the Closing, (i) all of the Canada Shares, the Parent Shares and the Sponsor Shares will be duly and validly authorized and issued, fully paid and nonassessable, and will be issued in accordance with the registration or qualification provisions of the Securities Act or pursuant to valid exemptions therefrom and (ii) none of the Canada Shares, the Parent Shares or the Sponsor Shares will be issued in violation of any preemptive rights.

Section 5.5 Valid Issuance of Shares. The Parent Shares, Adjustment Shares and the Common Stock underlying the Parent Warrants, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement and the related warrant agreement, as applicable, will be (a) validly issued, fully paid and nonassessable and (b) free of restrictions on transfer other than restrictions on transfer under applicable state and federal securities Laws and Encumbrances created by or imposed by Sellers. Assuming the accuracy of the representations of Sellers in **Section 4.21**, the Parent Shares, Adjustment Shares and Parent Warrants will be issued in compliance with all applicable federal and state securities Laws.

Section 5.6 Investment Representations.

(a) Purchaser is acquiring the Transferred Equity Interests for its own account solely for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act or the applicable securities Laws of any jurisdiction. Purchaser agrees that it shall not transfer any of the Transferred Equity Interests, except in compliance with the Securities Act and with the applicable securities Laws of any other jurisdiction.

(b) Purchaser is an "Accredited Investor" as defined in Rule 501(a) promulgated under the Securities Act.

(c) Purchaser understands that the acquisition of the Transferred Equity Interests to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Purchaser and its officers have experience as an investor in Equity Interests of companies such as the ones being transferred pursuant to this Agreement and Purchaser acknowledges that it can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Transferred Equity Interests to be acquired by it pursuant to the transactions contemplated hereby.

(d) Purchaser further understands and acknowledges that the Transferred Equity Interests have not been registered under the Securities Act or under the applicable securities Laws of any jurisdiction and agrees that the Transferred Equity Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or under the applicable securities Laws of any jurisdiction, or, in each case, an applicable exemption therefrom.

(e) Purchaser acknowledges that the offer and sale of the Transferred Equity Interests has not been accomplished by the publication of any advertisement.

Section 5.7 Continuity of Business Enterprise. It is the present intention of Purchaser to directly, or indirectly through its Subsidiaries, continue at least one significant historic business line of each Seller, or use at least a significant portion of each Seller's historic business assets in a business, in each case, within the meaning of Treas. Reg. § 1.368-1(d).

Section 5.8 Integrated Transaction. Sponsor has contributed, or will, prior to the Closing, contribute the UST Credit Facilities, a portion of the DIP Facility that is owed as of the Closing and the UST Warrant to Purchaser solely for the purposes of effectuating the transactions contemplated by this Agreement.

Section 5.9 No Other Representations or Warranties of Sellers. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN **ARTICLE IV**, NONE OF SELLERS AND ANY PERSON ACTING ON BEHALF OF A SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, ANY OF THEIR AFFILIATES, SELLERS' BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLERS CONTAINED IN **ARTICLE IV**, PURCHASER FURTHER HEREBY ACKNOWLEDGES AND AGREES THAT SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION, WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE (WHETHER BEFORE OR, IN CONNECTION WITH ANY SUPPLEMENT, MODIFICATION OR UPDATE TO THE SELLERS' DISCLOSURE SCHEDULE PURSUANT TO **SECTION 6.5**, **SECTION 6.6** OR **SECTION 6.26,** AFTER THE DATE HEREOF) TO PURCHASER OR ANY OF ITS REPRESENTATIVES, INCLUDING IN "DATA ROOMS" (INCLUDING ON-LINE DATA ROOMS), MANAGEMENT PRESENTATIONS, FUNCTIONAL "BREAK-OUT" DISCUSSIONS, RESPONSES TO QUESTIONS SUBMITTED ON BEHALF OF IT OR OTHER COMMUNICATIONS BETWEEN IT OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, ON THE ONE HAND, AND SELLERS, THEIR AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION OR (C) ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (D) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLERS' BUSINESS OR THE PURCHASED ASSETS.

ARTICLE VI
COVENANTS

Section 6.1 Access to Information.

(a) Sellers agree that, until the earlier of the Executory Contract Designation Deadline and the termination of this Agreement, Purchaser shall be entitled, through its Representatives or otherwise, to have reasonable access to the executive officers and Representatives of Sellers and the properties and other facilities, businesses, books, Contracts, personnel, records and operations (including the Purchased Assets and Assumed Liabilities) of Sellers and their Subsidiaries, including access to systems, data, databases for benefit plan administration; provided however, that no such investigation or examination shall be permitted to the extent that it would, in Sellers' reasonable determination, require any Seller, any Subsidiary of any Seller or any of their respective Representatives to disclose information subject to attorney-client privilege or in conflict with any confidentiality agreement to which any Seller, any Subsidiary of any Seller or any of their respective Representatives are bound (in which case, to the extent requested by Purchaser, Sellers will use reasonable best efforts to seek an amendment or appropriate waiver, or necessary consents, as may be required to avoid such conflict, or restructure the form of access, so as to permit the access requested); provided further, that notwithstanding the notice provisions in **Section 9.2** hereof, all such requests for access to the executive officers of Sellers shall be directed, prior to the Closing, to the Chief Financial Officer of Parent or his designee, and following the Closing, to the Chief Restructuring Officer of Parent or his or her designee. If any material is withheld pursuant to this **Section 6.1(a)**, Seller shall inform Purchaser in writing as to the general nature of what is being withheld and the reason for withholding such material.

(b) Any investigation and examination contemplated by this **Section 6.1** shall be subject to restrictions set forth in **Section 6.24** and under applicable Law. Sellers shall cooperate, and shall cause their Subsidiaries and each of their respective Representatives to cooperate, with Purchaser and its Representatives in connection with such investigation and examination, and each of Purchaser and its Representatives shall use their reasonable best efforts to not materially interfere with the business of Sellers and their Subsidiaries. Without limiting the generality of the foregoing, subject to **Section 6.1(a),** such investigation and examination shall include reasonable access to Sellers' executive officers (and employees of Sellers and their respective Subsidiaries identified by such executive officers), offices, properties and other facilities, and books, Contracts and records (including any document retention policies of Sellers) and access to accountants of Sellers and each of their respective Subsidiaries (provided that Sellers and each of their respective Subsidiaries, as applicable, shall have the right to be present at any meeting between any such accountant and Purchaser or Representative of Purchaser, whether such meeting is in person, telephonic or otherwise) and Sellers and each of their respective Subsidiaries and their Representatives shall prepare and furnish to Purchaser's Representatives such additional financial and operating data and other information as Purchaser may from time to time reasonably request, subject, in each case, to the confidentiality restrictions outlined in this **Section 6.1**. Notwithstanding anything contained herein to the contrary, Purchaser shall consult with Sellers prior to conducting

any environmental investigations or examinations of any nature, including Phase I and Phase II site assessments and any environmental sampling in respect of the Transferred Real Property.

Section 6.2 Conduct of Business.

(a) Except as (i) otherwise expressly contemplated by or permitted under this Agreement, including the DIP Facility; (ii) disclosed on Section 6.2 of the Sellers' Disclosure Schedule; (iii) approved by the Bankruptcy Court (or any other court or other Governmental Authority in connection with any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of Parent); or (iv) required by or resulting from any changes to applicable Laws, from and after the date of this Agreement and until the earlier of the Closing and the termination of this Agreement, Sellers shall and shall cause each Purchased Subsidiary to (A) conduct their operations in the Ordinary Course of Business, (B) not take any action inconsistent with this Agreement or with the consummation of the Closing, (C) use reasonable best efforts to preserve in the Ordinary Course of Business and in all material respects the present relationships of Sellers and each of their Subsidiaries with their respective customers, suppliers and others having significant business dealings with them, (D) not take any action to cause any of Sellers' representations and warranties set forth in **ARTICLE IV** to be untrue in any material respect as of any such date when such representation or warranty is made or deemed to be made and (E) not take any action that would reasonably be expected to materially prevent or delay the Closing.

(b) Subject to the exceptions contained in clauses (i) through (iv) of **Section 6.2(a)**, each Seller agrees that, from and after the date of this Agreement and until the earlier of the Closing and the termination of this Agreement, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), such Seller shall not, and shall not permit any of the Key Subsidiaries (and in the case of clauses (i), (ix), (xiii) or (xvi), shall not permit any Purchased Subsidiary) to:

(i) take any action with respect to which any Seller has granted approval rights to Sponsor under any Contract, including under the UST Credit Facilities, without obtaining the prior approval of such action from Sponsor;

(ii) issue, sell, pledge, create an Encumbrance or otherwise dispose of or authorize the issuance, sale, pledge, Encumbrance or disposition of any Equity Interests of the Transferred Entities, or grant any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any such Equity Interests;

(iii) declare, set aside or pay any dividend or make any distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to any Seller or any Key Subsidiary without receipt of fair value with respect to any Equity Interest of Seller or any Key Subsidiary), except for dividends and distributions among the Purchased Subsidiaries;

(iv) directly or indirectly, purchase, redeem or otherwise acquire any Equity Interests or any rights to acquire any Equity Interests of any Seller or Key Subsidiary;

(v) materially change any of its financial accounting policies or procedures or any of its methods of reporting income, deductions or other material items for financial accounting purposes, except as permitted by GAAP, a SEC rule, regulation or policy or applicable Law, or as modified by Parent as a result of the filing of the Bankruptcy Cases;

(vi) adopt any amendments to its Organizational Documents or permit the adoption of any amendment of the Organizational Documents of any Key Subsidiary or effect a split, combination or reclassification or other adjustment of Equity Interests of any Purchased Subsidiary or a recapitalization thereof;

(vii) sell, pledge, lease, transfer, assign or dispose of any Purchased Asset or permit any Purchased Asset to become subject to any Encumbrance, other than a Permitted Encumbrance, in each case, except in the Ordinary Course of Business or pursuant to a Contract in existence as of the date hereof (or entered into in compliance with this **Section 6.2**);

(viii) (A) incur or assume any Indebtedness for borrowed money or issue any debt securities, except for Indebtedness for borrowed money incurred by Purchased Subsidiaries under existing lines of credit (including through the incurrence of Intercompany Obligations) to fund operations of Purchased Subsidiaries and Indebtedness for borrowed money incurred by Sellers under the DIP Facility or (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person, except for Indebtedness for borrowed money among any Seller and Subsidiary or among the Subsidiaries;

(ix) discharge or satisfy any Indebtedness in excess of $100,000,000 other than the discharge or satisfaction of any Indebtedness when due in accordance with its originally scheduled terms;

(x) other than as is required by the terms of a Parent Employee Benefit Plan and Policy (in effect on the date hereof and set forth on Section 4.10 of the Sellers' Disclosure Schedule), any Assumed Plan (in effect on the date hereof) the UAW Collective Bargaining Agreement or consistent with the expiration of a Collective Bargaining Agreement, the Settlement Agreement, the UAW Retiree Settlement Agreement or as may be required by applicable Law or TARP or under any enhanced restrictions on executive compensation agreed to by Sellers and Sponsor, (A) increase the compensation or benefits of any Employee of Sellers or any Purchased Subsidiary (except for increases in salary or wages in the Ordinary Course of Business with respect to Employees who are not current or former directors or officers of Sellers or Seller Key Personnel), (B) grant any severance or termination pay to any Employee of Sellers or any Purchased

Subsidiary except for severance or termination pay provided under any Parent Employee Benefit Plan and Policy or as the result of a settlement of any pending Claim or charge involving a Governmental Authority or litigation with respect to Employees who are not current or former officers or directors of Sellers or Seller Key Personnel), (C) establish, adopt, enter into, amend or terminate any Benefit Plan (including any change to any actuarial or other assumption used to calculate funding obligations with respect to any Benefit Plan or any change to the manner in which contributions to any Benefit Plan are made or the basis on which such contributions are determined), except where any such action would reduce Sellers' costs or Liabilities pursuant to such plan, (D) grant any awards under any Benefit Plan (including any equity or equity-based awards), (E) increase or promise to increase or provide for the funding under any Benefit Plan, (F) forgive any loans to Employees of Sellers or any Purchased Subsidiary (other than as part of a settlement of any pending Claim or charge involving a Governmental Authority or litigation in the Ordinary Course of Business or with respect to obligations of Employees whose employment is terminated by Sellers or a Purchased Subsidiary in the Ordinary Course of Business, other than Employees who are current or former officers or directors of Sellers or Seller Key Personnel or directors of Sellers or a Purchased Subsidiary) or (G) exercise any discretion to accelerate the time of payment or vesting of any compensation or benefits under any Benefit Plan;

(xi) modify, amend, terminate or waive any rights under any Affiliate Contract or Seller Material Contract (except for any dealer sales and service Contracts or as contemplated by **Section 6.7**) in any material respect in a manner that is adverse to any Seller that is a party thereto, other than in the Ordinary Course of Business;

(xii) enter into any Seller Material Contract other than as contemplated by **Section 6.7**;

(xiii) acquire (including by merger, consolidation, combination or acquisition of Equity Interests or assets) any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeds $100,000,000;

(xiv) alter, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of any Key Subsidiary, or adopt or approve a plan with respect to any of the foregoing;

(xv) enter into any Contract that limits or otherwise restricts or that would reasonably be expected to, after the Closing, restrict or limit in any material respect (A) Purchaser or any of its Subsidiaries or any successor thereto or (B) any Affiliates of Purchaser or any successor thereto, in the case of each of

clause (A) or (B), from engaging or competing in any line of business or in any geographic area;

(xvi) enter into any Contracts for capital expenditures, exceeding $100,000,000 in the aggregate in connection with any single project or group of related projects;

(xvii) open or reopen any major production facility; and

(xviii) agree, in writing or otherwise, to take any of the foregoing actions.

Section 6.3 Notices and Consents.

(a) Sellers shall and shall cause each of their Subsidiaries to, and Purchaser shall use reasonable best efforts to, promptly give all notices to, obtain all material consents, approvals or authorizations from, and file all notifications and related materials with, any third parties (including any Governmental Authority) that may be or become necessary to be given or obtained by Sellers or their Affiliates, or Purchaser, respectively, in connection with the transactions contemplated by this Agreement.

(b) Each of Purchaser and Parent shall, to the extent permitted by Law, promptly notify the other Party of any communication it or any of its Affiliates receives from any Governmental Authority relating to the transactions contemplated by this Agreement and permit the other Party to review in advance any proposed substantive communication by such Party to any Governmental Authority. Neither Purchaser nor Parent shall agree to participate in any material meeting with any Governmental Authority in respect of any significant filings, investigation (including any settlement of the investigation), litigation or other inquiry unless it consults with the other Party in advance and, to the extent permitted by such Governmental Authority, gives the other Party the opportunity to attend and participate at such meeting; provided, however, in the event either Party is prohibited by applicable Law or such Governmental Authority from participating in or attending any such meeting, then the Party who participates in such meeting shall keep the other Party apprised with respect thereto to the extent permitted by Law. To the extent permitted by Law, Purchaser and Parent shall coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Party may reasonably request in connection with the foregoing, including, to the extent reasonably practicable, providing to the other Party in advance of submission, drafts of all material filings, submissions, correspondences or other written communications, providing the other Party with an opportunity to comment on the drafts, and, where practicable, incorporating such comments, if any, into the final documents. To the extent permitted by applicable Law, Purchaser and Parent shall provide each other with copies of all material correspondences, filings or written communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement or the transactions contemplated by this Agreement.

(c) None of Purchaser, Parent or their respective Affiliates shall be required to pay any fees or other payments to any Governmental Authorities in order to obtain any authorization, consent, Order or approval (other than normal filing fees and administrative fees that are imposed by Law on Purchaser), and in the event that any fees in addition to normal filing fees imposed by Law may be required to obtain any such authorization, consent, Order or approval, such fees shall be for the account of Purchaser.

(d) Notwithstanding anything to the contrary contained herein, no Seller shall be required to make any expenditure or incur any Liability in connection with the requirements set forth in this **Section 6.3**.

Section 6.4 Sale Procedures; Bankruptcy Court Approval.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers and the Bankruptcy Court of higher or better competing Bids with respect to an Alternative Transaction. Nothing contained herein shall be construed to prohibit Sellers and their respective Affiliates and Representatives from soliciting, considering, negotiating, agreeing to, or otherwise taking action in furtherance of, any Alternative Transaction but only to the extent that Sellers determine in good faith that such actions are permitted or required by the Sale Procedures Order.

(b) On the Petition Date, Sellers filed with the Bankruptcy Court the Bankruptcy Cases under the Bankruptcy Code and a motion (and related notices and proposed Orders) (the "Sale Procedures and Sale Motion"), seeking entry of (i) the sale procedures order, in the form attached hereto as **Exhibit H** (the "Sale Procedures Order"), and (ii) the sale approval order, in the form attached hereto as **Exhibit I** (the "Sale Approval Order"). The Sale Approval Order shall declare that if there is an Agreed G Transaction, (A) this Agreement constitutes a "plan" of Parent and Purchaser solely for purposes of Sections 368 and 354 of the Tax Code and (B) the transactions with respect to Parent described herein, in combination with the subsequent liquidation of Sellers, are intended to constitute a reorganization of Parent pursuant to Section 368(a)(1)(G) of the Tax Code. To the extent reasonably practicable, Sellers shall consult with and provide Purchaser and the UAW a reasonable opportunity to review and comment on material motions, applications and supporting papers prepared by Sellers in connection with this Agreement prior to the filing or delivery thereof in the Bankruptcy Cases.

(c) Purchaser acknowledges that Sellers may receive bids ("Bids") from prospective purchasers (such prospective purchasers, the "Bidders") with respect to an Alternative Transaction, as provided in the Sale Procedures Order. All Bids (other than Bids submitted by Purchaser) shall be submitted with two copies of this Agreement marked to show changes requested by the Bidder.

(d) If Sellers receive any Bids, Sellers shall have the right to select, and seek final approval of the Bankruptcy Court for, the highest or otherwise best Bid or Bids from the Bidders (the "Superior Bid"), which will be determined in accordance with the Sale Procedure Order.

(e) Sellers shall use their reasonable best efforts to obtain entry of the Sale Approval Order on the Bankruptcy Court's docket as soon as practicable, and in no event no later than July 10, 2009.

(f) Sellers shall use reasonable best efforts to comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure in connection with obtaining approval of the transactions contemplated by this Agreement, including serving on all required Persons in the Bankruptcy Cases (including all holders of Encumbrances and parties to the Purchased Contracts), a notice of the Sale Procedures and Sale Motion, the Sale Hearing and the objection deadline in accordance with Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (as modified by Orders of the Bankruptcy Court), the Sale Procedures Order or other Orders of the Bankruptcy Court, including General Order M-331 issued by the Bankruptcy Court, and any applicable local rules of the Bankruptcy Court.

(g) Sellers shall provide Purchaser with a reasonable opportunity to review and comment on all motions, applications and supporting papers prepared by Sellers in connection with this Agreement (including forms of Orders and of notices to interested parties) prior to the filing or delivery thereof in the Bankruptcy Cases. All motions, applications and supporting papers prepared by Sellers and relating to the approval of this Agreement (including forms of Orders and of notices to interested parties) to be filed or delivered on behalf of Sellers shall be reasonably acceptable in form and substance to Purchaser. Sellers shall provide written notice to Purchaser of all matters that are required to be served on Sellers' creditors pursuant to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. In the event the Sale Procedures Order and the Sale Approval Order is appealed, Sellers shall use their reasonable best efforts to defend such appeal.

(h) Purchaser agrees, to the extent reasonably requested by Sellers, to cooperate with and assist Sellers in seeking entry of the Sale Procedures Order and the Sale Approval Order by the Bankruptcy Court, including attending all hearings on the Sale Procedures and Sale Motion.

Section 6.5 Supplements to Purchased Assets. Purchaser shall, from the date hereof until the Executory Contract Designation Deadline, have the right to designate in writing additional Personal Property it wishes to designate as Purchased Assets if such Personal Property is located at a parcel of leased real property where the underlying lease has been designated as a Rejectable Executory Contract pursuant to **Section 6.6** following the Closing.

Section 6.6 Assumption or Rejection of Contracts.

(a) The Assumable Executory Contract Schedule sets forth a list of Executory Contracts entered into by Sellers that Sellers may assume and assign to Purchaser in accordance with this **Section 6.6(a)** (each, an "Assumable Executory Contract"). Any Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule and Section 6.6(a)(ii) of the Sellers' Disclosure Schedule shall automatically be designated as an

Assumable Executory Contract and deemed to be set forth on the Assumable Executory Contract Schedule. Purchaser may, until the Executory Contract Designation Deadline, designate in writing any additional Executory Contract it wishes to designate as an Assumable Executory Contract and include on the Assumable Executory Contract Schedule, or any Assumable Executory Contract it no longer wishes to designate as an Assumable Executory Contract and remove from the Assumable Executory Contract Schedule; provided, however, that (i) Purchaser may not designate as an Assumable Executory Contract any (A) Rejectable Executory Contract, unless Sellers have consented to such designation in writing or (B) Contract that has previously been rejected by Sellers pursuant to Section 365 of the Bankruptcy Code, and (ii) Purchaser may not remove from the Assumable Executory Contract Schedule (v) the UAW Collective Bargaining Agreement, (w) any Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule or Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, (x) any Contract that has been previously assumed by Sellers pursuant to Section 365 of the Bankruptcy Code, (y) any Deferred Termination Agreement (or the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement) or (z) any Participation Agreement (or the related Continuing Brand Dealer Agreement). Except as otherwise provided above, for each Assumable Executory Contract, Purchaser must determine, prior to the Executory Contract Designation Deadline, the date on which it seeks to have the assumption and assignment become effective, which date may be the Closing Date or a later date (but not an earlier date). The term "Executory Contract Designation Deadline" shall mean the date that is thirty (30) calendar days following the Closing Date, or if such date is not a Business Day, the next Business Day, or if mutually agreed upon by the Parties, any later date up to and including the Business Day immediately prior to the date of the confirmation hearing for Sellers' plan of liquidation or reorganization. For the avoidance of doubt, the Executory Contract Designation Deadline may be extended by mutual agreement of the Parties with respect to any single unassumed and unassigned Executory Contract, groups of unassumed and unassigned Executory Contracts or all of the unassumed and unassigned Executory Contracts.

(b) Sellers may, until the Closing, provide written notice (a "Notice of Intent to Reject") to Purchaser of Sellers' intent to designate any Executory Contract (that has not been designated as an Assumable Executory Contract) as a Rejectable Executory Contract (each a "Proposed Rejectable Executory Contract"). Following receipt of a Notice of Intent to Reject, Purchaser shall as soon as reasonably practicable, but in no event later than fifteen (15) calendar days following receipt of a Notice of Intent to Reject (the "Option Period"), provide Sellers written notice of Purchaser's designation of one or more Proposed Rejectable Executory Contracts identified in such Notice of Intent to Reject as an Assumable Executory Contract. Each Proposed Rejectable Executory Contract that has not been designated by Purchaser as an Assumable Executory Contract during the applicable Option Period shall automatically, without further action by Sellers, be designated as a Rejectable Executory Contract. A "Rejectable Executory Contract" is an Executory Contract that Sellers may, but are not obligated to, reject pursuant Section 365 of the Bankruptcy Code.

(c) Immediately following the Closing, each Executory Contract entered into by Sellers and then in existence that has not previously been designated as an Assumable

Executory Contract, a Rejectable Executory Contract or a Proposed Rejectable Executory Contract, and that has not otherwise been assumed or rejected by Sellers pursuant to Section 365 of the Bankruptcy Code, shall be deemed to be an Executory Contract subject to subsequent designation by Purchaser as an Assumable Executory Contract or a Rejectable Executory Contract (each a "Deferred Executory Contract").

(d) All Assumable Executory Contracts shall be assumed and assigned to Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the date designated by the Purchaser and (ii) the date following expiration of the objection deadline if no objection, other than to the Cure Amount, has been timely filed or the date of resolution of any objection unrelated to Cure Amount, as provided in the Sale Procedures Order; provided, however, that in the case of each (A) Assumable Executory Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule, (2) Deferred Termination Agreement (and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract and (3) Participation Agreement (and the related Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract, the Assumption Effective Date shall be the Closing Date and (B) Assumable Executory Contract identified on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, the Assumption Effective Date shall be a date that is no later than the date set forth with respect to such Executory Contract on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule. On the Assumption Effective Date for any Assumable Executory Contract, such Assumable Executory Contract shall be deemed to be a Purchased Contract hereunder. If it is determined under the procedures set forth in the Sale Procedures Order that Sellers may not assume and assign to Purchaser any Assumable Executory Contract, such Executory Contract shall cease to be an Assumable Executory Contract and shall be an Excluded Contract and a Rejectable Executory Contract. Except as provided in **Section 6.31**, notwithstanding anything else to the contrary herein, any Executory Contract that has not been specifically designated as an Assumable Executory Contract as of the Executory Contract Designation Deadline applicable to such Executory Contract, including any Deferred Executory Contract, shall automatically be deemed to be a Rejectable Executory Contract and an Excluded Contract hereunder. Sellers shall have the right, but not the obligation, to reject, at any time, any Rejectable Executory Contract; provided, however, that Sellers shall not reject any Contract that affects both Owned Real Property and Excluded Real Property (whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule), including any such Executory Contract that involves the provision of water, water treatment, electric, fuel, gas, telephone and other utilities to any facilities located at the Excluded Real Property, whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (the "Shared Executory Contracts"), without the prior written consent of Purchaser.

(e) From and after the Closing and during the applicable period specified below, Purchaser shall be obligated to pay or cause to be paid all amounts due in respect of Sellers' performance (i) under each Proposed Rejectable Executory Contract, during the pendency of the applicable Option Period under such Proposed Rejectable Executory Contract, (ii) under each Deferred Executory Contract, for so long as such Contract remains a Deferred Executory Contract, (iii) under each Assumable Executory Contract,

as long as such Contract remains an Assumable Executory Contract and (iv) under each GM Assumed Contract, until the applicable Assumption Effective Date. At and after the Closing and until such time as any Shared Executory Contract is either (y) rejected by Sellers pursuant to the provision set forth in this **Section 6.6** or (z) assumed by Sellers and subsequently modified with Purchaser's consent so as to no longer be applicable to the affected Owned Real Property, Purchaser shall reimburse Sellers as and when requested by Sellers for Purchasers' and its Affiliates' allocable share of all costs and expenses incurred under such Shared Executory Contract.

(f) Sellers and Purchaser shall comply with the procedures set forth in the Sale Procedures Order with respect to the assumption and assignment or rejection of any Executory Contract pursuant to, and in accordance with, this **Section 6.6**.

(g) No designation of any Executory Contract for assumption and assignment or rejection in accordance with this **Section 6.6** shall give rise to any right to any adjustment to the Purchase Price.

(h) Without limiting the foregoing, if, following the Executory Contract Designation Deadline, Sellers or Purchaser identify an Executory Contract that has not previously been identified as a Contract for assumption and assignment, and such Contract is important to Purchaser's ability to use or hold the Purchased Assets or operate its businesses in connection therewith, Sellers will assume and assign such Contract and assign it to Purchaser without any adjustment to the Purchase Price; provided that Purchaser consents and agrees at such time to (i) assume such Executory Contract and (ii) and discharge all Cure Amounts in respect hereof.

Section 6.7 Deferred Termination Agreements; Participation Agreements.

(a) Sellers shall, and shall cause their Affiliates to, use reasonable best efforts to enter into short-term deferred voluntary termination agreements in substantially the form attached hereto as **Exhibit J-1** (in respect of all Saturn Discontinued Brand Dealer Agreements), **Exhibit J-2** (in respect of all Hummer Discontinued Brand Dealer Agreements) and **Exhibit J-3** (in respect of all non-Saturn and non-Hummer Discontinued Brand Dealer Agreements and all Excluded Continuing Brand Dealer Agreements) that will, when executed by the relevant dealer counterparty thereto, modify the respective Discontinued Brand Dealer Agreements and selected Continuing Brand Dealer Agreements (collectively, the "Deferred Termination Agreements"). For the avoidance of doubt, (i) each Deferred Termination Agreement, and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement modified thereby, will automatically be an Assumable Executory Contract hereunder upon valid execution of such Deferred Termination Agreement by the parties thereto and (ii) all Discontinued Brand Dealer Agreements that are not modified by a Deferred Termination Agreement, and all Continuing Brand Dealer Agreements that are not modified by either a Deferred Termination Agreement or a Participation Agreement, will automatically be a Rejectable Executory Contract hereunder.

(b) Sellers shall, and shall cause their Affiliates to, use reasonable best efforts to enter into agreements, substantially in the form attached hereto as **Exhibit K** that will modify all Continuing Brand Dealer Agreements (other than the Continuing Brand Dealer Agreements that are proposed to be modified by Deferred Termination Agreements) (the "Participation Agreements"). For the avoidance of doubt, (i) all Participation Agreements, and the related Continuing Brand Dealer Agreements, will automatically be Assumable Executory Contracts hereunder upon valid execution of such Participation Agreement and (ii) all Continuing Brand Dealer Agreements that are proposed to be modified by a Participation Agreement and are not modified by a Participation Agreement will be offered Deferred Termination Agreements pursuant to **Section 6.7(a)**.

Section 6.8 [Reserved]

Section 6.9 Purchaser Assumed Debt; Wind Down Facility.

(a) Purchaser shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of the Purchaser Assumed Debt so as to be assumed by Purchaser immediately prior to the Closing. Purchaser shall use reasonable best efforts to enter into definitive financing agreements with respect to the Purchaser Assumed Debt so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

(b) Sellers shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of $950,000,000 of Indebtedness accrued under the DIP Facility (as restructured, the "Wind Down Facility") to provide for such Wind Down Facility to be non-recourse, to accrue payment-in-kind interest at LIBOR plus 300 basis points, to be secured by all assets of Sellers (other than the Parent Shares, Adjustment Shares, Parent Warrants and any securities received in respect thereof), and to be subject to mandatory repayment from the proceeds of asset sales (other than the sale of Parent Shares, Adjustment Shares, Parent Warrants and any securities received in respect thereof). Sellers shall use reasonable best efforts to enter into definitive financing agreements with respect to the Wind Down Facility so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

Section 6.10 Litigation and Other Assistance. In the event and for so long as any Party is actively contesting or defending against any action, investigation, charge, Claim or demand by a third party in connection with any transaction contemplated by this Agreement, the other Parties shall reasonably cooperate with the contesting or defending Party and its counsel in such contest or defense, make available its personnel and provide such testimony and access to its books, records and other materials as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party; provided, however, that no Party shall be required to provide the contesting or defending party with any access to its books, records or materials if such access would violate the attorney-client privilege or conflict with any confidentiality obligations to which the non-contesting or defending Party is subject. In addition, the Parties agree to cooperate in connection with the making or filing of claims, requests for information, document retrieval and other activities in connection with any

and all Claims made under insurance policies specified on Section 2.2(b)(xiii) of the Sellers' Disclosure Schedule to the extent any such Claim relates to any Purchased Asset or Assumed Liability. For the avoidance of doubt, this **Section 6.10** shall not apply to any action, investigation, charge, Claim or demand by any of Sellers or their Affiliates, on the one hand, or Purchaser or any of its Affiliates, on the other hand.

Section 6.11 Further Assurances.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use their reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all actions necessary, proper or advisable to consummate and make effective as promptly as practicable, the transactions contemplated by this Agreement in accordance with the terms hereof and to bring about the satisfaction of all other conditions to the other Parties' obligations hereunder; provided, however, that nothing in this Agreement shall obligate Sellers or Purchaser, or any of their respective Affiliates, to waive or modify any of the terms and conditions of this Agreement or any documents contemplated hereby, except as expressly set forth herein. The Parties acknowledge that Sponsor's acquisition of interest is a sovereign act and that no filings should be made by Sponsor or Purchaser in non-United States jurisdictions.

(b) The Parties shall negotiate the forms, terms and conditions of the Ancillary Agreements, to the extent the forms thereof are not attached to this Agreement, on the basis of the respective term sheets attached to this Agreement, in good faith, with such Ancillary Agreements to set forth terms on an Arms-Length Basis and incorporate usual and customary provisions for similar agreements.

(c) Until the Closing, Sellers shall maintain a team of appropriate personnel (each such team, a "Transition Team") to assist Purchaser and its Representatives in connection with Purchaser's efforts to complete prior to the Closing the activities described below. Sellers shall use their reasonable best efforts to cause the Transition Team to (A) meet with Purchaser and its Representatives on a regular basis at such times as Purchaser may reasonably request and (B) take such action and provide such information, including background and summary information, as Purchaser and its Representatives may reasonably request in connection with the following activities:

(i) evaluation and identification of all Contracts that Purchaser may elect to designate as Purchased Contracts or Excluded Contracts, consistent with its rights under this Agreement;

(ii) evaluation and identification of all assets and entities that Purchaser may elect to designate as Purchased Assets or Excluded Assets, consistent with its rights under this Agreement;

(iii) maintaining and obtaining necessary governmental consents, permits, authorizations, licenses and financial assurance for operation of the business by Purchaser following the Closing;

(iv) obtaining necessary third party consents for operation of the business by Purchaser following the Closing;

(v) implementing the optimal structure for Purchaser and its subsidiaries to acquire and hold the Purchased Assets and operate the business following the Closing;

(vi) implementing the assumption of all Assumed Plans and otherwise satisfying the obligations of Purchaser as provided in **Section 6.17** with respect to Employment Related Obligations; and

(vii) such other transition matters as Purchaser may reasonably determine are necessary for Purchaser to fulfill its obligations and exercise its rights under this Agreement.

Section 6.12 Notifications.

(a) Sellers shall give written notice to Purchaser as soon as practicable upon becoming aware of any event, circumstance, condition, fact, effect or other matter that resulted in, or that would reasonably be likely to result in (i) any representation or warranty set forth in **ARTICLE IV** being or becoming untrue or inaccurate in any material respect as of any date on or after the date hereof (as if then made, except to the extent such representation or warranty is expressly made only as of a specific date, in which case, as of such date), (ii) the failure by Sellers to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by Sellers under this Agreement or (iii) a condition to the Closing set forth in **Section 7.1** or **Section 7.2** becoming incapable of being satisfied; provided, however, that no such notification shall affect or cure a breach of any of Sellers' representations or warranties, a failure to perform any of the covenants or agreements of Sellers or a failure to have satisfied the conditions to the obligations of Sellers under this Agreement. Such notice shall be in form of a certificate signed by an executive officer of Parent setting forth the details of such event and the action which Parent proposes to take with respect thereto.

(b) Purchaser shall give written notice to Sellers as soon as practicable upon becoming aware of any event, circumstance, condition, fact, effect or other matter that resulted in, or that would reasonably be likely to result in (i) any representation or warranty set forth in **ARTICLE V** being or becoming untrue or inaccurate in any material respect with respect to Purchaser as of any date on or after the date hereof (as if then made, except to the extent such representation or warranty is expressly made only as of a specific date, in which case as of such date), (ii) the failure by Purchaser to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by Purchaser under this Agreement or (iii) a condition to the Closing set forth in **Section 7.1** or **Section 7.3** becoming incapable of being satisfied; provided, however, that no such notification shall affect or cure a breach of any of Purchaser's representations or warranties, a failure to perform any of the covenants or agreements of Purchaser or a failure to have satisfied the conditions to the obligations of Purchaser under this Agreement. Such notice shall be in a form of a certificate signed by

an executive officer of Purchaser setting forth the details of such event and the action which Purchaser proposes to take with respect thereto.

Section 6.13 Actions by Affiliates. Each of Purchaser and Sellers shall cause their respective controlled Affiliates, and shall use their reasonable best efforts to ensure that each of their respective other Affiliates (other than Sponsor in the case of Purchaser) takes all actions reasonably necessary to be taken by such Affiliate in order to fulfill the obligations of Purchaser or Sellers, as the case may be, under this Agreement.

Section 6.14 Compliance Remediation. Except with respect to the Excluded Assets or Retained Liabilities, prior to the Closing, Sellers shall use reasonable best efforts to, and shall use reasonable best efforts to cause their Subsidiaries to use their reasonable best efforts to, cure in all material respects any instances of non-compliance with Laws or Orders, failures to possess or maintain Permits or defaults under Permits.

Section 6.15 Product Certification, Recall and Warranty Claims.

(a) From and after the Closing, Purchaser shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Safety Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code and similar Laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by Seller.

(b) From and after the Closing, Purchaser shall be responsible for the administration, management and payment of all Liabilities arising under (i) express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (ii) Lemon Laws. In connection with the foregoing clause (ii), (A) Purchaser shall continue to address Lemon Law Claims using the same procedural mechanisms previously utilized by the applicable Sellers and (B) for avoidance of doubt, Purchaser shall not assume Liabilities arising under the law of implied warranty or other analogous provisions of state Law, other than Lemon Laws, that provide consumer remedies in addition to or different from those specified in Sellers' express warranties.

(c) For the avoidance of doubt, Liabilities of the Transferred Entities arising from or in connection with products manufactured or sold by the Transferred Entities remain the responsibility of the Transferred Entities and shall be neither Assumed Liabilities nor Retained Liabilities for the purposes of this Agreement.

Section 6.16 Tax Matters; Cooperation.

(a) Prior to the Closing Date, Sellers shall prepare and timely file (or cause to be prepared and timely filed) all Tax Returns required to be filed prior to such date (taking into account any extension of time to file granted or obtained) that relate to Sellers, the Purchased Subsidiaries and the Purchased Assets in a manner consistent with

past practices (except as otherwise required by Law), and shall provide Purchaser prompt opportunity for review and comment and shall obtain Purchaser's written approval prior to filing any such Tax Returns. After the Closing Date, at Purchaser's election, Purchaser shall prepare, and the applicable Seller, Seller Subsidiary or Seller Group member shall timely file, any Tax Return relating to any Seller, Seller Subsidiary or Seller Group member for any Pre-Closing Tax Period or Straddle Period due after the Closing Date or other taxable period of any entity that includes the Closing Date, subject to the right of the applicable Seller to review any such material Tax Return. Purchaser shall prepare and file all other Tax Returns required to be filed after the Closing Date in respect of the Purchased Assets. Sellers shall prepare and file all other Tax Returns relating to the Post-Closing Tax Period of Sellers, subject to the prior review and approval of Purchaser, which approval may be withheld, conditioned or delayed with good reason. No Seller or Seller Group member shall be entitled to any payment or other consideration in addition to the Purchase Price with respect to the acquisition or use of any Tax items or attributes by Purchaser, any Purchased Subsidiary or Affiliates thereof. At Purchaser's request, any Seller or Seller Group member shall designate Purchaser or any of its Affiliates as a substitute agent for the Seller Group for Tax purposes. Purchaser shall be entitled to make all determinations, including the right to make or cause to be made any elections with respect to Taxes and Tax Returns of Sellers, Seller Subsidiaries, Seller Groups and Seller Group members with respect to Pre-Closing Tax Periods and Straddle Periods and with respect to the Tax consequences of the Relevant Transactions (including the treatment of such transactions as an Agreed G Transaction) and the other transactions contemplated by this Agreement, including (i) the "date of distribution or transfer" for purposes of Section 381(b) of the Tax Code, if applicable; (ii) the relevant Tax periods and members of the Seller Group and the Purchaser and its Affiliates; (iii) whether the Purchaser and/or any of its Affiliates shall be treated as a continuation of Seller Group; and (iv) any other determinations required under Section 381 of the Tax Code. Purchaser shall have the sole right to represent the interests, as applicable, of any Seller, Seller Group member or Purchased Subsidiary in any Tax proceeding in connection with any Tax Liability or any Tax item for any Pre-Closing Tax Period, Straddle Period or other Tax period affecting any such earlier Tax period. After the Closing, Purchaser shall have the right to assume control of any PLR or CA request filed by Sellers or any Affiliate thereof, including the right to represent Sellers and their Affiliates and to direct all professionals acting on their behalf in connection with such request, and no settlement, concession, compromise, commitment or other agreements in respect of such PLR or CA request shall be made without Purchaser's prior written consent.

(b) All Taxes required to be paid by any Seller or Seller Group member for any Pre-Closing Tax Period or any Straddle Period shall be timely paid. To the extent a Party hereto is liable for a Tax pursuant to this Agreement and such Tax is paid or payable by another Party or such other Party's Affiliates, the Party liable for such Tax shall make payment in the amount of such Tax to the other Party no later than three (3) days prior to the due date for payment of such Tax, unless a later time for payment is agreed to in writing by such other Party. To the extent that any Seller or Seller Group member receives or realizes the benefit of any Tax refund, abatement or credit that is a Purchased Asset, such Seller or Seller Group member receiving the benefit shall transfer

an amount equal to such refund, abatement or credit to Purchaser within fourteen (14) days of receipt or realization of the benefit.

(c) Purchaser and Sellers shall provide each other with such assistance and non-privileged information relating to the Purchased Assets as may reasonably be requested in connection with any Tax matter, including the matters contemplated by this **Section 6.16**, the preparation of any Tax Return or the performance of any audit, examination or other proceeding by any Taxing Authority, whether conducted in a judicial or administrative forum. Purchaser and Sellers shall retain and provide to each other all non-privileged records and other information reasonably requested by the other and that may be relevant to any such Tax Return, audit, examination or other proceeding.

(d) After the Closing, at Purchaser's election, Purchaser shall exercise exclusive control over the handling, disposition and settlement of any inquiry, examination or proceeding (including an audit) by a Governmental Authority (or that portion of any inquiry, examination or proceeding by a Governmental Authority) with respect to Sellers, any Subsidiary of Sellers or any Seller Group, provided that to the extent any such inquiry, examination or proceeding by a Governmental Authority could materially affect the Taxes due or payable by Sellers, Purchaser shall control the handling, disposition and settlement thereof, subject to reasonable consultation rights of Sellers. Each Party shall notify the other Party (or Parties) in writing promptly upon learning of any such inquiry, examination or proceeding. The Parties and their Affiliates shall cooperate with each other in any such inquiry, examination or proceeding as a Party may reasonably request. Neither Parent nor any of its Affiliates shall extend, without Purchaser's prior written consent, the statute of limitations for any Tax for which Purchaser or any of its Affiliates may be liable.

(e) Notwithstanding anything contained herein, Purchaser shall prepare and Sellers shall timely file all Tax Returns required to be filed in connection with the payment of Transfer Taxes.

(f) From the date of this Agreement to and including the Closing Date, except to the extent relating solely to an Excluded Asset or Retained Liability, no Seller, Seller Group member or Purchased Subsidiary shall, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed, and shall not be withheld if not resulting in any Tax impact on Purchaser or any Purchased Asset), (i) make, change, or terminate any material election with respect to Taxes (including elections with respect to the use of Tax accounting methods) of any Seller, Seller Group member or Purchased Subsidiary or any material joint venture to which any Seller or Purchased Subsidiary is a party, (ii) settle or compromise any Claim or assessment for Taxes (including refunds) that could be reasonably expected to result in any adverse consequence on Purchaser or any Purchased Asset following the Closing Date, (iii) agree to an extension of the statute of limitations with respect to the assessment or collection of the Taxes of any Seller, Seller Group member or Purchased Subsidiary or any material joint venture of which any Seller or Purchased Subsidiary is a party or (iv) make or surrender any Claim for a refund of a material amount of the Taxes of any of

Sellers or Purchased Subsidiaries or file an amended Tax Return with respect to a material amount of Taxes.

(g)

(i) Purchaser shall treat the transactions with respect to Parent described herein, in combination with the subsequent liquidation of Sellers (such transactions, collectively, the "Relevant Transactions"), as a reorganization pursuant to Section 368(a)(1)(G) of the Tax Code with any actual or deemed distribution by Parent qualifying solely under Sections 354 and 356 of the Tax Code but not under Section 355 of the Tax Code (a "G Transaction") if (x) the IRS issues a private letter ruling ("PLR") or executes a closing agreement ("CA"), in each case reasonably acceptable to Purchaser, confirming that the Relevant Transactions shall qualify as a G Transaction for U.S. federal income Tax purposes, or (y) Purchaser determines to treat the Relevant Transactions as so qualifying (clause (x) or (y), an "Agreed G Transaction"). In connection with the foregoing, Sellers shall use their reasonable best efforts to obtain a PLR or execute a CA with respect to the Relevant Transactions at least seven (7) days prior to the Closing Date. At least three (3) days prior to the Closing Date, Purchaser shall advise Parent in writing as to whether Purchaser has made a determination regarding the treatment of the Relevant Transactions for U.S. federal income Tax purposes and, if applicable, the outcome of any such determination.

(ii) On or prior to the Closing Date, Sellers shall deliver to Purchaser all information in the possession of Sellers and their Affiliates that is reasonably related to the determination of whether the Relevant Transactions constitute an Agreed G Transaction ("Relevant Information"), and, after the Closing, Sellers shall promptly provide to Purchaser any newly produced or obtained Relevant Information. For the avoidance of doubt, the Parties shall cooperate in taking any actions and providing any information that Purchaser determines is necessary or appropriate in furtherance of the intended U.S. federal income Tax treatment of the Relevant Transactions and the other transactions contemplated by this Agreement.

(iii) If Purchaser has not determined as of the Closing Date whether to treat the Relevant Transactions as an Agreed G Transaction, Purchaser shall make such determination in accordance with this **Section 6.16** prior to the due date (including validly obtained extensions) for filing the corporate income Tax Return for Parent's U.S. affiliated group (as defined in Section 1504 of the Tax Code) for the taxable year in which the Closing Date occurs, and shall convey such decision in writing to Parent, which decision shall be binding on Parent.

(iv) If the Relevant Transactions constitute an Agreed G Transaction under this **Section 6.16**: (A) Sellers shall use their reasonable best efforts, and Purchaser shall use reasonable best efforts to assist Sellers, to effectuate such treatment and the Parties shall not take any action or position inconsistent with, or

fail to take any necessary action in furtherance of, such treatment (subject to **Section 6.16(g)(vi)**); (B) the Parties agree that this Agreement shall constitute a "plan" of Parent and Purchaser for purposes of Sections 368 and 354 of the Tax Code; (C) the board of directors of Parent and Purchaser shall, by resolution, approve the execution of this Agreement and expressly recognize its treatment as a "plan" of Parent and Purchaser for purposes of Sections 368 and 354 of the Tax Code, and the treatment of the Relevant Transactions as a G Transaction for federal income Tax purposes; (D) Sellers shall provide Purchaser with a statement setting forth the adjusted Tax basis of the Purchased Assets and the amount of net operating losses and other material Tax attributes of Sellers and any Purchased Subsidiary that are available as of the Closing Date and after the close of any taxable year of any Seller or Seller Group member that impacts the numbers previously provided, all based on the best information available, but with no Liability for any errors or omissions in information; and (E) Sellers shall provide Purchaser with an estimate of the cancellation of Indebtedness income that Sellers and any Seller Group member anticipate realizing for the taxable year that includes the Closing Date, and shall provide revised numbers after the close of any taxable year of any Seller or Seller Group member that impacts this number.

(v) If the Relevant Transactions do not constitute an Agreed G Transaction under this **Section 6.16**, the Parties hereby agree, and Sellers hereby consent, to treat the sale of the Purchased Assets by Parent as a taxable asset sale for all Tax purposes, to make any elections pursuant to Section 338 of the Tax Code requested by Purchaser, and to report consistently herewith for purposes of **Section 3.3**. In addition, the Parties hereby agree, and Sellers hereby consent, to treat the sales of the Purchased Assets by S Distribution and Harlem as taxable asset sales for all Tax purposes, to make any elections pursuant to Section 338 of the Tax Code requested by Purchaser, and to report consistently herewith for purposes of **Section 3.3**.

(vi) No Party shall take any position with respect to the Relevant Transactions that is inconsistent with the position determined in accordance with this **Section 6.16**, unless, and then only to the extent, otherwise required to do so by a Final Determination.

(vii) Each Seller shall liquidate, as determined for U.S. federal income Tax purposes and to the satisfaction of Purchaser, no later than December 31, 2011, and each such liquidation may include a distribution of assets to a "liquidating trust" within the meaning of Treas. Reg. § 301.7701-4, the terms of which shall be satisfactory to Purchaser.

(viii) Effective no later than the Closing Date, Purchaser shall be treated as a corporation for federal income Tax purposes.

Section 6.17 Employees; Benefit Plans; Labor Matters.

(a) *Transferred Employees*. Effective as of the Closing Date, Purchaser or one of its Affiliates shall make an offer of employment to each Applicable Employee. Notwithstanding anything herein to the contrary and except as provided in an individual employment Contract with any Applicable Employee or as required by the terms of an Assumed Plan, offers of employment to Applicable Employees whose employment rights are subject to the UAW Collective Bargaining Agreement as of the Closing Date, shall be made in accordance with the applicable terms and conditions of the UAW Collective Bargaining Agreement and Purchaser's obligations under the Labor Management Relations Act of 1974, as amended. Each offer of employment to an Applicable Employee who is not covered by the UAW Collective Bargaining Agreement shall provide, until at least the first anniversary of the Closing Date, for (i) base salary or hourly wage rates initially at least equal to such Applicable Employee's base salary or hourly wage rate in effect as of immediately prior to the Closing Date and (ii) employee pension and welfare benefits, Contracts and arrangements that are not less favorable in the aggregate than those listed on Section 4.10 of the Sellers' Disclosure Schedule, but not including any Retained Plan, equity or equity-based compensation plans or any Benefit Plan that does not comply in all respects with TARP. For the avoidance of doubt, each Applicable Employee on layoff status, leave status or with recall rights as of the Closing Date, shall continue in such status and/or retain such rights after Closing in the Ordinary Course of Business. Each Applicable Employee who accepts employment with Purchaser or one of its Affiliates and commences working for Purchaser or one of its Affiliates shall become a "Transferred Employee." To the extent such offer of employment by Purchaser or its Affiliates is not accepted, Sellers shall, as soon as practicable following the Closing Date, terminate the employment of all such Applicable Employees. Nothing in this **Section 6.17(a)** shall prohibit Purchaser or any of its Affiliates from terminating the employment of any Transferred Employee after the Closing Date, subject to the terms and conditions of the UAW Collective Bargaining Agreement. It is understood that the intent of this **Section 6.17(a)** is to provide a seamless transition from Sellers to Purchaser of any Applicable Employee subject to the UAW Collective Bargaining Agreement. Except for Applicable Employees with non-standard individual agreements providing for severance benefits, until at least the first anniversary of the Closing Date, Purchaser further agrees and acknowledges that it shall provide to each Transferred Employee who is not covered by the UAW Collective Bargaining Agreement and whose employment is involuntarily terminated by Purchaser or its Affiliates on or prior to the first anniversary of the Closing Date, severance benefits that are not less favorable than the severance benefits such Transferred Employee would have received under the applicable Benefit Plans listed on Section 4.10 of the Sellers' Disclosure Schedule. Purchaser or one of its Affiliates shall take all actions necessary such that Transferred Employees shall be credited for their actual and credited service with Sellers and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual (except in the case of a defined benefit pension plan sponsored by Purchaser or any of its Affiliates in which Transferred Employees may commence participation after the Closing that is not an Assumed Plan), in any employee benefit plans (excluding equity compensation plans or programs) covering Transferred Employees after the Closing to the same extent as such Transferred Employee was

entitled as of immediately prior to the Closing Date to credit for such service under any similar employee benefit plans, programs or arrangements of any of Sellers or any Affiliate of Sellers; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such Transferred Employee or the funding for any such benefit. Such benefits shall not be subject to any exclusion for any pre-existing conditions to the extent such conditions were satisfied by such Transferred Employees under a Parent Employee Benefit Plan as of the Closing Date, and credit shall be provided for any deductible or out-of-pocket amounts paid by such Transferred Employee during the plan year in which the Closing Date occurs.

(b) *Employees of Purchased Subsidiaries*. As of the Closing Date, those employees of Purchased Subsidiaries who participate in the Assumed Plans, may, subject to the applicable Collective Bargaining Agreement, for all purposes continue to participate in such Assumed Plans, in accordance with their terms in effect from time to time. For the avoidance of any doubt, Purchaser shall continue the employment of any current Employee of any Purchased Subsidiary covered by the UAW Collective Bargaining Agreement on the terms and conditions of the UAW Collective Bargaining Agreement in effect immediately prior to the Closing Date, subject to its terms; provided, however, that nothing in this Agreement shall be construed to terminate the coverage of any UAW-represented Employee in an Assumed Plan if such Employee was a participant in the Assumed Plan immediately prior to the Closing Date. Further provided, that nothing in this Agreement shall create a direct employment relationship between Parent or Purchaser and an Employee of a Purchased Subsidiary or an Affiliate of Parent.

(c) *No Third Party Beneficiaries*. Nothing contained herein, express or implied, (i) is intended to confer or shall confer upon any Employee or Transferred Employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment, (ii) except as set forth in **Section 9.11**, is intended to confer or shall confer upon any individual or any legal Representative of any individual (including employees, retirees, or dependents or beneficiaries of employees or retirees and including collective bargaining agents or representatives) any right as a third-party beneficiary of this Agreement or (iii) shall be deemed to confer upon any such individual or legal Representative any rights under or with respect to any plan, program or arrangement described in or contemplated by this Agreement, and each such individual or legal Representative shall be entitled to look only to the express terms of any such plans, program or arrangement for his or her rights thereunder. Nothing herein is intended to override the terms and conditions of the UAW Collective Bargaining Agreement.

(d) *Plan Authority*. Nothing contained herein, express or implied, shall prohibit Purchaser or its Affiliates, as applicable, from, subject to applicable Law and the terms of the UAW Collective Bargaining Agreement, adding, deleting or changing providers of benefits, changing, increasing or decreasing co-payments, deductibles or other requirements for coverage or benefits (e.g., utilization review or pre-certification requirements), and/or making other changes in the administration or in the design, coverage and benefits provided to such Transferred Employees. Without reducing the obligations of Purchaser as set forth in **Section 6.17(a)**, no provision of this Agreement

shall be construed as a limitation on the right of Purchaser or its Affiliates, as applicable, to suspend, amend, modify or terminate any employee benefit plan, subject to the terms of the UAW Collective Bargaining Agreement. Further, (i) no provision of this Agreement shall be construed as an amendment to any employee benefit plan, and (ii) no provision of this Agreement shall be construed as limiting Purchaser's or its Affiliate's, as applicable, discretion and authority to interpret the respective employee benefit and compensation plans, agreements arrangements, and programs, in accordance with their terms and applicable Law.

(e) *Assumption of Certain Parent Employee Benefit Plans and Policies.* As of the Closing Date, Purchaser or one of its Affiliates shall assume (i) the Parent Employee Benefit Plans and Policies set forth on Section 6.17(e) of the Sellers' Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto, except for any that do not comply in all respects with TARP or as otherwise provided in **Section 6.17(h)** and (ii) all employee benefit plans, programs, policies, agreements or arrangements (whether written or oral) in which Employees who are covered by the UAW Collective Bargaining Agreement participate and all assets, trusts, insurance and other Contracts relating thereto (the "Assumed Plans"), for the benefit of the Transferred Employees and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Affiliates as the sponsor of such Assumed Plans including all assets, trusts, insurance policies and other Contracts relating thereto. Other than with respect to any Employee who was or is covered by the UAW Collective Bargaining Agreement, Purchaser shall have no Liability with respect to any modifications or changes to Benefit Plans contemplated by Section 6.17(e) of the Sellers' Disclosure Schedule, or changes made by Parent prior to the Closing Date, and Purchaser shall not assume any Liability with respect to any such decisions or actions related thereto, and Purchaser shall only assume the Liabilities for benefits provided pursuant to the written terms and conditions of the Assumed Plan as of the Closing Date. Notwithstanding the foregoing, the assumption of the Assumed Plans is subject to Purchaser taking all necessary action, including reduction of benefits, to ensure that the Assumed Plans comply in all respects with TARP. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement to which Purchaser or one of its Affiliates is a party, Purchaser and its Affiliates may, in its sole discretion, amend, suspend or terminate any such Assumed Plan at any time in accordance with its terms.

(f) *UAW Collective Bargaining Agreement.* Parent shall assume and assign to Purchaser, as of the Closing, the UAW Collective Bargaining Agreement and all rights and Liabilities of Parent relating thereto (including Liabilities for wages, benefits and other compensation, unfair labor practices, grievances, arbitrations and contractual obligations). With respect to the UAW Collective Bargaining Agreement, Purchaser agrees to (i) recognize the UAW as the exclusive collective bargaining representative for the Transferred Employees covered by the terms of the UAW Collective Bargaining Agreement, (ii) offer employment to all Applicable Employees covered by the UAW Collective Bargaining Agreement with full recognition of all seniority rights, (iii) negotiate with the UAW over the terms of any successor collective bargaining agreement upon the expiration of the UAW Collective Bargaining Agreement and upon timely

demand by the UAW, (iv) with the agreement of the UAW or otherwise as provided by Law and to the extent necessary, adopt or assume or replace, effective as of the Closing Date, employee benefit plans, policies, programs, agreements and arrangements specified in or covered by the UAW Collective Bargaining Agreement as required to be provided to the Transferred Employees covered by the UAW Collective Bargaining Agreement, and (v) otherwise abide by all terms and conditions of the UAW Collective Bargaining Agreement. For the avoidance of doubt, the provisions of this **Section 6.17(f)** are not intended to (A) give, and shall not be construed as giving, the UAW or any Transferred Employee any enhanced or additional rights or (B) otherwise restrict the rights that Purchaser and its Affiliates have, under the terms of the UAW Collective Bargaining Agreement.

(g) *UAW Retiree Settlement Agreement.* Prior to the Closing, Purchaser and the UAW shall have entered into the UAW Retiree Settlement Agreement.

(h) *Assumption of Existing Internal VEBA.* Purchaser or one of its Affiliates shall, effective as of the Closing Date, assume from Sellers the sponsorship of the voluntary employees' beneficiary association trust between Sellers and State Street Bank and Trust Company dated as of December 17, 1997, that is funded and maintained by Sellers ("Existing Internal VEBA") and, in connection therewith, Purchaser shall, or shall cause one of its Affiliates to, (i) succeed to all of the rights, title and interest (including the rights of Sellers, if any) as plan sponsor, plan administrator or employer) under the Existing Internal VEBA, (ii) assume any responsibility or Liability relating to the Existing Internal VEBA and each Contract established thereunder or relating thereto, and (iii) to operate the Existing Internal VEBA in accordance with, and to otherwise comply with the Purchaser's obligations under, the New UAW Retiree Settlement Agreement between Purchaser and the UAW, effective as of the Closing and subject to approval by a court having jurisdiction over this matter, including the obligation to direct the trustee of the Existing Internal VEBA to transfer the UAW's share of assets in the Existing Internal VEBA to the New VEBA. The Parties shall cooperate in the execution of any documents, the adoption of any corporate resolutions or the taking of any other reasonable actions to effectuate such succession of the settlor rights, title, and interest with respect to the Existing Internal VEBA. For avoidance of doubt, Purchaser shall not assume any Liabilities relating to the Existing Internal VEBA except with respect to such Contracts set forth in Section 6.17(h) of the Sellers' Disclosure Schedule.

(i) *Wage and Tax Reporting.* Sellers and Purchaser agree to apply, and cause their Affiliates to apply, the standard procedure for successor employers set forth in Revenue Procedure 2004-53 for wage and employment Tax reporting.

(j) *Non-solicitation.* Sellers shall not, for a period of two (2) years from the Closing Date, without Purchaser's written consent, solicit, offer employment to or hire any Transferred Employee.

(k) *Cooperation.* Purchaser and Sellers shall provide each other with such records and information as may be reasonably necessary, appropriate and permitted under applicable Law to carry out their obligations under this **Section 6.17**; provided, that all

records, information systems data bases, computer programs, data rooms and data related to any Assumed Plan or Liabilities of such, assumed by Purchaser, shall be transferred to Purchaser.

(l) *Union Notifications.* Purchaser and Sellers shall reasonably cooperate with each other in connection with any notification required by Law to, or any required consultation with, or the provision of documents and information to, the employees, employee representatives, the UAW and relevant Governmental Authorities and governmental officials concerning the transactions contemplated by this Agreement, including any notice to any of Sellers' retired Employees represented by the UAW, describing the transactions contemplated herein.

(m) *Union-Represented Employees (Non-UAW).*

(i) Effective as of the Closing Date, Purchaser or one of its Affiliates shall assume the collective bargaining agreements, as amended, set forth on Section 6.17(m)(i) of the Sellers' Disclosure Schedule (collectively, the "Non-UAW Collective Bargaining Agreements") and make offers of employment to each current employee of Parent who is covered by them in accordance with the applicable terms and conditions of such Non-UAW Collective Bargaining Agreements, such assumption and offers conditioned upon (A) the non-UAW represented employees' ratification of the amendments thereto (including termination of the application of the Supplemental Agreements Covering Health Care Program to retirees and the reduction to retiree life insurance coverage) and (B) Bankruptcy Court approval of Settlement Agreements between Purchaser and such Unions and Proposed Memorandum of Understanding Regarding Retiree Health Care and Life Insurance between Sellers and such Unions, as identified on Section 6.17(m)(ii) of the Sellers' Disclosure Schedule and satisfaction of all conditions stated therein. Each such non-UAW hourly employee on layoff status, leave status or with recall rights as of the Closing Date shall continue in such status and/or retain such rights after the Closing in the Ordinary Course of Business, subject to the terms of the applicable Non-UAW Collective Bargaining Agreement. Other than as set forth in this **Section 6.17(m)**, no non-UAW collective bargaining agreement shall be assumed by Purchaser.

(ii) Section 6.17(m)(ii) of the Sellers' Disclosure Schedule sets forth agreements relating to post-retirement health care and life insurance coverage for non-UAW retired employees (the "Non-UAW Settlement Agreements"), including those agreements covering retirees who once belonged to Unions that no longer have any active employees at Sellers. Conditioned on both the approval of the Bankruptcy Court and the non-UAW represented employees' ratification of the amendments to the applicable Non-UAW Collective Bargaining Agreement providing for such coverage as described in **Section 6.17(m)(i)** above, Purchaser or one of its Affiliates shall assume and enter into the agreements identified on Section 6.17(m)(ii) of the Sellers' Disclosure Schedule. Except as set forth in those agreements identified on Section 6.17(m)(i) and Section 6.17(m)(ii) of the Sellers' Disclosure Schedule, Purchaser shall not assume any Liability to provide

post-retirement health care or life insurance coverage for current or future hourly non-UAW retirees.

(iii) Other than as expressly set forth in this **Section 6.17(m)**, Purchaser assumes no Employment-Related Obligations for non-UAW hourly Employees. For the avoidance of doubt, (A) the provisions of **Section 6.17(f)** shall not apply to this **Section 6.17(m)** and (B) the provisions of this **Section 6.17(m)** are not intended to (y) give, and shall not be construed as giving, any non-UAW Union or the covered employee or retiree of any Non-UAW Collective Bargaining Agreement any enhanced or additional rights or (z) otherwise restrict the rights that Purchaser and its Affiliates have under the terms of the Non-UAW Collective Bargaining Agreements identified on Section 6.17(m)(i) of the Sellers' Disclosure Schedule.

Section 6.18 TARP. From and after the date hereof and until such time as all amounts under the UST Credit Facilities have been paid in full, forgiven or otherwise extinguished or such longer period as may be required by Law, subject to any applicable Order of the Bankruptcy Court, each of Sellers and Purchaser shall, and shall cause each of their respective Subsidiaries to, take all necessary action to ensure that it complies in all material respects with TARP or any enhanced restrictions on executive compensation agreed to by Sellers and Sponsor prior to the Closing.

Section 6.19 Guarantees; Letters of Credit. Purchaser shall use its reasonable best efforts to cause Purchaser or one or more of its Subsidiaries to be substituted in all respects for each Seller and Excluded Entity, effective as of the Closing Date, in respect of all Liabilities of each Seller and Excluded Entity under each of the guarantees, letters of credit, letters of comfort, bid bonds and performance bonds (a) obtained by any Seller or Excluded Entity for the benefit of the business of Sellers and their Subsidiaries and (b) which is assumed by Purchaser as an Assumed Liability. As a result of such substitution, each Seller and Excluded Entity shall be released of its obligations of, and shall have no Liability following the Closing from, or in connection with any such guarantees, letters of credit, letters of comfort, bid bonds and performance bonds.

Section 6.20 Customs Duties. Purchaser shall reimburse Sellers for all customs-related duties, fees and associated costs incurred by Sellers on behalf of Purchaser with respect to periods following the Closing, including all such duties, fees and costs incurred in connection with co-loaded containers that clear customs intentionally or unintentionally under any Seller's importer or exporter identification numbers and bonds or guarantees with respect to periods following the Closing.

Section 6.21 Termination of Intellectual Property Rights. Each Seller agrees that any rights of any Seller, including any rights arising under Contracts, if any, to any and all of the Intellectual Property transferred to Purchaser pursuant to this Agreement (including indirect transfers resulting from the transfer of the Transferred Equity Interests and including transfers resulting from this **Section 6.21**), whether owned or licensed, shall terminate as of the Closing. Before and after the Closing, each Seller agrees to use its reasonable best efforts to cause the Retained Subsidiaries to do the following, but only to the extent that such Seller can do so

without incurring any Liabilities to such Retained Subsidiaries or their equity owners or creditors as a result thereof: (a) enter into a written Contract with Purchaser that expressly terminates any rights of such Retained Subsidiaries, including any rights arising under Contracts, if any, to any and all of the Intellectual Property transferred to Purchaser pursuant to this Agreement (including indirect transfers resulting from the transfer of the Transferred Equity Interests), whether owned or licensed; and (b) assign to Purchaser or its designee(s): (i) all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted, used, acquired, or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by or associated with such marks, in each case, that are owned by such Retained Subsidiaries and that contain or are confusingly similar with (whether in whole or in part) any of the Trademarks; and (ii) all other intellectual property owned by such Retained Subsidiaries. Nothing in this **Section 6.21** shall preserve any rights of Sellers or the Retained Subsidiaries, or any third parties, that are otherwise terminated or extinguished pursuant to this Agreement or applicable Law, and nothing in this **Section 6.21** shall create any rights of Sellers or the Retained Subsidiaries, or any third parties, that do not already exist as of the date hereof. Notwithstanding anything to the contrary in this **Section 6.21**, Sellers may enter into (and may cause or permit any of the Purchased Subsidiaries to enter into) any of the transactions contemplated by Section 6.2 of the Sellers' Disclosure Schedule.

Section 6.22 Trademarks.

(a) At or before the Closing (i) Parent shall take any and all actions that are reasonably necessary to change the corporate name of Parent to a new name that bears no resemblance to Parent's present corporate name and that does not contain, and is not confusingly similar with, any of the Trademarks; and (ii) to the extent that the corporate name of any Seller (other than Parent) or any Retained Subsidiary resembles Parent's present corporate name or contains or is confusingly similar with any of the Trademarks, Sellers (including Parent) shall take any and all actions that are reasonably necessary to change such corporate names to new names that bear no resemblance to Parent's present corporate name, and that do not contain and are not confusingly similar with any of the Trademarks.

(b) As promptly as practicable following the Closing, but in no event later than ninety (90) days after the Closing (except as set forth in this **Section 6.22(b)**), Sellers shall cease, and shall cause the Retained Subsidiaries to cease, using the Trademarks in any form, whether by removing, permanently obliterating, covering, or otherwise eliminating all Trademarks that appear on any of their assets, including all signs, promotional or advertising literature, labels, stationery, business cards, office forms and packaging materials. During such time period, Sellers and the Retained Subsidiaries may continue to use Trademarks in a manner consistent with their usage of the Trademarks as of immediately prior to the Closing, but only to the extent reasonably necessary for them to continue their operations as contemplated by the Parties as of the

Closing. If requested by Purchaser within a reasonable time after the Closing, Sellers and Retained Subsidiaries shall enter into a written agreement that specifies quality control of such Trademarks and their underlying goods and services. For signs and the like that exist as of the Closing on the Excluded Real Property, if it is not reasonably practicable for Sellers or the Retained Subsidiaries to remove, permanently obliterate, cover or otherwise eliminate the Trademarks from such signs and the like within the time period specified above, then Sellers and the Retained Subsidiaries shall do so as soon as practicable following such time period, but in no event later than one-hundred eighty (180) days following the Closing.

(c) From and after the date of this Agreement and, until the earlier of the Closing or termination of this Agreement, each Seller shall use its reasonable best efforts to protect and maintain the Intellectual Property owned by Sellers that is material to the conduct of its business in a manner that is consistent with the value of such Intellectual Property.

(d) At or prior to the Closing, Sellers shall provide a true, correct and complete list setting forth all worldwide patents, patent applications, trademark registrations and applications and copyright registrations and applications included in the Intellectual Property owned by Sellers.

Section 6.23 Preservation of Records. The Parties shall preserve and keep all books and records that they own immediately after the Closing relating to the Purchased Assets, the Assumed Liabilities and Sellers' operation of the business related thereto prior to the Closing for a period of six (6) years following the Closing Date or for such longer period as may be required by applicable Law, unless disposed of in good faith pursuant to a document retention policy. During such retention period, duly authorized Representatives of a Party shall, upon reasonable notice, have reasonable access during normal business hours to examine, inspect and copy such books and records held by the other Parties for any proper purpose, except as may be prohibited by Law or by the terms of any Contract (including any confidentiality agreement); provided that to the extent that disclosing any such information would reasonably be expected to constitute a waiver of attorney-client, work product or other legal privilege with respect thereto, the Parties shall take all reasonable best efforts to permit such disclosure without the waiver of any such privilege, including entering into an appropriate joint defense agreement in connection with affording access to such information. The access provided pursuant to this **Section 6.23** shall be subject to such additional confidentiality provisions as the disclosing Party may reasonably deem necessary.

Section 6.24 Confidentiality. During the Confidentiality Period, Sellers and their Affiliates shall treat all trade secrets and all other proprietary, legally privileged or sensitive information related to the Transferred Entities, the Purchased Assets and/or the Assumed Liabilities (collectively, the "Confidential Information"), whether furnished before or after the Closing, whether documentary, electronic or oral, labeled or otherwise identified as confidential, and regardless of the form of communication or the manner in which it is or was furnished, as confidential, preserve the confidentiality thereof, not use or disclose to any Person such Confidential Information and instruct their Representatives who have had access to such information to keep confidential such Confidential Information. The "Confidentiality Period"

shall be a period commencing on the date of the Original Agreement and (a) with respect to a trade secret, continuing for as long as it remains a trade secret and (b) for all other Confidential Information, ending four (4) years from the Closing Date. Confidential Information shall be deemed not to include any information that (i) is now available to or is hereafter disclosed in a manner making it available to the general public, in each case, through no act or omission of Sellers, any of their Affiliates or any of their Representatives, or (ii) is required by Law to be disclosed, including any applicable requirements of the SEC or any other Governmental Authority responsible for securities Law regulation and compliance or any stock market or stock exchange on which any Seller's securities are listed.

Section 6.25 Privacy Policies. At or prior to the Closing, Purchaser shall, or shall cause its Subsidiaries to, establish Privacy Policies that are substantially similar to the Privacy Policies of Parent and the Purchased Subsidiaries as of immediately prior to the Closing, and Purchaser or its Affiliates, as applicable, shall honor all "opt-out" requests or preferences made by individuals in accordance with the Privacy Policies of Parent and the Purchased Subsidiaries and applicable Law; provided that such Privacy Policies and any related "opt-out" requests or preferences are delivered or otherwise made available to Purchaser prior to the Closing, to the extent not publicly available.

Section 6.26 Supplements to Sellers' Disclosure Schedule. At any time and from time to time prior to the Closing, Sellers shall have the right to supplement, modify or update Section 4.1 through Section 4.22 of the Sellers' Disclosure Schedule (a) to reflect changes and developments that have arisen after the date of the Original Agreement and that, if they existed prior to the date of the Original Agreement, would have been required to be set forth on such Sellers' Disclosure Schedule or (b) as may be necessary to correct any disclosures contained in such Sellers' Disclosure Schedule or in any representation and warranty of Sellers that has been rendered inaccurate by such changes or developments. No supplement, modification or amendment to Section 4.1 through Section 4.22 of the Sellers' Disclosure Schedule shall without the prior written consent of Purchaser, (i) cure any inaccuracy of any representation and warranty made in this Agreement by Sellers or (ii) give rise to Purchaser's right to terminate this Agreement unless and until this Agreement shall be terminable by Purchaser in accordance with **Section 8.1(f)**.

Section 6.27 Real Property Matters.

(a) Sellers and Purchaser acknowledge that certain real properties (the "Subdivision Properties") may need to be subdivided or otherwise legally partitioned in accordance with applicable Law (a "Required Subdivision") so as to permit the affected Owned Real Property to be conveyed to Purchaser separate and apart from adjacent Excluded Real Property. Section 6.27 of the Sellers' Disclosure Schedule contains a list of the Subdivision Properties that was determined based on the current list of Excluded Real Property. Section 6.27 of the Sellers' Disclosure Schedule may be updated at any time prior to the Closing to either (i) add additional Subdivision Properties or (ii) remove any Subdivision Properties, which have been determined to not require a Required Subdivision or for which a Required Subdivision has been obtained. Purchaser shall pay for all costs incurred to complete all Required Subdivisions. Sellers shall cooperate in good faith with Purchaser in connection with the completion with all Required

Subdivisions, including executing all required applications or other similar documents with Governmental Authorities. To the extent that any Required Subdivision for a Subdivision Property is not completed prior to Closing, then at Closing, Sellers shall lease to Purchaser only that portion of such Subdivision Property that constitutes Owned Real Property pursuant to the Master Lease Agreement (Subdivision Properties) substantially in the form attached hereto as **Exhibit L** (the "Subdivision Master Lease"). Upon completion of a Required Subdivision affecting an Owned Real Property that is subject to the Subdivision Master Lease, the Subdivision Master Lease shall be terminated as to such Owned Real Property and such Owned Real Property shall be conveyed to Purchaser by Quitclaim Deed for One Dollar ($1.00) in stated consideration.

(b) Sellers and Purchaser acknowledge that the Saginaw Nodular Iron facility in Saginaw, Michigan (the "Saginaw Nodular Iron Land") contains a wastewater treatment facility (the "Existing Saginaw Wastewater Facility") and a landfill (the "Saginaw Landfill") that currently serve the Owned Real Property commonly known as the GMPT - Saginaw Metal Casting facility (the "Saginaw Metal Casting Land"). The Saginaw Nodular Iron Land has been designated as an Excluded Real Property under Section 2.2(b)(v) of the Sellers' Disclosure Schedule. At the Closing (or within sixty (60) days after the Closing with respect to the Saginaw Landfill), Sellers shall enter into one or more service agreements with one or more third party contractors (collectively, the "Saginaw Service Contracts") to operate the Existing Saginaw Wastewater Facility and the Saginaw Landfill for the benefit of the Saginaw Metal Casting Land. The terms and conditions of the Saginaw Service Contracts shall be mutually acceptable to Purchaser and Sellers; provided that the term of each Saginaw Service Contract shall not extend beyond December 31, 2012, and Purchaser shall have the right to terminate any Saginaw Service Contract upon prior written notice of not less than forty-five (45) days. At any time during the term of the Saginaw Service Contracts, Purchaser may elect to purchase the Existing Saginaw Wastewater Facility, the Saginaw Landfill, or both, for One Dollar ($1.00) in stated consideration; provided that (i) Purchaser shall pay all costs and fees related to such purchase, including the costs of completing any Required Subdivision necessary to effectuate the terms of this **Section 6.27(b)**, (ii) Sellers shall convey title to the Existing Saginaw Wastewater Facility, the Saginaw Landfill and/or such other portion of the Saginaw Nodular Iron Land as is required by Purchaser to operate the Existing Saginaw Wastewater Facility and/or the Saginaw Landfill, including lagoons, but not any other portion of the Saginaw Nodular Iron Land, to Purchaser by quitclaim deed and (iii) Sellers shall grant Purchaser such easements for utilities over the portion of the Saginaw Nodular Iron Land retained by Sellers as may be required to operate the Existing Saginaw Wastewater Facility and/or the Saginaw Landfill.

(c) Sellers and Purchaser acknowledge that access to certain Excluded Real Property owned by Sellers or other real properties owned by Excluded Entities and certain Owned Real Property that may hereafter be designated as Excluded Real Property on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (a "Landlocked Parcel") is provided over land that is part of the Owned Real Property. To the extent that direct access to a public right-of-way is not obtained for any Landlocked Parcel by the Closing, then at Closing, Purchaser, in its sole election, shall for each such Landlocked Parcel either (i) grant an access easement over a mutually agreeable portion of the adjacent

Owned Real Property for the benefit of the Landlocked Parcel until such time as the Landlocked Parcel obtains direct access to the public right-of-way, pursuant to the terms of a mutually acceptable easement agreement, or (ii) convey to the owner of the affected Landlocked Parcel by quitclaim deed such portion of the adjacent Owned Real Property as is required to provide the Landlocked Parcel with direct access to a public right-of-way.

(d) At and after Closing, Sellers and Purchasers shall cooperate in good faith to investigate and resolve all issues reasonably related to or arising in connection with Shared Executory Contracts that involve the provision of water, water treatment, electricity, fuel, gas, telephone and other utilities to both Owned Real Property and Excluded Real Property.

(e) Parent shall use reasonable best efforts to cause the Willow Run Landlord to execute, within thirty (30) days after the Closing, or at such later date as may be mutually agreed upon, an amendment to the Willow Run Lease which extends the term of the Willow Run Lease until December 31, 2010 with three (3) one-month options to extend, all at the current rental rate under the Willow Run Lease (the "Willow Run Lease Amendment"). In the event that the Willow Run Lease Amendment is approved and executed by the Willow Run Landlord, then Purchaser shall designate the Willow Run Lease as an Assumable Executory Contract and Parent and Purchaser, or one of its designated Subsidiaries, shall enter into an assignment and assumption of the Willow Run Lease substantially in the form attached hereto as **Exhibit M** (the "Assignment and Assumption of Willow Run Lease").

Section 6.28 Equity Incentive Plans. Within a reasonable period of time following the Closing, Purchaser, through its board of directors, will adopt equity incentive plans to be maintained by Purchaser for the benefit of officers, directors, and employees of Purchaser that will provide the opportunity for equity incentive benefits for such persons ("Equity Incentive Plans").

Section 6.29 Purchase of Personal Property Subject to Executory Contracts. With respect to any Personal Property subject to an Executory Contract that is nominally an unexpired lease of Personal Property, if (a) such Contract is recharacterized by a Final Order of the Bankruptcy Court as a secured financing or (b) Purchaser, Sellers and the counterparty to such Contract agree, then Purchaser shall have the option to purchase such personal property by paying to the applicable Seller for the benefit of the counterparty to such Contract an amount equal to the amount, as applicable (i) of such counterparty's allowed secured Claim arising in connection with the recharacterization of such Contract as determined by such Order or (ii) agreed to by Purchaser, Sellers and such counterparty.

Section 6.30 Transfer of Riverfront Holdings, Inc. Equity Interests or Purchased Assets; Ren Cen Lease. Notwithstanding anything to the contrary set forth in this Agreement, in lieu of or in addition to the transfer of Sellers' Equity Interest in Riverfront Holdings, Inc., a Delaware corporation ("RHI"), Purchaser shall have the right at the Closing or at any time during the RHI Post-Closing Period, to require Sellers to cause RHI to transfer good and marketable title to, or a valid and enforceable right by Contract to use, all or any portion of the assets of RHI

to Purchaser. Purchaser shall, at its option, have the right to cause Sellers to postpone the transfer of Sellers' Equity Interest in RHI and/or title to the assets of RHI to Purchaser up until the earlier of (i) January 31, 2010 and (ii) the Business Day immediately prior to the date of the confirmation hearing for Sellers' plan of liquidation or reorganization (the "RHI Post-Closing Period"); provided, however, that (a) Purchaser may cause Sellers to effectuate said transfers at any time and from time to time during the RHI-Post Closing Period upon at least five (5) Business Days' prior written notice to Sellers and (b) at the closing, RHI, as landlord, and Purchaser, or one of its designated Subsidiaries, as tenant, shall enter into a lease agreement substantially in the form attached hereto as **Exhibit N** (the "Ren Cen Lease") for the premises described therein.

Section 6.31 Delphi Agreements. Notwithstanding anything to the contrary in this Agreement, including **Section 6.6**:

(a) Subject to and simultaneously with the consummation of the transactions contemplated by the MDA or of an Acceptable Alternative Transaction (in each case, as defined in the Delphi Motion), (i) the Delphi Transaction Agreements shall, effective immediately upon and simultaneously with such consummation, (A) be deemed to be Assumable Executory Contracts and (B) be assumed and assigned to Purchaser and (ii) the Assumption Effective Date with respect thereto shall be deemed to be the date of such consummation.

(b) The LSA Agreement shall, effective at the Closing, (i) be deemed to be an Assumable Executory Contract and (B) be assumed and assigned to Purchaser and (ii) the Assumption Effective Date with respect thereto shall be deemed to be the Closing Date. To the extent that any such agreement is not an Executory Contract, such agreement shall be deemed to be a Purchased Contract.

Section 6.32 GM Strasbourg S.A. Restructuring. The Parties acknowledge and agree that General Motors International Holdings, Inc., a direct Subsidiary of Parent and the direct parent of GM Strasbourg S.A., may, prior to the Closing, dividend its Equity Interest in GM Strasbourg S.A. to Parent, such that following such dividend, GM Strasbourg S.A. will become a wholly-owned direct Subsidiary of Parent. Notwithstanding anything to the contrary in this Agreement, the Parties further acknowledge and agree that following the consummation of such restructuring at any time prior to the Closing, GM Strasbourg S.A. shall automatically, without further action by the Parties, be designated as an Excluded Entity and deemed to be set forth on Section 2.2(b)(iv) of the Sellers' Disclosure Schedule.

Section 6.33 Holding Company Reorganization. The Parties agree that Purchaser may, with the prior written consent of Sellers, reorganize prior to the Closing such that Purchaser may become a direct or indirect, wholly-owned Subsidiary of Holding Company on such terms and in such manner as is reasonably acceptable to Sellers, and Purchaser may assign all or a portion of its rights and obligations under this Agreement to Holding Company (or one or more newly formed, direct or indirect, wholly-owned Subsidiaries of Holding Company) in accordance with **Section 9.5**. In connection with any restructuring effected pursuant to this **Section 6.33**, the Parties further agree that, notwithstanding anything to the contrary in this Agreement (a) Parent shall receive securities of Holding Company with the same rights and

privileges, and in the same proportions, as the Parent Shares and the Parent Warrants, in each case, in lieu of the Parent Shares and Parent Warrants, as Purchase Price hereunder, (b) Canada, New VEBA and Sponsor shall receive securities of Holding Company with the same rights and privileges, and in the same proportions, as the Canada Shares, VEBA Shares, VEBA Warrant and Sponsor Shares, as applicable, in each case, in connection with the Closing and (c) New VEBA shall receive the VEBA Note issued by the same entity that becomes the obligor on the Purchaser Assumed Debt.

Section 6.34 Transfer of Promark Global Advisors Limited and Promark Investment Trustees Limited Equity Interests. Notwithstanding anything to the contrary set forth in this Agreement, in the event approval by the Financial Services Authority (the "FSA Approval") of the transfer of Sellers' Equity Interests in Promark Global Advisors Limited and Promark Investments Trustees Limited (together, the "Promark UK Subsidiaries") has not been obtained as of the Closing Date, Sellers shall, at their option, have the right to postpone the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries until such time as the FSA Approval is obtained. If the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries is postponed pursuant to this **Section 6.34**, then (a) Sellers and Purchaser shall effectuate the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries no later than five (5) Business Days following the date that the FSA Approval is obtained and (b) Sellers shall enter into a transitional services agreement with Promark Global Advisors, Inc. in the form provided by Promark Global Advisors, Inc., which shall include terms and provisions regarding: (i) certain transitional services to be provided by Promark Global Advisors, Inc. to the Promark UK Subsidiaries, (ii) the continued availability of director and officer liability insurance for directors and officers of the Promark UK Subsidiaries and (iii) certain actions on the part of the Promark UK Subsidiaries to require the prior written consent of Promark Global Advisors, Inc., including changes to employee benefits or compensation, declaration of dividends, material financial transactions, disposition of material assets, entry into material agreements, changes to existing business plans, changes in management and the boards of directors of the Promark UK Subsidiaries and other similar actions.

Section 6.35 Transfer of Equity Interests in Certain Subsidiaries. Notwithstanding anything to the contrary set forth in this Agreement, the Parties may mutually agree to postpone the transfer of Sellers' Equity Interests in those Transferred Entities as are mutually agreed upon by the Parties ("Delayed Closing Entities") to a date following the Closing.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.1 Conditions to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver (to the extent permitted by applicable Law), prior to or at the Closing, of each of the following conditions:

(a) The Bankruptcy Court shall have entered the Sale Approval Order and the Sale Procedures Order on terms acceptable to the Parties and reasonably acceptable to the UAW, and each shall be a Final Order and shall not have been vacated, stayed or

reversed; provided, however, that the conditions contained in this **Section 7.1(a)** shall be satisfied notwithstanding the pendency of an appeal if the effectiveness of the Sale Approval Order has not been stayed.

(b) No Order or Law of a United States Governmental Authority shall be in effect that declares this Agreement invalid or unenforceable or that restrains, enjoins or otherwise prohibits the consummation of the transactions contemplated by this Agreement.

(c) Sponsor shall have delivered, or caused to be delivered to Sellers and Purchaser an equity registration rights agreement, substantially in the form attached hereto as **Exhibit O** (the "Equity Registration Rights Agreement"), duly executed by Sponsor.

(d) Canada shall have delivered, or caused to be delivered to Sellers and Purchaser the Equity Registration Rights Agreement, duly executed by Canada.

(e) The Canadian Debt Contribution shall have been consummated.

(f) The New VEBA shall have delivered, or caused to be delivered to Sellers and Purchaser, the Equity Registration Rights Agreement, duly executed by the New VEBA.

(g) Purchaser shall have received (i) consents from Governmental Authorities, (ii) Permits and (iii) consents from non-Governmental Authorities, in each case with respect to the transactions contemplated by this Agreement and the ownership and operation of the Purchased Assets and Assumed Liabilities by Purchaser from and after the Closing, sufficient in the aggregate to permit Purchaser to own and operate the Purchased Assets and Assumed Liabilities from and after the Closing in substantially the same manner as owned and operated by Sellers immediately prior to the Closing (after giving effect to (A) the implementation of the Viability Plans; (B) Parent's announced shutdown, which began in May 2009; and (C) the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of Parent).

(h) Sellers shall have executed and delivered definitive financing agreements restructuring the Wind Down Facility in accordance with the provisions of **Section 6.9(b)**.

Section 7.2 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver, prior to or at the Closing, of each of the following conditions; provided, however, that in no event may Purchaser waive the conditions contained in **Section 7.2(d)** or **Section 7.2(e)**:

(a) Each of the representations and warranties of Sellers contained in **ARTICLE IV** of this Agreement shall be true and correct (disregarding for the purposes of such determination any qualification as to materiality or Material Adverse Effect) as of

the Closing Date as if made on the Closing Date (except for representations and warranties that speak as of a specific date or time, which representations and warranties shall be true and correct only as of such date or time), except to the extent that any breaches of such representations and warranties, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Material Adverse Effect.

(b) Sellers shall have performed or complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by Sellers prior to or at the Closing.

(c) Sellers shall have delivered, or caused to be delivered, to Purchaser:

(i) a certificate executed as of the Closing Date by a duly authorized representative of Sellers, on behalf of Sellers and not in such authorized representative's individual capacity, certifying that the conditions set forth in **Section 7.2(a)** and **Section 7.2(b)** have been satisfied;

(ii) the Equity Registration Rights Agreement, duly executed by Parent;

(iii) stock certificates or membership interest certificates, if any, evidencing the Transferred Equity Interests (other than in respect of the Equity Interests held by Sellers in RHI, Promark Global Advisors Limited, Promark Investments Trustees Limited and the Delayed Closing Entities, which the Parties agree may be transferred following the Closing in accordance with **Section 6.30**, **Section 6.34** and **Section 6.35**), duly endorsed in blank or accompanied by stock powers (or similar documentation) duly endorsed in blank, in proper form for transfer to Purchaser, including any required stamps affixed thereto;

(iv) an omnibus bill of sale, substantially in the form attached hereto as **Exhibit P** (the "Bill of Sale"), together with transfer tax declarations and all other instruments of conveyance that are necessary to effect transfer to Purchaser of title to the Purchased Assets, each in a form reasonably satisfactory to the Parties and duly executed by the appropriate Seller;

(v) an omnibus assignment and assumption agreement, substantially in the form attached hereto as **Exhibit Q** (the "Assignment and Assumption Agreement"), together with all other instruments of assignment and assumption that are necessary to transfer the Purchased Contracts and Assumed Liabilities to Purchaser, each in a form reasonably satisfactory to the Parties and duly executed by the appropriate Seller;

(vi) a novation agreement, substantially in the form attached hereto as **Exhibit R** (the "Novation Agreement"), duly executed by Sellers and the appropriate United States Governmental Authorities;

(vii) a government related subcontract agreement, substantially in the form attached hereto as **Exhibit S** (the "Government Related Subcontract Agreement"), duly executed by Sellers;

(viii) an omnibus intellectual property assignment agreement, substantially in the form attached hereto as **Exhibit T** (the "Intellectual Property Assignment Agreement"), duly executed by Sellers;

(ix) a transition services agreement, substantially in the form attached hereto as **Exhibit U** (the "Transition Services Agreement"), duly executed by Sellers;

(x) all quitclaim deeds or deeds without warranty (or equivalents for those parcels of Owned Real Property located in jurisdictions outside of the United States), in customary form, subject only to Permitted Encumbrances, conveying the Owned Real Property to Purchaser (the "Quitclaim Deeds"), duly executed by the appropriate Seller;

(xi) all required Transfer Tax or sales disclosure forms relating to the Transferred Real Property (the "Transfer Tax Forms"), duly executed by the appropriate Seller;

(xii) an assignment and assumption of the leases and subleases underlying the Leased Real Property, in substantially the form attached hereto as **Exhibit V** (the "Assignment and Assumption of Real Property Leases"), together with such other instruments of assignment and assumption that are necessary to transfer the leases and subleases underlying the Leased Real Property located in jurisdictions outside of the United States, each duly executed by Sellers; provided, however, that if it is required for the assumption and assignment of any lease or sublease underlying a Leased Real Property that a separate assignment and assumption for such lease or sublease be executed, then a separate assignment and assumption of such lease or sublease shall be executed in a form substantially similar to **Exhibit V** or as otherwise required to assume or assign such Leased Real Property;

(xiii) an assignment and assumption of the lease in respect of the premises located at 2485 Second Avenue, New York, New York, substantially in the form attached hereto as **Exhibit W** (the "Assignment and Assumption of Harlem Lease"), duly executed by Harlem;

(xiv) an omnibus lease agreement in respect of the lease of certain portions of the Excluded Real Property that is owned real property, substantially in the form attached hereto as **Exhibit X** (the "Master Lease Agreement"), duly executed by Parent;

(xv) *[Reserved]*;

(xvi) the Saginaw Service Contracts, if required, duly executed by the appropriate Seller;

(xvii) any easement agreements required under **Section 6.27(c)**, duly executed by the appropriate Seller;

(xviii) the Subdivision Master Lease, if required, duly executed by the appropriate Sellers;

(xix) a certificate of an officer of each Seller (A) certifying that attached to such certificate are true and complete copies of (1) such Seller's Organizational Documents, each as amended through and in effect on the Closing Date and (2) resolutions of the board of directors of such Seller, authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which such Seller is a party, the consummation of the transactions contemplated by this Agreement and such Ancillary Agreements and the matters set forth in **Section 6.16(e)**, and (B) certifying as to the incumbency of the officer(s) of such Seller executing this Agreement and the Ancillary Agreements to which such Seller is a party;

(xx) a certificate in compliance with Treas. Reg. §1.1445-2(b)(2) that each Seller is not a foreign person as defined under Section 897 of the Tax Code;

(xxi) a certificate of good standing for each Seller from the Secretary of State of the State of Delaware;

(xxii) their written agreement to treat the Relevant Transactions and the other transactions contemplated by this Agreement in accordance with Purchaser's determination in **Section 6.16**;

(xxiii) payoff letters and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements), each in a form reasonably satisfactory to the Parties and duly executed by the holders of the secured Indebtedness; and

(xxiv) all books and records of Sellers described in **Section 2.2(a)(xiv)**.

(d) The UAW Collective Bargaining Agreement shall have been ratified by the membership, shall have been assumed by the applicable Sellers and assigned to Purchaser, and shall be in full force and effect.

(e) The UAW Retiree Settlement Agreement shall have been executed and delivered by the UAW and shall have been approved by the Bankruptcy Court as part of the Sale Approval Order.

(f) The Canadian Operations Continuation Agreement shall have been executed and delivered by the parties thereto in the form previously distributed among them.

Section 7.3 Conditions to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver, prior to or at the Closing, of each of the following conditions; provided, however, that in no event may Sellers waive the conditions contained in **Section 7.3(h)** or **Section 7.3(i)**:

(a) Each of the representations and warranties of Purchaser contained in **ARTICLE V** of this Agreement shall be true and correct (disregarding for the purpose of such determination any qualification as to materiality or Purchaser Material Adverse Effect) as of the Closing Date as if made on such date (except for representations and warranties that speak as of a specific date or time, which representations and warranties shall be true and correct only as of such date or time), except to the extent that any breaches of such representations and warranties, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Purchaser Material Adverse Effect.

(b) Purchaser shall have performed or complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers:

(i) Parent Warrant A (including the related warrant agreement), duly executed by Purchaser;

(ii) Parent Warrant B (including the related warrant agreement), duly executed by Purchaser;

(iii) a certificate executed as of the Closing Date by a duly authorized representative of Purchaser, on behalf of Purchaser and not in such authorized representative's individual capacity, certifying that the conditions set forth in **Section 7.3(a)** and **Section 7.3(b)** are satisfied;

(iv) stock certificates evidencing the Parent Shares, duly endorsed in blank or accompanied by stock powers duly endorsed in blank, in proper form for transfer, including any required stamps affixed thereto;

(v) the Equity Registration Rights Agreement, duly executed by Purchaser;

(vi) the Bill of Sale, together with all other documents described in **Section 7.2(c)(iv)**, each duly executed by Purchaser or its designated Subsidiaries;

(vii) the Assignment and Assumption Agreement, together with all other documents described in **Section 7.2(c)(v)**, each duly executed by Purchaser or its designated Subsidiaries;

(viii) the Novation Agreement, duly executed by Purchaser or its designated Subsidiaries;

(ix) the Government Related Subcontract Agreement, duly executed by Purchaser or its designated Subsidiary;

(x) the Intellectual Property Assignment Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xi) the Transition Services Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xii) the Transfer Tax Forms, duly executed by Purchaser or its designated Subsidiaries, to the extent required;

(xiii) the Assignment and Assumption of Real Property Leases, together with all other documents described in **Section 7.2(c)(xii)**, each duly executed by Purchaser or its designated Subsidiaries;

(xiv) the Assignment and Assumption of Harlem Lease, duly executed by Purchaser or its designated Subsidiaries;

(xv) the Master Lease Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xvi) *[Reserved]*;

(xvii) the Subdivision Master Lease, if required, duly executed by Purchaser or its designated Subsidiaries;

(xviii) any easement agreements required under **Section 6.27(c)**, duly executed by Purchaser or its designated Subsidiaries;

(xix) a certificate of a duly authorized representative of Purchaser (A) certifying that attached to such certificate are true and complete copies of (1) Purchaser's Organizational Documents, each as amended through and in effect on the Closing Date and (2) resolutions of the board of directors of Purchaser, authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Purchaser is a party, the consummation of the transactions contemplated by this Agreement and such Ancillary Agreements and the matters set forth in **Section 6.16(g)**, and (B) certifying as to the incumbency of the officer(s) of Purchaser executing this Agreement and the Ancillary Agreements to which Purchaser is a party; and

(xx) a certificate of good standing for Purchaser from the Secretary of State of the State of Delaware.

(d) *[Reserved]*

(e) Purchaser shall have filed a certificate of designation for the Preferred Stock, substantially in the form attached hereto as **Exhibit Y**, with the Secretary of State of the State of Delaware.

(f) Purchaser shall have offset the UST Credit Bid Amount against the amount of Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities pursuant to a Bankruptcy Code Section 363(k) credit bid and delivered releases and waivers and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements) with respect to the UST Credit Bid Amount, in a form reasonably satisfactory to the Parties and duly executed by Purchaser in accordance with the applicable requirements in effect on the date hereof, (iii) transferred to Sellers the UST Warrant and (iv) issued to Parent, in accordance with instructions provided by Parent, the Purchaser Shares and the Parent Warrants (duly executed by Purchaser).

(g) Purchaser shall have delivered, or caused to be delivered, to Canada, Sponsor and/or the New VEBA, as applicable:

(i) certificates representing the Canada Shares, the Sponsor Shares and the VEBA Shares in accordance with the applicable equity subscription agreements in effect on the date hereof;

(ii) the Equity Registration Rights Agreement, duly executed by Purchaser;

(iii) the VEBA Warrant (including the related warrant agreement), duly executed by Purchaser; and

(iv) a note, in form and substance consistent with the terms set forth on **Exhibit Z** attached hereto, to the New VEBA (the "VEBA Note").

(h) The UAW Collective Bargaining Agreement shall have been ratified by the membership, shall have been assumed by Purchaser, and shall be in full force and effect.

(i) The UAW Retiree Settlement Agreement shall have been executed and delivered, shall be in full force and effect, and shall have been approved by the Bankruptcy Court as part of the Sale Approval Order.

ARTICLE VIII
TERMINATION

Section 8.1 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time prior to the Closing Date as follows:

(a) by the mutual written consent of Sellers and Purchaser;

(b) by either Sellers or Purchaser, if (i) the Closing shall not have occurred on or before August 15, 2009, or such later date as the Parties may agree in writing, such date not to be later than September 15, 2009 (as extended, the "End Date"), and (ii) the Party seeking to terminate this Agreement pursuant to this **Section 8.1(b)** shall not have breached in any material respect its obligations under this Agreement in any manner that shall have proximately caused the failure of the transactions contemplated hereby to close on or before such date;

(c) by either Sellers or Purchaser, if the Bankruptcy Court shall not have entered the Sale Approval Order by July 10, 2009;

(d) by either Sellers or Purchaser, if any court of competent jurisdiction in the United States or other United States Governmental Authority shall have issued a Final Order permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement or the sale of a material portion of the Purchased Assets;

(e) by Sellers, if Purchaser shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, and such breach or failure to perform has not been cured by the End Date, provided that (i) Sellers shall have given Purchaser written notice, delivered at least thirty (30) days prior to such termination, stating Sellers' intention to terminate this Agreement pursuant to this **Section 8.1(e)** and the basis for such termination and (ii) Sellers shall not have the right to terminate this Agreement pursuant to this **Section 8.1(e)** if Sellers are then in material breach of any its representations, warranties, covenants or other agreements set forth herein;

(f) by Purchaser, if Sellers shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in **Section 7.2(a)** or **Section 7.2(b)** to be fulfilled, (ii) cannot be cured by the End Date, provided that (i) Purchaser shall have given Sellers written notice, delivered at least thirty (30) days prior to such termination, stating Purchaser's intention to terminate this Agreement pursuant to this **Section 8.1(f)** and the basis for such termination and (iii) Purchaser shall not have the right to terminate this Agreement pursuant to this **Section 8.1(f)** if Purchaser is then in material breach of any its representations, warranties, covenants or other agreements set forth herein; or

(g) by either Sellers or Purchaser, if the Bankruptcy Court shall have entered an Order approving an Alternative Transaction.

Section 8.2 Procedure and Effect of Termination.

(a) If this Agreement is terminated pursuant to **Section 8.1**, this Agreement shall become null and void and have no effect, and all obligations of the Parties hereunder shall terminate, except for those obligations of the Parties set forth this **Section 8.2** and **ARTICLE IX**, which shall remain in full force and effect; provided that nothing

herein shall relieve any Party from Liability for any material breach of any of its representations, warranties, covenants or other agreements set forth herein. If this Agreement is terminated as provided herein, all filings, applications and other submissions made pursuant to this Agreement shall, to the extent practicable, be withdrawn from the agency or other Person to which they were made.

(b) If this Agreement is terminated by Sellers or Purchaser pursuant to **Section 8.1(a)** through **Section 8.1(d)** or **Section 8.1(g)** or by Purchaser pursuant to **Section 8.1(f)**, Sellers, severally and not jointly, shall reimburse Purchaser for its reasonable, out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Purchaser in connection with this Agreement and the transactions contemplated hereby (the "Purchaser Expense Reimbursement"). The Purchaser Expense Reimbursement shall be paid as an administrative expense Claim of Sellers pursuant to Section 503(b)(1) of the Bankruptcy Code.

(c) Except as expressly provided for in this **Section 8.2**, any termination of this Agreement pursuant to **Section 8.1** shall be without Liability to Purchaser or Sellers, including any Liability by Sellers to Purchaser for any break-up fee, termination fee, expense reimbursement or other compensation as a result of a termination of this Agreement.

(d) If this Agreement is terminated for any reason, Purchaser shall, and shall cause each of its Affiliates and Representatives to, treat and hold as confidential all Confidential Information, whether documentary, electronic or oral, labeled or otherwise identified as confidential, and regardless of the form of communication or the manner in which it was furnished. For purposes of this **Section 8.2(d)**, Confidential Information shall be deemed not to include any information that (i) is now available to or is hereafter disclosed in a manner making it available to the general public, in each case, through no act or omission of Purchaser, any of its Affiliates or any of their Representatives, or (ii) is required by Law to be disclosed.

ARTICLE IX
MISCELLANEOUS

Section 9.1 Survival of Representations, Warranties, Covenants and Agreements and Consequences of Certain Breaches. The representations and warranties of the Parties contained in this Agreement shall be extinguished by and shall not survive the Closing, and no Claims may be asserted in respect of, and no Party shall have any Liability for any breach of, the representations and warranties. All covenants and agreements contained in this Agreement, including those covenants and agreements set forth in **ARTICLE II** and **ARTICLE VI**, shall survive the Closing indefinitely.

Section 9.2 Notices. Any notice, request, instruction, consent, document or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes (a) upon delivery when personally delivered; (b) on the delivery date after having been sent by a nationally or internationally recognized overnight courier service (charges prepaid); (c) at the time received

when sent by registered or certified mail, return receipt requested, postage prepaid; or (d) at the time when confirmation of successful transmission is received (or the first Business Day following such receipt if the date of such receipt is not a Business Day) if sent by facsimile, in each case, to the recipient at the address or facsimile number, as applicable, indicated below:

If to any Seller:

General Motors Corporation
300 Renaissance Center
Tower 300, 25th Floor, Room D55
M/C 482-C25-D81
Detroit, Michigan 48265-3000
Attn: General Counsel
Tel.: 313-667-3450
Facsimile: 248-267-4584

With copies to:

Jenner & Block LLP
330 North Wabash Avenue
Chicago, Illinois 60611-7603
Attn: Joseph P. Gromacki
Michael T. Wolf
Tel.: 312-222-9350
Facsimile: 312-527-0484

and

Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Harvey R. Miller
Stephen Karotkin
Raymond Gietz
Tel.: 212-310-8000
Facsimile: 212-310-8007

If to Purchaser:

NGMCO, Inc.
c/o The United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington D.C. 20220
Attn: Chief Counsel Office of Financial Stability
Facsimile: 202-927-9225

With a copy to: Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attn: John J. Rapisardi
R. Ronald Hopkinson
Tel.: 212-504-6000
Facsimile: 212-504-6666

provided, however, if any Party shall have designated a different addressee and/or contact information by notice in accordance with this **Section 9.2**, then to the last addressee as so designated.

Section 9.3 Fees and Expenses; No Right of Setoff. Except as otherwise provided in this Agreement, including **Section 8.2(b)**, Purchaser, on the one hand, and each Seller, on the other hand, shall bear its own fees, costs and expenses, including fees and disbursements of counsel, financial advisors, investment bankers, accountants and other agents and representatives, incurred in connection with the negotiation and execution of this Agreement and each Ancillary Agreement and the consummation of the transactions contemplated hereby and thereby. In furtherance of the foregoing, Purchaser shall be solely responsible for (a) all expenses incurred by it in connection with its due diligence review of Sellers and their respective businesses, including surveys, title work, title inspections, title searches, environmental testing or inspections, building inspections, Uniform Commercial Code lien and other searches and (b) any cost (including any filing fees) incurred by it in connection with notarization, registration or recording of this Agreement or an Ancillary Agreement required by applicable Law. No Party nor any of its Affiliates shall have any right of holdback or setoff or assert any Claim or defense with respect to any amounts that may be owed by such Party or its Affiliates to any other Party (or Parties) hereto or its or their Affiliates as a result of and with respect to any amount that may be owing to such Party or its Affiliates under this Agreement, any Ancillary Agreement or any other commercial arrangement entered into in between or among such Parties and/or their respective Affiliates.

Section 9.4 Bulk Sales Laws. Each Party hereto waives compliance by the other Parties with any applicable bulk sales Law.

Section 9.5 Assignment. Neither this Agreement nor any of the rights, interests or obligations provided by this Agreement may be assigned or delegated by any Party (whether by operation of law or otherwise) without the prior written consent of the other Parties, and any such assignment or delegation without such prior written consent shall be null and void; provided, however, that, without the consent of Sellers, Purchaser may assign or direct the transfer on its behalf on or prior to the Closing of all, or any portion, of its rights to purchase, accept and acquire the Purchased Assets and its obligations to assume and thereafter pay or perform as and when due, or otherwise discharge, the Assumed Liabilities, to Holding Company or one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Holding Company or Purchaser; provided, further, that no such assignment or delegation shall relieve Purchaser of any of its obligations under this Agreement. Subject to the preceding sentence and except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 9.6 Amendment. This Agreement may not be amended, modified or supplemented except upon the execution and delivery of a written agreement executed by a duly authorized representative or officer of each of the Parties.

Section 9.7 Waiver. At any time prior to the Closing, each Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties; (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant hereto; or (c) waive compliance with any of the agreements or conditions contained herein (to the extent permitted by Law). Any such waiver or extension by a Party (i) shall be valid only if, and to the extent, set forth in a written instrument signed by a duly authorized representative or officer of the Party to be bound and (ii) shall not constitute, or be construed as, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement. The failure in any one or more instances of a Party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said Party of any breach of any of the terms, covenants or conditions of this Agreement shall not be construed as a subsequent waiver of, or estoppel with respect to, any other terms, covenants, conditions, rights or privileges, but the same will continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Section 9.8 Severability. Whenever possible, each term and provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law. If any term or provision of this Agreement, or the application thereof to any Person or any circumstance, is held to be illegal, invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be legal, valid and enforceable, the intent and purpose of such illegal, invalid or unenforceable provision and (b) the remainder of this Agreement or such term or provision and the application of such term or provision to other Persons or circumstances shall remain in full force and effect and shall not be affected by such illegality, invalidity or unenforceability, nor shall such invalidity or unenforceability affect the legality, validity or enforceability of such term or provision, or the application thereof, in any jurisdiction.

Section 9.9 Counterparts; Facsimiles. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

Section 9.10 Headings. The descriptive headings of the Articles, Sections and paragraphs of, and Schedules and Exhibits to, this Agreement, and the table of contents, table of Exhibits and table of Schedules contained in this Agreement, are included for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit, modify or affect any of the provisions hereof.

Section 9.11 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective permitted successors and

assigns; provided, that (a) for all purposes each of Sponsor, the New VEBA, and Canada shall be express third-party beneficiaries of this Agreement and (b) for purposes of **Section 2.2(a)(x)** and **(xvi)**, **Section 2.2(b)(vii)**, **Section 2.3(a)(x)**, **(xii)**, **(xiii)** and **(xv)**, **Section 2.3(b)(xv)**, **Section 4.6(b)**, **Section 4.10**, **Section 5.4(c)**, **Section 6.2(b)(x)**, **(xv)** and **(xvii)**, **Section 6.4(a)**, **Section 6.4(b)**, **Section 6.6(a)**, **(d)**, **(f)** and **(g)**, **Section 6.11(c)(i)** and **(vi)**, **Section 6.17**, **Section 7.1(a)** and **(f)**, **Section 7.2(d)** and **(e)** and **Section 7.3(g)**, **(h)** and **(i)**, the UAW shall be an express third-party beneficiary of this Agreement. Subject to the preceding sentence, nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to any Person, other than the Parties, their Affiliates and their respective permitted successors or assigns, any legal or equitable Claims, benefits, rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.12 Governing Law. The construction, interpretation and other matters arising out of or in connection with this Agreement (whether arising in contract, tort, equity or otherwise) shall in all respects be governed by and construed (a) to the extent applicable, in accordance with the Bankruptcy Code, and (b) to the extent the Bankruptcy Code is not applicable, in accordance with the Laws of the State of New York, without giving effect to rules governing the conflict of laws.

Section 9.13 Venue and Retention of Jurisdiction. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein); provided, however, that this **Section 9.13** shall not be applicable in the event the Bankruptcy Cases have closed, in which case the Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the federal courts in the Southern District of New York and state courts of the State of New York located in the Borough of Manhattan in the City of New York for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in the federal courts in the Southern District of New York and state courts of the State of New York located in the Borough of Manhattan in the City of New York, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein).

Section 9.14 Waiver of Jury Trial. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN, AND AGREES TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER.

Section 9.15 Risk of Loss. Prior to the Closing, all risk of loss, damage or destruction to all or any part of the Purchased Assets shall be borne exclusively by Sellers.

Section 9.16 Enforcement of Agreement. The Parties agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the

Parties shall, without the posting of a bond, be entitled, subject to a determination by a court of competent jurisdiction, to an injunction or injunctions to prevent any such failure of performance under, or breaches of, this Agreement, and to enforce specifically the terms and provisions hereof and thereof, this being in addition to all other remedies available at law or in equity, and each Party agrees that it will not oppose the granting of such relief on the basis that the requesting Party has an adequate remedy at law.

Section 9.17 Entire Agreement. This Agreement (together with the Ancillary Agreements, the Sellers' Disclosure Schedule and the Exhibits) contains the final, exclusive and entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, among the Parties with respect to the subject matter hereof and thereof. Neither this Agreement nor any Ancillary Agreement shall be deemed to contain or imply any restriction, covenant, representation, warranty, agreement or undertaking of any Party with respect to the transactions contemplated hereby or thereby other than those expressly set forth herein or therein, and none shall be deemed to exist or be inferred with respect to the subject matter hereof.

Section 9.18 Publicity. Prior to the first public announcement of this Agreement and the transactions contemplated hereby, Sellers, on the one hand, and Purchaser, on the other hand, shall consult with each other regarding, and share with each other copies of, their respective communications plans, including draft press releases and related materials, with regard to such announcement. Neither Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party or Parties, as applicable, which approval shall not be unreasonably withheld, conditioned or delayed, unless, in the sole judgment of the Party intending to make such release, disclosure is otherwise required by applicable Law, or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or Sellers list securities; provided, that the Party intending to make such release shall use reasonable best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party or Parties, as applicable, with respect to the text thereof; provided, further, that, notwithstanding anything to the contrary contained in this section, no Party shall be prohibited from publishing, disseminating or otherwise making public, without the prior written approval of the other Party or Parties, as applicable, any materials that are derived from or consistent with the materials included in the communications plan referred to above. In an effort to coordinate consistent communications, the Parties shall agree upon procedures relating to all press releases and public announcements concerning this Agreement and the transactions contemplated hereby.

Section 9.19 No Successor or Transferee Liability. Except where expressly prohibited under applicable Law or otherwise expressly ordered by the Bankruptcy Court, upon the Closing, neither Purchaser nor any of its Affiliates or stockholders shall be deemed to (a) be the successor of Sellers; (b) have, de facto, or otherwise, merged with or into Sellers; (c) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (d) other than as set forth in this Agreement, be liable for any acts or omissions of Sellers in the conduct of Sellers' business or arising under or related to the Purchased Assets. Without limiting

the generality of the foregoing, and except as otherwise provided in this Agreement, neither Purchaser nor any of its Affiliates or stockholders shall be liable for any Claims against Sellers or any of their predecessors or Affiliates, and neither Purchaser nor any of its Affiliates or stockholders shall have any successor, transferee or vicarious Liability of any kind or character whether known or unknown as of the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to Sellers' business or any obligations of Sellers arising prior to the Closing, except as provided in this Agreement, including Liabilities on account of any Taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of Sellers' business prior to the Closing.

Section 9.20 Time Periods. Unless otherwise specified in this Agreement, an action required under this Agreement to be taken within a certain number of days or any other time period specified herein shall be taken within the applicable number of calendar days (and not Business Days); provided, however, that if the last day for taking such action falls on a day that is not a Business Day, the period during which such action may be taken shall be automatically extended to the next Business Day.

Section 9.21 Sellers' Disclosure Schedule. The representations and warranties of Sellers set forth in this Agreement are made and given subject to the disclosures contained in the Sellers' Disclosure Schedule. Inclusion of information in the Sellers' Disclosure Schedule shall not be construed as an admission that such information is material to the business, operations or condition of the business of Sellers, the Purchased Assets or the Assumed Liabilities, taken in part or as a whole, or as an admission of Liability of any Seller to any third party. The specific disclosures set forth in the Sellers' Disclosure Schedule have been organized to correspond to Section references in this Agreement to which the disclosure may be most likely to relate; provided, however, that any disclosure in the Sellers' Disclosure Schedule shall apply to, and shall be deemed to be disclosed for, any other Section of this Agreement to the extent the relevance of such disclosure to such other Section is reasonably apparent on its face.

Section 9.22 No Binding Effect. Notwithstanding anything in this Agreement to the contrary, no provision of this Agreement shall (i) be binding on or create any obligation on the part of Sponsor, the United States Government or any branch, agency or political subdivision thereof (a "Sponsor Affiliate") or the Government of Canada, or any crown corporation, agency or department thereof (a "Canada Affiliate") or (ii) require Purchaser to initiate any Claim or other action against Sponsor or any Sponsor Affiliate or otherwise attempt to cause Sponsor, any Sponsor Affiliate, Government of Canada or any Canada Affiliate to comply with or abide by the terms of this Agreement. No facts, materials or other information received or action taken by any Person who is an officer, director or agent of Purchaser by virtue of such Person's affiliation with or employment by Sponsor, any Sponsor Affiliate, Government of Canada or any Canada Affiliate shall be attributed to Purchaser for purposes of this Agreement or shall form the basis of any claim against such Person in their individual capacity.

[Remainder of the page left intentionally blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

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Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
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NGMCO, INC.

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Title: Vice President and Treasurer

FIRST AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT, dated as of June 30, 2009 (this "Amendment"), is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, Sellers and Purchaser have entered into that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (the "Purchase Agreement"); and

WHEREAS, the Parties desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Section 1. *Capitalized Terms.* All capitalized terms used but not defined herein shall have the meanings specified in the Purchase Agreement.

Section 2. *Amendments to Purchase Agreement.*

(a) **Section 2.3(a)(v)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Cases through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases, to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers' Liabilities in clauses (A) and (B) above include all of Sellers' Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes and other Liabilities mentioned in the Bankruptcy Court's Order - Docket No. 174), in each case, other than (1) Liabilities of the type described in **Section 2.3(b)(iv)**, **Section 2.3(b)(vi)**, **Section 2.3(b)(ix)** and **Section 2.3(b)(xii)**, (2) Liabilities arising under any dealer sales and service Contract and any Contract related thereto, to the extent such Contract has been designated as

a Rejectable Executory Contract, and (3) Liabilities otherwise assumed in this **Section 2.3(a)**;

(b) **Section 2.3(a)(ix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities"), which arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date and arising from such motor vehicles' operation or performance (for avoidance of doubt, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including asbestos, silicates or fluids, regardless of when such alleged exposure occurs);

(c) **Section 2.3(b)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xii) all workers' compensation Claims with respect to Employees residing or employed in, as the case may be and as defined by applicable Law, (A) the states set forth on **Exhibit G** and (B) if the State of Michigan (1) fails to authorize Purchaser and its Affiliates operating within the State of Michigan to be a self-insurer for purposes of administering workers' compensation Claims or (2) requires Purchaser and its Affiliates operating within the State of Michigan to post collateral, bonds or other forms of security to secure workers' compensation Claims, the State of Michigan (collectively, "Retained Workers' Compensation Claims");

(d) **Section 6.6(d)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(d) All Assumable Executory Contracts shall be assumed and assigned to Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the date designated by the Purchaser and (ii) the date following expiration of the objection deadline if no objection, other than to the Cure Amount, has been timely filed or the date of resolution of any objection unrelated to Cure Amount, as provided in the Sale Procedures Order; provided, however, that in the case of each (A) Assumable Executory Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule, (2) Deferred Termination Agreement (and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement)

designated as an Assumable Executory Contract and (3) Participation Agreement (and the related Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract, the Assumption Effective Date shall be the Closing Date and (B) Assumable Executory Contract identified on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, the Assumption Effective Date shall be a date that is no later than the date set forth with respect to such Executory Contract on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule. As soon as reasonably practicable following a determination that an Executory Contract shall be designated as an Assumable Executory Contract hereunder, Sellers shall use reasonable best efforts to notify each third party to such Executory Contract of their intention to assume and assign such Executory Contract in accordance with the terms of this Agreement and the Sale Procedures Order. On the Assumption Effective Date for any Assumable Executory Contract, such Assumable Executory Contract shall be deemed to be a Purchased Contract hereunder. If it is determined under the procedures set forth in the Sale Procedures Order that Sellers may not assume and assign to Purchaser any Assumable Executory Contract, such Executory Contract shall cease to be an Assumable Executory Contract and shall be an Excluded Contract and a Rejectable Executory Contract. Except as provided in **Section 6.31**, notwithstanding anything else to the contrary herein, any Executory Contract that has not been specifically designated as an Assumable Executory Contract as of the Executory Contract Designation Deadline applicable to such Executory Contract, including any Deferred Executory Contract, shall automatically be deemed to be a Rejectable Executory Contract and an Excluded Contract hereunder. Sellers shall have the right, but not the obligation, to reject, at any time, any Rejectable Executory Contract; provided, however, that Sellers shall not reject any Contract that affects both Owned Real Property and Excluded Real Property (whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule), including any such Executory Contract that involves the provision of water, water treatment, electric, fuel, gas, telephone and other utilities to any facilities located at the Excluded Real Property, whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (the "Shared Executory Contracts"), without the prior written consent of Purchaser.

Section 3. Effectiveness of Amendment. Upon the execution and delivery hereof, the Purchase Agreement shall thereupon be deemed to be amended and restated as set forth in Section 2, as fully and with the same effect as if such amendments and restatements were originally set forth in the Purchase Agreement.

Section 4. Ratification of Purchase Agreement; Incorporation by Reference. Except as specifically provided for in this Amendment, the Purchase Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement, including **Article IX** thereof, which sections are hereby incorporated into this Amendment, mutatis mutandis, as if they were set forth in their entirety herein.

Section 5. *Counterparts.* This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

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NGMCO, INC.

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SECOND AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT, dated as of July 5, 2009 (this "Amendment"), is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, Sellers and Purchaser have entered into that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended, the "Purchase Agreement");

WHEREAS, Sellers and Purchaser have entered into that certain First Amendment to Amended and Restated Master and Purchase Agreement; and

WHEREAS, the Parties desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Section 1. *Capitalized Terms.* All capitalized terms used but not defined herein shall have the meanings specified in the Purchase Agreement.

Section 2. *Amendments to Purchase Agreement.*

(a) The following new definition of "Advanced Technology Credits" is hereby included in **Section 1.1** of the Purchase Agreement:

> "Advanced Technology Credits" has the meaning set forth in **Section 6.36**.

(b) The following new definition of "Advanced Technology Projects" is hereby included in **Section 1.1** of the Purchase Agreement:

> "Advanced Technology Projects" means development, design, engineering and production of advanced technology vehicles and components, including the vehicles known as "the Volt", "the Cruze" and components, transmissions and systems for vehicles employing hybrid technologies.

(c) The definition of "Ancillary Agreements" is hereby amended and restated in its entirety to read as follows:

"Ancillary Agreements" means the Parent Warrants, the UAW Active Labor Modifications, the UAW Retiree Settlement Agreement, the VEBA Warrant, the Equity Registration Rights Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Intellectual Property Assignment Agreement, the Transition Services Agreement, the Quitclaim Deeds, the Assignment and Assumption of Real Property Leases, the Assignment and Assumption of Harlem Lease, the Master Lease Agreement, the Subdivision Master Lease (if required), the Saginaw Service Contracts (if required), the Assignment and Assumption of Willow Run Lease, the Ren Cen Lease, the VEBA Note and each other agreement or document executed by the Parties pursuant to this Agreement or any of the foregoing and each certificate and other document to be delivered by the Parties pursuant to **ARTICLE VII**.

(d) The following new definition of "Excess Estimated Unsecured Claim Amount" is hereby included in **Section 1.1** of the Purchase Agreement:

"Excess Estimated Unsecured Claim Amount" has the meaning set forth in **Section 3.2(c)(i)**.

(e) The definition of "Permitted Encumbrances" is hereby amended and restated in its entirety to read as follows:

"Permitted Encumbrances" means all (i) purchase money security interests arising in the Ordinary Course of Business; (ii) security interests relating to progress payments created or arising pursuant to government Contracts in the Ordinary Course of Business; (iii) security interests relating to vendor tooling arising in the Ordinary Course of Business; (iv) Encumbrances that have been or may be created by or with the written consent of Purchaser; (v) mechanic's, materialmen's, laborer's, workmen's, repairmen's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings; (vi) liens for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties); (vii) with respect to the Transferred Real Property that is Owned Real Property, other than Secured Real Property Encumbrances at and following the Closing: (a) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose, the existence of which, individually or in the aggregate, would not materially and adversely interfere with the present use of the affected property; (b) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Owned Real Property; (c) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Owned Real Property, which, individually or in the aggregate, would not materially and adversely interfere with the present use

of the applicable Owned Real Property; and (d) such other Encumbrances, the existence of which, individually or in the aggregate, would not materially and adversely interfere with or affect the present use or occupancy of the applicable Owned Real Property; (viii) with respect to the Transferred Real Property that is Leased Real Property: (1) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose; (2) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Leased Real Property; (3) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Leased Real Property or which have otherwise been imposed on such property by landlords; (ix) in the case of the Transferred Equity Interests, all restrictions and obligations contained in any Organizational Document, joint venture agreement, shareholders agreement, voting agreement and related documents and agreements, in each case, affecting the Transferred Equity Interests; (x) except to the extent otherwise agreed to in the Ratification Agreement entered into by Sellers and GMAC on June 1, 2009 and approved by the Bankruptcy Court on the date thereof or any other written agreement between GMAC or any of its Subsidiaries and any Seller, all Claims (in each case solely to the extent such Claims constitute Encumbrances) and Encumbrances in favor of GMAC or any of its Subsidiaries in, upon or with respect to any property of Sellers or in which Sellers have an interest, including any of the following: (1) cash, deposits, certificates of deposit, deposit accounts, escrow funds, surety bonds, letters of credit and similar agreements and instruments; (2) owned or leased equipment; (3) owned or leased real property; (4) motor vehicles, inventory, equipment, statements of origin, certificates of title, accounts, chattel paper, general intangibles, documents and instruments of dealers, including property of dealers in-transit to, surrendered or returned by or repossessed from dealers or otherwise in any Seller's possession or under its control; (5) property securing obligations of Sellers under derivatives Contracts; (6) rights or property with respect to which a Claim or Encumbrance in favor of GMAC or any of its Subsidiaries is disclosed in any filing made by Parent with the SEC (including any filed exhibit); and (7) supporting obligations, insurance rights and Claims against third parties relating to the foregoing; and (xi) all rights of setoff and/or recoupment that are Encumbrances in favor of GMAC and/or its Subsidiaries against amounts owed to Sellers and/or any of their Subsidiaries with respect to any property of Sellers or in which Sellers have an interest as more fully described in clause (x) above; it being understood that nothing in this clause (xi) or preceding clause (x) shall be deemed to modify, amend or otherwise change any agreement as between GMAC or any of its Subsidiaries and any Seller.

(f) The following new definition of "Purchaser Escrow Funds" is hereby included in **Section 1.1** of the Purchase Agreement:

"Purchaser Escrow Funds" has the meaning set forth in **Section 2.2(a)(xx)**.

(g) **Section 2.2(a)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all credits, Advanced Technology Credits, deferred charges, prepaid expenses, deposits, advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating to the Purchased Assets or Assumed Liabilities, including all warranties, rights and guarantees (whether express or implied) made by suppliers, manufacturers, contractors and other third parties under or in connection with the Purchased Contracts;

(h) **Section 2.2(a)(xviii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xviii) any rights of any Seller, Subsidiary of any Seller or Seller Group member to any Tax refunds, credits or abatements that relate to any Pre-Closing Tax Period or Straddle Period;

(i) **Section 2.2(a)(xix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xix) any interest in Excluded Insurance Policies, only to the extent such interest relates to any Purchased Asset or Assumed Liability; and

(j) A new **Section 2.2(a)(xx)** is hereby added to the Purchase Agreement to read as follows:

> (xx) all cash and cash equivalents, including all marketable securities, held in (1) escrow pursuant to, or as contemplated by that certain letter agreement dated as of June 30, 2009, by and between Parent, Citicorp USA, Inc., as Bank Representative, and Citibank, N.A., as Escrow Agent or (2) any escrow established in contemplation or for the purpose of the Closing, that would otherwise constitute a Purchased Asset pursuant to **Section 2.2(a)(i)** (collectively, "Purchaser Escrow Funds");

(k) **Section 2.2(b)(i)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (i) cash or cash equivalents in an amount equal to $1,175,000,000 (the "Excluded Cash");

(l) **Section 2.2(b)(ii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (ii) all Restricted Cash exclusively relating to the Excluded Assets or Retained Liabilities, which for the avoidance of doubt, shall not be deemed to include Purchaser Escrow Funds;

(m) **Section 2.3(a)(viii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (viii) all Liabilities arising under any Environmental Law (A) relating to the Transferred Real Property, other than those Liabilities described in **Section 2.3(b)(iv)**, (B) resulting from Purchaser's ownership or operation of the Transferred Real Property after the Closing or (C) relating to Purchaser's failure to comply with Environmental Laws after the Closing;

(n) **Section 2.3(a)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all Liabilities (A) specifically assumed by Purchaser pursuant to **Section 6.17** or (B) arising out of, relating to or in connection with the salaries and/or wages and vacation of all Transferred Employees that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date;

(o) **Section 2.3(b)(iv)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (iv) all Liabilities (A) associated with noncompliance with Environmental Laws (including for fines, penalties, damages and remedies); (B) arising out of, relating to, in respect of or in connection with the transportation, off-site storage or off-site disposal of any Hazardous Materials generated or located at any Transferred Real Property; (C) arising out of, relating to, in respect of or in connection with third party Claims related to Hazardous Materials that were or are located at or that were Released into the Environment from Transferred Real Property prior to the Closing, except as otherwise required under applicable Environmental Laws; (D) arising under Environmental Laws related to the Excluded Real Property, except as provided under Section 18.2(e) of the Master Lease Agreement or as provided under the "Facility Idling Process" section of Schedule A of the Transition Services Agreement; or (E) for environmental Liabilities with respect to real property formerly owned, operated or leased by Sellers (as of the Closing), which, in the case of clauses (A), (B) and (C), arose prior to or at the Closing, and which, in the case of clause (D) and (E), arise prior to, at or after the Closing;

(p) **Section 2.3(b)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all workers' compensation Claims with respect to Employees residing or employed in, as the case may be and as defined by applicable Law, the states set forth on **Exhibit G** (collectively, "Retained Workers' Compensation Claims");

(q) **Section 3.2(a)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(a) The purchase price (the "Purchase Price") shall be equal to the sum of:

(i) a Bankruptcy Code Section 363(k) credit bid in an amount equal to: (A) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing pursuant to the UST Credit Facilities, and (B) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing under the DIP Facility, less $8,247,488,605 of Indebtedness under the DIP Facility (such amount, the "UST Credit Bid Amount");

(ii) the UST Warrant (which the Parties agree has a value of no less than $1,000);

(iii) the valid issuance by Purchaser to Parent of (A) 50,000,000 shares of Common Stock (collectively, the "Parent Shares") and (B) the Parent Warrants; and

(iv) the assumption by Purchaser or its designated Subsidiaries of the Assumed Liabilities.

For the avoidance of doubt, immediately following the Closing, the only indebtedness for borrowed money (or any guarantees thereof) of Sellers and their Subsidiaries to Sponsor, Canada and Export Development Canada is amounts under the Wind Down Facility.

(r) **Section 3.2(c)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(c)

(i) Sellers may, at any time, seek an Order of the Bankruptcy Court (the "Claims Estimate Order"), which Order may be the Order confirming Sellers' Chapter 11 plan, estimating the aggregate allowed general unsecured claims against Sellers' estates. If in the Claims Estimate Order, the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against Sellers' estates exceed $35,000,000,000, then Purchaser will, within five (5) Business Days of entry of the Claims Estimate Order, issue additional shares of Common Stock (the "Adjustment Shares") to Parent, as an adjustment to the Purchase Price, based on the extent by which such estimated aggregate general unsecured claims exceed $35,000,000,000 (such amount, the "Excess Estimated Unsecured Claim Amount;" in the event this amount exceeds $7,000,000,000 the Excess Estimated Unsecured Claim Amount will be reduced to a cap of $7,000,000,000). The number of Adjustment Shares to be issued will be equal to the number of shares, rounded up to the next whole share, calculated by multiplying (i) 10,000,000 shares of Common Stock (adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization, merger, consolidation, reorganization or similar transaction with respect to the

Common Stock, effected from and after the Closing and before issuance of the Adjustment Shares) and (ii) a fraction, (A) the numerator of which is Excess Estimated Unsecured Claim Amount (capped at $7,000,000,000) and (B) the denominator of which is $7,000,000,000.

(ii) At the Closing, Purchaser will have authorized and, thereafter, will reserve for issuance the maximum number of shares of Common Stock issuable as Adjustment Shares.

(s) **Section 6.9(b)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(b) Sellers shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of $1,175,000,000 of Indebtedness accrued under the DIP Facility (as restructured, the "Wind Down Facility") to provide for such Wind Down Facility to be non-recourse, to accrue payment-in-kind interest at the Eurodollar Rate (as defined in the Wind-Down Facility) plus 300 basis points, to be secured by all assets of Sellers (other than the Parent Shares, Adjustment Shares, Parent Warrants and any securities or proceeds received in respect thereof). Sellers shall use reasonable best efforts to enter into definitive financing agreements with respect to the Wind Down Facility so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

(t) **Section 6.17(e)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(e) *Assumption of Certain Parent Employee Benefit Plans and Policies*. As of the Closing Date, Purchaser or one of its Affiliates shall assume (i) the Parent Employee Benefit Plans and Policies set forth on Section 6.17(e) of the Sellers' Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto, except for any that do not comply in all respects with TARP or as otherwise provided in **Section 6.17(h)** and (ii) all employee benefit plans, programs, policies, agreements or arrangements (whether written or oral) in which Employees who are covered by the UAW Collective Bargaining Agreement participate and all assets, trusts, insurance and other Contracts relating thereto (collectively, the "Assumed Plans"), and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Affiliates as the sponsor of such Assumed Plans including all assets, trusts, insurance policies and other Contracts relating thereto. Other than with respect to any Employee who was or is covered by the UAW Collective Bargaining Agreement, Purchaser shall have no Liability with respect to any modifications or changes to Benefit Plans contemplated by Section 6.17(e) of the Sellers' Disclosure Schedule, or changes made by Parent prior to the Closing Date, and Purchaser shall not assume any Liability with respect to any such decisions or actions related thereto, and Purchaser shall only assume the Liabilities for benefits provided pursuant to the written terms and conditions of

the Assumed Plan as of the Closing Date. Notwithstanding the foregoing, the assumption of the Assumed Plans is subject to Purchaser taking all necessary action, including reduction of benefits, to ensure that the Assumed Plans comply in all respects with TARP. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement to which Purchaser or one of its Affiliates is a party, Purchaser and its Affiliates may, in its sole discretion, amend, suspend or terminate any such Assumed Plan at any time in accordance with its terms.

(u) A new **Section 6.17(n)** is hereby added to the Purchase Agreement to read as follows:

(n) *Harlem Employees*. With respect to non-UAW employees of Harlem, Purchaser or one of its Affiliates may make offers of employment to such individuals at its discretion. With respect to UAW-represented employees of Harlem and such other non-UAW employees who accept offers of employment with Purchaser or one of its Affiliates, in addition to obligations under the UAW Collective Bargaining Agreement with respect to UAW-represented employees, Purchaser shall assume all Liabilities arising out of, relating to or in connection with the salaries and/or wages and vacation of all such individuals that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date. With respect to non-UAW employees of Harlem who accept such offers of employment, Purchaser or one of its Affiliates shall take all actions necessary such that such individuals shall be credited for their actual and credited service with Sellers and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual in any employee benefit plans (excluding equity compensation plans or programs) covering such individuals after the Closing; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such individual or the funding for any such benefit. Purchaser or one of its Affiliates, in its sole discretion, may assume certain employee benefit plans maintained by Harlem by delivering written notice (which such notice shall indentify such employee benefit plans of Harlem to be assumed) to Sellers of such assumption on or before the Closing, and upon delivery of such notice, such employee benefit plans shall automatically be deemed to be set forth on Section 6.17(e) of the Sellers' Disclosure Schedules. All such employee benefit plans that are assumed by Purchaser or one of its Affiliates pursuant to the preceding sentence shall be deemed to be Assumed Plans for purposes of this Agreement.

(v) A new **Section 6.36** is hereby added to the Purchase Agreement to read as follows:

Section 6.36 Advanced Technology Credits. The Parties agree that Purchaser shall, to the extent permissible by applicable Law (including all rules, regulations and policies pertaining to Advanced Technology Projects), be entitled to receive full credit for expenditures incurred by Sellers prior to the Closing towards Advanced Technology Projects for the purpose of any current or future program sponsored by a Governmental Authority providing financial assistance in

connection with any such project, including any program pursuant to Section 136 of the Energy Independence and Security Act of 2007 ("Advanced Technology Credits"), and acknowledge that the Purchase Price includes and represents consideration for the full value of such expenditures incurred by Sellers.

(w) **Section 7.2(c)(vi)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(vi) *[Reserved]*;

(x) **Section 7.2(c)(vii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(vii) *[Reserved]*;

(y) **Section 7.3(c)(viii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(viii) *[Reserved]*;

(z) **Section 7.3(c)(ix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(ix) *[Reserved]*;

(aa) **Section 7.3(f)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(f) Purchaser shall have (i) offset the UST Credit Bid Amount against the amount of Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities and the DIP Facility pursuant to a Bankruptcy Code Section 363(k) credit bid and delivered releases and waivers and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements) with respect to the UST Credit Bid Amount, in a form reasonably satisfactory to the Parties and duly executed by Purchaser in accordance with the applicable requirements in effect on the date hereof, (ii) transferred to Sellers the UST Warrant and (iii) issued to Parent, in accordance with instructions provided by Parent, the Purchaser Shares and the Parent Warrants (duly executed by Purchaser).

(bb) **Exhibit R** to the Purchase Agreement is hereby deleted in its entirety.

(cc) **Exhibit S** to the Purchase Agreement is hereby deleted in its entirety.

(dd) **Exhibit U** to the Purchase Agreement is hereby replaced in its entirety with **Exhibit U** attached hereto.

(ee) **Exhibit X** to the Purchase Agreement is hereby replaced in its entirety with **Exhibit X** attached hereto.

(ff) Section 2.2(b)(iv) of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 2.2(b)(iv) of the Sellers' Disclosure Schedule attached hereto.

(gg) Section 4.4 of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 4.4 of the Sellers' Disclosure Schedule attached hereto.

(hh) Section 6.6(a)(i) of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 6.6(a)(i) of the Sellers' Disclosure Schedule attached hereto.

Section 3. *Effectiveness of Amendment.* Upon the execution and delivery hereof, the Purchase Agreement shall thereupon be deemed to be amended and restated as set forth in Section 2, as fully and with the same effect as if such amendments and restatements were originally set forth in the Purchase Agreement.

Section 4. *Ratification of Purchase Agreement; Incorporation by Reference.* Except as specifically provided for in this Amendment, the Purchase Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement, including **Article IX** thereof, which sections are hereby incorporated into this Amendment, mutatis mutandis, as if they were set forth in their entirety herein.

Section 5. *Counterparts.* This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

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Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

Exhibit E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ORDER (I) AUTHORIZING SALE OF ASSETS PURSUANT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT WITH NGMCO, INC., A U.S. TREASURY-SPONSORED PURCHASER; (II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE; AND (III) GRANTING RELATED RELIEF

Upon the motion, dated June 1, 2009 (the "**Motion**"), of General Motors Corporation ("**GM**") and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), pursuant to sections 105, 363, and 365 of title 11, United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for, among other things, entry of an order authorizing and approving (A) that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, by and among GM and its Debtor subsidiaries (collectively, the "**Sellers**") and NGMCO, Inc., as successor in interest to Vehicle Acquisition Holdings LLC (the "**Purchaser**"), a purchaser sponsored by the United States Department of the Treasury (the "**U.S. Treasury**"), together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (as amended, the "**MPA**"), a copy of which is annexed hereto as Exhibit "A" (excluding the exhibits and schedules thereto); (B) the sale of the Purchased Assets[1] to the

[1] Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Motion or the MPA.

Purchaser free and clear of liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability; (C) the assumption and assignment of the Assumable Executory Contracts; (D) the establishment of certain Cure Amounts; and (E) the UAW Retiree Settlement Agreement (as defined below); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with this Court's Order, dated June 2, 2009 (the "**Sale Procedures Order**"), and it appearing that no other or further notice need be provided; and a hearing having been held on June 30 through July 2, 2009, to consider the relief requested in the Motion (the "**Sale Hearing**"); and upon the record of the Sale Hearing, including all affidavits and declarations submitted in connection therewith, and all of the proceedings had before the Court; and the Court having reviewed the Motion and all objections thereto (the "**Objections**") and found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtors, their estates and creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein and in the Court's Decision dated July 5, 2009 (the "**Decision**") constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

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B. To the extent any of the following findings of fact or Findings of Fact in the Decision constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law or Conclusions of Law in the Decision constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the Motion, the MPA, and the 363 Transaction pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code as supplemented by Bankruptcy Rules 2002, 6004, and 6006.

E. As evidenced by the affidavits and certificates of service and Publication Notice previously filed with the Court, in light of the exigent circumstances of these chapter 11 cases and the wasting nature of the Purchased Assets and based on the representations of counsel at the Sale Procedures Hearing and the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the 363 Transaction, the procedures for assuming and assigning the Assumable Executory Contracts as described in the Sale Procedures Order and as modified herein (the "**Modified Assumption and Assignment Procedures**"), the UAW Retiree

Settlement Agreement, and the Sale Hearing have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), and 6006(c) and in compliance with the Sale Procedures Order; (ii) such notice was good and sufficient, reasonable, and appropriate under the particular circumstances of these chapter 11 cases, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, about the Sale Procedures, the sale of the Purchased Assets, the 363 Transaction, and the assumption and assignment of the Assumable Executory Contracts, and to reach all UAW-Represented Retirees about the UAW Retiree Settlement Agreement and the terms of that certain Letter Agreement, dated May 29, 2009, between GM, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "**UAW**"), and Stember, Feinstein, Doyle & Payne, LLC (the "**UAW Claims Agreement**") relating thereto; and (iii) no other or further notice of the Motion, the 363 Transaction, the Sale Procedures, the Modified Assumption and Assignment Procedures, the UAW Retiree Settlement Agreement, the UAW Claims Agreement, and the Sale Hearing or any matters in connection therewith is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, potential contingent warranty claims against the Debtors), the Publication Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

F. On June 1, 2009, this Court entered the Sale Procedures Order approving the Sale Procedures for the Purchased Assets. The Sale Procedures provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. The Debtors received no bids under the Sale Procedures for the Purchased Assets. Therefore, the Purchaser's bid was designated as the Successful Bid pursuant to the Sale Procedures Order.

G. As demonstrated by (i) the Motion, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing, and (iii) the representations of counsel made on the record at the Sale Hearing, in light of the exigent circumstances presented, (a) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets; (c) the consideration provided for in the MPA constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets; (d) the 363 Transaction is a sale of deteriorating assets and the only alternative to liquidation available for the Debtors; (e) if the 363 Transaction is not approved, the Debtors will be forced to cease operations altogether; (f) the failure to approve the 363 Transaction promptly will lead to systemic failure and dire consequences, including the loss of hundreds of thousands of auto-related jobs; (g) prompt approval of the 363 Transaction is the only means to preserve and maximize the value of the Debtors' assets; (h) the 363 Transaction maximizes fair value for the Debtors' parties in interest; (i) the Debtors are receiving fair value for the assets being sold; (j) the 363 Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including liquidation under chapters 7 or 11 of the Bankruptcy Code; (k) no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; (l) the consideration to be paid by the Purchaser under the MPA exceeds the liquidation value of the Purchased Assets; and (m) the Debtors' determination that the MPA constitutes the highest or best offer for the Purchased Assets and that the 363 Transaction represents a better alternative for the Debtors' parties in interest than an immediate liquidation constitute valid and sound exercises of the Debtors' business judgment.

H. The actions represented to be taken by the Sellers and the Purchaser are appropriate under the circumstances of these chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest.

I. Approval of the MPA and consummation of the 363 Transaction at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets pursuant to the 363 Transaction prior to, and outside of, a plan of reorganization and for the immediate approval of the MPA and the 363 Transaction because, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis. In light of the exigent circumstances of these chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the 363 Transaction, time is of the essence in (i) consummating the 363 Transaction, (ii) preserving the viability of the Debtors' businesses as going concerns, and (iii) minimizing the widespread and adverse economic consequences for the Debtors, their estates, their creditors, employees, the automotive industry, and the national economy that would be threatened by protracted proceedings in these chapter 11 cases.

K. The consideration provided by the Purchaser pursuant to the MPA (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery to the Debtors' estates than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The 363 Transaction must be approved and consummated as promptly as practicable in order to preserve the viability of the business to which the Purchased Assets relate as a going concern.

M. The MPA was not entered into and none of the Debtors, the Purchaser, or the Purchasers' present or contemplated owners have entered into the MPA or propose to consummate the 363 Transaction for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors. None of the Debtors, the Purchaser, nor the Purchaser's present or contemplated owners is entering into the MPA or proposing to consummate the 363 Transaction fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to any of the foregoing.

N. In light of the extensive prepetition negotiations culminating in the MPA, the Purchaser's commitment to consummate the 363 Transaction is clear without the need to provide a good faith deposit.

O. Each Debtor (i) has full corporate power and authority to execute the MPA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the MPA, (iii) has taken all corporate action necessary to authorize and approve the MPA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly provided for in the MPA which may be waived by the Purchaser, to consummate such transactions.

P. The consummation of the 363 Transaction outside of a plan of reorganization pursuant to the MPA neither impermissibly restructures the rights of the Debtors' creditors, allocates or distributes any of the sale proceeds, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The 363 Transaction does not constitute a *sub rosa* plan of reorganization. The 363 Transaction in no way dictates distribution of the Debtors' property to creditors and does not impinge upon any chapter 11 plan that may be confirmed.

Q. The MPA and the 363 Transaction were negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Sellers, the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, and advisors, has engaged in any conduct that would cause or permit the MPA to be avoided under 11 U.S.C. § 363(n).

R. The Purchaser is a newly-formed Delaware corporation that, as of the date of the Sale Hearing, is wholly-owned by the U.S. Treasury. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

S. Neither the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, or advisors is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

T. Upon the Closing of the 363 Transaction, the Debtors will transfer to the Purchaser substantially all of its assets. In exchange, the Purchaser will provide the Debtors with (i) cancellation of billions of dollars in secured debt; (ii) assumption by the Purchaser of a portion of the Debtors' business obligations and liabilities that the Purchaser will satisfy; and (iii) no less than 10% of the Common Stock of the Purchaser as of the Closing (100% of which the

Debtors' retained financial advisor values at between $38 billion and $48 billion) and warrants to purchase an additional 15% of the Common Stock of the Purchaser as of the Closing, the combination of which the Debtors' retained financial advisor values at between $7.4 billion and $9.8 billion (which amount, for the avoidance of doubt, does not include any amount for the Adjustment Shares).

U. The Purchaser, not the Debtors, has determined its ownership composition and capital structure. The Purchaser will assign ownership interests to certain parties based on the Purchaser's belief that the transfer is necessary to conduct its business going forward, that the transfer is to attain goodwill and consumer confidence for the Purchaser and to increase the Purchaser's sales after completion of the 363 Transaction. The assignment by the Purchaser of ownership interests is neither a distribution of estate assets, discrimination by the Debtors on account of prepetition claims, nor the assignment of proceeds from the sale of the Debtors' assets. The assignment of equity to the New VEBA (as defined in the UAW Retiree Settlement Agreement) and 7176384 Canada Inc. is the product of separately negotiated arm's-length agreements between the Purchaser and its equity holders and their respective representatives and advisors. Likewise, the value that the Debtors will receive on consummation of the 363 Transaction is the product of arm's-length negotiations between the Debtors, the Purchaser, the U.S. Treasury, and their respective representatives and advisors.

V. The U.S. Treasury and Export Development Canada ("**EDC**"), on behalf of the Governments of Canada and Ontario, have extended credit to, and acquired a security interest in, the assets of the Debtors as set forth in the DIP Facility and as authorized by the interim and final orders approving the DIP Facility (Docket Nos. 292 and 2529, respectively). Before entering into the DIP Facility and the Loan and Security Agreement, dated as of December 31, 2008 (the "**Existing UST Loan Agreement**"), the Secretary of the Treasury, in

consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is "necessary to promote financial market stability," and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201 et seq. ("**EESA**"). The U.S. Treasury's extension of credit to, and resulting security interest in, the Debtors, as set forth in the DIP Facility and the Existing UST Loan Agreement and as authorized in the interim and final orders approving the DIP Facility, is a valid use of funds pursuant to EESA.

W. The DIP Facility and the Existing UST Loan Agreement are loans and shall not be recharacterized. The Court has already approved the DIP Facility. The Existing UST Loan Agreement bears the undisputed hallmarks of a loan, not an equity investment. Among other things:

(i) The U.S. Treasury structured its prepetition transactions with GM as (a) a loan, made pursuant to and governed by the Existing UST Loan Agreement, in addition to (b) a separate, and separately documented, equity component in the form of warrants;

(ii) The Existing UST Loan Agreement has customary terms and covenants of a loan rather than an equity investment. For example, the Existing UST Loan Agreement contains provisions for repayment and pre-payment, and provides for remedies in the event of a default;

(iii) The Existing UST Loan Agreement is secured by first liens (subject to certain permitted encumbrances) on GM's and the guarantors' equity interests in most of their domestic subsidiaries and certain of their foreign subsidiaries (limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries), intellectual property, domestic real estate (other than manufacturing plants or facilities) inventory that was not pledged to other lenders, and cash and cash equivalents in the United States;

(iv) The U.S. Treasury also received junior liens on certain additional collateral, and thus, its claim for recovery on such collateral under the Existing UST Loan Agreement is, in part, junior to the claims of other creditors;

(v) the Existing UST Loan Agreement requires the grant of security by its terms, as well as by separate collateral documents, including: (a) a guaranty and

security agreement, (b) an equity pledge agreement, (c) mortgages and deeds of trust, and (d) an intellectual property pledge agreement;

(vi) Loans under the Existing UST Loan Agreement are interest-bearing with a rate of 3.00% over the 3-month LIBOR with a LIBOR floor of 2.00%. The Default Rate on this loan is 5.00% above the non-default rate.

(vii) The U.S. Treasury always treated the loans under the Existing UST Loan Agreement as debt, and advances to GM under the Existing Loan Agreement were conditioned upon GM's demonstration to the United States Government of a viable plan to regain competitiveness and repay the loans.

(viii) The U.S. Treasury has acted as a prudent lender seeking to protect its investment and thus expressly conditioned its financial commitment upon GM's meaningful progress toward long-term viability.

Other secured creditors of the Debtors also clearly recognized the loans under the Existing UST Loan Agreement as debt by entering into intercreditor agreements with the U.S. Treasury in order to set forth the secured lenders' respective prepetition priority.

X. This Court has previously authorized the Purchaser to credit bid the amounts owed under both the DIP Facility and the Existing UST Loan Agreement and held the Purchaser's credit bid to be, for all purposes, a "Qualified Bid" under the Sale Procedures Order.

Y. The Debtors, the Purchaser, and the UAW, as the exclusive collective bargaining representative of the Debtors' UAW-represented employees and the authorized representative of the persons in the Class and the Covered Group (as described in the UAW Retiree Settlement Agreement) (the "**UAW-Represented Retirees**") under section 1114(c) of the Bankruptcy Code, engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of "retiree benefits" within the meaning of section 1114(a) of the Bankruptcy Code and related matters. Conditioned upon the consummation of the 363 Transaction and the approval of the Bankruptcy Court granted in this Order, the Purchaser and the UAW will enter into that certain Retiree Settlement Agreement, dated as of the Closing Date (the "**UAW Retiree Settlement Agreement**"), which is Exhibit D to the MPA, which resolves

issues with respect to the provision of certain retiree benefits to UAW-Represented Retirees as described in the UAW Retiree Settlement Agreement. As set forth in the UAW Retiree Settlement Agreement, the Purchaser has agreed to make contributions of cash, stock, and warrants of the Purchaser to the New VEBA (as defined in the UAW Retiree Settlement Agreement), which will have the obligation to fund certain health and welfare benefits for the UAW-Represented Retirees. The New VEBA will also be funded by the transfer of assets from the Existing External VEBA and the assets in the UAW Related Account of the Existing Internal VEBA (each as defined in the UAW Retiree Settlement Agreement). GM and the UAW, as the authorized representative of the UAW-Represented Retirees, as well as the representatives for the class of plaintiffs in a certain class action against GM (the "**Class Representatives**"), through class counsel, Stemper, Feinstein, Doyle and Payne LLC ("**Class Counsel**"), negotiated in good faith the UAW Claims Agreement, which requires the UAW and the Class Representatives to take actions to effectuate the withdrawal of certain claims against the Debtors, among others, relating to retiree benefits in the event the 363 Transaction is consummated and the Bankruptcy Court approves, and the Purchaser becomes fully bound by, the UAW Retiree Settlement Agreement, subject to reinstatement of such claims to the extent of any adverse impact to the rights or benefits of UAW-Represented Retirees under the UAW Retiree Settlement Agreement resulting from any reversal or modification of the 363 Transaction, the UAW Retiree Settlement Agreement, or the approval of the Bankruptcy Court thereof, the foregoing as subject to the terms of, and as set forth in, the UAW Claims Agreement.

Z. Effective as of the Closing of the 363 Transaction, the Debtors will assume and assign to the Purchaser the UAW Collective Bargaining Agreement and all liabilities thereunder. The Debtors, the Purchaser, the UAW and Class Representatives intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings

incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2).

AA. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Assumed Liabilities, will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any successor or transferee liability, including, but not limited to (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or the Purchaser's interest in the Purchased Assets, or any similar rights and (ii) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under doctrines of successor or transferee liability.

BB. The Sellers may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the

Bankruptcy Code has been satisfied. Those (i) holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, and (ii) non-Debtor parties to the Assumable Executory Contracts who did not object, or who withdrew their Objections, to the 363 Transaction or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of liens, claims, and encumbrances, and (ii) non-Debtor parties to the Assumable Executory Contracts who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, to the extent they have valid and enforceable liens or encumbrances, are adequately protected by having such liens or encumbrances, if any, attach to the proceeds of the 363 Transaction ultimately attributable to the property against or in which they assert a lien or encumbrance. To the extent liens or encumbrances secure liabilities that are Assumed Liabilities under this Order and the MPA, no such liens or encumbrances shall attach to the proceeds of the 363 Transaction.

CC. Under the MPA, GM is transferring all of its right, title, and interest in the Memphis, TN SPO Warehouse and the White Marsh, MD Allison Transmission Plant (the "**TPC Property**") to the Purchaser pursuant to section 363(f) of the Bankruptcy Code free and clear of all liens (including, without limitation, the TPC Liens (as hereinafter defined)), claims, interests, and encumbrances (other than Permitted Encumbrances). For purposes of this Order, "**TPC Liens**" shall mean and refer to any liens on the TPC Property granted or extended pursuant to the TPC Participation Agreement and any claims relating to that certain Second Amended and Restated Participation Agreement and Amendment of Other Operative Documents (the "**TPC Participation Agreement**"), dated as of June 30, 2004, among GM, as Lessee, Wilmington Trust Company, a Delaware corporation, not in its individual capacity except as expressly stated herein but solely as Owner Trustee (the "**TPC Trustee**") under GM Facilities Trust No. 1999-I (the "**TPC Trust**"), as Lessor, GM, as Certificate Holder, Hannover Funding Company LLC, as

CP Lender, Wells Fargo Bank Northwest, N.A., as Agent, Norddeutsche Landesbank Girozentrale (New York Branch), as Administrator, and Deutsche Bank, AG, New York Branch, HSBC Bank USA, ABN AMRO Bank N.V., Royal Bank of Canada, Bank of America, N.A., Citicorp USA, Inc., Merrill Lynch Bank USA, Morgan Stanley Bank, collectively, as Purchasers (collectively, with CP Lender, Agent and Administrator, the "**TPC Lenders**"), together with the Operative Documents (as defined in the TPC Participation Agreements (the "**TPC Operative Documents**").

DD. The Purchaser would not have entered into the MPA and would not consummate the 363 Transaction (i) if the sale of the Purchased Assets was not free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability or (ii) if the Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the "**Retained Liabilities**"), other than, in each case, the Assumed Liabilities. The Purchaser will not consummate the 363 Transaction unless this Court expressly orders that none of the Purchaser, its affiliates, their present or contemplated members or shareholders (other than the Debtors as the holder of equity in the Purchaser), or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability or Retained Liabilities, other than as expressly provided herein or in agreements made by the Debtors and/or the Purchaser on the record at the Sale Hearing or in the MPA.

EE. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Purchased Contracts to the Purchaser in connection

with the consummation of the 363 Transaction, and the assumption and assignment of the Purchased Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Purchased Contracts being assigned to, and the liabilities being assumed by, the Purchaser are an integral part of the Purchased Assets being purchased by the Purchaser, and, accordingly, such assumption and assignment of the Purchased Contracts and liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

FF. For the avoidance of doubt, and notwithstanding anything else in this Order to the contrary:

- The Debtors are neither assuming nor assigning to the Purchaser the agreement to provide certain retiree medical benefits specified in (i) the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW, and (ii) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW (together, the "**VEBA Settlement Agreement**");

- at the Closing, and in accordance with the MPA, the UAW Collective Bargaining Agreement, and all liabilities thereunder, shall be assumed by the Debtors and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. Assumption and assignment of the UAW Collective Bargaining Agreement is integral to the 363 Transaction and the MPA, are in the best interests of the Debtors and their estates, creditors, employees, and retirees, and represent the exercise of the Debtors' sound business judgment, enhances the value of the Debtors' estates, and does not constitute unfair discrimination;

- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the "authorized representative" of the UAW-Represented Retirees under section 1114(c) of the Bankruptcy Code, GM, and the Purchaser engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of retiree health benefits within the meaning of section 1114(a) of the Bankruptcy Code. Conditioned upon the consummation of the 363 Transaction, the UAW and the Purchaser have entered into the UAW Retiree Settlement Agreement, which, among other things, provides for the financing by the Purchaser of modified retiree health care obligations for the Class and Covered Group (as defined in the UAW Retiree Settlement Agreement) through contributions by the Purchaser (as referenced in paragraph Y herein). The New VEBA will also be funded by the transfer of the UAW Related Account from the Existing Internal VEBA and the assets of the Existing External VEBA to the New VEBA (each as defined in the UAW Retiree Settlement Agreement). The Debtors, the

Purchaser, and the UAW specifically intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2);

- the Debtors' sponsorship of the Existing Internal VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the MPA.

GG. The Debtors have (i) cured and/or provided adequate assurance of cure (through the Purchaser) of any default existing prior to the date hereof under any of the Purchased Contracts that have been designated by the Purchaser for assumption and assignment under the MPA, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation through the Purchaser to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Purchased Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance of future performance under the Purchased Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code. The Modified Assumption and Assignment Procedures are fair, appropriate, and effective and, upon the payment by the Purchaser of all Cure Amounts (as hereinafter defined) and approval of the assumption and assignment for a particular Purchased Contract thereunder, the Debtors shall be forever released from any and all liability under the Purchased Contracts.

HH. The Debtors are the sole and lawful owners of the Purchased Assets, and no other person has any ownership right, title, or interest therein. The Debtors' non-Debtor Affiliates have acknowledged and agreed to the 363 Transaction and, as required by, and in accordance with, the MPA and the Transition Services Agreement, transferred any legal, equitable, or beneficial right, title, or interest they may have in or to the Purchased Assets to the Purchaser.

II. The Debtors currently maintain certain privacy policies that govern the use of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) in conducting their business operations. The 363 Transaction may contemplate the transfer of certain personally identifiable information to the Purchaser in a manner that may not be consistent with certain aspects of their existing privacy policies. Accordingly, on June 2, 2009, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and such ombudsman was appointed on June 10, 2009. The Privacy Ombudsman is a disinterested person as required by section 332(a) of the Bankruptcy Code. The Privacy Ombudsman filed his report with the Court on July 1, 2009 (Docket No. 2873) (the "**Ombudsman Report**") and presented his report at the Sale Hearing, and the Ombudsman Report has been reviewed and considered by the Court. The Court has given due consideration to the facts, including the exigent circumstances surrounding the conditions of the sale of personally identifiable information in connection with the 363 Transaction. No showing has been made that the sale of personally identifiable information in connection with the 363 Transaction in accordance with the provisions of this Order violates applicable nonbankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the 363 Transaction.

JJ. Pursuant to Section 6.7(a) of the MPA, GM offered Wind-Down Agreements and Deferred Termination Agreements (collectively, the "**Deferred Termination Agreements**") in forms prescribed by the MPA to franchised motor vehicle dealers, including dealers authorized to sell and service vehicles marketed under the Pontiac brand (which is being discontinued), dealers authorized to sell and service vehicles marketed under the Hummer, Saturn and Saab brands (which may or may not be discontinued depending on whether the brands are sold to third parties) and dealers authorized to sell and service vehicles marketed

under brands which will be continued by the Purchaser. The Deferred Termination Agreements were offered as an alternative to rejection of the existing Dealer Sales and Service Agreements of these dealers pursuant to section 365 of the Bankruptcy Code and provide substantial additional benefits to dealers which enter into such agreements. Approximately 99% of the dealers offered Deferred Termination Agreements accepted and executed those agreements and did so for good and sufficient consideration.

KK. Pursuant to Section 6.7(b) of the MPA, GM offered Participation Agreements in the form prescribed by the MPA to dealers identified as candidates for a long term relationship with the Purchaser. The Participation Agreements provide substantial benefits to accepting dealers, as they grant the opportunity for such dealers to enter into a potentially valuable relationship with the Purchaser as a component of a reduced and more efficient dealer network. Approximately 99% of the dealers offered Participation Agreements accepted and executed those agreements.

LL. This Order constitutes approval of the UAW Retiree Settlement Agreement and the compromise and settlement embodied therein.

MM. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Consistent with Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order to the full extent to which those rules provide, but that its Order should not become effective instantaneously. Thus the Court will shorten, but not wholly eliminate, the periods set forth in Fed.R.Bankr.P. 6004(h) and 6006, and expressly directs entry of judgment as set forth in accordance with the provisions of Paragraph 70 below.

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NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the MPA and the 363 Transaction is approved.

2. All Objections to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such Objections, are overruled on the merits other than a continuing Objection (each a "**Limited Contract Objection**") that does not contest or challenge the merits of the 363 Transaction and that is limited to (a) contesting a particular Cure Amount(s) (a "**Cure Objection**"), (b) determining whether a particular Assumable Executory Contract is an executory contract that may be assumed and/or assigned under section 365 of the Bankruptcy Code, and/or (c) challenging, as to a particular Assumable Executory Contract, whether the Debtors have assumed, or are attempting to assume, such contract in its entirety or whether the Debtors are seeking to assume only part of such contract. A Limited Contract Objection shall include, until resolved, a dispute regarding any Cure Amount that is subject to resolution by the Bankruptcy Court , or pursuant to the dispute resolution procedures established by the Sale Procedures Order or pursuant to agreement of the parties, including agreements under which an objection to the Cure Amount was withdrawn in connection with a reservation of rights under such dispute resolution procedures. Limited Contract Objections shall not constitute objections to the 363 Transaction, and to the extent such Limited Contract Objections remain continuing objections to be resolved before the Court, the hearing to consider each such Limited Contract Objection shall be adjourned to August 3, 2009 at 9:00a.m. (the "**Limited Contract Objection Hearing**"). Within two (2) business days of the entry of this Order, the Debtors shall serve upon each of the counterparties to the remaining Limited Contract Objections a notice of the Limited Contract Objection Hearing. The Debtors or any party that withdraws, or has withdrawn, a Limited

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Contract Objection without prejudice shall have the right, unless it has agreed otherwise, to schedule the hearing to consider a Limited Contract Objection on not less than fifteen (15) days notice to the Debtors, the counterparties to the subject Assumable Executory Contracts, the Purchaser, and the Creditors' Committee, or within such other time as otherwise may be agreed by the parties.

Approval of the MPA

3. The MPA, all transactions contemplated thereby, and all the terms and conditions thereof (subject to any modifications contained herein) are approved. If there is any conflict between the MPA, the Sale Procedures Order, and this Order, this Order shall govern.

4. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under, and comply with the terms of, the MPA and consummate the 363 Transaction pursuant to, and in accordance with, the terms and provisions of the MPA and this Order.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the MPA, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the MPA and effectuate the 363 Transaction, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the MPA.

6. This Order and the MPA shall be binding in all respects upon the Debtors, their affiliates, all known and unknown creditors of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including

rights or claims based on any successor or transferee liability, all non-Debtor parties to the Assumable Executory Contracts, all successors and assigns of the Purchaser, each Seller and their Affiliates and subsidiaries, the Purchased Assets, all interested parties, their successors and assigns, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion of any of such cases to cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in any of the Debtors' chapter 11 cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the MPA or this Order.

Transfer of Purchased Assets Free and Clear

7. Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the MPA, and, upon the Closing, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, shall attach to the net proceeds of the 363 Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses a Seller or any other party in interest may possess with respect thereto.

8. Except as expressly permitted or otherwise specifically provided by the MPA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims

based on any successor or transferee liability, against or in a Seller or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined (with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible) from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

9. This Order (a) shall be effective as a determination that, as of the Closing, (i) no claims other than Assumed Liabilities, will be assertable against the Purchaser, its affiliates, their present or contemplated members or shareholders, successors, or assigns, or any of their respective assets (including the Purchased Assets); (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances); and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is directed to accept for filing any and all of the documents

and instruments necessary and appropriate to consummate the transactions contemplated by the MPA.

10. The transfer of the Purchased Assets to the Purchaser pursuant to the MPA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.

11. On the Closing of the 363 Transaction, each of the Sellers' creditors and any other holder of a lien, claim, encumbrance, or other interest, is authorized and directed to execute such documents and take all other actions as may be necessary to release its lien, claim, encumbrance (other than Permitted Encumbrances), or other interest in the Purchased Assets, if any, as such lien, claim, encumbrance, or other interest may have been recorded or may otherwise exist.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing a lien, claim, encumbrance, or other interest in the Sellers or the Purchased Assets (other than Permitted Encumbrances) shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, encumbrances, or other interests, which the person or entity has with respect to the Sellers or the Purchased Assets or otherwise, then (a) the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sellers or the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which

shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Sellers or the Purchased Assets.

13. All persons or entities in possession of any of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of Closing of the 363 Transaction.

14. Following the Closing of the 363 Transaction, no holder of any lien, claim, encumbrance, or other interest (other than Permitted Encumbrances) shall interfere with the Purchaser's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such lien, claim, encumbrance, or other interest, or based on any actions the Debtors may take in their chapter 11 cases.

15. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the MPA and this Order; *provided, however*, that the foregoing restriction shall not prevent any person or entity from appealing this Order or opposing any appeal of this Order.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the 363 Transaction contemplated by the MPA.

17. From and after the Closing, the Purchaser shall comply with the certification, reporting, and recall requirements of the National Traffic and Motor Vehicle Safety Act, as amended and recodified, including by the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety

Code, and similar Laws, in each case, to the extent applicable in respect of motor vehicles, vehicles, motor vehicle equipment, and vehicle parts manufactured or distributed by the Sellers prior to the Closing.

18. Notwithstanding anything to the contrary in this Order or the MPA, (a) any Purchased Asset that is subject to any mechanic's, materialman's, laborer's, workmen's, repairman's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings, or any lien for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable, or delinquent (or which may be paid without interest or penalties) shall continue to be subject to such lien after the Closing Date if and to the extent that such lien (i) is valid, perfected and enforceable as of the Commencement Date (or becomes valid, perfected and enforceable after the Commencement Date as permitted by section 546(b) or 362(b)(18) of the Bankruptcy Code), (ii) could not be avoided by any Debtor under sections 544 to 549, inclusive, of the Bankruptcy Code or otherwise, were the Closing not to occur; and (iii) the Purchased Asset subject to such lien could not be sold free and clear of such lien under applicable non-bankruptcy law, and (b) any Liability as of the Closing Date that is secured by a lien described in clause (a) above (such lien, a "**Continuing Lien**") that is not otherwise an Assumed Liability shall constitute an Assumed Liability with respect to which there shall be no recourse to the Purchaser or any property of the Purchaser other than recourse to the property subject to such Continuing Lien. The Purchased Assets are sold free and clear of any reclamation rights, *provided, however*, that nothing, in this Order or the MPA shall in any way impair the right of any claimant against the Debtors with respect to any alleged reclamation right to the extent such reclamation right is not subject to the prior rights of a holder of a security interest in

the goods or proceeds with respect to which such reclamation right is alleged, or impair the ability of a claimant to seek adequate protection against the Debtors with respect to any such alleged reclamation right. Further, nothing in this Order or the MPA shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the Purchaser, the U.S. Treasury, EDC, the Creditors' Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or with respect to any claim for adequate protection.

Approval of the UAW Retiree Settlement Agreement

19. The UAW Retiree Settlement Agreement, the transactions contemplated therein, and the terms and conditions thereof, are fair, reasonable, and in the best interests of the retirees, and are approved. The Debtors, the Purchaser, and the UAW are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and to comply with the terms of the UAW Retiree Settlement Agreement, including the obligation of the Purchaser to reimburse the UAW for certain expenses relating to the 363 Transaction and the transition to the New VEBA arrangements. The amendments to the Trust Agreement (as defined in the UAW Retiree Settlement Agreement) set forth on Exhibit E to the UAW Retiree Settlement Agreement, are approved, and the Trust Agreement is reformed accordingly.

20. In accordance with the terms of the UAW Retiree Settlement Agreement, (I) as of the Closing, there shall be no requirement to amend the Pension Plan as set forth in section 15 of the Henry II Settlement (as such terms are defined in the UAW Retiree Settlement Agreement); (II) on the later of December 31, 2009, or the Closing of the 363 Transaction (the "**Implementation Date**"), (i) the committee and the trustees of the Existing External VEBA (as defined in the UAW Retiree Settlement Agreement) are directed to transfer to the New VEBA all assets and liabilities of the Existing External VEBA and to terminate the Existing External

VEBA within fifteen (15) days thereafter, as provided under Section 12.C of the UAW Retiree Settlement Agreement, (ii) the trustee of the Existing Internal VEBA is directed to transfer to the New VEBA the UAW Related Account's share of assets in the Existing Internal VEBA within ten (10) business days thereafter as provided in Section 12.B of the UAW Retiree Settlement Agreement, and, upon the completion of such transfer, the Existing Internal VEBA shall be deemed to be amended to terminate participation and coverage regarding Retiree Medical Benefits for the Class and the Covered Group, effective as of the Implementation Date (each as defined in the UAW Retiree Settlement Agreement); and (III) all obligations of the Purchaser and the Sellers to provide Retiree Medical Benefits to members of the Class and Covered Group shall be governed by the UAW Retiree Settlement Agreement, and, in accordance with section 5.D of the UAW Retiree Settlement Agreement, all provisions of the Purchaser's Plan relating to Retiree Medical Benefits for the Class and/or the Covered Group shall terminate as of the Implementation Date or otherwise be amended so as to be consistent with the UAW Retiree Settlement Agreement (as each term is defined in the UAW Retiree Settlement Agreement), and the Purchaser shall not thereafter have any such obligations as set forth in Section 5.D of the UAW Retiree Settlement Agreement.

Approval of GM's Assumption of the UAW Claims Agreement

21. Pursuant to section 365 of the Bankruptcy Code, GM's assumption of the UAW Claims Agreement is approved, and GM, the UAW, and the Class Representatives are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Claims Agreement and comply with the terms of the UAW Claims Agreement.

Assumption and Assignment to the Purchaser of Assumable Executory Contracts

22. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and subject to and conditioned upon (a) the Closing of the 363 Transaction, (b) the occurrence of the Assumption Effective Date, and (c) the resolution of any relevant Limited Contract Objections, other than a Cure Objection, by order of this Court overruling such objection or upon agreement of the parties, the Debtors' assumption and assignment to the Purchaser of each Assumable Executory Contract (including, without limitation, for purposes of this paragraph 22) the UAW Collective Bargaining Agreement) is approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are deemed satisfied.

23. The Debtors are authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective as of the Assumption Effective Date, as provided by, and in accordance with, the Sale Procedures Order, the Modified Assumption and Assignment Procedures, and the MPA, those Assumable Executory Contracts that have been designated by the Purchaser for assumption pursuant to sections 6.6 and 6.31 of the MPA and that are not subject to a Limited Contract Objection other than a Cure Objection, free and clear of all liens, claims, encumbrances, or other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities, and (ii) execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deems may be necessary to assign and transfer such Assumable Executory Contracts and Assumed Liabilities to the Purchaser. The Purchaser shall Promptly Pay (as defined below) the following (the "**Cure Amount**"): (a) all amounts due under such Assumable Executory Contract as of the Commencement Date as reflected on the website established by the Debtors (the "**Contract Website**"), which is referenced and is accessible as set forth in the Assumption and Assignment

Notice or as otherwise agreed to in writing by an authorized officer of the parties (for this purpose only, Susanna Webber shall be deemed an authorized officer of the Debtors) (the "**Prepetition Cure Amount**"), less amounts, if any, paid after the Commencement Date on account of the Prepetition Cure Amount (such net amount, the "**Net Prepetition Cure Amount**"), plus (b) any such amount past due and owing as of the Assumption Effective Date, as required under the Modified Assumption and Assignment Procedures, exclusive of the Net Prepetition Cure Amount. For the avoidance of doubt, all of the Debtors' rights to assert credits, chargebacks, setoffs, rebates, and other claims under the Purchased Contracts are purchased by and assigned to the Purchaser as of the Assumption Effective Date. As used herein, "**Promptly Pay**" means (i) with respect to any Cure Amount (or portion thereof, if any) which is undisputed, payment as soon as reasonably practicable, but not later than five (5) business days after the Assumption Effective Date, and (ii) with respect to any Cure Amount (or portion thereof, if any) which is disputed, payment as soon as reasonably practicable, but not later than five (5) business days after such dispute is resolved or such later date upon agreement of the parties and, in the event Bankruptcy Court approval is required, upon entry of a final order of the Bankruptcy Court. On and after the Assumption Effective Date, the Purchaser shall (i) perform any nonmonetary defaults that are required under section 365(b) of the Bankruptcy Code; *provided* that such defaults are undisputed or directed by this Court and are timely asserted under the Modified Assumption and Assignment Procedures, and (ii) pay all undisputed obligations and perform all obligations that arise or come due under each Assumable Executory Contract in the ordinary course. Notwithstanding any provision in this Order to the contrary, the Purchaser shall not be obligated to pay any Cure Amount or any other amount due with respect to any Assumable Executory Contract before such amount becomes due and payable under the applicable payment terms of such Contract.

24. The Debtors shall make available a writing, acknowledged by the Purchaser, of the assumption and assignment of an Assumable Executory Contract and the effective date of such assignment (which may be a printable acknowledgment of assignment on the Contract Website). The Assumable Executory Contracts shall be transferred and assigned to, pursuant to the Sale Procedures Order and the MPA, and thereafter remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Assumable Executory Contract (including those of the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Sellers shall be relieved from any further liability with respect to the Assumable Executory Contracts after such assumption and assignment to the Purchaser. Except as may be contested in a Limited Contract Objection, each Assumable Executory Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code and the Debtors may assume each of their respective Assumable Executory Contracts in accordance with section 365 of the Bankruptcy Code. Except as may be contested in a Limited Contract Objection other than a Cure Objection, the Debtors may assign each Assumable Executory Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumable Executory Contract that prohibit or condition the assignment of such Assumable Executory Contract or terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumable Executory Contract, constitute unenforceable antiassignment provisions which are void and of no force and effect in connection with the transactions contemplated hereunder. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of each Assumable Executory Contract have been satisfied, and, pursuant to section 365(k) of the Bankruptcy Code, the

Debtors are hereby relieved from any further liability with respect to the Assumable Executory Contracts, including, without limitation, in connection with the payment of any Cure Amounts related thereto which shall be paid by the Purchaser. At such time as provided in the Sale Procedures Order and the MPA, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract. With respect to leases of personal property that are true leases and not subject to recharacterization, nothing in this Order or the MPA shall transfer to the Purchaser an ownership interest in any leased property not owned by a Debtor. Any portion of any of the Debtors' unexpired leases of nonresidential real property that purport to permit the respective landlords thereunder to cancel the remaining term of any such leases if the Sellers discontinue their use or operation of the Leased Real Property are void and of no force and effect and shall not be enforceable against the Purchaser, its assignees and sublessees, and the landlords under such leases shall not have the right to cancel or otherwise modify such leases or increase the rent, assert any Claim, or impose any penalty by reason of such discontinuation, the Sellers' cessation of operations, the assignment of such leases to the Purchaser, or the interruption of business activities at any of the leased premises.

25. Except in connection with any ongoing Limited Contract Objection, each non-Debtor party to an Assumable Executory Contract is forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or the Purchaser, their successors or assigns, or their respective property, any default arising prior to, or existing as of, the Commencement Date, or, against the Purchaser, any counterclaim, defense, or setoff (other than defenses interposed in connection with, or related to, credits, chargebacks, setoffs, rebates, and other claims asserted by the Sellers or the Purchaser in its capacity as assignee), or other claim asserted or assertable against the Sellers and (b) imposing or charging against the Debtors, the

Purchaser, or its Affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Sellers' assumption and assignment to the Purchaser of the Assumable Executory Contracts. The validity of such assumption and assignment of the Assumable Executory Contracts shall not be affected by any dispute between the Sellers and any non-Debtor party to an Assumable Executory Contract.

26. Except as expressly provided in the MPA or this Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities other than certain Cure Amounts as provided in the MPA, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, and their estates.

27. The failure of the Sellers or the Purchaser to enforce at any time one or more terms or conditions of any Assumable Executory Contract shall not be a waiver of such terms or conditions, or of the Sellers' and the Purchaser's rights to enforce every term and condition of the Assumable Executory Contracts.

28. The authority hereunder for the Debtors to assume and assign an Assumable Executory Contract to the Purchaser includes the authority to assume and assign an Assumable Executory Contract, as amended.

29. Upon the assumption by a Debtor and the assignment to the Purchaser of any Assumable Executory Contract and the payment of the Cure Amount in full, all defaults under the Assumable Executory Contract shall be deemed to have been cured, and any counterparty to such Assumable Executory Contract shall be prohibited from exercising any rights or remedies against any Debtor or non-Debtor party to such Assumable Executory Contract based on an asserted default that occurred on, prior to, or as a result of, the Closing, including the type of default specified in section 365(b)(1)(A) of the Bankruptcy Code.

30. The assignments of each of the Assumable Executory Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

31. Entry by GM into the Deferred Termination Agreements with accepting dealers is hereby approved. Executed Deferred Termination Agreements represent valid and binding contracts, enforceable in accordance with their terms.

32. Entry by GM into the Participation Agreements with accepting dealers is hereby approved and the offer by GM of entry into the Participation Agreements and entry into the Participation Agreements was appropriate and not the product of coercion. The Court makes no finding as to whether any specific provision of any Participation Agreement governing the obligations of Purchaser and its dealers is enforceable under applicable provisions of state law. Any disputes that may arise under the Participation Agreements shall be adjudicated on a case by case basis in an appropriate forum other than this Court.

33. Nothing contained in the preceding two paragraphs shall impact the authority of any state or of the federal government to regulate Purchaser subsequent to the Closing.

34. Notwithstanding any other provision in the MPA or this Order, no assignment of any rights and interests of the Debtors in any federal license issued by the Federal Communications Commission ("**FCC**") shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.

TPC Property

35. The TPC Participation Agreement and the other TPC Operative Documents are financing transactions secured to the extent of the TPC Value (as hereinafter defined) and shall be Retained Liabilities.

36. As a result of the Debtors' interests in the TPC Property being transferred to the Purchaser free and clear of all liens, claims, interests, and encumbrances (other than Permitted Encumbrances), including, without limitation, the TPC Lenders' Liens and Claims, pursuant to section 363(e) of the Bankruptcy Code, the TPC Lenders shall have an allowed secured claim in a total amount equal to the fair market value of the TPC Property on the Commencement Date under section 506 of the Bankruptcy Code (the "**TPC Value**"), as determined at a valuation hearing conducted by this Court or by mutual agreement of the Debtors, the Purchaser, and the TPC Lenders (such claim, the "**TPC Secured Claim**"). Either the Debtors, the Purchaser, the TPC Lenders, or the Creditors' Committee may file a motion with this Court to determine the TPC Value on twenty (20) days notice.

37. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for the TPC Secured Claim and for the sole benefit of the TPC Lenders, at the Closing or as soon as commercially practicable thereafter, but in any event not later than five (5) business days after the Closing, the Purchaser shall place $90,700,000 (the "**TPC Escrow Amount**") in cash into an interest-bearing escrow account (the "**TPC Escrow Account**") at a financial institution selected by the Purchaser and acceptable to the other parties (the "**Escrow Bank**"). Interest earned on the TPC Escrow Amount from the date of deposit through the date of the disposition of the proceeds of such account (the "**TPC Escrow Interest**") will follow principal, such that interest earned on the amount of cash deposited into the TPC Escrow Account equal to the TPC Value shall be paid to the TPC Lenders and interest earned on the balance of the TPC Escrow Amount shall be paid to the Purchaser.

38. Promptly after the determination of the TPC Value, an amount of cash equal to the TPC Secured Claim plus the TPC Lenders' pro rata share of the TPC Escrow Interest shall be released from the TPC Escrow Account and paid to the TPC Lenders (the "**TPC**

Payment") without further order of this Court. If the TPC Value is less than $90,700,000, the TPC Lenders shall have, in addition to the TPC Secured Claim, an aggregate allowed unsecured claim against GM's estate equal to the lesser of (i) $45,000,000 and (ii) the difference between $90,700,000 and the TPC Value (the "**TPC Unsecured Claim**").

39. If the TPC Value exceeds $90,700,000, the TPC Lenders shall be entitled to assert a secured claim against GM's estate to the extent the TPC Lenders would have an allowed claim for such excess under section 506 of the Bankruptcy Code (the "**TPC Excess Secured Claim**"); *provided, however*, that any TPC Excess Secured Claim shall be paid from the consideration of the 363 Transaction as a secured claim thereon and shall not be payable from the proceeds of the Wind-Down Facility; *and provided further, however*, that the Debtors, the Creditors' Committee, and all parties in interest shall have the right to contest the allowance and amount of the TPC Excess Secured Claim under section 506 of the Bankruptcy Code (other than to contest the TPC Value as previously determined by the Court). All parties' rights and arguments respecting the determination of the TPC Secured Claim are reserved; *provided, however*, that in consideration of the settlement contained in these paragraphs, the TPC Lenders waive any legal argument that the TPC Lenders are entitled to a secured claim equal to the face amount of their claim under section 363(f)(3) or any other provision of the Bankruptcy Code solely as a matter of law, including, without limitation, on the grounds that the Debtors are required to pay the full face amount of the TPC Lenders' secured claims in order to transfer, or as a result of the transfer of, the TPC Property to the Purchaser. After the TPC Payment is made, any funds remaining in the TPC Escrow Account plus the Purchasers' pro rata share of the TPC Escrow Interest shall be released and paid to the Purchaser without further order of this Court. Upon the receipt of the TPC Payment by the TPC Lenders, other than any right to payment from GM on account of the TPC Unsecured Claim and the TPC Excess Secured Claim, the TPC

Lenders' Claims relating to the TPC Property shall be deemed fully satisfied and discharged, including, without limitation, any claims the TPC Lenders might have asserted against the Purchaser relating to the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents. For the avoidance of doubt, any and all claims of the TPC Lenders arising from or in connection with the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents shall be payable solely from the TPC Escrow Account or GM and shall be nonrecourse to the Purchaser.

40. The TPC Lenders shall not be entitled to payment of any fees, costs, or expenses (including legal fees) except to the extent that the TPC Value results in a TPC Excess Secured Claim and is thereby oversecured under the Bankruptcy Code and such claim is allowed by the Court as a secured claim under section 506 of the Bankruptcy Code.

41. In connection with the foregoing, and pursuant to Section 11.2 of the TPC Trust Agreement, GM, as the sole Certificate Holder and Beneficiary under the TPC Trust, together with the consent of GM as the Lessee, effective as of the date of the Closing, (a) exercises its election to terminate the TPC Trust and (b) in connection therewith, assumes all of the obligations of the TPC Trust and TPC Trustee under or contemplated by the TPC Operative Documents to which the TPC Trust or TPC Trustee is a party and all other obligations of the TPC Trust or TPC Trustee incurred under the TPC Trust Agreement (other than obligations set forth in clauses (i) through (iii) of the second sentence of Section 7.1 of the TPC Trust Agreement).

42. As a condition precedent to the 363 Transaction, in connection with the termination of the TPC Trust, effective as of the date of the Closing, all of the assets of the TPC Trust (the "**TPC Trust Assets**") shall be distributed to GM, as sole Certificate Holder and beneficiary under the TPC Trust, including, without limitation, the following:

(i) Industrial Development Revenue Real Property Note (General Motors Project) Series 1999-I, dated November 18, 1999, in the principal amount of $21,700,000, made by the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, to PVV Southpoint 14, LLC, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds (the "**TPC Tennessee Ground Lease**");

(ii) Real Property Lease Agreement dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Lessor, and PVV Southpoint 14, LLC, as Lessee, recorded as JW1262 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Real Property Lease dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1267 in the records of the Shelby County Register of Deeds;

(iii) Deed of Trust dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Grantor, in favor of Mid-South Title Corporation, as Trustee, for the benefit of PVV Southpoint 14, LLC, Beneficiary, recorded as JW1263 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(iv) Assignment of Rents and Lease dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Assignor, and PVV Southpoint 14, LLC, as Assignee, recorded as JW1264 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(v) The Tennessee Master Lease (as defined in the TPC Participation Agreement);

(vi) A certain tract of land being known and designated as Lot 1, as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Maryland, together with a certain tract of land being known and designated as "1.1865 Acre of Highway Widening," as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Baltimore, Maryland, saving and excepting from the above described property all that land conveyed to the State of Maryland to the use of the State Highway Administration of the Department of Transportation dated November 24, 2003, and

recorded among the Land Records of Baltimore County in Liber 19569, folio 074, Maryland, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way, including, without limitation, those easements benefiting Parcel 1 set forth in the Declaration and Agreement Respecting Easements, Restrictions and Operations, between the TPC Trust, GM, and Whitemarsh Associates, LLC, recorded among the Land Records of Baltimore County in Liber 14019, folio 430, as amended (collectively, the "**Maryland Property**");

(vii) alternatively to the transfer of a direct interest in the Maryland Property pursuant to item (vi) above, if such documents are still extant, the following interests shall be transferred: (a) Ground Lease Agreement dated as of September 8, 1999, between the TPC Trustee of the TPC Trust. as lessor, and Maryland Economic Development Corporation, as lessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 565, (b) Sublease Agreement dated as of September 8, 1999, between the Maryland Economic Development Corporation, as sublessor, and the TPC Trustee of the TPC Trust, as sublessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 589, together with (c) all agreements, loan agreements, notes, rights, obligations, and interests held by the TPC Trustee of the TPC Trust and/or issued by the TPC Trustee of the TPC Trust in connection therewith; and

(viii) The Maryland Master Lease (as defined in the TPC Participation Agreement).

43. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the leasehold interest of the TPC Trustee of the TPC Trust under the TPC Tennessee Ground Lease and the lessor's interest under the Tennessee Master Lease shall be held by GM, as are the lessor's and lessee's interests under the Tennessee Master Lease, and as permitted by the TPC Trust Agreement, the Tennessee Master Lease shall hereby be terminated, and GM shall succeed to all rights of the lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

44. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the Maryland Property, the lessor's and lessee's interests under the Maryland Master Lease shall be held by GM, and as permitted by the TPC Trust Agreement, the Maryland Master Lease shall hereby be terminated, and GM shall succeed to all rights of the

lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

45. All of the TPC Trust Assets and the TPC Property are Purchased Assets under the MPA and shall be transferred by GM pursuant thereto to the Purchaser free and clear of all liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including, without limitation, any liens, claims, encumbrances, and interests of the TPC Lenders. To the extent any of the TPC Trust Assets are executory contracts and unexpired leases, they shall be Assumable Executory Contracts, which shall be assumed by GM and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code and the Sale Procedures Order.

Additional Provisions

46. Except for the Assumed Liabilities expressly set forth in the MPA, none of the Purchaser, its present or contemplated members or shareholders, its successors or assigns, or any of their respective affiliates or any of their respective agents, officials, personnel, representatives, or advisors shall have any liability for any claim that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser shall not be deemed, as a result of any action taken in connection with the MPA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchased Assets from and after the Closing); (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims,

including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated.

47. Effective upon the Closing and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter or an order of the Court, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, its present or contemplated members or shareholders, its successors and assigns, or the Purchased Assets, with respect to any (i) claim against the Debtors other than Assumed Liabilities, or (ii) successor or transferee liability of the Purchaser for any of the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Purchaser, its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (c) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of this Court, or

the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets. Notwithstanding the foregoing, a relevant taxing authority's ability to exercise its rights of setoff and recoupment are preserved.

48. Except for the Assumed Liabilities, or as expressly permitted or otherwise specifically provided for in the MPA or this Order, the Purchaser shall have no liability or responsibility for any liability or other obligation of the Sellers arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided in this Order and the MPA, the Purchaser shall not be liable for any claims against the Sellers or any of their predecessors or Affiliates, and the Purchaser shall have no successor, transferee, or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor, or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to the Sellers or any obligations of the Sellers arising prior to the Closing.

49. The Purchaser has given fair and substantial consideration under the MPA for the benefit of the holders of liens, claims, encumbrances, or other interests. The consideration provided by the Purchaser for the Purchased Assets under the MPA is greater than the liquidation value of the Purchased Assets and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

50. The consideration provided by the Purchaser for the Purchased Assets under the MPA is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

51. If there is an Agreed G Transaction (determined no later than the due date, with extensions, of GM's tax return for the taxable year in which the 363 Transaction occurs), (i) the MPA shall, and hereby does, constitute a "plan" of GM and the Purchaser solely for purposes of sections 368 and 354 of the Tax Code, and (ii) the 363 Transaction, as set forth in the MPA, and the subsequent liquidation of the Sellers, are intended to constitute a tax reorganization of GM pursuant to section 368(a)(1)(G) of the Tax Code.

52. This Order (a) shall be effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated, and that the conveyances described in this Order have been effected, and (b) shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

53. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by the MPA.

54. Any amounts that become payable by the Sellers to the Purchaser pursuant to the MPA (and related agreements executed in connection therewith, including, but not limited to, any obligation arising under Section 8.2(b) of the MPA) shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the MPA without further Court order.

55. The transactions contemplated by the MPA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the 363 Transaction shall not affect the validity of the 363 Transaction (including the assumption and assignment of any of the Assumable Executory Contracts and the UAW Collective Bargaining Agreement), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

56. The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials. Notwithstanding the foregoing, the Purchaser has assumed the

Sellers' obligations under state "lemon law" statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.

57. Subject to further Court order and consistent with the terms of the MPA and the Transition Services Agreement, the Debtors and the Purchaser are authorized to, and shall, take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, (a) the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' business, and (b) the cash management system maintained by the Debtors prior to the Closing, as such system may be necessary to effect the orderly administration of the Debtors' estates.

58. The Debtors are authorized to take any and all actions that are contemplated by or in furtherance of the MPA, including transferring assets between subsidiaries and transferring direct and indirect subsidiaries between entities in the corporate structure, with the consent of the Purchaser.

59. Upon the Closing, the Purchaser shall assume all liabilities of the Debtors arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Debtor, except for workers' compensation claims against the Debtors with respect to Employees residing in or employed in, as the case may be as defined by applicable law, the states of Alabama, Georgia, New Jersey, and Oklahoma.

60. During the week after Closing, the Purchaser shall send an e-mail to the Debtors' customers for whom the Debtors have usable e-mail addresses in their database, which will provide information about the Purchaser and procedures for consumers to opt out of being

contacted by the Purchaser for marketing purposes. For a period of ninety (90) days following the Closing Date, the Purchaser shall include on the home page of GM's consumer web site (www.gm.com) a conspicuous disclosure of information about the Purchaser, its procedures for consumers to opt out of being contacted by the Purchaser for marketing purposes, and a notice of the Purchaser's new privacy statement. The Debtors and the Purchaser shall comply with the terms of established business relationship provisions in any applicable state and federal telemarketing laws. The Dealers who are parties to Deferred Termination Agreements shall not be required to transfer personally identifying information in violation of applicable law or existing privacy policies.

61. Nothing in this Order or the MPA releases, nullifies, or enjoins the enforcement of any Liability to a governmental unit under Environmental Laws or regulations (or any associated Liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor liability doctrine with respect to any Liabilities under Environmental Laws or regulations for penalties for days of violation prior to entry of this Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

62. Nothing contained in this Order or in the MPA shall in any way (i) diminish the obligation of the Purchaser to comply with Environmental Laws, or (ii) diminish the obligations of the Debtors to comply with Environmental Laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The definition of Environmental Laws in the MPA shall be amended to delete the words "in existence on the date of the Original Agreement." For purposes of clarity, the exclusion of asbestos liabilities in

section 2.3(b)(x) of the MPA shall not be deemed to affect coverage of asbestos as a Hazardous Material with respect to the Purchaser's remedial obligations under Environmental Laws.

63. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transactions contemplated by the 363 Transaction, the MPA, the Motion, and this Order.

64. The Debtors shall comply with their tax obligations under 28 U.S.C. § 960, except to the extent that such obligations are Assumed Liabilities.

65. Notwithstanding anything contained in their respective organizational documents or applicable state law to the contrary, each of the Debtors is authorized and directed, upon and in connection with the Closing, to change their respective names, and any amendment to the organizational documents (including the certificate of incorporation) of any of the Debtors to effect such a change is authorized and approved, without Board or shareholder approval. Upon any such change with respect to GM, the Debtors shall file with the Court a notice of change of case caption within two (2) business days of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

66. The terms and provisions of the MPA and this Order shall inure to the benefit of the Debtors, their estates, and their creditors, the Purchaser, and their respective agents, officials, personnel, representatives, and advisors.

67. The failure to specifically include any particular provisions of the MPA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the MPA be authorized and approved in its entirety, except as modified herein.

68. The MPA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification,

amendment, or supplement does not have a material adverse effect on the Debtors' estates. Any such proposed modification, amendment, or supplement that does have a material adverse effect on the Debtors' estates shall be subject to further order of the Court, on appropriate notice.

69. The provisions of this Order are nonseverable and mutually dependent on each other.

70. As provided in Fed.R.Bankr.P. 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry, and instead shall be effective as of 12:00 noon, EDT, on Thursday, July 9, 2009. The Debtors and the Purchaser are authorized to close the 363 Transaction on or after 12:00 noon on Thursday, July 9. Any party objecting to this Order must exercise due diligence in filing any appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and the Debtors elect to close prior to this Order becoming a Final Order.

Deleted: Pursuant to Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the 363 Transaction immediately upon entry of this Order.

71. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the Deferred Termination Agreements, in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) compel delivery of the purchase price or performance of other obligations owed by or to the Debtors, (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets, and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation

Agreements, stockholder agreements or other documents concerning the corporate governance of the Purchaser, and documents governed by foreign law, which disputes shall be adjudicated as

necessary under applicable law in any other court or administrative agency of competent jurisdiction.

Dated: New York, York
July **5**, 2009

s/Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

Exhibit F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ORDER PURSUANT TO FED. R. BANKR. P. 9019 AND FED. R. CIV. P. RULE 23 APPROVING AGREEMENT RESOLVING PROOF OF CLAIM NO. 44887 AND IMPLEMENTING CLASS SETTLEMENT

Upon the Motion, dated July 13, 2010 (the "**Motion**"),[1] of Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Federal Rule of Civil Procedure 23(e), for entry of an order approving the agreement Resolving Proof of Claim No. 44887 and Implementing Class Settlement (the **"Agreement"**), attached to the Motion as **Exhibit "A**,**"** between the Debtors, Plaintiff Donna Soders ("**Soders**"), on behalf of herself and all others similarly situated (the "**Soders Class**"), and RodaNast P.C. ("**RodaNast**"), as more fully set forth in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided to any party; and the Court having found and determined that (i) the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all

[1] Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

parties in interest; (ii) the Settlement is fair, reasonable, adequate, and in the best interest of the Soders Class considering the complexity, expense, and likely duration of the Soders Class Action litigation; the reaction of the Soders Class to the proposed settlement; the stage of the proceedings and the amount of discovery completed; the risk of establishing liability and damages and maintaining the class through trial; the ability of the Debtors to withstand a greater judgment; and the range of reasonableness of the settlement in light of the best possible recovery and all the attendant risks of litigation; (iii) the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; (iv) the settlements and compromise embodied in the Agreement are within the range of reasonableness; (v) the Settlement was not the product of collusion between the parties and their respective counsel, but was the result of bona fide, good faith, arm's-length negotiations between experienced counsel after sufficient discovery was obtained; (vi) and the Notice of Settlement provided to the Soders Class was adequate and satisfied the Federal Rules of Civil Procedure; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the Motion is granted as provided herein; and it is further

ORDERED that the Debtors' entry into the Agreement is in the best interests of the Debtors and their estates; and it is further

ORDERED that the Debtors' entry into the Agreement is authorized, ratified, and directed; and it is further

ORDERED that the Court will apply Rule 7023 of the Federal Rules of Bankruptcy Procedure solely for the purposes of settlement in granting the Motion; and it is further

ORDERED that the Court adopts the Pennsylvania Court's certification of the Soders Class solely for the purposes of settlement; and it is further

ORDERED that an award of a general unsecured claim in the amount of $554,050 to the Participating Soders Class Members is fair and reasonable; and it is further

ORDERED that RodaNast is permitted to sell, transfer, or otherwise liquidate the Total Allowed Unsecured Claim and make pro rata distributions to the Participating Class Members, as necessary; and it is further

ORDERED that a payment of a general unsecured claim of $5,000 to Soders as the Soders Class representative is fair and reasonable; and it is further

ORDERED that an attorneys' fee award of a general unsecured claim in the amount of $526,348 is fair and reasonable considering the time and efforts reasonably expended by RodaNast in the litigation, the quality of services rendered, the results achieved and benefits conferred upon the Soders Class, the magnitude, complexity and uniqueness of the litigation, and the contingent nature of the fee; and it is further

ORDERED that the reimbursement of costs incurred by RodaNast in the Soders Class Action of a general unsecured claim in the amount of $437,416.92 to RodaNast is fair and reasonable, and it is further

ORDERED that no further notice of (i) the Settlement, (ii) the Debtors' entry into the Agreement, or (iii) Soders' entry into the Agreement on behalf of the Soders Class is required; and it is further

ORDERED that upon entry of this Order, all terms and conditions of the Agreement shall become effective; and it is further

ORDERED that to the extent any conflict exists between the terms and conditions of the Agreement and this Order, this Order shall control; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: New York, New York
August 10, 2010

s/Robert E. Gerber
United States Bankruptcy Judge

Exhibit G

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ORDER PURSUANT TO FED. R. BANKR. P. 9019 AND FED. R. CIV. P. RULE 23 APPROVING AGREEMENT RESOLVING PROOF OF CLAIM NO. 51095 AND IMPLEMENTING MODIFIED DEX-COOL CLASS SETTLEMENT

Upon the Motion, dated March 24, 2011 (the "**Motion**"),[1] of Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and Federal Rule of Civil Procedure 23, for entry of an order approving the Agreement Resolving Proof of Claim No. 51095 and Implementing Modified Dex-Cool Class Settlement (the **"Agreement"**), attached to the Motion as **Exhibit "A**,**"** implementing a settlement between the Debtors and class action plaintiffs (the "**Dex-Cool Plaintiffs**"), on behalf of themselves and all others similarly situated (collectively, the "**Dex-Cool Class**") as more fully set forth in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided to any party; and the Court having found and determined that (i) the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; (ii) the Agreement is fair, reasonable, adequate, and in the best interest of the Dex-Cool Class considering the complexity, expense,

[1] Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and likely duration of the Dex-Cool Class Action litigation; the reaction of the Dex-Cool Class to the proposed settlement; the stage of the proceedings and the amount of discovery completed; the risk of establishing liability and damages and maintaining the class through trial; the ability of the Debtors to withstand a greater judgment; and the range of reasonableness of the settlement in light of the best possible recovery and all the attendant risks of litigation; (iii) the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; (iv) the settlement and compromise embodied in the Agreement is within the range of reasonableness; (v) the Agreement was not the product of collusion between the parties and their respective counsel, but was the result of bona fide, good faith, arms-length negotiations between experienced counsel after sufficient discovery was obtained; (vi) and the Notice of Settlement previously provided to the Dex-Cool Class was adequate and satisfied the Federal Rules of Civil Procedure and no additional notice of the Agreement is required; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the Motion is granted as provided herein; and it is further

ORDERED that the Debtors' entry into the Agreement is in the best interests of the Debtors and their estates; and it is further

ORDERED that the Debtors' entry into the Agreement is authorized, ratified, and directed; and it is further

ORDERED that the Court will apply Rule 7023 of the Federal Rules of Bankruptcy Procedure solely for the purposes of settlement in granting the Motion; and it is further

ORDERED that the Court adopts the California and Missouri Courts' certification of the Dex-Cool Class solely for the purposes of settlement; and it is further

ORDERED that the Resubmitting Participating Class Members shall be awarded an allowed general unsecured claim in the amount of $2,205,570.00 (the "**Total Allowed Unsecured Claim**") and it is hereby determined that such amount is fair and reasonable; and it is further

ORDERED that the Claim and the Dex-Cool Proof of Claim shall be superseded and replaced by the Total Allowed Unsecured Claim; and it is further

ORDERED that Co-Lead Class Counsel is specifically authorized and directed to administer the proceeds resulting from the Total Allowed Unsecured Claim and otherwise make *pro rata* distributions of the cash proceeds to the Resubmitting Participating Class Members in accordance with the Agreement and as follows:

(i) Co-Lead Class Counsel is authorized to (i) sell, transfer, assign, and/or otherwise monetize the Total Allowed Unsecured Claim, either individually or through a broker, and/or (ii) monetize any shares, warrants, options, or other property received from Debtors as part of any chapter 11 plan in any commercially reasonable manner;

(ii) Cash distributions to Resubmitting Participating Class Members will be made on a *pro rata* basis from cash proceeds resulting from the Total Allowed Unsecured Claim and will be allocated in accordance with the Agreement and the Plan of Allocation contained therein; and it is further

ORDERED that no further notice of (i) the Agreement, (ii) Co-Lead Class Counsels' and the Debtors' entry into the Agreement, or (iii) the representative plaintiffs' entry into the Agreement on behalf of the Dex-Cool Class is required; and it is further

ORDERED that upon entry of this Order, all terms and conditions of the Agreement shall become effective; and it is further

ORDERED that to the extent any conflict exists between the terms and conditions of the Agreement and this Order, this Order shall control; and it is further

ORDERED that no member of the Dex-Cool Class shall have any claim against the Debtors or Debtors' Counsel based on implementation of the Agreement or distributions made from cash proceeds resulting from the Total Allowed Unsecured Claim; and it is further

ORDERED that Co-Lead Class Counsel shall be solely responsible for costs associated with administration and implementation of the Agreement and distribution of the cash proceeds resulting from the Total Allowed Unsecured Claim; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: New York, New York
May 3, 2011

/s/ Robert E. Gerber
United States Bankruptcy Judge

Exhibit H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*,	:	**09-50026 (REG)**
f/k/a General Motors Corp., *et al.*	:	
Debtors.	:	**(Jointly Administered)**

DISCLOSURE STATEMENT FOR DEBTORS' AMENDED JOINT CHAPTER 11 PLAN

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Attorneys for the Debtors and Debtors in Possession

Dated: New York, New York
December 8, 2010

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THE DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT TO DATE.

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I. INTRODUCTION

This is the disclosure statement (the "**Disclosure Statement**") of Motors Liquidation Company (f/k/a General Motors Corporation) ("**MLC**"); MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.); MLCS, LLC (f/k/a Saturn, LLC); MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation); Remediation and Liability Management Company, Inc. ("**REALM**"); and Environmental Corporate Remediation Company, Inc. ("**ENCORE**," and collectively with MLC, MLC of Harlem, Inc., MLCS, LLC, MLCS Distribution Corporation, and REALM, the "**Debtors**"), in the above-captioned chapter 11 cases pending before the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"), filed in connection with the Debtors' Amended Chapter 11 Plan, dated December 7, 2010 (the "**Plan**"), a copy of which is annexed to this Disclosure Statement as **Exhibit "A**."

A. Definitions and Exhibits

1. Definitions. Unless otherwise defined herein, capitalized terms used in this Disclosure Statement shall have the meanings ascribed to such terms in the Plan.

2. Exhibits. The exhibit to this Disclosure Statement are incorporated as if fully set forth herein and are a part of this Disclosure Statement.

B. Notice to Creditors

1. Scope of Plan. Summarily, the Plan provides for (i) the distribution on the Effective Date of Cash to the holders of Allowed Administrative Expenses, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims in an amount equal to the Allowed amount of such Administrative Expenses and priority Claims, (ii) the distribution on the Effective Date to the holders of Allowed Secured Claims (if any), at the option of the Debtors, of either (a) Cash in an amount equal to one hundred percent (100%) of the unpaid amount of such Allowed Secured Claim, (b) the proceeds of the sale or disposition of the Collateral securing such Allowed Secured Claim, net of the costs of disposition of such Collateral, (c) the Collateral securing such Allowed Secured Claim, (d) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Allowed Secured Claim is entitled, or (e) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code, (iii) the distribution no earlier than the Distribution Record Date to the holders of Allowed General Unsecured Claims of their Pro Rata Share of (a) the New GM Securities or the proceeds thereof, if any, (b) the GUC Trust Units, and (c) to the extent it is determined that the holders of Allowed General Unsecured Claims are entitled to any proceeds of the Term Loan Avoidance Action, any proceeds of the Term Loan Avoidance Action, all in accordance with the terms of the GUC Trust, the GUC Trust Agreement, the Avoidance Action Trust, and the Avoidance Action Trust Agreement, as applicable, (iv) the satisfaction and treatment on the Effective Date of the holders of Allowed Property Environmental Claims in accordance with the terms of the Environmental Response Trust Agreement and the Environmental Response Trust

counsel to GM filed a UCC-3 terminating the UCC-1, which covered most of the personal property securing the term loan. The position of JPMCB, as a lender and the administrative agent under the Prepetition Term Loan Agreement, is that the UCC-3 was filed without authority and, therefore, the filing has no force or effect. The Creditors' Committee's position is that since JPMCB authorized the filing made by GM's counsel, the filing is effective. JPMCB and the Creditors' Committee entered into a stipulated scheduling order governing discovery and briefing, dated October 6, 2009, as modified on January 20, 2009, pursuant to which the parties agreed that JPMCB would accept service of the complaint commencing the Term Loan Avoidance Action and the Creditors' Committee would have thirty days after the date of entry of the Bankruptcy Court's decision on any dispositive motion to serve the summons and complaint on the remaining lenders. In accordance with the modified scheduling order, on July 1, 2010, JPMCB filed a motion for summary judgment and the Creditors' Committee filed a motion for partial summary judgment. On August 5, 2010, the Creditors' Committee filed a memorandum of law in opposition to JPMCB's motion for summary judgment, and JPMCB filed a memorandum of law in opposition to the Creditors' Committee's motion for partial summary judgment. On August 26, 2010, the Creditors' Committee filed a reply memorandum of law in further support of its motion for partial summary judgment and JPMCB filed a reply memorandum of law in further support of its motion for summary judgment. A hearing to consider the summary judgment motion took place on December 3, 2010. At the conclusion of the hearing, the Bankruptcy Court requested further briefing and reserved decision.

Because the Plan currently leaves open whether holders of Allowed General Unsecured Claims or the DIP Lenders are entitled to the proceeds of any recovery on the Term Loan Avoidance Action, on October 4, 2010, the Creditors' Committee filed a Motion to Enforce (A) the Final DIP Order, (B) the Wind-Down Order, and (C) the Amended DIP Facility (the "**Creditors' Committee's Motion to Enforce the DIP**") (ECF No. 7226), seeking a determination that the DIP Lenders have no interest in the Term Loan Avoidance Action and that the interests in the Avoidance Action Trust should be distributed exclusively to holders of Allowed General Unsecured Claims. The U.S. Treasury filed an objection to the Creditors' Committee's Motion to Enforce the DIP, which was joined by EDC. (ECF Nos. 7338, 7498) The Asbestos Claimants' Committee and the Future Claimants' Representative each filed a joinder in support of the Creditors' Committee's Motion to Enforce the DIP (ECF Nos. 7441, 7387). At the hearing held on October 21, 2010, the Bankruptcy Court denied the Creditors' Committee's Motion to Enforce the DIP, without prejudice, on procedural grounds as being premature.

The Creditors' Committee has stated that it will discontinue the Term Loan Avoidance Action if the DIP Lenders are deemed to own the proceeds of the Term Loan Avoidance Action (as such a result would only decrease recoveries to holders of Allowed General Unsecured Claims). It is not certain whether any other party could proceed with litigating the Term Loan Avoidance Action. For a discussion of the risks to holders of Allowed General Unsecured Claims receiving any recovery from the Term Loan Avoidance Action, see Section III.C, below.

7. Wind-Down Process. After the commencement of the Chapter 11 Cases and the consummation of the 363 Transaction, the Debtors began the process of an orderly liquidation and wind-down of the Debtors' remaining assets and properties. In connection therewith, the Debtors retained a number of professionals to assist in the administration of their estates, including the professionals at AP Services, who have taken the lead in compiling information related to the Debtors' remaining assets and administering the Debtors' estates, local and foreign counsel, as well as accounting professionals and environmental consultants. The wind-down activities have included, among other things, analyzing the physical assets of the Debtors; analyzing the assets and obligations of MLC's numerous remaining subsidiaries to determine the most appropriate means of liquidating each subsidiary; filing motions to reject hundreds of executory contracts and unexpired leases; establishing global procedures for asset sales; establishing bar dates for the filing of claims; analyzing the over 70,000 proofs of claim that have been filed in an aggregate amount of approximately $270 billion, of which over 29,000 were unliquidated, approximately 28,500 are asbestos-related, and 470 are environmental-related; and negotiating settlements with certain equipment lessors resulting in modifications to lease agreements and the assumption and assignment to New GM of such modified leases, which reduced or eliminated hundreds of millions of dollars in rejection damage claims. Certain of these activities are described more fully below.

8. Executory Contracts and Unexpired Leases/Dealerships. As of the Commencement Date, the Debtors were parties to over 700,000 executory contracts and unexpired leases of nonresidential real property and personal property.

In connection with the 363 Transaction and the continued operation of New GM's businesses, the Debtors participated in an assumption and assignment process that was critical to the continuation of the GM enterprise and wind-down of the Debtors' remaining operations. Under this procedure, the Debtors maintained a database of executory contracts and unexpired leases of nonresidential real property that were designated by New GM to be assumed by the Debtors and assigned to New GM (each an "**Assumable Executory Contract**"). New GM, at its option, could elect to designate a contract as an Assumable Executory Contract until October 22, 2010, the expiration of the extended contract designation period, which period was agreed to between the Debtors and New GM. In connection with this process, New GM has assumed approximately 672,900 executory contracts and unexpired leases of the Debtors and is responsible for paying all cure amounts in connection therewith, as required by the MSPA.

The Debtors have evaluated those contracts not designated as Assumable Executory Contracts to determine their appropriate disposition in the context of the Debtors' wind-down efforts. The Debtors have sought to reject certain contracts and leases that are not required for the Debtors' continuing operations and which were not assumed and assigned to New GM. Specifically, the Debtors have filed twelve omnibus motions as well as other motions to reject approximately 1,100 executory contracts and unexpired leases of nonresidential real property.

Finally, the Debtors had approximately 6,000 dealerships in their network as of the Commencement Date. The Debtors implemented a comprehensive dealer rationalization program, which included entering into thousands of participation and wind-down agreements enabling successful dealerships to continue with New GM while providing underperforming dealerships with significant economic support to wind down their businesses. The Debtors also filed a motion to reject approximately eighty dealership agreements and negotiated voluntary termination agreements with several others.

9. Claims Process. By order dated September 16, 2009 (the "**Initial Debtors' Bar Date Order**"), the Bankruptcy Court established November 30, 2009 as the deadline for each person or entity, including governmental units, to file a proof of Claim against the Initial Debtors in the Chapter 11 Cases (the "**Initial Debtors' Bar Date**"). By order dated December 18, 2009 (the "**Property Bar Date Order**"), the Bankruptcy Court established February 10, 2010 as the deadline for entities residing adjacent to or in the proximity of certain Initial Debtors' properties to file a proof of Claim with respect to their person or real property arising from being located adjacent to or in the proximity of such properties (the "**Property Bar Date**"). By order dated December 2, 2009 (the "**REALM/ENCORE Bar Date Order**," and together with the Initial Debtors' Bar Date Order and the Property Bar Date Order, the "**Bar Date Orders**"), the Bankruptcy Court established February 1, 2010 as the deadline for each person or entity to file a proof of Claim against REALM and ENCORE and April 16, 2010 as the deadline for governmental units to file a proof of Claim against REALM and ENCORE (the "**REALM/ENCORE Bar Dates**," and together with the Initial Debtors' Bar Date and the Property Bar Date, the "**Bar Dates**"). Notice of the Bar Dates was given as required. The time within which to file claims against the Debtors has expired. To date, over 70,000 proofs of claim have been filed against the Debtors.

On October 6, 2009, the Bankruptcy Court entered an order (the "**Omnibus Claims Objection and Settlement Procedures Order**") authorizing the Debtors to file omnibus objections to claims (the "**Omnibus Claims Objections**") and settle claims in accordance with certain procedures (the "**Claim Settlement Procedures**"). Pursuant to the Omnibus Claims Objection and Settlement Procedures Order, the Debtors are authorized to file Omnibus Claims Objections to Claims seeking the reduction, reclassification, and/or disallowance of Claims on grounds in addition to those set forth in Bankruptcy Rule 3007(d).

To date, the Debtors have filed 110 Omnibus Claims Objections with respect to 22,590 Claims. The Debtors' actions have resulted in the expungement of over $48 billion of Claims against the Debtors' estates and the reclassification of over 568 Claims that improperly asserted either secured, administrative, and/or priority Claims to date.

Pursuant to the Claim Settlement Procedures, the Debtors are authorized to settle any and all Claims asserted against them (i) without the approval of the Bankruptcy Court or any other party in interest whenever the aggregate amount allowed for an individual claim (the "**Settlement Amount**") is (x) less than or equal to $1 million

retained on account of Disputed Claims in the Avoidance Action Trust Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims or (ii) to the extent such Disputed Claims subsequently have been resolved, deducted from any amounts otherwise distributable by the Avoidance Action Trust Administrator as a result of the resolution of such Disputed Claims.

(d) The Avoidance Action Trust Administrator may request an expedited determination of taxes of the Avoidance Action Trust, including the Avoidance Action Trust Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Avoidance Action Trust for all taxable periods through the dissolution of the Avoidance Action Trust.

o. Dissolution. The Avoidance Action Trust Administrator and the Avoidance Action Trust shall be discharged or dissolved, as applicable, at such time as (i) all of the Avoidance Action Trust Assets have been distributed pursuant to the Plan and the Avoidance Action Trust Agreement, (ii) the Avoidance Action Trust Administrator determines, in its sole discretion, that the administration of the Avoidance Action Trust Assets is not likely to yield sufficient additional Avoidance Action Trust Assets to justify further pursuit, and (iii) all distributions required to be made by the Avoidance Action Trust Administrator under the Plan and the Avoidance Action Trust Agreement have been made, but in no event shall the Avoidance Action Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion within the six (6) month period prior to the third (3rd) anniversary (or at least six (6) months prior to the end of an extension period), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable private letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Avoidance Action Trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Avoidance Action Trust Assets. If at any time the Avoidance Action Trust Administrator determines, in reliance upon such professionals as the Avoidance Action Trust Administrator may retain, that the expense of administering the Avoidance Action Trust so as to make a final distribution to the beneficiaries of the Avoidance Action Trust is likely to exceed the value of the Avoidance Action Trust Assets remaining in the Avoidance Action Trust, the Avoidance Action Trust Administrator may apply to the Bankruptcy Court for authority to (a) reserve any amounts necessary to dissolve the Avoidance Action Trust, (b) transfer the balance to the DIP Lenders and/or the GUC Trust as determined either by (I) mutual agreement between the U.S. Treasury and the Creditors' Committee or (II) Final Order, or donate any balance to a charitable organization described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Avoidance Action Trust, and any insider of the Avoidance Action Trust Administrator, and (c) dissolve the Avoidance Action Trust.

p. Indemnification of Avoidance Action Trust Administrator and Avoidance Action Trust Monitor. The Avoidance Action Trust Administrator and

the Avoidance Action Trust Monitor (and their agents and professionals) shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Avoidance Action Trust Administrator, the Avoidance Action Trust Monitor, or the Avoidance Action Trust, except those acts found by Final Order to be arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts, and each shall be entitled to indemnification and reimbursement for reasonable fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of, the Avoidance Action Trust Administrator, the Avoidance Action Trust Monitor, or the Avoidance Action Trust, except for any actions or inactions found by Final Order to be involving willful misconduct, gross negligence, bad faith, self-dealing, or *ultra vires* acts. Any indemnification claim of the Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor (and the other parties entitled to indemnification under this subsection) shall be satisfied first from the Avoidance Action Trust Administrative Cash and then from the Avoidance Action Trust Assets. The Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor shall be entitled to rely, in good faith, on the advice of their retained professionals.

6. Securities Law Matters. In reliance upon section 1145(a) of the Bankruptcy Code, the offer and/or issuance of the New GM Securities (but, for the avoidance of doubt, not the sale by the GUC Trust Administrator of New GM Warrants pursuant to Section 5.2(e) of the Plan) by either MLC or the GUC Trust, as a successor of MLC under the Plan, is exempt from registration under the Securities Act and any equivalent securities law provisions under state law. The exemption from Securities Act registration provided by section 1145(a) of the Bankruptcy Code (as well as any equivalent securities law provisions under state law) also is available for the offer and/or issuance by the GUC Trust of (i) beneficial interests in the GUC Trust and (ii) New GM Securities in exchange for such beneficial interests as outstanding Disputed General Unsecured Claims are resolved in accordance with the Plan. The offer and/or issuance of beneficial interests by any of the following successors of the Debtors – the Asbestos Trust, the Environmental Response Trust, and the Avoidance Action Trust – is exempt from Securities Act registration (along with any equivalent securities law provisions under state law) in reliance upon section 1145(a) of the Bankruptcy Code.

Notwithstanding the foregoing, the exemption from registration that is provided by section 1145(a) of the Bankruptcy Code will not apply if the holder of the applicable securities is an "underwriter," as that term is defined in section 1145(b) of the Bankruptcy Code. Section 1145(b) of the Bankruptcy Code defines an "underwriter" for the purposes of the Securities Act as one who (a) purchases a claim with a view to distribution of any security to be received in exchange for the claim other than in ordinary trading transactions, (b) offers to sell securities issued under a plan for the holders of such securities, (c) offers to buy securities issued under a plan from persons receiving such securities, if the offer to buy is made with a view to distribution, or (d) is a "Control Person" of the issuer of the securities as defined in Section 2(a)(11) of the Securities Act.

For persons deemed to be "underwriters" who receive New GM Securities or beneficial interests in the GUC Trust, the Asbestos Trust, the Environmental Response Trust, or the Avoidance Action Trust pursuant to the Plan, including control person underwriters (collectively, the "**Restricted Holders**"), resales of New GM Securities, or beneficial interests in the applicable trust will not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Restricted Holders, however, may be able, at a future time, and under certain conditions described below, to sell New GM Securities or beneficial interests in the applicable trust without registration pursuant to the resale provisions of Rule 144 or other applicable exemptions under the Securities Act.

Under certain circumstances, holders of New GM Securities or beneficial interests in the GUC Trust, the Asbestos Trust, the Environmental Response Trust, or the Avoidance Action Trust deemed to be "underwriters" may be entitled to resell their securities pursuant to the limited safe harbor resale provisions of Rule 144 of the Securities Act, to the extent available, and in compliance with applicable state and foreign securities laws. Generally, Rule 144 of the Securities Act provides that persons who hold securities received in a transaction not involving a public offering or who are affiliates of an issuer who resell securities will not be deemed to be underwriters if certain conditions are met. These conditions vary depending on whether the seller is a holder of restricted securities or a control person of the issuer and whether the security to be sold is an equity security or a debt security. The conditions include required holding periods in certain cases, the requirement that current public information with respect to the issuer be available, a limitation as to the amount of securities that may be sold in certain cases, the requirement in certain cases that the securities be sold in a "brokers transaction" or in a transaction directly with a "market maker," and that, in certain cases, notice of the resale be filed with the Securities and Exchange Commission.

IN VIEW OF THE COMPLEX, SUBJECTIVE NATURE OF THE QUESTION OF WHETHER A RECIPIENT OF NEW GM SECURITIES OR BENEFICIAL INTERESTS IN THE GUC TRUST, THE ASBESTOS TRUST, THE ENVIRONMENTAL RESPONSE TRUST, OR THE AVOIDANCE ACTION TRUST MAY BE AN UNDERWRITER, THE DEBTORS MAKE NO REPRESENTATIONS CONCERNING THE RIGHT OF ANY PERSON TO TRADE IN NEW GM SECURITIES OR BENEFICIAL INTERESTS TO BE DISTRIBUTED PURSUANT TO THE PLAN. ACCORDINGLY, THE DEBTORS RECOMMEND THAT POTENTIAL RECIPIENTS OF NEW GM SECURITIES OR BENEFICIAL INTERESTS CONSULT THEIR OWN COUNSEL CONCERNING WHETHER THEY MAY FREELY TRADE SUCH SECURITIES OR BENEFICIAL INTERESTS.

7. Cancellation of Existing Securities and Agreements. Except for purposes of evidencing a right to distributions under the Plan or otherwise provided under the Plan or as set forth in Sections 2.4 or 10.1 of the Plan, on the Effective Date all the agreements and other documents evidencing the Claims or rights of any holder of a Claim against the Debtors, including all Indentures and Fiscal and Paying Agency Agreements and bonds, debentures, and notes issued thereunder evidencing such Claims, all Note Claims, all Eurobond Claims, all Nova Scotia Guarantee Claims, and any options or

Exhibit I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

This Document Relates to All Actions

INDEX NO. 14-MD-2543 (JMF); 14-MC-2543

CONSOLIDATED CLASS ACTION COMPLAINT AGAINST NEW GM FOR RECALLED VEHICLES MANUFACTURED BY OLD GM AND PURCHASED BEFORE JULY 11, 2009

JURY TRIAL DEMANDED

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INTRODUCTION

1. This Consolidated Complaint ("Complaint") is filed as a civil action under the authority and direction of the Court as set forth in Section III of its August 15, 2014 Order No. 8. It is intended to serve as the Plaintiffs' Master Class Action Complaint for purposes of discovery, pre-trial motions and rulings (including for choice of law rulings relevant to Rule 23 of the Federal Rules of Civil Procedure, and class certification itself), and the determination and trial of certified claims or common questions in these multi-district litigation ("MDL") proceedings with respect to millions of vehicles recalled by New GM, that were originally sold by Old GM.

2. Plaintiffs bring this action for a Nationwide Class of all persons in the United States who either bought or leased a vehicle with one of the ignition switch related defects, as defined herein ("Defective Vehicle") prior to the Bankruptcy Sale Order and: (i) still own or lease the vehicle, or (ii) sold the vehicle on or after February 14, 2014; or (iii) owned or leased a Defective Vehicle that was declared a total loss after an accident on or after February 14, 2104 and, as set forth in the CLASS ACTION ALLEGATIONS section of this Complaint, State Classes of such purchasers (collectively, the "Classes").

3. This case involves New GM's egregious and ongoing failure to disclose and affirmative concealment of a known safety defect in Old GM-manufactured vehicles. This Complaint is bought on behalf of the Classes for recovery of damages, statutory penalties, and injunctive relief/equitable relief against New GM as the sole Defendant. This Complaint asserts each of the Classes' claims for relief on two distinct and separate bases of liability against New GM: First, this Complaint asserts each of the claims for relief herein based on New GM's own wrongful conduct and breaches of its own independent, non-derivative duties

toward the Classes. Second, this Complaint alternatively asserts claims on behalf of the Classes against New GM for its liability as a successor and mere continuation of Old GM.

4. This Complaint, consistent with Fed. R. Civ. P. 1's directive to secure the "just, speedy and inexpensive determinations of every action and proceeding," sets forth those facts relating to the unprecedented abnegation by New GM of basic standards of safety, truthfulness, and accountability, to the detriment of millions of consumers and the public at large, that are capable of determination in this MDL. It draws upon an array of sources, including but not limited to documents GM recently produced to the National Highway Traffic Safety Administration ("NHTSA"), the House Energy & Commerce Committee, and the results of an internal investigation overseen by Anton R. Valukas ("Valukas Report").[1] These documents include tens of thousands of pages of unheeded consumer complaints.

5. This Complaint neither waives nor dismisses any claims for relief against any defendant not included in this pleading that are asserted by any other plaintiffs in actions that have been or will be made part of this MDL proceeding, except by operation of the class notice and any opt-out provisions on claims or common questions asserted in this Complaint and certified by this Court. Certain claims for certain parties may, consistent with 28 U.S.C. § 1407 and the caselaw thereunder, be matters for determination on remand by transferor courts.

6. An auto manufacturer should never make profits more important than safety and should never conceal defects that exist in its vehicles from customers or the public. New GM Vehicle Safety Chief Jeff Boyer acknowledged that: "Nothing is more important than the safety of our customers in the vehicles they drive."

[1] These sources are referred to as "GMNHTSA," "GMHEC," and the "Valukas Report." Other sources are described herein

7. The first priority of a car manufacturer should be to ensure that the vehicles who bear its brands are safe, and particularly that its vehicles have operable ignition systems, airbags, power steering, power brakes, seatbelt pretensioners, and other safety features that can prevent or minimize the threat of death or serious bodily harm to the vehicle's occupants.

8. The Transportation Recall Enhancement, Accountability and Documentation Act ("TREAD Act")[2], its accompanying regulations, and state statutory and common law require prompt disclosure of serious safety defects known to a manufacturer.[3] If it is determined that the vehicle is defective, the manufacturer may be required to notify vehicle owners, purchasers, and dealers of the defect, and may be required to remedy the defect.[4]

9. Millions of vehicles designed, manufactured, and sold by Old GM have a safety defect such that the vehicle's ignition switch inadvertently moves from the "run" position to the "accessory" or "off" position during ordinary driving conditions, resulting in a loss of power, vehicle speed control, and braking, as well as a failure of the vehicle's airbags to deploy. These vehicles are referred to in this Complaint as "Defective Vehicles."

10. In February and March of 2014, New GM, which has assumed the liabilities of Old GM for the conduct at issue in this Complaint, and which has independent and non-derivative duties of candor and care based upon its own knowledge and conduct, issued its first set of recalls of various models due to the defective ignition switch. The recalls encompassed 2.19 million vehicles in the United States and included the following models of cars manufactured by Old GM: 2005-2009 Cobalts; 2007-2009 Pontiac G5s; 2006-2009 Chevrolet HHRs and Pontiac Solstices; 2005-2006 Pontiac Pursuits; 2003-2007 Saturn Ions; and 2007-2009 Saturn Skys.

[2] 49 U.S.C. §§ 30101-30170.
[3] 49 U.S.C. § 30118(c)(1) & (2).
[4] 49 U.S.C. § 30118(b)(2)(A) & (B).

11. The ignition switch systems in these vehicles are defective for several reasons, including (a) the ignition switch is too weak to hold the key in place in the "run" position; (b) the low position of the switches in the Defective Vehicles, as exacerbated by the use of a "slotted" key; and (c) they cause the airbags to become inoperable when the ignition switch is in the "accessory" or "off" position. As NHTSA's Acting Administrator testified in recent Congressional hearings, a vehicle's airbags should deploy whenever the car is moving—even if the ignition switch moves out of the "run" position.

12. On June 23, 2014, New GM notified NHTSA and consumers that it was issuing a second recall for Defective Vehicles (the "June recall"). Here, New GM recalled 3.14 million vehicles. New GM characterized the June recall as relating to the design of the ignition key with a slot (rather than a hole), which allows the key and the key fob to hang lower down in the vehicle where it is vulnerable to being hit by the driver's knee. Despite this delineation, this "key slot defect" is substantially identical to the ignition switch defect that gave rise to the earlier recall and creates the same safety risks and dangers.

13. According to documents on NHTSA's website, 2,349,095 of the vehicles subject to the June recall were made by Old GM. 792,636 vehicles were made and sold by New GM. The Defective Vehicles made by Old GM with the ignition key slot defect include:

- 2005-2009 Buick Lacrosse
- 2006-2009 Buick Lucerne
- 2004-2005 Buick Regal LS & GS
- 2000-2005 Cadillac Deville
- 2007-2009 Cadillac DTS
- 2006-2009 Chevrolet Impala
- 2006-2007 Chevrolet Monte Carlo

14. Like the ignition switch defect that is the subject of the February/March recall, the ignition key slot defect poses a serious and dangerous safety risk because the key in the ignition switch can rotate and consequently cause the ignition to switch from the "on" or "run" position to "off" or "accessory" position. This, in turn, may result in a loss of engine power, stalling, loss of speed control, loss of power steering, loss of power braking, and increase the risk of a crash. Moreover, as with the ignition switch defect, because of this defect, if a crash occurs, the airbags are unlikely to deploy.

15. New GM has tried to characterize the recall of these 3.14 million vehicles as being different than the ignition switch defect in the February/March recall when in reality it is for exactly the same defect, posing the same safety risks. New GM has attempted to distinguish the ignition key slot defect from the ignition switch defect to provide it with cover and an explanation for why it did not recall these 3.14 million vehicles much earlier, and allow New GM to provide a more limited, cheap and ineffective "fix" in the form of a key with hole (as opposed to a slot).

16. On July 2-3, 2014 New GM announced it was recalling 7.29 million Defective Vehicles due to "unintended key rotation" (the "July recall"). The vehicles with the unintended key rotation defect were built on the same platform and with defective ignition switches, likely due to weak detent plungers just like the other Defective Vehicles. The Old GM vehicles implicated in the July recall are: 2000-2005 Chevrolet Impalas and Monte Carlos; 1997-2005 Chevrolet Malibus; 1999-2004 Oldsmobile Aleros; 1999-2005 Pontiac Grand Ams and 2004-2008 Pontiac Grand Prixs; certain 2003-2009 Cadillac CTSs; and certain 2004-2006 Cadillac SRX vehicles.

17. As with the vehicles subject to the June recall, New GM has downplayed the severity of the "unintended key rotation" defect, and its recall offers a similarly cheap and ineffective "fix" in the form of new keys. New GM is *not* upgrading the ignition switches in these vehicles, altering the placement of the ignition so that it is not placed low on the steering column and is not correcting the algorithm that immediately disables the airbags as soon as the Defective Vehicle's ignition switch leaves the "run" position.

18. Collectively these three groups of recalls (as well as a yet another very recent recall first posted on the NHTSA website on September 9, 2014 involving unintended ignition key rotation defects and another nearly 47,000 vehicles, including 2008-2009 Pontiac G8s) all relate to defects in the ignition switch system that New GM could and should have remedied years ago. The vehicles in these recalls are the "Defective Vehicles."

19. From at least 2005 to the present, both Old GM and New GM received reports of crashes and injuries that put Old GM and New GM on notice of the serious safety issues presented by its ignition switch system. Given the continuity of engineers, general counsel, and other key personnel from Old GM to New GM, to say nothing of the access to Old GM's documents, New GM was aware of the ignition switch defects *from the very date of its inception* pursuant to the July 5, 2009 bankruptcy Sale Order, which became effective on July 11, 2009.

20. Despite the dangerous, life-threatening nature of the ignition switch defects, including how the defects affect critical safety systems, New GM concealed the existence of the defects and failed to remedy the problem.

21. The systematic concealment of known defects was deliberate, as both Old and New GM followed a consistent pattern of endless "investigation" and delay each time they

became aware (or aware yet again) of a given defect. In fact, recently revealed documents show that both Old and New GM valued cost-cutting over safety, trained their personnel to *never* use the word "defect," "stall," or other words suggesting that any GM-branded vehicles are defective, routinely chose the cheapest part supplier without regard to safety, and discouraged employees from acting to address safety issues.

22. According to the administrator of NHTSA, Old and New GM worked to hide documents from the government regulator and to keep people within the Companies from "connecting the dots" to keep information secret.

23. New GM's CEO, Mary Barra, has admitted in a video message that: "Something went wrong with our process in this instance, and terrible things happened." But that admission, and New GM's attempt to foist the blame on its parts supplier and engineers, lawyers and others whom it has now terminated, are cold comfort for Plaintiffs and the Class.

24. As a result of the disclosure of these defects and Old and New GM's independent roles in concealing their existence, the value of Defective Vehicles has diminished. For example, a 2007 Saturn Ion sedan is estimated to have diminished in value by $251 in March 2014 as a direct result of these disclosures of unlawful conduct. A 2007 Saturn Sky was down $238.

25. But there is more. In the first eight months of 2014, New GM announced at least 60 additional recalls, bringing the total number of recalled vehicles up to more than *27 million*. The unprecedented scope of these recalls has completely belied the Companies' claims that they made reliable and safe cars. As a result of these further revelations the Defective Vehicles suffered additional diminished value. For example, the 2007 Saturn Ion sedan's estimated diminution was $472 in September 2014 and the 2007 Saturn Sky had $686

in diminished value. From its very inception, New GM had the knowledge, the choice, the opportunity, and the responsibility to prevent personal and economic harm by timely and properly recalling the Defective Vehicles and timely and properly correcting the other safety defects. The economic harm to millions of customers that manifested upon the long-delayed recalls and revelation of New GM's ongoing concealment of these defects could have been prevented by timely discharge of its duties. This Complaint seeks the redress now available at law and in equity for New GM's failure to do so.

JURISDICTION AND VENUE

26. This Court has diversity jurisdiction over this action under 28 U.S.C. §§ 1332(a) and (d) because the amount in controversy for the Class exceeds $5,000,000, and Plaintiffs and other Class members are citizens of a different state than Defendant.

27. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit to the Court's jurisdiction. This Court has personal jurisdiction over New GM because it conducts substantial business in this District, and some of the actions giving rise to the complaint took place in this District.

28. Venue is proper in this District under 28 U.S.C. § 1391 because New GM, as a corporate entity, is deemed to reside in any judicial district in which it is subject to personal jurisdiction. Additionally, New GM transacts business within this District, and some of the events establishing the claims arose in this District. Additionally, New GM requested that the Judicial Panel on Multi-District litigation transfer and centralize the ignition defect class actions filed by Plaintiffs to this District and the Judicial Panel has done so.

29. Pursuant to this Court's direction that new plaintiffs can file directly in the MDL without first filing in the district in which they reside, new plaintiffs file this action as if it had been filed in the judicial district in which they reside.

PARTIES

I. Plaintiffs

30. Unless otherwise indicated, all Plaintiffs below purchased their GM-branded vehicles primarily for personal, family, and household use.

31. Unless otherwise indicated, all Plaintiffs' vehicles described below were manufactured, sold, distributed, advertised, marketed, and warranted by GM.

Debra Forbes—Alabama: Plaintiff and proposed Nationwide and Alabama State Class Representative Debra Forbes is a resident and citizen of Geneva, Alabama. Ms. Forbes purchased a new 2007 Chevrolet Cobalt in 2007 in Fort Walton Beach, Florida for $16,000. Her vehicle is covered by a seven-year warranty that expires at the end of 2014. Among other incidents consistent with ignition switch shutdown, Ms. Forbes' steering locked up on three or four occasions, in May or June 2010, fall 2010, and spring 2011, all on normal road conditions and while she was driving approximately 25-30 miles per hour. Each time she had to slam on her brakes and manipulate the ignition switch to unlock the steering. Although the ignition switch on Ms. Forbes's car has been repaired, other repairs are incomplete, pending the arrival of parts. The book value of Ms. Forbes' vehicle is presently only approximately $6,000. She would not have purchased her vehicle if she knew of the problems with the ignition switch.

Aaron Henderson—Alabama: Plaintiff and proposed Nationwide and Alabama State Class Representative Aaron Henderson is a resident and citizen of Buhl, Alabama. Mr. Henderson purchased a new 2007 Saturn Ion 3 in September, 2006, in Madison, Wisconsin for approximately $17,500. At the time Mr. Henderson purchased his new Saturn it was under warranty. Mr. Henderson has experienced two accidents in this car—one on December 7, 2012, and the other on February 23, 2014. The airbags failed to deploy in both accidents, and

Mr. Henderson suffered minor injuries as a result. Mr. Henderson has spent approximately $9,000 to repair his vehicle following these accidents. Mr. Henderson did not learn of the ignition switch defects until March of 2014. In May of 2014, the ignition switch recall repair work was performed on his vehicle. Mr. Henderson would not have purchased the vehicle if he had known of the problems with the ignition switch.

Marion Smoke—Alabama: Plaintiff and proposed Nationwide and Alabama State Class Representative Marion Smoke is a resident and citizen of Elmore, Alabama. Ms. Smoke purchased a new 2005 Chevy Cobalt the week of May 5, 2005 in Montgomery, Alabama, for $19,000. At the time Ms. Smoke purchased her new Cobalt, she also purchased the manufacturer's warranty. Ms. Smoke's Cobalt unexpectedly shut off on at least seven separate occasions, all of them while she was driving on highways. She has also had trouble with the steering wheel being hard to turn making it difficult to drive. As a result of the issues with her vehicle and ignition switch recall and associated risks, she fears driving her vehicle despite having the recall work performed on her vehicle in April of 2014. She believes the value of her vehicle has been diminished as a result of the defects. Ms. Smoke feels that the safety of the vehicle was misrepresented, and she would not have purchased this car if GM had been honest about the safety defects.

Grace Belford—Arizona: Plaintiff and proposed Nationwide and Arizona State Class Representative Grace Belford is a resident and citizen of Phoenix, Arizona. Ms. Belford purchased a new 2005 Chevrolet Cobalt in October 2005, in Phoenix, Arizona for $18,900. Ms. Belford also purchased the warranty for her Cobalt. On two separate occasions, Ms. Belford's ignition has unexpectedly shut off after her vehicle went over a bump in the road. Ms. Belford did not learn of the ignition switch defects until March of 2014. She immediately

requested a loaner vehicle, but she had no choice despite her concerns to continue to drive the Cobalt to work, as it was her only form of transportation. It took about three months for the recall repair work to be completed on Ms. Belford's vehicle. Ms. Belford had planned to use her Cobalt as a down payment on a new vehicle, but the resale value of her Cobalt was diminished due to the ignition switch defect. Ms. Belford traded in her Cobalt in August of 2014. She was only offered $3,000 for the vehicle - $2,000 less than current Kelley Blue Book value. Ms. Belford would never have purchased the 2005 Chevrolet Cobalt had she known about the defects and GM's indifference with regard to the safety and reliability of its vehicles.

Camille Burns—Arkansas: Plaintiff and proposed Nationwide and Arkansas State Class Representative Camille Burns is a resident and citizen of Pine Bluff, Arkansas. Ms. Burns purchased a used 2006 Chevrolet Cobalt on or about November 1, 2006, from Smart Chevrolet in White Hall, Arkansas, for over $16,000. At the time of purchase, the car was still covered under warranty. Ms. Burns recalls reading that GM and Chevrolet-branded vehicles were great cars with reliable parts. Ms. Burns' Cobalt shutdown "too many times to count"—approximately two to three times per week between June 2014 and the time she traded the vehicle in around July 14, 2014. These unexpected shutdowns occurred when Ms. Burns was pulling out into traffic, backing up, or turning her car. Each time she would be forced to restart the car. The last time it shut off suddenly, it almost caused an accident. She also experienced a loss of power steering while backing out of her driveway. Ms. Burns had her car checked by an independent repair shop, but they could not diagnose the problem. Upon calling a GM dealership about the ignition recall, the dealership refused to provide her a loaner car. But when she called GM directly, they advised her that she should get out of the car immediately. Although her Cobalt had been paid off, based on the repeated shutdowns,

GM's advice, and GM's inability to fix it, Ms. Burns felt compelled to trade in the Cobalt for a safer vehicle. On or about July 14, 2014, she traded it to Smart Hyundai and received only $2,500. The new car payment was a financial hardship. Ms. Burns asserts that the Cobalt suffered a diminution of value due to the ignition switch defects, the recalls, and the surrounding publicity. Ms. Burns would not have purchased the Cobalt, or she would have paid less for it, had she known about its defects.

Patricia Barker—California: Plaintiff and proposed Nationwide and California Class Representative Patricia Barker is a resident and citizen of Wilmington, California. Ms. Barker purchased a new 2005 Saturn Ion in Torrance, California in March 2005 for approximately $18,000. The car was covered under the standard manufacturer's warranty, and she also purchased an extended warranty. She chose the Saturn, in part, because she wanted a safely-designed and manufactured vehicle. She saw advertisements for Old GM Vehicles before she purchased the Saturn and, although she does not recall the specifics of the advertisements, she does recall that safety and quality were consistent themes across the advertisements she saw. These representations about safety and quality influenced Ms. Barker's decision to purchase the Saturn. She has experienced power steering failure in her car on at least two separate occasions. In both instances she was able to reboot the power steering after restarting the car. Ms. Barker did not learn of the ignition switch defects until about February 2014 when she received an undated recall notice in the mail. She then saw a commercial notifying affected GM drivers that they could receive a loaner car while waiting for backordered recall parts to arrive. When she went to a local GM dealership they gave her a 2014 Chevy Impala. She drove this car for forty-five days until her car was repaired in April 2014. Only after she returned the loaner did she find out that it was under recall for the same ignition issue as her

own vehicle. Ever since the recall repair has been completed on her car she has some difficulty turning the key in her ignition. Ms. Barker would not have purchased this car had she known about the defects in her GM vehicle.

Michael and Sylvia Benton—California: Plaintiffs and proposed Nationwide and California State Class Representatives Michael and Sylvia Benton are residents and citizens of Barstow, California. Mr. and Mrs. Benton purchased a used 2005 Chevrolet Cobalt on January 10, 2009, in Barstow, California, for $12,789.76. The Bentons chose the Cobalt, in part, because they wanted a safely designed and manufactured vehicle. They saw advertisements for vehicles before they purchased the Cobalt, and, although they do not recall the specifics of the advertisements, they do recall that safety and quality were consistent themes across the advertisements they saw, which influenced their purchase decision. The vehicle was not covered under warranty when they purchased it. Mr. and Mrs. Benton purchased gap warranty for the Cobalt for a term of 48 months. The Bentons' vehicle has shutdown at least 20 times. Mr. and Mrs. Benton did not learn of the ignition switch defects until March 2014. In April 2014, they took their Cobalt to the dealership in their area to have the recall work performed. They were provided a loaner vehicle. The Bentons still fear driving their vehicle due to the ignition switch recall and the risk posed by the ignition switch defects. They would not have purchased this car, or would have paid less than they did, if GM was honest about the safety defects.

Melvin Cohen—California: Plaintiff and proposed Nationwide and California State Class Representative Melvin Cohen is a resident and citizen of California City, California. Mr. Cohen purchased a new 2006 Chevrolet Cobalt on January 13, 2006, from Rally Auto Group in Palmdale, California, for $22,799.80. He does not believe his vehicle was covered by

written warranties. Mr. Cohen had a general impression that GM was a quality brand and that the vehicle was safe and reliable. In October of 2008, Mr. Cohen's wife, Karin was driving the vehicle when it suddenly shut off while making a left turn into a gas station in California City, California. Ms. Cohen was unable to control the vehicle once it shut off, and it was hit by another vehicle when it strayed out of its lane. The airbags did not deploy even though the impact was significant enough to total the vehicle. Mr. Cohen would not have purchased the vehicle had he known of the defects.

Esperanza Ramirez—California: Plaintiff and proposed Nationwide and California State Class Representative Esperanza Ramirez is a resident and citizen of Los Angeles, California. Ms. Ramirez purchased new 2007 Saturn Ion on March 13, 2007, at a dealership in California for $27, 215. Her vehicle was covered by a warranty at the time of purchase. Ms. Ramirez has experienced several incidents consistent with the ignition defects, and is unable to drive the car on freeways or for long distances. She had seen commercials about Saturns featuring families that trusted Saturns. Had she known of the problems with her GM car, she would not have purchased it.

Kimberly Brown—California: Plaintiff and proposed Nationwide and California State Class Representative Kimberly Brown is a resident and citizen of Palmdale, California. Ms. Brown purchased a new 2006 Chevrolet HHR on January 7, 2007, at Rally Auto Group in Palmdale, California, for $30,084. Her car was under a 48-month or 100,000 mile warranty at the time she purchased it. She and her husband relied on the advertising posted at the GM dealership where they purchased the vehicle, as well as the GM brand name and its purported reputation for safety and quality, which were consistent with the representations at the GM dealership. Between 2007 and 2011, Ms. Brown's vehicle inadvertently shutdown four or five

times a year, and on several other occasions she had to use heavy force to turn the wheel. Between 2012 and 2014, her vehicle inadvertently shutdown eight or nine times a year, and on several other occasions she had to use heavy force to turn the wheel. Her vehicle typically shuts down while going over bumpy roads, speed bumps, or railroad tracks. It will shutdown while the gear is in drive and the key is in the "on" position. To remedy the problem she puts the gear into neutral and restarts the car. Although the GM dealership indicated that it fixed the ignition switch defect during a post-recall repair in May of 2014, Ms. Brown and her husband have experienced their ignition shutting down at least five times since then. In September 2014, she returned to the dealer to try to have the ongoing shutdowns remedied, and she had to pay out of pocket for a loaner vehicle. Ms. Brown would not have paid the purchase price she paid if she had known GM was manufacturing and selling vehicles plagued with defects, and was not committed to the safety and reliability of its vehicles.

Javier Malaga—California: Plaintiff and proposed Nationwide and California State Class Representative Javier F. Malaga is a resident and citizen of in Playa Del Rey, California. On or about August 7, 2013, Mr. Malaga purchased a used 2006 Cobalt LS, which he still owns, for $15,979.08. When Mr. Malaga purchased the 2006 Cobalt LS, it was not covered by a written warranty. On two occasions Mr. Malaga was unable to turn on the engine with his ignition key. Mr. Malaga returned the car to a dealer for repairs on or about February 15, 2008, and March 25, 2010. One of GM's main selling points has been the efficiency, cost effectiveness, and safety of its vehicles. Mr. Malaga's purchase was based, in significant part, on these representations and assertions by GM. If GM had disclosed the nature and extent of its problems, Mr. Malaga would not have purchased a GM vehicle, or would not have purchased the vehicle for the price paid.

William Rukeyser—California: Plaintiff and proposed Nationwide and California State Class Representative William Rukeyser is a resident and citizen of Davis, California. After researching vehicles on the GM website, Mr. Rukeyser purchased a new 2008 Chevrolet Cobalt on September 4, 2008, in Lodi, California, for $16,215.54. Mr. Rukeyser purchased the manufacturer's warranty at the same time. Mr. Rukeyser had the ignition switch replaced on August 8, 2014. He was provided a loaner vehicle during the two months it took to complete the recall repair work. Mr. Rukeyser would not have purchased this car if GM had been honest about the safety defects.

Yvonne Elaine Rodriguez—Colorado: Plaintiff and proposed Nationwide and Colorado State Class Representative Yvonne Elaine Rodriguez is a resident and citizen of Lakewood, Colorado. She purchased a new 2007 Chevrolet HHR on December 5, 2006, at EMICH Chevrolet in Lakewood, Colorado, for $20,735.87. At the time of purchase, the HHR was covered by Chevrolet's standard warranty. Ms. Rodriguez did not find out about the ignition defect and the safety risk it posed until she received a recall notice in March 2014. After that point, Ms. Rodriguez stopped using her HHR for any long trips or highway driving, for fear of the safety of her family and herself. As soon as she received the recall notice, Ms. Rodriguez attempted to have the recall repair performed on her vehicle, but was informed that the parts were not available. Ms. Rodriguez continued to try to schedule the repair, but because of a lack of parts, she was not able to get her HHR repaired until June 2014. Even after the recall repair, however, Ms. Rodriguez does not feel her HHR is safe, and she and her family continue to avoid long trips and highway driving with the HHR. Ms. Rodriguez would not have purchased her vehicle if she had known that GM cars were plagued by defects and produced by a company that is not committed to safety.

Dawn Orona—Colorado: Plaintiff and proposed Nationwide and Colorado State Class Representative Dawn Orona is a resident and citizen of Limon, Colorado. Ms. Orona purchased a new 2005 Chevrolet Cobalt on August 6, 2005, from Century 1 Chevrolet in Broomfield, Colorado, for a total sale price of $35,053.92. She financed a portion of the sales price, paid a portion of the sales price by trading in an older Chevrolet vehicle, and paid the balance of the purchase in cash. Ms. Orona's vehicle was covered by a warranty and the warranty had not expired at the time the vehicle was totaled in an accident. In the years prior to her purchase and around the time of her purchase, Ms. Orona viewed multiple commercials in which GM touted the safety of its vehicles, and she believed she was purchasing a vehicle that was safe and defect-free. Ms. Orona's vehicle spontaneously shut off a number of times within the first several months of purchasing it. Approximately six months after purchasing the 2006 Chevrolet Cobalt, Ms. Orona and her husband experienced a power loss while attempting to complete a turn on a curve. Although her husband applied both feet on the brakes, the car jumped the curb and plowed into a brick wall. The impact of the crash was severe enough to break the front axle, totaling the vehicle, but the air bags never deployed. Ms. Orona would not have purchased the vehicle had she known of the defects.

Michael Pesce—Connecticut: Plaintiff and proposed Nationwide and Connecticut State Class Representative Michael Pesce is a resident and citizen of Waterbury, Connecticut. Mr. Pesce purchased a used 2006 Chevrolet Cobalt on May 29, 2008, in Waterbury, Connecticut, for approximately $12,000. When Mr. Pesce bought the car it was still covered under a three-year, 36,000-mile warranty. Mr. Pesce was a repeat GM customer and trusted the GM brand when he decided to purchase his Cobalt. This was Mr. Pesce's fifth time owning a GM vehicle. In August 2011, Mr. Pesce's 18 year-old son was driving the car on a

major highway in Connecticut when the vehicle lost all power. His son was able to pull over and restart the car, but after another few minutes it died again. Mr. Pesce paid to have the vehicle looked over and repaired, but he now believes the problem was related to the ignition switch defects. Mr. Pesce did not learn about the ignition switch defects until March 2014. The recall repair work was not performed until September 2014, more than six months later. While he waited for the repair work, Mr. Pesce only drove the vehicle if there was an emergency because he was afraid to drive the car. Mr. Pesce does not feel this car is worth what he paid for it and will not buy another GM vehicle.

Lisa Teicher—Connecticut: Plaintiff and proposed Nationwide and Connecticut State Class Representative Lisa Teicher is a resident and citizen of Manchester, Connecticut. Ms. Teicher purchased a used 2005 Chevrolet Cobalt on January 24, 2008, from Gengras Chevrolet in Hartford, Connecticut, for $7,769.22. Her vehicle was covered by written warranty that has now expired. Ms. Teicher received a direct mailing from Gengras Chevrolet advertising the vehicle she purchased. These and other consistent representations at the dealership left her with the impression that the vehicle was safe and reliable. She believed her vehicle was safe and defect free when she purchased it. Ms. Teicher's vehicle has spontaneously turned off on two occasions. In June 2008, her vehicle locked up and shut off while she was driving on an exit ramp on Route 2 in Connecticut. She was unable to control the vehicle and ended up hitting a barrier on the road. She hit her head on the dash and was injured, but hospitalization was not required. The airbags did not deploy during this collision. In May of 2009, Ms. Teicher's vehicle again shut off while she was driving to work on I-84 in Connecticut just before Exit 64. She was able to bring the vehicle to a stop and re-start the vehicle again. On June 25, 2014, she had her ignition switch replaced by Carter Chevrolet,

located in Manchester, Connecticut, in connection with the recalls GM initiated in response to the ignition switch defects. Ms. Teicher would not have purchased the vehicle had she known of the defects.

Steven Diana—Florida: Plaintiff and proposed Nationwide and Florida State Class Representative Steven Diana is a resident and citizen of Sebastian, Florida. Mr. Diana purchased a used 2002 Chevrolet Impala in July 2007 from Champion Motors in Mansfield, Connecticut, for $12,500. Mr. Diana did not purchase an extended warranty and does not believe his vehicle is currently covered by any written warranties. Mr. Diana expressly recalls seeing advertisements on television and in the newspaper about the 2002 Chevrolet Impala, including advertisements touting its safety. He considered and was influenced by the advertisements emphasizing the safety of the vehicle when making his purchase. Mr. Diana believed his vehicle was safe and defect-free when he purchased it. Mr. Diana's vehicle spontaneously shut off in January 2009, July 2012, and August 2012. On each occasion Mr. Diana was driving on or around I-95 near his home in Sebastian, Florida, and the road was bumpy. On each occasion, Mr. Diana had to put the vehicle in neutral to get it to restart. Mr. Diana would not have purchased the vehicle had he known of the defects.

Maria E. Santiago—Florida: Plaintiff and proposed Nationwide and Florida State Class Representative Maria Santiago is a resident and citizen of Cutler Bay, Florida. Ms. Santiago purchased a new 2007 Saturn Ion Coupe in late 2006 at a Saturn Dealership at Dadeland South in Miami, Florida, for approximately $20,000. Ms. Santiago also purchased an extended warranty for the vehicle that is still active. Ms. Santiago purchased her Ion because she understood and believed that GM vehicles were durable and reliable. Sometime in 2009, as Ms. Santiago was leaving a friend's house and driving onto an expressway ramp,

her Ion turned suddenly turned off. Since Ms. Santiago had just entered the expressway ramp and was driving at only 25 miles per hour, she was able to pull her vehicle over to the side of the ramp. She soon noticed the ignition key was in the off position, for no apparent reason. Ms. Santiago was able to restart the car and continue driving. Plaintiff Santiago would not have purchased her Ion had she known of the car's ignition switch defect.

Turner Clifford—Georgia: Plaintiff and proposed Nationwide and Georgia State Class Representative Turner Clifford is a resident and citizen of Palmetto, Georgia. He purchased a used 2004 Saturn Ion in September 2005 in Marietta, Georgia, for $15,000. Mr. Clifford purchased a standard three-year warranty on his vehicle. Mr. Clifford experienced safety issues while driving his vehicle, including periodic shut-offs, usually when driving the interstate, and the key falling out of the ignition on occasion while driving. Mr. Clifford stopped driving his vehicle as soon as he learned about the safety recall. In April 2014, he brought his vehicle to the dealership to have his ignition switch replaced, but the repair did not occur until late June/early July. During that time, Mr. Clifford incurred considerable additional fuel costs because the rental vehicle he was given consumed more fuel than his Saturn had. In August 2014, Mr. Clifford traded in his Saturn Ion. He believes he received less in trade in value as a result of the GM recalls, but he no longer wanted to own the Saturn. When he traded in his vehicle, the dealership informed him that it would have to sell the Saturns at wholesale because of the safety recalls. Knowing what he now knows about the safety defects in the Saturn Ion, Mr. Clifford would not have purchased the vehicle.

Jennifer Gearin—Georgia: Plaintiff and proposed Nationwide and Georgia State Class Representative Jennifer Gearin is a resident and citizen of Clermont, Georgia. Ms. Gearin purchased a new 2006 Chevrolet Cobalt in 2006 in Gainesville, Georgia, for

$18,499.52. Her Cobalt was covered under the manufacturer's warranty when she purchased it. Ms. Gearin has owned GM products before and she and her family were loyal customers. Ms. Gearin was advised at the dealership that the Cobalt was most dependable car for the lowest price. Although Ms. Gearin has not experienced her vehicle shutting down while driving, she is very afraid for her safety as a result of the ignition switch defects and she must drive a long distance to work on a daily basis. Ms. Gearin did not learn about the ignition switch defects until March 2014. She had the recall repair work completed this summer and was provided a loaner vehicle. She would not have purchased this car if GM had been honest about the safety defects.

Winifred Mattos—Hawaii: Plaintiff and proposed Nationwide and Hawaii State Class Representative Winifred Mattos is a resident and citizen of Honolulu, Hawaii. Ms. Mattos purchased a new Pontiac G5 in April 2007 in Culver City, California, for $20,000. She also had a three-year warranty on her vehicle. When she first learned about the recall, Ms. Mattos stopped driving her vehicle on highways or long distances and then decided it was unsafe to drive any distance at all. She requested and obtained a rental vehicle while awaiting replacement of her ignition switch pursuant to the recall. Her vehicle's ignition switch was replaced in April 2014. Ms. Mattos is still concerned about driving her vehicle. She would like to sell it, but she doubts she will be able to sell it and, even if she could, she doubts she would receive what she would have received before the recall. She would need full, pre-recall notice value for her vehicle in order to purchase another vehicle. Knowing what she now knows about the safety defects in many GM-manufactured vehicles, she would not have purchased her vehicle.

Dennis Walther—Hawaii: Plaintiff and proposed Nationwide and Hawaii State Class Representative Dennis Walther is a resident and citizen of Honolulu, Hawaii. Mr. Walther purchased a new 2006 Saturn Ion in 2006 in Hawaii for approximately $16,400. His car had a three-year warranty when he purchased it. The vehicle's ignition switch has been replaced under the recall. He bought the car because he trusted GM. If Mr. Walther had known about the Ion's defects, he would never have purchased it. He will never purchase another GM product.

Donna Harris—Illinois: Plaintiff and proposed Nationwide and Illinois State Class Representative Donna Harris is a resident and citizen of Herrin, Illinois. Ms. Harris purchased a used 2006 Chevrolet Cobalt in Herrin, Illinois, in 2007 for approximately $13,000. She purchased the vehicle with a standard three-year manufacturer's warranty. Ms. Harris bought the vehicle because her father was a "GM person" and she believed the vehicle was safe and reliable. Safety is the feature Ms. Harris finds most important feature in a vehicle. Ms. Harris started experiencing shutdowns in her Cobalt in 2009. The first time she was backing out of parking lot and the vehicle shutdown; as a result, she collided with a parked truck. In another incident, the vehicle stalled while Ms. Harris was backing out of a hospital parking lot space and she hit a cement barrier. The second shutdown cost Ms. Harris $1,700 in repairs. She also has experienced problems with her vehicle not locking. She has had her ignition switch replaced, but she still experiences problems turning the key in the ignition. Ms. Harris no longer feels safe driving her car, but she has no other means of transportation. Had she known about the problems with her GM vehicle, she would not have purchased the car, and she will never again purchase a GM vehicle.

Heather Holleman—Indiana: Plaintiff and proposed Nationwide and Indiana State Class Representative Heather Holleman is a resident and citizen of South Bend, Indiana. Ms. Holleman purchased a new 2007 Pontiac G5 in May 2007 from Don Meadows in South Bend, Indiana, for $17,500. Ms. Holleman has experienced numerous issues with the ignition of her Pontiac G5. The GM dealership where she purchased her vehicle has told her that the parts to fix the vehicle are unavailable, and she should simply "be careful." Ms. Holleman would not have purchased the vehicle had she known of the defects.

James Dooley—Iowa: Plaintiff and proposed Nationwide and Iowa State Class Representative James Dooley is a resident and citizen of Waterloo, Iowa. Mr. Dooley purchased a new 2006 Pontiac Solstice from Dan Deery Chevrolet in Cedar Falls, Iowa, in June 2006 for $28,000. Mr. Dooley purchased an extended seven-year warranty on the vehicle. Mr. Dooley did not experience a power failure during normal operation of his vehicle, but he stopped driving his vehicle in March 2014 when he learned about the safety recall because he was afraid for his safety. Because Mr. Dooley was unaware that GM was offering loaner vehicles to individuals afraid to drive their defective vehicles, he did not drive the vehicle again until August 2014 when the ignition switch was replaced. Knowing what he now knows about the safety defects in many GM-manufactured vehicles, he believes GM mislead him about the Solstice's safety and he would not have purchased the vehicle had he known the truth.

Philip Zivnuska, D.D.S.—Kansas: Plaintiff and proposed Nationwide and Kansas State Class Representative Philip Zivnuska, D.D.S., is a resident and citizen of Valley Center, Kansas. Mr. Zivnuska purchased a new 2006 Chevrolet Cobalt from Conklin Cars dealership in Newton, Kansas, in 2006 for approximately $25,000. His vehicle was covered by

Chevrolet's standard new car warranty at the time it was purchased. Throughout the course of his ownership of the Cobalt, Dr. Zivnuska and his family members experienced numerous issues consistent with the ignition switch defect, including frequent total power failure and loss of power steering, and an accident. Dr. Zivnuska brought the Cobalt into Conklin Cars dealership multiple times to address the issues, and became so concerned that he eventually filed a complaint with NHTSA in 2007 to document the problems he was experiencing. He never received information from GM following this complaint, although he was lead to understand GM obtained information about his car, which was subsequently totaled in a later accident. Dr. Zivnuska is appalled by the number of people who have also experienced ignition switch issues and is very upset that GM has not been forthcoming to vehicle owners, mechanics, and dealerships. Dr. Zivnuska reviewed internet websites before purchasing his car, particularly because good handling was important to him. Had he known of the problems with his GM car, he would not have purchased it.

Dawn Talbot—Kentucky: Plaintiff and proposed Nationwide and Kentucky State Class Representative Dawn Talbot is a resident and citizen of Glasgow, Kentucky. Ms. Talbot purchased a used 2006 Chevrolet Cobalt in May 2009 from Goodman Automotive in Glasgow, Kentucky. Ms. Talbot's vehicle has regularly lost power during driving. She would not have purchased the vehicle had she known of the defects.

Jennifer Crowder—Louisiana: Plaintiff and proposed Nationwide and Louisiana State Class Representative Jennifer Crowder is a resident and citizen of Shreveport, Louisiana. She purchased a used 2006 Chevrolet Cobalt in 2008 in Shreveport, Louisiana, for $14,000. Her car was not under warranty at the time of purchase. Ms. Crowder experienced many instances of stalling in her Cobalt. Her vehicle stalled on many occasions while driving to

work. She was late to work so often due to the stalling that she was dismissed from her employment for arriving late to work. On another occasion, Ms. Crowder's vehicle shut off in the middle of the road while she was making a turn. She was fortunately able to start the vehicle on the second try and avoided an accident. Knowing what she now knows about the safety defects in many GM-manufactured vehicles, and the Cobalt in particular, she would not have purchased the vehicle nor even visited the dealership to look at the Cobalt.

Alysha Peabody—Maine: Plaintiff and proposed Nationwide and Maine State Class Representative Alysha Peabody is a resident and citizen of Kenduskeag, Maine. Ms. Peabody purchased a used 2005 Chevrolet Cobalt in 2006 in Maine for $14,000. Her car was under warranty at the time of purchase. Although she did not have ignition switch issues before the recall, since having the repair done her vehicle does not always start on the first try. She has tried to sell her car on Craigslist since news of the ignition switch defect went public, but has not received a single inquiry about the vehicle. Ms. Peabody would have never purchased a GM vehicle if she had known about the defects.

Robert Wyman—Maryland: Plaintiff and proposed Nationwide and Maryland State Class Representative Robert Wyman is a resident and citizen of Baltimore, Maryland. Mr. Wyman purchased a new 2007 Saturn Sky from the Owings Mills, Maryland, Heritage Group in 2007 for $32,000. His vehicle came with a three-year warranty. Although he has not experienced an inadvertent power failure while driving his vehicle, on multiple occasions Mr. Wyman had difficulty removing and/or inserting his ignition key into the ignition cylinder or starting his vehicle. Mr. Wyman's vehicle had the recall repair done on May 31, 2014. Had he known that the Saturn Sky contained a defective ignition switch, Mr. Wyman would not have

purchased the vehicle because it is a "death car," and he worries what might have happened had he "hit a bump a certain way."

George Mathis—Maryland: Plaintiff and proposed Nationwide and Maryland State Class Representative George Mathis is a resident and citizen of Parkville, Maryland. Mr. Mathis purchased a new 2007 Chevrolet Cobalt on April 1, 2007, in York, Pennsylvania, for $12,000. The vehicle was covered under warranty when he purchased it. Mr. Mathis has experienced his ignition shutting down while driving on three separate occasions, with one instance resulting in a minor accident, and the other two nearly resulting in an accident. Mr. Mathis did not learn about the ignition switch defects until March 2014. In August 2014, he took his Cobalt to the dealership in his area to have the recall work performed. Mr. Mathis would not have purchased this car, or would have paid less than he did, if GM had been honest about the safety defects.

Mary Dias—Massachusetts: Plaintiff and proposed Nationwide and Massachusetts State Class Representative Mary Dias is a resident and citizen of Taunton, Massachusetts. Ms. Dias purchased a used 2007 Chevrolet HHR on February 28, 2008, in Woonsocket, Rhode Island, for approximately $13,000. The vehicle was under warranty when she purchased it. Because of the ignition switch defects, Ms. Dias is very concerned for her safety every time she drives her vehicle. Ms. Dias did not learn of the ignition switch defects until March 2014. When she inquired about her safety, GM told her that her vehicle had not been recalled and not to worry. On April 11, 2014, after receiving notice that her HHR was in fact recalled, Ms. Diaz took her HHR in for the recall repair work and was provided a loaner vehicle. She would not have purchased this vehicle if she had known of the safety defects.

Colin Elliott—Massachusetts: Plaintiff and proposed Nationwide and Massachusetts State Class Representative Colin Elliott is a resident and citizen of Buzzards Bay, Massachusetts. Mr. Elliot purchased a new 2008 Saturn Sky in Hyannis, Massachusetts, in July of 2007 for $23,000. His vehicle was covered by a standard 100,000-mile warranty at the time of purchase. At the time of purchase, Mr. Elliott was choosing between a Saturn Sky and Pontiac Solstice. To avoid defects that he believed plagued early production models, however, Mr. Elliott waited two years before ordering his Saturn in the hopes that any early production defects would be discovered and fixed. Although he has not experienced an inadvertent power failure while operating the vehicle, Mr. Elliott has not driven his Sky since learning of the recall several months ago. He has contacted his dealership to inquire about the timing of repairs, but his dealership has indicated that it does not have parts available. Because he will no longer drive his Sky, Mr. Elliott and his wife have been sharing her Kia since March. This has caused significant inconvenience, as they drive each other to work and are dependent on one another's schedule.

Diana Cnossen—Michigan: Plaintiff and proposed Nationwide and Michigan State Class Representative Diana Cnossen is a resident and citizen of Grand Rapids, Michigan. Ms. Cnossen purchased a new 2007 Saturn Ion on November 27, 2006, in Michigan for $18,250. Her vehicle was covered under warranty when she purchased it. She purchased the vehicle because she was attracted to its compact size when she viewed it in the showroom. Ms. Cnossen did not experience a power failure during normal operation of her vehicle, though she often experienced difficulty turning the steering wheel. Ms. Cnossen's ignition switch was replaced under the recall on June 4, 2014. While she awaited a replacement part, Ms. Cnossen continued to use her vehicle because she was not aware that GM had offered to provide loaner

vehicles to those too afraid to continue operating their defective vehicles. Ms. Cnossen did not learn of the ignition switch defect until it was announced in March of 2014, and she would not have purchased her Saturn Ion had she known it continued a defective ignition switch. Ms. Cnossen will "never buy another car from GM."

David Cleland—Minnesota: Plaintiff and proposed Nationwide and Minnesota Class Representative David Cleland is a resident and citizen of Northfield, Minnesota. He purchased a used 2004 Saturn Ion in 2005 in Northfield, Minnesota, for $10,000. Mr. Cleland's Saturn Ion was covered under the standard manufacturer's warranty at the time he purchased it. Mr. Cleland read GM promotional material about the vehicle's safety and reliability, including the vehicle's airbags, prior to purchasing the vehicle. This spring, after the recall announcement, Mr. Cleland's children had a frontal collision while driving his vehicle. The airbags did not deploy, even though they should have under the circumstances of the collision. Knowing what he now knows about the safety defects in many GM-manufactured vehicles, and particularly his Saturn Ion, Mr. Cleland would not have paid the amount of money he paid, or even purchased, the vehicle.

Frances Howard—Mississippi: Plaintiff and proposed Nationwide and Mississippi State Class Representative Frances Howard is a resident and citizen of Jackson, Mississippi. Ms. Howard leased and then purchased a new 2006 Saturn Ion in April 2006 at a Saturn dealership in Jackson, Mississippi, for approximately $11,000. The vehicle was covered by a warranty at the time of purchase. She recalls seeing television ads touting the Saturn brand as outstanding with dependable vehicles and high-rated customer service. In 2009, Ms. Howard's key got stuck in the ignition and she could not turn the vehicle off. She drove it to the dealership and they replaced the ignition switch on September 8, 2009, at Ms. Howard's

expense. One week later the key got stuck in the ignition again. This time the GM dealership told her it was because her car's battery was dead. Their service was unhelpful and contradictory. Ms. Howard's car has also inadvertently shutdown on two occasions. The first time happened approximately four months ago when she accidentally bumped the key while it was in the ignition. The second time, on September 2, 2014, it shut off while she was at a red light. Both times the car restarted after she turned the key off and then on again. Ms. Howard was never contacted about the ignition switch recall, and only found out about it by reading news on the internet. After contacting her GM dealership about the repairs, it took eight weeks for the parts to come in. She also asked for a loaner vehicle, but they declined, telling her there were none available and it would be only two weeks until the parts arrived. Ms. Howard would have never purchased this vehicle if she had known about these defects

Michelle Washington—Missouri: Plaintiff and proposed Nationwide and Missouri State Class Representative Michelle Washington is a resident and citizen of Florissant, Missouri. Ms. Washington purchased a new 2008 Chevrolet Impala in July 2007 at a GM dealership in Missouri for approximately $27,000. She also purchased a new 2014 Chevrolet Impala on May 9, 2014, at a GM dealership for approximately $37,000. The 2008 Impala was covered under warranty at the time of sale and she also purchased an extended warranty. The 2014 Impala is currently covered under warranty. In purchasing the 2008 Impala, Ms. Washington was convinced of the safety and reliability of her GM product based upon their warranties and representations. The ignition switch defect manifested in her 2008 Impala on approximately four separate occasions. In one instance the car shutdown on the highway and she had to pull to the side of the road and restart it. Before purchasing her new 2014 Impala, Washington took her 2008 Impala to two different GM dealerships to get an estimated trade-

in value. At the first GM dealership, during their test drive of her 2008 Impala, the vehicle ignition switch defect manifested and the car shutdown. The dealership informed her that they would have to dock her money on the trade-in amount being offered because of the problem. Based upon the vehicle shutting down during the examination, the dealership offered her a quote of $1,500 for a trade-in amount. Just days later, she took it to another GM dealership who gave her $2,900 for a trade-in amount. Ms. Washington received the ignition switch recall notice on her 2008 Impala after she had already traded it in for the 2014 Impala. Her 2014 Impala has not yet been repaired under the recall. Ms. Washington is adamant that had she known of the defects, she would have never considered the 2008 Impala or, later, the 2014 Impala when she was looking to trade-in her vehicle.

Patrice Witherspoon—Missouri: Plaintiff and proposed Nationwide and Missouri State Class Representative Patrice Witherspoon is a resident and citizen of Lee's Summit, Missouri. Ms. Witherspoon purchased a new 2006 Saturn Ion in 2005 from a Missouri vehicle dealer for approximately $16,828. Ms. Witherspoon reviewed GM's webpage and other internet websites discussing the Saturn Ion prior to her purchases and believed that the vehicle was safe and reliable based on her review. Ms. Witherspoon believed her vehicle was safe and defect-free when she purchased it. Ms. Witherspoon's 2006 Saturn Ion spontaneously shut off on at least five occasions while driving the vehicle. On one such occasion, she was on the highway, but was able to avoid an accident by pulling over to the shoulder. On another occasion, her vehicle shut off while on the exit ramp to a highway, but she was fortunately again able to avoid an accident. On each occasion, the vehicle gearshift was in "drive" or "reverse" and the ignition key was in the "run" position. Ms. Witherspoon had difficulty controlling and safely stopping the vehicle on these occasions. The value of Ms.

Witherspoon's vehicle is less than she bargained for when she purchased the vehicle and has diminished as a result of the defect.

Laurie Holzwarth—Montana: Plaintiff and proposed Nationwide and Minnesota Class Representative Laurie Holzwarth is a resident and citizen of Billings, Montana. Ms. Holzwarth purchased a used 2005 Chevrolet Cobalt in 2008 in Billings, Montana, for approximately $7,000. Her daughter Christine has experienced countless shutdowns in the vehicle. Christine is the primary driver of the vehicle and will not let anyone else drive it, because she is concerned about the number of shutdowns that she has experienced. They have occurred on highways, in the main street of her town, pulling into parking spaces, and everything in between. The worst incident that she can remember was a definite power failure. Ms. Holzwarth witnessed this event. They were driving on the highway in August of 2010 from Billings to Bozeman, where Christine would be attending college. At a point where they had to make a sharp turn, traveling at 75-80 miles per hour, the car just quit. Christine was able to get the car to a stop without hitting the concrete wall, cycle the key, and continue. They drove another 40 miles, and the car shut off twice more on the straightaway, and once more in the town. Christine had experienced both power steering failure and power failure incidences before this, but had not done much highway driving because she mainly drove to and from high school. The ignition switch was supposedly repaired as part of the ignition switch recall on July 29, 2014. But Ms. Holzwarth's daughter is still experiencing power failures in the car. Since the vehicle was repaired, Christine experienced two shutdowns and/or power steering failures on September 3, 2014, and September 8, 2014. Ms. Holzwarth and her daughter would like to get rid of the car, but they are not financially capable of doing so—Christine is working full time to pay off her college loans and needs a vehicle to get to

work. Furthermore, they do not believe that they could sell this vehicle to anyone else in good conscience. Even if they were to say that the car was repaired, they do not believe it is true, and they don't want to put anyone else at risk in the car. Ms. Holzwarth would not have purchased this vehicle if she had known about its serious and dangerous defects.

Michael Amezquita—New Jersey: Plaintiff and proposed Nationwide and New Jersey State Class Representative Michael Amezquita is a resident and citizen of Hamilton, New Jersey. Mr. Amezquita purchased a new 2006 Chevrolet Cobalt on June 30, 2006, in East Windsor, New Jersey, for $14,000. At the time he purchased the vehicle it was covered under warranty, but the warranty has since expired. Mr. Amezquita did not learn of the ignition switch defects until March 2014. His car was not repaired under the recall until April 23, 2014. Mr. Amezquita had to demand a loaner vehicle before GM would agree to provide one. He used the loaner vehicle for approximately seven weeks, from March 19, 2014, to April 23, 2014, while he waited for the repair parts to arrive. Mr. Amezquita would not have purchased this vehicle if he had known about these defects.

Anthony Juraitis—New Jersey: Plaintiff and proposed Nationwide and New Jersey State Representative Anthony Juraitis is a resident and citizen of Freehold, New Jersey. He purchased a new 2004 Saturn Ion in or around the winter of 2003. Mr. Juraitis purchased the vehicle with a standard warranty. Mr. Juraitis was considering other vehicles as well, but he decided on the Ion in part because he believed the vehicle to be safe and reliable. Mr. Juraitis experienced several shutdowns/stalls while driving his Ion. The first occurred on the highway, when his vehicle "locked" while driving. Other drivers stopped to help him push his vehicle to the side of the road, where after several attempts he was able to restart his vehicle. Mr. Juraitis took the vehicle to the dealership, which replaced the ignition switch and charged Mr. Juraitis

for parts and labor. Following this supposed repair, Mr. Juraitis continued to have stalls and shutdowns with his vehicle; he estimates approximately three dozen times with about eight or ten of them being in very dangerous situations. On July 31, 2014, the ignition switch was replaced again, this time pursuant to the recall. Following this replacement, Mr. Juraitis has continued to experience safety problems with the vehicle, including in early September 2014 when his vehicle shutdown again and he was unable to immediately restart the vehicle. Mr. Juraitis would like to sell or trade in his vehicle, but he does not want another person to experience the dangerous events he has experienced or have a vehicle with an obvious safety defect. Mr. Juraitis believes the vehicle is not worth anything if it means you have to gamble with your life to drive it. Knowing what he now knows about the safety defects in many GM-manufactured vehicles, he would not have purchased the vehicle and will never again purchase a General Motors vehicle.

Bernadette Romero—New Mexico: Plaintiff and proposed Nationwide and New Mexico State Class Representative Bernadette Romero is a resident and citizen of Santa Fe, New Mexico. Ms. Romero purchased a new 2007 Chevrolet Cobalt on July 3, 2007, at Casa Chevrolet in Albuquerque, New Mexico, for $14,645. Her car was covered by a warranty at the time of purchase. Her vehicle had the recall repair performed in May 2014, but she went without her vehicle for five weeks while it was repaired. She drove a loaner car during that time. Ms. Romero traded in her Cobalt for $5,500 on June 20, 2014. She would never have bought this vehicle had she known about the ignition switch defects.

Sandra Levine—New York: Plaintiff and proposed Nationwide and New York State Class Representative Sandra Levine is a resident and citizen of Babylon, New York. Ms. Levine purchased a used 2005 Chevrolet Cobalt on May 27, 2006, from Babylon Honda in

Babylon, New York, for $16,627.96. Ms. Levine's vehicle was covered by a warranty that expired 90 days after her purchase. She does not recall any specific advertising that influenced her decision to buy the vehicle, but she had a general impression that GM was a quality brand and that the vehicle was safe and reliable. Plaintiff Levine believed her vehicle was safe and defect-free when she purchased it. Ms. Levine's vehicle spontaneously shut off on two occasions. Although she does not recall precise dates, the shut-off incidents occurred in 2011 and 2012. The shut-off incidents both took place when she was driving on Deer Park Avenue in Suffolk County, New York. There was no apparent reason for the shutdown in either case. The road was not bumpy, and Ms. Levine does not believe her knee hit the ignition switch. In both instances, Ms. Levine was able to navigate the vehicle to the shoulder of the road. Ms. Levine's ignition switch was replaced on May 22, 2014, by Chevrolet of Huntington in connection with the recall GM initiated in response to the ignition switch defects. Ms. Levine would not have purchased the vehicle had she known of the defects.

Michael Rooney—New York: Plaintiff and proposed Nationwide and New York State Representative Michael Rooney is a resident and citizen of Ronkonkoma, New York. She purchased a used 2005 Chevrolet Cobalt in November 2006. Ms. Rooney purchased an extended warranty for the vehicle. She purchased the Cobalt after reading several advertisements about the Cobalt and other vehicles as well; she believed the Cobalt to be a safe and reliable vehicle to drive. Further, the dealership confirmed with Ms. Rooney that the Cobalt was a safe, reliable vehicle. Ms. Rooney experienced several shutdowns in her vehicle while driving. Upon learning about the safety recall on her vehicle, she stopped driving it. The dealership later informed her of her right to a loaner vehicle while awaiting replacement of her ignition switch, and she received a loaner vehicle soon thereafter. Her ignition switch was

replaced in the summer of 2014. Following that replacement, her automatic starter no longer worked in her vehicle, which she had to have repaired. Knowing what she now knows about the safety defects in many GM-manufactured vehicles, she would not have purchased the vehicle.

William Ross—New York: Plaintiff and proposed Nationwide and New York State Class Representative William Ross is a resident and citizen of Bellmore, New York. Mr. Ross purchased a new 2005 Chevrolet Cobalt in 2005, in Hicksville, New York, for approximately $25,000. At the time of purchase, his vehicle was under the original manufacturer's warranty, and he did not purchase any additional warranties. Mr. Ross does not recall when the warranty expired or its terms. Mr. Ross recalls at least one incident where the car became hard to steer. He took it to a repair shop thinking added power steering fluid would fix the problem, but the repair shop told him the vehicle did not need power steering fluid. On June 23, 2012, Mr. Ross was driving his Cobalt in Nassau County, New York, at approximately 55 miles per hour when the ignition was inadvertently switched into the accessory position, causing the engine to lose power. The car's power steering, power braking, and airbag systems were disabled. Mr. Ross lost control and the car crashed into a divider lined with rubber pylons. The airbag did not deploy. Mr. Ross suffered cuts and a separation of the muscle from his tendon in his arm. It could not be surgically repaired by the time he was able to go to the VA hospital. This accident cost Mr. Ross $6,279.97 in car repairs. On March 30, 2014, Mr. Ross was again driving his Chevrolet Cobalt in Nassau County, New York, at approximately 55 miles per hour when the ignition again suddenly switched into the accessory position, causing the vehicle to lose power to the engine. Again the power steering, power braking system, and airbags were disabled. Mr. Ross lost control of the car and it hit a divider, knocking the rear

wheels out of alignment. This accident cost Mr. Ross approximately $175 in repairs. In both accidents, the road was not bumpy and Mr. Ross does not recall hitting anything with his knee to cause the key to turn. When Mr. Ross learned of the recalls he called his GM dealership to see if his vehicle was involved in the recall. GM told him it was not. Then in early March 2014, he received a recall notice. When he called about getting the recall repairs done he was told the parts to repair it were not available. Mr. Ross stopped driving the vehicle and, in April 2014, he sold it to a junkyard to scrap for approximately $4,000. He is a retired, disabled veteran. Since selling the Cobalt he now relies on veterans' transportation to go to his medical appointments and walks everywhere else. Mr. Ross would not have bought the car if he had known beforehand about the ignition switch defect.

Donald Cameron—North Carolina: Plaintiff and proposed Nationwide and North Carolina State Class Representative Donald Cameron is a resident and citizen of Durham, North Carolina. He purchased a new 2006 Saturn Ion in 2006 in Durham, North Carolina, for $14,000. Mr. Cameron purchased the vehicle with a five-year, 120,000-mile warranty. On several occasions, Mr. Cameron's vehicle shutdown while he was driving. Knowing what he now knows about the safety defects in many GM-manufactured vehicles, and in the Ion specifically, he would not have purchased the vehicle or, at a minimum, would not have been willing to pay the amount of money he paid for the car.

Leland Tilson—North Carolina: Plaintiff and proposed Nationwide and North Carolina State Representative Leland Tilson is a resident and citizen of Gastonia, North Carolina. He purchased a new 2009 Chevrolet Cobalt in February 2009. Mr. Tilson has a five-year/100,000-mile warranty on the vehicle. Mr. Tilson experienced at least one shutdown in the vehicle, while driving on a highway at highway speed. It happened when the vehicle went

over a break in the asphalt, and the vehicle shutdown. Mr. Tilson, with an 18-wheeler bearing down on him, was able to maneuver the vehicle to the side of the road to avoid an accident. During this power failure, the power steering also failed. Mr. Tilson has had his ignition replaced twice. The first time was in June 2013, not pursuant to the recall, because he was unable to shut off his vehicle. The second time was in July 2014 pursuant to the recall. Knowing what he now knows about the safety defects in many GM-manufactured vehicles, he would not have purchased a vehicle with a safety defect.

Jayn Roush—Ohio: Plaintiff and proposed Nationwide and Ohio State Class Representative Jayn Roush is a resident and citizen of Worthington, Ohio. Ms. Roush purchased a used 2005 Saturn Ion on May 5, 2008, from Saturn West in Hilliard, Ohio, for $14,984.59. Ms. Roush's vehicle was covered by a standard warranty that expired on August 3, 2008. Ms. Roush purchased an extended warranty, but this warranty only covers the vehicle's powertrain. She recalls advertisements for the Saturn running frequently around the time of her purchase. She had a general impression that GM was a quality brand and that Saturn vehicles were safe and reliable. Ms. Roush believed her vehicle was safe and defect-free when she purchased it. Ms. Roush's vehicle has spontaneously lost power with some regularity. She recalls a number of discrete incidents. Her vehicle suddenly lost power three different times on November 25, 2010, when she was driving in and around Columbus, Ohio. The vehicle also experienced several power-loss incidents driving in and around Columbus, Ohio, in 2013. She was able to pull over and get the vehicle to the side of the road. The vehicle most recently shut off on Highway 315 S in Ohio on January 9, 2014. Each of Ms. Roush's incidents involved a sudden loss of power accompanied by a "TRAC OFF" light. Ms. Roush had her ignition switch replaced at an out-of-pocket cost of $187.50 on June 11, 2013,

in an attempt to address the power-loss problems the vehicle was experiencing, but the replacement did not fix the problem. Indeed, the car experienced a loss of power again in January of 2014. Ms. Roush attempted to participate in GM's 2014 recall of the vehicle, initiated in response to the ignition switch defects, but her ignition switch was not replaced in connection with this recall because the parts have not been available. Ms. Roush would not have purchased the vehicle had she known of the defects.

Bonnie Taylor—Ohio: Plaintiff and proposed Nationwide and Ohio State Class Representative Bonnie Taylor is a resident and citizen of Laura, Ohio. Ms. Taylor purchased a new 2007 Chevrolet Cobalt on December 23, 2006, from Joe Johnson Chevrolet in Troy, Ohio, for $14,417.42. At the time Ms. Taylor purchased her new Cobalt she also purchased a warranty which expired in December 2011. This was Ms. Taylor's fourth time purchasing a vehicle from Joe Johnson Chevrolet and she trusted them to provide her with a safe and reliable vehicle. Ms. Taylor did not learn of the ignition switch defects until March 2014. She scheduled the recall work on her vehicle right away and was provided a loaner vehicle. The repair work was completed on April 21, 2014. Although Ms. Taylor has not experienced the ignition shutdown while driving her Cobalt, she believes the Cobalt has too many serious safety defects for her to ever feel safe driving it again. She also feels that the value of her vehicle is severely diminished as a result of the recall. She would not have purchased this vehicle if she had known of the safety defects.

Sharon Dorsey—Ohio: Plaintiff and proposed Nationwide and Ohio State Class Representative Sharon Dorsey is a resident and citizen of Dayton, Ohio. Ms. Dorsey purchased a used 2004 Chevrolet Malibu in June 2007 at Reichard dealership in Dayton, Ohio, for $12,040. At the time of purchase, Plaintiff Dorsey also secured an extended warranty

which expired in 2011. Plaintiff Dorsey has experienced no less than four engine shut-offs while driving her vehicle. In one such instance, her Malibu stalled in the middle of heavy traffic with her five-year-old grandson in the vehicle. Upon returning the vehicle to Reichard on September 10, 2014, she was informed by a GM technician that he had, in fact, been able to duplicate the engine stall event she experienced. Ms. Dorsey's sister was a former GM employee and owned a Chevrolet Impala, which influenced Ms. Dorsey's desire to own a GM vehicle. However, if she had known of the defects plaguing her Chevrolet Malibu prior to purchasing the vehicle, she would not have purchased it. Ms. Dorsey relied upon the GM Malibu brand to be a safe and reliable vehicle. As a result of the vehicle defect and subsequent recalls, Ms. Dorsey has been unable to enjoy the use of her Chevrolet Malibu since June 2014, has been unable to work regularly, and has not been provided a loaner or rental vehicle while repairs are being made on her vehicle despite repeated requests. In addition, Ms. Dorsey continues to incur significant expense, inconvenience, and economic damage as a result.

Paulette Hand—Oklahoma: Plaintiff and proposed Nationwide and Oklahoma State Class Representative Paulette Hand is a resident and citizen of Blanchard, Oklahoma. She purchased a new 2006 Chevrolet HHR in 2006 from Frost Chevrolet, a dealership owned by her sister, in Hennessy, Oklahoma, for $24,625. She believed that GM made safe and reliable cars. Ms. Hand experienced multiple events in which her vehicle's steering locked up and the power failed. She would not have purchased or paid as much for the vehicle if she had known the truth about GM's commitment to safety and its concealment of the defects.

William Bernick—Oregon: Plaintiff and proposed Nationwide and Oregon State Class Representative William Bernick is a resident and citizen of Grants Pass, Oregon. Mr. Bernick purchased a used 2005 Chevrolet Cobalt on December 29, 2006, from a dealership in

Oregon for $10,750. He also purchased a vehicle service contract, and his warranty is continuing. During the time he has owned the vehicle, Mr. Bernick has experienced power outages and difficulties with the ignition, such as keys becoming stuck in the ignition, inability to shift gears, inability to start the ignition, and transmission default. Mr. Bernick is very concerned about the ignition defect and is disappointed in the way GM has handled the recalls. He wants to see GM held accountable for putting lives at risk for so long. Had Mr. Bernick known of the problems with his GM car, he would not have purchased it.

Shawn Doucette—Pennsylvania: Plaintiff and proposed Nationwide and Pennsylvania State Class Representative Shawn Doucette is a resident and citizen of Hamburg, Pennsylvania. Mr. Doucette purchased a new 2007 Chevrolet Cobalt SS in September 2007 from Outten Chevrolet of Hamburg in Hamburg, Pennsylvania, for $28,000. GM should have disclosed the ignition switch defects when Mr. Doucette purchased the vehicle. Mr. Doucette has experienced numerous shutdowns and power loss events while driving. He would not have purchased the vehicle had he known of the defects.

Shirley Gilbert—Pennsylvania: Plaintiff and proposed Nationwide and Pennsylvania State Class Representative Shirley Gilbert is a resident and citizen of Frackville, Pennsylvania. She purchased a new 2008 Chevrolet Cobalt in Pennsylvania in June 2008 for $16,000. Her vehicle was covered by a warranty when she purchased it. The warranty expired in June 2013. She purchased the car, in part, because the dealership highlighted the safety features, namely the car's eight airbags. On two or three occasions she has experienced her vehicle shutting down immediately after it started. She would not have purchased her vehicle, or she would have paid less for it, had she known about its defects.

Garrett Mancieri—Rhode Island: Plaintiff and proposed Nationwide and Rhode Island State Class Representative Garrett Mancieri is a resident and citizen of Woonsocket, Rhode Island. Mr. Mancieri purchased a new 2007 Pontiac G5 on November 24, 2006 in Woonsocket, Rhode Island, for $16,138. Mr. Mancieri received a safety recall notice pertaining to his vehicle in March 2014. He promptly requested that the dealership perform the recall repair, but was told that he would be put on a waiting list because the dealership was waiting on the parts from GM. The dealership did not provide Mr. Mancieri with a loaner car, so he had to continue driving the vehicle. The recall notice received by Mr. Mancieri did not inform him of the right to a loaner vehicle, nor did the GM dealership volunteer such information. His vehicle was not scheduled to be repaired until September 18, 2014. Mr. Mancieri believes he has been damaged by the diminution of value in his vehicle due to the ignition switch defect. Mr. Mancieri also believes he has been damaged in the amount of the reasonable value of the rental car he should have received from March 2014 through the time his vehicle is finally repaired by GM.

Annette Hopkins—South Carolina: Plaintiff and proposed Nationwide and South Carolina State Class Representative Annette Hopkins is a resident and citizen of Bishopville, South Carolina. Ms. Hopkins purchased a used 2003 Chevrolet Impala LS on December 31, 2004, at Newsome Automotive in Florence, South Carolina, for $12,749.32. Ms. Hopkins first learned of a recall affecting her vehicle when she received a recall notice in September 2014. Although she has not yet experienced any incidents of sudden power loss with her vehicle, now that she knows about the defects and the recalls, Ms. Belford asserts that she would never have purchased the Chevrolet Impala had she known about the defects and GM's indifference with regard to the safety and reliability of its vehicles.

Norma Lee Nelson—South Dakota: Plaintiff and proposed Nationwide and South Dakota State Class Representative Norma Lee Nelson is a resident and citizen of Huron, South Dakota. Ms. Nelson purchased a used 2007 Chevrolet Cobalt in September 2007 from a dealership in Watertown, South Dakota, for $14,000. Her vehicle came with a standard warranty at the time of purchase that expired in 2010. She has experienced numerous ignition problems with the vehicle, and at times it requires significant force to turn the steering wheel. Ms. Nelson has removed all of the keys from her keychain, but remains nervous about driving the car. Ms. Nelson has had difficulty starting the vehicle on numerous occasions. Had she known that the Cobalt contained a defective ignition switch, Ms. Nelson would not have purchased the vehicle.

Helen A. Brown—Tennessee: Plaintiff and proposed Nationwide and Tennessee State Class Representative Helen A. Brown is a resident and citizen of Franklin, Tennessee. She purchased a new 2006 Chevrolet Cobalt from a GM dealer, with an extended warranty, on February 1, 2006, for approximately $10,000. Ms. Brown's vehicle lost power at least three times, twice in 2007 and once in 2014. She does not trust her car and would not have purchased the vehicle or would have paid less if the truth had been disclosed about the quality and safety of GM vehicles.

Lisa William—Texas: Plaintiff and proposed Nationwide and Texas State Class Representative Lisa William is a resident and citizen of Amarillo, Texas. Ms. William purchased a new 2007 Saturn Ion in 2007 in Amarillo, Texas, for approximately $16,000. Her vehicle had a standard warranty, which she believes was for five years. Ms. William purchased a Saturn because she had owned one in the past and believed the brand to be one she could trust. She has experienced problems with her airbag light turning on unexpectedly

and difficulty turning on her vehicle. These problems have caused her concern and she does not feel safe driving her vehicle. She is a college student and provides rides from time to time for certain students. She is now concerned about having other students or anyone else in her vehicle because of the safety defect. She also frequently drives out of town and is afraid of her vehicle shutting down. Ms. William had her ignition switch replaced on September 23, 2014. She wonders if she can trust the "repair." Had she known about the problems with her GM vehicle, she would not have purchased the car.

Blair Tomlinson, D.D.S.—Utah: Plaintiff and proposed Nationwide and Utah State Class Representative Blair Tomlinson, D.D.S., is a resident and citizen of Kaysville, Utah. Dr. Tomlinson purchased a new 2005 Chevrolet Cobalt from Murdock Chevrolet in Bountiful, Utah, in August 2005 for approximately $15,000. Throughout the course of his ownership of the Cobalt, Dr. Tomlinson and his family members have experienced various issues consistent with the ignition switch defect, including unexpected shutdowns. In one particular incident, Dr. Tomlinson's daughter was driving on the highway in Logan, Utah, when she accidentally bumped the ignition switch with her knee and the vehicle lost power. She was able to get the vehicle safely to the side of the road, but was terrified by the incident. After hearing about the recall in the news in March 2014, Dr. Tomlinson attempted to reach GM, but he had great difficulty before eventually being informed he would receive a letter if his car was recalled. He also immediately took his Cobalt to Young Chevrolet in Layton, Utah, to address the issue. However, the dealership informed him they did not have the recall parts available to fix the defect. Mr. Tomlinson continues to be concerned about the defects in his Cobalt and the safety of his family. Had he known of the problems with his GM car, he would not have purchased it or would have paid less.

Erinn Salinas—Virginia: Plaintiff and proposed Nationwide and Virginia State Representative Erinn Salinas is a resident and citizen of Virginia Beach, Virginia. She purchased a new 2008 Chevrolet Cobalt in April 2008. The vehicle was purchased with the standard manufacturer's warranty. Ms. Salinas purchased her vehicle after seeing television advertisements about the vehicle and also about a GM rebate. The salesperson at the dealership also told Ms. Salinas that the Cobalt was a very safe vehicle. Ms. Salinas experienced at least one shutdown while driving the vehicle. She was able to steer the vehicle to the side of the road and then to turn it back on. Once she learned about the safety recall in March or April of 2014, she stopped driving her vehicle because she believed it was not safe to drive. She was not given a rental vehicle to use and had to depend on her sister or father for transportation. On July 18, 2014, the ignition switch was replaced in her vehicle pursuant to the recall. Knowing what she now knows about the safety defects in many GM-manufactured vehicles, she would not have purchased the vehicle.

Stephanie Renee Carden—West Virginia: Plaintiff and proposed Nationwide and West Virginia Class Representative Stephanie Renee Carden is a resident and citizen of Huntington, West Virginia. Ms. Carden purchased a new 2004 Saturn Ion 2 on July 22, 2004, at Saturn of Hurricane in Hurricane, West Virginia, for $22,181. Ms. Carden's vehicle came with the standard manufacturer's warranty. Ms. Carden has experienced manifestation of the defect on more than one occasion. She has twice experienced loss of power due to the ignition switch defect. Shortly after the second power-loss incident, Ms. Carden's vehicle had an issue where it would not restart, causing here to have to have the vehicle towed to a service station. If she had known what she now knows about the safety defects in many GM-manufactured vehicles, Ms. Carden would not have purchased the vehicle.

Les Rouse—Wisconsin: Plaintiff and proposed Nationwide and Wisconsin Class Representative Les Rouse is a resident and citizen of LaCrosse, Wisconsin. Mr. Rouse purchased a new 2004 Saturn Ion 2 in October 2004 in LaCrosse, Wisconsin, for approximately $16,000. His car was covered under the manufacturer's standard warranty at the time of purchase, and Mr. Rouse also believes he purchased some kind of extended warranty. At the time of purchase, Mr. Rouse and his wife visited the dealer to learn more about the Ion. There, the dealership had Ions on display to demonstrate the safety and reliability of the vehicle. The safety and reliability of the Ion had a large impact on Mr. Rouse's decision to buy the car. Mr. Rouse experienced a loss of electrical power in his vehicle while driving and he is concerned about driving it due to the safety risks it poses. He also believes the value of his car has diminished as a result of the ignition switch defects. Mr. Rouse learned of the ignition switch defects in March 2014, but it took until May 2014 for the parts to arrive and to repair his car under the recall. Mr. Rouse would not have purchased his vehicle had he known about the ignition switch defects in his GM vehicle.

II. Defendant

Defendant General Motors LLC ("New GM") is a foreign limited liability company formed under the laws of Delaware with its principal place of business located at 300 Renaissance Center, Detroit, Michigan. The sole member and owner of General Motors LLC is General Motors Holding LLC. General Motors Holdings LLC is a Delaware limited liability company with its principal place of business in the State of Michigan. The sole member and owner of General Motors Holdings LLC is General Motors Company. General Motors Company is a Delaware Corporation, which has its principal place of business in the State of Michigan, and is a citizen of the States of Delaware and Michigan. New GM was incorporated in 2009 and, effective on July 10, 2009, acquired substantially all assets and

assumed certain liabilities of General Motors Corporation through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code.

Among the liabilities and obligations expressly assumed by New GM are the following:

> From and after the Closing, Purchaser [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code, and similar laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by [Old GM].

New GM also expressly assumed:

> [A]ll Liabilities arising under express written warranties of [Old GM] that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by [Old GM] or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws

Finally, New GM also expressly assumed "all Liabilities arising out of, relating to, in respect of, or in connection with the use, ownership or sale of the Purchased Assets after the closing." Those assets included all contracts of Old GM, including its contracts with dealers and service centers.

FACTUAL ALLEGATIONS

I. There Are Serious Safety Defects in Millions of Old GM Vehicles that New GM Has Continued to Conceal from Consumers.

97. So far, in 2014, New GM has announced over 60 recalls affecting over 27 million GM-branded vehicles from model years 1997-2014. These recalls include millions of vehicles originally made and sold by Old GM. The numbers of recalls and serious safety defects are unprecedented, and lead to only one conclusion: Old GM and New GM have been

incapable of building safe, defect-free vehicles, and they have systematically refused to remedy (and instead have fraudulently concealed) defects once the vehicles were on the road.

98. The available evidence shows a common pattern: Old GM knew about an ever-growing list of serious safety defects in millions of its vehicles, but concealed those defects from consumers and regulators in order to cut costs, boost sales, and avoid the cost and publicity of recalls.

99. The company New GM inherited from Old GM in 2009 valued cost-cutting over safety, actively discouraged its personnel from taking a "hard line" on safety issues, avoided using "hot" words like "stall" that might attract the attention of NHTSA, and trained its employees to avoid the use of words such as "defect" or "problem" that might flag the existence of a safety issue. New GM affirmatively and independently continued and ratified these practices.

100. The Center for Auto Safety recently stated that it has identified 2,004 death and injury reports filed by New GM with federal regulators in connection with vehicles that have recently been recalled. Most or all of these deaths and injuries would have been avoided had Old GM complied with its TREAD Act obligations instead of concealing the truth.

101. The many defects concealed by Old GM affected key safety systems in its vehicles, including the ignition, power steering, and airbag systems.

102. The available evidence shows a consistent pattern: Old GM learned about a particular defect and, often at the prodding of regulatory authorities, "investigated" the defect and decided upon a "root cause." Old GM then took minimal action – such as issuing a carefully worded "Technical Service Bulletin" to its dealers, or even recalling a very small number of the vehicles with the defect. All the while, the true nature and scope of the defects

were kept under wraps, defective vehicles remained on the road, and Old GM enticed Class members to purchase its vehicles by touting their safety, quality, and reliability.

103. After July 11, 2009, New GM would continue this very same pattern of conduct and concealment, for over five more years.

A. The Ignition Switch Defects

104. The Defective Vehicles all contain substantially similar ignition switch and cylinders, with the key position of the lock module located low on the steering column, in close proximity to a driver's knee. The ignition switch systems on these vehicles are prone to fail during ordinary and foreseeable driving situations.

105. Specifically, the ignition switches can inadvertently move from the "run" to the "accessory" or "off" position at any time during normal and proper operation of the Defective Vehicles. The ignition switch is most likely to move when the vehicle is jarred or travels across a bumpy road; if the key chain is heavy; if a driver inadvertently touches the ignition key with his or her knee; or for a host of additional reasons. When the ignition switch fails, the vehicle suddenly and unexpectedly loses engine power, power steering, and power brakes, and certain safety features are disabled, including the vehicle's airbags. This leaves occupants vulnerable to crashes, serious injuries, and death.

106. The ignition switch systems at issue are defective in at least three major respects. First, the switches are weak; due to a faulty "detent plunger," the switch can inadvertently move from the "run" to the "accessory" position. Second, because the ignition switch is placed low on the steering column, the driver's knee can easily bump the key (or the hanging fob below the key) and cause the switch to inadvertently move from the "run" to the "accessory" or "off" position. Third, when the ignition switch moves from the "run" to the "accessory" or "off" position, the vehicle's power is disabled. This also immediately disables

the airbags. Thus, when power is lost during ordinary operation of the vehicle, a driver is left without the protection of the airbag system even if he or she is traveling at high speeds.

107. Vehicles with defective ignition switches are therefore unreasonably prone to be involved in accidents, and those accidents are unreasonably likely to result in serious bodily harm or death to the drivers and passengers of the vehicles.

108. Indeed, New GM itself has acknowledged that the defective ignition switches pose an "increas[ed] risk of injury or fatality" and has linked the ignition defect to at least thirteen deaths and over fifty crashes in the vehicles subject to the February recall alone. Ken Feinberg, who was hired by New GM to settle wrongful death claims arising from the ignition switch defects, has already linked the defect to twenty-seven deaths, and has over 1300 death and injury claims still to review. The Center for Auto Safety studied collisions in just two vehicle makes, and linked the defect to over 300 accidents. There is every reason to believe that as more information is made public, these numbers will continue to grow.

109. Alarmingly, Old GM knew of the deadly ignition switch defects and their dangerous consequences from at least 2001, but concealed its knowledge from consumers and regulators. New GM did the same, and, incredibly, it was not until 2014 – more than a decade later – that the ignition switch recalls were first announced.

II. Old GM's Fraudulent Conduct with Respect to the 2.19 Million Defective Vehicles Subject to the February/March Recall.

A. Old GM Knew That There Were Failures With The Ignition Switch Design In 2001, And Concealed These Material Facts, Putting The Safety Of The Class At Serious Risk Of Harm.

110. Old GM knew that the ignition switches to be used in its vehicles were defective well before the vehicles were ever sold to the public. In the late 1990s and early 2000s, Old GM and one of its suppliers, Eaton Mechatronics, finalized the specifications for

the ignition switch for the Saturn Ion. Eaton Corporation sold its Vehicle Switch/Electronic Division to Delphi Automotive Systems ("Delphi") on March 31, 2001. Delphi went on to manufacture the defective ignition switch for Old GM.

111. In 2001, years *before* the vehicles were ever sold and available to customers, Old GM privately acknowledged in a pre-production report for the Saturn Ion that there were serious problems, including engineering test failures, with the ignition switch. During the pre-production development of the 2003 Saturn Ion, Old GM engineers learned that the ignition switch could inadvertently move from the "Run" position to the "Accessory" or "Off" position. In a section of an internal report titled "Root Cause Summary," Old GM engineers identified two "causes of failure" namely, "[l]ow contact force and low detent plunger force." The "detent" is part of the ignition switch's inner workings that keeps the switch from rotating from one setting to another unless the driver turns the key.

112. The Old GM Design Release Engineer assigned to the ignition switch was Ray DeGiorgio. DeGiorgio had worked at Old GM since 1991, and spent his career focused on vehicle switches. During early testing of the ignition switch, DeGiorgio noticed problems with the prototypes provided by Delphi. In September 2001, DeGiorgio corresponded with representatives of Koyo, the supplier of the Ion steering column into which Delphi's switch was installed. In his correspondence, DeGiorgio stated he learned that 10 of 12 prototype switches from Delphi "[f]ailed to meet engineering requirements," and the "failure is significant," adding that Old GM "must ensure this new design meets engineering requirements." This significant failure of the ignition switch design was not corrected by Old GM; moreover, it was suppressed and concealed by the failure to remedy and disclose.

B. Old GM Approved Production Of Ignition Switches In 2002 Despite Knowing That They Had Failed In Pre-Production Testing And Did Not Meet Old GM's Internal Design Specifications.

113. Old GM approved production of the ignition switches despite knowing that they did not meet Old GM's own engineering design specifications.

114. Validation testing conducted by Delphi in late 2001 and early 2002 revealed that the ignition switch consistently failed to meet the torque values in the internal specification. These tests, conducted on various dates in the fall of 2001, included a test to determine whether the torque required to rotate the switch from Run to Accessory complied with the specification. The January 2002 test report denoted the design failure by stating "Not OK" next to each result.

115. In February 2002, Delphi, Old GM's ignition switch supplier for the recalled vehicles, asked Old GM to approve production for the ignition switch and submitted a Production Part Approval Process ("PPAP") request. Even though testing of the ignition switch revealed that it did not meet the original specifications set by Old GM and that internal testing showed the switch would fail, Old GM approved it. The defective switch was put into Old GM vehicles unbeknownst to the Class.

C. Old GM Received Complaints And Reports On The Stalling Of Vehicles Due To The Defective Ignition Switch Turning Off And Causing Moving Stalls, And Concealed That Material Information From The Class.

116. In 2003, almost immediately after the first Old GM vehicles with the defective ignition switches were sold to the public, GM started receiving complaints regarding loss of power while driving with no Diagnostic Trouble Codes ("DTC") being recorded in 2003 Saturn Ions involving the same ignition switch and steering column. In 2003, an internal report documented an instance in which the service technician observed a stall while driving.

The service technician noted that the weight of several keys on the key ring had worn out the ignition switch. The ignition switch was replaced and the matter closed.

117. Old GM employees were also having problems with their own model year ("MY") 2003 and 2004 Ions that contained the switch. In a January 9, 2004 report received from Old GM employee, Gerald A. Young, concerning his MY 2003 Saturn Ion, he informed Old GM, "[t]he ignition switch is too low. All other keys and the key fob hit on the driver's right knee. The switch should be raised at least one inch toward the wiper stalk," characterizing it as "a basic design flaw [that] should be corrected if we want repeat sales."

118. In a February 19, 2004 report concerning his MY 2004 Saturn Ion, Old GM employee, Onassis Matthews, stated: "The location of the ignition key was in the general location where my knee would rest (I am 6' 3" tall, not many places to put my knee). On several occasions, I inadvertently turn [sic] the ignition key off with my knee while *driving down the road*. For a tall person, the location of the ignition key should be moved to a place that will not be inadvertently switched to the off position."

119. In an April 15, 2004 report concerning his MY 2004 Saturn Ion, Old GM employee, Raymond P. Smith, reported experiencing an inadvertent shut-off: "I thought that my knee had inadvertently turned the key to the off position."

120. Old GM concealed these and other similar manifestations of the defective ignition switch.

D. Old GM Engineers Understood The Need To Correct The Ignition Switch Defect In 2004 But Failed To Act To Disclose Or Correct The Defect.

121. In 2004, Old GM knew that the ignition switch posed a safety concern that needed to be fixed. For example, in October 2004, Old GM internally documented incidents in which Old GM engineers verified that the ignition switch was turned to the off position as a

result of being grazed by the driver's knee. The cause of the problem was found to be the "low key cylinder torque/effort."

122. In 2004, Old GM was finalizing plans to begin production and sale of the Chevrolet Cobalt. The Chevrolet Cobalt was designed using the same ignition switch that was used in the Saturn Ion. As the Chevrolet Cobalt moved into production, it too—like its Saturn Ion predecessor— experienced inadvertent ignition switch shut-offs that resulted in moving stalls. Old GM already knew that when the ignition switch was inadvertently turned to off or accessory—by design—the airbags would not deploy. Instead of implementing a solution to the safety problem, the engineers debated partial solutions, short-term fixes, and cost.

123. Around the time of the Cobalt launch, more reports surfaced of moving stalls caused by a driver bumping the key fob or chain with his knee. At a 2004 press event associated with the launch of the Cobalt in Santa Barbara, California, a journalist informed Doug Parks, the Cobalt Chief Engineer, that while adjusting his seat in the Cobalt he was test driving, the journalist had inadvertently turned off the car by hitting his knee against the key fob or chain. Old GM's Doug Parks asked Gary Altman, the Program Engineering Manager, to follow up on the complaint by trying to replicate the incident and to determine a fix.

124. Old GM engineers independently encountered the ignition switch defect in early test drives of the Chevy Cobalt, before it went to market. The Old GM engineers pinpointed the problem of engine shut-off in the Cobalt and were "able to replicate this phenomenon during test drives." Despite this knowledge, Old GM told no one.

125. According to Old GM, its engineers "believed that low key cylinder torque effort was an issue and considered a number of potential solutions." But after considering the

cost and amount of time it would take to develop a fix, Old GM did not implement a fix, and the defective vehicles went to market.

126. As soon as the Chevrolet Cobalt hit the market in late 2004, Old GM immediately started getting similar complaints about sudden loss of power incidents, "including instances in which the key moved out of the 'run' position when a driver inadvertently contacted the key or steering column." Old GM engineers determined that the low torque in the ignition switch could cause the key to move from the "run" to the "accessory" or "off" position under ordinary driving conditions with normal key chains because "detent efforts on ignition switch are too low, allowing [the] key to be cycled to [the] off position inadvertently." Specifically, in February 2005, GM engineers concluded that "there are two main reasons that we believe can cause a lower effort in turning the key: a lower torque detent in the ignition switch … [and a] low position of the lock module [on] the [steering] column."

127. From the outset, Old GM employees, customers, and members of the automotive press found repeatedly that they would hit the key fob or keychain with their knee, and the car would turn off. As noted, Old GM received some of these reports before the Cobalt's launch, and others afterwards. Despite the many complaints describing the moving stalls and customers' safety concerns, Old GM covered up the defect and made safety assurances to the driving public, its customers, and the Class, upon which they reasonably relied. Old GM received reports from dealers documenting this problem and advised dealers to tell customers to modify their key chains. For example, in response to a customer complaint in December 2004, GM internally noted:

> RECOMMENDATION/INSTRUCTIONS:
>
> There is potential for the driver to inadvertently turn off the ignition due to low key ignition cylinder torque/effort. The concern

> is more likely to occur if the driver is short and has a large heavy key chain.
>
> In the cases this condition was documented, the driver's knee would contact the key chain while the vehicle was to ruing the steering column was adjusted all the way down. This is more likely to happen to a person that is short as they will have the seat positioned closer to the steering column.
>
> In cases that fit this profile, question the customer thoroughly to determine if this may the cause. The customer should be advised of this potential and to take steps, such as removing unessential items from their key chain, to prevent it.

GM then closed the complaint file and kept this "potential" problem secret.

128. Old GM's Manager of Product Safety Communications publicly announced and reassured customers that there was no safety issue with Cobalt moving stalls: "When this happens, the Cobalt is still controllable. The engine can be restarted after shifting to neutral."

129. DeGiorgio learned about the Cobalt press event moving stall and was approached by an Old GM engineer who suggested that DeGiorgio could "beef up" the ignition switch and increase the torque.

130. On May 17, 2004, during a NHTSA visit to the GM Milford Proving Grounds, Old GM gave a presentation titled "Engine Stall & Loss of Assist Demonstration." At a June 3, 2004, meeting with NHTSA, GM represented to NHTSA that in assessing a given stall, it considered severity, incident rate, and warning to the driver. But drivers had no such warning, certainly not from Old GM. NHTSA told Old GM that where number of stalls were high, the factors should be considered, but did not immunize Old GM from a safety recall.

131. On November 22, 2004, engineers in Old GM's High Performance Vehicle Operations group wrote DeGiorgio and informed him that their group had repeatedly experienced a moving stall during a track test of the Cobalt SS (the high-performance version of the Cobalt) when the driver's knee "slightly graze[d]" the key fob. An Old GM engineer

forwarded this complaint to DeGiorgio, and explicitly asked DeGiorgio whether there was "a specification on the force/torque required to keep that switch in the RUN position." He also asked DeGiorgio: "If so, is the switch meeting that spec? If not, what are the options for implementing a stronger spring?"

E. Old GM Closed Its First Internal Investigation With No Action Because Of Cost.

132. Despite the serious safety problem posed by the ignition switch defect, Old GM took no action to correct the defect and instead covered it up. As set forth above, in the summer and fall of 2004, as the Chevrolet Cobalt moved into the production stage, engineers observed a number of moving stalls caused by the ignition switch defect.

133. On November 19, 2004, Old GM personnel opened an engineering inquiry known as a Problem Resolution Tracking System (PRTS) to address the complaint that the Cobalt could be "keyed off with knee while driving." At this time, PRTS issues were analyzed by a Current Production Improvement Team (CPIT). The CPIT that examined the Cobalt issue beginning in late 2004 included a cross-section of business people and engineers, including Parks, Old GM engineer Gary Altman and Lori Queen, Vehicle Line Executive for the Cobalt.

134. In early 2005, and as part of the PRTS, Parks sent an email with the subject, "Inadvertent Ign turn-off." In the email, Parks wrote, "For service, can we come up with a 'plug' to go into the key that centers the ring through the middle of the key and not the edge/slot? This appears to me to be the only real, quick solution."

135. After considering this and a number of other solutions (including changes to the key position and measures to increase the torque in the ignition switch), the CPIT examining the issue decided to do nothing. Indeed, by March 2005, the GM Cobalt Program

Engineering Manager ("PEM") issued a "directive" to close the 2004 PRTS "with no action."[5] According to Old GM's internal documents, the design change was refused because of time, i.e., because the "lead-time for all solutions is too long," and money, i.e., because the "tooling cost and piece price are too high…".[6]

136. The 2004 PRTS was closed because "none of the solutions represents an acceptable business case"—a standard phrase used by GM personnel for closing a PRTS without action because of cost.[7] In deciding to do nothing to correct the serious safety defect that existed in its vehicles, Old GM simply shrugged off the issue entirely. What is more, Old GM downplayed the severity of the safety threat, rating the specter of a moving stall (even at highway speeds) with a severity level of 3—on a scale of 1 (most severe) to 4 (least severe). Old GM did not explain what, if any, criteria exist for an "acceptable business case" or otherwise justify its decision to do nothing. David Trush, the DRE for the ignition cylinder, explained that to present an "acceptable business case," a solution should solve the issue, be cost effective, and have an acceptable lead time to implement the change. [8] But one of the very solutions proposed by Thrush—changing the key from a slot to a hole configuration—would have cost less than one dollar per vehicle.

137. Here, as elsewhere in the story of the ignition switch defect, the structure within Old GM was one in which no one was held responsible and no one took responsibility.[9]

[5] GMHEC000001735 (Nov. 19, 2004).
[6] GMHEC000001735.
[7] GMNA PRTS+ Closure Codes (Close w/out Action) (Effective Dec. 2007) [DOC ID GMCB-000000977300]. Valukas Report at 69, n. 271.
[8] Valukas Report at 69.
[9] Valukas Report at 71.

F. Complaints Continued And Serious Accidents Came To Old GM's Attention In 2005, While NHTSA Began To Investigate Death Cases Involving Chevy Cobalts.

138. After the Cobalt program team closed the November 19, 2004, PRTS with no action taken, additional complaints of Cobalt stalls and inadvertent ignition switch shut-offs continued to come into GM's Brand Quality Group.[10]

139. In March 2005, Jack Weber, a GM engineer, reported that during "heel-toe downshifting" in a Cobalt SS with a manual transmission (a high-performance Cobalt model), his knee contacted the key fob and key ring, which caused "pulling on the key to move it to the 'Off' position."[11]

140. In May 2005, a customer demanded that Old GM repurchase his Cobalt. The complaint was that the ignition switch shut off during normal driving conditions with no apparent contact between the driver's knee and the key chain or fob.[12] Old GM Brand Quality Manager Steven Oakley forwarded this information internally at Old GM, stating that the ignition switch "goes to the off position too easily shutting the car off."[13] DeGiorgio was one of the Old GM personnel who received this e-mail chain, which effectively stated that the customer's car, as well as others at the dealership, had ignition switches with insufficient

[10] Valukas Report at 75.
[11] E-mail from Jonathan L. Weber, GM, to Rajiv Mehta, GM, et al. (March 9, 2005), at 22 (attached to FPR0793/2005/US) [DOC ID GMHEC000019677]. Valukas Report at 76, n. 303.
[12] E-mail from Steven Oakley, GM, to Arnaud Dessirieix, GM (May 2, 2005) [DOC ID 000077753011; GMNHTSA000337483). Valukas Report at 76, n. 308.
[13] E-mail from Steven Oakley, GM, to Arnaud Dessirieix, GM (May 2, 2005) [DOC ID 000077753011; GMNHTSA000337483]. Valukas Report at 76, n. 309.

torque and cause the car to shut off while driving.[14] This e-mail specifically included a request to DeGiorgio for an ignition switch "at the high end of the tolerance spec."[15]

141. By May 2005, Old GM personnel thus had multiple reports of moving stalls and were receiving buyback requests for Cobalts following complaints that consumers made to dealers.[16]

142. The problem of moving stalls and the ignition switch turning off in Old GM vehicles continued throughout 2005, and was described both within Old GM and in the media. In May and June 2005, reviewers from two newspapers, including the New York Times, wrote articles detailing how they or a family member had inadvertently turned a Cobalt off with their knees.[17] On May 26, 2005, a writer for the Sunbury Daily Item in Pennsylvania reviewed the Cobalt and reported that "[u]nplanned engine shutdowns happened four times during a hard-driving test last week. . . . I never encountered anything like this in 37 years of driving and I hope I never do again." In furtherance of covering up a material safety hazard, one of Old GM's in-house vehicle safety lawyers e-mailed a colleague to marshal evidence for the press that the risk of moving stalls was "remote" and "inconsequential." He wrote that he did not want to be criticized for failing to "defend a brand new launch."[18]

[14] E-mail from Joseph Joshua, GM, to Joseph Manson, GM, Raymond DeGiorgio, GM, et al. (May 4, 2005) [DOC ID 000077753011; GMNHTSA000337483]. Valukas Report at 77, n. 312.
[15] E-mail from Joseph Joshua, GM, to Steven Oakley, GM, et al. (May 4, 2005) (noting "[w]e have asked the ign switch DRE for a switch at the high end of the tolerance spec") [DOC ID 000077753011; GMNHTSA000337483]. Valukas Report at 76-77, n. 310.
[16] J&B Interview of Steven Oakley, May 23, 2014. Valukas Report at 78, n. 315.
[17] Jeff Sabatini, "Making a Case for Ignitions That Don't Need Keys," *New York Times*, June 19, 2005; *see also* Christopher Jensen, "Salamis, Key Rings and GM's Ongoing Sense of Humor," *Plain Dealer (Cleveland)*, June 26, 2005.
[18] Valukas Report at 86.

143. In June 2005, a Senior Delphi Project Engineer stated in an "e-mail that the "Cobalt is blowing up in [GM's] face in regards to the car turning off with the driver's knee."[19]

144. An Old GM customer filed the following complaint about a 2005 Cobalt prone to moving stalls on June 29, 2005:

> Dear Customer Service:
>
> This is a safety/recall issue if ever there was one.… The problem is the ignition turn switch is poorly installed. Even with the slightest touch, the car will shut off while in motion. I don't have to list to you the safety problems that may happen, besides an accident or death, a car turning off while doing a high speed …[20]

145. In July 2005, a 2005 Chevrolet Cobalt crashed in Maryland, killing the teenage driver, Amber Rose.[21] Calspan Crash Data Research Center was assigned by the NHTSA Special Crash Investigation Program to conduct a Special Crash Investigation (or "SCI"), which found "that the frontal airbag system did not deploy" and the "[Sensing Diagnostic Module (or "SDM")] data indicated that the 'vehicle power mode status' was in 'Accessory.'"[22] The August 15, 2005, SCI report found that the vehicles' SDM data recorded the "vehicle power mode status" of the ignition switch had shifted from "run" to "accessory" just before the crash. NHTSA continued the SCI and Old GM failed to report the crash to

[19] Valukas Report at 88.
[20] Customer complaint (June 29, 2005) [DOC ID 000014669078; GMNHTSA000540683]. Valukas Report at 89, n. 379.
[21] Calspan Corp. Crash Data Research Ctr., Calspan On-site Air Bag Non-deployment Investigation Case No. CA05-049, Vehicle: 2005 Chevrolet Cobalt (July 2005) (the "2005 SCI Report").
[22] Calspan Corp. Crash Data Research Ctr., Calspan On-site Air Bag Non-deployment Investigation Case No. CA05-049, Vehicle: 2005 Chevrolet Cobalt (July 2005) (the "2005 SCI Report").

NHTSA until the third quarter of 2005.[23] Upon information and belief, Old GM subsequently entered into a confidential settlement agreement with the victim's mother.

146. Inside Old GM, the defect was raised with the Product Investigations ("PI") unit. The PI unit was charged with solving significant engineering problems, including safety problems; it was the primary unit charged with investigating and resolving potential safety defects.[24] Old GM Product Investigations Manager Doug Wachtel assigned PI employee Elizabeth Kiihr to investigate the Cobalt ignition switch shut-off. Wachtel's team looked at early data from the field and found 14 incidents related to the ignition switch. The PI group also tried to recreate the problem themselves. Doug Wachtel and Gay Kent drove a Cobalt around Old GM's property in Warren, Michigan. Gay Kent had a long and heavy key chain, and was able to knock the ignition from Run to Accessory simply by moving her leg so that her jeans caused friction against the fob.[25] Wachtel also reproduced the stall in the Cobalt test drive by contact with the key chain.[26]

147. Notwithstanding the media reporting, the customer complaints, and its replication of moving stalls in the field, the PI team did not recommend a safety recall on vehicles with the ignition switch defect.[27] Old GM knew that a defect existed in its vehicles, but did nothing to disclose the truth or warn consumers or the Class, nor did Old GM correct the defect in vehicles that it had already sold, or in vehicles it continued to manufacture, sell, warrant, and represent as safe.

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[23] Letter from Christina Morgan, Chief, Early Warning Division, Office of Defects Investigation to Gay P. Kent, Director, General Motors Corp. (Mar. 1, 2006) and Letter to Christina Morgan from Gay P. Kent, Director, Product Investigations (Apr. 6, 2006), (GMHEC 00198137-198210); (GMHEC00197893).
[24] Valukas Report at 86.
[25] TREAD Search Results (June 28, 2005) [DOC ID 000005586004; DOC ID 000005586005; DOC ID 000005586006]. Valukas Report at 86-87, n. 367.
[26] Valukas Report at 87.
[27] Valukas Report at 87.

G. Old GM Engineers Proposed Design Modifications To The Ignition Switch In 2005 That Were Rejected By Old GM Management On The Basis Of Cost.

148. Old GM's knowledge of the serious safety problem grew, but still there was no disclosure. In February 2005, as part of the 2004 PRTS that avoided the word "stall," Old GM engineers met to analyze how to address the ignition switch defect.[28] Indeed, between February 2005 and December 2005, Old GM opened multiple PRTS inquiries regarding reports of power failure and/or engine shutdown in the affected vehicles.

149. Old GM engineers internally recognized that there was a need to do something in order to address the ignition switch defect. For example, Old GM engineers were directed to investigate a possible key slot change as "containment" of the defect, including development cost and time estimates.[29]

150. In May 2005, PRTS N182276 (the "2005 PRTS") was opened by Old GM to analyze the ignition switch in the 2005 Chevrolet Cobalt following continued customer complaints that the "vehicle ignition will turn off while driving."[30] Old GM acknowledged in the 2005 PRTS that it had previously been faced with the same issue in the 2004 PRTS and "[d]ue to the level of buyback activity that is developing in the field, Brand Quality requests that the issue be reopened."[31] In other words, customers were asking Old GM to take back the defective cars while Old GM said nothing to customers or the Class about the safety risks. Old GM continued to market and warrant the vehicles as safe. The 2005 PRTS proposed that Old

[28] GMHEC000001733 (Nov. 19, 2004).
[29] GMHEC000001734 (Nov. 19, 2004).
[30] 2005 PRTS, originated May 17, 2005, GMHEC000001742-54.
[31] GMHEC000001743.

GM re-design the key head from a "slotted" to a "hole" configuration. After initially approving the proposed fix, Old GM reversed course and again declined to implement it.[32].

151. As part of one of the myriad PRTS inquiries opened in 2005, Quality Brand Manager Steve Oakley asked William Chase, an Old GM warranty engineer, to estimate the warranty impact of the ignition switch defect in Cobalt vehicles. Chase estimated that for Cobalt and G5 vehicles on the road for 26 months, 12.40 out of every 1,000 vehicles would experience inadvertent power failure while driving. Still, Old GM did nothing.

152. At a June 7, 2005, Vehicle And Process Integration Review ("VAPIR") meeting at Old GM, the Cobalt VAPIR team discussed potential solutions to the inadvertent shut-off issue. Around this same time, DeGiorgio was asked to propose a change to the ignition switch that would double the torque required to turn the switch.[33] DeGiorgio identified two possibilities. First, he proposed using a switch under development for the Saturn Vue and the Chevrolet Equinox (the "GMT 191"). Because the GMT 191 switch was superior to the current ignition switch both electrically and mechanically, DeGiorgio referred to it as the "gold standard of ignition switches."[34] Second, DeGiorgio proposed redesigning the ignition switch already in Delta platform vehicles. Part of DeGiorgio's redesign plan included adding a second detent plunger.[35]

153. At the VAPIR meeting on June 14, 2005, additional proposed fixes were presented – categorized as either "short-term" or "long-term" solutions. The short- term solution was to use a smaller key ring and to change the key going forward with a new key

[32] February 24, 2014 GM Submission to NHTSA – Chronology Re: Recall of 2005-2007 Chevrolet Cobalt and 2007 Pontiac G5 Vehicles (or "February GM Chronology"), at 1; March 11, 2014 GM Submission to NHTSA – Chronology Re: Recall of 2006-2007 Chevrolet HHR and Pontiac Solstice, 2003-2007 Saturn Ion, and 2007 Saturn Sky Vehicles (or "March GM Chronology") at 1; April Chronology at 2.
[33] J&B Interview of Raymond DeGiorgio, May 7-8, 2014. Valukas Report at 79.
[34] J&B Interview of Raymond DeGiorgio, May 7-8, 2014. Valukas Report at 79.
[35] J&B Interview of Raymond DeGiorgio, May 7-8, 2014. Valukas Report at 79.

head design that used a hole instead of a slot—the same idea that David Thrush had proposed during the November 2004 PRTS inquiry.[36] The "long-term" solutions included DeGiorgio's idea of replacing the ignition switch with the GMT 191, or gold standard switch, which would double the torque needed to shut off the ignition. The implementation of the new switch was targeted for MY 2007 or MY 2008 vehicles, at a cost of just $1.00/vehicle, plus tooling costs which were not known at that time.[37]

154. The presentation for this VAPIR meeting also included discussion of press coverage that described the very defect in this case that the Old GM engineers were addressing earlier in 2005: inadvertent shut-off of the ignition switch and moving stalls. The presentation included GM's official public relations statement regarding the issue reassuring the public and the Class that the vehicle was "still controllable."[38]

155. Also on June 14, 2005, similar complaints surfaced of "inadvertent ignition shut-offs" in the Solstice, which used the same defective ignition switch as the Cobalt and the Ion. A GM engineer emailed DeGiorgio and other Old GM personnel involved in evaluating short-term and long-term fixes for the ignition switch, informing them that Solstice testing showed the "ignition inadvertently turns off when hit." The engineer noted that the complaint was "very similar to the ones on the Cobalt [sic]" and suggested that the same "preventative measures" under discussion for the Cobalt should be taken for the Solstice.[39]

[36] X001 Ignition Cylinder Effort … Next Actions VAPIR Presentation (June 14, 2005), at 1 [DOC ID 000011020041; GMNHTSA000218772]. Valukas Report at 80, n. 331.
[37] X001 Ignition Cylinder Effort … Next Actions VAPIR Presentation (June 14, 2005), at 1 [DOC ID 000011020041; GMNHTSA000218772]. Valukas Report at 80-81, n. 333.
[38] X001 Ignition Cylinder Effort … Next Actions VAPIR Presentation (June 14, 2005), at 1 [DOC ID 000011020041; GMNHTSA000218772]. Valukas Report at 80-81, n. 334.
[39] E-mail from Devin Newell, GM, to Raymond DeGiorgio, GM, et al. (June 14, 2005) [DOC ID 000001748037; GMNHTSA000218756]. Valukas Report at 81, n. 336.

156. On June 17, 2005, Old GM engineer Al Manzor conducted testing on the ignition switch, and the proposed GMT 191 ignition switch, at Old GM's Milford Proving Ground[40] to evaluate how the switches performed in the Cobalt using a key with a slotted key head versus a key head with a hole.[41]

157. Manzor's testing demonstrated that the rotational torque required to move the key out of Run was 10 N-cm, below the Specification of 15 to 25 N-cm. However, neither Manzor, nor anyone else interviewed, compared the test results to the actual specification.[42]

158. Later in June 2005, the VAPIR approved a fix for existing customers – a plug that could be inserted into keys when customers came to the dealer reporting problems – and a change to the key for production in the future (a change that was not implemented). On July 12, 2005, Old GM also issued another Preliminary Information to dealers, this time explaining (only for the 2005 Cobalt and 2005 Pontiac Pursuit) that a fix was available (the key insert). The key change (and the insert) did not, however, address the core problem of inadequate torque performance in the ignition switch or the low placement of the ignition switch on the steering cylinder; indeed, the engineers still regarded the key head design change as only a temporary solution – or, as one Old GM engineer described it, a "band-aid."[43]

[40] The Milford Proving Ground is a GM engineering facility designed for vehicle research, development, and testing in Milford, Michigan. It has extensive test tracks for vehicle testing under a range of road conditions. Valukas Report at 81, n. 337.
[41] X001 Ignition Cylinder Effort … Next Actions" (June 19, 2005) [DOC ID 000012140574; GMNHTSA000218793]; J&B Interview of Alberto Manzor, May 1, 2014; e mail from Gay Kent, GM, to Deb Nowak-Vanderhoef, GM, *et al.*(June 14, 2005) [DOC ID S006878_000038279]. Valukas Report at 81, n. 338.
[42] J&B Interview of Doug parks, May 1-2, 2014; J&B Interview of Alberto Manzor, May 1, 2014. Valukas Report at 82, n. 341.
[43] Valukas Report at 82-83.

159. Manzor said he discussed his safety concerns about the Cobalt, including the potential for airbag non-deployment, with Parks, Altman, and a safety engineer, Naveen Ramachandrappa Nagapola.[44]

160. Ignoring the ignition defect did not make the problem or reported incidents go away.

H. Rather Than Implementing A Safety Recall And Fixing The Known Defect, Old GM Sent An Inadequate Technical Service Bulletin To GM Dealers In Late 2005, Advising Dealers On Taking Heavy Items Off Key Rings.

161. Throughout 2005, various committees within Old GM considered proposed fixes, but rejected them as too costly. In December of 2005, rather than issuing a safety recall on the ignition switch defects, Old GM sent a Technical Service Bulletin ("TSB") 05-02-35-007 to GM dealers, titled "Information on Inadvertent Turning Off of Key Cylinder, Loss of Electrical System and No DTCs" for the Chevy Cobalt and HHR, Saturn Ion, and Pontiac Solstice vehicles.[45] The TSB explained that "[t]here is potential for the driver to inadvertently turn off the ignition due to low ignition key cylinder/torque."

162. When Old GM issued this TSB, the prior Preliminary Information provided to its dealers on July 12, 2005 (which had accurately used the word "stall"), was removed from the dealer database as obsolete. This TSB also did not accurately describe the danger posed by the ignition switch defect and went only to Old GM dealers, not to the public or the Class.[46] There was no mention in the TSB of the possibility of airbag non-deployment, engine stalls, loss of power steering or power brakes.

[44] J&B Interview of Alberto Manzor, May l, 2014. Valukas Report at 83, n. 347.
[45] TSB 05-02-35-007, "Information on Inadvertent Turning Off of Key Cylinder, Loss of Electrical System and No DTCs," (Oct. 2006), at GMHEC000329773.
[46] March 2014 GM chronology; GMHEC000329773.

163. As evidence of the international and fraudulent concealment by Old GM, multiple Old GM employees confirmed that Old GM intentionally avoided using the word "stall" in the TSB to dealers.[47]

164. Old GM Quality Brand Manager, Steve Oakley, who drafted the December 2005 TSB, stated the term "stall" is a "hot" word that Old GM did not use in TSBs because *it may raise a concern about vehicle safety*, *which "suggests Old GM should recall the vehicle*, *not issue a bulletin."*[48] In addition, Old GM personnel stated that "there was concern about the use of 'stall' in a TSB because such language might draw the attention of NHTSA."[49] The December 2005 TSB was intentionally misleading and incomplete. Rather than spend the money on a part with sufficient torque or recall the defective vehicles, Old GM came up with a self-described band-aid.

165. Rather than disclose the true nature of the defects and correct them, pursuant to the December 2005 TSB, Old GM, through its dealers, instead gave some customers who brought in their vehicle complaining about stalling "an insert for the key ring so that it goes from a 'slot' design to a hole design" to prevent the key rings from moving up and down in the slot. "[T]he previous key ring" was "replaced with a smaller" one; this change was intended to keep the keys from hanging as low as they had in the past.[50] Old GM created over 10,000 key plug inserts as the defect's cheaper fix.[51] According to GM's records, Old GM dealers provided key inserts to only 474 customers who brought their vehicles into dealers for service.[52] But the band-aid failed because Old GM abandoned the key redesign effort.[53]

[47] Valukas Report at 91-93; (citing GMHEC000329773).
[48] Valukas Report at 92, n. 390, emphasis added.
[49] Valukas Report at 93, n. 392.
[50] Valukas Report at 1-2; March GM Chronology at 2; April GM Chronology at 2.
[51] Valukas Report at 93-94.
[52] February GM Chronology at 2.

Furthermore, while Old GM made the key insert available to consumers of previously purchased vehicles, it did not, at the same time, change the key for cars that were rolling off the assembly line and those yet to be produced. Thus, even the "band-aid" that Old GM engineers proposed was not implemented for new cars.[54]

166. Still there was no recall and Old GM continued to receive complaints of fatalities and injuries that put it squarely on notice of the defect. Rather than issue the necessary safety recall, inside Old GM, the cover-up continued.

I. Old GM Knew About And Authorized A Design Change To The Ignition Switch In 2006, But Masked The Existence Of The Change By Keeping The Part Number The Same.

167. Old GM covertly authorized a design change for the defective ignition switch in 2006.

168. In late 2005 and early 2006, DeGiorgio discussed with Delphi a proposal to put a stronger spring and plunger into the ignition switch.[55] An internal Delphi document indicates that this switch design—with a longer detent spring-plunger—was the same as the longer detent spring-plunger design originally drafted by Delphi in 2001.[56] In other words, this option was available when the ignition switch was first designed [57]

169. In April 2006, DeGiorgio authorized Delphi to implement changes to fix the ignition switch defect.[58] The design change "was implemented to increase torque performance

Footnote continued from previous page

[53] Valukas Report at 94.

[54] Valukas Report at 94.

[55] E-mail from Arturo Alcala, Delphi to Raymond DeGiorgio, GM, John B. Coniff, Delphi, et al. (Jan. 6, 2006) [DOC ID 000051786002; GMNHTSA000257777]. Valukas Report at 97, n. 401.

[56] Drawing 741-76307-T [DOC ID GMHEC000003206]; 2001 Long Detent Spring Drawing, Drawing 741-79378 (2001) [Ex. A.3.a(2) 2001 Long Detent Spring Drawing]; 2001 Short Detent Spring Drawing, Drawing 741-75259 (2001) [Ex. A.3.a (1) 2001 Short Detent Spring Drawing]; e-mail from Antero Cuervo, Delphi, to Lyle Miller, Delphi (Oct. 29, 2013) [DOC ID 000004253527; GMNHTSA000223906]. Valukas Report at 97, n. 402.

[57] Valukas Report at 97.

[58] General Motors Commodity Validation Sign-Off (April 26, 2006, GMHEC000003201).

in the switch."[59] On April 26, 2006, DeGiorgio approved an ignition switch with a longer detent plunger by signing what is called a Form 3660, giving Delphi permission to begin manufacturing the longer parts for the switch.[60] The Form 3660 stated, "[n]ew detent plunger (Catera spring/plunger) was implemented to increase torque force in switch."[61] Each Form 3660 has to link back to a master work order, and this one did as well. But the work order to which it was linked was only for the electrical improvements to the ignition switch; the work order did not mention the change to the spring and plunger.[62] Old GM fraudulently concealed and acted to suppress and cover up this material fact.

170. Delphi documents suggest that the new ignition switch went into production sometime after June 26, 2006.[63] Although the design of the ignition switch changed, *the part number remained the same*.[64]

171. Meanwhile, consumers, NHTSA, the driving public, and the Class were not told of this change, because Old GM "*concealed the fact*" of the design change and "*failed to disclose this critical information*," with devastating consequences.[65]

172. In congressional testimony in 2014, GM CEO Mary Barra acknowledged that GM should have changed the part number when it redesigned the ignition switch, and that its failure to do so did not meet industry standard behavior. Former New GM engineers term GM's failure to change the part number a "cardinal sin" and "an extraordinary violation of internal processes."

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[59] General Motors Commodity Validation Sign-Off (April 26, 2006, GMHEC000003201).
[60] General Motors Commodity Validation Sign Off (April 26, 2006) GMHEC000003201.
[61] Form 3660 (April 26, 2006), at 3 [DOC ID 000004253529; GMNHTSA000223924]. Valukas Report at 98, n. 406.
[62] EWO 302726 (Feb. 19, 2004) [DOC ID 000000000080; GMNHTSA000220667]. Valukas Report at 98, n. 407.
[63] Valukas Report at 99.
[64] Valukas Report at 100 (emphasis added).
[65] Valukas Report at 34 (emphasis added).

J. The Fatalities Resulting From The Defects And Cover-Up Came To Old GM's Attention As Early As 2004.

173. Customer complaints and reports of injuries and fatalities continued.

174. GM's legal department received notice of the first Ion airbag non-deployment claim in January 2004 in a 2004 Saturn Ion. The first Cobalt crash came to Old GM's attention in September 2005.[66]

175. On November 17, 2005—immediately before Old GM issued the December Bulletin—a Cobalt went off the road and hit a tree in Baldwin, Louisiana. The front airbags did not deploy in this accident. Old GM received notice of the accident, opened a file, and referred to it as the "Colbert" incident.

176. In January 2006, a 2005 Chevy Cobalt, driven by an unsuspecting Old GM customer struck several trees and its driver died en route to the hospital.[67] The vehicle's power mode status was in "accessory" at the time of the crash and the airbag did not deploy when it should have.[68]

177. On February 10, 2006, in Lanexa, Virginia – shortly after Old GM issued the TSB – a 2005 Cobalt flew off of the road and hit a light pole. As with the Colbert incident (above), the frontal airbags failed to deploy in this incident. The download of the SDM (the vehicle's "black box") showed the key was in the "accessory/off" position at the time of the crash. Old GM received notice of this accident, opened a file, and referred to it as the "Carroll" incident.

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[66] Valukas Report at 103, n. 419.
[67] Calspan Corporation, Calspan On-Site Air Bag Non-Deployment Investigation, Case No. CA05-049, Dec. 12, 2006 [DOC ID GMCB-000000073786; GMHEC100026303]; GM, Activity Notes form, File No. 501661, Jan. 31, 2006 [DOC ID 000001660023; GMNHTSA000200717]. Valukas Report at 110, n. 453.
[68] Crash Data Retrieval System, [redacted] SDM Data, Sept. 14, 2005 [DOC ID 000001660011; GMNHTSA000200688]. Valukas Report at 110, n. 454.

178. On March 14, 2006, in Frederick, Maryland, a 2005 Cobalt traveled off the road and struck a utility pole. The frontal airbags did not deploy in this incident. The download of the SDM showed the key was in the "accessory/off" position at the time of the crash. Old GM received notice of this incident, opened a file, and referred to it as the "Oakley" incident.

179. In September 2006, GM became aware of an incident in which a 2004 Saturn Ion left the road and struck a utility pole head on. The airbag did not deploy and the driver was wearing her seatbelt, but was pronounced dead at the scene. Old GM identified this crash as one in which the airbag should have deployed, and the airbag likely would have saved her life.[69] Old GM engineers agreed that "1) the airbags … should have deployed; 2) the SDM did not record the crash event, for unknown reasons;… and 4) it is reasonably likely that deployment of the driver airbag would have prevented [] death in this accident."[70] Still, Old GM admitted nothing and represented its cars were non-defective and safe.

180. On October 24, 2006, a crash occurred in which a 2005 Cobalt left the road and struck a telephone box and two trees. There were fatalities and severe injuries and the airbag did not deploy. Alan Adler e-mailed Dwayne Davidson, Senior Manager for TREAD Reporting at Old GM, and others, copying Gay Kent, Jaclyn Palmer, Brian Everest, and Doug Wachtel, with the subject line "2005 Cobalt Air Bags—Fatal Crash; Alleged Non-Deployment."[71]

181. In October 2006, a 2005 Chevy Cobalt was involved in a crash in Wisconsin which resulted in the deaths of the front right and rear right passengers. NHTSA assigned Indiana University Transportation Research Center to investigate the crash. The vehicle was

[69] Valukas Report at 112, n. 463, 464.
[70] Valukas Report at 113, n. 474.
[71] Valukas Report at 113-114.

inspected on November 6, 2006.[72] Old GM reported the crash later in 2006 in its EWR filing.[73] NHTSA requested additional information from GM in May of 2007, and GM responded a month later.[74]

182. In 2007, two analyses of the fatalities in the Wisconsin Cobalt crash, one by Wisconsin State Trooper Keith Young and another by Indiana University researchers, both independently concluded that the movement of the ignition switch from "run" into "accessory" caused the 2006 accident, the airbag non-deployment and the tragic deaths. Officer Young was able to reach this accurate conclusion by examining GM's own engineering documents.

183. Internal Old GM documents show that the company has received at least 248 reports of air bag non-deployment in 2005 MY vehicles.[75] Internal documents also showed that Old GM received at least 134 reports of air bag non-deployment in 2006 MY vehicles.[76]

K. Old GM Responded To Growing Evidence Of Fatalities By Updating The Technical Service Bulletin To Dealers About Heavy Key Chains.

184. In October 2006, Old GM updated the prior December 2005 Service Bulletin to include additional make and MY vehicles, namely: the 2007 Saturn Ion and Sky, 2007 Chevrolet HHR, and 2007 Pontiac Solstice and G5.[77] As it had previously done, in its statement to dealers, Old GM avoided acknowledging the ignition switch defect and this time blamed the problem on height and weight of its customers, short people and heavy key rings, stating:

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[72] Indiana Univ. Transp. Research Ctr., On-site Air Bag Non-deployment Investigation Case No. IN06-033, Vehicle: 2005 Chevrolet Cobalt (Oct. 2006) (hereinafter the "2006 SCI Report").
[73] Letter from Christina Morgan, Chief, Early Warning Division, Office of Defects Investigation, to Gay P. Kent, Director, General Motors Corp. (May 7, 2007); Letter to Christina Morgan from Gay P. Kent, Director, Product Investigations (June 7, 2007) (GMHEC00198410-198414).
[74] GMHEC00197898.
[75] GM Internal Summary Points on Airbag Non-Deployment for Cobalt, G5 and Pursuit (Aug. 2013).
[76] GM Internal Summary Points on Airbag Non-Deployment for Cobalt, G5 and Pursuit (Aug. 2013).
[77] (Service Bulletin 05-02-35-007, "Information on Inadvertent Turning Off of Key Cylinder, Loss of Electrical System and No DTCs," (Oct. 2006 revised), at GMHEC000000002).

> There is potential for the driver to inadvertently turn off the ignition due to low ignition key cylinder torque/effort. The concern is more likely to occur if the driver is short and has a large and/or heavy key chain. In these cases, this condition was documented and the driver's knee would contact the key chain while the vehicle was turning and the steering column was adjusted all the way down. This is more likely to happen to a person who is short, as they will have the seat positioned closer to the steering column. In cases that fit this profile, question the customer thoroughly to determine if this may be the cause. The customer should be advised of this potential and should take steps to prevent it—such as removing unessential items from their key chain.[78]

185. Despite the TSB to dealers, millions of the defective vehicles remained on the road endangering the lives and livelihoods of the Class and the public.

L. Old GM Knew Of And Tracked Multiple Accidents Involving The Ignition Switch Defect By 2007 And Avoided Scrutiny By Misleading The Class, The Public, And Regulators.

186. Old GM knew that people were being killed and seriously injured because of the ignition switch defect in its vehicles and the resulting loss of power and airbag non-deployment.

187. In March 2007, Old GM met with NHTSA and discussed the July 29, 2005, fatal crash involving Amber Rose.[79] At this meeting, Old GM was told by NHTSA the airbags in the Cobalt did not deploy, causing the Ms. Rose's death, and that data retrieved from the crashed vehicle's diagnostic system indicated that the ignition was in the "accessory" position. This was no surprise to Old GM; it had been secretly tracking ignition switch related accidents since well before this time. By the end of 2007, Old GM identified ten (10) other accidents, including four (4) where the ignition switch had moved into the "accessory" position.[80]

[78] GMHEC000143093; GM Technical Service Bulletin, "Information on Inadvertent Turning Off of Key Cylinder, Loss of Electrical System and no DTCs," (Oct. 25, 2006), at GMHEC000138614.
[79] GM Feb. 24, 2014, Letter to NHTSA, GM February Chronology.
[80] GM Feb. 24, 2014, Letter to NHTSA, GM February chronology.

188. Thus, by the end of 2007, Old GM knew of at least 10 frontal collisions in which the airbag did not deploy.[81] Old GM actually knew of but kept secret many other similar fatal accidents involving the ignition switch defects.

189. For the next two years, Old GM continued to receive complaints and continued to investigate frontal crashes in which the airbags did not deploy in Defective Vehicles, but did not disclose the crucial safety information to the Class of unsuspecting drivers of Old GM vehicles.

190. In April 2007, having continued its investigation into the July 2005 Maryland Cobalt crash, NHTSA received a 2006 SCI report stating that the "crash is of special interest because the vehicle was equipped with … dual stage air bags that did not deploy."[82] The SCI Report concluded that the air bags did not deploy "as a result of the impact with the clump of trees, possibly due to the yielding nature of the tree impact or power loss due to the movement of the ignition switch just prior to impact."[83] The Electronic Data Recorder ("EDR") for the vehicle indicated that the ignition switch was in "Accessory" mode at the time of impact.[84] The SCI Report also found that the investigation demonstrated that contact with the ignition switch could result in "engine shutdown and loss of power."[85]

191. In August 2007, Old GM met with its airbag supplier, Continental, to review SDM data from a 2005 Chevrolet Cobalt crash where the airbags failed to deploy.[86]

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[81] Letter from M. Carmen Benavides, Dir., Prod. Investigations & Safety Regulations, GM, to Nancy Lewis, Assoc. Adm'r for Enforcements, NHTSA, Attach. B-573.6(c)(6) at 2 (February 24, 2014), *available at* http://democrats.energycommerce.house.gov/sites/default/files/ documents/Letter-Benavides-Lewis-2014-02-24.pdf (or "Benavides Letter").
[82] 2006 NTHSA SCI Report.
[83] 2006 NTHSA SCI Report at ii.
[84] 2006 NTHSA SCI Report at 7.
[85] 2006 NTHSA SCI Report at 7.
[86] Continental Automotive Sys. US, Inc., Field Event Analysis Report, GMHEC00003143-3153, GM Mar. 11, 2014 Letter to NHTSA, GM March chronology at 2.

192. The next month, in September of 2007, the Chief of the Defects Assessment Division ("DAD") within NHTSA's Office of Defects Investigation ("ODI") proposed an investigation of "frontal airbag non-deployment in the 2003-2006 Chevrolet Cobalt/Saturn Ion" vehicles.[87] The Chief of DAD within ODI noted that the "issue was prompted by a pattern of reported non-deployments in VOQ [Vehicle Owner Questionnaire] complaints that was first observed in early 2005."[88] The email stated that NHTSA had "discussed the matter with GM," but that Old GM had assured NHTSA that "they see no specific problem pattern."[89] NHTSA's Greg Magno stated:

> Notwithstanding GM's indications that they see no specific problem, DAD perceives a pattern of non-deployment in these vehicles that does not exist in their peers and that their circumstances are such that, in our engineering judgment, merited a deployment, and that such a deployment would have reduced injury levels or saved lives.[90]

193. In November 2007, NHTSA's ODI considered a proposal to investigate the non-deployment of airbags in 2003-2006 model/year Chevy Cobalt and Saturn Ion vehicles.[91] The review was prompted by twenty-nine (29) complaints, four (4) fatal crashes, and fourteen (14) field reports that NHTSA knew about.[92] Again, Old GM not only failed to act, it worked to thwart the agency's efforts, in furtherance of its fraud and concealment to the detriment of the Class.

194. As part of the cover-up, Old GM tried to avoid full regulatory investigation and disclosure by claiming that it was unaware of any problem in its vehicles. Furthermore, Old GM knew that the airbag system in the Defective Vehicles would be disabled when the

[87] E-mail from Chief of DAD, ODI, to NHTSA staff (Sept. 5, 2007), NHTSA-HEC-004491.
[88] E-mail from Chief of DAD, ODI, to NHTSA staff (Sept. 5, 2007), NHTSA-HEC-004491.
[89] E-mail from Chief of DAD, ODI, to NHTSA staff (Sept. 5, 2007), NHTSA-HEC-004491.
[90] E-mail from Chief of DAD, ODI, to NHTSA staff (Sept. 5, 2007), NHTSA-HEC-004491.
[91] DAD Panel (Nov. 17, 2007), at NHTSA-HECC-004462-4483.
[92] DAD Panel (Nov. 17, 2007), at NHTSA-HECC-004462-4483.

ignition switch to a vehicle moved from the "run" to the "accessory" position. The airbag system, in other words, was disabled when the vehicle lost power. Old GM knew, however, that NHTSA believed that in most, if not all, vehicles, the airbag systems were operable for several seconds following a power loss. Although Old GM knew that NHTSA was mistaken, it did not correct NHTSA's mistaken belief.

M. Old GM Instructed Its Personnel On Judgment Words To Be Avoided.

195. In a 2008 internal presentation at Old GM, it instructed its employees to avoid using the following judgment words:[93]

Always	detonate	maniacal
Annihilate	disemboweling	mutilating
Apocalyptic	enfeebling	Never
Asphyxiating	Evil	potentially-disfiguring
Bad	evicscerated [*sic*]	power [*sic*] keg
Band-Aid	explode	Problem
big time	Failed	Safety
brakes like an "X" car	Flawed	safety related
Cataclysmic	genocide	Serious
Catastrophic	Ghastly	spontaneous combustion
Challenger	grenadelike	startling
Chaotic	Grisly	suffocating
Cobain	gruesome	Suicidal
Condemns	Hindenburg	terrifying
Corvair-like	Hobbling	Titanic
Crippling	Horrific	tomblike
Critical	impaling	unstable
Dangerous	Inferno	widow-maker rolling sarcophagus (tomb or coffin)
Deathtrap	Kevorkianesque	Words or phrases with biblical connotation
Debilitating	lacerating	
Decapitating	life-threatening	
Defect	maiming	
Defective	mangling	

[93] NHTSA Consent Order at Exhibit B, 2008 Q1 Interior Technical Learning Symposium.

196. Instead of using their common sense judgment, Old GM employees were advised in Orwellian fashion to use specific words to avoid disclosure of the material safety risks, and in so doing furthered the cover-up and fraud through intentional word substitutions such as:

- "Issue, Condition [or] Matter" instead of "**Problem**"
- "Has Potential Safety Implications" instead of "**Safety**"
- "Does not perform to design" instead of "**Defect/Defective**"[94]

197. Old GM knew its defective vehicles were killing and maiming its customers, while instructing its employees to avoid the words "defect" or "safety." Instead of publicly admitting the dangerous safety defects in its vehicles, Old GM repeatedly blamed accidents on driver error.

198. From 2001 until July 10, 2009, Old GM was repeatedly put on notice of the defect internally and received reports of deaths and injuries in Chevy Cobalts and other GM vehicles involving airbag failures and/or steering, yet acted at every turn to fraudulently conceal the danger from the Class. Examples include, but are not limited to:

- 2005: 26 Cobalt Death and Injury Incidents, including 1 death citing "airbag" as the component involved.
- 2006: 69 Cobalt Death and Injury Incidents, including 2 deaths citing "airbag" as the component involved and 4 deaths listing the component involved as "unknown."
- 2007: 87 Cobalt Death and Injury Incidents, including 3 deaths citing "airbag" as the component involved.
- 2008: 106 Cobalt Death and Injury Incidents, including 1 death citing "airbag" as the component involved and 2 deaths listing the component involved as "unknown."[95]

[94] NHTSA Consent Order at Exhibit B (emphasis added).

N. By 2009, As Injuries And Deaths Continued To Mount, Old GM Opened Yet Another Internal Investigation, But Continued To Withhold Information From Its Customers And The Class About The Defects.

199. In February 2009, Old GM initiated yet another internal investigation of the ignition switch defect which resulted in a redesign of the ignition key for the 2010 model/year Cobalt.[96] However, Old GM took no remedial action in response to the investigation and continued to conceal the facts. Consequently, deaths, injuries, and incidents continued to occur related to the ignition switch defect. As one Old GM employee put it when the ignition defect was raised again internally at Old GM:

> "Gentleman! This issue has been around since man first lumbered out of sea and stood on two feet. In fact, I think Darwin wrote the first PRTS on this and included as an attachment as part of his Theory of Evolution."[97]

200. Some within Old GM were not mincing words. Yet Old GM chose to conceal the truth from the Class, and the death and injury toll mounted.

201. Again, in April 2009, a 2005 Chevy Cobalt was involved in a crash in Pennsylvania which resulted in the deaths of the driver and front passenger.[98] The crash was investigated by NHTSA.[99] The 2009 SCI Report noted that data from the Cobalt's SDM indicated that the ignition switch was in "accessory" mode at the time of the crash.[100] Still, Old GM refused to issue a recall or notify the Class of the danger.

Footnote continued from previous page

[95] NHTSA Cobalt Chronology prepared by the Center for Auto Safety, February 27, 2014.

[96] GM Feb. 24, 2014 Letter To NHSTA, GM Feb. chronology at 2; Valukas Report at 132-133; GM PRTS Complete Report (1078137)—GMNHTSA000018925.

[97] Memo, Joseph R. Manson, Feb. 18, 2009, GMHEC000282093.

[98] Calspan Corp. Crash Data Research Ctr., Calspan On-site Air Bag Non-deployment Investigation SCI Case No.: CA09022, Vehicle: 2005 Chevrolet Cobalt (Apr. 2009) (the "2009 SCI Report").

[99] Calspan Corp. Crash Data Research Ctr., Calspan On-site Air Bag Non-deployment Investigation SCI Case No.: CA09022, Vehicle: 2005 Chevrolet Cobalt (Apr. 2009) (the "2009 SCI Report").

[100] Calspan Corp. Crash Data Research Ctr., Calspan On-site Air Bag Non-deployment Investigation SCI Case No.: CA09022, Vehicle: 2005 Chevrolet Cobalt (Apr. 2009) (the "2009 SCI Report"). SDM Data Report, attached to 2009 SCI Report.

O. The Spreadsheet Of Accidents Involving The Cobalt Ignition Switch Within Old GM Continued To Grow, But Was Never Disclosed.

202. Beginning in 2007, Old GM Field Performance Assessment engineer, John Sprague, maintained a spreadsheet of accidents involving Cobalt non-airbag deployments, along with the vehicle power mode status. To gather the data for the spreadsheet, Sprague sent SDMs from crash vehicles to Continental (the SDM manufacturer) so that it could access information that Old GM could not.[101] After receiving the data from Continental, Sprague collected information regarding the Cobalt crashes and power mode status, added it to the spreadsheet, and discovered that, in fact, the power mode status was recorded as "off" or "accessory" in many accidents..[102]

203. Sprague continued to maintain his spreadsheet until July 10, 2009 (and beyond). In doing so, Sprague noticed a pattern—the problem of non-deployment of airbags did not appear as frequently in MY 2008 and later Cobalts. That led him to question whether there had been some change in the Cobalt from MY 2007 to MY 2008.[103]

204. Sprague brought his spreadsheet on the ignition switches and vehicles losing power while driving to a meeting with DeGiorgio in 2009 and the two of them reviewed it together.[104] Still no action was taken. Instead, there were more non-productive meetings.

205. In May 2009, Old GM again met with its SDM supplier, Continental, and asked for data in connection with another crash involving a 2006 Chevy Cobalt where the airbags failed to deploy.[105] In a report dated May 11, 2009, Continental analyzed the SDM data and concluded that the SDM ignition state changed from "run" to "off" during the

[101] Valukas Report at 134.
[102] J&B Interview of John Sprague, May 27, 2014. Valukas Report at 135, n. 596.
[103] Valukas Report at 137.
[104] Valukas Report at 138, n. 616.
[105] Continental Automotive Sys. US, Inc., Field Event Analysis Report GMHEC00003129-3142.

accident. According to Continental, this, in turn, disabled the airbags. Old GM did not disclose this finding to NHTSA, despite its knowledge that NHTSA was interested in non-deployment incidents in Chevrolet Cobalt vehicles. Yet again, in the face of mounting death tolls, Old GM did not correct the ignition switch defect, take the vehicles off the road, or warn its consumers or the Class. Sprague's secret spreadsheet of accidents simply grew.

206. The next month, in June 2009, Old GM filed a Chapter 11 petition. The bankruptcy sale to New GM became effective on July 10, 2009.

207. At that point, New GM assumed Old GM's obligation to report any known, dangerous defects in GM vehicles, including the Defective Vehicles.

III. Meet The New GM, Same As The Old GM: With Knowledge of the Defects, New GM "Investigates" Further-And Continues To Conceal The Defects.

208. In 2009, Old GM declared bankruptcy, and, weeks later, it emerged from bankruptcy as New GM. Both before and after GM's bankruptcy, the ignition switches in the Defective Vehicles continued to fail and GM, in both its incarnations, continued to conceal the truth.

209. On March 10, 2010, many months after the birth of New GM, Brooke Melton was driving her 2005 Cobalt on a two-lane highway in Paulding County, Georgia. While she was driving, her key turned from the "run" to the "accessory/off" position causing her engine to shut off. After her engine shut off, she lost control of her Cobalt, which traveled into an oncoming traffic lane, where it collided with an oncoming car. Brooke was killed in the crash.

210. On March 22, 2011, Ryan Jahr, a GM engineer, downloaded the SDM from Brooke's Cobalt. The information from the SDM download showed that the key in Brooke's Cobalt turned from the "run" to the "accessory/off" position 3-4 seconds before the crash. On June 24, 2011, Brooke Melton's parents, Ken and Beth Melton, filed a lawsuit against GM.

211. On December 31, 2010, in Rutherford County Tennessee, a 2006 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. New GM received notice of this incident, opened a file, and referred to it as the "Chansuthus" incident.

212. On December 31, 2010, in Harlingen, Texas, another 2006 Cobalt traveled off the road and struck a curb. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. New GM received notice of this incident, opened a file, and referred to it as the "Najera" incident.

213. These incidents are not limited to vehicles of model year 2007 and before. According to New GM's own investigation, there have been over 250 crashes involving 2008-2010 Chevrolet Cobalts in which the airbags failed to deploy.

214. In 2010, New GM began a formal investigation of the frontal airbag non-deployment incidents in Chevrolet Cobalts and Pontiac G5s. New GM subsequently elevated the investigation to a Field Performance Evaluation ("FPE").

215. In August 2011, New GM assigned Engineering Group Manager, Brian Stouffer as the Field Performance Assessment Engineer ("FPAE") to assist with the FPE investigation.

216. On December 18, 2011, in Parksville, South Carolina, a 2007 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. GM received notice of this incident, opened a file, and referred to it as the "Sullivan" incident.

217. In spring 2012, Stouffer asked Jim Federico, a high level executive and chief engineer at Old and New GM who recently retired, to oversee the FPE investigation. Federico was the "executive champion" for the investigation to help coordinate resources for the FPE investigation.

218. In May 2012, New GM engineers tested the torque on the ignition switches for 2005-2009 Cobalt, 2007, 2009 Pontiac G5, 2006-2009 HHR, and 2003-2007 Ion vehicles in a junkyard. The results of these tests showed that the torque required to turn the ignition switches in most of these vehicles from the "run" to the "accessory/off" position did not meet Old GM's minimum torque specification requirements, including the 2008-2009 vehicles. These results were reported to Stouffer and other members of the FPE.

219. Indeed, airbag non-deployment incidents are not limited to vehicles of model year 2007 and before. According to New GM's own investigation, there have been over 250 crashes involving 2008-2010 Chevrolet Cobalts in which the airbags failed to deploy.

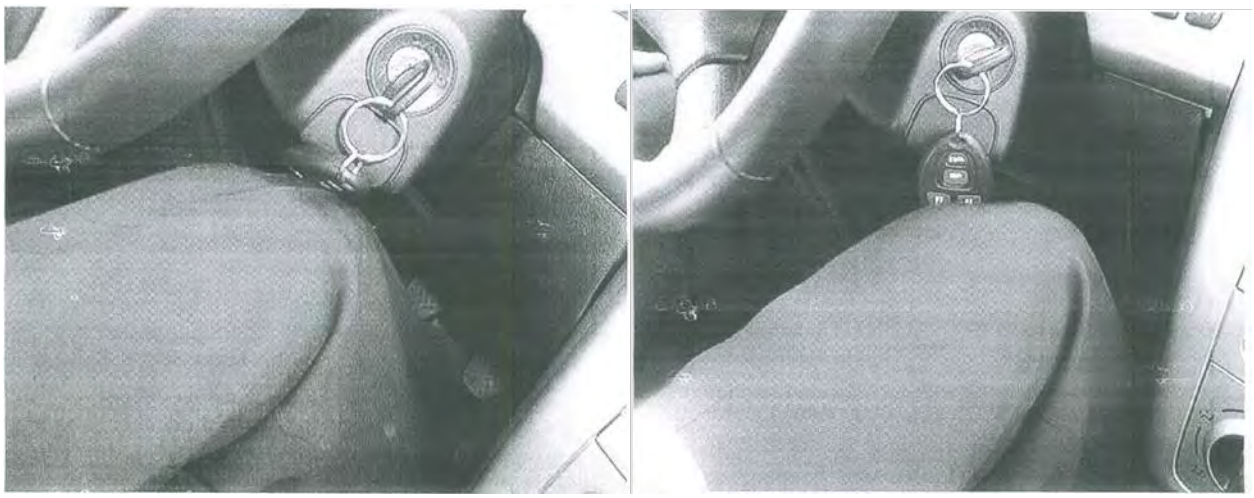
220. In September 2012, Stouffer requested assistance from a "Red X Team" as part of the FPE investigation. The Red X Team was a group of engineers within GM assigned to find the root cause of the airbag non-deployments in frontal accidents involving Chevrolet Cobalts and Pontiac G5s. By that time, however, it was clear that the root cause of the airbag non-deployments in a majority of the frontal accidents was the defective ignition switch system. The Red X Team became involved in the investigation shortly after Mr. Stouffer's request.

221. During the field-performance-evaluation process, New GM determined that, although increasing the detent in the ignition switch would reduce the chance that the key

would inadvertently move from the "run" to the "accessory/off" position, it would not be a total solution to the problem.

222. Indeed, the New GM engineers identified several additional ways to actually fix the problem. These ideas included adding a shroud to prevent a driver's knee from contacting the key, modifying the key and lock cylinder to orient the key in an upward facing orientation when in the run position, and adding a push button to the lock cylinder to prevent it from slipping out of run. New GM rejected each of these ideas.

223. The photographs below are of a New GM engineer in the driver's seat of a Cobalt during the investigation of Cobalt engine stalling incidents:



224. These photographs show the dangerous condition of the position of the key in the lock module on the steering column, as well as the key with the slot, which allow the key fob to hang too low off of the steering column. New GM engineers understood that the key fob may be impacted and pinched between the driver's knee and the steering column which causes the key to be inadvertently turned from the run to accessory/off position. The photographs show why the New GM engineers understood that increasing the detent in the ignition switch would not be a total solution to the problem. It also shows why GM engineers

believe that the additional changes to the ignition switch system (such as the shroud) were necessary to fix the defects.

225. The New GM engineers clearly understood that increasing the detent in the ignition switch alone was not a solution to the ignition switch problem but New GM concealed—and continues to conceal—from the public, the nature and extent of the defects.

226. By 2012, Federico, Stouffer, and the remaining members of the Red X Team knew that the Key System in the Ion, the Cobalt, and the G5 vehicles had safety-related defects that would cause the key to move from the "run" to the "accessory/off" position while driving these vehicles. They also knew that when this happened the airbags would no longer work in frontal crashes.

227. On October 4, 2012, there was a meeting of the Red X Team during which Federico gave an update of the Cobalt airbag non-deploy investigation. According to an email from Stouffer on the same date, the "primary discussion was on what it would take to keep the SDM active if the ignition key was turned to the accessory mode." Despite this recognition by New GM engineers that the SDM should remain active if the key is turned to the accessory/off mode, New GM has done nothing to remedy this safety defect and has fraudulently concealed, and continue to fraudulently conceal it, from the public.

228. During the October 4, 2012 meeting, Stouffer, and the other members of the Red X Team also discussed "revising the ignition switch to increase the effort to turn the key from Run to Accessory."

229. On October 4, 2012, at 9:07 p.m., Stouffer emailed DeGiorgio and asked him to "develop a high level proposal on what it would take to create a new switch for service with higher efforts."

230. On October 5, 2012, at 7:39 a.m., DeGiorgio responded:

Brian,

In order to provide you with a HIGH level proposal, I need to understand what my requirements are. what is the TORQUE value that you desire?

Without this information I cannot develop a proposal.

231. At 9:05 a.m. on that same day, Stouffer in responding to DeGiorgio's email, stated:

Ray,

As I said in my original statement, I currently don't know what the torque value needs to be. Significant work is required to determine the torque. What is requested is a high level understanding of what it would take to create a new switch.

232. DeGiorgio responded back to Stouffer at 9:33 a.m. that same morning:

Brian,

Not knowing what my requirements are I will take a SWAG at the Torque required for a new switch. Here is my high level proposal:

Assumption is 100 N cm Torque.

- New switch design = Engineering Cost Estimate approx. $300,000
- Lead Time = 18-24 months from issuance of GM Purchase Order and supplier selection.

Let me know if you have any additional questions.

233. Stouffer admitted during his deposition that DeGiorgio's reference to SWAG was an acronym for Silly Wild-Ass Guess.

234. DeGiorgio's cavalier attitude exemplifies the decade-long approach to the safety-related defects that existed in the ignition switch systems in Defective Vehicles. Rather than seriously addressing the safety defects, DeGiorgio's emails show he understood the ignition switches were contributing to the crashes and fatalities and he could not care less.

235. It is also obvious from this email exchange that Stouffer, who was a leader of the Red X Team, had no problem with DeGiorgio's cavalier and condescending response to the request that he evaluate the redesign of the ignition switches.

236. Federico, Stouffer, and the other members of the Red X Team also understood that these safety-related defects had caused or contributed to numerous accidents and multiple fatalities. Despite this knowledge, New GM chose to conceal this information from the public, including the Class.

237. In December 2012, in Pensacola, Florida, Ebram Handy, a New GM engineer, participated in an inspection of components from Brooke Melton's Cobalt, including the ignition switch. At that inspection, Handy, along with Mark Hood, a mechanical engineer retained by the Meltons, conducted testing on the ignition switch from Brooke Melton's vehicle, as well as a replacement ignition switch for the 2005 Cobalt.

238. At that inspection, Handy observed that the results of the testing showed that the torque performance on the ignition switch from Brooke Melton's Cobalt was well below Old GM's minimum torque performance specifications. Handy also observed that the torque performance on the replacement ignition switch was higher than the torque performance on the ignition switch in Brooke Melton's Cobalt.

239. In January 2013, Handy, in preparation for his Rule 30(b)(6) deposition in the Melton case, spoke with several people who were engineers at both Old and New GM,

including DeGiorgio and Stouffer. At that time, Handy knew that, based on the testing he had observed, the original ignition switch in the 2005 Cobalt failed to meet Old GM's minimum torque performance specifications and that Old GM had redesigned the ignition switches that were being sold as replacement switches. Both Old and N that an ignition switch that did not meet its minimum torque performance requirements was a safety defect.

240. Old and New GM engineers integrally involved with this situation have admitted that Old GM never should have sold the Defective Vehicles with ignition switches that did not meet the Company's minimum torque performance requirements.

241. In 2013, Ray DeGiorgio, the chief design engineer for the ignition switches in millions of the Defective Vehicles was deposed. At his deposition, DeGiorgio was shown photographs of the differences between the ignition switch in Brooke Melton's Cobalt and the ignition switch in the 2008 Cobalt or replacement ignition switch. After looking at the photographs of the different ignition switches, DeGiorgio testified as follows:

Q. The one on the right, Exhibit 13 is an '05 or an '06, and the one on the left, Exhibit 14, is either an '08 or replacement. Do you see the difference?

A. Yes.

Q. Have you noticed that before today, Mr. DeGiorgio?

A. No sir.

Q. Were you aware of this before today, Mr. DeGiorgio?

MR. HOLLADAY: Object to the form. You can answer.

THE WITNESS: No sir.

Q. It appears to be pretty clear that the plunger and the cap is taller on Exhibit 14 compared to Exhibit 13, isn't it?

A. That's correct.

Q. How is a taller cap going to affect the rotational resistance?

A. It's hard to determine from these pictures exactly if it is a taller cap or is it recessed inside the housing or not. It's hard for me to assess, really, what I'm looking at.

Q. You've taken apart a number of switches and you're telling the jury you've never noticed the difference in the plunger between the '05 and '06 versus the new resistor or switch?

MR. HOLLADAY: Object to the form.

THE WITNESS: I did not notice, no.

(DeGiorgio Deposition, pp. 149-150.)

242. DeGiorgio was then further questioned about his knowledge of any differences in the ignition switches:

Q. And I'll ask the same question. You were not aware before today that GM had changed the spring—the spring on the ignition switch had been changed from '05 to the replacement switch?

MR. HOLLADAY: Object to the form. Lack of predicate and foundation. You can answer.

THE WITNESS: I was not aware of a detent plunger switch change. We certainly did not approve a detent plunger design change.

Q. Well, suppliers aren't supposed to make changes such as this without GM's approval, correct?

A. That is correct.

Q. And you are saying that no one at GM, as far as you know, was aware of this before today?

MR. HOLLADAY: Object. Lack of predicate and foundation. You can answer.

THE WITNESS: I am not aware about this change.

(DeGiorgio Deposition, pp. 151-152.)

243. DeGiorgio clearly testified that he had absolutely no knowledge of any change in the ignition switch in 2005-2010 Cobalts.

244. DeGiorgio also provided the following testimony about the ignition switch supplier, Delphi:

Q. And there weren't any changes made—or were there changes made to the switch between '05 and 2010 that would have affected the torque values to move the key from the various positions in the cylinder?

A. There was one change made to the resistor in '08, but that should not have affected the torque or the displacement of the switch.

I can restate this way: There was an electrical change made in '08, but not a mechanical change—at least there were no official changes, mechanical changes, made to the switch that I know of.

Q. When you say no official, could there be unofficial changes made?

A. I'm not saying that there was, I'm just saying if there was something changed at the supplier side, we were not aware of it and we did not approve it, okay?

(DeGiorgio Deposition, pp. 57-58.)

Q. Did you ask Mary Fitz or anyone from Delphi whether there, in fact, had been any changes made to the ignition switch?

A. Yes, yes I did. And they came back, said there's been no changes made to the switch since the introduction to production.

Q. Who told you that?

A. Mary Fitz.

Q. Where is she located?

A. She's located in, I want to say, Delphi headquarters here in Michigan.

(DeGiorgio Deposition, pp. 117-118.)

245. DeGiorgio clearly testified that he had spoken with Delphi employees and that they confirmed there were no changes made to the ignition switch in 2005-2010 Cobalts.

246. DeGiorgio signed his errata sheet on May 23, 2013. In the signed errata sheet, DeGiorgio did not change any testimony referenced in this Complaint.

247. On June 12, 2013, Gary Altman, the Cobalt program engineering manager, testified as follows during his deposition in Melton v. GM:

Q. And the vehicle never should have been sold if it didn't meet GM's minimum torque specific—performance requirements, should it?

MR. FRANKLIN: Object to form.

THE WITNESS: That's correct.

Q. And the reason is because that could be dangerous under certain situations, because the key can move from run to accessory?

MR. FRANKLIN: Object to form.

THE WITNESS: Yes.

(Gary Altman Dep., pp. 23-24)

248. Altman's admission simply demonstrates that N that the Defective Vehicles were dangerous but chose to do nothing about it.

IV. New GM Issues A Recall—Ten Years Too Late.

249. On February 7, 2014, New GM informed NHTSA that it was conducting Recall No. 14V-047 for certain 2005-2007 model year Chevrolet Cobalts and 2007 model year Pontiac G5 vehicles.

250. In its February 7, 2014, letter to NHTSA, New GM represented that as replacement ignition switches became available, New GM would replace the ignition switches on the Defective Vehicles with ignition switches with greater torque to prevent the unintended movement from the "run" to "accessory" position..

251. On February 19, 2014, a request for timeliness query was sent to NHTSA in connection with Recall No. 14V-047 ("timeliness query"). The timeliness query pointed out that New GM had failed to recall all of the vehicles with the defective ignition switches.

252. The February 19, 2014 timeliness query also asked NHTSA to investigate New GM's failure to fulfill its legal obligation to report the safety defects in the Defective Vehicles to NHTSA within five days of discovering the defect.

253. On February 24, 2014, New GM sent a letter informing NHTSA it was expanding the recall to include 2006-2007 model year (MY) Chevrolet HHR and Pontiac Solstice, 2003-2007 MY Saturn Ion, and 2007 MY Saturn Sky vehicles.

254. New GM included an Attachment to the February 24, 2014, letter. In the Attachment New GM, *for the first time,* admitted that Old GM had authorized a change in the ignition switch in 2006. Specifically, New GM stated:

> On April 26, 2006, the GM design engineer responsible for the Cobalt's ignition switch signed a document approving changes to the ignition switch proposed by the supplier, Delphi Mechatronics.

> The approved changes included, among other things, the use of a new detent plunger and spring that increased torque force in the ignition switch. This change to the ignition switch was not reflected in a corresponding change in the part number for the ignition switch. GM believes that the supplier began providing the re-designed ignition switch to GM at some point during the 2007 model year.

255. New GM then produced documents in response to Congressional requests leading up to hearings on April 1 and 2, 2014. Among the documents produced by New GM is a document titled, "GENERAL MOTORS COMMODITY VALIDATION SIGN-OFF," dated April 26, 2006. According to this document, Delphi had met all of the sign-off requirements in order to provide a new ignition switch for certain Old GM vehicles. New GM has acknowledged that the ignition switch in the Cobalt was included in this design change.

256. The design change included a new detent plunger "to increase torque force in the switch." DeGiorgio's signature is on this page as the Old GM authorized engineer who signed off on this change to the ignition switch.

257. This Commodity Validation Sign-Off shows that DeGiorgio repeatedly perjured himself during his deposition on April 29, 2013. DeGiorgio perjured himself in order to fraudulently conceal evidence from the Meltons that Old GM had signed off on the change in the ignition switch so that the Meltons, and ultimately a jury, would never know that Old GM had changed the switches in 2007 and later model year Cobalts and concealed these changes from Brooke Melton.

258. DeGiorgio perjured himself when he signed the errata sheet confirming that all the testimony was true and accurate.

259. On March 17, 2014, Mary T. Barra, General Motors' chief executive issued an internal video, which was broadcast to employees.[106] In the video, Ms. Barra admits:

> Scrutiny of the recall has expanded beyond the review by the federal regulators at NHTSA, the National Highway Traffic Safety Administration. As of now, two congressional committees have announced that they will examine the issue. And it's been reported that the Department of Justice is looking into this matter.… *These are serious developments that shouldn't surprise anyone*. After all, *something went wrong with our process in this instance and terrible things happened.*… The bottom line is, *we will be better because of this tragic situation*, if we seize the opportunity.… I ask everyone to stay focused on making today's GM the best it can be.

260. On March 28, 2014, New GM again expanded the first ignition switch recall to cover all model years of the Chevrolet Cobalt and HHR, the Pontiac G5 and Solstice and the Saturn Ion and Sky in the United States. This third expansion of the ignition switch recall covered an additional 824,000 vehicles in the U.S., bringing the number of recalled vehicles to 2,191,146.

V. New GM's Recall Fails to Correct the Defect.

261. Not only was New GM's recall ten years too late, it is completely insufficient to correct the safety-related defects in the Defective Vehicles.

262. The supposed fix implemented by New GM as part of the recall—replacing the ignition switch—is insufficient and does not adequately address the safety risks posed by the defect. The ignition key and switch remains prone to inadvertently move from "run" to "accessory." Replacing the ignition switch does not address the problem posed by the low position of the ignition on the steering cylinder. Even with New GM's alleged "fix," drivers of ordinary height can hit the ignition key with their knees during ordinary driving situations.

[106] *See* http://media.gm.com/media/us/en/gm/news.detail.html./content/ Pages/news/us/en/2014/mar/0317-video.html. (last visited March 21, 2014) (emphasis added).

Such an impact may cause the ignition to move from the "run" to the "accessory" or "off" position while the vehicle is in operation, causing the vehicle to stall, the power brakes and power steeling to fail, and the airbags not to deploy in a collision.

263. Since at least the November 2004 PRTS inquiry, first Old and then New GM has known that simply replacing the ignition switches on the Defective Vehicles is not a solution to the potential for the key to inadvertently turn from the "run" to the "accessory/off" position in these vehicles.

264. New GM's recall fails to address the design defect that causes the key fob/chain to hang too low on the steering column.

265. Thus, even when the ignition switches are replaced, this defective condition will still exist in the Defective Vehicles and there continues to be the potential for a driver to contact the key chain and inadvertently turn the key from the "run" to the "accessory/off" position.

266. The recall is additionally insufficient because New GM is not replacing all of the keys in the Defective Vehicles with the redesigned key with a hole instead of a slot. Yet New GM's engineers have determined that the redesigned key would reduce the chance that the key could be inadvertently turned from the "run" to the "accessory/off" position.

267. The recall also fails to address the design defects in the Defective Vehicles which disables the airbag immediately upon the engine shutting off.

268. Although New GM began installing DeGiorgio's redesigned ignition switch in MY 2008 Defective Vehicles, later model year Defective Vehicles continue to experience non-deployment collision events. Undermining New GM's position is its own investigation

into the non-deployment events in Cobalts that identifies over 250 non-deploy crashes involving 2008-2010 Cobalts.

269. New GM's engineers understood that increasing the detent in the ignition switch alone was not a solution to the problem, but New GM concealed—and continues to conceal from the public, including the Class, the nature and extent of the defects, which the current recall will not cure.

VI. New GM Expands the February/March Recall—and Suspends Two Engineers.

270. On Wednesday, April 9, 2014, New GM issued a new recall of all the vehicles covered by the February/March ignition switch recall.

271. New GM's stated purpose for the new recall is to replace "lock cylinder" into which the key is inserted, because the current lock cylinders allow the key to be pulled out while the car is still running.

272. According to New GM, the defective lock cylinder could lead to "a possible roll-away, crash and occupant or pedestrian injuries."

273. The next day, April 10, 2014, New GM announced that it was suspending Ray DeGiorgio, the lead design engineer for the Cobalt and Ion ignition switch, and Gary Altman, GM's program-engineering manager for the Cobalt, for their respective roles in GM's safety failure. (The two have since been terminated in the wake of the Valukas Report.)

274. The April 10 announcement came after Ms. Barra, New GM's chief executive, was briefed on the results of former United States Attorney Anton R. Valukas internal investigation of the company, which was conducted in response to growing concerns regarding the safety of the Defective Vehicles.

275. Additionally, New GM also announced a new program entitled "Speak Up for Safety," which is intended to encourage New GM employees to report potential customer

safety issues. According to Ms. Barra, this program is being adopted because New "GM must embrace a culture where safety and quality come first." Unfortunately, these actions are too little, too late.

VII. The June 2014 Recall For The "Ignition Key Slot" Defect Further Reveals New GM's Fraudulent Concealment of Known Serious Safety Problems.

276. New GM sent further shockwaves through the automotive world when it announced, on June 23, 2014, that it was recalling 3,141,731 vehicles in the United States for ignition switch, or so-called "ignition key slot" defects (NHTSA Recall Number 14V- 355).

277. According to information on NHTSA's website, 2,349,095 of the vehicles subject to this recall were made by Old GM. 792,636 vehicles were made and/or sold by New GM.

278. The following Old GM vehicles were included in the June 23, 2014 recall: 2005-2009 Buick Lacrosse, 2006-2009 Chevrolet Impala, 2000-2005 Cadillac Deville, 2004-2009 Cadillac DTS, 2006-2011 Buick Lucerne, 2004-2005 Buick Regal LS and RS, and 2006-20009 Chevrolet Monte Carlo.

279. The recall notice states, "In the affected vehicles, the weight on the key ring and/or road conditions or some other jarring event may cause the ignition switch to move out of the run position, turning off the engine."

280. Further, "[i]f the key is not in the run position, the air bags may not deploy if the vehicle is involved in a crash, increasing the risk of injury. Additionally, a key knocked out of the run position could cause loss of engine power, power steering, and power braking, increasing the risk of a vehicle crash."

281. The vehicles included in this recall were built on the same platform and their defective ignition switches are likely due to weak detent plungers, just like the other Defective Vehicles recalled in February and March of 2014.

282. Old GM was long-aware of the ignition switch defect in these vehicles, and New GM was aware of the ignition switch defect in these vehicles from the date of its inception on July 11, 2009, as it acquired on that date all of the knowledge possessed by Old GM given the continuity in personnel, databases and operations from Old GM to New GM. In addition, New GM acquired additional information thereafter. The information, all of which was known to New GM, included the following facts:

i. In January of 2003, Old GM opened an internal investigation after it received complaints from a Michigan GM dealership that a customer had experienced a power failure while operating his model year 2003 Pontiac Grand Am.

ii. During the investigation, Old GM's Brand Quality Manager for the Grand Am visited the dealership and requested that the affected customer demonstrate the problem. The customer was able to recreate the shutdown event by driving over a speed bump at approximately 30-35 mph.

iii. The customer's key ring was allegedly quite heavy. It contained approximately 50 keys and a set of brass knuckles.

iv. In May 2003, Old GM issued a voicemail to dealerships describing the defective ignition condition experienced by the customer in the Grand Am. Old GM identified the relevant population of affected vehicles as the 1999-2003 Chevrolet Malibu, Oldsmobile Alero, and Pontiac Grand Am.

v. Old GM did not recall these vehicles. Nor did it provide owners and/or lessees with notice of the defective condition. Instead, its voicemail directed dealerships to pay attention to the key size and mass of the customer's key ring.

vi. On July 24, 2003, Old GM issued an engineering work order to increase the detent plunger force on the ignition switch for the 1999-2003 Chevrolet Malibu, Oldsmobile Alero, and Pontiac Grand Am vehicles. Old GM engineers allegedly increased the detent plunger force and changed the part number of the ignition switch. The new parts were installed beginning in the model year 2004 Malibu, Alero, and Grand Am vehicles.

vii. Old GM issued a separate engineering work order in March 2004 to increase the detent plunger force on the ignition switch in the Pontiac Grand Prix. Old GM engineers did not change the part number for the new Pontiac Grand Prix ignition switch.

viii. Then-Old GM design engineer Ray DeGiorgio signed the work order in March 2004 authorizing the part change for the Grand Prix ignition switch. DeGiorgio maintained his position as design engineer with New GM.

ix. On or around August 25, 2005, Laura Andres, an Old GM design engineer (who remains employed with New GM), sent an email describing ignition switch issues that she experienced while operating a 2006 Chevrolet Impala on the highway. Ms. Andres' email stated, "While driving home from work on my usual route, I was driving about 45 mph, where the road changes from paved to gravel & then back to paved, some of the gravel had worn away, and the pavement acted as a speed bump when I went over it. The car shut off. I took the car in for repairs. The technician thinks it might be the ignition detent, because in a road test in the parking lot it also shut off."

x. Old GM employee Larry S. Dickinson, Jr. forwarded Ms. Andres' email on August 25, 2005 to four Old GM employees. Mr. Dickinson asked, "Is this a condition we would expect to occur under some impacts?"

xi. On August 29, 2005, Old GM employee Jim Zito forwarded the messages to Ray DeGiorgio and asked, "Do we have any history with the ignition switch and far as it being sensitive to road bumps?"

xii. Mr. DeGiorgio responded the same day, stating, "To date there has never been any issues with the detents being too light."

xiii. On August 30, 2005, Ms. Andres sent an email to Old GM employee Jim Zito and copied ten other Old GM employees, including Ray DeGiorgio. Ms. Andres, in her email, stated, "I picked up the vehicle from repair. No repairs were done. . . . The technician said there is nothing they can do to repair it. He said it is just the design of the switch. He said other switches, like on the trucks, have a stronger detent and don't experience this."

xiv. Ms. Andres' email continued: "I think this is a serious safety problem, especially if this switch is on multiple programs. I'm thinking big recall. I was driving 45 mph when I hit the pothole and the car shut off and I had a car driving behind me that swerved around me. I don't like to imagine a customer driving with their kids in the back seat, on I-75 and hitting a pothole, in rush-hour traffic. I think you should seriously consider changing this part to a switch with a stronger detent."

xv. Ray DeGiorgio, who reportedly designed the ignition switches installed in the 2006 Chevrolet Impala vehicles, replied to Ms. Andres' email, stating that he had recently driven a 2006 Impala and "did not experience this condition."

283. On or after July 11, 2009, senior executives and engineers at N that some of the information relayed to allay Ms. Andres' concerns was inaccurate. For example, Ray DeGiorgio knew that there had been "issues with detents being too light." Instead of relaying those "issues," Mr. DeGiorgio falsely stated that there were no such "issues."

284. New GM has tried to characterize the recall of these 3.14 million vehicles as being different than the recall for the ignition switch defect in the Cobalts and other Defective Ignition Switch Vehicles when in reality and for all practical purposes it is for exactly the same defect that creates exactly the same safety risks. New GM has attempted to label and describe the ignition key slot defect as being different in order to provide it with cover and an explanation for why it did not recall these 3.14 million vehicles much earlier, and why it is not providing a new ignition switch and other remedies for the 3.14 million vehicles.

285. From 2001 to the present, Old GM and New GM received numerous reports from consumers regarding complaints, crashes, injuries and deaths linked to this safety defect. The following are examples of just a few of the many reports and complaints regarding the defect:

286. For example, on January 23, 2001, Old GM became aware of a complaint filed with NHTSA involving a 2000 Cadillac Deville and an incident that occurred on January 23, 2001, in which the following was reported:

> "COMPLETE ELECTRICAL SYSTEM AND ENGINE SHUTDOWN WHILE DRIVING. HAPPENED THREE DIFFERENT TIMES TO DATE. DEALER IS UNABLE TO DETERMINE CAUSE OF FAILURE. THIS CONDITION DEEMED TO BE EXTREMELY HAZARDOUS BY OWNER."
> NHTSA ID Number: 739850

287. On June 12, 2001, Old GM became aware of a complaint filed with NHTSA involving a 2000 Cadillac Deville and an incident that occurred on June 12, 2001, in which the following was reported:

> "INTEERMITTENTLY AT 60MPH VEHICLE WILL STALL OUT AND DIE. MOST TIMES VEHICLE WILL START UP IMMEDIATELY AFTER. DEALER HAS REPLACED MAIN CONSOLE 3 TIMES, AND ABS BRAKES. BUT, PROBLEM HAS NOT BEEN CORRECTED. MANUFACTURER HAS BEEN NOTIFIED.*AK" NHTSA ID Number: 890227

288. On January 27, 2003, Old GM became aware of a complaint filed with NHTSA involving a 2001 Cadillac Deville and an incident that occurred on January 27, 2003, in which the following was reported:

> "WHILE DRIVING AT HIGHWAY SPEED ENGINE SHUTDOWN, CAUSING AN ACCIDENT. PLEASE PROVIDE ANY ADDITIONAL INFORMATION.*AK" NHTSA ID Number: 10004759

289. On September 18, 2007, Old GM became aware of a complaint filed with NHTSA involving a 2006 Chevrolet Impala and an incident that occurred on September 15, 2006, in which it was reported that:

> "TL*THE CONTACTS SON OWNS A 2006 CHEVROLET IMPALA. WHILE DRIVING APPROXIMATELY 33 MPH AT NIGHT, THE CONTACTS SON CRASHED INTO A STALLED VEHICLE. HE STRUCK THE VEHICLE ON THE DRIVER SIDE DOOR AND NEITHER THE DRIVER NOR THE PASSENGER SIDE AIR BAGS DEPLOYED. THE DRIVER SUSTAINED MINOR INJURIES TO HIS WRIST. THE VEHICLE SUSTAINED MAJOR FRONT END DAMAGE. THE DEALER WAS NOTIFIED AND STATED THAT THE CRASH HAD TO HAVE BEEN A DIRECT HIT ON THE SENSOR. THE CURRENT AND FAILURE MILEAGES WERE 21,600. THE CONSUMER STATED THE AIR BAGS DID NOT DEPLOY. THE CONSUMER PROVIDED PHOTOS OF THE VEHICLE. UPDATED 10/10/07 *TR" NHTSA ID Number: 10203350

290. On April 02, 2009, GM became aware of a complaint filed with NHTSA involving a 2005 Buick LaCrosse and an incident that occurred on April 02, 2009, in which the following was reported:

> "POWER STEERING WENT OUT COMPLETELY, NO WARNING JUST OUT. HAD A VERY HARD TIME STEERING CAR. LUCKY KNOW ONE WAS HURT. *TR" NHTSA ID Number: 10263976

291. The reports regarding the defect continued to be reported to New GM. For example, on February 15, 2010, New GM became aware of a complaint filed with NHTSA involving a 2008 Buick LaCrosse and an incident that occurred on February 13, 2010, in which a driver reported:

> "WHILE DRIVING AT 55MPH I RAN OVER A ROAD BUMP AND MY 2008 BUICK LACROSSE SUPER SHUT OFF(STALLED). I COASTED TO THE BURM, HIT BRAKES TO A STOP. THE CAR STARTED ON THE FIRST TRY. CONTINUED MY TRIP WITH NO INCIDENCES. TOOK TO DEALER AND NO CODES SHOWED IN THEIR COMPUTER. CALLED GM CUSTOMER ASSISTANCE AND THEY GAVE ME A CASE NUMBER. NO BULLETINS. SCARY TO DRIVE. TRAFFIC WAS LIGHT THIS TIME BUT MAY NOT BE THE NEXT TIME. *TR." NHTSA ID Number: 10310692

292. On April 21, 2010, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick Lucerne and an incident that occurred on March 22, 2010, in which the following was reported:

> "06 BUICK LUCERNE PURCHASED 12-3-09, DIES OUT COMPLETELY WHILE DRIVING AT VARIOUS SPEEDS. THE CAR HAS SHUT OFF ON THE HIGHWAY 3 TIMES WITH A CHILD IN THE CAR. IT HAS OCCURRED A TOTAL OF 7 TIMES BETWEEN1-08-10 AND 4-17-10. THE CAR IS UNDER FACTORY WARRANTY AND HAS BEEN SERVICED 7 TIMES BY 3 DIFFERENT BUICK DEALERSHIPS. *TR" NHTSA ID Number: 10326754

293. On April 29, 2010, New GM became aware of a complaint filed with NHTSA involving a 2005 Buick LaCrosse and an incident that occurred on March 21, 2010, in which it was reported that:

> "TRAVELING ON INTERSTATE 57 DURING DAYTIME HOURS. WHILE CRUISING AT 73 MILES PER HOUR IN THE RIGHT HAND LANE, THE VEHICLE SPUTTERED AND LOST ALL POWER. I COASTED TO A STOP OFF THE SIDE OF THE ROAD. I RESTARTED THE VEHICLE AND EVERYTHING SEEMED OK, SO I CONTINUED ON. A LITTLE LATER IT SPUTTERED AGAIN AND STARTED LOSING POWER. THE POWER CAME BACK BEFORE IT CAME TO A COMPLETE STOP. I CALLED ON STAR FOR A DIAGNOSTIC CHECK AND THEY TOLD ME I HAD A FUEL SYSTEM PROBLEM AND THAT IF THE CAR WOULD RUN TO CONTINUE THAT IT WAS NOT A SAFETY ISSUE. THEY TOLD ME TO TAKE IT TO A DEALER FOR REPAIRS WHEN I GOT HOME. I TOOK THE CAR WORDEN-MARTEN SERVICE CENTER FOR REPAIRS ON MARCH 23RD. TO REPAIR THE CAR THEY: 1.REPLACED CAT CONVERTER AND OXYGEN SENSOR 125CGMPP- $750.47 A SECOND INCIDENT OCCURRED WHILE TRAVELING ON INTERSTATE 57 DURING DAYTIME HOURS. I WAS PASSING A SEMI TRACTOR TRAILER WITH THREE CARS FOLLOWING ME WHILE CRUISING AT 73 MILES PER HOUR WHEN THE VEHICLE SPUTTERED AND LOST ALL POWER PUTTING ME IN A VERY DANGEROUS SITUATION. THE VEHICLE COASTED DOWN TO ABOUT 60 MILES PER HOUR BEFORE IT KICKED BACK IN. I IN THE MEAN TIME HAD DROPPED BACK BEHIND THE SEMI WITH THE THREE CARS BEHIND ME AND WHEN I COULD I PULLED BACK INTO THE RIGHT HAND LANE. THIS WAS A VERY DANGEROUS SITUATION FOR ME AND MY WIFE. I CALLED ON STAR FOR A DIAGNOSTIC CHECK AND THEY TOLD ME THAT EVERYTHING WAS OK. I TOOK THE CAR WORDEN-MARTEN SERVICE CENTER FOR REPAIRS AGAIN ON APRIL 19TH TO REPAIR THE CAR THEY: 1.REPLACED MASS -AIR FLOW UNIT AND SENSOR $ 131.39 WHO KNOWS IF IT IS FIXED RIGHT THIS TIME? THIS WAS A VERY DANGEROUS SITUATION TO BE IN FOR THE CAR TO FAIL. *TR" NHTSA ID Number: 10328071

294. On June 2, 2010, New GM became aware of a complaint filed with NHTSA involving a 2007 Buick LaCrosse and an incident that occurred on March 1, 2010, in which the following was reported:

> "2007 BUICK LACROSSE SEDAN. CONSUMER STATES MAJOR SAFETY DEFECT. CONSUMER REPORTS WHILE DRIVING THE ENGINE SHUTDOWN 3 TIMES FOR NO APPARENT REASON *TGW" NHTSA ID Number: 10334834

295. On February 20, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Chevrolet Monte Carlo and an incident that occurred on January 16, 2014, in which the following was reported:

> "I WAS DRIVING GOING APPROXIMATELY 45 MPH, I HIT A POT HOLE AND MY VEHICLE CUT OFF. THIS HAS HAPPENED THREE TIMES SINCE JANUARY. THE SAME THING HAPPENED THE SECOND TIME. THE LAST TIME IT OCCURRED WAS TUESDAY, FEBRUARY 18. THIS TIME I WAS ON THE EXPRESSWAY TRAVELING APPROXIMATELY 75 MPH, HIT A BUMP AND IT CUT OFF. THE CAR STARTS BACK UP WHEN I PUT IT IN NEUTRAL. *TR" NHTSA ID Number: 10565104

296. On March 3, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Chevrolet Impala and an incident that occurred on February, 29, 2012, in which the following was reported:

> "I WAS DRIVING MY COMPANY ASSIGNED CAR DOWN A STEEP HILL WHEN THE ENGINE STALLED WITHOUT WARNING. THIS HAS HAPPENED 5 OTHER TIMES WITH THIS VEHICLE. THIS WAS THE FIRST TIME I WAS TRAVELING FAST THOUGH. IT'S LIKE THE ENGINE JUST TURNS OFF. THE LIGHTS ARE STILL ON BUT I LOSE THE POWER STEERING AND BRAKES. IT WAS TERRIFYING AND EXTREMELY DANGEROUS. THIS PROBLEM HAPPENS COMPLETELY RANDOMLY WITH NO WARNING. IT HAS HAPPENED TO OTHERS IN MY COMPANY WITH THEIR IMPALAS. I LOOKED ONLINE AND FOUND NUMEROUS OTHER INSTANCES OF CHEVY IMPALAS OF VARIOUS MODEL YEARS DOING THE SAME THING. IT IS CURRENTLY IN THE REPAIR SHOP AND THE

> MECHANIC CAN'T DUPLICATE THE PROBLEM. I TOLD THEM ITS RANDOM AND OCCURS ABOUT EVERY 4 MONTHS OR SO. I AM AFRAID I WILL HAVE TO GET BACK IN THIS DEATH TRAP DUE TO MY EMPLOYER MAKING ME. PLEASE HELP- I DON'T WANT TO DIE BECAUSE CHEVROLET HAS A PROBLEM WITH THEIR ELECTRICAL SYSTEMS IN THEIR CARS. *TR" NHTSA ID Number: 10567458

297. On March 11, 2014, New GM became aware of a complaint filed with NHTSA involving a 2007 Cadillac DTS and an incident that occurred on January 27, 2013, in which the following was reported:

> "ENGINE STOPPED. ALL POWER EQUIPMENT CEASED TO FUNCTION. I WAS ABLE TO GET TO THE SIDE OF THE FREEWAY. PUT THE CAR IN NEUTRAL, TURNED THE KEY AND THE CAR STARTED AND CONTINUED FOR THE DURATION OF THE 200 MILE TRIP. THE SECOND TIME APPROXIMATELY THREE WEEKS AGO MY WIFE WAS DRIVING IN HEAVY CITY TRAFFIC WHEN THE SAME PROBLEM OCCURRED AND SHE LOST THE USE OF ALL POWER EQUIPMENT. SHE WAS ABLE TO PUT THE CAR IN PARK AND GET IT STARTED AGAIN WITHOUT INCIDENT. I CALLED GM COMPLAINT DEPARTMENT. THEY INSTRUCTED ME TO TAKE THE CAR TO A DEALERSHIP AND HAVE A DIAGNOSTIC TEST DONE ON IT. THIS WAS DONE AND NOTHING WAS FOUND TO BE WRONG WITH THE VEHICLE. I AGAIN CALLED CADILLAC COMPLAINT DEPARTMENT AND OPENED A CASE. THIS TIME I WAS TOLD TO TAKE THE CAR BACK TO THE DEALERSHIP AND ASK THE SERVICE DEPARTMENT TO RECHECK IT. I INFORMED THEM I HAVE THE DIAGNOSTIC REPORT SHOWING NOTHING WRONG WAS FOUND. THEY SUGGESTED I TAKE IT BACK AND HAVE THE SERVICE PEOPLE DRIVE THE CAR. THIS DIDN'T MAKE ANY SENSE BECAUSE I DON'T KNOW WHEN AND WHERE THE PROBLEM WILL OCCUR AGAIN. WHAT WAS I TO DO FOR A CAR WHILE THE DEALERSHIP HAD MINE? I INQUIRED OF THE CADILLAC REPRESENTATIVE IF THIS CAR MAY HAVE THE SAME IGNITION AS THE CARS CURRENTLY BEING RECALLED BY GM. THEY WERE UNABLE TO ANSWER THAT QUESTION. THEY FINALLY STATED THE ONLY REMEDY WAS TO TAKE IT BACK TO THE DEALERSHIP. IF THIS PROBLEM OCCURS AGAIN SOMEONE COULD EASILY GET INJURED OR KILLED. I

> WOULD APPRECIATE ANY ASSISTANCE YOU CAN GIVE ME ON HOW TO RESOLVE THIS MATTER." NHTSA ID Number: 10568491

298. On March 19, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick LaCrosse and an incident that occurred on March 15, 2014, in which the following was reported:

> "WHILE DRIVING UP A LONG INCLINE ON I-10 VEHICLE BEHAVED AS IF THE IGNITION HAD BEEN TURNED OFF AND KEY REMOVED. IE: ENGINE OFF, NO LIGHTS OR ACCESSORIES, NO WARNING LIGHTS ON DASH. TRAFFIC WAS HEAVY AND MY WIFE WAS FORTUNATE TO SAFELY COAST INTO SHOULDER. INCIDENT RECORDED WITH BUICK, HAVE REFERENCE NUMBER. *TR" NHTSA ID Number: 10573586

299. On June 20, 2014, New GM became aware of a complaint filed with NHTSA involving a 2008 Buick LaCrosse and an incident that occurred on August 30, 2013, in which the following was reported:

> "THE IGNITION CONTROL MODULE (NOT THE IGNITION SWITCH) FAILED SUDDENLY WHILE DRIVING ON THE HIGHWAY, CAUSING THE ENGINE TO SHUT OFF SUDDENLY AND WITHOUT WARNING. THE CAR WAS TRAVELING DOWNHILL, SO THE INITIAL INDICATION WAS LOSS OF POWER STEERING. I WAS ABLE TO PULL ONTO THE SHOULDER AND THEN REALIZED THAT THE ENGINE HAD DIED AND WOULD NOT RESTART. WHILE NO CRASH OR INJURY OCCURRED, THE POTENTIAL FOR A SERIOUS CRASH WAS QUITE HIGH." NHTSA ID Number: 10604820

300. On July 1, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick LaCrosse and an incident that occurred on October 25, 2012, in which the following was reported:

> "TRAVELING 40 MPH ON A FOUR LANE ABOUT TO PASS A TRUCK. MOTOR STOPPED, POWER STEERING OUT, POWER BRAKES OUT, MANAGED TO COAST ACROSS THREE LANES TO SHOULDER TO PARK. WALKED 1/4

> MILES TO STORE CALLED A LOCAL GARAGE. CAR STILL WOULD NOT START, TOWED TO HIS GARAGE. CHECKED GAS, FUEL PRESSURE OKAY BUT NO SPARK. MOVED SOME CONNECTORS AROUND THE STARTING MODULE AND CAR STARTED. HAVE NOT HAD ANY PROBLEMS SINCE, HAVE THE FEAR THAT I WILL BE ON A CHICAGO TOLL ROAD AND IT WILL STOP AGAIN." NHTSA ID Number: 10607535

301. On July 12, 2014, New GM became aware of a complaint filed with NHTSA involving a 2009 Chevrolet Impala and an incident that occurred on March 19, 2010, in which the following was reported:

> "I HAD JUST TURNED ONTO THIS ROAD, HAD NOT EVEN GONE A MILE. NO SPEED, NO BLACK MARKS, CAR SHUTDOWN RAN OFF THE ROAD AND HIT A TREE STUMP. TOTAL THE CAR. THE STEERING WHEEL WAS BENT ALMOST IN HALF. I HAVE PICTURES OF THE CAR. I GOT THIS CAR NEW, SO ALL MILES WE'RE PUT ON IT BY ME. I BROKE MY HIP, BACK, KNEE, DISLOCATED MY ELBOW, CRUSHED MY ANKLE AND FOOT. HAD A HEAD INJURY, A DEFLATED LUNG. I WAS IN THE HOSPITAL FOR TWO MONTHS AND A NURSING HOME FOR A MONTH. I HAVE HAD 14 SURGERIES. STILL NOT ABLE TO WORK OR DO A LOT OF THINGS FOR MY SELF. WITH THE RECALLS SHOWING THE ISSUES OF THE ENGINE SHUTTING OFF, I NEED THIS LOOKED INTO." NHTSA ID Number: 10610093

302. On July 24, 2014, New GM became aware of a complaint filed with NHTSA involving a 2008 Buick LaCrosse and an incident that occurred on July 15, 2014, in which the following was reported:

> "WHILE DRIVING NORTH ON ALTERNATE 69 HIGHWAY AT 65 MPH AT 5:00 P.M., MY VEHICLE ABRUPTLY LOSS POWER EVEN THOUGH I TRIED TO ACCELERATE. THE ENGINE SHUT OFF SUDDENLY AND WITHOUT WARNING. VEHICLE SLOWED TO A COMPLETE STOP. I WAS DRIVING IN THE MIDDLE LANE AND WAS UNABLE TO GET IN THE SHOULDER LANE BECAUSE I HAD NO PICKUP (UNABLE TO GIVE GAS TO ACCELERATE) SO MY HUSBAND AND I WERE CAUGHT IN FIVE 5:00 TRAFFIC WITH CARS WHIPPING AROUND US ON BOTH SIDES AND

> MANY EXCEEDING 65 MPH. I PUT ON MY EMERGENCY LIGHTS AND IMMEDIATELY CALLED ON-STAR. I WAS UNABLE TO RESTART THE ENGINE. THANK GOD FOR ON-STAR BECAUSE FROM THAT POINT ON, I WAS IN TERROR WITNESSING CARS COMING UPON US NOT SLOWING UNTIL THEY REALIZED I WAS AT A STAND STILL WITH LIGHTS FLASHING. THE CARS WOULD SWERVE TO KEEP FROM HITTING US. IT TOOK THE HIGHWAY PATROL AND POLICE 15 MINUTES TO GET TO US BUT DURING THAT TIME, I RELIVED VISIONS OF US BEING KILLED ON THE HIGHWAY. I CANÂ€™T DESCRIBE THE HORROR, LOOKING OUT MY REAR VIEW MIRROR, WITNESSING OUR DEMISE TIME AFTER TIME. THOSE 15 MINUTES SEEMED LIKE AN ETERNITY. WHEN THE HIGHWAY PATROL ARRIVED THEY CLOSED LANES AND ASSISTED IN PUSHING CAR OUT OF THE HIGHLY TRAFFIC LANES. IT TOOK MY HUSBAND AND I BOTH TO TURN THE STEERING WHILE IN NEUTRAL. THE CAR WAS TOWED TO CONKLIN FANGMAN KC DEALERSHIP AND I HAD TO REPLACE IGNITION COIL AND MODULE THAT COST ME $933.16. THEY SAID THESE PARTS WERE NOT ON THE RECALL LIST, WHICH I HAVE FOUND OUT SINCE THEN GM HAS PUT DEALERSHIPS ON NOTICE OF THIS PROBLEM. IT HAS SOMETHING TO DO WITH SUPPLYING ENOUGH MANUFACTURED PARTS TO TAKE CARE OF RECALL. IF I COULD AFFORD TO PURCHASE ANOTHER CAR I WOULD BECAUSE I DONÂ€™T FEEL SAFE ANY LONGER IN THIS CAR. EMOTIONALLY I AM STILL SUFFERING FROM THE TRAUMA.” NHTSA ID Number: 10604820

303. Notwithstanding New GM’s recall, the reports and complaints relating to this defect have continued to pour into New GM. Such complaints and reports indicate that New GM’s proffered recall “fix” does not work.

304. For example, on August 2, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick LaCrosse and an incident that occurred on July 12, 2014, in which the following was reported:

> “WHILE TRAVELING IN THE FAST LANE ON THE GARDEN STATE PARKWAY I HIT A BUMP IN THE ROAD, THE AUTO SHUT OFF.WITH A CONCRETE DIVIDER ALONG SIDE AND AUTOS APPROACHING AT HIGH

> SPEED, MY WIFE AND DAUGHTER SCREEMING I MANAGED TO GET TO THE END OF THE DIVIDER WERE I COULD TURN OFF THE AUTO RESTARTED ON 1ST TRY BUT VERY SCARY." NHTSA ID Number: 10618391

305. On August 18, 2014, New GM became aware of a complaint filed with NHTSA involving a 2007 Buick LaCrosse and an incident that occurred on August 18, 2014, in which the following was reported:

> "TL* THE CONTACT OWNS A 2007 BUICK LACROSSE. THE CONTACT STATED WHILE DRIVING APPROXIMATELY 60 MPH, SHE HIT A POT HOLE AND THE VEHICLE STALLED. THE VEHICLE COASTED TO THE SHOULDER OF THE ROAD. THE VEHICLE WAS RESTARTED AND THE CONTACT WAS ABLE TO DRIVE THE VEHICLE AS NORMAL. THE CONTACT RECEIVED A RECALL NOTICE UNDER NHTSA CAMPAIGN NUMBER: 14V355000 (ELECTRICAL SYSTEM), HOWEVER THE PARTS NEEDED FOR THE REPAIRS WAS UNAVAILABLE. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 110,000." NHTSA ID Number: 10626067

306. On August 20, 2014, New GM became aware of complaint filed with NHTSA involving a 2007 Chevrolet Impala and an incident that occurred on August 6, 2014, in which it was reported that:

> "TL* THE CONTACT OWNS A 2007 CHEVROLET IMPALA. THE CONTACT STATED THAT WHILE DRIVING 25 MPH, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT RECEIVED A NOTIFICATION FOR RECALL NHTSA CAMPAIGN NUMBER: 14V355000 (ELECTRICAL SYSTEM). THE VEHICLE WAS TAKEN TO AN INDEPENDENT MECHANIC WHERE THE TECHNICIAN ADVISED THE CONTACT TO REMOVE THE KEY FOB AND ANY OTHER OBJECTS. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE FAILURE MILEAGE WAS 79,000." NHTSA ID Number: 10626659

307. On August 27, 2014, New GM became aware of the following complaint filed with NHTSA involving a 2008 Chevrolet Impala and an incident that occurred on August 27, 2014, in which it was reported that:

> "TL-THE CONTACT OWNS A 2008 CHEVROLET IMPALA. THE CONTACT STATED WHILE DRIVING APPROXIMATELY 50 MPH, THE VEHICLE LOST POWER AND THE STEERING WHEEL SEIZED WITHOUT WARNING. AS A RESULT, THE CONTACT CRASHED INTO A POLE AND THE AIR BAGS FAILED TO DEPLOY. THE CONTACT SUSTAINED A CONCUSION, SPRAINED NECK, AND WHIPLASH WHICH REQUIRED MEDICAL ATTENTION. THE POLICE WAS NOT FILED. THE VEHICLE WAS TOWED TO A TOWING COMPANY. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN ID NUMBER: 14V355000 (ELECTRICAL SYSTEM), HOWEVER THE PARTS ARE NOT AVAILABLE TO PERFORM THE REPAIRS. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 70,000. MF." NHTSA ID Number: 10628704.

308. Old GM and later N that this serious safety defect existed for years yet did nothing to warn the public or even attempt to correct the defect in these vehicles until late June of 2014 when New GM finally made the decision to implement a recall.

309. The "fix" that New GM plans as part of the recall is to modify the ignition key from a "slotted" key to "hole" key." This is insufficient and does not adequately address the safety risks posed by the defect. The ignition key and switch remain prone to inadvertently move from the "run" to the "accessory" position. Simply changing the key slot or taking other keys and fobs off of key rings is New GM's attempt to make consumers responsible for the safety of GM-branded vehicles and to divert its own responsibility to make GM-branded vehicles safe. New GM's "fix" does not adequately address the inherent dangers and safety threats posed by the defect in the design. In addition, New GM is not addressing the other design issues that create safety risks in connection with this defect. New GM is not altering

the algorithm that prevents the airbags from deploying when the ignition leaves the "run" position even when the vehicle is moving at high speed. And New GM is not altering the placement of the ignition switch in an area where the driver's knees may inadvertently cause the ignition to move out of the "run" position.

310. Further, as of the date of this filing, New GM has not even begun to implement this "fix," leaving owners and lessees in these vehicles exposed to the serious safety risks posed by moving stalls and the accompanying effects on powering steering, power brakes, and the vehicle's airbags.

VIII. The July 2 and 3, 2014 Recalls Relating to the Unintended Ignition Rotation Defect Further Reveal New GM's Fraudulent Concealment of Known Serious Safety Problems.

311. On July 2, 2014, New GM recalled 554,328 vehicles in the United States for ignition switch defects (Recall Number 14V-394). The July 2 recall applied to the 2003-2014 Cadillac CTS and the 2004-2006 Cadillac SRX.

312. The recall notice explains that the weight on the key ring and/or road conditions or some other jarring event may cause the ignition switch to move out of the "run" position, turning off the engine. Further, if the key is not the in the "run" position, the airbags may not deploy in the event of a collision, increasing the risk of injury.

313. On July 3, 2014, New GM recalled 6,729,742 additional vehicles in the United States for ignition switch defects (Recall No. 14V-400).

314. The following Old GM vehicles were included in this recall: 1997-2005 Chevrolet Malibu, 2000-2005 Chevrolet Impala, 2000-2005 Chevrolet Monte Carlo, 2000-2005 Pontiac Grand Am, 2004-2008 Pontiac Grand Prix, 1998-2002 Oldsmobile Intrigue, and 1999-2004 Oldsmobile Alero.

315. The recall notice states that the weight on the key and/or road conditions or some other jarring event may cause the ignition switch to move out of the "run" position, turning off the engine. If the key is not in the "run" position, the airbags may not deploy if the vehicle is involved in a collision, increasing the risk of injury.

316. In both of these recalls, New GM notified NHTSA and the public that the recall was intended to address a defect involving unintended or "inadvertent key rotation" within the ignition switch of the vehicles. As with the ignition key defect announced June 20, however, the defects for which these vehicles have been recalled is directly related to the ignition switch defect in the Cobalt and other Defective Ignition Switch Vehicles and involves the same safety risks and dangers.

317. Based on information on NHTSA's website, 175,896 of the recalled vehicles were manufactured by Old GM. 108,174 of the vehicles were manufactured and sold by New GM.

318. Once again, the unintended ignition rotation defect is substantially similar to and relates directly to the other ignition switch defects, including the defects that gave rise to the initial recall of 2.1 million Cobalt and other vehicles in February and March of 2014. Like the other ignition switch defects, the unintended ignition key rotation defect poses a serious and dangerous safety risk because it can cause a vehicle to stall while in motion by causing the key in the ignition to inadvertently move from the "on" or "run" position to "off" or "accessory position." Like the other ignition switch defects, the unintended ignition key rotation defect can result in a loss of power steering, power braking and increase the risk of a crash. And as with the other ignition switch defects, if a crash occurs, the airbags will not deploy because of the unintended ignition key rotation defect.

319. The unintended ignition key rotation defect involves several problems, and they are identical to the problems in the other Defective Vehicles: a weak detent plunger, the low positioning of the ignition on the steering column, and the algorithm that renders the airbags inoperable when the vehicle leaves the "run" position.

320. The 2003-2006 Cadillac CTS and the 2004-2006 Cadillac SRX use the same Delphi switch and have inadequate torque for the "run"-"accessory" direction of the key rotation. This was known to Old and New GM, and was the basis for a change that was made to a stronger detent plunger for the 2007 and later model years of the SRX model. The 2007 and later CTS vehicles used a switch manufactured by Dalian Alps.

321. In 2010, New GM changed the CTS key from a "slot" to a "hole" design to "reduce an observed nuisance" of the key fob contacting the driver's leg. But in 2012, a New GM employee reported two running stalls of a 2012 CTS that had a "hole" key and the stronger detent plunger switch. When New GM did testing in 2014 of the "slot" versus "hole" keys, it confirmed that the weaker detent plunger-equipped switches used in the older CTS and SRX could inadvertently move from "run" to "accessory" or "off" when the "vehicle goes off road or experience some other jarring event."

322. GM has tried to characterize the recall of these 7.3 million vehicles as being different than the other ignition switch defects ***even though*** these recalls are aimed at addressing the same defects and safety risks as those that that gave rise to the other ignition switch defect recalls. New GM has attempted to portray the unintended ignition key rotation defect as being different from the ignition switch defect in order to deflect attention from the severity and pervasiveness of the ignition switch defect and to try to provide a story and

plausible explanation for why it did not recall these 7.3 million vehicles much earlier, and to avoid providing new, stronger ignition switches as a remedy.

323. From 2002 to the present, Old GM and New GM received numerous reports from consumers regarding complaints, crashes, injuries and deaths linked to this safety defect. The following are just a handful of examples of some of the reports known to Old GM and New GM:

324. On September 16, 2002, Old GM became aware of a complaint filed with NHTSA regarding a 2002 Oldsmobile Intrigue involving an incident that occurred on March 16, 2002, in which the following was reported:

> "WHILE DRIVING AT 30 MPH CONSUMER RAN HEAD ON INTO A STEEL GATE, AND THEN HIT THREE TREES. UPON IMPACT, NONE OF THE AIR BAGS DEPLOYED. CONTACTED DEALER. PLEASE PROVIDE FURTHER INFORMATION. *AK" **NHTSA ID Number:** 8018687.

325. On November 22, 2002, Old GM became aware of complaint filed with NHTSA involving a 2003 Cadillac CTS involving an incident that occurred on July 1, 2002, in which it was reported that:

> "THE CAR STALLS AT 25 MPH TO 45 MPH, OVER 20 OCCURANCES, DEALER ATTEMPTED 3 REPAIRS. DT" NHTSA ID Number: 770030.

326. On January 21, 2003, Old GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS, in which the following was reported:

> "WHILE DRIVING AT ANY SPEED,THE VEHICLE WILL SUDDENLY SHUT OFF. THE STEERING WHEEL AND THE BRAKE PEDAL BECOMES VERY STIFF. CONSUMER FEELS ITS VERY UNSAFE TO DRIVE. PLEASE PROVIDE ANY FURTHER INFORMATION." NHTSA ID Number: 10004288.

327. On June 30, 2003, Old GM became aware of a complaint with NHTSA regarding a 2001 Oldsmobile Intrigue which involved the following report:

> "CONSUMER NOTICED THAT WHILE TRAVELING DOWN HILL AT 40-45 MPH BRAKES FAILED, CAUSING CONSUMER TO RUN INTO THREES AND A POLE. UPON IMPACT, AIR BAGS DID NOT DEPLOY. *AK" **NHTSA ID Number:** 10026252.

328. On March 11, 2004, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac CTS involving an incident occurred on March 11, 2004, in which the following was reported:

> "CONSUMER STATED WHILE DRIVING AT 55-MPH VEHICLE STALLED, CAUSING CONSUMER TO PULL OFF THE ROAD. DEALER INSPECTED VEHICLE SEVERAL TIMES, BUT COULD NOT DUPLICATE OR CORRECT THE PROBLEM. *AK" NHTSA ID Number: 10062993.

329. On March 11, 2004, Old GM became aware of a complaint with NHTSA regarding a 2003 Oldsmobile Alero incident that occurred on July 26, 2003, in which the following was reported:

> "THE VEHICLE DIES. WHILE CRUISING AT ANY SPEED, THE HYDRAULIC BRAKES & STEERING FAILED DUE TO THE ENGINE DYING. THERE IS NO SET PATTERN, IT MIGHT STALL 6 TIMES IN ONE DAY, THEN TWICE THE NEXT DAY. THEN GO 4 DAYS WITH NO OCURRENCE, THEN IT WILL STALL ONCE A DAY FOR 3 DAYS. THEN GO A WEEK WITH NO OCURRENCE, THEN STALL 4 TIMES A DAY FOR 5 DAYS, ETC., ETC. IN EVERY OCURRENCE, IT TAKES APPROXIMATELY 10 MINUTES BEFORE IT WILL START BACK UP. AT HIGH SPEEDS, IT IS EXTREMELY TOO DANGEROUS TO DRIVE. WE'VE TAKEN IT TO THE DEALER, UNDER EXTENDED WARRANTY, THE REQUIRED 4 TIMES UNDER THE LEMON LAW PROCESS. THE DEALER CANNOT ASCERTAIN, NOR FIX THE PROBLEM. IT HAPPENED TO THE DEALER AT LEAST ONCE WHEN WE TOOK IT IN. I DOUBT THEY WILL ADMIT IT, HOWEVER, MY WIFE WAS WITNESS. THE CAR IS A 2003. EVEN THOUGH I BOUGHT IT IN JULY 2003, IT WAS CONSIDERED A USED CAR. GM HAS DENIED OUR CLAIM SINCE THE LEMON LAW DOES NOT APPLY TO USED CARS. THE CAR HAS BEEN PERMANENTLY PARKED SINCE NOVEMBER 2003. WE WERE FORCED TO BUY ANOTHER CAR. THE DEALER WOULD NOT TRADE.

> THIS HAS RESULTED IN A BADLUCK SITUATION FOR US. WE CANNOT AFFORD 2 CAR PAYMENTS / 2 INSURANCE PREMIUMS, NOR CAN WE AFFORD $300.00 PER HOUR TO SUE GM. I STOPPED MAKING PAYMENTS IN DECEMBER 2003. I HAVE KEPT THE FINANCE COMPANY ABREAST OF THE SITUATION. THEY HAVE NOT REPOSSED AS OF YET. THEY WANT ME TO TRY TO SELL IT. CAN YOU HELP ?*AK" **NHTSA ID Number:** 10061898.

330. On July 20, 2004, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac SRX, involving an incident that occurred on July 9, 2004, in which the following was reported:

> "THE CAR DIES AFTER TRAVELING ON HIGHWAY. IT GOES FROM 65 MPH TO 0. THE BRAKES, STEERING, AND COMPLETE POWER DIES. YOU HAVE NO CONTROL OVER THE CAR AT THIS POINT. I HAVE ALMOST BEEN HIT 5 TIMES NOW. ALSO, WHEN THE CARS DOES TURN BACK ON IT WILL ONLY GO 10 MPH AND SOMETIMES WHEN YOU TURN IT BACK ON THE RPM'S WILL GO TO THE MAX. IT SOUNDS LIKE THE CAR IS GOING TO EXPLODE. THIS CAR IS A DEATH TRAP. *LA" NHTSA ID Number: 10082289.

331. In August 2004, Old GM became aware of a complaint filed with NHTSA regarding a 2004 Chevrolet Malibu incident that occurred on June 30, 2004, in which it was reported that:

> "WHILE TRAVELING AT ANY SPEED VEHICLE STALLED. WITHOUT CONSUMER HAD SEVERAL CLOSE CALLS OF BEING REAR ENDED. VEHICLE WAS SERVICED SEVERAL TIMES, BUT PROBLEM RECURRED. *AK." **NHTSA ID Number:** 10089418.

332. Another report in August of 2004 which Old GM became aware of involved a 2004 Chevrolet Malibu incident that occurred on August 3, 2004, in which it was reported that:

> "WHEN DRIVING, THE VEHICLE TO CUT OFF. THE DEALER COULD NOT FIND ANY DEFECTS. *JB." **NHTSA ID Number:** 10087966.

333. On October 23, 2004, Old GM became aware of a complaint with NHTSA regarding a 2003 Chevrolet Monte Carlo, in which the following was reported:

> "VEHICLE CONTINUOUSLY EXPERIENCED AN ELECTRICAL SYSTEM FAILURE. AS A RESULT, THERE'WAS AN ELECTRICAL SHUTDOWN WHICH RESULTED IN THE ENGINE DYING/ STEERING WHEEL LOCKING UP, AND LOSS OF BRAKE POWER.*AK" **NHTSA ID Number:** 10044624.

334. On April 26, 2005, Old GM became aware of a complaint filed with NHTSA involving a 2005 Pontiac Grand Prix, pertaining to an incident that occurred on December 29, 2004, in which the following was reported:

> "2005 PONTIAC GRAND PRIX GT SEDAN VIN #[XXX] PURCHASED 12/16/2004. INTERMITTENTLY VEHICLE STALLS/ LOSS OF POWER IN THE ENGINE. WHILE DRIVING THE VEHICLE IT WILL SUDDENLY JUST LOSES POWER. YOU CONTINUE TO PRESS THE ACCELERATOR PEDAL AND THEN THE ENGINE WILL SUDDENLY TAKE BACK OFF AT A GREAT SPEED. THIS HAS HAPPENED WHILE DRIVING NORMALLY WITHOUT TRYING TO ACCELERATE AND ALSO WHILE TRYING TO ACCELERATE. THE CAR HAS LOST POWER WHILE TRYING TO MERGE IN TRAFFIC. THE CAR HAS LOST POWER WHILE TRYING TO CROSS HIGHWAYS. THE CAR HAS LOST POWER WHILE JUST DRIVING DOWN THE ROAD. GMC HAS PERFORMED THE FOLLOWING REPAIRS WITHOUT FIXING THE PROBLEM. 12/30/2004 [XXX]-MODULE, POWERTRAIN CONTROL-ENGINE REPROGRAMMING. 01/24/2005 [XXX]-SOLENOID,PRESSURE CONTROL-REPLACED. 02/04/2005 [XXX]-MODULE, PCM/VCM-REPLACED. 02/14/2005 [XXX]-PEDAL,ACCELERATOR-REPLACED. DEALERSHIP PURCHASED FROM CAPITAL BUICK-PONTIAC-GMC 225-293-3500. DEALERSHIP HAS ADVISED THAT THEY DO NOT KNOW WHAT IS WRONG WITH THE CAR. WE HAVE BEEN TOLD THAT WE HAVE TO GO DIRECT TO PONTIAC WITH THE PROBLEM. HAVE BEEN IN CONTACT WITH PONTIAC SINCE 02/15/05. PONTIAC ADVISED THAT THEY WERE GOING TO RESEARCH THE PROBLEM AND SEE IF ANY OTHER GRAND PRI WAS REPORTING LIKE PROBLEMS. SO FAR THE ONLY ADVICE FROM PONTIAC IS THEY WANT US TO COME IN AND TAKE ANOTHER

> GRAND PRIX OFF THE LOT AND SEE IF WE CAN GET THIS CAR TO DUPLICATE THE SAME PROBLEM. THIS DID NOT IMPRESS ME AT ALL. SO AFTER WAITING FOR 2-1/2 MONTHS FOR PONTIAC TO DO SOMETHING TO FIX THE PROBLEM, I HAVE DECIDED TO REPORT THIS TO NHTSA. *AK *JS INFORMATION REDACTED PURSUANT TO THE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6)" NHTSA ID Number: 10118501.

335. In May 2005, Old GM became aware of a complaint filed with NHTSA regarding a 2004 Chevrolet Malibu incident that occurred on July 18, 2004, in which it was reported that:

> "THE CAR CUT OFF WHILE I WAS DRIVING AND IN HEAVY TRAFFIC MORE THAN ONCE. THERE WAS NO WARNING THAT THIS WOULD HAPPEN. THE CAR WAS SERVICED BEFORE FOR THIS PROBLEM BUT IT CONTINUED TO HAPPEN. I HAVE HAD 3 RECALLS, THE HORN FUSE HAS BEEN REPLACED TWICE, AND THE BLINKER IS CURRENTLY OUT. THE STEERING COLLAR HAS ALSO BEEN REPLACED. THIS CAR WAS SUPPOSED TO BE A NEW CAR." **NHTSA ID Number:** 10123684.

336. On June 2, 2005, Old GM became aware of a complaint with NHTSA regarding a 2004 Pontiac Grand Am incident that occurred on February 18, 2005, in which the following was reported:

> "2004 PONTIAC GRAND PRIX SHUTS DOWN WHILE DRIVING AND THE POWER STEERING AND BRAKING ABILITY ARE LOST.*MR *NM." **NHTSA ID Number:** 10124713.

337. On August 12, 2005, Old GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS, regarding an incident that occurred on January 3, 2005, in which it was reported that:

> "DT: VEHICLE LOST POWER WHEN THE CONSUMER HIT THE BRAKES. THE TRANSMISSION JOLTS AND THEN THE ENGINE SHUTS OFF. IT HAS BEEN TO THE DEALER 6 TIMES SINCE JANUARY. THE DEALER TRIED SOMETHING DIFFERENT EVERY TIME SHE TOOK IT IN.

> MANUFACTURER SAID SHE COULD HAVE A NEW VEHICLE IF SHE PAID FOR IT. SHE WANTED TO GET RID OF THE VEHICLE.*AK THE CHECK ENGINE LIGHT ILLUMINATED. *JB" NHTSA ID Number: 10127580.

338. On August 26, 2005, Old GM became aware of a complaint with NHTSA regarding a 2004 Pontiac Grand Am incident that occurred on August 26, 2005, in which the following was reported:

> "WHILE DRIVING MY 2004 PONTIAC GRAND AM THE CAR FAILED AT 30 MPH. IT COMPLETELY SHUT OFF LEAVING ME WITH NO POWER STEERING AND NO WAY TO REGAIN CONTROL OF THE CAR UNTIL COMING TO A COMPLETE STOP TO RESTART IT. ONCE I HAD STOPPED IT DID RESTART WITHOUT INCIDENT. ONE WEEK LATER THE CAR FAILED TO START AT ALL NOT EVEN TURNING OVER. WHEN THE PROBLEM WAS DIAGNOSED AT THE GARAGE IT WAS FOUND TO BE A FAULTY "IGNITION CONTROL MODULE" IN THE CAR. AT THIS TIME THE PART WAS REPLACED ONLY TO FAIL AGAIN WITHIN 2 MONTHS TIME AGAIN WHILE I WAS DRIVING THIS TIME IN A MUCH MORE HAZARDOUS CONDITION BEING THAT I WAS ON THE HIGHWAY AND WAS TRAVELING AT 50 MPH AND HAD TO TRAVEL ACROSS TWO LANES OF TRAFFIC TO EVEN PULL OVER TO TRY TO RESTART IT. THE CAR CONTINUED TO START AND SHUT OFF ALL THE WAY TO THE SERVICE GARAGE WHERE IT WAS AGAIN FOUND TO BE A FAULTY "IGNITION CONTROL MODULE". IN ANOTHER TWO WEEKS TIME THE CAR FAILED TO START AND WHEN DIAGNOSED THIS TIME IT WAS SAID TO HAVE "ELECTRICAL PROBLEMS" POSSIBLE THE "POWER CONTROL MODULE". AT THIS TIME THE CAR IS STILL UNDRIVEABLE AND UNSAFE FOR TRAVEL. *JB" **NHTSA ID Number:** 10134303.

339. On September 22, 2005, Old GM became aware of a complaint filed with NHTSA involving a 2005 Cadillac CTS, concerning an incident that occurred on September 16, 2005, in which the following was reported:

> "DT: 2005 CADILLAC CTS – THE CALLER'S VEHICLE WAS INVOLVED IN AN ACCIDENT WHILE DRIVING AT 55 MPH. UPON IMPACT, AIR BAGS DID NOT DEPLOY. THE VEHICLE WENT OFF THE ROAD AND HIT A TREE. THIS

> WAS ON THE DRIVER'S SIDE FRONT. THERE WERE NO INDICATOR LIGHTS ON PRIOR TO THE ACCIDENT. THE VEHICLE HAS NOT BEEN INSPECTED BY THE DEALERSHIP, AND INSURANCE COMPANY TOTALED THE VEHICLE. THE CALLER SAW NO REASON FOR THE AIR BAGS NOT TO DEPLOY. . TWO INJURED WERE INJURED IN THIS CRASH. T A POLICE REPORT WAS TAKEN. THERE WAS NO FIRE. *AK" NHTSA ID Number: 10137348.

340. On September 29, 2006, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac CTS and an incident that occurred on September 29, 2006, in which the following was reported:

> "DT*: THE CONTACT STATED AT VARIOUS SPEEDS WITHOUT WARNING, THE VEHICLE LOST POWER AND WOULD NOT ACCELERATE ABOVE 20 MPH. ALSO, WITHOUT WARNING, THE VEHICLE STALLED ON SEVERAL OCCASIONS, AND WOULD NOT RESTART. THE VEHICLE WAS TOWED TO THE DEALERSHIP, WHO REPLACED THE THROTTLE TWICE AND THE THROTTLE BODY ASSEMBLY HARNESS, BUT THE PROBLEM PERSISTED. *AK UPDATED 10/25/2006 – *NM" NHTSA ID Number: 10169594.

341. On April 18, 2007, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac SRX, regarding an incident that occurred on April 13, 2007, in which it was reported that:

> "TL*THE CONTACT OWNS A 2004 CADILLAC SRX. THE ENGINE STALLED WITHOUT WARNING AND CAUSED ANOTHER VEHICLE TO CRASH INTO THE VEHICLE. THE VEHICLE WAS ABLE TO RESTART A FEW MINUTES AFTER THE CRASH. THE DEALER AND MANUFACTURER WAS UNABLE TO DIAGNOSE THE FAILURE. THE MANUFACTURER HAD THE VEHICLE INSPECTED BY A CADILLAC SPECIALIST WHO WAS UNABLE TO DIAGNOSE THE FAILURE. THE DEALER UPDATED THE COMPUTER FOUR TIMES, BUT THE ENGINE CONTINUED TO STALL. THE CURRENT AND FAILURE MILEAGES WERE 48,000." NHTSA ID Number: 10188245.

342. On September 20, 2007, Old GM became aware of a complaint filed with NHSTA involving a 2007 Cadillac CTS, in connection with an incident that occurred on January 1, 2007, and the following was reported:

> "TL*THE CONTACT OWNS A 2007 CADILLAC CTS. WHILE DRIVING 40 MPH, THE VEHICLE SHUT OFF WITHOUT WARNING. THE FAILURE OCCURRED ON FIVE SEPARATE OCCASIONS. THE DEALER WAS UNABLE TO DUPLICATE THE FAILURE. AS OF SEPTEMBER 20, 2007, THE DEALER HAD NOT REPAIRED THE VEHICLE. THE POWERTRAIN WAS UNKNOWN. THE FAILURE MILEAGE WAS 2,000 AND CURRENT MILEAGE WAS 11,998." NHTSA ID Number: 10203516.

343. On September 24, 2007, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac SRX, regarding an incident that occurred on January 1, 2005, in which the following was reported:

> "TL*THE CONTACT OWNS A 2004 CADILLAC SRX. WHILE DRIVING 5 MPH OR GREATER, THE VEHICLE WOULD SHUT OFF WITHOUT WARNING. THE DEALER STATED THAT THE BATTERY CAUSED THE FAILURE AND THEY REPLACED THE BATTERY. APPROXIMATELY EIGHT MONTHS LATER, THE FAILURE RECURRED. THE DEALER STATED THAT THE BATTERY CAUSED THE FAILURE AND REPLACED IT A SECOND TIME. APPROXIMATELY THREE MONTHS LATER, THE FAILURE OCCURRED AGAIN. SHE WAS ABLE TO RESTART THE VEHICLE. THE DEALER WAS UNABLE TO DUPLICATE THE FAILURE, HOWEVER, THEY REPLACED THE CRANK SHAFT SENSOR. THE FAILURE CONTINUES TO PERSIST. AS OF SEPTEMBER 24, 2007, THE DEALER HAD NOT REPAIRED THE VEHICLE. THE POWERTRAIN WAS UNKNOWN. THE FAILURE MILEAGE WAS 8,000 AND CURRENT MILEAGE WAS 70,580." NHTSA ID Number: 10203943.

344. On June 18, 2008, Old GM became aware of a complaint filed with NHTSA involving a 2006 Cadillac CTS and an incident that occurred on June 17, 2008, in which it was reported that:

> "TL*THE CONTACT OWNS A 2006 CADILLAC CTS. WHILE DRIVING 60 MPH AT NIGHT, THE VEHICLE SHUT OFF AND LOST TOTAL POWER. WHEN THE FAILURE OCCURRED, THE VEHICLE CONTINUED TO ROLL AS IF IT WERE IN NEUTRAL. THERE WERE NO WARNING INDICATORS PRIOR TO THE FAILURE. THE CONTACT FEELS THAT THIS IS A SAFETY HAZARD BECAUSE IT COULD HAVE RESULTED IN A SERIOUS CRASH. THE VEHICLE WAS TAKEN TO THE DEALER TWICE FOR REPAIR FOR THE SAME FAILURE IN FEBURARY OF 2008 AND JUNE 17, 2008. THE FIRST TIME THE CAUSE OF THE FAILURE WAS IDENTIFIED AS A GLITCH WITH THE COMPUTER SWITCH THAT CONTROLS THE TRANSMISSION. AT THE SECOND VISIT, THE SHOP EXPLAINED THAT THEY COULD NOT IDENTIFY THE FAILURE. IT WOULD HAVE TO RECUR IN ORDER FOR THEM TO DIAGNOSE THE FAILURE PROPERLY. THE CURRENT AND FAILURE MILEAGES WERE 43,000." NHTSA ID Number: 10231507.

345. On October 14, 2008, Old GM became aware of a complaint filed with NHTSA involving a 2008 Cadillac CTS and an incident that occurred on April 5, 2008, in which it was reported that:

> "WHILE DRIVING MY 2008 CTS, WITH NO ADVANCE NOTICE, THE ENGINE JUST DIED. IT SEEMED TO RUN OUT OF GAS. MY FUEL GAUGE READ BETWEEN 1/2 TO 3/4 FULL. THIS HAPPENED 3 DIFFERENT OCCASIONS. ALL 3 TIMES I HAD TO HAVE IT TOWED BACK TO THE DEALERSHIP THAT I PURCHASED THE CAR FROM. ALL 3 TIMES I GOT DIFFERENT REASONS IT HAPPENED, FROM BAD FUEL PUMP IN GAS TANK, TO SOME TYPE OF BAD CONNECTION, ETC. AFTER THIS HAPPENED THE 3RD TIME, I DEMANDED A NEW CAR, WHICH I RECEIVED. I HAVE HAD NO PROBLEMS WITH THIS CTS, RUNS GREAT. *TR" NHTSA ID Number: 10245423.

346. On November 13, 2008, Old GM became aware of a complaint with NHTSA regarding a 2001 Oldsmobile Intrigue, in which the following was reported:

> "L*THE CONTACT OWNS A 2001 OLDSMOBILE INTRIGUE. WHILE DRIVING 35 MPH, THE VEHICLE CONTINUOUSLY STALLS AND HESITATES. IN ADDITION, THE INSTRUMENT PANEL INDICATORS WOULD ILLUMINATE

> AT RANDOM. THE VEHICLE FAILED INSPECTION AND THE CRANKSHAFT SENSOR WAS REPLACED, WHICH HELPED WITH THE STALLING AND HESITATION; HOWEVER, THE CHECK ENGINE INDICATOR WAS STILL ILLUMINATED. DAYS AFTER THE CRANKSHAFT SENSOR WAS REPLACED, THE VEHICLE FAILED TO START. HOWEVER, ALL OF THE INSTRUMENT PANEL INDICATORS FLASHED ON AND OFF. AFTER NUMEROUS ATTEMPTS TO START THE VEHICLE, HE HAD IT JUMPSTARTED. THE VEHICLE WAS THEN ABLE TO START. WHILE DRIVING HOME, ALL OF THE LIGHTING FLASHED AND THE VEHICLE SUDDENLY SHUT OFF. THE VEHICLE LOST ALL ELECTRICAL POWER AND POWER STEERING ABILITY. THE CONTACT MANAGED TO PARK THE VEHICLE IN A PARKING LOT AND HAD IT TOWED THE FOLLOWING DAY TO A REPAIR SHOP. THE VEHICLE IS CURRENTLY STILL IN THE SHOP. THE VEHICLE HAS BEEN RECALLED IN CANADA AND HE BELIEVES THAT IT SHOULD ALSO BE RECALLED IN THE UNITED STATES. THE FAILURE MILEAGE WAS UNKNOWN AND THE CURRENT MILEAGE WAS 106,000." **NHTSA ID Number:** 10248694.

347. On December 10, 2008, Old GM became aware of a complaint filed with NHTSA regarding a 2004 Oldsmobile Alero and an incident that occurred on December 10, 2008, in which the following was reported:

> "I WAS DRIVING DOWN THE ROAD IN RUSH HOUR GOING APPROX. 55 MPH AND MY CAR COMPLETELY SHUT OFF, THE GAUGES SHUTDOWN, LOST POWER STEERING. HAD TO PULL OFF THE ROAD AS SAFELY AS POSSIBLE, PLACE VEHICLE IN PARK AND RESTART CAR. MY CAR HAS SHUTDOWN PREVIOUSLY TO THIS INCIDENT AND FEEL AS THOUGH IT NEEDS SERIOUS INVESTIGATION. I COULD HAVE BEEN ON THE HIGHWAY AND BEEN KILLED. THIS ALSO HAS HAPPENED WHEN IN A SPIN OUT AS WELL THOUGH THIS PARTICULAR INCIDENT WAS RANDOM. *TR" **NHTSA ID Number:** 10251280.

348. On March 31, 2009, Old GM became aware a complaint filed with NHTSA regarding a 2005 Chevrolet Malibu incident that occurred on May 30, 2008, in which it was reported that:

> "TL*THE CONTACT OWNS A 2005 CHEVROLET MALIBU. THE CONTACT STATED THAT THE POWER WINDOWS, LOCKS, LINKAGES, AND IGNITION SWITCH SPORADICALLY BECOME INOPERATIVE. SHE TOOK THE VEHICLE TO THE DEALER AND THEY REPLACED THE IGNITION SWITCH AT THE COST OF $495. THE MANUFACTURER STATED THAT THEY WOULD NOT ASSUME RESPONSIBILITY FOR ANY REPAIRS BECAUSE THE VEHICLE EXCEEDED ITS MILEAGE. ALL REMEDIES AS OF MARCH 31, 2009 HAVE BEEN INSUFFICIENT IN CORRECTING THE FAILURES. THE FAILURE MILEAGE WAS 45,000 AND CURRENT MILEAGE WAS 51,000."
> **NHTSA ID Number:** 10263716.

349. The defects did not get any safer and the reports did not stop when Old GM ceased to exist. To the contrary, New GM continued receiving the same reports involving the same defects. For example, on August 11, 2010, New GM became aware of the following complaint filed with NHTSA involving a 2005 Cadillac CTS, the incident occurred on May 15, 2010, in which it was reported:

> "TL*THE CONTACT OWNS A 2005 CADILLAC CTS. WHILE DRIVING 40 MPH, ALL OF THE SAFETY LIGHTS ON THE DASHBOARD ILLUMINATED WHEN THE VEHICLE STALLED. THE VEHICLE WAS TURNED BACK ON IT BEGAN TO FUNCTION NORMALLY. THE FAILURE OCCURRED TWICE. THE DEALER WAS CONTACTED AND THEY STATED THAT SHE NEEDED TO BRING IT IN TO HAVE IT DIAGNOSED AGAIN. THE DEALER PREVIOUSLY STATED THAT THEY WERE UNABLE TO DUPLICATE THE FAILURE. THE VEHICLE WAS NOT REPAIRED. THE FAILURE MILEAGE WAS 4100 AND THE CURRENT MILEAGE WAS 58,000." NHTSA ID Number: 10348743.

350. On April 16, 2012, New GM became aware of as complaint filed with NHTSA involving a 2005 Cadillac SRX and an incident that occurred on March 31, 2012, in which the following was reported:

> "TL* THE CONTACT OWNS A 2005 CADILLAC SRX. WHILE DRIVING APPROXIMATELY 45 MPH, THE CONTACT STATED THAT THE STEERING BECAME DIFFICULT TO MANEUVER AND HE LOST CONTROL OF THE VEHICLE.

> THERE WERE NO WARNING LIGHTS ILLUMINATED ON THE INSTRUMENT PANEL. THE CONTACT THEN CRASHED INTO A HIGHWAY DIVIDER AND INTO ANOTHER VEHICLE. THERE WERE NO INJURIES. THE VEHICLE WAS TOWED TO AN AUTO CENTER AND THE MECHANIC STATED THAT THERE WAS A RECALL UNDER NHTSA CAMPAIGN ID NUMBER 06V125000 (SUSPENSION:REAR), THAT MAY BE RELATED TO THE FAILURE. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE AND STATED THAT THE VIN WAS NOT INCLUDED IN THE RECALL. THE VEHICLE WAS NOT REPAIRED. THE APPROXIMATE FAILURE MILEAGE WAS 46,000." NHTSA ID Number: 10455394.

351. On March 20, 2013, New GM became aware of a complaint filed with NHTSA regarding a 2003 Chevrolet Impala incident that occurred on March 1, 2013, in which it was reported that:

> "CAR WILL SHUTDOWN WHILE DRIVING AND SECURITY LIGHT WILL FLASH. HAS DONE IT NUMEROUS TIMES, WORRIED IT WILL CAUSE AN ACCIDENT. THERE ARE MULTIPLE CASES OF THIS PROBLEM ON INTERNET. *TR" **NHTSA ID Number:** 10503840.

352. On May 12, 2013, New GM became aware of the following complaint filed with NHTSA regarding a 2005 Chevrolet Malibu incident that occurred on May 11, 2012, in which the following was reported:

> "I WAS AT A STOP SIGN WENT TO PRESS GAS PEDAL TO TURN ONTO ROAD AND THE CAR JUST SHUT OFF NO WARNING LIGHTS CAME ON NOR DID IT SHOW ANY CODES. GOT OUT OF CAR POPPED TRUNK PULLED RELAY FUSE OUT PUT IT BACK IN AND IT CRANKED UP,THEN ON MY WAY HOME FROM WORK,GOING ABOUT 25 MPH AND IT JUST SHUTDOWN AGAIN,I REPEATED PULLING OUT RELAY FUSE AND PUT IT BACK IN THEN WAITED A MINUTE THEN IT CRANKED AND I DROVE STRAIGHT HOME. *TR" **NHTSA ID Number:** 10458198.

353. On February 26, 2014, New GM became aware of a complaint filed with NHTSA involving a 2004 Pontiac Grand Prix, concerning an incident that occurred on May 10, 2005, in which it was reported that:

> "TL – THE CONTACT OWNS A 2004 PONTIAC GRAND PRIX. THE CONTACT STATED THAT WHILE DRIVING AT VARIOUS SPEEDS AND GOING OVER A BUMP, THE VEHICLE WOULD STALL WITHOUT WARNING. THE VEHICLE WAS TAKEN TO THE DEALER. THE TECHNICIAN WAS UNABLE TO DIAGNOSE THE FAILURE. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE VEHICLE WAS NOT REPAIRED. THE VIN WAS NOT AVAILABLE. THE FAILURE MILEAGE WAS 12,000 AND THE CURRENT MILEAGE WAS 82,000. KMJ" NHTSA ID Number: 10566118.

354. On March 13, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Pontiac Grand Prix and an incident that occurred on February 27, 2014, in which a driver reported:

> "I WAS DRIVING HOME FROM WORK AND WHEN I TURNED A CORNER, THE ENGINE CUT OUT. I BELIEVE IT WAS FROM THE KEY FLIPPING TO ACCESSORY. I'VE HEARD THAT THIS HAS CAUSED CRASHES THAT HAVE KILLED PEOPLE AND WOULD LIKE THIS FIXED. THIS IS THE FIRST TIME IT HAPPENED, BUT NOW I'M WORRIED EVERY TIME I DRIVE IT THAT THIS IS GOING TO HAPPEN AND I DON'T FEEL SAFE LETTING MY WIFE DRIVE THE CAR NOW. WHY ARE THE 2006 PONTIAC GRAND PRIX VEHICLES NOT PART OF THE RECALL FROM GM? *TR" NHTSA ID Number: 10569215.

355. On April 1, 2014, New GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS and an incident that occurred on January 1, 2008, in which the following was reported:

> "TL* THE CONTACT OWNS A 2003 CADILLAC CTS. THE CONTACT STATED THAT THE VEHICLE EXHIBITED A RECURRING STALLING FAILURE. THE VEHICLE WAS TAKEN TO THE DEALER NUMEROUS TIMES WHERE SEVERAL UNKNOWN REPAIRS WERE PERFORMED ON

> THE VEHICLE BUT TO NO AVAIL. THE FAILURE MILEAGE WAS 59,730 AND THE CURRENT MILEAGE WAS 79,000. UPDATED 06/30/14 MA UPDATED 07/3/2014 *JS" NHTSA ID Number: 10576468.

356. On April 1, 2014, New GM became aware of a complaint with NHTSA regarding a 2003 Chevrolet Monte Carlo and an incident that occurred on September 16, 2013, in which the following was reported:

> "WHILE DRIVING AT ANY SPEED THE IGNITION SYSTEM WOULD RESET LIGHTING UP THE DISPLAY CLUSTER JUST AS IF THE KEY WAS TURNED OFF AND BACK ON. THIS WOULD CAUSE A MOMENTARY SHUTDOWN OF THE ENGINE. THE PROBLEM SEEMED TO BE MORE PREVAILANT WHILE TURNING THE WHEEL FOR A CURVE OR TURN OFF THE ROAD. THE TURN SIGNAL UNIT WAS FIRST SUSPECT SINCE IT SEEMED TO CORRELATE WITH APPLYING THE TURN SIGNAL AND TURNING THE WHEEL. THE CONDITION WORSENED TO THE IGNITION SHUTDOWN FOR LONGER PERIODS SHUTTING DOWN THE ENGINE CAUSING STEERING AND BRAKING TO BE SHUTDOWN AND FINALLY DIFFICULTY STARTING THE CAR. AFTER 2 VISITS TO A GM SERVICE CENTER THE PROBLEM WAS FOUND TO BE A FAULTY IGNITION THAT WAS REPLACED AND THE PROBLEM HAS NOT RECURRED." **NHTSA ID Number:** 10576201.

357. On April 8, 2014, New GM became aware of a complaint with NHTSA regarding a 2003 Chevrolet Impala and an incident that occurred on August 14, 2011 and the following was reported:

> "I HAVE HAD INCIDENTS SEVERAL TIMES OVER THE YEARS WHERE I WOULD HIT A BUMP IN THE ROAD AND MY CAR WOULD COMPLETLY SHUT OFF. I HAVE ALSO HAD SEVERAL INCIDENTS WHERE I WAS TRAVELING DOWN THE EXPRESSWAY AND MY CAR TURNED OFF ON ME. I HAD TO SHIFT MY CAR INTO NEUTRAL AND RESTART IT TO CONTINUE GOING. I WAS FORTUNATE NOT TO HAVE AN ACCIDENT." **NHTSA ID Number:** 10578158.

358. On May 14, 2014, New GM became aware of a complaint filed with NHTSA regarding a 2004 Chevrolet Impala incident that occurred on April 5, 2013 and reported that:

> "CHEVY IMPALA 2004 LS- THE VEHICLE IS STOPPING COMPLETELY WHILE DRIVING OR SITTING AT INTERSECTION. THERE IS NO WARNING, NO MESSAGE, IT JUST DIES. THE STEERING GOES WHEN THIS HAPPENS SO I CANNOT EVEN GET OFF THE ROAD. THEN THERE ARE TIMES THAT THE CAR WILL NOT START AT ALL AND I HAVE BEEN STRANDED. EVENTUALLY AFTER ABOUT 20 MINUTES THE CAR WILL START- I HAVE ALREADY REPLACED THE STARTER BUT THE PROBLEM STILL EXISTS. I HAVE HAD THE CAR CHECKED OUT AT 2 DIFFERENT SHOPS (FIRESTONE) AND THEY CANNOT FIND THE PROBLEM. THERE ARE NO CODES COMING UP. THEY ARE COMPLETELY PERPLEXED. CHEVY STATES THEIR MECHANICS ARE BETTER. ALSO THE CLUSTER PANEL IS GONE AND CHEVY IS AWARE OF THE PROBLEM BUT THEY ONLY RECALLED CERTAIN MODELS AND DID NOT INCLUDE THE IMPALAS. I HAVE 2 ESTIMATES REGARDING FIXING THIS PROBLEM BUT THE QUOTES ARE $500.00. I DO NOT FEEL THAT I SHOULD HAVE TO PAY FOR THIS WHEN CHEVY KNEW THEY HAD THIS PROBLEM WITH CLUSTER PANELS AND OMITTED THE IMPALAS IN THEIR RECALL. SO, TO RECAP: THE CAR DIES IN TRAFFIC (ALMOST HIT TWICE), I DO NOT KNOW HOW MUCH GAS I HAVE, HOW FAST I AM GOING, OR IF THE CAR IS OVERHEATING. IN DEALING WITH CHEVY I WAS TOLD TO TAKE THE CAR TO A CHEVY DEALERSHIP. THEY GAVE ME A PLACE THAT IS 2 1/2 HOURS HOUSE AWAY FROM MY HOME. I WAS ALSO TOLD THAT I WOULD HAVE THE HONOR OF PAYING FOR THE DIAGNOSTICS. IN RESEARCHING THIS PROBLEM, I HAVE PULLED UP SEVERAL COMPLAINTS FROM OTHER CHEVY IMPALA 2004 OWNERS THAT ARE EXPERIENCING THE SAME MULTIPLE PROBLEMS. I ALSO NOTICED THAT MOST OF THE COMPLAINTS ARE STATING THAT THE SAME ISSUES OCCURRED AT APPROX. THE SAME MILEAGE AS MINE. I HAVE DISCUSSED THIS WITH CHEVY CUSTOMER SERVICE AND BASICALLY THAT WAS IGNORED. THIS CAR IS HAZARDOUS TO DRIVE AND POTENTIALLY WILL CAUSE BODILY HARM. DEALING WITH CHEVY IS POINTLESS. ALL THEY CAN THINK OF IS HOW MUCH MONEY THEIR

DEFECTS WILL BRING IN. *TR" **NHTSA ID Number:** 10512006.

359. New GM has publicly admitted that it was aware of at least seven (7) crashes, eight (8) injuries, and three (3) deaths linked to this serious safety defect before deciding to finally implement a recall. However, in reality, the number of reports and complaints is much higher.

360. Moreover, notwithstanding years of notice and knowledge of the defect, on top of numerous complaints and reports from consumers, including reports of crashes, injuries and deaths, New GM delayed and did not implement a recall involving this defect until July of 2014.

361. New GM's supposed recall fix does not address the defect or the safety risks that it poses, including insufficient amount of torque to resist rotation from the "run" the "accessory" position under reasonably foreseeable conditions, and puts the burden on drivers to alter their behavior and carry their ignition keys separately from their other keys, and even from their remote fob. The real answer must include the replacement of all the switches with ones that have sufficient torque to resist foreseeable rotational forces. The consequences of an unwanted rotation from the "run" to "accessory" position has the same results in all these cars: loss of power (stalling), loss of power steering, loss of power brakes after one or two depressions of the brake pedal, and suppression of seat belt pretensioners and airbag deployments.

362. In addition, New GM is not addressing the other design issues that create safety risks in connection with this defect. New GM is not altering the algorithm that prevents the airbags from deploying when the ignition leaves the "run" position, even when the vehicle is moving. And New GM is not altering the placement of the ignition in an area where the

driver's knees may inadvertently cause the ignition to move out of the "run" position Moreover, notwithstanding years of notice and knowledge of the defect, on top of numerous complaints and reports from consumers, including reports of crashes, injuries and deaths, New GM delayed and did not implement a recall involving this defect until July of 2014.

363. Further, New GM has not begun implementing its "fix" for these affected vehicles. Thus, owners and lessees continue to operate their vehicles, at risk of the serious safety defects posed if and when the ignition switch in a Defective Vehicle fails during normal and ordinary vehicle operation.

IX. The September 2014 Ignition Switch Defect Recall Is the Latest Evidence of the Extent of the Defects and New GM's Ongoing Concealment.

364. On September 4, 2014, New GM recalled 46,873 MY 2011-2013 Chevrolet Caprice and 2008-2009 Pontiac G8 vehicles for yet another ignition switch defect (NHTSA Recall Number 14-V-510).

365. New GM explains that, in these Defective Ignition Switch Vehicles, "there is a risk, under certain conditions, that some drivers may bump the ignition key with their knee and unintentionally move the key away from the 'run' position." New GM admits that, when this happens, "engine power, and power barking will be affected, increasing the risk of a crash." Moreover, "[t]he timing of the key movement out of the 'run' position, relative to the activation of the sending algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes."

366. This recall is directly related to the other ignition switch recalls and involves the same safety risks and dangers. The defect poses a serious and dangerous safety risk because the key in the ignition switch can rotate and consequently cause a the ignition to switch from the "on" or "run" position to the "off" or "accessory" position, which causes the

loss of engine power, stalling, loss of speed control, loss of power steering, loss of power braking, and increases the risk of a crash. Moreover, as with the ignition switch torque defect, if a crash occurs, the airbags may not deploy.

367. According to New GM, in late June 2014, "GM Holden began investigating potential operator knee-to-key interference in Holden-produced vehicles consistent with Safety's learning from" earlier ignition switch recalls, NHTSA recalls no. 14V-346 and 14V-355.[107]

368. New GM "analyzed vehicle test results, warranty data, TREAD data, NHTSA Vehicle Owner Questionnaires, and other data."[108] This belated review, concerning vehicles that were sold as long as six years earlier, led to the August 27, 2014 decision to conduct a safety recall.[109]

369. Once again, a review of NHTSA's website shows that New GM was long on notice of ignition switch issues in the vehicles subject to the September 4 recall.

370. For example, on February 10, 2010, New GM became aware of an incident involving a 2009 Pontiac G8 that occurred on November 23, 2009, and again on January 26, 2010, in which the following was reported to NHTSA:

> FIRST OCCURRED ON 11/23/2009. ON THE INTERSTATE IT LOSES ALL POWER, ENGINE SHUTS DOWN, IGNITION STOPS, POWER STEERING STOPS, BRAKES FAIL - COMPLETE VEHICLE STOPPAGE AND FULL OPERATING SYSTEMS SHUTDOWN WITHOUT WARNING AT 70 MPH, TWICE! SECOND OCCURRENCE WAS 1/26/2010.

371. On May 22, 2013, New GM became aware of an incident involving a 2008 Pontiac G8 that occurred on May 18, 2013, in which the following was reported:

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[107] *Id.*
[108] *Id.*
[109] *Id.*

> THE CONTACT OWNS A 2008 PONTIAC G8. THE CONTACT STATED THAT WHILE DRIVING 50 MPH, THE VEHICLE STALLED WITHOUT WARNING. THE FAILURE RECURRED TWICE. THE VEHICLE WAS TOWED TO THE DEALER FOR DIAGNOSIS, BUT THE DEALER WAS UNABLE TO DUPLICATE THE PROBLEM. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOT NOTIFIED. THE APPROXIMATE FAILURE MILEAGE WAS 60,000.

372. Consistent with its pattern in the June and July recalls, New GM's proposed remedy is to provide these Defective Ignition Switch Vehicle owners with a "revised key blade and housing assembly, in which the blade has been indexed by 90 degrees."[110] Until the remedy is provided, New GM asserts, "it is very important that drivers adjust their seat and steering column to allow clearance between their knee and the ignition key."[111] New GM sent its recall notice to NHTSA one week later, on September 4, 2014.

373. New GM's supposed fix does not address the defect or the safety risks that the defect poses, including the apparent insufficient torque to resist rotation from the "run" to the "accessory" position under reasonably foreseeable driving conditions, and puts the burden on drivers to alter their behavior and carry their ignition keys separately from their other keys, and even from their remote fob. The real answer must include the replacement of all the switches with ones that have sufficient torque to resist foreseeable rotational forces.

374. In addition, New GM is not addressing the other design issues that create safety risks in connection with this defect. New GM is not altering the algorithm that prevents the airbags from deploying when the ignition leaves the "run" position, even when the vehicle is moving. And New GM is not altering the placement of the ignition in an area where the driver's knees may inadvertently cause the ignition to move out of the "run" position.

[110] New GM's Part 573 Safety Recall Report, Sept. 4, 2014.
[111] *Id.*

375. The September 4 recall is, like the earlier defective ignition switch recalls, too little and too late.

X. Even As They Concealed the Safety Defects From Consumers, Old and New GM Each Presented Their Vehicles As Safe And Reliable, and Presented Itself As An Honest Company With Integrity.

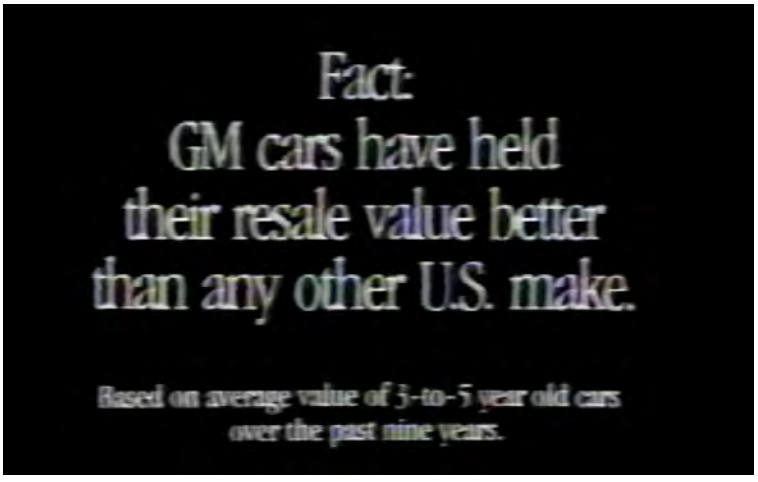
376. Throughout its history, Old GM regularly used print media, press releases, and television and video media to represent its vehicles as safe, reliable, quality products that provide great value to purchasers, and retain their value over time better than other manufacturers' vehicles. Old GM also used these media to present itself as an honest, above-board, values-oriented company with integrity. In truth, however, Old GM was concealing serious safety hazards and endangering its own customers.

377. A 1988 Old GM commercial stated:

> "GM meets your challenge. With outstanding quality and great value… That's leadership, that's GM."[112]

378. In 1989, an Old GM commercial represented:

> "Fact: GM cars have held their resale value better than any other U.S. make."[113]



[112] https://www.youtube.com/watch?v=h19lFAwGDwU.
[113] https://www.youtube.com/watch?v=Bg8CAt5ZhdI.

379. A 1990 Old GM Pontiac commercial stated:

> "GM is putting quality on the road."[114]

380. A 1998 General Motors Commercial proclaimed that Old GM cars were reliable and safe:

> "We are fans and nothing keeps us from the game. We need cars and trucks as reliable as we are. Season after season. And when the game is over, we need to know that what got us there will also get us safely home. Delivering cars and trucks that fans count on is what makes us General Motors."[115]

381. Old GM explained that the 2003 Saturn ION had "surprising levels of safety" in the car's Product Information: "Bringing a new charge into the small-car segment, the 2003 Saturn ION sets itself apart from competitors with innovative features, unique personalization opportunities and surprising levels of safety, sophistication and fun."[116]

382. On July 1, 2003, Old GM issued a press release explaining that the 2004 Impala "offers a comprehensive safety package, solid body structure, room for five passengers,

[114] https://www.youtube.com/watch?v=_hR7-7eKufQ.
[115] https://www.youtube.com/watch?v=Dt12Gti12iA.
[116] https://archives.media.gm.com/division/2003_prodinfo/03_saturn/03_Ion/index.html.

plenty of cargo space, a surprising number of amenities for the price, and a track record of outstanding quality, reliability and durability."[117]

383. In a July 1, 2003 press release Old GM stated that "[e]nhanced handling and acceleration are always paramount for Pontiac enthusiasts, and these, plus added safety and comfort measures, make the 2004 Pontiac lineup one of the most exciting in the division's history."[118]

384. On July 1, 2003, Old GM issued a press release about the 2004 Chevrolet Monte Carlo that explained that "[a]ttention to safety and security is also key to Monte Carlo's success."[119]

385. On July 1, 2003, Old GM issued a press release about the 2004 Pontiac Grand Prix that explained that "[s]afety is always a high priority for Grand Prix."[120]

386. In its Product Information for the 2003 Chevrolet Malibu, Old GM explained that "since 1997, the new Malibu has offered buyers excellent performance, safety and comfort in a trim, stylish package. For 2003, Chevrolet Malibu remains a smart buy for those who want a well-equipped midsize sedan at an attractive price.… Designed for individuals or families with high expectations of quality, reliability, safety, driving pleasure, and affordability, the Malibu appeals to domestic and import owners."[121]

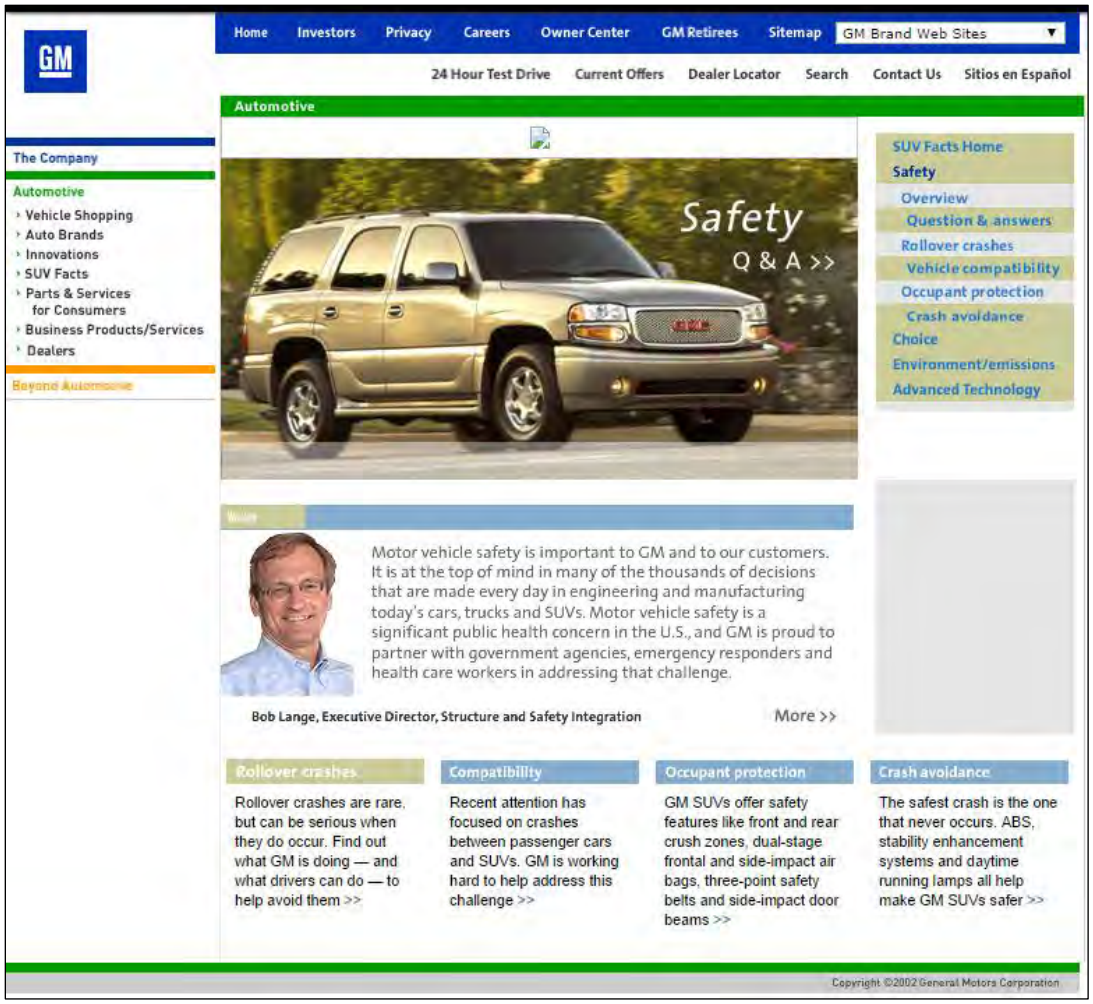
387. On July 1, 2003, Old GM issued a press release about the 2004 Saturn Ion explaining that, "[t]he ION sedan and quad coupe are designed to carry on the Saturn tradition of being at the top of the class when it comes to safety and security. The world-class structural design provides the foundation for this focus on safety. The steel spaceframe's front and rear

[117] https://archives.media.gm.com/division/2004_prodinfo/chevrolet/cars/impala/index.html.
[118] https://archives.media.gm.com/division/2004_prodinfo/pontiac/pdf/04_Pontiac_Overview.pdf.
[119] https://archives.media.gm.com/division/2004_prodinfo/chevrolet/cars/monte_carlo/ index.html.
[120] https://archives.media.gm.com/division/2004_prodinfo/pontiac/grand_prix/index.html.
[121] https://archives.media.gm.com/division/2003_prodinfo/03_chevrolet/03_malibu/ index.html.

crush zones help absorb the energy of a crash while protecting the integrity of the safety cage."[122]

388. On October 4, 2003, Old GM's website stated that "[m]otor vehicle safety is important to GM and to our customers. It is at the top of mind in many of the thousands of decisions that are made every day in engineering and manufacturing today's cars, trucks, and SUVs/ Motor vehicle safety is a significant public health concern in the U.S., and GM is proud to partner with government agencies, emergency responders and health care workers in addressing that challenge."[123]

[122] https://archives.media.gm.com/division/2004_prodinfo/saturn/ion/index.html.
[123] http://web.archive.org/web/20031004014908/http://www.gm.com/automotive/vehicle_shopping/suv_facts/100_safety/index.html.



389. In 2004, Old GM's marketing campaign incorporated a new phrase "Only GM," which highlighted safety features such as electronic stability control. Old GM stated: "We want to bring this kind of safety, security and peace-of-mind to all of our customers because it's the right thing to do, and because only Old GM can do it."

Only GM

For example, we recently launched a new corporate advertising campaign under the theme, "Only GM." It's part of an effort to use the GM brand more aggressively and with more purpose, to show that we're leading the industry in ways that only GM can.

The "Only GM" campaign began by highlighting our plans to equip all our cars and trucks sold to retail customers in the United States and Canada with OnStar and StabiliTrak, GM's electronic stability control system. We want to bring this kind of safety, security and peace-of-mind to all of our customers because it's the right thing to do, and because only GM can do it. We also want potential customers to know that GM offers them great value, and that buying GM matters. (For more details, go to *onlygm.com.*)

(Old GM's 2004 Annual Report, p. 6.)

390. And in the same Report, under the banner "Peace of mind," Old GM represented that "Only GM can offer its customers the assurance that someone is looking out for them and their families when they're on the road," and that: "This commitment to safety makes GM the only automobile manufacturer able to offer a full range of cars, tricks an SUVs that provide safety protection before, during and after vehicle collisions."

(Old GM's 2004 Annual Report, p. 22.)

391. On May 10, 2004, Old GM's website announced that its "aim is to improve motor vehicle safety for customers, passengers, and other motorists. Our customers expect and demand vehicles that help them to avoid crashes and reduce the risk of injury in case of a crash. We strive to exceed these expectations and to protect customers and their families while they are on the road." The website continued, "GM is committed to continuously improving the crashworthiness and crash avoidance of its vehicles, and we support many programs aimed at encouraging safer motor vehicle use…"[124]

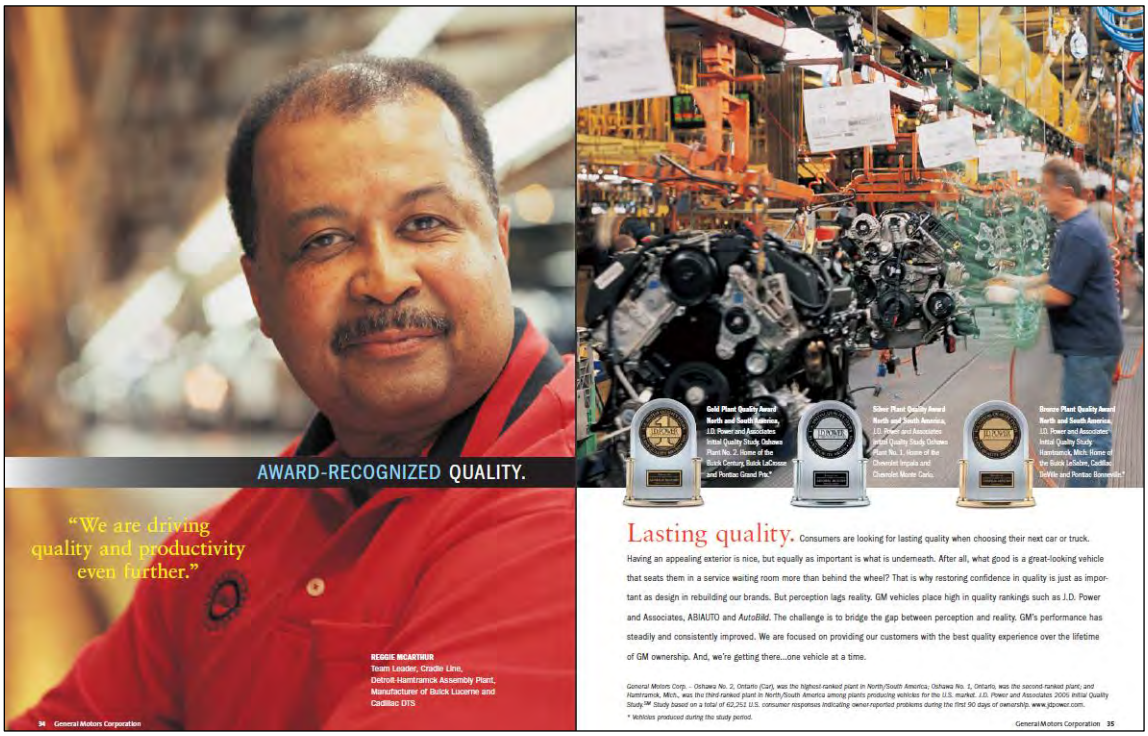
392. On June 4, 2004, Old GM's website stated that "[v]ehicle safety is paramount at GM, and we constantly strive to make our cars and trucks safe. We also continue our support for groups such as the National SAFE KIDS Campaign, and a number of programs aimed at encouraging safer motor vehicle use."[125]

393. Old GM's June 4, 2004, website published a message from its CEO, Rick Wagoner, on corporate responsibility. Mr. Wagoner wrote, "[a]t a time when current events remind us of the critical importance of corporate responsibility and the value of sustainable development, we at General Motors are fortunate to have inherited a legacy of doing business the right way. It's a great asset. And, it's a huge obligation … one we take very seriously. What we call "winning with integrity" is not an optional or occasional behavior at GM. Integrity is one of our core values, and a way of doing business that helps us realize our company's full potential….In short, "winning with integrity" is much more than a one-time exercise at GM. It's how we work every day. It's a philosophy that transcends borders,

[124] http://web.archive.org/web/20040510221647/http://www.gm.com/company/gmability/safety/?section=Company&layer=GMAbility2&action=open&page=1.
[125] http://web.archive.org/web/20040604055658/http://www.gm.com/company/gmability/sustainability/reports/03/safety.html.

language, and culture, and something we promote by creating an environment within our company that supports, and demands, proper business conduct."[126]

394. In its 2005 Annual Report Old GM stated: "We are driving quality and productivity even further." "Lasting quality—That is why restoring confidence in quality is just as important as design in rebuilding our brands…. We are focused on providing our customers with the best quality experience over the lifetime of GM ownership."



395. The 2005 GMC Yukon, Tahoe, and Cadillac Escalade were touted as "distinctly designed packages that lead the segment in performance, safety, efficiency and capability."[127]

396. On September 9, 2005, Old GM's website described its safety technology as "Helping You Avoid a Crash" and "Giving the driver information never possible before":[128]

[126] http://web.archive.org/web/20040604055939/http://www.gm.com/company/gmability/sustainability/reports/03/wagoner_message.html.
[127] GM's 2005 Annual Report, p. 23.

397. At the same time Old GM announced what it called the next big step in safety:[129]

> "No matter what vehicle you drive, your safety is vital. GM is looking out for you—you deserve that peace of mind on the road. Which is why at GM, we've taken the next big step in our commitment to provide more customers with more safety and security."

Footnote continued from previous page

[128] http://web.archive.org/web/20050909184042/http://www.gm.com/company/gmability/safety/avoid_crash/index.html.

[129] http://web.archive.org/web/20050909225925/http://www.gm.com/company/onlygm/.

398. In a July 12, 2006 press release regarding Old GM's 2007 model year lineup, Old GM stated, "[f]rom an all-new family of full-size pickup trucks and SUVs to carlike crossovers to small cars and a near-complete revitalization of the Saturn portfolio, General Motors is introducing several new or significantly redesigned vehicles for the 2007 model year—stylish products that leverage GM's global resources to deliver value, brand-distinctive design character, safety, fuel efficiency, relevant technologies and quality to the North American market."[130]

399. In an August 1, 2006 press statement for the 2007 Cadillac Lucerne, Old GM represented that the "Lucerne's body structure is engineered to provide maximum occupant protection and minimum intrusion under a wide range of impact conditions."[131]

400. In an August 1, 2006 press statement for the 2007 Cadillac DTS, Old GM represented: "[d]esigned and engineered with occupant safety and protection in mind, the DTS reinforces Cadillac's long-standing reputation for safe occupant environments in premium vehicles."[132]

401. Old GM's website on August 9, 2006, stated:[133]

> **MAKING VEHICLES SAFER**
>
> "GM strives to make each new model safer than the one it replaces. Vehicle-based safety strategies generally fall into three categories:
>
> BEFORE: Collision avoidance—technologies designed to help the driver avoid potential crashes (sometimes called 'active safety' technologies),

[130] https://archives.media.gm.com/us/gm/en/product_services/vehicles/2007/07%20 corporate%20oview.html.
[131] https://archives.media.gm.com/us/buick/en/product_services/r_cars/r_c_lucerne/07 index.html.
[132] https://archives.media.gm.com/us/cadillac/en/product_services/r_cars/r_c_DTS/07 index.html.
[133] http://web.archive.org/web/20060809103405/http://www.gm.com/company/gmability/sustainability/reports/05/400_products/7_seventy/471.html.

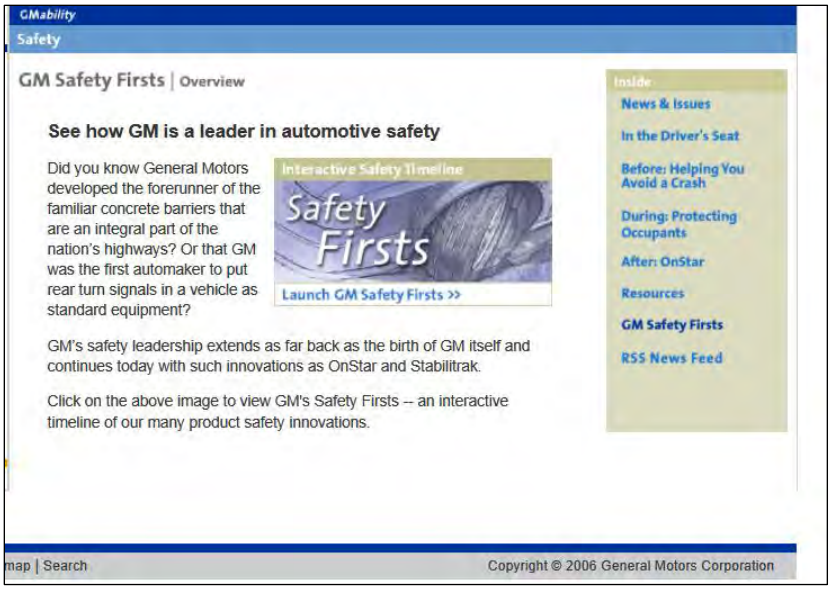
> DURING: Crashworthiness—designs and technologies that help mitigate the injury potential of a crash (sometimes called 'passive safety'), and
>
> AFTER: Post-crash—systems that can help alert emergency rescue to a crash and help provide information to aid rescue specialists.
>
> …
>
> GM vehicles are designed to help protect occupants in the 'first' collision, which acts to deform the vehicle structure and change the velocity of the vehicle's center of mass. Also, GM vehicles are designed to help reduce injury risk for occupants in the 'second' collision, which is between the vehicle interior as it responds to the forces imposed by object that collides with the vehicle, and the occupants."

402. Old GM's website on September 6, 2006, stated:[134]

> "Helping drivers avoid crashes and making vehicles safer is a priority for GM.
>
> …
>
> Motor vehicle safety involves not only the design of the vehicle, but the manner in which it is driven, and the driving environment as well. GM is committed to researching and implementing programs and technologies that enhance the safety of vehicles. GM wants to assist drivers to operate their vehicles to avoid hazards, and to help protect occupants in the event of a vehicle crash. GM also focuses on the circumstances that occur after a crash.
>
> GM's vehicle safety priorities are guided by analysis of the real-world experience that customers have with motor vehicles."

403. Old GM stated on its website in October 29, 2006 it is a leader in automotive safety and that its safety leadership extends as far back as the birth of Old GM:[135]

[134] http://web.archive.org/web/20060906083227/http://www.gm.com/company/gmability/sustainability/reports/05/400_products/7_seventy/470.html.
[135] http://web.archive.org/web/20061029080834/http://www.gm.com/company/gmability/safety/safety_firsts/index.html.



404. In a video published on January 2, 2007, Old GM's Vice Chairman of Product Development, Bob Lutz, stated "Saturn has always been a great brand" and that it "has predominately been known for customer service, fair dealers, honest dealers and having happy buyers."[136]

405. On Old GM's website on January 6, 2007, Bob Lange, Executive Director, Structure and Safety Integration, stated "[o]ur aim is to improve motor vehicle safety for customers, passengers and other motorists. Our customers expect and demand vehicles that help them to avoid crashes and reduce the risk of injury in case of a crash. We strive to exceed these expectations and to protect customers and their families while they are on the road." Further, that "GM is committed to continuously improving the crashworthiness and crash avoidance of its vehicles…"[137]

406. In its 2007 Annual Report, Old GM stated:

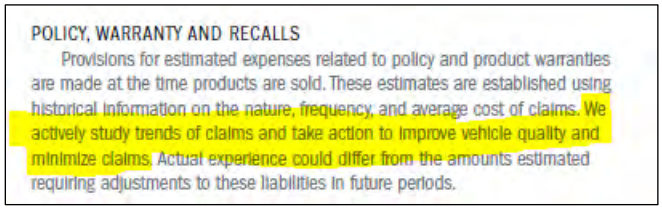
> In 2007, we continued to implement major improvements to our U.S. sales and marketing strategy. Over the past two years, we've

[136] https://www.youtube.com/watch?v=Kd1Kg0BBdto&list=UUxN-Csvy_9sveql5HJviDjA.
[137] http://web.archive.org/web/20070106044410/http://www.gm.com/company/gmability /safety/.

> re-focused our marketing efforts to emphasize the strength and value of our products and brands…
>
> We also continued to make progress in our long-term effort to improve quality…
>
> We've also witnessed, since 2005, an 89 percent reduction in vehicle recall campaigns involving safety and non-compliance.

(Old GM's 2007 Annual Report, p. 7.)

407. Moreover, Old GM represented that it "actively studies trends of claims" to take action to improve vehicle quality:



POLICY, WARRANTY AND RECALLS

Provisions for estimated expenses related to policy and product warranties are made at the time products are sold. These estimates are established using historical information on the nature, frequency, and average cost of claims. We actively study trends of claims and take action to improve vehicle quality and minimize claims. Actual experience could differ from the amounts estimated requiring adjustments to these liabilities in future periods.

(Old GM 2007 Annual Report, p. 74.)

408. In an August 1, 2007 press release, Mark LaNeve, GM North America Vice President, Vehicle Sales, Service and Marketing introduced Old GM's 2008 line up, stating "Old GM's transformation is being driven by high-quality cars and trucks that look great, drive great, are fuel-efficient and provide genuine value to our customers." Further, "[n]o other automaker provides such a diverse lineup of cars and trucks that meets the needs of customers that range from college studies to contactors. And our five-year, 100,000-mile powertrain warranty—the most comprehensive in the industry—adds even more value to the bottom line, demonstrating that we are putting our money where our mouth is on vehicle quality."[138]

409. On August 1, 2007, Old GM represented that "[t]he Cobalt enters the 2008 model year on the heels of a successful '07 model year, which introduced several significant

[138] https://archives.media.gm.com/us/gm/en/product_services/vehicles/2008/08gmna_ overview.html.

enhancements, including more powerful Ecotec engines. For '08, the Cobalt builds on that powerful foundation with a streamlined model lineup and more standard safety and convenience equipment…Cobalt's enhanced safety features include:

> StabiliTrack electronic stability control system standard on 2LT and Sport
>
> Traction control standard on all models equipped with an automatic transmission and optional ABS
>
> Tire pressure monitoring system standard on all models
>
> Headcurtain side impact air bags standard on all models
>
> OnStar standard on 2LT and Sport; available on 1LT"[139]

410. On August 1, 2007 Old GM represented that "[t]he 2008 Impala reinforces the brand's value story with new features and revisions that add to its safety and efficiency, including the addition of standard StabiliTrack electronic stability control on 2LT, LTZ and SS models…"[140]

411. In an August 1, 2007 press statement for the 2008 Buick LaCrosse, Old GM represented that the "LaCrosse is built with a strong 'safety cage' structure and a full-perimeter aluminum engine cradle that directs impact energy away from passengers. Anti-lock brakes and side curtain airbags are standard on all models."[141]

412. In an August 1, 2007 press statement for the 2008 Buick Lucerne, GM represented that the "Lucerne's body structure is designed to provide maximum occupant protection and minimum intrusion under a wide range of impact conditions. Active safety and handling features offered on Lucerne include a four-channel anti-lock braking system and traction control; an auto-level rear suspension that automatically adjusts the vehicle height for

[139] https://archives.media.gm.com/us/chevrolet/en/product_services/r_cars/08%20 chevrolet%20car%20oview.html.
[140] https://archives.media.gm.com/us/chevrolet/en/product_services/r_cars/08%20 chevrolet%20car%20oview.html.
[141] https://archives.media.gm.com/us/buick/en/product_services/r_cars/r_c_lacrosse/ 08index.html.

heavy loads; and four-channel StabiliTrack electronic stability control with brake assist, which senses emergency braking situations and boosts power as needed."[142]

413. In mid to late 2007, Old GM represented that "[t]he 2008 CTS is designed to enhance Cadillac's reputation for providing safe occupant environments in luxury vehicles. Details include:

> Dual-stage driver's front air bag
>
> Segment-first dual-depth front passenger air bag
>
> River and front passenger side seat-mounted pelvic/thorax side air bags
>
> Roof-rail side curtain air bags, covers front and rear seating rows
>
> Front safety belt pretensioners
>
> Tire pressure monitoring system
>
> Body structure with strategically place high-strength steels"[143]

414. In an August 1, 2007, press statement for the 2008 Cadillac DTS, Old GM stated, "Designed and engineered with occupant safety and protection in mind, the DTS reinforces Cadillac's long-standing reputation for safe occupant environments in premium vehicles. The DTS is equipped with a host of safety and security features, beginning with its body frame integral (BFI) construction, strategically engineered crumple zones in front and rear; and comprehensive use of high-strength steel. The vehicle's crashworthiness is enhanced with structural foam and nylon structural inserts strategically placed in areas of the vehicle's structure."[144]

415. In an August 1, 2007, press statement for the 2008 Pontiac Grand Prix, Old GM represented that the "Grand Prix's convenience and safety features are perfect for drivers

[142] https://archives.media.gm.com/us/buick/en/product_services/r_cars/r_c_lucerne/ 08index.html.
[143] https://archives.media.gm.com/us/cadillac/en/product_services/r_cars/r_c_CTS/08 index.html.
[144] https://archives.media.gm.com/us/cadillac/en/product_services/r_cars/r_c_DTS/ 08index.html.

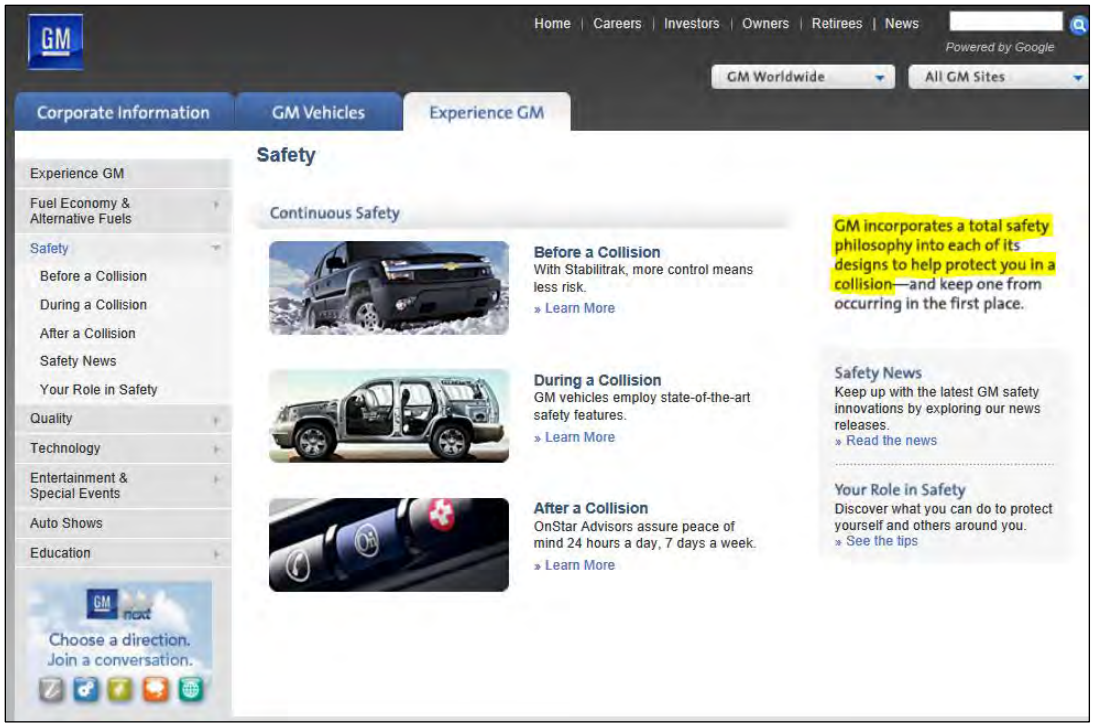
who enjoy the precise handling characteristics of a sporty, family-friendly package. The 2008 Grand Prix remains a driver's car inside and out. The active and passive safety features on the Grand Prix include standard four-wheel disc brakes, traction control and daytime running lamps."[145]

416. Old GM's website on January 15, 2008, stated "GM incorporates a total safety philosophy into each of its designs to help protect you in a collision—and keep one from occurring in the first place."[146]

417. In February 2008, Old GM aired a Chevy Malibu commercial during The Grammy's which stated the Chevy Malibu was "built to last" "because safety should last a lifetime." The commercial used images of a child being raised to adulthood, in order to convey protection and safety.[147]

418. On its website in March of 2008, Old GM stated it was delivering the best cars and trucks in its 100-year history, and that it was "Obsessed with Quality." The website also spoke of "Continuous Safety," and represented that "GM incorporates a total safety philosophy into each of its designs to help protect you in a collision—and keep one from occurring in the first place":[148/149/150]

[145] https://archives.media.gm.com/us/pontiac/en/product_services/r_cars/r_c_grandprix/ index.html.
[146] http://web.archive.org/web/20080115004426/http://www.gm.com/explore/safety/.
[147] https://www.youtube.com/watch?v=EgNQ2tns0Gs.
[148] http://web.archive.org/web/20080303182635/http://www.gm.com/corporate/.
[149] http://web.archive.org/web/20080305021951/http://www.gm.com/explore/.
[150] http://web.archive.org/web/20080311045525/http://www.gm.com/explore/safety.



XI. New GM Promoted All Of Its Vehicles As Safe, Reliable, And High-Quality While It Fraudulently Concealed Numerous Safety Defects

A. New GM Claimed To Be Turning Over A New Leaf After The Bankruptcy.

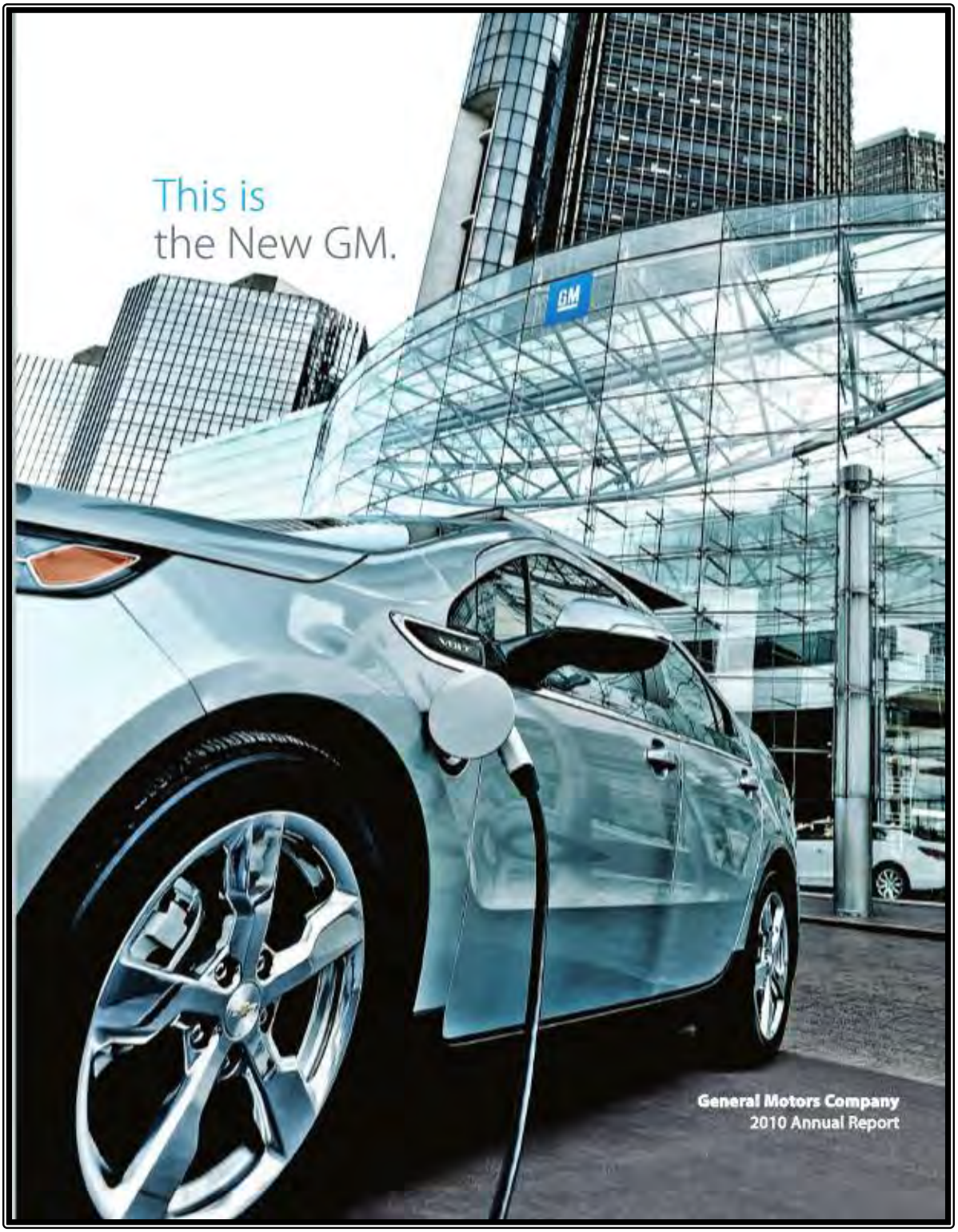
419. New GM was financially successful in emerging from the Old GM bankruptcy. Sales of all its models went up and New GM became profitable. A new GM was born and the GM brand once again stood strong in the eyes of consumers – or so the world thought.

420. In 2010, New GM sold 4.26 million vehicles globally, an average of one every 7.4 seconds. Joel Ewanick, New GM's global chief marketing officer at the time, described this success in a statement to the press, "Chevrolet's dedication to compelling designs, quality, durability and great value is a winning formula that resonates with consumers around the world."[151]

421. New GM led the world and U.S. consumers to believe that, once it emerged from bankruptcy in 2009, it was a new and improved company. New GM repeatedly

[151] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2011/Jan/0117_chev_ global.

proclaimed that it was a company committed to innovation, safety, and maintaining a strong brand:



General Motors Company 2010 Annual Report, cover page.

422. In New GM's 2010 Annual Report, New GM proclaimed its products would "improve safety and enhance the overall driving experience for our customers." (*See* New GM 2010 Annual Report, p. 10.)

> As we regain our financial footing, we expect the number of new product launches to steadily rise over the next several years. And these new products will increasingly embrace advanced technology to reduce fuel consumption and emissions, improve safety and enhance the overall driving experience for our customers.

General Motors Company 2010 Annual Report, p. 4.

423. New GM claimed the New GM would create vehicles that would define the industry stand.

> BUILDING THE NEW GM
>
> We are moving with increased speed and agility, and implementing change faster than ever before. We are becoming a company with the capability, resources and confidence to play offense, not defense. Instead of creating new vehicles that are just better than their predecessors, we're working to design, build and sell vehicles that define the industry standard.

General Motors Company 2010 Annual Report, p. 5.

424. In its 2010 Annual Report New GM told consumers that it built the world's best vehicles:

> *We truly are building a new GM, from the inside out. Our vision is clear: to design, build, and sell the world's best vehicles, and we*

> *have a new business model to bring that vision to life. We have a lower cost structure, a stronger balance sheet, and a dramatically lower risk profile. We have a new leadership team – a strong mix of executive talent from outside the industry and automotive veterans – and a passionate, rejuvenated workforce.*
>
> *"Our plan is to steadily invest in creating world-class vehicles, which will continuously drive our cycle of great design, high quality and higher profitability."*

General Motors Company 2010 Annual Report, p. 2.

425. New GM represented that it was building vehicles with design excellence, quality, and performance:

> *And across the globe, other GM vehicles are gaining similar acclaim for design excellence, quality, and performance, including the Holden Commodore in Australia. Chevrolet Agile in Brazil, Buick LaCrosse in China, and many others.*
>
> *The company's progress is early evidence of a new business model that begins and ends with great vehicles. We are leveraging our global resources and scale to maintain stringent cost management while taking advantage of growth and revenue opportunities around the world, to ultimately deliver sustainable results for all of our shareholders.*

General Motors Company 2010 Annual Report, p. 3.

426. These themes were repeatedly put forward as the core message about New GM's Brand:

The new General Motors has one clear vision: to design, build and sell the world's best vehicles. Our new business model revolves around this vision, focusing on fewer brands, compelling vehicle design, innovative technology, improved manufacturing productivity and streamlined, more efficient inventory processes. The end result is products that delight customers and generate higher volumes and margins—and ultimately deliver more cash to invest in our future vehicles.

A New Vision, a New Business Model

Our vision is simple, straightforward and clear; to design, build and sell the world's best vehicles. That doesn't mean just making our vehicles better than the ones they replace. We have set a higher standard for the new GM—and that means building the best.

Our vision comes to life in a continuous cycle that starts, ends and begins again with great vehicle designs. To accelerate the momentum we've already created, we reduced our North American portfolio from eight brands to four: Chevrolet, Buick, Cadillac and GMC. Worldwide, we're aggressively developing and leveraging global vehicle architectures to maximize our talent and resources and achieve optimum economies of scale.

Across our manufacturing operations, we have largely eliminated overcapacity in North America while making progress in Europe, and we're committed to managing inventory with a new level of discipline. By using our manufacturing capacity more efficiently and maintaining leaner vehicle inventories, we are reducing the need to offer sales incentives on our vehicles. These moves, combined with offering attractive, high-quality vehicles, are driving healthier margins—and at the same time building stronger brands.

Our new business model creates a self-sustaining cycle of reinvestment that drives continuous improvement in vehicle design, manufacturing discipline, brand strength, pricing and margins, because we are now able to make money at the bottom as well as the top of the industry cycles.

We are seeing positive results already. In the United States, for example, improved design, content and quality have resulted in solid gains in segment share, average transaction prices and projected residual values for the Chevrolet Equinox, Buick LaCrosse and Cadillac SRX. This is just the beginning.

General Motors Company 2010 Annual Report, p. 6.

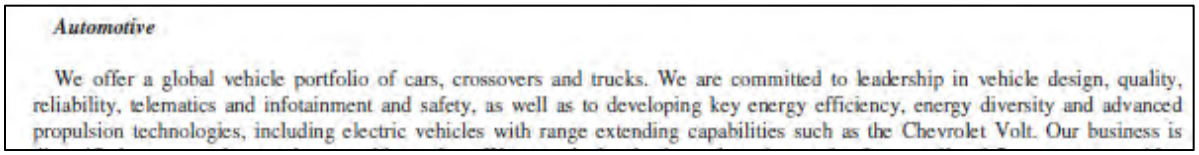
427. New GM boasted of its new "culture":

General Motors Company 2010 Annual Report, p. 16.

428. In its 2011 Annual Report, New GM proclaimed that it was putting its customers first:

General Motors Company 2011 Annual Report, p. 1.

429. Further, New GM stated that it is committed to leadership in vehicle safety:



Automotive

We offer a global vehicle portfolio of cars, crossovers and trucks. We are committed to leadership in vehicle design, quality, reliability, telematics and infotainment and safety, as well as to developing key energy efficiency, energy diversity and advanced propulsion technologies, including electric vehicles with range extending capabilities such as the Chevrolet Volt. Our business is

General Motors Company 2011 Annual Report, p. 11.

430. In its 2011 Annual Report, in a "Letter to Stockholders," New GM noted that its brand had grown in value and that it designed the "World's Best Vehicles":

> *Dear Stockholder:*
>
> *Your company is on the move once again. While there were highs and lows in 2011, our overall report card shows very solid marks, including record net income attributable to common stockholders of $7.6 billion and EBIT-adjusted income of $8.3 billion.*
>
> - *GM's overall momentum, including a 13 percent sales increase in the United States, created new jobs and drove investments. We have announced investments in 29 U.S. facilities totaling more than $7.1 billion since July 2009, with more than 17,500 jobs created or retained.*
>
> *Design, Build and Sell the World's Best Vehicles*

This pillar is intended to keep the customer at the center of everything we do, and success is pretty easy to define. It means creating vehicles that people desire, value and are proud to own. When we get this right, it transforms our reputation and the company's bottom line.

General Motors Company 2011 Annual Report, p. 2.

Strengthen Brand Value

Clarity of purpose and consistency of execution are the cornerstones of our product strategy, and two brands will drive our global growth. They are Chevrolet, which embodies the qualities of value, reliability, performance, and expressive design; and Cadillac, which creates luxury vehicles that are provocative and powerful. At the same time the Holden, Buick, GMC, Baojun, Opel and Vauxhall brands are being carefully cultivated to satisfy as many customers as possible in select regions.

Each day the cultural change underway at GM becomes more striking. The old internally focused, consensus-driven and overly complicated GM is being reinvented brick by brick, by truly accountable executives who know how to take calculated risks and lead global teams that are committed to building the best vehicles in the world as efficiently as we can.

That's the crux of our plan. The plan is something we can control. We like the results we're starting to see and we're going to stick to it – always.

General Motors Company 2011 Annual Report, p. 3.

These themes continued in New GM's 2012 Annual Report:

DANIEL F. AKERSON
Chairman & Chief Executive Officer
with the 2014 Cadillac CTS

TO OUR STOCKHOLDERS:

Last year, I closed my letter to you by talking about how GM was changing its processes and culture in order to build the best vehicles in the world much more efficiently and profitably. This year, I want to pick up where I left off, and articulate what success looks like for you as stockholders, and for everyone else who depends on us. >>

General Motors Company 2012 Annual Report, p. 3.

431. New GM told the world the following about its brand:

> *What is immutable is our focus on the customer, which requires us to go from "good" today to "great" in everything we do, including product design, initial quality, durability, and service after the sale.*

General Motors Company 2012 Annual Report, p. 4.

432. New GM also indicated it had changed its structure to create more "accountability" which, as shown below, was a blatant falsehood:

> *That work continues, and it has been complemented by changes to our design and engineering organization that have flattened the*

> *structure and created more accountability for produce execution, profitability and customer satisfaction.*

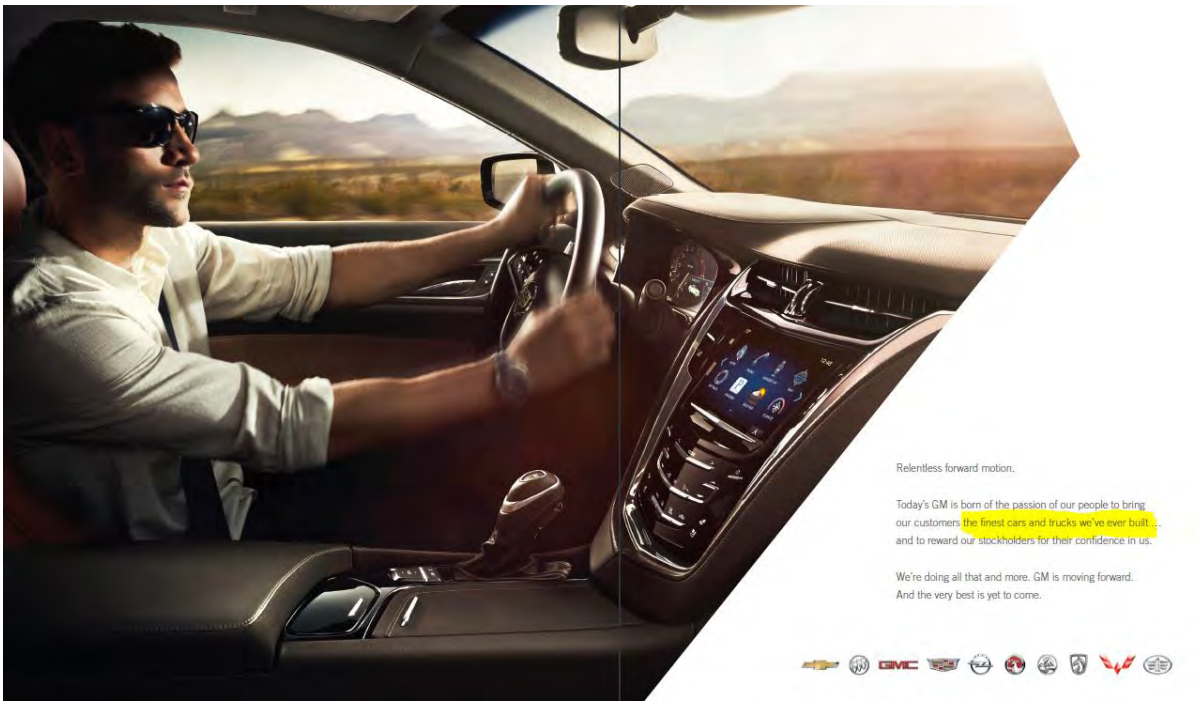
General Motors Company 2012 Annual Report, p. 10.

433. And New GM represented that product quality was a key focus – another blatant falsehood:

> *Product quality and long-term durability are two other areas that demand our unrelenting attention, even though we are doing well on key measures.*

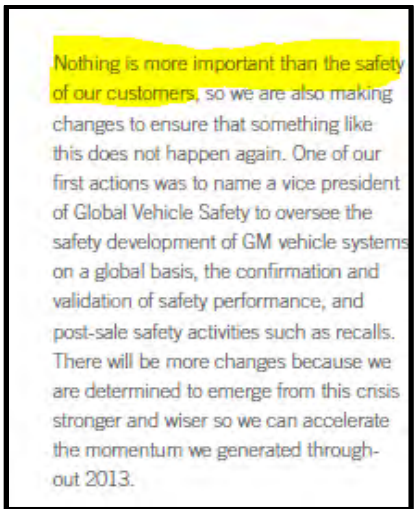
General Motors Company 2012 Annual Report, p. 10.

434. New GM's 2013 Annual Report stated "Today's GM is born of the passion of our people to bring our customers the finest cars and trucks we've ever built":



General Motors Company 2013 Annual Report, inside front cover dual page, (unnumbered).

435. In addition, New GM represented: "Nothing is more important than the safety of our customers":



Nothing is more important than the safety of our customers, so we are also making changes to ensure that something like this does not happen again. One of our first actions was to name a vice president of Global Vehicle Safety to oversee the safety development of GM vehicle systems on a global basis, the confirmation and validation of safety performance, and post-sale safety activities such as recalls. There will be more changes because we are determined to emerge from this crisis stronger and wiser so we can accelerate the momentum we generated throughout 2013.

General Motors Company 2013 Annual Report, p. 4.

B. New GM's Advertising And Literature Claimed That GM Placed Safety And Quality First.

436. In May of 2014, New GM sponsored the North American Conference on Elderly Mobility. Gay Kent, director, New GM global vehicle safety, and a presenter at the conference stated: "The safety of all our customers is our utmost concern.[152]

437. In advertisements and company literature, New GM consistently promoted all its vehicles as safe and reliable, and presented itself as a responsible manufacturer that stands behind GM-branded vehicles after they are sold. New GM has made, and continues to make, misleading safety and reliability claims in public statements, advertisements, and literature provided with its vehicles. For example:

438. An online ad for "GM certified" used vehicles that ran from July 6, 2009, until April 5, 2010, stated that "GM certified means no worries."

439. In April 2010, General Motors Company Chairman and CEO, Ed Whitacre, starred in a commercial video advertisement on behalf of New GM. In it, Mr. Whitacre acknowledged that not all Americans wanted to give New GM a second chance, but that New

[152] https://media.gm.com/media/us/en/gm/news.detail./content/Pages/news/us/en/2014/May/0514-cameras.

GM wanted to make itself a company that "all Americans can be proud of again" and "exceed every goal [Americans] set for [General Motors]." He stated that New GM was "designing, building, and selling the best cars in the world." He continued by saying New GM has "unmatched lifesaving technology" to keep customers safe. He concluded by inviting the viewer to take a look at "the new GM."[153]

440. A radio ad that ran from New GM's inception until July 16, 2010 stated that "[a]t GM, building quality cars is the most important thing we can do."

441. On November 10, 2010, General Motors published a video that told consumers that New GM prevents any defects from reaching consumers. The video, entitled "Andy Danko: The White Glove Quality Check," wherein it is stated that there are "quality processes in the plant that prevent any defects from getting out." The video also stated that the goal when a customer buys a New GM vehicle is that they "drive it down the road and they never go back to the dealer."[154]

[153] https://www.youtube.com/watch?v=jbXpV0aqEM4.
[154] https://www.youtube.com/watch?v=JRFO8UzoNho&list=UUxN-Csvy_9sveql5HJviDjA.

442. In 2010 New GM ran a television advertisement for its Chevrolet brand that implied its vehicles were safe by showing parents bringing their newborn babies home from the hospital, with the tagline "as long as there are babies, there will be Chevys to bring them home."[155]

443. Another 2010 television ad informed consumers that "Chevrolet's ingenuity and integrity remain strong, exploring new areas of design and power, while continuing to make some of the safest vehicles on earth."

444. New GM's 2010 brochure for the Chevy Cobalt states "Chevy Cobalt is savvy when it comes to standard safety" and "you'll see we've thought about safety so you don't have to." It also states "[w]e're filling our cars and trucks with the kind of thinking, features and craftsmanship you'd expect to pay a lot more for."[156]

[155] https://www.youtube.com/watch?v=rb28vTN382g.
[156] https://www.auto-brochures.com/makes/Chevrolet/Cobalt/Chevrolet_US%20Cobalt_2010.pdf.

COBALT

See a photo gallery of Cobalt at chevy.com/cobalt

Cobalt is engineered to save you money years down the road with long-life components like 100,000-mile spark plugs and 150,000-mile engine coolant, plus automatic transmission fluid that never needs changing.[1]

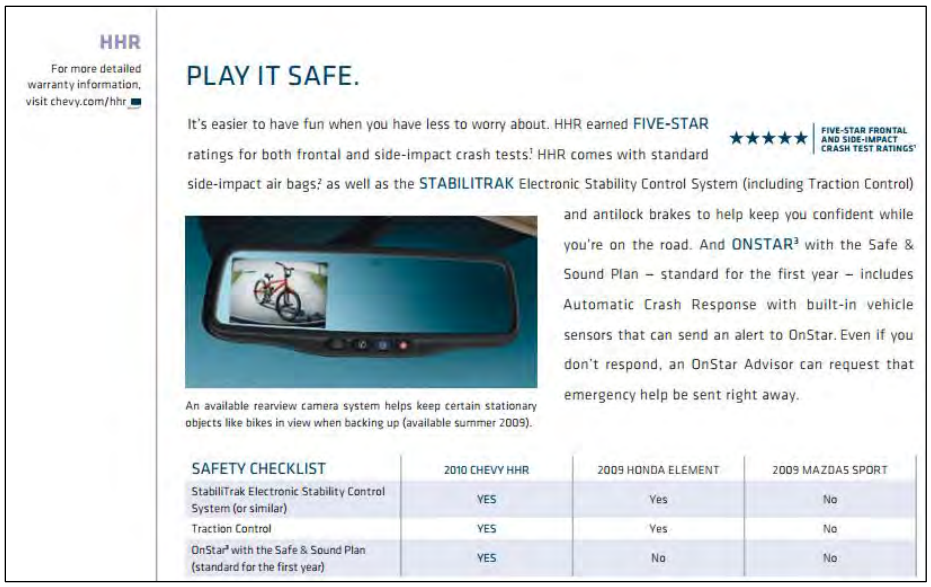
STREET-SMART ABOUT SAFETY.

Chevy Cobalt is savvy when it comes to standard safety. It's equipped with dual frontal air bags and HEAD-CURTAIN SIDE-IMPACT AIR BAGS;[2] the OnStar[3] Safe & Sound Plan (standard for the first year); and a Driver Information Center that alerts you to tire pressure, oil life and many other vehicle functions and also includes personalization settings. The STABILITRAK Electronic Stability Control System (including Traction Control) is standard on SS models. Factor in antilock brakes – standard on 2LT and SS, available on LS and 1LT – and you'll see we've thought about safety so you don't have to.

The Driver Information Center includes a Tire Pressure Monitor (excludes spare tire), 15 messages and personalization settings.

CHEVY To us, it's pretty simple: Build vehicles that anyone would be proud to own, and put them within reach. We offer more models than Toyota or Honda with 30 MPG HIGHWAY OR BETTER! We're backing our quality with the BEST COVERAGE IN AMERICA, which includes the 100,000 mile/5-year[2] transferable Powertrain Limited Warranty plus Roadside Assistance and Courtesy Transportation Programs. We're filling our cars and trucks with the kind of thinking, features and craftsmanship you'd expect to pay a lot more for. This philosophy has earned us more *CONSUMERS DIGEST* "BEST BUY" awards for 2009 models[3] than any other brand. So owning a Chevy isn't just a source of transportation. It's a source of pride. CHEVY.COM

445. New GM's 2010 Chevy HHR brochure proclaims "PLAY IT SAFE" and "It's easier to have fun when you have less to worry about."[157]



HHR

For more detailed warranty information, visit chevy.com/hhr

PLAY IT SAFE.

It's easier to have fun when you have less to worry about. HHR earned FIVE-STAR ratings for both frontal and side-impact crash tests.[1] HHR comes with standard side-impact air bags,[2] as well as the STABILITRAK Electronic Stability Control System (including Traction Control) and antilock brakes to help keep you confident while you're on the road. And ONSTAR[3] with the Safe & Sound Plan – standard for the first year – includes Automatic Crash Response with built-in vehicle sensors that can send an alert to OnStar. Even if you don't respond, an OnStar Advisor can request that emergency help be sent right away.

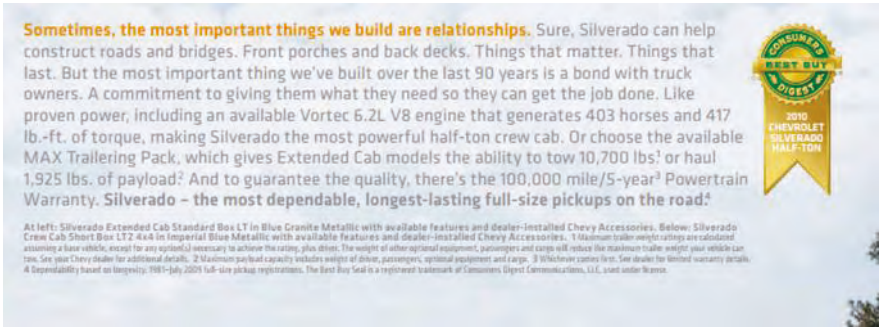
★★★★★ FIVE-STAR FRONTAL AND SIDE-IMPACT CRASH TEST RATINGS[1]

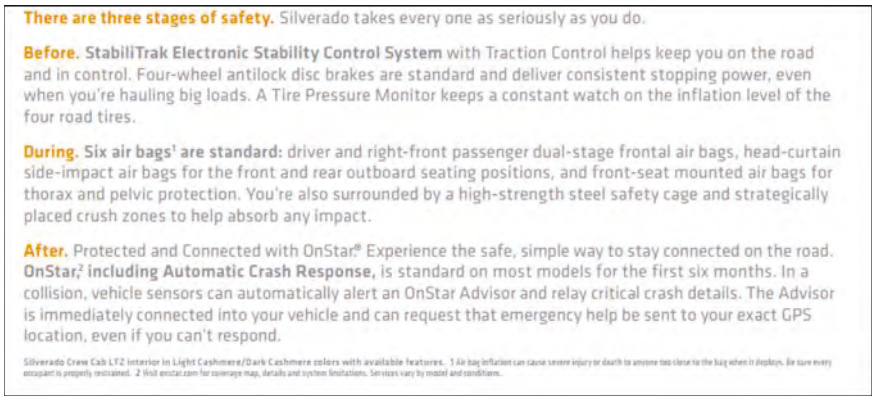
An available rearview camera system helps keep certain stationary objects like bikes in view when backing up (available summer 2009).

SAFETY CHECKLIST	2010 CHEVY HHR	2009 HONDA ELEMENT	2009 MAZDA5 SPORT
StabiliTrak Electronic Stability Control System (or similar)	YES	Yes	No
Traction Control	YES	Yes	No
OnStar[3] with the Safe & Sound Plan (standard for the first year)	YES	No	No

[157] https://www.auto-brochures.com/makes/Chevrolet/HHR/Chevrolet_US%20HHR_2010.pdf.

446. New GM's brochure for the 2011 Chevrolet Silverado states "Silverado – the most dependable, long-lasting full size pickups on the road." It goes on to state "[t]here are three stages of safety. Silverado takes every one as seriously as you do."[158]





447. The brochure for the 2011 Cadillac DTS and STS states "Passenger safety is a primary consideration throughout the engineering process." It continues by stating "[t]he STS and DTS were carefully designed to provide a host of features to help you from getting into a collision in the first place."[159]

[158] https://www.auto-brochures.com/makes/Chevrolet/Silverado/Chevrolet_US%20Silverado_2011.pdf.
[159] https://www.auto-brochures.com/makes/Cadillac/Cadillac_US%20STS-DTS_2011.pdf.

448. On August 29, 2011, New GM stated on its website that: "Chevrolet provides consumers with fuel-efficient, safe and reliable vehicles that deliver high quality, expressive design, spirited performance and value."[160]

449. On September 29, 2011, New GM announced on the "News" portion of its website the introduction of front center airbags. The announcement included a quote from Gay Kent, New GM executive director of Vehicle Safety and Crashworthiness, who stated that: "This technology is a further demonstration of New GM's above-and-beyond commitment to provide continuous occupant protection before, during and after a crash."[161]

450. On December 27, 2011, Gay Kent, Executive Director of Vehicle Safety, was quoted in an interview on New GM's website as saying: "Our safety strategy is about providing continuous protection for our customers before, during and after a crash."[162]

451. New GM's brochure for the 2012 Chevrolet Impala proclaims: "[a] safety philosophy that RUNS DEEP," and that "if a moderate to severe collision does happen, Impala is designed to respond quickly":[163]

[160] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2014/Jul/0731-mpg.
[161] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2011/Sep/0929_airbag.
[162] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2011/Dec/1227_safety.

A safety philosophy that **RUNS DEEP**

BEFORE

What's the best safety philosophy? Avoid a collision in the first place. That's why we've equipped Impala with advanced safety systems like the **STABILITRAK ELECTRONIC STABILITY CONTROL SYSTEM** with **TRACTION CONTROL**. On slippery surfaces, StabiliTrak helps you stay the course by detecting the difference between the path being steered and the direction the vehicle is actually going. It then uses the brakes and, if necessary, adjusts engine torque to help you keep your Impala on track. What's more, **FOUR-WHEEL ANTILOCK BRAKES** help maintain control and stability during hard braking, by preventing wheel lockup. Other advancements you can count on, including **DAYTIME RUNNING LAMPS** and a **TIRE PRESSURE MONITOR**,[1] are just some of the forward-thinking ways we try to help you avoid trouble on the road.

DURING

Sometimes, however, trouble finds you. And if a moderate to severe collision does happen, Impala is designed to respond quickly. Sensors throughout the vehicle determine how many of the **SIX STANDARD AIR BAGS**[2]—including head-curtain side-impact air bags—deploy. Adding to this protection, the cabin is reinforced with **HIGH-STRENGTH STEEL** throughout. Meanwhile, front and rear "crush zones" are designed to compress in a controlled manner, helping absorb and channel energy away from the cabin and engine. But our protective measures don't end there.

AFTER

Should a collision occur, crucial information can be instantly relayed to the OnStar command center via **ONSTAR AUTOMATIC CRASH RESPONSE**.[3] There, trained OnStar Advisors utilize GPS technology to pinpoint your exact location and can request that assistance be sent right away—even if you're unable to respond. It's part of **ONSTAR DIRECTIONS & CONNECTIONS**,[3] standard for six months, which also includes **STOLEN VEHICLE ASSISTANCE**, **REMOTE DOOR UNLOCK** and **REMOTE HORN AND LIGHTS**. All this because nothing is more important than your safety.

452. New GM's brochure for the 2012 Cadillac CTS states "At Cadillac, we believe the best way to survive a collision is to avoid one in the first place." It goes on to say "Active safety begins with a responsive engine, powerful brakes, and an agile suspension."[164]

Footnote continued from previous page

[163] https://www.chevrolet.com/content/dam/Chevrolet/northamerica/usa/nscwebsite/en/Home/Help%20Center/Download%20a%20Brochure/02_PDFs/2012_Impala_eBrochure.pdf.

[164] https://www.auto-brochures.com/makes/Cadillac/CTS/Cadillac_US%20CTS_2012.pdf.

453. On January 3, 2012, Gay Kent, New GM Executive Director of Vehicle Safety, was quoted on New GM's website as saying: "From the largest vehicles in our lineup to the smallest, we are putting overall crashworthiness and state-of-the-art safety technologies at the top of the list of must-haves."[165]

454. An online national ad campaign for New GM in April 2012 stressed "Safety. Utility. Performance."

455. On June 5, 2012, New GM posted an article on its website announcing that its Malibu Eco had received top safety ratings from the National Highway Traffic Safety Administration and the Insurance Institute for Highway Safety. The article includes the following quotes: "With the Malibu Eco, Chevrolet has earned seven 2012 TOP SAFETY PICK awards," said IIHS President Adrian Lund. "The IIHS and NHTSA results demonstrate GM's commitment to state-of-the-art crash protection." And "We are now seeing the results from our commitment to design the highest-rated vehicles in the world in safety performance," said Gay Kent, New GM executive director of Vehicle Safety. "Earning these top safety ratings demonstrates the strength of the Malibu's advanced structure, overall crashworthiness and effectiveness of the vehicle's state-of-the-art safety technologies."[166]

456. On June 5, 2012, New GM posted an article on its website entitled "Chevrolet Backs New Vehicle Lineup with Guarantee," which included the following statement: "We have transformed the Chevrolet lineup, so there is no better time than now to reach out to new customers with the love it or return it guarantee and very attractive, bottom line pricing," said Chris Perry, Chevrolet global vice president of marketing. "We think customers who have been driving competitive makes or even older Chevrolets will be very pleased by today's

[165] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2012/Jan/0103_sonic.
[166] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2012/Jun/0605_malibu safety.

Chevrolet designs, easy-to-use technologies, comprehensive safety and the quality built into all of our cars, trucks and crossovers."[167]

457. On November 5, 2012, New GM published a video to advertise its "Safety Alert Seat" and other safety sensors. The video described older effective safety systems and then added that new systems "can offer drivers even more protection." Then, a Cadillac Safety Engineer stated there "are a variety of crash avoidance sensors that work together to help the driver avoid crashes." Finally, the engineer then discussed all the sensors and the safety alert seat on the Cadillac XTS, leaving the viewer with the impression safety was a top priority at Cadillac.[168]

458. New GM's brochure for the 2013 Chevrolet Traverse states "Traverse provides peace of mind with an array of innovative safety features" and "[i]t helps protect against the unexpected."[169]

[167] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2012/Jul/0710_ confidence.
[168] https://www.youtube.com/watch?v=CBEvflZMTeM.
[169] https://www.auto-brochures.com/makes/Chevrolet/Traverse/Chevrolet_US%20Traverse_2013.pdf.

459. A national print ad campaign in April 2013 states that "[w]hen lives are on the line, you need a dependable vehicle you can rely on. Chevrolet and GM … for power, performance and safety."

460. On November 8, 2013, New GM posted a press release on its website regarding GMC, referring to it as "one of the industry's healthiest brands":[170]

About GMC

GMC has manufactured trucks since 1902, and is one of the industry's healthiest brands. Innovation and engineering excellence is built into all GMC vehicles and the brand is evolving to offer more fuel-efficient trucks and crossovers, including the Terrain small SUV and Acadia crossover. The 2014 Sierra half-ton pickup boasts all-new powertrains and design, and the Sierra Heavy Duty pickups are the most capable and powerful trucks ever built by GMC. Every retail GMC model, including Yukon and Yukon XL full-size SUVs, is now available in Denali luxury trim. Details on all GMC models are available at http://www.gmc.com/, on Twitter at @thisisgmc or at http://www.facebook.com/gmc.

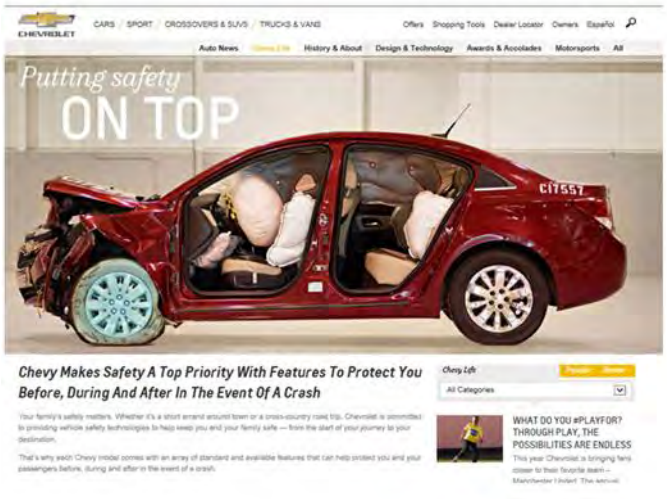
461. A December 2013 New GM testimonial ad stated that "GM has been able to deliver a quality product that satisfies my need for dignity and safety."

[170] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2013/Nov/1108-truck-lightweighting.

462. In 2013, New GM proclaimed on its website, https://www.gm.com, the company's passion for building and selling the world's best vehicles as "the hallmark of our customer-driven culture":[171]

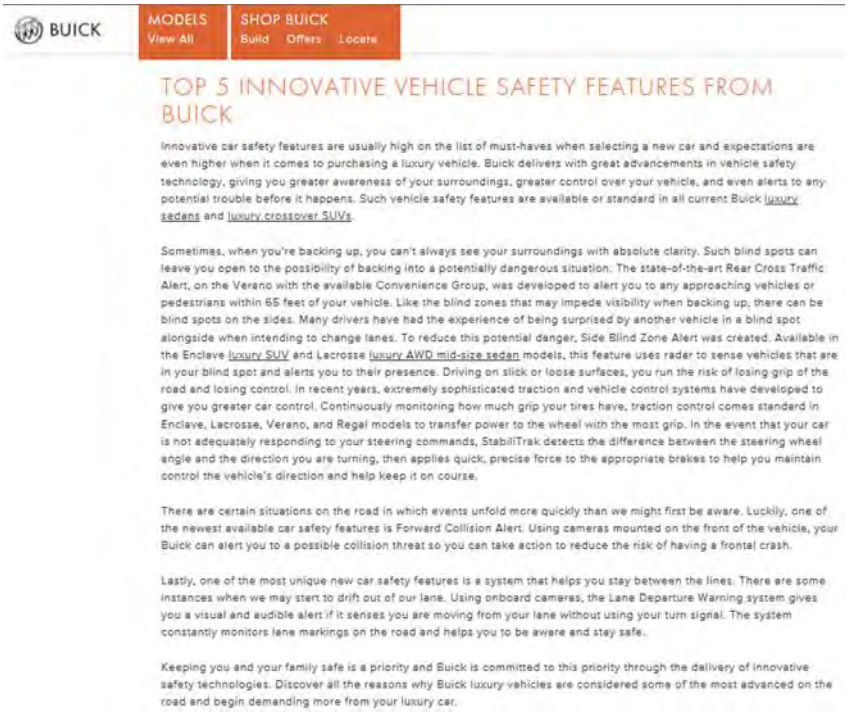
463. On the same website in 2013, New GM stated: "At GM, it's about getting everything right for our customers – from the way we design, engineer and manufacture our vehicles, all the way through the ownership experience."[172]

464. On its website, Chevrolet.com, New GM promises that it is "Putting safety ON TOP," and that "Chevy Makes Safety a Top Priority":[173]



465. On its website, Buick.com, New GM represents that "Keeping you and your family safe is a priority":[174]

[171] https://www.gm.com/company/aboutGM/our_company.
[172] https://www.gm.com/vision/quality_safety/it_begins_with_a_commitment_to_Quality.
[173] https://www.chevrolet.com/culture/article/vehicle-safety-preparation.
[174] https://www.buick.com/top-vehicle-safety-features.



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TOP 5 INNOVATIVE VEHICLE SAFETY FEATURES FROM BUICK

Innovative car safety features are usually high on the list of must-haves when selecting a new car and expectations are even higher when it comes to purchasing a luxury vehicle. Buick delivers with great advancements in vehicle safety technology, giving you greater awareness of your surroundings, greater control over your vehicle, and even alerts to any potential trouble before it happens. Such vehicle safety features are available or standard in all current Buick luxury sedans and luxury crossover SUVs.

Sometimes, when you're backing up, you can't always see your surroundings with absolute clarity. Such blind spots can leave you open to the possibility of backing into a potentially dangerous situation. The state-of-the-art Rear Cross Traffic Alert, on the Verano with the available Convenience Group, was developed to alert you to any approaching vehicles or pedestrians within 65 feet of your vehicle. Like the blind zones that may impede visibility when backing up, there can be blind spots on the sides. Many drivers have had the experience of being surprised by another vehicle in a blind spot alongside when intending to change lanes. To reduce this potential danger, Side Blind Zone Alert was created. Available in the Enclave luxury SUV and Lacrosse luxury AWD mid-size sedan models, this feature uses radar to sense vehicles that are in your blind spot and alerts you to their presence. Driving on slick or loose surfaces, you run the risk of losing grip of the road and losing control. In recent years, extremely sophisticated traction and vehicle control systems have developed to give you greater car control. Continuously monitoring how much grip your tires have, traction control comes standard in Enclave, Lacrosse, Verano, and Regal models to transfer power to the wheel with the most grip. In the event that your car is not adequately responding to your steering commands, StabiliTrak detects the difference between the steering wheel angle and the direction you are turning, then applies quick, precise force to the appropriate brakes to help you maintain control the vehicle's direction and help keep it on course.

There are certain situations on the road in which events unfold more quickly than we might first be aware. Luckily, one of the newest available car safety features is Forward Collision Alert. Using cameras mounted on the front of the vehicle, your Buick can alert you to a possible collision threat so you can take action to reduce the risk of having a frontal crash.

Lastly, one of the most unique new car safety features is a system that helps you stay between the lines. There are some instances when we may start to drift out of our lane. Using onboard cameras, the Lane Departure Warning system gives you a visual and audible alert if it senses you are moving from your lane without using your turn signal. The system constantly monitors lane markings on the road and helps you to be aware and stay safe.

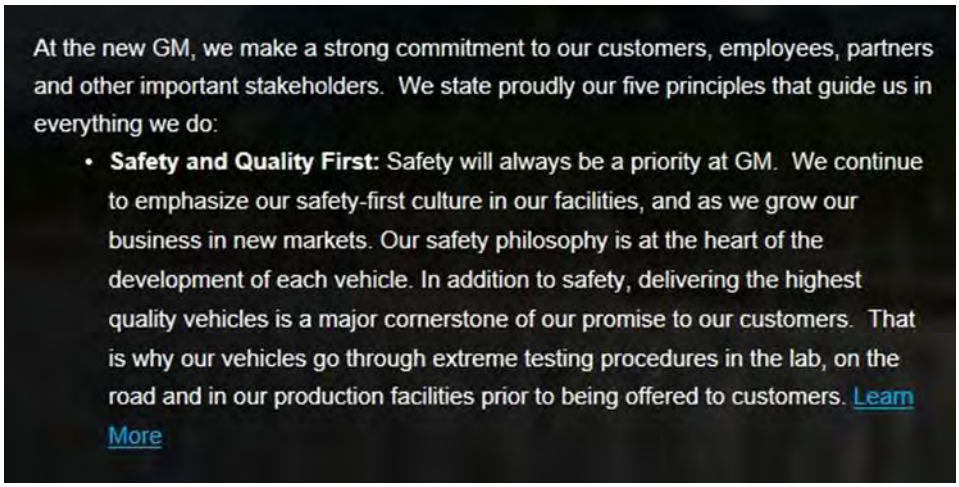
Keeping you and your family safe is a priority and Buick is committed to this priority through the delivery of innovative safety technologies. Discover all the reasons why Buick luxury vehicles are considered some of the most advanced on the road and begin demanding more from your luxury car.

466. New GM's website currently states:[175]

> *Innovation: Quality & Safety; GM's Commitment to Safety; Quality and safety are at the top of the agenda at GM, as we work on technology improvements in crash avoidance and crashworthiness to augment the post-event benefits of OnStar, like advanced automatic crash notification.*
>
> *Understanding what you want and need from your vehicle helps GM proactively design and test features that help keep you safe and enjoy the drive. Our engineers thoroughly test our vehicles for durability, comfort, and noise minimization before you think about them. The same quality process ensures our safety technology performs when you need it.*

467. New GM's website further promises: Safety and Quality First: Safety will always be a priority at New GM. We continue to emphasize our safety-first culture in our facilities," and that, "[i]n addition to safety, delivering the highest quality vehicles is a major cornerstone of our promise to our customers".[176]

[175] https://www.gm.com/vision/quality_safety/gms_commitment_tosafety.
[176] https://www.gm.com/company/aboutGM/our_company.



468. New GM's current website states that "leading the way is our seasoned leadership team who set high standards for our company so that we can give you the best cars and trucks. This means that we are committed to delivering vehicles with compelling designs, flawless quality, and reliability, and leading safety, fuel economy and infotainment features… Safety and Quality First: Safety will always be a priority at New GM. We continue to emphasize our safety-first culture in our facilities, and as we grow our business in new markets. Our safety philosophy is at the heart of the development of each vehicle. In addition to safety, delivering the highest quality vehicles is a major cornerstone of our promise to our customers. That is why our vehicles go through extreme testing procedures in the lab, on the road and in our production facilities prior to being offered to customers."[177]

469. New GM is highly aware of the impact vehicle recalls, and their timeliness, have on its brand image. In its 2010 Form 10-K submitted to the United States Securities and Exchange Commission ("SEC"), New GM admitted that "Product recalls can harm our reputation and cause us to lose customers, particularly if those recalls cause consumers to question the safety or reliability of our products. Any costs incurred or lost sales caused by

[177] https://www.gm.com/company/aboutGM/our_company.

future product recalls could materially adversely affect our business. Conversely, not issuing a recall or not issuing a recall on a timely basis can harm our reputation and cause us to lose customers…" General Motors 2010 Form 10-K, p. 31.[178]

470. In its 2011 10-K SEC filing, New GM stated "We are a leading global automotive company. Our vision is to design, build and sell the world's best vehicles. We seek to distinguish our vehicles through superior design, quality, reliability, telematics (wireless voice and data) and infotainment and safety within their respective segments." General Motors 2011 Form 10-K, p. 50.[179]

471. New GM's relentlessly repeated and reinforced product quality and safety representations were not mere harmless "puffery." New GM made these and similar representations to boost vehicle sales while knowing the starkly contrasting truth that millions of GM-branded vehicles, across numerous models and years, were plagued with serious and concealed safety defects that were putting its customers, their passengers, and all those who shared the road with its Defective Vehicles at constant risk of crashes, injury and death.

C. New GM Concealed And Disregarded Safety Issues As A Way Of Doing Business.

472. Ever since its inception, New GM possessed vastly superior knowledge and information to that of consumers – if not exclusive information – about the design and function of GM-branded vehicles and the existence of the defects in those vehicles.

473. Recently revealed information presents a disturbing picture of New GM's approach to safety issues – both in the design and manufacture stages, and in discovering and responding to defects in GM-branded vehicles that have already been sold.

[178] https://www.sec.gov/Archives/edgar/data/1467858/000119312510078119/d10k.htm#toc85733_4.
[179] https://www.sec.gov/Archives/edgar/data/1467858/000119312511051462/d10k.htm.

474. New GM made very clear to its personnel that cost-cutting was more important than safety, deprived its personnel of necessary resources for spotting and remedying defects, trained its employees not to reveal known defects, and rebuked those who attempted to "push hard" on safety issues.

475. One "directive" at New GM was "cost is everything."[180] The messages from top leadership at New GM to employees, as well as their actions, were focused on the need to control cost.[181]

476. One New GM engineer stated that emphasis on cost control at New GM "permeates the fabric of the whole culture."[182]

477. According to Mark Reuss (President of GMNA from 2009-2013 before succeeding Mary Barra as Executive Vice President for Global Product Development, Purchasing and Supply Chain in 2014), cost and time-cutting principles known as the "Big 4" at New GM "emphasized timing over quality."[183]

478. New GM's focus on cost-cutting created major disincentives to personnel who might wish to address safety issues. For example, those responsible for a vehicle were responsible for its costs, but if they wanted to make a change that incurred cost and affected other vehicles, they also became responsible for the costs incurred in the other vehicles.

479. As another cost-cutting measure, parts were sourced to the lowest bidder, even if they were not the highest quality parts.[184]

480. Because of New GM's focus on cost-cutting, New GM Engineers did not believe they had extra funds to spend on product improvements.[185]

[180] Valukas Report at 249.
[181] *Id*. at 250.
[182] *Id*.
[183] *Id*.
[184] *Id*. at 251.

481. New GM's focus on cost-cutting also made it harder for New GM personnel to discover safety defects, as in the case of the "TREAD Reporting team."

482. New GM used its TREAD database (known as "TREAD") to store the data required to be reported quarterly to NHTSA under the TREAD Act.[186] From the date of its inception in 2009, TREAD has been the principal database used by New GM to track incidents related to its vehicles.[187]

483. From 2003-2007 or 2008, the TREAD Reporting team had eight employees, who would conduct monthly searches and prepare scatter graphs to identify spikes in the number of accidents or complaints with respect to various GM-branded vehicles. The TREAD Reporting team reports went to a review panel and sometimes spawned investigations to determine if any safety defect existed.[188]

484. In or around 2007-08, Old GM cut its TREAD Reporting team from eight to three employees, and the monthly data mining process pared down.[189] In 2010, New GM restored two people to the team, but they did not participate in the TREAD database searches.[190] Moreover, until 2014, the TREAD Reporting team did not have sufficient resources to obtain any of the advanced data mining software programs available in the industry to better identify and understand potential defects.[191]

485. By starving the TREAD Reporting team of the resources it needed to identify potential safety issues, New GM helped to insure that safety issues would not come to light.

Footnote continued from previous page

[185] *Id*.
[186] *Id*. at 306.
[187] *Id*.
[188] *Id*. at 307.
[189] *Id*.
[190] *Id*. at 307-308.
[191] *Id*. at 208.

486. "[T]here was resistance or reluctance to raise issues or concerns in the GM culture." The culture, atmosphere and supervisor response at New GM "discouraged individuals from raising safety concerns."[192]

487. New GM CEO, Mary Barra, experienced instances where New GM engineers were "unwilling to identify issues out of concern that it would delay the launch" of a vehicle.[193]

488. New GM supervisors warned employees to "never put anything above the company" and "never put the company at risk."[194]

489. New GM "pushed back" on describing matters as safety issues and, as a result, "GM personnel failed to raise significant issues to key decision-makers."[195]

490. So, for example, and as set forth above, New GM discouraged the use of the word "stall" in Technical Service Bulletins ("TSBs") it sometimes sent to dealers because the word "stall" was a "hot" word that may raise concerns at NHTSA.[196]

491. Direct of Brand Quality Steven Oakley, who drafted TSBs, noted that "he was reluctant to push hard on safety issues because of his perception that his predecessor had been pushed out of the job for doing just that."[197]

492. Many New GM employees "did not take notes at all at critical safety meetings because they believed New GM lawyers did not want such notes taken."[198]

493. A New GM training document released by NHTSA as an attachment to its Consent Order sheds further light on the lengths to which New GM went to ensure that known

[192] *Id*. at 252.
[193] *Id*.
[194] *Id*. at 252-253.
[195] *Id*. at 253.
[196] *Id*. at 92.
[197] *Id*.
[198] *Id*. at 254.

defects were concealed. It appears that the defects were concealed pursuant to a company policy New GM inherited from Old GM.

494. The document consists of slides from a 2008 Technical Learning Symposium for "designing engineers," "company vehicle drivers," and other employees at Old GM. On information and belief, the vast majority of employees who participated in this webinar presentation continued on in their same positions at New GM after July 10, 2009.

495. The presentation focused on recalls, and the "reasons for recalls."

496. One major component of the presentation was captioned "Documentation Guidelines," and focused on what employees should (and should not say) when describing problems in vehicles.

497. Employees were instructed to "[w]rite smart," and to "[b]e factual, not fantastic" in their writing.

498. Company vehicle drivers were given examples of comments to avoid, including the following: "This is a safety and security issue"; "I believe the wheels are too soft and weak and could cause a serious problem"; and "Dangerous … almost caused accident."

499. In documents used for reports and presentations, employees were advised to avoid a long list of words, including: "bad," "dangerous," "defect," "defective," "failed," "flawed," "life-threatening," "problem," "safety," "safety-related," and "serious."

500. As NHTSA's Acting Administrator Friedman noted at the May 16, 2014, press conference announcing the Consent Order concerning the ignition switch defect, it was New GM's company policy to avoid using words that might suggest the existence of a safety defect:

> *GM must rethink the corporate philosophy reflected in the documents we reviewed, including training materials that explicitly discouraged employees from using words like 'defect,' 'dangerous,' 'safety related,' and many more essential terms for engineers and investigators to clearly communicate up the chain when they suspect a problem.'*

501. New GM appears to have trained its employees to conceal the existence of known safety defects from consumers and regulators. Indeed, it is nearly impossible to convey the potential existence of a safety defect without using the words "safety" or "defect" or similarly strong language that was verboten at New GM.

502. So institutionalized at New GM was the "phenomenon of avoiding responsibility" that the practice was given a name: "the 'GM salute,'" which was "a crossing of the arms and pointing outward towards others, indicating that the responsibility belongs to someone else, not me."[199]

503. CEO Mary Barra described a related New GM phenomenon, "known as the 'GM nod,'" which was "when everyone nods in agreement to a proposed plan of action, but then leaves the room with no intention to follow through, and the nod is an empty gesture."[200]

504. According to the New GM Report prepared by Anton R. Valukas, part of the failure to properly correct the ignition switch defect was due to problems with New GM's organizational structure.[201] Part of the failure to properly correct the ignition switch defect was due to a corporate culture that did not care enough about safety.[202] Part of the failure to properly correct the ignition switch defect was due to a lack of open and honest communication with NHTSA regarding safety issues.[203] Part of the failure to properly correct

[199] GM Report at 255.
[200] *Id*. at 256.
[201] *Id*. at 259-260.
[202] *Id*. at 260-61.
[203] *Id*. at 263.

the ignition switch defect was due to improper conduct and handling of safety issues by lawyers within New GM's Legal Staff.[204] On information and belief, all of these issues also helped cause the concealment of and failure to remedy the many defects that have led to the spate of recalls in the first half of 2014.

505. An automobile manufacturer has a duty to promptly disclose and remedy defects. New GM knowingly concealed information about material safety hazards from the driving public, its own customers, and the Class, thereby allowing unsuspecting vehicle owners and lessees to continue unknowingly driving patently unsafe vehicles which posed a mortal danger to themselves, their passengers and loved ones, other drivers, and pedestrians.

506. Not only did New GM take far too long in failing to address or remedy the defects, it deliberately worked to cover-up, hide, omit, fraudulently conceal and/or suppress material facts from the Class who relied upon it to the detriment of the Class.

D. New GM Admitted Its Failure To Disclose The Defects In Its Vehicle, Attempting To Reassure The Public That It Can Now Be Trusted.

507. Consistent with its CEO's contrition, GM has once again embarked on a public campaign to convince the public that, this time, it has sincerely reformed.

508. On February 25, 2014, New GM North America President, Alan Batey, publically stated: "Ensuring our customers' safety is our first order of business. We are deeply sorry and we are working to address this issue as quickly as we can."[205]

509. In a press release on March 18, 2014 New GM announced that Jeff Boyer had been named to the newly created position of Vice President, Global Vehicle Safety. In the press release New GM quoted Mr. Boyer as stating that: "Nothing is more important than the

[204] *Id*. at 264.
[205] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2014/Feb/0225-ion.

safety of our customers in the vehicles they drive. Today's GM is committed to this, and I'm ready to take on this assignment."[206]

510. On May 13, 2014, New GM published a video to defend its product and maintain that the ignition defect will never occur when only a single key is used. Jeff Boyer, New GM Vice President of Global Vehicle Safety, addressed viewers and told them New GM's Milford Proving Ground is "the largest and most comprehensive testing facilities in the world." He told viewers that if you use a New GM single key that there is no safety risk.[207]

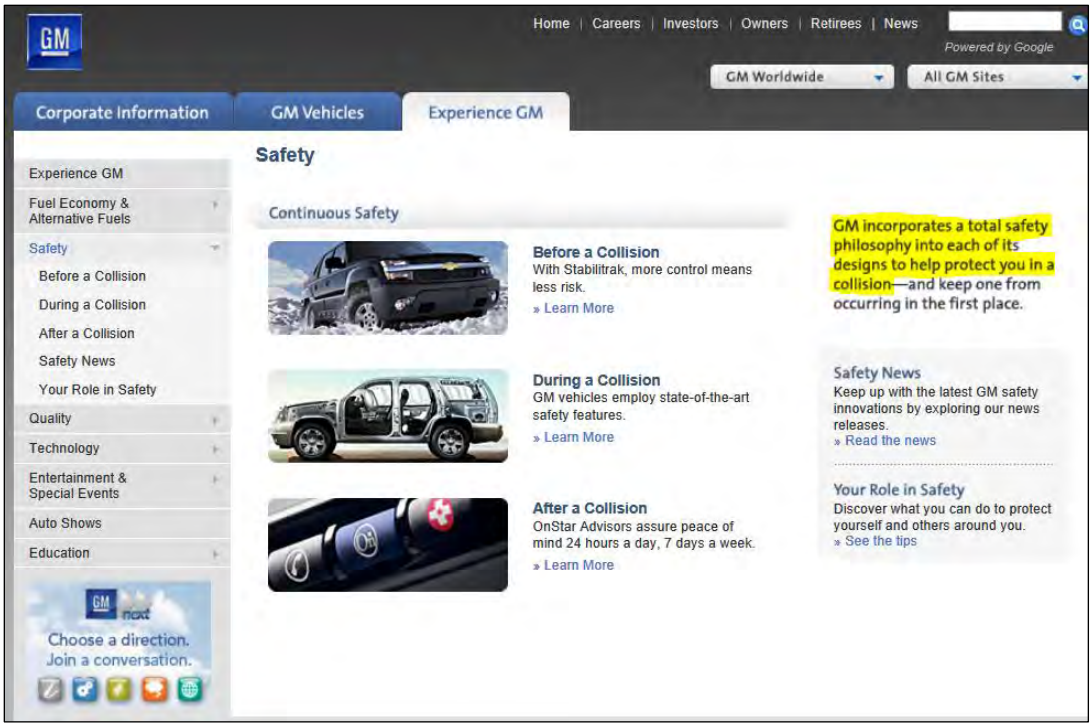
511. As of July 2014, New GM continues to praise its safety testing. It published a video entitled "90 Years of Safety Testing at New GM's Milford Proving Ground." The narrator describes New GM's testing facility as "one of the world's top automotive facilities" where data is "analyzed for customer safety." The narrator concludes by saying, "[o]ver the past ninety years one thing remained unchanged, GM continues to develop and use the most advanced technologies available to deliver customers the safest vehicles possible."[208]

[206] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2014/mar/0318-boyer.
[207] https://www.youtube.com/watch?v=rXO7F3aUBAY.
[208] https://www.youtube.com/watch?v=BPQdlJZvZhE&list=UUxN-Csvy_9sveql5HJviDjA.

512. On July 31, 2014, Jack Jensen, the New GM engineering group manager for the "Milford Proving Ground" dummy lab, told customers that "[w]e have more sophisticated dummies, computers to monitor crashes and new facilities to observe different types of potential hazards. All those things together give our engineers the ability to design a broad range of vehicles that safely get our customers where they need to go."[209]

513. As discussed in this Complaint, these most recent statements from New GM contrast starkly with New GM's wholly inadequate response to remedy the defects in its vehicles, such as the ignition switch defect.

[209] https://media.gm.com/media/us/en/gm/news.detail../content/Pages/news/us/en/2014/Jul/0731-mpg.



XII. Other Recently Revealed Information Demonstrates New GM's Widespread Ongoing Pattern Of Concealing Dangerous Defects In GM-Branded Vehicles That Has Caused Diminution in the Value of the Defective Vehicles.

514. Other recently-revealed information suggests that Old and New GM's egregious mishandling of the ignition switch defects is part of a pattern of concealing dangerous known defects in Old and New GM vehicles.

515. That pattern of conduct, together with the ever-expanding and piecemeal nature of the recall, calls into further question whether New GM is to be trusted when it claims that simply replacing the ignition switch (in some Defective Vehicles) and providing new keys for others, will fully resolve the myriad of issues faced by Defective Vehicle owners as a result of the ignition switch defects.

516. The defects identified in the myriad recalls of 2014 affect virtually every safety system in GM-branded vehicles, including but by no means limited to the airbags, power

steering, power brakes, and seat belts, as discussed below, and are discussed here to illustrate the extent of Old and New GM's pattern of faulty processes and concealment of known defects to the detriment of consumers and public safety.

A. The Ignition Lock Cylinder Defect.

517. As discussed briefly in previous sections, on April 9, 2014, New GM recalled 2,191,014 GM-branded vehicles with faulty ignition lock cylinders.[210] Though the vehicles are the same as those affected by the ignition switch torque defect,[211] the lock cylinder defect is distinct.

518. In these vehicles, faulty ignition lock cylinders can allow removal of the ignition key while the engine is not in the "off" position. If the ignition key is removed when the ignition is not in the "off" position, unintended vehicle motion may occur. That could cause a crash and injury to the vehicle's occupants or pedestrians. Some of the vehicles with faulty ignition lock cylinders may fail to conform to Federal Motor Vehicle Safety Standard number 114, "*Theft Prevention and Rollaway Prevention*."[212]

519. According to New GM's Chronology that it submitted to NHTSA on April 23, 2014, the ignition lock cylinder defect arose out of New GM's notorious recalls for defective ignition switch systems in the Chevrolet Cobalt, Chevrolet HHR, Pontiac G5, Pontiac Solstice, Saturn ION, and Saturn Sky vehicles. Those three recalls occurred in February and March of 2014.[213]

[210] New GM Letter to NHTSA dated April 9, 2014.
[211] Namely, MY 2005-2010 Chevrolet Cobalts, 2006-2011 Chevrolet HHRs, 2007-2010 Pontiac G5s, 2003-2007 Saturn Ions, and 2007-2010 Saturn Skys. *See id.*
[212] New GM Notice to NHTSA dated April 9, 2014, at 1.
[213] *See* Attachment B to New GM's letter to NJTSA dated April 23, 2014 ("Chronology").

520. In late February or March 2014, New GM personnel participating in the ignition switch recalls observed that the keys could sometimes be removed from the ignition cylinders when the ignition was not in the "off" position. This led to further investigation.

521. After investigation, New GM's findings were presented at an EFADC meeting on April 3, 2014. New GM noted several hundred instances of potential key pullout issues in vehicles covered by the previous ignition switch recalls, and specifically listed 139 instances identified from records relating to customer and dealer reports to GM call centers, 479 instances identified from warranty repair data, one legal claim, and six instances identified from NHTSA VOQ information. New GM investigators also identified 16 roll-away instances associated with the key pullout issue from records relating to customer and dealer reports to GM call centers and legal claims information.

522. New GM noted that excessive wear to ignition tumblers and keys may be the cause of the key pullout issue. New GM also considered the possibility that some vehicles may have experienced key pullout issues at the time they were manufactured, based on information that included the following: (a) a majority of instances of key pullouts that had been identified in the recall population were in early-year Saturn Ion and Chevrolet Cobalt vehicles, and in addition, repair order data indicated vehicles within that population had experienced a repair potentially related to key pullout issues as early as 47 days from the date on which the vehicle was put into service; and (b) an engineering inquiry known within New GM as a Problem Resolution Tracking System inquiry ("PRTS") related to key pullout issues was initiated in June 2005, which resulted in an engineering work order to modify the ignition cylinder going forward.

523. A majority of the key pullout instances identified involved 2003-2004 model year Saturn Ion and 2005 model year Chevrolet Cobalt vehicles. An April 3 New GM PowerPoint identified 358 instances of key pullouts involving those vehicles.

524. In addition, with respect to early-year Saturn Ion and Chevrolet Cobalt vehicles, the April 3 PowerPoint materials discussed the number of days that elapsed between the "In Service Date" of those vehicles (the date they first hit the road) and the "Repair Date." The April 3 PowerPoint stated that, with respect to the 2003 model year Saturn Ion, a vehicle was reported as experiencing a potential key pullout repair as early as 47 days from its "In Service Date;" with respect to the 2004 model year Saturn Ion, a vehicle was reported as experiencing a potential key pullout repair as early as 106 days from its "In Service Date;" with respect to the 2005 model year Chevrolet Cobalt, a vehicle was reported as experiencing a potential key pullout repair as early as 173 days from its "In Service Date;" and with respect to the 2006 model year Chevrolet Cobalt, a vehicle was reported as experiencing a potential key pullout repair as early as 169 days from its "In Service Date." The length of time between the "In Service Date" and the "Repair Date" suggested that these vehicles were defective at the time of manufacture.

525. The PowerPoint at the April 3 EFADC meeting also discussed a PRTS that was initiated in June 2005 which related to key pullout issues in the Chevrolet Cobalt (PRTS N 183836). According to PRTS N 183836: "Tolerance stack up condition permits key to be removed from lock cylinder while driving." The "Description of Root Cause Investigation Progress and Verification" stated, "[a]s noted a tolerance stack up exists in between the internal components of the cylinder." According to a "Summary," "A tolerance stack up condition exists between components internal to the cylinder which will allow some keys to

be removed." The PRTS identified the following "Solution": "A change to the sidebar of the ignition cylinder will occur to eliminate the stack-up conditions that exist in the cylinder."

526. In response to PRTS N 183836, New GM issued an engineering work order to ·"[c]hange shape of ignition cylinder sidebar top from flat to crowned."

527. According to the work order: "Profile and overall height of ignition cylinder sidebar [will be] changed in order to assist in preventing key pullout on certain keycodes. Profile of sidebar to be domed as opposed to flat and overall height to be increased by 0.23mm."

528. According to PRTS N 183836, this "solution fix[ed] the problem" going forward. An entry in the PRTS made on March 2, 2007 stated: "There were no incidents of the key coming out of the ignition cylinder in the run position during a review of thirty vehicles…." A "Summary" in the PRTS stated: "Because there were no incidents of the key coming out of the ignition cylinder in the run position during a review of thirty vehicles[,] this PRTS issue should be closed." PRTS N 183836 was the only PRTS discussed at the April 3, 2014, EFADC meeting, although it is not the only engineering or field report relating to potential key pullout issues.

529. This data led the EFADC to conclude that 2003-2004 model year Saturn Ion vehicles and 2005 and some 2006 model year Chevrolet Cobalt vehicles failed to conform to FMVSS 114. In addition, the EFADC concluded that a defect related to motor vehicle safety existed, and decided to recall all vehicles covered by the first, second, and third ignition switch torque recalls to prevent unintended vehicle motion potentially caused by key pullout issues that could result in a vehicle crash and occupant or pedestrian injuries. For vehicles that were built with a defective ignition cylinder that have not previously had the ignition cylinder

replaced with a redesigned part, the recall called for dealers to replace the ignition cylinder and provide two new ignition/door keys for each vehicle.

B. There Have Been Extensive Additional Recalls of GM-branded Vehicles With Additional Safety-Related and Other Defects.

530. **Sudden Power-Steering Failure Defect:** Between 2003 and 2010, over 1.3 million GM-branded vehicles in the United States were sold with a safety defect that causes the vehicle's electric power steering ("EPS") to suddenly fail during ordinary driving conditions and revert back to manual steering, requiring greater effort by the driver to steer the vehicle and increasing the risk of collisions and injuries.

531. The affected vehicles are MY 2004-2006 and 2008-2009 Chevrolet Malibu, 2004-2006 Chevrolet Malibu Maxx, 2009-2010 Chevrolet HHR, 2010 Chevrolet Cobalt, 2005-2006 and 2008-2009 Pontiac G6, 2004-2007 Saturn Ion, and 2008-2009 Saturn Aura vehicles.

532. As with the ignition switch defects and many of the other defects, New GM was aware of the power steering defect long before it took anything approaching full remedial action.

533. When the power steering fails, a message appears on the vehicle's dashboard, and a chime sounds to inform the driver. Although steering control can be maintained through manual steering, greater driver effort is required, and the risk of an accident is increased.

534. In 2010, New GM first recalled Chevy Cobalt and Pontiac G5 models for these power steering issues, yet it did *not* recall the many other vehicles that had the very same power steering defect.

535. Documents released by NHTSA show that New GM waited years to recall nearly 335,000 Saturn Ions for power-steering failure – despite receiving nearly 4,800

consumer complaints and more than 30,000 claims for warranty repairs. That translates to a complaint rate of 14.3 incidents per thousand vehicles and a warranty claim rate of 9.1 percent. By way of comparison, NHTSA has described as "high" a complaint rate of 250 complaints per 100,000 vehicles.[214] Here, the rate translates to 1,430 complaints per 100,000 vehicles.

536. In response to the consumer complaints, in September 2011, NHTSA opened an investigation into the power-steering defect in Saturn Ions.

537. NHTSA database records show complaints from Ion owners as early as June 2004, with the first injury reported in May 2007.

538. NHTSA has linked approximately 12 crashes and two injuries to the power-steering defect in the Ions.

539. In September 2011, after NHTSA began to make inquiries about the safety of the Saturn Ion, GM acknowledged that it had received almost 3,500 customer reports claiming a sudden loss of power steering in 2004-2007 Ion vehicles.

540. The following month, New GM engineer Terry Woychowski informed current CEO Mary Barra – then head of product development –that there was a serious power-steering issue in Saturn Ions, and that it may be the same power steering issue that plagued the Chevy Cobalt and Pontiac G5. Ms. Barra was also informed of the ongoing NHTSA investigation. At the time, NHTSA reportedly came close to concluding that Saturn Ions should have been included in New GM's 2010 steering recall of Cobalt and G5 vehicles.

541. Instead of recalling the Saturn Ion, GM sent dealers a service bulletin in May of 2012 identifying complaints about the steering system in the vehicle.

[214] *See* http://www-odi.nhtsa.dot.gov/cars/problems/defect/-results.cfm?action_number=EA06002&SearchType=QuickSearch&summary=true.

542. By the time GM finally recalled the Saturn Ion – four years later, in March 2014 - NHTSA had received more than 1200 complaints about the vehicle's power steering. Similar complaints resulted in over 30,000 warranty claims with GM.

543. After announcing the March 31, 2014 recall, Jeff Boyer, New GM's Vice President of Global Vehicle Safety, acknowledged that New GM recalled some of these same vehicle models previously for the *same issue*, but that New GM "did not do enough."

544. According to an analysis by the New York Times published on April 20, 2014, New GM has "repeatedly used technical service bulletins to dealers and sometimes car owners as stopgap safety measures instead of ordering a timely recall."

545. Former NHTSA head Joan Claybrook echoed this conclusion, stating, "There's no question that service bulletins have been used where recalls should have been."

546. NHTSA has recently criticized New GM for issuing service bulletins on at least four additional occasions in which a recall would have been more appropriate and in which New GM later, in fact, recalled the subject vehicles.

547. These inappropriate uses of service bulletins prompted Frank Borris, the top defect investigator for NHTSA, to write to New GM's product investigations director, Carmen Benavides, in July 2013, complaining that "GM is slow to communicate, slow to act, and, at times, requires additional effort . . . that we do not feel is necessary with some of [GM's] peers."

548. Mr. Borris' correspondence was circulated widely among New GM's top executives. Upon information and belief, the following employees received a copy: John Calabrese and Alicia Boler-Davis, two vice presidents for product safety; Michael Robinson, vice president of regulatory affairs; Jim Federico; Gay Kent, director of product investigations

who had been involved in safety issues with the Cobalt since 2006; and William Kemp, an in-house product liability lawyer.

549. **Ignition Lock Cylinder Defect:** On August 7, 2014, New GM recalled 202,155 MY 2002-2004 Saturn Vue vehicles.[215] In the affected vehicles, the ignition key can be removed when the vehicle is not in the "off" position.[216] If this happens, the vehicle can roll away, increasing the risk for a crash and occupant or pedestrian injuries.[217]

550. Following New GM's April 9, 2014 recall announcement regarding ignition switch defects, New GM reviewed field and warranty data for potential instances of ignition cylinders that permit the operator to remove the ignition key when the key is not in the "off" position in other vehicles outside of those already recalled.[218] New GM identified 152 reports of vehicle roll away and/or ignition keys being removed when the key is not in the "off" position in the 2002-2004 MY Saturn Vue vehicles.[219]

551. After reviewing this data with NHTSA on June 17, 2014, July 7, 2014, and July 24, 2014, GM instituted a safety recall on July 31, 2014.[220]

552. **Safety Defects of the Airbag Systems – Wiring Harness Defect:** On March 17, 2014, New GM recalled nearly 1.2 million vehicles for a dangerous defect involving airbags and seatbelt pretensioners that caused them to fail to deploy, increasing the risk of injury and death to the drivers and front-seat passengers.

553. Once again, N of the dangerous airbag defect long before it took anything approaching the requisite remedial action. Indeed, the problem apparently arose when Old

[215] *See* August 7, 2014 Letter from New GM to NHTSA.
[216] *Id.*
[217] *Id.*
[218] *Id.*
[219] *Id.*
[220] *Id.*

GM made the change from using gold-plated terminals to connect its wire harnesses to cheaper tin terminals in 2007.

554. In June 2008, Old GM noticed increased warranty claims for airbag service on certain of its vehicles and determined it was due to increased resistance in airbag wiring. After analysis of the tin connectors in September 2008, Old GM determined that corrosion and wear to the connectors was causing the increased resistance in the airbag wiring. It released a technical service bulletin on November 25, 2008, for 2008-2009 Buick Enclaves, 2009 Chevy Traverse, 2008-2009 GMC Acadia, and 2008-2009 Saturn Outlook models, instructing dealers to repair the defect by using Nyogel grease, securing the connectors, and adding slack to the line. Old GM also began the transition back to gold-plated terminals in certain vehicles. At that point, Old GM suspended all investigation into the defective airbag wiring and took no further action.[221]

555. In November 2009, New GM learned of similar reports of increased airbag service messages in 2010 Chevy Malibu and 2010 Pontiac G6 vehicles. After investigation, New GM concluded that corrosion and wear in the same tin connector was the root of the airbag problems in the Malibu and G6 models.[222]

556. In January 2010, after review of the Malibu and G6 airbag connector issues, New GM concluded that ignoring the service airbag message could increase the resistance such that an SIAB might not deploy in a side impact collision. On May 11, 2010, New GM issued a Customer Satisfaction Bulletin for the Malibu and G6 models and instructed dealers

[221] *See* New GM Notification Campaign No. 14V-118 dated March 31, 2014, at 1-2.
[222] *Id.* at 2.

to secure both front seat-mounted, side-impact airbag wire harnesses and, if necessary, reroute the wire harness.[223]

557. From February to May 2010, New GM revisited the data on vehicles with faulty harness wiring issues, and noted another spike in the volume of the airbag service warranty claims. This led New GM to conclude that the November 2008 bulletin was "not entirely effective in correcting the [wiring defect present in the vehicles]." On November 23, 2010, New GM issued another Customer Satisfaction Bulletin for certain 2008 Buick Enclave, 2008 Saturn Outlook, and 2008 GMC Acadia models built from October 2007 to March 2008, instructing dealers to secure SIAB harnesses and re-route or replace the SIAB connectors.[224]

558. New GM issued a revised Customer Service Bulletin on February 3, 2011, requiring replacement of the front seat-mounted side-impact airbag connectors in the same faulty vehicles mentioned in the November 2010 bulletin. In July 2011, New GM again replaced its connector, this time with a Tyco-manufactured connector featuring a silver-sealed terminal.[225]

559. But in 2012, New GM noticed another spike in the volume of warranty claims relating to SIAB connectors in vehicles built in the second half of 2011. After further analysis of the Tyco connectors, it discovered that inadequate crimping of the connector terminal was causing increased system resistance. In response, New GM issued an internal bulletin for 2011-2012 Buick Enclave, Chevy Traverse, and GMC Acadia vehicles, recommending dealers repair affected vehicles by replacing the original connector with a new sealed connector.[226]

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[223] *Id*.
[224] *See id.* at 3.
[225] *See id.*
[226] *See id.* at 4.

560. The defect was still uncured, however, because in 2013 New GM again noted an increase in service repairs and buyback activity due to illuminated airbag service lights. On October 4, 2013, New GM opened an investigation into airbag connector issues in 2011-2013 Buick Enclave, Chevy Traverse, and GMC Acadia models. The investigation revealed an increase in warranty claims for vehicles built in late 2011 and early 2012.[227]

561. On February 10, 2014, New GM concluded that corrosion and crimping issues were again the root cause of the airbag problems.228

562. New GM initially planned to issue a less-urgent Customer Satisfaction Program to address the airbag flaw in the 2010-2013 vehicles. But it wasn't until a call with NHTSA on March 14, 2014, that New GM finally issued a full-blown safety recall on the vehicles with the faulty harness wiring – years after it first learned of the defective airbag connectors, after four investigations into the defect, and after issuing at least six service bulletins on the topic. The recall as first approved covered only 912,000 vehicles, but on March 16, 2014, it was increased to cover approximately 1.2 million vehicles.[229]

563. **Safety Defects of the Airbag Systems – Driver-side Airbag Shorting Bar Defect:** On June 5, 2014, New GM issued a safety recall of 38,636 vehicles with a driver's airbag shorting bar defect.

564. In the affected vehicles, the driver side frontal airbag has a shorting bar which may intermittently contact the airbag terminals. If the bar and terminals are contacting each other at the time of a crash, the airbag will not deploy, increasing the driver's risk of injury. New GM admits awareness of one crash with an injury where the relevant diagnostic trouble code was found at the time the vehicle was repaired. New GM is aware of other crashes

[227] *See id.*
[228] *See id.* at 5.
[229] *See id*.

involving these vehicles where airbags did not deploy but claims not to know if they were related to this defect.

565. N about the driver's airbag shorting bar defect in 2012. In fact, New GM conducted two previous recalls in connection with shorting bar defect condition involving 7,116 vehicles – one on October 31, 2012, and one on January 24, 2013.[230] Yet it would take New GM nearly two years to finally order a broader recall.

566. On May 31, 2013, after New GM's two incomplete recalls, NHTSA opened an investigation into reports of allegations of the non-deployment of air bags. New GM responded to this investigation on September 13, 2013.

567. On November 1, 2013, NHTSA questioned New GM about: (1) the exclusion of 390 vehicles which met the criteria for the two previous safety recalls; (2) the 30-day in-service cutoff used for the recall population of one previous recall; and (3) twelve additional build days which, as of the June 2013 data pull in the investigation, had an elevated warranty rate. In response to NHTSA's concerns, New GM added additional vehicles to the recall.

568. After announcement the initial ignition switch torque defect in February and March of 2014, New GM re-examined its records relating to the driver's airbag shorting defect. This review finally prompted New GM to expand the recall population on May 29, 2014 – ***long after the problem should have been remedied.***

569. **Safety Defects of the Airbag Systems – Driver-Side Airbag Inflator Defect:** On June 25, 2014, New GM recalled 29,019 vehicles with a driver-side airbag inflator defect.

570. In the affected vehicles, the driver's front airbag inflator may have been manufactured with an incorrect part. In the event of a crash necessitating deployment of the

[230] *See* New GM's Letters to NHTSA date 10/31/2012 and 1/24/2013, respectively.

driver-side airbag, the airbag's inflator may rupture and the airbag may not inflate. The rupture could cause metal fragments to strike and injure the vehicle's occupants. Additionally, if the airbag does not inflate, the driver will be at increased risk of injury.[231]

571. New GM was named in a lawsuit on or about May 1, 2014 involving a 2013 Chevrolet Cruze and an improperly deployed driver-side airbag that caused an injury to the driver.[232] The lawsuit prompted an inspection of "the case vehicle," the assignment of a New GM Product Investigations engineer, and discussions with NHTSA.[233]

572. Meanwhile, the airbag supplier, Takata Corporation/TK Holdings Inc., conducted its own analysis. New GM removed airbags with "build dates near the build date of the case vehicle," and sent them to Takata.[234] Subsequently, on June 20, 2014, Takata informed New GM it had "discovered [the] root cause" of the driver-side airbag defect through analysis of one of the airbags sent by New GM.[235]

573. Shortly thereafter, on June 23, 2014, New GM decided to conduct a safety recall.[236]

574. **Safety Defects of the Airbag Systems – Roof Rail Airbag Defect:** On June 18, 2014, New GM recalled 16,932 MY 2011 Cadillac CTS vehicles with a roof rail airbag defect.

575. In the affected vehicles, vibrations from the drive shaft may cause the vehicle's roll over sensor to command the roof rail airbags to deploy. If the roof rail airbags deploy unexpectedly, there is an increased risk of crash and injury to the occupants.[237]

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[231] *See* New GM's Letter to NHTSA dated June 25, 2014.
[232] *Id.*
[233] *Id.*
[234] *Id.*
[235] *Id.*
[236] *Id.*

576. According to New GM, the defect is caused by a loss of grease from the center constant velocity (CV) joint; the loss of grease causes vibrations of the propeller shaft that are transferred to the roll over sensor in the vehicle floor above the shat. The vibrations can cause the deployment of the roof rail airbags.[238]

577. On October 28, 2010, a new supplier began shipping propeller shafts for MY 2011 Cadillac CTS vehicles; these propeller shafts used a metal gasket from the CV joint (as opposed to the liquid sealing system used by the previous supplier.).[239] *This new metal gasket design was not validated or approved by New GM.*[240]

578. On June 27, 2011, a Problem Resolution Tracking System (PRTS) was opened concerning this defect. The PRTS resulted in the "purge" of the metal gasket design.[241] Then, on August 1, 2011, New GM issued an Engineering Work Order banning the metal gasket design, and mandating the use of the liquid sealing system. Yet New GM "closed the investigation without action in October 2012**."**[242]

579. Inexplicably, New GM waited until June of 2014 before finally recalling the affected vehicles.

580. **Safety Defects of the Airbag Systems – Passenger-Side Airbag Defect:** On May 16, 2014, GM recalled 1,953 MY 2015 Cadillac Escalade and Escalade ESV vehicles with a passenger-side airbag defect.

581. The affected vehicles do not conform to Federal Motor Vehicle Safety Standard number 208, "Occupant Crash Protection." In these vehicles, the airbag module is

Footnote continued from previous page
[237] *See* June 18, 2014 New GM Letter to NHTSA.
[238] *Id.*
[239] *Id.*
[240] *Id.*
[241] *Id.*
[242] *Id.*

secured to a chute adhered to the backside of the instrument panel with an insufficiently heated infrared weld. As a result, the front passenger-side airbag will only partially deploy in the event of crash, and this will increase the risk of occupant injury.[243]

582. On April 28, 2014, during product validation testing of the "Platinum" Escalade (a planned interim 2015 model), the passenger-side front airbag did not properly deploy.[244] New GM then obtained information from the supplier Johnson Controls Inc. (JCI) concerning the portion of the Escalade instrument panel through which the frontal airbag deploys.[245] In particular, New GM requested information on chute weld integrity.[246]

583. On May 13, 2014, JCI informed New GM engineering that it had modified its infrared weld process on April 2, 2014 and "corrected" that process on April 29, 2014. New GM claims that it was unaware of the changes until May 13, 2014.[247]

584. On May 14, 2014, the Executive Field Action Decision Committee decided to conduct a "noncompliance recall." On May 16, 2014, GM obtained a list of suspected serial numbers from JCI, which GM then matched to VINs through a records obtained from the scanning process used during instrument panel sub-assembly.[248] A recall notice was issued on May 16, 2014 for 1,953 vehicles, each of which will have the JCI part replaced.[249]

585. Subsequently, GM discovered errors in the scanning process, and decided to expand the recall population to include any VINs that could have received parts bearing the suspect JCI serial numbers.[250] GM therefore issued a second recall notice on May 27, 2014.

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[243] *See* May 16, 2014 Letter from New GM to NHTSA.
[244] *See* May 27, 2014 Letter from New GM to NHTSA.
[245] *Id.*
[246] *Id.*
[247] *Id.*
[248] *Id.*
[249] *Id.*
[250] *Id.*

With respect to this second set of 885 vehicles, they will be inspected to see if they were made with JCI parts bearing suspect serial numbers. If they are, the part will be replaced.[251]

586. **Safety Defects of the Airbag Systems – Sport Seat Side-Impact Airbag Defect:** On June 18, 2014, New GM issued a safety recall for 712 MY 2014 Chevrolet Corvette vehicles with sport seat side-impact airbag defect.

587. The affected vehicles do not meet a Technical Working Group Side Airbag Injury Assessment Reference Value (IARV) specifications for protecting unbelted, out-of-position young children from injury. In a crash necessitating side impact airbag deployment, an unbelted, out-of-position three year old child may be at an increased risk of neck injury.

588. **Safety Defects of the Airbag Systems – Passenger-side Airbag Inflator Defect:** On June 5, 2014, New GM recalled 61 MY 2013 Chevrolet Spark and 2013 Buick Encore vehicles with a passenger side airbag inflator defect.

589. In the affected vehicles, because of an improper weld, the front passenger airbag end cap could separate from the airbag inflator. This can prevent the airbag from deploying properly, and creates an increased risk of injury to the front passenger.[252]

590. New GM was alerted to this issue on July 10, 2013, when a customer brought an affected vehicle into a dealership with "an airbag readiness light 'ON' condition."[253] After replacing the side frontal airbag, the dealer shipped the original airbag to New GM for warranty analysis.

591. In September 2013, New GM "noted" the "weld condition of the end cap." New GM then sent the airbag to the airbag supplier, S&T Motive, who sent it on to the

[251] *Id.*
[252] *See* June 5, 2014 Letter from New GM to NHTSA.
[253] *Id.*

inflator supplier, ARC Automotive Inc., for "root cause" analysis.[254] S&T and ARC did not conclude their analysis until April 2014. [255]

592. Based upon the information provided by S&T and ARC, in May 2014 New GM Engineering linked the defect to inflators produced on December 17, 2012. ARC records show that on that date, an inflator end cap separated during testing, but that ARC nonetheless shipped quarantined inflators to S&T where they were used in passenger side frontal airbags beginning on December 29, 2012.[256]

593. On May 29, 2014 – nearly one year after being presented with a faulty airbag – New GM's Safety Field Action Committee finally decided to conduct a safety recall. [257]

594. **Safety Defects of the Airbag Systems – Front Passenger Airbag Defect:** On March 17, 2014, New GM issued a noncompliance recall of 303,013 MY 2009-2014 GMC Savana vehicles with a passenger-side instrument panel defect. [258]

595. In the affected vehicles, in certain frontal impact collisions below the airbag deployment threshold, the panel covering the airbag may not sufficiently absorb the impact of the collision. These vehicles therefore do not meet the requirements of Federal Motor Vehicle Safety Standard number 201, "Occupant Protection in Interior Impact."[259]

596. The defect apparently arose in early 2009, when the passenger-side airbag housing was changed from steel to plastic.[260] Inexplicably, New GM did not act to remedy this defect until March of 2014.

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[254] *Id.*
[255] *Id.*
[256] *Id.*
[257] *Id.*
[258] *See* March 31, 2014 Letter from New GM to NHTSA.
[259] *Id.*
[260] *Id.*

597. **Safety Defects of the Seat Belt Systems – Seat Belt Connector Cable**

Defect: On May 20, 2014, New GM issued a safety recall for nearly 1.4 million vehicles with a dangerous safety belt defect.

598. In the affected vehicles, "[t]he flexible steel cable that connects the safety belt to the vehicle at the outside of the front outside of the front outboard seating positions can fatigue and separate over time as a result of occupant movement into the seat. In a crash, a separated cable could increase the risk of injury to the occupant."[261]

599. New GM waited more than two years after learning about this defect before disclosing it or remedying it. [262] This delay is consistent with New GM's long period of concealment of the other defects as set forth above.

600. New GM first learned of the seat belt defect no later than February 10, 2012, when a dealer reported that a seat belt buckle separated from the anchor at the attaching cable in a 2010 GMC Acadia.[263] On March 7, 2012, after notification and analysis of the returned part, the supplier determined the problem was caused by fatigue of the cable.[264]

601. On April 20, 2012, New GM received another part exhibiting the defect from a dealership.[265] New GM also did a warranty analysis that turned up three additional occurrences of similar complaints.[266] But New GM did not order a field review until June 4, 2012.[267] The review, on June 11, 2012, covered just 68 vehicles, and turned up no cable damage.[268]

[261] *See* New GM Notice to NHTSA dated May 19, 2014, at 1.
[262] *See* New GM Notice to NHTSA dated May 30, 2014, at 1-3.
[263] *Id.* at 1.
[264] *Id.* at 2.
[265] *Id.*
[266] *Id.*
[267] *Id.*
[268] *Id.*

602. New GM received another part exhibiting the defect on August 28, 2013, from GM Canada Product Investigations.[269] After further testing in October 2013, New GM duplicated the defect condition, determining that, in some seat positions, the sleeve can present the buckle in a manner that can subject the cable to bending during customer entry into the vehicle.[270] New GM duplicated the condition again in a second vehicle in November, 2013.[271] And then just a month later, on December 18, 2013, New GM received another part exhibiting the condition from GM Canada Product Investigations.[272] But still New GM did not issue a safety recall.

603. Further testing between February and April 2014, confirmed the defect resulted from fatigue of the cable.[273] This was the same root cause New GM identified as early as March 7, 2012. Finally, on April 14, 2014, these findings were turned over to New GM Product Investigations and assigned an investigation number.[274]

604. On May 19, 2014, New GM's Executive Field Action Decision Committee decided to conduct a recall of the affected vehicles.[275]

605. **Safety Defects of the Seat Belt Systems – Seat Belt Retractor Defect:** On June 11, 2014, New GM recalled 28,789 MY 2004-2011 Saab 9-3 Convertible vehicles with a seatbelt retractor defect.

606. In the affected vehicles, the driver's side front seat belt retractor may break, causing the seat belt webbing spooled out by the user not to retract.[276] In the event of a crash,

[269] *Id.*
[270] *Id.*
[271] *Id.*
[272] *Id.*
[273] *Id.*
[274] *Id.*
[275] New GM Notice to NHTSA dated May 19, 2014, at 1.
[276] *See* New GM's June 11, 2013 Letter to NHTSA.

a seat belt that has not retracted may not properly restrain the seat occupant, increasing the risk of injury to the driver.[277]

607. By September of 2009 New GM was aware of an issue with seatbelt retractors in MY 2004 Saab 9-3 vehicles; at that time, NHTSA informed New GM that it received 5 Vehicle Owner Questionnaires "alleging that the driver seat belt will no longer retract on 2004 Saab 0-3 vehicles built after September 30, 2003."[278] In December 2009-January 2010, New GM conducted a survey "of customers who had a retractor replaced to determine how many were due" to a break in the Automatic Tensioning System that causes "webbing spooled out by the user not to retract."[279]

608. On February 9, 2010, New GM issued a recall for the driver side retractor, but only in certain MY 2004 Saab 9-3 sedans – some 14,126 vehicles.[280] New GM would wait another 4 years before attempting to address the full scope of the seatbelt retractor defect in Saab 9-3 vehicles.

609. New GM finally opened an investigation into the seatbelt retractor defect in other Saab 9-3 vehicles in February of this year, and that was "in response to NHTSA Vehicle Owner Questionnaires claiming issues with the driver side front seat belt retractor" in the affected vehicles.[281] As a result, New GM eventually recalled 28,789 MY 2004-2011 Saab 9-3 convertible vehicles on June 11, 2014.

[277] *See* New GM's June 11, 2013 Letter to NHTSA.
[278] *See* New GM's February 9, 2010 Letter to NHTSA.
[279] *Id.*
[280] *Id.*
[281] *See* New GM's June 11, 2013 Letter to NHTSA.

610. **Safety Defects of the Seat Belt Systems – Frontal Lap-Belt Pretensioner**

Defect: On August 7, 2014, New GM recalled 48,059 MY 2013 Cadillac ATS and 2013 Buick Encore vehicles with a defect in the front lap-belt pretensioners.[282]

611. In the affected vehicles, the driver and passenger lap-belt pretensioner cables may not lock in a retracted position; that allows the seat belts to extend when pulled upon.[283] If the seat belts do not remain locked in the retracted position, the seat occupant may not be adequately restrained in a crash, increasing the risk of injury.[284]

612. In July 2012, GM Korea learned that the lap-belt pretensioner cable and seat belt webbing slipped out after being retracted.[285] Several months later, New GM changed the rivet position on the pretensioner bracket and the design of the pretension mounting bolt.[286] This change was made after New GM started production on the 2013 MY Buick Encore.[287]

613. In October 2012, New GM testing on a pre-production 2014 MY Cadillac CTS revealed that the driver side front seat belt anchor pretensioner cables retracted upon deployment to pull in the lap-belt webbing, as intended, but did not lock in that position; that allowed the retracted webbing to return ("pay out") to its original position under loading, which was not intended.[288]

614. On November 13, 2012, New GM modified the design of the lap-belt pretensioner for the Cadillac CTS, Cadillac ATS, and Cadillac ELR vehicles to include a modified bolt, relocation of a rivet in the cam housing to reposition the locking cam, and a

[282] *See* August 7, 2014 Letter from New GM to NHTSA.
[283] *Id.*
[284] *Id.*
[285] *See* August 21, 2014 Letter from New GM to NHTSA.
[286] *Id.*
[287] *Id.*
[288] *Id.*

change in torque of the lap-belt pretensioner bolt to seat.[289] These changes were implemented in the 2014 MY Cadillac CTS and Cadillac ELR, but not in the 2013 MY Cadillac ATS.[290]

615. Despite making these adjustments to later MY vehicles only, New GM did not launch an investigation into the performance of the lap-belt pretensioners in the 2013 MY Buick Encore and Cadillac ATS until mid-April, 2013.[291] New GM claims that during this year-long investigation period it found no issues potentially relating to the pay out of the lap-belt pretensioners.[292]

616. Nonetheless, New GM decided to issue a safety recall for the affected vehicles on July 31, 2014.[293] It later expanded the recall by 55 additional vehicles, to a total population of 48,114, on August 19, 2014.[294]

617. **Safety Defects of the Seat:** On July 22, 2014, New GM issued a safety recall of 414,333 vehicles with a power height adjustable seats defect.[295]

618. In the affected vehicles, the bolt that secures the height adjuster in the driver and front passenger seats may become loose or fall out. If the bolt falls out, the seat will drop suddenly to the lowest vertical position. The sudden drop can affect the driver's ability to safely operate the vehicle, and can increase the risk of injury to the driver and the front-seat passenger if there is an accident. New GM admits to knowledge of at least one crash caused by this defect.[296]

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[289] *Id.*
[290] *Id.*
[291] *Id.*
[292] *Id.*
[293] *Id.*
[294] *Id.*
[295] *See* July 22, 2014 Letter from New GM to NHTSA.
[296] *Id.*

619. New GM was aware of this defect by July 10, 2013 when the crash occurred, and by July 22, 2013, New GM was aware that the crash was caused when the bolt on the height adjuster fell out.[297]

620. By September 5, 2013, New GM was aware of 27 cases of loose or missing height adjuster bolts in Camaro vehicles.[298] Yet New GM waited until July 15 before its Safety Field Decision Authority made the decision to conduct a safety recall.

621. **Safety Defects Affecting the Brakes in GM-branded Vehicles – Brake Light Defect:** On May 14, 2014, New GM issued a safety recall of approximately 2.4 million vehicles with a dangerous brake light defect.

622. In the affected vehicles, the brake lamps may fail to illuminate when the brakes are applied or illuminate when the brakes are not engaged; the same defect can disable cruise control, traction control, electronic stability control, and panic brake assist operation, thereby increasing the risk of collisions and injuries.[299]

623. Once again, N of the dangerous brake light defect for years before it took anything approaching the requisite remedial action. In fact, although the brake light defect has caused at least 13 crashes since 2008, New GM did not recall all 2.4 million vehicles with the defect until May 2014.

624. According to New GM, the brake defect originates in the Body Control Module (BCM) connection system. "Increased resistance can develop in the [BCM] connection system and result in voltage fluctuations or intermittency in the Brake Apply Sensor (BAS) circuit that can cause service brakes lamp malfunction."[300] The result is brake

[297] *Id.*
[298] *Id.*
[299] *See* New GM Notification Campaign No. 14V-252 dated May 28, 2014, at 1.
[300] *Id.*

lamps that may illuminate when the brakes are not being applied and may not illuminate when the brakes are being applied. [301]

625. The same defect can also cause the vehicle to get stuck in cruise control if it is engaged, or cause cruise control to not engage, and may also disable the traction control, electronic stability control, and panic-braking assist features.[302]

626. New GM now acknowledges that the brake light defect "may increase the risk of a crash."[303]

627. As early as September 2008, NHTSA opened an investigation for MY 2005-2007 Pontiac G6 vehicles involving allegations that the brake lights may turn on when the driver does not depress the brake pedal and may ***not*** turn on when the driver ***does*** depress the brake pedal.[304]

628. During its investigation of the brake light defect in 2008, Old GM found elevated warranty claims for the brake light defect for MY 2005 and 2006 vehicles built in January 2005, and found "fretting corrosion in the BCM C2 connector was the root cause" of the problem.[305] Old GM and its part supplier Delphi decided that applying dielectric grease to the BCM C2 connector would be "an effective countermeasure to the fretting corrosion."[306] Beginning in November of 2008, the Company began applying dielectric grease in its vehicle assembly plants.[307]

629. On December 4, 2008, Old GM issued a TSB recommending the application of dielectric grease to the BCM C2 connector for the MY 2005-2009, Pontiac G6, 2004-2007

[301] *Id.*
[302] *Id.*
[303] *Id.*
[304] *Id.* at 2.
[305] *Id.*
[306] *Id.*
[307] *Id* at 3.

Chevrolet Malibu/Malibu Maxx, 2008 Malibu Classic, and 2007-2009 Saturn Aura vehicles.[308] One month later, in January 2009, Old GM recalled only a small subset of the vehicles with the brake light defect – 8,000 MY 2005-2006 Pontiac G6 vehicles built during the month of January, 2005.[309]

630. Not surprisingly, the brake light problem was far from resolved.

631. In October 2010, New GM released an updated TSB regarding "intermittent brake lamp malfunctions," and added MY 2008-2009 Chevrolet Malibu/Malibu Maxx vehicles to the list of vehicles for which it recommended the application of dielectric grease to the BCM C2 connector.[310]

632. In September of 2011, New GM received an information request from Canadian authorities regarding brake light defect complaints in vehicles that had not yet been recalled. Then, in June 2012, NHTSA provided New GM with additional complaints "that were outside of the build dates for the brake lamp malfunctions on the Pontiac G6" vehicles that had been recalled.[311]

633. In February of 2013, NHTSA opened a "Recall Query" in the face of 324 complaints "that the brake lights do not operate properly" in Pontiac G6, Malibu, and Aura vehicles that had not yet been recalled.[312]

634. In response, New GM asserts that it "investigated these occurrences looking for root causes that could be additional contributors to the previously identified fretting

[308] *Id.* at 2.
[309] *Id.*
[310] *Id.*
[311] *Id.*
[312] *Id.* at 3.

corrosion," but that it continued to believe that "fretting corrosion in the BCM C2 connector" was the "root cause" of the brake light defect.[313]

635. In June of 2013, NHTSA upgraded its "Recall Query" concerning brake light problems to an "Engineering Analysis."[314]

636. In August 2013, New GM found an elevated warranty rate for BCM C2 connectors in vehicles built *after* Old GM had begun applying dielectric grease to BCM C2 connectors at its assembly plants in November of 2008.[315] In November of 2013, New GM concluded that "the amount of dielectric grease applied in the assembly plant starting November 2008 was insufficient…."[316]

637. Finally, in March of 2014, "[New] GM engineering teams began conducting analysis and physical testing to measure the effectiveness of potential countermeasures to address fretting corrosion. As a result, New GM determined that additional remedies were needed to address fretting corrosion."[317]

638. On May 7, 2014, New GM's Executive Field Action Decision Committee finally decided to conduct a safety recall.

639. According to New GM, "Dealers are to attach the wiring harness to the BCM with a spacer, apply dielectric lubricant to both the BCM CR and harness connector, and on the BAS and harness connector, and relearn the brake pedal home position."[318]

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[313] *Id.*
[314] *Id.*
[315] *Id.*
[316] *Id.*
[317] *Id.* at 4.
[318] *Id.*

640. New GM sat on and concealed its knowledge of the brake light defect for years, and did not even consider available countermeasures (other than the application of grease that had proven ineffective) until March of this year.

641. **Safety Defects Affecting the Brakes in GM-branded Vehicles – Brake Booster Pump Defect:** On March 17, 2014, New GM issued a safety recall of 63,903 MY 2013-2014 Cadillac XTS vehicles with a brake booster pump defect.

642. In the affected vehicles, a cavity plug on the brake boost pump connector may dislodge and allow corrosion of the brake booster pump relay connector. This can have an adverse impact on the vehicle's brakes and increase the risk of collision. This same defect can also cause a fire in the vehicle resulting from the electrical shore in the relay connector.

643. In June of 2013, New GM learned that a fire occurred in a 2013 Cadillac XTS vehicle while it was being transported between car dealerships. Upon investigation, New GM determined that the fire originated near the brake booster pump relay connector, but could not determine the "root cause" of the fire.

644. A second vehicle fire in a 2013 Cadillac XTS occurred in September of 2013. In November 2013, the same team of New GM investigators examined the second vehicle, but, again, could not determine the "root cause" of the fire.

645. In December 2013, New GM identified two warranty claims submitted by dealers related to complaints by customers about vibrations in the braking system of their vehicles. The New GM team investigating the two prior 2013 Cadillac XTS fires inspected these parts and discovered the relay connector in both vehicles had melted.

646. In January 2014, New GM determined that pressure in the relay connector increased when the brake booster pump vent hose was obstructed or pinched. Further testing

revealed that pressure from an obstructed vent hose could force out the cavity plugs in the relay connector, and in the absence of the plugs, water, and other contaminants can enter and corrode the relay connector, causing a short and leading to a fire or melting.

647. On March 11, 2014, New GM issued a safety recall for the affected vehicles.

648. **Safety Defects Affecting the Brakes in GM-branded Vehicles – Hydraulic Boost Assist Defect:** On May 13, 2014, New GM recalled 140,067 model year 2014 Chevrolet Malibu vehicles with a hydraulic brake boost assist defect.[319]

649. In the affected vehicles, the "hydraulic boost assist" may be disabled; when that happens, slowing or stopping the vehicle requires harder brake pedal force, and the vehicle will travel a greater distance before stopping. Therefore, these vehicles do not comply with Federal Motor Vehicle Safety Standard number 135, "Light Vehicle Brake Systems," and are at increased risk of collision.[320]

650. **Safety Defects Affecting the Brakes in GM-branded Vehicles – Brake Rotor Defect:** On May 7, 2014, New GM recalled 8,208 MY 2014 Chevrolet Malibu and Buick LaCrosse vehicles with a brake rotor defect.

651. In the affected vehicles, New GM may have accidentally installed rear brake rotors on the front brakes. The rear rotors are thinner than the front rotors, and the use of rear rotors in the front of the vehicle may result in a front brake pad detaching from the caliper. The detachment of a break pad from the caliper can cause a sudden reduction in braking which lengthens the distance required to stop the vehicle and increases the risk of a crash.

652. **Safety Defects Affecting the Brakes in GM-branded Vehicles – Reduced Brake Performance Defect:** On July 28, 2014, New GM recalled 1,968 MY 2009-2010

[319] *See* May 13, 2014 Letter from New GM to NHTSA.
[320] *Id.*

Chevrolet Aveo and 2009 Pontiac G3 vehicles.[321] Affected vehicles may contain brake fluid which does not protect against corrosion of the valves inside the anti-lock brake system ("ABS") module, affecting the closing motion of the valves.[322] If the ABS valve corrodes it may result in longer brake pedal travel or reduced performance, increasing the risk of a vehicle crash.[323]

653. New GM was aware of this defect as far back as August 2012, when it initiated a customer satisfaction campaign.[324] The campaign commenced in November 2012, and New GM estimates that, to date, approximately 34% of Chevrolet Aveo and Pontiac G3 vehicles included in the customer satisfaction campaign are not yet repaired.[325] On July 19, 2014, New GM decided to conduct a safety recall for vehicles that had been included in the customer satisfaction program but had not had the service repair performed.[326]

654. **Safety Defects Affecting the Brakes in GM-branded Vehicles – Parking Brake Defect:** On September 20, 2014, GM recalled more than 221,000 MY 2014-15 Chevrolet Impalas and 2013-15 model Cadillac XTS vehicles because of a parking-brake defect.

655. In the affected vehicles, the brake pads can stay partly engaged, which can lead to "excessive brake heat that may result in a fire," according to documents posted on the NHTSA website.

656. NHTSA said the fire risk stemmed from the rear brakes generating "significant heat, smoke and sparks." The agency also warned that drivers of affected vehicles might

[321] *See* July 28, 2014 Letter from New GM to NHTSA.
[322] *Id.*
[323] *Id.*
[324] *Id.*
[325] *Id.*
[326] *Id.*

experience "poor vehicle acceleration, undesired deceleration, excessive brake heat and premature wear to some brake components."

657. **Safety Defects Affecting the Steering in GM-branded Vehicles – Sudden Power-Steering Failure Defect:** Between 2003 and 2010, over 1.3 million GM-branded vehicles in the United States were sold with a safety defect that causes the vehicle's electric power steering ("EPS") to suddenly fail during ordinary driving conditions and revert back to manual steering, requiring greater effort by the driver to steer the vehicle and increasing the risk of collisions and injuries.

658. The affected vehicles are MY 2004-2006 and 2008-2009 Chevrolet Malibu, 2004-2006 Chevrolet Malibu Maxx, 2009-2010 Chevrolet HHR, 2010 Chevrolet Cobalt, 2005-2006 and 2008-2009 Pontiac G6, 2004-2007 Saturn Ion, and 2008-2009 Saturn Aura vehicles.

659. As with the ignition switch defects and many of the other defects, New GM was aware of the power steering defect long before it took anything approaching full remedial action.

660. When the power steering fails, a message appears on the vehicle's dashboard, and a chime sounds to inform the driver. Although steering control can be maintained through manual steering, greater driver effort is required, and the risk of an accident is increased.

661. In 2010, New GM first recalled Chevy Cobalt and Pontiac G5 models for these power steering issues, yet it did *not* recall the many other vehicles that had the very same power steering defect.

662. Documents released by NHTSA show that New GM waited years to recall nearly 335,000 Saturn Ions for power-steering failure – despite receiving nearly 4,800

consumer complaints and more than 30,000 claims for warranty repairs. That translates to a complaint rate of 14.3 incidents per thousand vehicles and a warranty claim rate of 9.1 percent. By way of comparison, NHTSA has described as "high" a complaint rate of 250 complaints per 100,000 vehicles.[327] Here, the rate translates to 1,430 complaints per 100,000 vehicles.

663. In response to the consumer complaints, in September 2011, NHTSA opened an investigation into the power-steering defect in Saturn Ions.

664. NHTSA database records show complaints from Ion owners as early as June 2004, with the first injury reported in May 2007.

665. NHTSA has linked approximately 12 crashes and two injuries to the power-steering defect in the Ions.

666. In September 2011, after NHTSA began to make inquiries about the safety of the Saturn Ion, GM acknowledged that it had received almost 3,500 customer reports claiming a sudden loss of power steering in 2004-2007 Ion vehicles.

667. The following month, New GM engineer Terry Woychowski informed current CEO Mary Barra – then head of product development –that there was a serious power-steering issue in Saturn Ions, and that it may be the same power steering issue that plagued the Chevy Cobalt and Pontiac G5. Ms. Barra was also informed of the ongoing NHTSA investigation. At the time, NHTSA reportedly came close to concluding that Saturn Ions should have been included in New GM's 2010 steering recall of Cobalt and G5 vehicles.

668. Instead of recalling the Saturn Ion, GM sent dealers a service bulletin in May of 2012 identifying complaints about the steering system in the vehicle.

[327] *See* https://www-odi.nhtsa.dot.gov/cars/problems/defect/-results.cfm?action_number=EA06002&Search Type=QuickSearch&summary=true.

669. By the time GM finally recalled the Saturn Ion – four years later, in March 2014 - NHTSA had received more than 1,200 complaints about the vehicle's power steering. Similar complaints resulted in over 30,000 warranty claims with GM.

670. After announcing the March 31, 2014 recall, Jeff Boyer, New GM's Vice President of Global Vehicle Safety, acknowledged that New GM recalled some of these same vehicle models previously for the *same issue*, but that New GM "did not do enough."

671. According to an analysis by the New York Times published on April 20, 2014, New GM has "repeatedly used technical service bulletins to dealers and sometimes car owners as stopgap safety measures instead of ordering a timely recall."

672. Former NHTSA head Joan Claybrook echoed this conclusion, stating, "There's no question that service bulletins have been used where recalls should have been."

673. NHTSA has recently criticized New GM for issuing service bulletins on at least four additional occasions in which a recall would have been more appropriate and in which New GM later, in fact, recalled the subject vehicles.

674. These inappropriate uses of service bulletins prompted Frank Borris, the top defect investigator for NHTSA, to write to New GM's product investigations director, Carmen Benavides, in July 2013, complaining that "GM is slow to communicate, slow to act, and, at times, requires additional effort . . . that we do not feel is necessary with some of [GM's] peers."

675. Mr. Borris' correspondence was circulated widely among New GM's top executives. Upon information and belief, the following employees received a copy: John Calabrese and Alicia Boler-Davis, two vice presidents for product safety; Michael Robinson,

vice president of regulatory affairs; Jim Federico; Gay Kent, director of product investigations, and William Kemp, an in-house product liability lawyer.

676. **Safety Defects Affecting the Steering in GM-branded Vehicles – Power-Steering Hose Clamp Defect:** On June 18, 2014, New GM issued a safety recall of 57,192 MY 2015 Chevrolet Silverado 2500/3500 HD and 2015 GMC Sierra 2500/3500 HD vehicles with a power steering hose clamp defect.

677. In the affected vehicles, the power steering hose clamp may disconnect from the power steering pump or gear, causing a loss of power steering fluid. A loss of power steering fluid can result in a loss of power steering assist and power brake assist, increasing the risk of a crash.

678. **Safety Defects Affecting the Steering in GM-branded Vehicles – Power-Steering Control Module Defect:** On July 22, 2014, New GM recalled 57,242 MY 2014 Chevrolet Impala vehicles with a Power Steering Control Module defect.

679. Drivers of the affected vehicles may experience reduced or no power steering assist at start-up or while driving due to a poor electrical ground connection to the Power Steering Control Module. If power steering is lost, the vehicle will revert to manual steering mode. Manual steering requires greater driver effort and increases the risk of accident. New GM acknowledges one crash related to this condition.

680. On May 17, 2013, New GM received a report of a 2014 Impala losing communication with the Power Steering Control Module ("PSCM"). On or about May 24, 2013, New GM determined the root cause was a poor electrical connection at the PSCM grounding stud wheelhouse assembly.

681. But New GM's initial efforts to implement new procedures and fix the issue were unsuccessful. In January 2014, New GM reviewed warranty data and discovered 72 claims related to loss of assist or the Service Power Steering message after implementation of New GM's process improvements.

682. Then, on February 25, 2014, New GM received notice of a crash involving a 2014 Impala that was built in 2013. The crash occurred when the Impala lost its power steering, and crashed into another vehicle as a result.

683. In response, New GM monitored field and warranty data related to this defect and, as of June 24, 2014, it identified 253 warranty claims related to loss of power steering assist or Service Power Steering messages.

684. On July 15, 2014, New GM finally issued a safety recall for the vehicles, having been unsuccessful in its efforts to minimize and conceal the defect.

685. **Safety Defects Affecting the Steering in GM-branded Vehicles – Lower Control Arm Ball Joint Defect:** On July 18, 2014, New GM issued a safety recall of 1,919 MY 2014-2015 Chevrolet Spark vehicles with a lower control arm ball joint defect.

686. The affected vehicles were assembled with a lower control arm bolt not fastened to specification. This can cause the separation of the lower control arm from the steering knuckle while the vehicle is being driven, and result in the loss of steering control. The loss of steering control in turn creates a risk of accident.[328]

687. **Safety Defects Affecting the Steering in GM-branded Vehicles – Steering Tie-Rod Defect:** On May 13, 2014, New GM issued a safety recall of 477 MY 2014

[328] *See* July 18, 2014 Letter from New GM to NHTSA.

Chevrolet Silverado, 2014 GMC Sierra and 2015 Chevrolet Tahoe vehicles with a steering tie-rod defect.

688. In the affected vehicles, the tie-rod threaded attachment may not be properly tightened to the steering gear rack. An improperly tightened tie-rod attachment may allow the tie-rod to separate from the steering rack and greatly increases the risk of a vehicle crash.[329]

689. **Safety Defects Affecting the Steering in GM-branded Vehicles – Joint Fastener Torque Defect:** On June 30, 2014, New GM issued a safety recall of 106 MY 2014 Chevrolet Camaro, 2014 Chevrolet Impala, 2014 Buick Regal and 2014 Cadillac XTS vehicles with a joint fastener torque defect.

690. In the affected vehicles, joint fasteners were not properly torqued to specification at the assembly plant. As a result of improper torque, the fasteners may "back out" and cause a "loss of steering," increasing the risk of a crash.[330]

691. New GM claims that it was alerted to the problem by a warranty claim filed on December 23, 2013, at a California dealership for a Chevrolet Impala built at New GM's Oshawa car assembly plant in Ontario, Canada. Yet the Oshawa plant was not informed of the issue until March 4, 2014.[331]

692. Between March 4 and March 14, 2014, the Oshawa plant conducted a "root cause" investigation and concluded that the problem was caused by an improperly fastened "Superhold" joint. Though the Impala was electronically flagged for failing to meet the requisite torque level, the employee in charge of correcting the torque level failed to do so.[332]

[329] *See* May 27, 2014 Letter from New GM to NHTSA.
[330] *See* July 2, 2014 Letter from New GM to NHTSA.
[331] *Id.*
[332] *Id.*

693. On or about March 14, 2014, New GM Oshawa learned of two more warranty claims concerning improperly fastened Superhold joints. Both of the vehicles were approved by the same employee who had approved the corrective action for the joint involved in the December 23, 2013 warranty claim. The two additional vehicles were also flagged for corrective action, but the employee failed to correct the problem.[333]

694. On March 20, 2014, New GM Oshawa concluded the derelict employee had approved 112 vehicles after they were flagged for corrective action to the Superhold joint.[334]

695. Yet New GM waited until June 25, 2014 before deciding to conduct a safety recall.

696. **Safety Defects Affecting the Powertrain in Chevrolet and Pontiac Vehicles – Transmission Shift Cable Defect:** On May 19, 2014, New GM issued a safety recall for more than 1.1 million Chevrolet and Pontiac vehicles with dangerously defective transmission shift cables.

697. In the affected vehicles, the shift cable may fracture at any time, preventing the driver from switching gears or placing the transmission in the "park" position. According to New GM, "[i]f the driver cannot place the vehicle in park, and exits the vehicle without applying the park brake, the vehicle could roll away and a crash could occur without prior warning."[335]

698. Yet again, N of the shift cable defect long before it issued the recent recall of more than 1.1 million vehicles with the defect.

699. In May of 2011, NHTSA informed New GM that it had opened an investigation into failed transmission cables in 2007 model year Saturn Aura vehicles. In

[333] *Id.*
[334] *Id.*
[335] *See* New GM letter to NHTSA Re: NHTSA Campaign No. 14V-224 dated May 22, 2014, at 1.

response, New GM noted "a cable failure model in which a tear to the conduit jacket could allow moisture to corrode the interior steel wires, resulting in degradation of shift cable performance, and eventually, a possible shift cable failure."[336]

700. Upon reviewing these findings, New GM's Executive Field Action Committee conducted a "special coverage field action for the 2007-2008 MY Saturn Aura vehicles equipped with 4 speed transmissions and built with Leggett & Platt cables." New GM apparently chose that cut-off date because, on November 1, 2007, Kongsberg Automotive replaced Leggett & Platt as the cable provider. [337]

701. New GM did not recall any of the vehicles with the shift cable defect at this time, and limited its "special coverage field action" to the 2007-2008 Aura vehicles even though "the same or similar Leggett & Platt cables were used on … Pontiac G6 and Chevrolet Malibu (MMX380) vehicles."

702. In March 2012, NHTSA sent New GM an Engineering Assessment request to investigate transmission shift cable failures in 2007-2008 MY Aura, Pontiac G6, and Chevrolet Malibu.[338]

703. In responding to the Engineering Assessment request, New GM for the first time "noticed elevated warranty rates in vehicles built with Kongsberg shift cables." Similar to their predecessor vehicles built with Leggett & Platt shift cables, in the vehicles built with Kongsberg shift cables "the tabs on the transmission shift cable end may fracture and separate without warning, resulting in failure of the transmission shift cable and possible unintended vehicle movement."[339]

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[336] *Id.* at 2.
[337] *Id.*
[338] *Id.*
[339] *Id.*

704. On September 13, 2012, the Executive Field Action Decision Committee decided to conduct a safety recall. This initial recall was limited to 2008-2010 MY Saturn Aura, Pontiac G6, and Chevrolet Malibu vehicles with 4-speed transmission built with Kongsberg shifter cables, as well as 2007-2008 MY Saturn Aura and 2005-2007 MY Pontiac G6 vehicles with 4-speed transmissions which may have been serviced with Kongsberg shift cables.[340]

705. But the shift cable problem was far from resolved.

706. In March of 2013, NHTSA sent New GM a second Engineering Assessment concerning allegations of failure of the transmission shift cables on all 2007-2008 MY Saturn Aura, Chevrolet Malibu, and Pontiac G6 vehicles.[341]

707. New GM continued its standard process of "investigation" and delay. But by May 9, 2014, New GM was forced to concede that "the same cable failure mode found with the Saturn Aura 4-speed transmission" was present in a wide population of vehicles.[342]

708. Finally, on May 19, 2014, New GM's Executive Field Action Decision Committee decided to conduct a safety recall of more than 1.1 million vehicles with the shift cable defect.

709. **Safety Defects Affecting the Powertrain in Cadillac Vehicles – Transmission Shift Cable Defect:** On June 18, 2014, New GM issued a safety recall of 90,750 MY 2013-2014 Cadillac ATS and 2014 Cadillac CTS vehicles with a transmission shift cable defect.

710. In the affected vehicles, the transmission shift cable may detach from either the bracket on the transmission shifter or the bracket on the transmission. If the cable detaches

[340] *Id.*
[341] *Id.*
[342] *Id.*

while the vehicle is being driven, the transmission gear selection may not match the indicated gear and the vehicle may move in an unintended or unexpected direction, increasing the risk of a crash. Furthermore, when the driver goes to stop and park the vehicle, the transmission may not be in "PARK" even though the driver has selected the "PARK" position. If the vehicle is not in the "PARK" position, there is a risk the vehicle will roll away as the driver and other occupants exit the vehicle or anytime thereafter. A vehicle rollaway causes a risk of injury to exiting occupants and bystanders.

711. On March 20, 2014, a New GM dealership contacted an assembly plant about a detached transmission shift cable. The assembly plant investigated and discovered one additional detached shift cable in the plant.

712. New GM assigned a product investigation engineer was assigned, and from March 24 to June 2, 2014, New GM examined warranty claims and plant assembly procedures and performed vehicle inspections. Based on these findings, New GM issued a safety recall on June 11, 2014.

713. **Safety Defects Affecting the Transmission in GM-branded Vehicles – Transmission Oil Cooler Defect:** On March 31, 2014, New GM issued a safety recall of 489,936 vehicles with a transmission oil cooler line defect.

714. In the affected vehicles, the transmission oil cooler lines may not be securely seated in the fitting. This can cause transmission oil to leak from the fitting, where it can contact a hot surface and cause a vehicle fire.

715. On September 4, 2013, a New GM assembly plant in Silao, Mexico experienced two instances in which a transmission oil cooler ("TOC") line became disconnected from the thermal bypass valve in 2014 pick-up trucks on the K2XX platform

during pressure tests. As a result, New GM required the supplier of the TOC lines and thermal bypass valve assembly (collectively the "TOC assembly") for these vehicles to issue a Quality Alert for its facility concerning the TOC assemblies. The supplier sorted the over 3,000 TOC assemblies at its facility, performed manual pull checks and visual inspections, and found no defects.

716. New GM also conducted manual pull checks and visual inspections on the TOC assemblies in the two New GM assembly plants responsible for the K2XX platform at the time (Silao, Mexico and Fort Wayne, Indiana), and identified no defects.

717. On September 19, 2013, the supplier provided New GM with a plan to ensure that the TOC lines were properly connected to the thermal bypass valve going forward. In addition to continuing its individual pull tests to verify that these connections were secure, the supplier planned to add a manual alignment feature to the three machines that it used to connect the TOC lines to the thermal bypass valve boxes. The supplier completed these upgrades on October 28, 2013.

718. On January 2, 2014, New GM's Product Investigations, Field Performance Assessment, and K2XX program teams received an investigator's report concerning a 2014 Chevrolet Silverado that caught fire during a test drive from a dealer in Gulfport, Mississippi on December 16, 2013. New GM's on-site investigation of the vehicle revealed that a TOC line had disconnected from the thermal bypass valve box. The build date for this vehicle was October 10, 2013, and the build date for the TOC assembly was September 28, 2013, prior to the supplier's October 28, 2013 completion of its machinery upgrades.

719. On January 3, 2014, New GM issued a Quality Alert to its assembly plants for K2XX vehicles, advising them to manually inspect the TOC assemblies from the supplier to

ensure that the TOC lines were securely connected. New GM also informed the supplier of the Mississippi event.

720. On January 15, 2014, New GM learned that a 2014 Chevrolet Silverado had recently caught fire while being driven by a dealer salesperson. New GM's investigation of the incident determined that one of the vehicle's TOC lines was disconnected from the thermal bypass valve box. The vehicle was built on November 12, 2013.

721. On January 29, after completing its investigation, New GM followed up with its K2XX assembly plants, and found no additional cases involving disconnected TOC lines after the January 3 Quality Alert.

722. On January 31, 2014, a team from New GM traveled to the supplier's facility to work with the supplier on its thermal valve assembly process. By February 27, 2014, the supplier added pressure transducers to the machine fixtures used to connect the TOC lines to the thermal bypass valve boxes to directly monitor the delivery of air pressure to the pull-test apparatus.

723. On March 23, 2014, a 2015 GMC Yukon caught fire during a test drive from a dealership in Anaheim, California. On March 24, 2014, New GM formed a team to investigate the incident; the team was dispatched to Anaheim that afternoon. On the morning of March 25, 2014, the New GM team examined the vehicle in Anaheim and determined that the incident was caused by a TOC line that was disconnected from the thermal bypass valve box. The assembly plants for K2XX vehicles were placed on hold and instructed to inspect all TOC assemblies in stock, as well as those in completed vehicles. A team from New GM also traveled to the supplier on March 25, 2014, to further evaluate the assembly process.

724. On March 26, 2014, New GM personnel along with personnel from the supplier examined the TOC assembly from the Anaheim vehicle. The group concluded that a TOC line had not been properly connected to the thermal bypass valve box. The build date for the thermal valve assembly in the Anaheim vehicle was determined to be January 16, 2014, after the supplier's October 28, 2013 machinery upgrades, but before its February 27, 2014 process changes.

725. On March 27, 2014, the Product Investigator assigned to this matter received a list of warranty claims relating to transmission fluid leaks in K2XX vehicles, which he had requested on March 24. From that list, he identified five warranty claims, ranging from August 30, 2013, to November 20, 2013, that potentially involved insecure connections of TOC lines to the thermal bypass valve box, none of which resulted in a fire. All five vehicles were built before the supplier completed its machinery upgrades on October 28, 2013.

726. Also on March 27, 2014, following discussions with New GM, the supplier began using an assurance cap in connecting the TOC lines to the thermal bypass valve boxes to ensure that the TOC lines are properly secured.

727. On March 28, 2014, New GM decided to initiate a recall of vehicles built on the K2XX platform so that they can be inspected to ensure that the TOC lines are properly secured to the thermal bypass valve box.

728. **Safety Defects Affecting the Transmission in GM-branded Vehicles – Transfer Case Control Module Software Defect:** On June 26, 2014, New GM issued a safety recall of 392,459 vehicles with a transfer case control module software defect.

729. In the affected vehicles, the transfer case may electronically switch to neutral without input from the driver. If the transfer case switches to neutral while the vehicle is

parked and the parking brake is not in use, the vehicle may roll away and cause injury to bystanders. If the transfer case switches to neutral while the vehicle is being driven, the vehicle will lose drive power, increasing the risk of a crash.

730. New GM first observed this defect on February 14, 2014, when a 2015 model year development vehicle, under slight acceleration at approximately 70 mph, shifted into a partial neutral position without operator input. When the vehicle shifted into neutral, the driver lost power, could not shift out of neutral, and was forced to stop driving. Once the vehicle stopped, the transfer case was in a complete neutral state and could not be moved out of neutral.

731. On or about February 17, 2014, New GM contacted Magna International Inc., the supplier of the transfer case and the Transfer Case Control Module ("TCCM") hardware and software, to investigate the incident. Magna took the suspect TCCM for testing.

732. From mid-February through mid-March, Magna continued to conduct testing. On March 18, Magna provided its first report to New GM but at that time, Magna had not fully identified the root cause.

733. On March 27, Magna provided an updated report that identified three scenarios that could cause a transfer case to transfer to neutral.

734. Between late March and April, New GM engineers continued to meet with Magna to identify additional conditions that would cause the unwanted transfer to neutral. New GM engineers also analyzed warranty information to identify claims for similar unwanted transfer conditions.

735. Two warranty claims for unwanted transfers were identified that appeared to match the conditions exhibited on February 14, 2014. Those warranty claims were submitted

on March 3 and March 18, 2014. On April 23, 2014, a Product Investigation engineer was assigned. A Problem Resolution Tracking System (PRTS) case was initiated on May 20, 2014.

736. The issue was presented to Open Investigation Review (OIR) on June 16, 2014, and on June 18, 2014, the Safety and Field Action Decision Authority (SFADA) decided to conduct a safety recall.

737. **Safety Defects Affecting the Transmission in GM-branded Vehicles – Acceleration-Lag Defect:** On April 24, 2014, New GM issued a safety recall of 50,571 MY 2013 Cadillac SRX vehicles with an acceleration-lag defect.

738. In the affected vehicles, there may be a three to four-second lag in acceleration due to faulty transmission control module programming. That can increase the risk of a crash.

739. On October 24, 2013, New GM's transmission calibration group learned of an incident involving hesitation in a company owned vehicle. New GM obtained the vehicle to investigate and recorded one possible event showing a one second hesitation.

740. In early December 2013, New GM identified additional reports of hesitation from the New GM company-owned vehicle driver fleet, as well as NHTSA VOQs involving complaints of transmission hesitation in the 2013 SRX vehicles.

741. In mid-February 2014, the transmission calibration team obtained additional company vehicles and repurchased customer vehicles that were reported to have transmission hesitation in order to install data loggers and attempt to reproduce the defect. On February 20, 2014, and February 27, 2014, New GM captured two longer hesitation events consistent with customer reports.

742. In response to the investigation, New GM issued a safety recall for the affected vehicles on April 17, 2014.

743. **Safety Defects Affecting the Transmission in GM-branded Vehicles – Transmission Turbine Shaft Fracture Defect:** On June 11, 2014, New GM recalled 21,567 MY 2012 Chevrolet Sonic vehicles equipped with a 6 Speed Automatic Transmission and a 1.8L Four Cylinder Engine suffering from a turbine shaft fracture defect.

744. In the affected vehicles, the transmission turbine shaft may fracture. If the transmission turbine shaft fracture occurs during vehicle operation in first or second gear, the vehicle will not upshift to the third through sixth gears, limiting the vehicle's speed. If the fracture occurs during operation in third through sixth gear, the vehicle will coast until it slows enough to downshift to first or second gear, increasing the risk of a crash.[343]

745. The turbine shafts at issue were made by Sundram Fasteners Ltd. ("SFL").[344] In November 2013, New GM learned of two broken turbine shafts in the affected vehicles when transmissions were returned to New GM's Warranty Parts Center (WPC). New GM sent the shafts to SFL, but SFL did not identify any "non-conformities."[345] But "[s]ubsequent investigation by GM identified a quality issue" with the SFL turbine shafts.[346]

746. By late January 2014, 5 or 6 more transmissions "were returned to the WPC for the same concern." That prompted a warranty search for related claims by New GM's "Quality Reliability Durability (QRD) lead for Gears and Shafts and Validation Engineer for Global Front Wheel 6 Speed Transmission…." That search revealed "a clear increase in incidents for 2012 Sonic built with 6T30 turbine shaft[s] during late February to June of 2012."[347]

[343] *See* June 11, 2014 Letter from New GM to NHTSA.
[344] *Id.*
[345] *Id.*
[346] *Id.*
[347] *Id.*

747. In March of 2014, New GM engineers found that turbine shafts made "in the suspect window were found to have a sharp corner and not a smooth radius in the spline." Testing done in April of 2014 apparently showed a lower life expectancy for "shafts with sharp corners" as opposed to "shafts with smooth radii."[348]

748. On June 4, 2014 "the Safety Field Action Decision Authority (SFADA) decided to conduct a safety recall," and New GM did so on June 11, 2014.[349]

749. **Safety Defects Affecting the Transmission in GM-branded Vehicles – Automatic Transmission Shaft Cable Adjuster Defect:** On February 20, 2014, New GM issued a noncompliance recall of 352 vehicles with defective automatic transmission shift cable adjusters.[350]

750. In the affected vehicles, one end of the transmission shift cable adjuster body has four legs that snap over a ball stud on the transmission shift lever. One or more of these legs may have been fractured during installation. If any of the legs are fractured, the transmission shift cable adjuster may disengage from the transmission shift lever. When that happens, the driver may be unable to shift gears, and the indicated gear position may not be accurate. If the adjuster is disengaged when the driver attempts to stop and park the vehicle, the driver may be able to shift the lever to the "PARK" position but the vehicle transmission may not be in the "PARK" gear position. That creates the risk that the vehicle will roll away as the driver and other occupants exit the vehicle, or anytime thereafter.[351]

[348] *Id.*
[349] *Id.*
[350] *See* February 20, 2014 Letter from New GM to NHTSA.
[351] *Id.*

751. These vehicles may not conform with Federal Motor Vehicle Safety Standard 102 for Transmission Shift Lever Sequence Starter Interlock and Transmission Braking Effect, or Federal Motor Vehicle Safety Standard 114 for Theft Protection and Rollaway Prevention.

752. **Other Serious Defects Affecting GM-branded Vehicles:** The above-described Safety Defects are not random or coincidental. They are not mere glitches. They are symptoms of an ailing culture at New GM—one that transfers ongoing risk of harm, as well as inconvenience and cost, to New GM's customers. The below list of other serious defects and recalls further illustrates and underscores that New GM has in no way prioritized making safe, defect free cars. There have been no fewer than 20 additional safety and other recalls of GM-Branded vehicles in 2014 alone. The defects are:

- Power management mode software defect
- Light control module defect
- Electrical short in driver's door module defect
- Front axle shaft defect
- Seat hook weld defect
- Front turn signal bulb defect
- Low-beam headlight defect
- Radio chime defect
- Fuel gauge defect
- Windshield wiper system defect
- Console bin door latch defect
- Driver door wiring splice defect
- Overloaded feed defect
- Windshield wiper module assembly defect

- Engine block heater power cord insulation defect
- Rear shock absorber defect
- Electronic stability control defect
- Unsecured floor mat defect
- Fuse block defect
- Diesel transfer pump defect

XIII. New GM's Misrepresentations That It Made Safe And Reliable Cars, The Ignition Switch Defect, and Other Safety Defects Have Harmed Plaintiffs And The Classes.

753. The ignition switch defect and the other safety defects have caused damage to Plaintiffs and the Class.

754. A vehicle purchased, leased, or retained with a serious safety defect is worth less than the equivalent vehicle leased, purchased, or retained without the defect.

755. A vehicle purchased, leased, or retained under the reasonable assumption that it is safe is worth more than a vehicle known to be subject to the unreasonable risk of catastrophic accident because of the ignition switch defects.

756. Purchasers and lessees of Defective Vehicles prior to the July 11, 2009, inception of New GM paid more for the Defective Vehicles, through a higher purchase price or higher lease payments, than they would have had Old GM disclosed the ignition switch defects. Plaintiffs and those Class members who purchased new or used Defective Vehicles overpaid for their Defective Vehicles as the result of Old GM's conduct, for which New GM is responsible. Because Old and New GM concealed the Ignition Switch Defect and the Other Safety Defects, these Plaintiffs did not receive the benefit of the bargain. In addition, the value of all Defective Vehicles has diminished as the result of Old and New GM's deceptive conduct.

757. Plaintiffs and *millions* of Class members are stuck with vehicles that are now worth less than they would have been but for Old and New GM's failure to disclose and remedy the Ignition Switch Defect and the Other Safety Defects, and the remaining Class members overpaid at the time of purchase or lease, only to then sell at diminished value on or after February 14, 2014.

758. In addition, Plaintiffs and Class members are subject to a recall that *does not* fully cure the safety defects. Even if they receive a replacement switch with a stronger detent plunger, their vehicles will *not* be safe from the unreasonable risk of sudden unintended shutdown, with the attendant loss of power steering and other critical safety systems, including an operable airbag. That is because New GM has *not* pledged to address either the placement of the ignition switch in the Defective Vehicles *or* the fact that the airbags in the Defective Vehicles become inoperable as soon as the ignition switch turns to the "accessory" or "off" position in all of the Defective Vehicles, and refuses to even provide a stronger ignition switch for the millions of vehicles subject to the June and July ignition switch recalls.

759. If Old or New GM had timely disclosed the ignition switch defects as required by the TREAD Act, the law of fraudulent concealment, and the other State laws set forth below, all Class members' vehicles would now be safe to drive, and would have retained considerably more of their value. Because of the Companies' now highly-publicized campaign of deception, and New GM's belated, piecemeal and ever-expanding recalls, so much stigma has attached to the Defective Vehicles that no rational consumer would now purchase a Defective Vehicle—let alone pay what otherwise would have been fair market value for the vehicle.

760. The fact that vehicles owned by the Plaintiffs and Class are worth less than vehicles that are perceived as safe is demonstrated by the decline in value the Defective Vehicles have experienced since the revelation of Old and New GM's misconduct.

761. In essence Plaintiffs and Class members suffered harm from the revelation of two facts (i) Old and New GM's concealment of switch defects, and (2) New GM's widespread inability to produce safe cars as evidenced by the massive recalls in 2014.

762. For example, the following 2007 model year vehicles suffered estimated diminished value in March 2014 following the February ignition switch recall:

Saturn Ion	$251
Pontiac Solstice	$790
Saturn Sky	$238

763. As the truth was revealed that GM cars were not safe and reliable as evidenced by the unprecedented number of recalls and vehicles recalled, Defective Vehicles suffered additional diminished value by way of illustration:

2007 Pontiac G5	September 2014 Diminished Value $459
2007 Saturn Ion Sedan	September 2014 Diminished Value $472
2007 Saturn Sky	September 2014 Diminished Value $686

TOLLING OF THE STATUTES OF LIMITATION

764. All applicable statutes of limitation have been tolled by Old and New GM's knowing, ongoing and active fraudulent concealment and denial of the facts alleged herein. Plaintiffs and Class members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that Old and New GM did not report information

within their knowledge to federal authorities (including NHTSA), their dealerships. Nor consumers, nor would a reasonable and diligent investigation have disclosed that Old or New GM had information in their possession about the existence and dangerousness of the defects, or that each opted to conceal that information until shortly before this action was filed.

765. All applicable statutes of limitation also have been tolled by operation of the discovery rule. Specifically, Plaintiffs and the other Class members could not have discovered, through the exercise of reasonable diligence, that their Defective Vehicles were defective within the time period of any applicable statutes of limitation.

766. Instead of disclosing the myriad safety defects and disregard of safety of which it was aware, New GM falsely represented that its vehicles were safe, reliable, and of high quality, and that it was a reputable manufacturer that stood behind GM-branded vehicles after they were sold.

767. New GM has been, since its inception, under a continuous duty to disclose to Plaintiffs and the other Class members the true character, quality, and nature of the Defective Vehicles. Instead, New GM has consistently, knowingly, affirmatively, and actively concealed the true nature, quality, and character of the Defective Vehicles from consumers.

768. Based on the foregoing, New GM is estopped from relying on any statutes of limitations in defense of this action as to claims for which the doctrine of estoppel is recognized.

769. Overall, regardless of whether it was New GM or Old GM that manufactured or sold a particular Defective Vehicle to a particular Class member, New GM is responsible for *its own* actions with respect to *all* the Defective Vehicles, and the resulting harm to Class members that occurred as the result of GM's acts and omissions. Simply put, GM was aware

of serious safety defects, and it also knew that Defective Vehicle owners were unaware of the defect, and it chose both to conceal these defects, and to forgo or delay any action to correct them. Under these circumstances, New GM had the clear duty to disclose and not conceal the ignition switch defects to Plaintiffs and the Class—regardless of when they acquired their Defective Vehicles.

770. New GM's obligations stem from several different sources, including, but not limited to: (i) the obligations it explicitly assumed under the TREAD Act to promptly report any safety defect to Defective Vehicle owners and to NHTSA so that appropriate remedial action could occur; (ii) the duty it had under the law of fraudulent concealment, as pleaded below; (iii) the duty it had under the State consumer protection and other laws, as pleaded below; and (iv) the general legal principle embodied in § 324A of the RESTATEMENT (SECOND) OF TORTS, ("Liability To Third Person For Negligent Performance Of Undertaking").

771. In acquiring Old GM, New GM expressly assumed the obligations to make all required disclosures under the TREAD Act with respect to all the Defective Vehicles.

772. Under the TREAD Act, if it is determined that vehicle has a safety defect, the manufacturer must promptly notify vehicle owners, purchasers and dealers of the defect, and may be ordered to remedy the defect. 49 U.S.C. § 30118(b)(2)(A) & (B).

773. Under the TREAD Act, manufacturers must also file a report with NHTSA within five working days of discovering "a defect in a vehicle or item of equipment has been determined to be safety related, or a noncompliance with a motor vehicle safety standard has been determined to exist." 49 C.F.R. § 573.6(a) & (b). At a minimum, the report to NHTSA must include: the manufacturer's name; the identification of the vehicles or equipment

containing the defect, including the make, line, model year and years of manufacturing; a description of the basis for determining the recall population; how those vehicles differ from similar vehicles that the manufacturer excluded from the recall; and a description of the defect. 49 C.F.R. § 276.6(b), (c)(1), (c)(2), & (c)(5).

774. The manufacturer must also promptly inform NHTSA regarding: the total number of vehicles or equipment potentially containing the defect; the percentage of vehicles estimated to contain the defect; a chronology of all principal events that were the basis for the determination that the defect related to motor vehicle safety, including a summary of all warranty claims, field or service reports, and other information, with its dates of receipt; and a description of the plan to remedy the defect. 49 C.F.R. § 276.6(b) & (c).

775. It cannot be disputed that New GM assumed a duty to all Defective Vehicle owners under the TREAD Act, and that it violated this duty.

776. Under § 324A of the RESTATEMENT, an entity that undertakes to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability for harm to the third person resulting from the failure to exercise reasonable care to protect the undertaking if the "failure to establish reasonable care increases the risk of such harm…" While this doctrine of negligent undertaking grew up in the context of physical harm, it also applies to economic loss, such as that suffered by Plaintiffs and the Class.

777. RESTATEMENT § 324A applies to an undertaking which is purely gratuitous, and it applies with even greater force here, where New GM is receiving substantial remuneration for its undertaking in relation to its dealerships' service centers. New GM provides parts for the Defective Vehicles as they are serviced at its dealerships, and receives

substantial revenue from dealerships relating to the servicing of Defective Vehicles. It also receives an additional benefit in that many of the people who own these vehicles will eventually sell or trade in their old vehicles for new ones. Consumers using New GM service centers and buying New GM replacement parts necessarily rely upon New GM to advise its dealerships of defects, notify its dealerships of safety related issues, provide its dealerships with accurate and up to date information and enable them to remedy defects. New GM's failure to carry out these obligations has increased the risk of harm to owners of Defective Vehicles, who regularly have their vehicles inspected and serviced at New GM dealerships and rely upon representations that the vehicles are safe and free of defects.

778. New GM's dealerships pass along GM replacement parts, and they also rely on New GM's expertise regarding how the vehicles should be maintained, and what conditions are necessary for the dealer to conclude that the vehicles are in proper working order at the time they are inspected, serviced and released back to the owner. The dealerships rely on New GM's assurances of safety, that New GM will tell them about safety related problems that come to New GM's attention, and that New GM will pass along knowledge of defects and how to address them. Dealers servicing the Defective Vehicles rely on New GM's representations that the vehicles and their component parts and safety features will function correctly if certain conditions are met when the vehicles are inspected and serviced, as do the consumers who go to a New GM dealership for repairs. New GM's breach of its obligations to its dealerships has resulted in harm to Plaintiffs and the Class.

SUCCESSOR LIABILITY ALLEGATIONS

779. General Motors Corporation was founded on September 16, 1908, in Flint, Michigan, and was incorporated on October 13, 1916, in Delaware. On June 1, 2009, General Motors Corporation ("Old GM") filed a Chapter 11 bankruptcy petition in the United States

Bankruptcy Court for the Southern District of New York.[352] On July 5, 2009, that court approved the sale of substantially all of the assets of Old GM to an entity known as General Motors LLC ("New GM").[353] Old GM sold all of its assets to New GM in a transaction finalized on July 10, 2009.[354] In that sale, all Old GM brands, inventory, physical assets, management, personnel, vehicles and general business operations were transferred to New GM. New GM acquired the contracts, books, and records of Old GM. New GM acquired all goodwill and intellectual property of Old GM. At no time was the business enterprise of the General Motors Company interrupted, and the New GM brand was continued as the same brand as Old GM.[355] New GM is the mere continuation or reincarnation of the same business enterprise as Old GM.

780. New GM acquired all or substantially all of the manufacturing assets of Old GM, and undertook the identical manufacturing operation as Old GM. New GM continued the manufacture, marketing sale and warranty of the Old GM brands, including the Chevrolet Cobalt, the Chevrolet HHR, the Buick Allure, the Buick LaCrosse, the Buick Lucerne, the Cadillac Deville, the Cadillac DTS, the Cadillac CTS, the Cadillac SRX, the Chevrolet Impala, the Chevrolet Camaro, the Chevrolet Malibu, and the Chevrolet Monte Carlo.

781. Saturn Corporation was established on January 7, 1985 as a subsidiary of Old GM. The Saturn Sky was first manufactured in 2006 for the 2007 model year ("MY"), and the Pontiac Solstice was first manufactured in 2005 for the 2006 MY. Old GM manufactured both of these vehicles at its Wilmington, DE plant, and New GM continued to manufacture, market and sell these vehicles post-bankruptcy. After attempting to sell the Saturn brand to Penske,

[352] Valukas Report at 1, FN 1 and Valukas Report at 131.
[353] *Id.*
[354] Valukas Report at 131-132.
[355] Valukas Report at 132, FN 577.

New GM announced on September 30, 2009, that it was going to wind down the Saturn brand by October 2010.[356]

782. Adam Opel AG was founded on January 21, 1862 as a sewing machine manufacturer and produced its first automobiles in 1899. Opel, based in Russelsheim, Hesse, Germany, became a subsidiary of Old GM in 1931. The Opel/Vauxhall GT was introduced as a production model in late 1968. Production of the Opel/Vauxhall GT was shutdown in 1973 only to return 34 years later as a 2007 MY vehicle for GM. The Daewoo G2X was a rebadged version of the Opel GT available in September 2007. Old GM manufactured these vehicles from 2007 until July 28, 2009 at its Wilmington, DE plant, and New GM continued to manufacture, market and sell these Old GM vehicles post-bankruptcy. New GM announced on July 21, 2014, that Opel Group, a new entity created by Adam Opel AG and New GM, would manage and maintain full responsibility for New GM's European business, including Cadillac, Chevrolet, and the Opel/Vauxhall brands.[357]

783. Old GM began production of the Chevrolet Cobalt at its Lordstown Assembly plant in Lordstown, OH, in 2004 for the 2005 MY. New GM continued to manufacture, market and sell the Cobalt, an Old GM vehicle, post-bankruptcy until New GM discontinued the brand in 2010.[358]

[356] Valukas Report at 19; http://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2009/Jun/0601_PlantClosures.html; http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aioTrH.Mfo0o.
[357] http://en.wikipedia.org/wiki/Opel_GT; http://en.wikipedia.org/wiki/Saturn_Sky; http://www.detroitnews.com/article/20140721/AUTO0103/307210084.
[358] Valukas Report at 18; http://www.cleveland.com/business/index.ssf/2010/06/gm_taking_some_unusual_risks_i.html.

784. The Chevrolet HHR was manufactured at Old GM's Ramos Arizpe, Mexico plant for the 2006 MY. New GM continued to manufacture, market and sell the Chevrolet HHR post-bankruptcy.[359]

785. Old GM introduced the Pontiac G5/Pursuit in Canada for the 2005 MY and in the U.S. for the 2007 MY. New GM continued to manufacture, market and sell the Pontiac G5/Pursuit post-bankruptcy.[360]

786. Old GM began manufacturing the Buick LaCrosse (U.S.) (or Buick Allure in Canada) in September 2004 for the 2005 MY.[361] The last vehicle of the first-generation Buick LaCrosse was manufactured on December 23, 2008, at GM's Oshawa, Ontario plant. The second-generation Buick LaCrosse was unveiled at the North American International Auto Show in Detroit, Michigan in January 2009. New GM continues to manufacture, market and sell the LaCrosse to this day.[362]

787. Old GM began production of the Buick Lucerne in 2005 for the 2006 MY.[363] New GM continued production of the Buick Lucerne model vehicle until 2011.[364]

788. Old GM began manufacturing the Cadillac DTS in 2005 for the 2006 MY. In the bankruptcy, New GM acquired the Cadillac brand and continued to manufacture, market and sell the Cadillac DTS until 2011.[365]

[359] Valukas Report at 18; http://www.prlog.org/11024409-chevrolet-discontinues-the-hhr.html; http://www.autofieldguide.com/articles/lookingthe-chevy-hhr.
[360] http://www.answers.com/topic/pontiac-g5.
[361] *Ward's Automotive Yearbook 2005*. Ward's Communications, Inc. 2005. p. 115.
[362] http://www.autoblog.com/2009/01/08/detroit-preview-2010-buick-lacrosse-breaks-cover/.
[363] http://www.edmunds.com/buick/lucerne/.
[364] http://www.just-auto.com/news/gm-axes-cadillac-dts-and-buick-lucerne_id111499.aspx.
[365] http://www.edmunds.com/cadillac/dts/.

789. The first-generation Cadillac SRX was manufactured and sold by Old GM between 2004 and 2009. New GM debuted the second-generation Cadillac SRX in 2010 and continues to manufacture, market and sell these vehicles to this day.[366]

790. Old GM began production of the Cadillac CTS in 2002 for the 2003 MY. Old GM redesigned portions of the Cadillac CTS in 2008, and New GM recently completed another redesign of this model in 2014. [367] New GM continues to manufacture, market and sell the Cadillac CTS.

791. The Chevrolet Impala has been manufactured, marketed and sold by Old GM since 1958. Old GM manufactured, marketed and sold the eighth-generation Impala from 2000-2005; followed by the ninth-generation Impala from 2006-2009. New GM continued to manufacture, market and sell the ninth-generation Chevrolet Impala between 2009 and 2013. New GM performed a redesign in 2013 for the 2014 MY, and continues to manufacture, market and sell the Chevrolet Impala. [368]

792. Old GM began manufacturing and selling the Chevrolet Malibu in 1963 for the 1964 MY. Four generations of Malibu were manufactured, marketed and sold by Old GM between 1964 and 1983, when the Malibu was discontinued. Old GM brought back the Malibu make in 1996 for the 1997 MY. With MY 2004, Old GM redesigned the Malibu, manufacturing, marketing and selling the second-generation Malibu until 2008. The third-generation Chevrolet Malibu was manufactured, marketed and sold by Old GM from 2008 to 2009. New GM continued to manufacture, market and sell the third-generation Chevrolet

[366] http://www.edmunds.com/cadillac/srx/.
[367] http://www.edmunds.com/cadillac/cts/.
[368] http://www.edmunds.com/chevrolet/impala/.

Malibu from July 10, 2009 through 2012. New GM continues to manufacture, market and sell the current version of the Malibu as redesigned for MY 2013.[369]

793. Old GM manufactured, marketed and sold the Chevrolet Camaro model from its inception in the late 1960s until 2002, when the model was discontinued. The Chevrolet Camaro returned to the New GM lineup in 2009 for the 2010 MY, and continues to be manufactured, marketed and sold by New GM to this day.[370]

794. New GM enjoyed the benefits of the Old GM brands in continuing these brands and product lines. As the specific examples below demonstrate, New GM knowingly and intentionally undertook ongoing duties to the purchasers of Old GM vehicles to ensure the safety, function, and value of these vehicles. New GM cannot in law, equity or fairness absolve itself of liability for the Old GM vehicle defects that New GM fraudulently acted to conceal and keep on the road.

795. New GM honored the vehicle warranties and customer programs of Old GM on Old GM vehicles. On June 1, 2009, days before it was to file for bankruptcy protection, Old GM posted on its Internet website (www.gm.com) a "Customer FAQ on GM's Chapter 11 Filing," which remained accessible on New GM's website (www.gm.com) post-bankruptcy.[371] Among other things, New GM promised its customers and the Class:

> There will be no interruptions in GM's ability to take care of our customers and honor customer programs, warranties and provide replacement parts. In fact, GM has asked the Court for specific orders authorizing GM to honor customer warranties and programs as it always has. You should have total confidence that:

[369] http://wot.motortrend.com/a-quick-history-of-the-chevy-malibu-125595.html; http://www.edmunds.com/chevrolet/malibu/.
[370] http://www.edmunds.com/chevrolet/camaro/.
[371] http://web.archive.org/web/20090606083403/http://www.gmreinvention.com/index.php/site/progress_reports/0601_Viability_CustomerFAQ/#; http://web.archive.org/web/20100107122701/; http://www.gmreinvention.com/index.php/site/progress_reports/.

- Our products are safe and sound;
- We will honor your existing warranty;
- Customer promotions and incentives will continue without interruption;
- You do not need to do anything differently regarding your warranty[372]

796. New GM continued:

> Will New GM honor customer warranty claims?
>
> Yes. GM will succeed and win by taking care of our customers every day. New GM will assume the obligations to support the express warranties issued by GM to its customers.[373]

797. With respect to Old GM's loyalty program—GM Card Earnings:

> What happens to my GM Card Earnings?
>
> Your GM Card Earnings will continue to be honored in accordance with the Program Rules. You can keep using your Card at more than 18 million outlets where MasterCard is accepted to accumulate Earnings and redeem them toward eligible, new GM vehicles.[374]

798. Under the bankruptcy sale agreement, New GM also expressly assumed certain liabilities of Old GM, including certain statutory requirements:

> From and after the Closing, Purchaser [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Safety Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code and similar Laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by Seller.

799. In the sale agreement, New GM expressly set forth that it:

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[372] *Id.*
[373] *Id.*
[374] *Id.*

> shall be responsible for the administration, management and payment of all Liabilities arising under (i) express written warranties of Sellers [Old GM] that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (ii) Lemon Laws.

800. New GM kept the same principle place of business and centers of operation as Old GM. Old GM purchased the Renaissance Center in Detroit, Michigan on May 16, 1996 for use as its global headquarters. New GM still maintains its public presence and residence at 300 Renaissance Center in Detroit, Michigan.[375]

801. In addition, Old GM established the General Motors Proving Grounds in Milford, Michigan in 1924; the Milford Proving Grounds property is still owned and used by New GM. The Milford Proving Grounds is a testing facility where the ignition switch was tested.

802. New GM kept the same employees as Old GM; retaining over 65,000 of Old GM's employees. This included some of Old GM's Board of Directors, top management and key players involved in the ignition switch defect, *inter alia*:

- Terry J. Woychowski was with Old GM since 1978, serving in various engineering positions including Global Vehicle Chief Engineer.[376] He held the position of Vice President of Global Quality and Vehicle Launch for New GM until retiring in June 2012.[377]

- Michael J. Robinson joined Old GM in 1984, and moved up to become North American General Counsel in 2008.[378] He continued to serve in New GM's legal department,

[375] *See* GM Annual Reports
[376] http://www.dbusiness.com/January-February-2011/General-Motors-Co/?cparticle=5&siarticle=4#.VBsxQE1OXcs.
[377] Valukas Report at 171.
[378] http://green.autoblog.com/2009/09/04/general-motors-announces-mike-robinson-as-new-environment-vp/.

becoming New GM's Vice President of Environment, Energy and Safety Policy in September 2009, holding that position until he was fired in 2014.[379]

- John R. Buttermore began his career at GM as an engineer in 1978.[380] He served Old GM as Vice President of Powertrain and Manufacturing Operations, and has served as New GM's Vice President of Manufacturing since September 2009.[381]

- Current New GM Chief Executive Officer, Mary T. Barra, began her career at Old GM in 1980 as a student at General Motors Institute.[382] She served in a number of engineering and management positions throughout Old GM and New GM prior to becoming New GM's Executive Vice President, Global Product Development, Purchasing and Supply Chain in 2013.[383] She assumed her current role with New GM on January 15, 2014.[384]

- Mark L. Reuss began his career with Old GM as an engineering intern in 1983.[385] Having held numerous management positions in engineering for GM, he served as President of GM North America from 2009-2013.[386] He currently serves New GM as Executive Vice President, Global Product Development, Purchasing and Supply Chain, having assumed the role from Barra.[387]

- Gary Altman served as Old GM's Program Engineering Manager for the Chevrolet Cobalt in 2004 and continued to serve New GM as a manager until he was fired in 2014.[388]

- Raymond DeGiorgio served Old GM as the Design Release Engineer for the ignition switch used in the Saturn Ion and Chevrolet Cobalt vehicles in 2003/2004.[389] He continued to

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[379] *Id*; http://fortune.com/2014/06/06/report-names-top-gm-workers-fired-over-gm-safety-probe/.
[380] http://investing.businessweek.com/research/stocks/people/person.asp?personId=2971371&ticker=GM&previousCapId=61206100&previousTitle=GENERAL%20MOTORS%20CO.
[381] *Id*.
[382] http://www.gm.com/company/aboutGM/board_of_directors0/mary_barra.html.
[383] *Id*.
[384] *Id*.
[385] http://www.gm.com/company/corporate-officers/mark-reuss.
[386] *Id*.
[387] *Id*.
[388] Valukas Report at 58; http://www.newsweek.com/gm-fired-15-over-defect-killed-least-13-253685.
[389] Valukas Report at 37-38.

be employed by New GM in an engineering role until he was fired in 2014.[390]

- Lawrence Buonomo served as an attorney in Old GM's legal department from 1994-2009, and served as New GM's Executive Director of Litigation from 2009-2012.[391] New GM named him Practice Area Manager and Global Legal Process Leader - Litigation in 2012, a position in which he served until he was fired in 2014.[392]

- William J. Kemp served as a top product safety attorney for Old GM during 2003-2013.[393] He continued to serve in New GM's legal department until his termination in 2014.[394]

- Michael Millikin, formerly Old GM's Coordinator of Global Legal Services, was renamed Old GM's Associate General Counsel in June 2005, a position he continued to hold until he assumed his current role as New GM's Vice President and General Counsel in July 2009.[395] Millikin remains in place as General Counsel for New GM.

- Thomas G. Stephens began his career at Old GM as an engineer in 1969.[396] Moving up the corporate ladder, he was made Group Vice President, Global Powertrain and Global Quality in 2006, and served as Vice Chairman, Global Product Development for Old GM and New GM from April 2009 through June 2011.[397] He continued to serve New GM as Vice Chairman & Global Chief Technology Officer until April 2012.[398]

- Timothy E. Lee began his career at Old GM as a student at General Motors Institute in 1969.[399] He moved into top management in 2002 when he assumed the role of Vice President of Manufacturing for GM Europe and in 2006 as

[390] http://www.newsweek.com/gm-fired-15-over-defect-killed-least-13-253685.
[391] http://www.linkedin.com/pub/lawrence-larry-buonomo/5/978/499
[392] *Id.; See also* http://online.wsj.com/articles/gm-dismissals-include-lawyers-lawrence-buonomo-bill-kemp-1402003050
[393] Valukas Report at 85-86, 104, 147-148, 150, 153, 164-165, 171, 178, 183 and 196.
[394] *Id*; http://online.wsj.com/articles/gm-dismissals-include-lawyers-lawrence-buonomo-bill-kemp-1402003050
[395] http://www.gm.com/company/aboutGM/GM_Corporate_Officers/michael_p_millikin.html
[396] http://investing.businessweek.com/research/stocks/people/person.asp?personId=9663636&ticker=GM
[397] *Id; See also* GM Annual Reports.
[398] http://investing.businessweek.com/research/stocks/people/person.asp?personId=9663636&ticker=GM
[399] http://investing.businessweek.com/research/stocks/people/person.asp?personId=25315960&ticker=GM

Vice President of Manufacturing for GM North America.[400] He took over as President of International Operations for New GM in December 2009, and also served New GM as its Executive Vice President of Global Manufacturing from 2012 through 2014.[401]

- Chester N. Watson has served as General Auditor for Old GM and New GM from 2003 through 2010.[402]

- Victoria McInnis began her career at GM Canada in 1995 and served New GM as Chief Tax Officer through 2012.[403]

- Frederick A. Henderson served as Old GM's Vice Chairman of the Board of Directors and Chief Financial Officer from 2005 until he was elected Chairman and Chief Financial Officer in June of 2009, leading new GM through bankruptcy.[404]

- Erroll B. Davis, Jr. served on Old GM's Board of Directors starting in 2007 and, according to New GM's 2013 Annual Report, still serves on the Board of Directors to this day.[405]

- Phillip A. Laskawy served on Old GM's Board of Directors beginning in 2003 and continued to serve on New GM's Board of Directors until 2013.[406]

- Kathryn V. Marinello served on Old GM's Board of Directors starting in 2007 and, according to New GM's 2013 Annual Report, still serves on the Board of Directors to this day.[407]

803. In addition to in-house counsel that remained with New GM post-bankruptcy, Old GM and New GM retained the same outside lawyers and law firms.

[400] *Id.; See also* GM Annual Reports.
[401] http://investing.businessweek.com/research/stocks/people/person.asp?personId=25315960&ticker=GM.
[402] http://www.dbusiness.com/January-February-2011/General-Motors-Co/?cparticle=5&siarticle=4#.VBrd9U1OXcs; *See also* GM Annual Reports.
[403] *Id.*
[404] *See* GM Annual Reports.
[405] *Id.*
[406] *Id.*
[407] *Id.*

804. New GM retained ownership and control over nearly all of Old GM's manufacturing plants; closing only fourteen.[408] New GM also assumed ownership and responsibility for over 3,600 of Old GM's U.S. dealerships.[409]

805. New GM kept the same logos and brand marketing as Old GM. Old GM unveiled its "Mark of Excellence" logo in 1966.

806. The words "Mark of Excellence" were removed in the late 1970's, but what remained of the logo is still in use today.

807. On August 24, 2009, New GM announced the removal of its logo from all of its vehicles starting with the 2010 MY; however, New GM continues to use this logo to this day on its websites and marketing materials.

[408] http://money.cnn.com/2009/07/10/news/companies/new_gm/.
[409] *Id.*

808. New GM has also maintained the logos and branding for Chevrolet and Cadillac, after acquiring these brand assets post-bankruptcy. The Chevrolet bowtie was introduced in late 1913 containing the "Chevrolet" name within the bowtie. Old GM continued to use the bowtie logo after it purchased Chevrolet in 1918.

809. Around 2000, the Chevrolet name was removed from the logo, and, despite slight design variations to the bowtie, the logo and brand remain the same today as used by New GM.

810. The iconic Cadillac crest was first unveiled in 1906. Though there have been slight varying designs of the crest, the Cadillac logo consisting of a silver, gold, red and blue crest surrounded by a wreath has remained conceptually the same since 1982.

811. In January of 2014, New GM announced it was removing the Cadillac wreath from the logo and widening the crest for a more streamlined appearance.

812. New GM's operations have consistently demonstrated a continuity of Old GM as an extension of its predecessor corporations' business and product lines. New GM expressly and impliedly assumed the warranty obligations and liabilities of Old GM. New GM has consistently and continuously held itself out to the public and the Class as the continuation of Old GM. New GM is a mere continuation or reincarnation of the same business of Old GM. New GM had—and continues to have—an ongoing duty to warn the Class of the defects that it knew existed in Old GM vehicles. New GM entered into the bankruptcy having fraudulently concealed material facts on the defects in Old GM and New GM vehicles to the reliance and detriment of the Class, and is responsible for the conduct and fraudulent concealment by Old

GM as it relates to the Defective Vehicles. New GM and Old GM were, and New GM remains, under a continuing duty to disclose to the Class the true character, quality, and nature of the Defective Vehicles; that this defect is based on dangerous, inadequate, and defective design and substandard materials; and that the defects will require repair, pose a severe safety concern, and diminishes the value of the Defective Vehicles.

813. New GM undertook the same manufacturing operation as Old GM. New GM continued the product lines of Old GM. The totality of the transaction between the predecessor and successor corporations demonstrates a basic continuity of the predecessor corporation's business. Indeed, the purpose of the bankruptcy transaction funded by taxpayer dollars was to save and continue the Old GM brand, the Old GM name, the Old GM product line, and to ensure the continuation or reincarnation of the same business enterprise as New GM. The fraudulent concealment of material facts begun under Old GM was continued, carried on, and furthered by New GM and its agents. New GM did not report material safety information within its knowledge to the Class, nor would a reasonable and diligent public investigation have disclosed to the Class that New GM had information in its possession about the existence and dangerousness of the Old GM defects that it failed to disclosed and instead acted to fraudulently conceal. The cover-up and omissions of Old GM are the responsibility of New GM. The transfer of Old GM assets to New GM was done fraudulently and in an attempt to escape liability for gross misconduct and to destroy the remedies of the Class as against New GM.

814. New GM continued the business of General Motors as evidenced by the continuity of management, personnel, physical location, assets, and general business operations of Old GM.

815. Old GM ceased its ordinary business operations and was dissolved by terms of the bankruptcy. New GM expressly and impliedly assumed the obligations of Old GM to manufacture non-defective vehicles and by warranting to the Class and the public that the GM brand would remain in operation as a continuation of the same company. At all relevant times, New GM held itself out to the Class, and to the world, as the effective continuation of Old GM. With respect to each of the Claims for Relief asserted herein, the Classes thus assert two distinct, severable, and independent bases of New GM liability: (1) GM's own knowledge, deceptive, negligent, and violative conduct, its breach of its own duty, and resulting harm; and (2) New GM's successor liability.

CHOICE OF LAW ALLEGATIONS

816. New GM is headquartered in Detroit, Michigan, the "center of gravity" of this case.

817. As did Old GM, New GM does substantial business in Michigan. Nearly half of New GM's United States manufacturing plants are in Michigan, as are a third of its assembly plants. Upon information and belief, there are approximately 20,000 New GM employees in Michigan alone.

818. In addition, the conduct that forms the basis for each and every Class members' claims against New GM emanated from Old and New GM's headquarters in Detroit, Michigan.

819. On information and belief, Old and New GM personnel responsible for customer communications are and were located at the Michigan headquarters, and the core decision not to disclose the ignition switch and safety defects to consumers was made and implemented from there.

820. On information and belief, throughout the Class Period, Old and New GM, in concert with their Michigan-based advertising agencies, failed to disclose the existence of the ignition switch and other safety defects.

821. On information and belief, the Red X team, an engineering team whose purpose is to find the cause of an engineering design defect, is and was located in Detroit, Michigan.

822. On information and belief, marketing campaigns falsely promoting Old and New GM cars as safe and reliable were conceived and designed in Michigan.

823. On information and belief, Old and New GM personnel responsible for managing the customer service division are and were located at the Michigan headquarters. The "Customer Assistance Centers" directs customers to call the following numbers: 1-800-222-1020 (Chevrolet), 1-800-521-7300 (Buick), 1-800-462-8782 (GMC), 1-800-458-8006 (Cadillac), 1-800-762-2737 (Pontiac), 1-800-732-5493 (HUMMER), and 1-800-553-6000 (Saturn), which are landlines in Detroit, Michigan. Customers are directed to send correspondence to GM Company, P.O. Box 33170, Detroit, MI 48232-5170. In addition, personnel from GM in Detroit, Michigan, also communicate via e-mail with customers concerned about the ignition switch and safety defects.

824. On information and belief, Old and New GM personnel responsible for communicating with dealers regarding known problems with Defective Vehicles are and were also located at the Michigan headquarters.

825. On information and belief, Old and New GM personnel responsible for managing the distribution of replacement parts to dealerships are and were located at the Michigan headquarters. The decision not to change the part number and the service stock

(replacement parts they had in inventory) of older, weaker switches was made and implemented from Old GM's Michigan headquarters.

826. On information and belief, New GM's presence is more substantial in Michigan than any other state, and the same was true of Old GM.

CLASS ACTION ALLEGATIONS

827. As alleged throughout this Complaint, the Classes' claims all derive directly from a single course of conduct by New GM, from its inception onward. This case is about the responsibility of New GM, at law and in equity, for its knowledge, its conduct, and its products. New GM has engaged in uniform and standardized conduct toward the Classes. It did not differentiate, in its degree of care or candor, its actions or inactions, OR in the content of its statements or omissions, among individual Class members. The objective facts on these subjects are the same for all Class members. Within each Claim For Relief asserted by the respective Classes, the same legal standards govern. Additionally, many states share the same legal standards and elements of proof, facilitating the certification of multistate classes for some or all claims.

II. The Nationwide Class

828. Accordingly, under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this action and seek to certify and maintain it as a class action on behalf of themselves and a Nationwide Class initially defined as follows:

> All persons in the United States who entered into a lease or bought, prior to July 11, 2009, and who (i) own or lease, or (ii) who sold after February 14, 2014, or (iii) who had declared a total loss after an accident occurring after February 14, 2014, one or more of the following GM vehicles: 2003-2007 Saturn Ion; 2005-2009 Chevrolet Cobalt; 2007-2009 Pontiac G5; 2006-2009 Chevrolet HHR; 2006-2009 Pontiac Solstice; 2007-2009 Saturn Sky; 2004-2005 Buick Regal LS & GS; 2005-2009 Buick Lacrosse; 2006-2009 Buick Lucerne; 2000-2005 Cadillac Deville; 2004-2009

Cadillac DTS; 2006-2009 Chevrolet Impala; 2000-2008 Chevrolet Monte Carlo; 2003-2009 Cadillac CTS; 2004-2006 Cadillac SRX; 1997-2005 Chevrolet Malibu; 2000-2005 Pontiac Grand Am; 2004-2008 Pontiac Grand Prix; 1998-2002 Oldsmobile Intrigue; 1999-2004 Oldsmobile Alero; or 2008-2009 Pontiac G8 ("Defective Vehicles").[410]

III. The State Classes

829. Plaintiffs allege statewide class action claims on behalf of classes for each of the 50 states, the District of Columbia and Puerto Rico ("State Classes"). Each of these State Classes is initially defined as follows:

> All persons in the State of _____ (e.g., Alabama) who entered into a lease or bought, prior to July 11, 2009, and who (i) own or lease, or (ii) who sold after February 14, 2014, or (iii) who had declared a total loss after an accident occurring after February 14, 2014, one or more of the following GM vehicles: 2003-2007 Saturn Ion; 2005-2009 Chevrolet Cobalt; 2007-2009 Pontiac G5; 2006-2009 Chevrolet HHR; 2006-2009 Pontiac Solstice; 2007-2009 Saturn Sky; 2004-2005 Buick Regal LS & GS; 2005-2009 Buick Lacrosse; 2006-2009 Buick Lucerne; 2000-2005 Cadillac Deville; 2004-2009 Cadillac DTS; 2006-2009 Chevrolet Impala; 2000-2008 Chevrolet Monte Carlo; 2003-2009 Cadillac CTS; 2004-2006 Cadillac SRX; 1997-2005 Chevrolet Malibu; 2000-2005 Pontiac Grand Am; 2004-2008 Pontiac Grand Prix; 1998-2002 Oldsmobile Intrigue; 1999-2004 Oldsmobile Alero; or 2008-2009 Pontiac G8 ("Defective Vehicles").

830. The Nationwide Class and the State Classes and their members are sometimes referred to herein as the "Class" or "Classes."

831. Excluded from each Class are Old GM and New GM, their employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of Old GM; Class Counsel and their employees; and the

[410] To the extent warranted, the list of Defective Vehicles for the purpose of the Nationwide and State Class Definitions, will be supplemented to include other GM vehicles that have the defective ignition switches, which inadvertently turn off the engine and vehicle electrical systems during ordinary driving conditions, and related defects.

judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons.

832. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). Plaintiffs are informed and believe that there are millions of Defective Vehicles nationwide, and thousands of Defective Vehicles in each of the States. Individual joinder of all Class members is impracticable.

833. Each of the Classes is ascertainable because its members can be readily identified using registration records, sales records, production records, and other information kept by New GM or third parties in the usual course of business and within their control. Plaintiffs anticipate providing appropriate notice to each certified Class, in compliance with Fed. R. Civ. P. 23(c)(1)(2)(A) and/or (B), to be approved by the Court after class certification, or pursuant to court order under Fed. R. Civ. P. 23(d).

834. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2) and 23(b)(3) because questions of law and fact that have common answers that are the same for each of the respective Classes predominate over questions affecting only individual Class members. These include, without limitation, the following:

a. Do the Defective Vehicles suffer from ignition switch defects?

b. Did Old GM and/or New GM fraudulently conceal these defects?

c. Did Old GM and/or New GM's conduct toll any or all applicable limitations periods by acts of fraudulent concealment, application of the discovery rule, or equitable estoppel?

d. Did Old GM and/or New GM misrepresent that the Defective Vehicles were safe?

e. Did Old GM and/or New GM engage in unfair, deceptive, unlawful and/or fraudulent acts or practices in trade or commerce by failing to disclose that the Defective Vehicles were designed, manufactured, and sold with defective ignition switches?

f. Was Old GM and/or New GM's conduct, as alleged herein, likely to mislead a reasonable consumer?

g. Were Old GM and/or New GM's statements, concealments and omissions regarding the Defective Vehicles material, in that a reasonable consumer could consider them important in purchasing, selling, maintaining, or operating such vehicles?

h. Did Old GM and/or New GM violate each of the States' consumer protection statutes, and if so, what remedies are available under those statutes?

i. Were the Defective Vehicles unfit for the ordinary purposes for which they were used, in violation of the implied warranty of merchantability?

j. Is New GM liable to the Class for damages and/or penalties, as a result of its own knowledge, conduct, action, or inaction?

k. Is New GM liable to the Class for damages and/or penalties under privileges of successor liability

l. Are Plaintiffs and the Class entitled to a declaratory judgment stating that the ignition switches in the Defective Vehicles are defective and/or not merchantable?

m. Did Old GM and/or New GM's unlawful, unfair, and/or deceptive practices harm Plaintiffs and the Class?

n. Has New GM been unjustly enriched by its conduct?

o. Are Plaintiffs and the Class entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction?

p. Should New GM be declared responsible for notifying all Class members of the defects and ensuring that all GM vehicles with the Ignition Switch Defect are promptly recalled and repaired?

q. What aggregate amounts of statutory penalties, as available under the laws of Michigan and other States, are sufficient to punish and deter New GM and to vindicate statutory and public policy?

r. How should such penalties be most equitably distributed among Class members?

835. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because Plaintiffs' claims are typical of the claims of the Class members, and arise from the same course of conduct by New GM. The relief Plaintiffs seek is typical of the relief sought for the absent Class members.

836. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(4) because Plaintiffs will fairly and adequately represent and protect the interests of all absent Class members. Plaintiffs are represented by counsel who are competent and experienced in product liability, consumer protection, and class action litigation.

837. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(1) because the prosecution of separate actions by the individual Class members on the claims asserted herein would create a risk of inconsistent or varying adjudications for individual Class members, which would establish incompatible standards of conduct for New GM; and because adjudication with respect to individual Class members would, as a practical matter, be dispositive of the interests of other Class members, or impair substantially or impede their ability to protect their interests.

838. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class Members will continue to incur damages, and Defendant's misconduct will continue without remedy.

839. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(2) because Defendant New GM has acted and refused to act on grounds generally applicable to each Class, thereby making appropriate final injunctive and/or corresponding declaratory relief with respect to each Class as a whole.

840. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(3) because a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The common questions of law and of fact regarding New GM's conduct and responsibility predominate over any questions affecting only individual Class members.

841. Because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, such that most or all class members would have no rational economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under Fed. R. Civ. P. 23(b)(3)(A).

842. The claims in this Complaint have been centralized in this forum as MDL proceedings pursuant to 28 U.S.C. § 1407. Essentially all related litigation already begun by GM customers asserting ignition switch-related class claims is now consolidated in this forum. The ongoing concentration of such claims in this forum, at least through the class certification determination and the trial of bellwether class claims, is superior, under Fed. R. Civ. P. 23(b)(3)(B) and (C), to the premature dispersion of these claims or individualized treatment of these claims.

843. The conduct of this action as a class action presents far fewer management difficulties, far better conserves judicial resources and the parties' resources, and far more effectively protects the rights of each Class member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the court, and the public of class treatment in this court, making class adjudication superior to other alternatives, under Fed. R. Civ. P. 23(b)(3)(D).

844. Plaintiffs are not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiffs or on its own determination, certify nationwide, statewide and/or multistate classes for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or law for classwide adjudication;

certify and adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into subclasses.

845. The Classes expressly disclaim any recovery, in this action, for physical injury resulting from the ignition switch defects without waiving or dismissing such claims. Plaintiffs are informed and believe that crashes implicating the Defective Vehicles are continuing to occur because of New GM's delays and inaction regarding the commencement and completion of recalls. The increased risk of injury from the ignition switch defects serves as an independent justification for the relief sought by Plaintiffs and the Class.

REALLEGATION AND INCORPORATION BY REFERENCE

846. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs and allegations of this Complaint, including the Introduction, all Factual Allegations, Tolling Allegations, Successor Liability Allegations, Choice of Law Allegations, and Class Action Allegations, as though fully set forth in each of the following Claims for Relief asserted on behalf of the Nationwide Class and the Statewide Classes.

CLAIMS FOR RELIEF

I. NATIONWIDE CLASS CLAIMS

FIRST CLAIM FOR RELIEF
ON BEHALF OF NATIONWIDE CLASS

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
15 U.S.C. § 2301 *et. seq.*

847. Plaintiffs bring this Count on behalf of members of the Nationwide Class who are residents of the following States: Alaska, Arkansas, California, Colorado, Delaware, District of Columbia, Hawaii, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma,

Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia and Wyoming.

848. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).

849. The Defective Vehicles are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

850. Plaintiffs are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3). They are consumers because they are persons entitled under applicable state law to enforce against the warrantor the obligations of its express and implied warranties.

851. Old GM was a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

852. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

853. Old and New GM provided Plaintiffs and the other Class members with an implied warranty of merchantability in connection with the purchase or lease of their vehicles that is an "implied warranty" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7). As a part of the implied warranty of merchantability, Old and New GM warranted that the Defective Vehicles were fit for their ordinary purpose as safe passenger motor vehicles, would pass without objection in the trade as designed, manufactured, and marketed, and were adequately contained, packaged, and labeled. Mich. Comp. Laws § 440.2314(2)(a), (c), and (e); U.C.C. § 2-314.

854. Old and New GM breached these implied warranties, as described in more detail above, and are therefore liable to Plaintiffs and the Class pursuant to 15 U.S.C. § 2310(d)(1). Without limitation, the Defective Vehicles share common design defects in that they are equipped with defective Key Systems that can suddenly fail during normal operation, leaving occupants of the Defective Vehicles vulnerable to crashes, serious injury, and death. New GM has admitted that the Defective Vehicles are defective in issuing its recalls, but the recalls are woefully insufficient to address each of the defects.

855. In its capacity as a warrantor, as Old and New GM had knowledge of the inherent defects in the Defective Vehicles, any efforts to limit the implied warranties in a manner that would exclude coverage of the Defective Vehicles is unconscionable, and any such effort to disclaim, or otherwise limit, liability for the Defective Vehicles is null and void.

856. The limitations on the warranties are procedurally unconscionable. There was unequal bargaining power between Old GM and Plaintiffs and the other Class members, as, at the time of purchase and lease, Plaintiffs and the other Class members had no other options for purchasing warranty coverage other than directly from Old GM.

857. The limitations on the warranties are substantively unconscionable. Old and N that the Defective Vehicles were defective and would continue to pose safety risks after the warranties purportedly expired. Old and New GM failed to disclose these defects to Plaintiffs and the other Class members. Thus, New GM's enforcement of the durational limitations on those warranties is harsh and shocks the conscience.

858. Plaintiffs and each of the other Class members have had sufficient direct dealings with either Old or New GM or its agents (dealerships) to establish privity of contract. Nonetheless, privity is not required here because Plaintiffs and each of the other Class

members are intended third-party beneficiaries of contracts between Old and New GM and its dealers, and specifically, of the implied warranties. The dealers were not intended to be the ultimate consumers of the Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit consumers. Finally, privity is also not required because the Defective Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

859. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and are not required to give New GM notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.

860. Furthermore, affording either Old or New GM an opportunity to cure its breach of written warranties would be unnecessary and futile here. At the time of sale or lease of each Defective Vehicle, Old GM knew, should have known, or was reckless in not knowing of its misrepresentations concerning the Defective Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford Old GM a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

861. Plaintiffs and the other Class members would suffer economic hardship if they returned their Defective Vehicles but did not receive the return of all payments made by them. Because New GM is refusing to acknowledge any revocation of acceptance and return

immediately any payments made, Plaintiffs and the other Class members have not re-accepted their Defective Vehicles by retaining them.

862. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of $25. The amount in controversy of this action exceeds the sum of $50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit. Plaintiffs, individually and on behalf of the other Class members, seek all damages permitted by law, including diminution in value of their vehicles, in an amount to be proven at trial. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other Class members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have reasonably been incurred by Plaintiffs and the other Class members in connection with the commencement and prosecution of this action.

863. Further, Plaintiffs and the Class are also entitled to equitable relief under 15 U.S.C. § 2310(d)(1). Based on New GM's continuing failures to fix the known dangerous defects, Plaintiffs seek a declaration that New GM has not adequately implemented its recall commitments and requirements and general commitments to fix its failed processes, and injunctive relief in the form of judicial supervision over the recall process is warranted. Plaintiffs also seek the establishment of the New GM-funded program for Plaintiffs and Class members to recover out of pocket costs incurred, as discussed in Paragraphs __ above.

864. Plaintiffs also request, as a form of equitable monetary relief, re-payment of the out-of-pocket expenses and costs they have incurred in attempting to rectify the Ignition Switch Defects in their vehicles. Such expenses and losses will continue as Plaintiffs and Class members must take time off from work, pay for rental cars or other transportation

arrangements, child care, and the myriad expenses involved in going through the recall process.

865. The right of Class members to recover these expenses as an equitable matter to put them in the place they would have been but for Old and New GM's conduct presents common questions of law. Equity and fairness requires the establishment by Court decree and administration under Court supervision of a program funded by New GM, using transparent, consistent, and reasonable protocols, under which such claims can be made and paid.

SECOND CLAIM FOR RELIEF
ON BEHALF OF THE NATIONWIDE CLASS

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(MICH. COMP. LAWS § 440.2314)

866. This claim is brought on behalf of the Nationwide Class for breach of implied warranty under Michigan law.

867. Old GM and New GM were merchants with respect to motor vehicles within the meaning of MICH. COMP. LAWS § 440.2314(1).

868. Under MICH. COMP. LAWS § 440.2314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when Michigan Class members purchased their Defective Vehicles.

869. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

870. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and

communications sent by the Michigan Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

871. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Michigan Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

872. The Michigan Class also seeks available equitable and/or injunctive relief. Based on New GM's continuing failures to fix the known dangerous defects, the Michigan Class seeks a declaration that New GM has not adequately implemented its recall commitments and requirements and general commitments to fix its failed processes, and injunctive relief in the form of judicial supervision over the recall process is warranted. The Michigan Class also seeks the establishment of a New GM-funded program for Plaintiffs and Class members to recover out of pocket costs incurred.

THIRD CLAIM FOR RELIEF
ON BEHALF OF NATIONWIDE CLASS

FRAUDULENT CONCEALMENT

873. This claim is brought on behalf of the Nationwide Class under Michigan law, or, alternatively, under the laws of the all states, as there is no material difference in the law of fraudulent concealment as applied to the claims and questions in this case.

874. Old and New GM each concealed and suppressed material facts concerning the Defective Vehicles.

875. As described above, Old GM and New GM each made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

876. The Companies each knew these representations were false when made.

877. The vehicles purchased or leased by Plaintiffs were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

878. The Companies each had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because Plaintiffs relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

879. The aforementioned concealment was material, because if it had been disclosed Plaintiffs would not have bought, leased or retained their vehicles.

880. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies each knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies each intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

881. Plaintiffs relied on the Companies' reputation-along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurances that their vehicles were safe and reliable and other similar false statements-in purchasing, leasing or retaining the Defective Vehicles.

882. However, Old and New GM each concealed and suppressed material facts concerning the culture of Old and New GM-a culture that emphasized cost-cutting, avoidance of dealing with safety issues and a shoddy design process.

883. Further, Old and then New GM each had a duty to disclose the true facts about the Defective Vehicles because they were known and/or accessible only to Old and then New GM who had superior knowledge and access to the facts, and the facts were not known to or reasonably discoverable by Plaintiff and the Classes. As stated above, these omitted and concealed facts were material because they directly impact the safety, reliability and value of the Defective Vehicles. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, is of material concern to a reasonable consumer.

FOURTH CLAIM FOR RELIEF
ON BEHALF OF NATIONWIDE CLASS

UNJUST ENRICHMENT

880. This claim for unjust enrichment is brought on behalf of the Nationwide Class under Michigan law, or alternatively, under the laws of all states as there is no material difference in the law of unjust enrichment as it applies to the claims and questions in this case.

881. New GM has received and retained a benefit from the Plaintiffs and the Nationwide Class, and inequity has resulted.

882. New GM benefitted from acquiring the assets and goodwill of Old GM, and avoiding and delaying the effort and expenditures involved in recalling and repairing the Defective Vehicles; while Plaintiffs, who originally overpaid for their Old GM cars, have been forced to pay additional out-of-pocket costs and incur additional expense and losses in connection with the belated recalls.

883. It is inequitable for New GM to retain the benefits of its misconduct.

884. As a result of New GM's conduct, the amount of New GM's unjust enrichment should be disgorged, in an amount according to proof.

II. STATE CLASS CLAIMS

ALABAMA

FIFTH CLAIM FOR RELIEF

VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT (ALA. CODE § 8-19-1, *et. seq.*)

885. The Class Members who are Alabama residents (the "Alabama Class") are "consumers" within the meaning of ALA. CODE §8-19-3(2).

886. The Alabama Class, Old GM, and New GM are "persons" within the meaning of ALA. CODE §8-19-3(5).

887. The Defective Vehicles are "goods" within the meaning of ALA. CODE §8-19-3(3).

888. The Companies were engaged in "trade or commerce" within the meaning of ALA. CODE §8-19-3(8).

889. The Alabama Deceptive Trade Practices Act ("Alabama DTPA") declares several specific actions to be unlawful, including: "(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have," "(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another," and "(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce." ALA. CODE § 8-19-5. By failing to disclose and actively concealing the dangerous risk of ignition switch movement, engine shutdown, and airbag disabling in Defective Vehicles, New GM engaged in deceptive business practices prohibited

by the Alabama DTPA, including: representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Defective Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Defective Vehicles has been supplied in accordance with a previous representation when it has not; and engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.

890. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Alabama DTPA, and also has successor liability for the violations of Old GM.

891. As alleged above, both Companies knew of the ignition switch defects, while the Alabama Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

892. The Companies knew or should have known that their conduct violated the Alabama DTPA.

893. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

894. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

895. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

896. The Companies each owed the Alabama Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Alabama Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Alabama Class that contradicted these representations.

897. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Alabama Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

898. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Alabama Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Alabama Class.

899. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Alabama Class. Had the Alabama Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

900. All members of the Alabama Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Alabama Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Alabama Class own vehicles that are not safe.

901. The Alabama Class have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

902. The Alabama Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Alabama DTPA, and these violations present a continuing risk to the Alabama Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

903. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

904. As a direct and proximate result of the Companies' violations of the Alabama DTPA, the Alabama Class have suffered injury-in-fact and/or actual damage.

905. Pursuant to ALA. CODE § 8-19-10, the Alabama Class seeks monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $100 for each Alabama Class Member.

906. The Alabama Class also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the ALA. CODE §8-19-1, *et. seq.*

907. Alabama Plaintiffs have complied with the notice requirement set forth in Alabama Code § 8-19-10 by virtue of the notice previously provided in the context of the underlying action styled *Forbes, et al. v. GM*, 2:14-cv-02018-GP (E.D. Pa.) and other underlying actions, as well as additional notice in the form of a demand letter sent on October 12, 2014.

SIXTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

908. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought only on behalf of the Alabama Class.

909. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

910. The Companies knew these representations were false when made.

911. The vehicles purchased or leased by the Alabama Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

912. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Alabama Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

913. The aforementioned concealment was material, because if it had been disclosed the Alabama Class would not have bought, leased or retained their vehicles.

914. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

915. The Alabama Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

916. As a result of their reliance, the Alabama Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

917. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Alabama Class. The Alabama Class is therefore entitled to an award of punitive damages.

ALASKA

SEVENTH CLAIM FOR RELIEF

VIOLATION OF THE ALASKA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (ALASKA STAT. ANN. § 45.50.471, *et. seq.*)

918. This claim is brought on behalf of Class members who are Alaska residents (the "Alaska Class").

919. The Alaska Unfair Trade Practices And Consumer Protection Act ("Alaska CPA") declares unfair methods of competition and unfair or deceptive acts or practices in the

conduct of trade or commerce unlawful, including: "(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" "(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" "(8) advertising goods or services with intent not to sell them as advertised;" or "(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged." ALASKA STAT. ANN. § 45.50.471.

920. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein. Old GM and New GM also engaged in unlawful trade practices by representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Defective Vehicles are of a particular standard and quality when they are not; advertising the Defective Vehicles with the intent not to sell them as advertised; and omitting material facts in describing the Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Alaska CPA, and also has successor liability for the violations of Old GM.

921. As alleged above, both Companies knew of the ignition switch defects, while the Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

922. The Companies knew or should have known that their conduct violated the Alaska CPA.

923. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

924. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

925. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

926. The Companies each owed the Alaska Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Alaska Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Alaska Class that contradicted these representations.

927. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Alaska Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

928. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Alaska Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Alaska Class.

929. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Alaska Class. Had the Alaska Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

930. All members of the Alaska Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Alaska Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the

Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Alaska Class own vehicles that are not safe.

931. The Alaska Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

932. The Alaska Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Alaska CPA, and these violations present a continuing risk to the Alaska Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

933. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

934. As a direct and proximate result of the Companies' violations of the Alaska CPA, the Alaska Class has suffered injury-in-fact and/or actual damage.

935. Pursuant to ALASKA STAT. ANN. § 45.50. 535(b)(1), the Alaska Class seek monetary relief against New GM measured as the greater of (a) three times the actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500 for each Alaska Class member.

936. Plaintiffs also seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Alaska CPA.

937. On October 12, 2014, Plaintiffs sent a notice letter complying with Alaska Stat. § 45.50.535. Plaintiffs presently do not claim the damages relief asserted in this Complaint under the Alaska CPA until and unless New GM fails to remedy its unlawful conduct towards the class within the requisite time period, after which Plaintiffs seek all damages and relief to which Plaintiffs and the Alaska Class are entitled

EIGHTH CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (ALASKA STAT. § 45.02.314)

938. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought only on behalf of the Alaska Class members.

939. Old GM was a merchant with respect to motor vehicles within the meaning of ALASKA STAT. § 45.02.104(a).

940. Under ALASKA STAT. § 45.02.314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Alaska Class purchased their Defective Vehicles.

941. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

942. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Alaska Class before or within a reasonable amount of time after GM issued the recall and the allegations of vehicle defects became public.

943. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Alaska Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

NINTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

944. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought only on behalf of the Alaska Class members.

945. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

946. The Companies knew these representations were false when made.

947. The vehicles purchased or leased by the Alaska Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

948. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Alaska Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

949. The aforementioned concealment was material, because if it had been disclosed the Alaska Class would not have bought, leased or retained their vehicles.

950. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

951. The Alaska Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

952. As a result of their reliance, the Alaska Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

953. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Alaska Class. The Alaska Class are therefore entitled to an award of punitive damages.

ARIZONA

TENTH CLAIM FOR RELIEF

VIOLATIONS OF THE CONSUMER FRAUD ACT
(ARIZONA REV. STAT. § 44-1521, *et. seq.*)

954. This claim is brought on behalf of Class members who are Arizona residents (the "Arizona Class").

955. The Companies, and the Arizona Class, are "persons" within the meaning of the Arizona Consumer Fraud Act ("Arizona CFA"), ARIZ. REV. STAT. § 44-1521(6).

956. The Defective Vehicles are "merchandise" within the meaning of ARIZ. REV. STAT. § 44-1521(5).

957. The Arizona CFA provides that "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud,. . . misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale . . . of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice." ARIZ. REV. STAT. § 44-1522(A).

958. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Arizona CFA, and also has successor liability for the violations of Old GM.

959. As alleged above, both Companies knew of the ignition switch defects, while the Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

960. The Companies knew or should have known that their conduct violated the Arizona CFA.

961. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

962. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

963. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

964. The Companies each owed the Arizona Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Arizona Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Arizona Class that contradicted these representations.

965. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Arizona Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

966. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Arizona Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Arizona Class.

967. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Arizona Class. Had the Arizona Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

968. All members of the Arizona Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Arizona Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Arizona Class own vehicles that are not safe.

969. The Arizona Class have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

970. The Arizona Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Arizona CFA, and these violations present a continuing risk to the Arizona Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

971. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

972. As a direct and proximate result of the Companies' violations of the Arizona CFA, the Arizona Class has suffered injury-in-fact and/or actual damage.

973. The Arizona Class seeks monetary relief against New GM in an amount to be determined at trial. The Arizona Class also seeks punitive damages because the Companies engaged in aggravated and outrageous conduct with an evil mind.

974. The Arizona Class also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Arizona CFA.

ELEVENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

975. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought only on behalf of the Arizona Class.

976. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

977. The Companies knew these representations were false when made.

978. The vehicles purchased or leased by the Arizona Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

979. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Arizona Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

980. The aforementioned concealment was material, because if it had been disclosed the Arizona Class would not have bought, leased or retained their vehicles.

981. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

982. The Arizona Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

983. As a result of their reliance, the Arizona Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

984. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Arizona Class. The Arizona Class are therefore entitled to an award of punitive damages.

ARKANSAS

TWELFTH CLAIM FOR RELIEF

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICE ACT
(ARK. CODE ANN. § 4-88-101, *et. seq.*)

985. This claim is brought on behalf of Class members who are Arkansas residents (the "Arkansas Class").

986. The Companies, and the Arkansas Class, are "persons" within the meaning of Arkansas Deceptive Trade Practices Act ("Arkansas DTPA"), ARK. CODE ANN. § 4-88-102(5).

987. The Class Vehicles are "goods" within the meaning of ARK. CODE ANN. § 4-88-102(4).

988. The Arkansas DTPA prohibits "[d]eceptive and unconscionable trade practices," which include but are not limited to a list of enumerated items, including "[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]" ARK. CODE ANN. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when

utilized in connection with the sale or advertisement of any goods: "(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission." ARK. CODE ANN. § 4-88-108. The Companies violated the Arkansas DTPA and engaged in deceptive and unconscionable trade practices by failing to disclose and actively concealing the dangerous ignition switch defects in the Defective Vehicles.

989. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

990. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Arkansas DTPA, and also has successor liability for the violations of Old GM.

991. As alleged above, both Companies knew of the ignition switch defects, while the Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

992. The Companies knew or should have known that their conduct violated the Arkansas DTPA.

993. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

994. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

995. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

996. The Companies each owed the Arkansas Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Arkansas Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Arkansas Class that contradicted these representations.

997. The Defective Vehicles posed and/or posed an unreasonable risk of death or serious bodily injury to the Arkansas Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

998. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Arkansas Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Arkansas Class.

999. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Arkansas Class. Had the Arkansas Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1000. The Arkansas Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Arkansas Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Arkansas Class own vehicles that are not safe.

1001. The Arkansas Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1002. The Arkansas Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Arkansas DTPA, and these violations present a continuing risk to the Arkansas Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1003. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1004. As a direct and proximate result of the Companies' violations of the Arkansas DTPA, the Arkansas Class have suffered injury-in-fact and/or actual damage.

1005. The Arkansas Class seeks monetary relief against New GM in an amount to be determined at trial. The Arkansas Class also seeks punitive damages because the Companies acted wantonly in causing the injury or with such a conscious indifference to the consequences that malice may be inferred.

1006. The Arkansas Class also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Arkansas DTPA.

THIRTEENTH CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (ARK. CODE ANN. § 4-2-314)

1007. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought only on behalf of the Arkansas Class.

1008. Old GM was a merchant with respect to motor vehicles within the meaning of ARK. CODE ANN. § 4-2-104(1).

1009. Under ARK. CODE ANN. § 4-2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Arkansas Class purchased their Defective Vehicles.

1010. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1011. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Arkansas Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1012. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Arkansas Class have been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

FOURTEENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1013. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought only on behalf of Class members who are Arkansas residents.

1014. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1015. The Companies knew these representations were false when made.

1016. The vehicles purchased or leased by the Arkansas Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1017. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Arkansas Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1018. The aforementioned concealment was material, because if it had been disclosed the Arkansas Class would not have bought, leased or retained their vehicles.

1019. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1020. The Arkansas Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1021. As a result of their reliance, the Arkansas Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1022. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Arkansas Class. The Arkansas Class are therefore entitled to an award of punitive damages.

CALIFORNIA

FIFTEENTH CLAIM FOR RELIEF

VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT
(CAL. CIV. CODE § 1750, *et. seq.*)

1023. This claim is brought on behalf of Class members who are California residents (the "California Class").

1024. New GM is a "person" under CAL. CIV. CODE § 1761(c).

1025. The California Class are "consumers," as defined by CAL. CIVIL CODE § 1761(d), who purchased or leased one or more Defective Vehicles.

1026. The California Legal Remedies Act ("CLRA") prohibits "unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer[.]" CAL. CIV. CODE § 1770(a). Old GM and New GM have engaged in unfair or deceptive acts or practices that violated CAL. CIV. CODE § 1750, *et. seq.*, as described above and below, by among other things, representing that

Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard, quality, and grade when they are not; advertising Defective Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a transaction involving Defective Vehicles has been supplied in accordance with a previous representation when it has not.

1027. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the CLRA, and also has successor liability for the violations of Old GM.

1028. As alleged above, both Companies knew of the ignition switch defects, while the California Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1029. The Companies knew or should have known that their conduct violated the CLRA.

1030. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1031. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1032. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1033. The Companies each owed the California Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the California Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the California Class that contradicted these representations.

1034. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the California Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1035. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the California Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the California Class.

1036. New GM has also violated the CLRA by violating the TREAD Act, 49 U.S.C. §§ 30101, *et. seq.*, and its accompanying regulations. Under the TREAD Act and its regulations, if a manufacturer learns that a vehicle contains a defect and that defect is related to motor vehicle safety, the manufacturer must disclose the defect. 49 U.S.C. § 30118(c)(1) & (2).

1037. In acquiring Old GM, New GM expressly assumed the obligations to make all required disclosures under the TREAD Act with respect to all Defective Vehicles. New GM also has successor liability for the deceptive and unfair acts and omissions of Old GM.

1038. Under the TREAD Act, if it is determined that the vehicle is defective, the manufacturer must promptly notify vehicle owners, purchasers and dealers of the defect and remedy the defect. 49 U.S.C. § 30118(b)(2)(A) & (B).

1039. Under the TREAD Act, manufacturers must also file a report with NHTSA within five working days of discovering "a defect in a vehicle or item of equipment has been determined to be safety related, or a noncompliance with a motor vehicle safety standard has been determined to exist." 49 C.F.R. § 573.6(a) & (b). At a minimum, the report to NHTSA

must include: the manufacturer's name; the identification of the vehicles or equipment containing the defect, including the make, line, model year and years of manufacturing; a description of the basis for determining the recall population; how those vehicles differ from similar vehicles that the manufacturer excluded from the recall; and a description of the defect. 49 C.F.R. § 276.6(b), (c)(1), (c)(2), & (c)(5).

1040. The manufacturer must also promptly inform NHTSA regarding: the total number of vehicles or equipment potentially containing the defect; the percentage of vehicles estimated to contain the defect; a chronology of all principal events that were the basis for the determination that the defect related to motor vehicle safety, including a summary of all warranty claims, field or service reports, and other information, with its dates of receipt; and a description of the plan to remedy the defect. 49 C.F.R. § 276.6(b) & (c).

1041. The TREAD Act provides that any manufacturer who violates 49 U.S.C. § 30166 must pay a civil penalty to the U.S. Government. The current penalty "is $7,000 per violation per day," and the maximum penalty "for a related series of daily violations is $17,350,000." 49 C.F.R. § 578.6(c).

1042. From at least 2001, Old GM had knowledge of the ignition switch defect, but hid the problem for the remainder of its existence until 2009.

1043. From the date of its inception on July 5, 2009, New GM knew of the ignition switch problem both because of the knowledge of Old GM personnel who remained at New GM and continuous reports and internal investigation right up until the present.

1044. New GM admits the defect in the ignition switch has been linked to at least 13 accident-related fatalities. But other sources have reported that hundreds of deaths and serious injuries are linked to the faulty ignition switches.

1045. Despite being aware of the ignition switch defects ever since its creation on July 5, 2009, New GM waited until February 7, 2014, before finally sending a letter to NHTSA confessing its knowledge of the ignition switch defects which could cause the vehicles to lose power, and in turn cause the airbags not to deploy. New GM initially identified two vehicle models, along with the corresponding model years, affected by the defect—the 2005-2007 Chevrolet Cobalt and the 2007 Pontiac G5. On February 25, 2014, New GM amended its letter to include four additional vehicles, the 2006-2007 Chevrolet HHR, 2006-2007 Pontiac Solstice, 2003-2007 Saturn Ion, and the 2007 Saturn Sky. In late March 2014, New GM added later model-year Ions and Cobalts (through 2010), HHRs through 2011, and Skys through 2010.

1046. By failing to disclose and by actively concealing the ignition switch defect, and by selling vehicles while violating the TREAD Act and through its other conduct as alleged herein, Old GM and New GM both engaged in deceptive business practices prohibited by the CLRA, CAL. CIV. CODE § 1750, *et. seq.*

1047. Both Old GM and New GM failed for many years to inform NHTSA about known defects in the Defective Vehicles' ignition system. Consequently, the public, including the California Class, received no notice of the ignition switch defects, that the defect could disable multiple electrical functions including power steering and power brakes, or that the defect could cause the airbags not to deploy in an accident.

1048. Old GM and then New GM knew that the ignition switch 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 Old GM and New GM failed to inform NHTSA or warn the California Class or the public about these inherent dangers despite having a duty to do so.

1049. New GM owed the California Class a duty to comply with the TREAD Act and disclose the defective nature of the Defective Vehicles, including the ignition switch defect and accompanying loss of power and failure of the airbags to deploy, because New GM:

a. Possessed exclusive knowledge of the ignition switch defects rendering the Defective Vehicles inherently more dangerous and unreliable than otherwise similar vehicles; and

b. Intentionally concealed the hazardous situation with the Defective Vehicles by failing to comply with the TREAD Act, which required the disclosure of the ignition switch defects.

1050. Defective Vehicles equipped with the faulty ignition switch posed and/or pose an unreasonable risk of death or serious bodily injury to the California Class, passengers, other motorists, and pedestrians, because they are susceptible to sudden loss of power resulting in the loss of power steering and power brakes and failure of the airbags to deploy.

1051. Old GM and New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including the California Class, about the true safety and reliability of the Defective Vehicles.

1052. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the California Class. Had the California Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1053. All members of the California Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The California Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the California Class own vehicles that are not safe.

1054. The California Class has been proximately and directly damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of the Companies' failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1055. The California Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the CLRA, and these violations present a continuing risk to the California Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1056. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles. Moreover, notwithstanding its obligations under the TREAD Act and the CLRA, New GM has not yet

disclosed that the low placement of the ignition column and the fact that the airbags shut off as soon as the key hits the "accessory" or "off" position are also defects. This failure to disclose continues to pose a grave risk to the California Class.

1057. As a direct and proximate result of the Companies' violations of the CLRA, and the California Class have suffered injury-in-fact and/or actual damage.

1058. Under CAL. CIV. CODE § 1780(a), the California Class seeks monetary relief against New GM measured as the diminution of the value of their vehicles caused by Old GM's and New GM's violations of the CLRA as alleged herein.

1059. Under CAL. CIV. CODE § 1780(b), the California Class seeks an additional award against New GM of up to $5,000 for each California Class member who qualifies as a "senior citizen" or "disabled person" under the CLRA. Old GM and New GM knew or should have known that their conduct was directed to one or more Class members who are senior citizens or disabled persons. Old GM's and New GM's conduct caused one or more of these senior citizens or disabled persons to suffer a substantial loss of property set aside for retirement or for personal or family care and maintenance, or assets essential to the health or welfare of the senior citizen or disabled person. One or more California Class members who are senior citizens or disabled persons are substantially more vulnerable to Old GM's and New GM's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and each of them suffered substantial physical, emotional, or economic damage resulting from Old GM's and New GM's conduct.

1060. The California Class also seeks punitive damages against New GM because it carried out reprehensible conduct with willful and conscious disregard of the rights and safety of others, subjecting the Class to potential cruel and unjust hardship as a result. First Old GM

and then New GM intentionally and willfully concealed and failed to inform NHTSA of the unsafe and unreliable Defective Vehicles, deceived the California Class on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations problem of correcting a deadly flaw in the Defective Vehicles. New GM's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages under CAL. CIV. CODE § 3294.

1061. The California Class further seeks an order enjoining New GM's unfair or deceptive acts or practices, restitution, punitive damages, costs of court, attorneys' fees under CAL. CIV. CODE § 1780(e), and any other just and proper relief available under the CLRA.

1062. California Plaintiffs have complied with the notice requirement set forth in CAL. CIV. CODE § 1780(b) by virtue of the notice previously provided in the context of the underlying action styled *Ramirez, et al. v. GM*, 2:14-cv-02344-JVS-AN (C.D. Cal.), and other underlying actions, as well as additional notice in the form of a demand letter sent on October 12, 2014.

SIXTEENTH CLAIM FOR RELIEF

VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200, *et. seq.*)
(Asserted on Behalf of the California Class)

1063. This Claim for Relief is brought by the California Class.

1064. California Business and Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising. . . ." The Companies engaged in conduct that violated each of this statute's three prongs.

1065. The Companies committed an unlawful business act or practice in violation of § 17200 by their violations of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et. seq.*, as set forth above, by the acts and practices set forth in this Complaint.

1066. New GM has also violated the unlawful prong because it has engaged in violations of National Traffic and Motor Vehicle Safety Act of 1996, codified at 49 U.S.C. § 30101, *et. seq.*, and its regulations.

1067. Federal Motor Vehicle Safety Standard ("FMVSS") 573 governs a motor vehicle manufacturer's responsibility to notify the NHTSA of a motor vehicle defect within five days of determining that a defect in a vehicle has been determined to be safety-related. *See* 49 C.F.R. § 573.6.

1068. Defendant violated the reporting requirements of FMVSS 573 requirement by failing to report the Ignition Switch Defect or any of the other Defects within five days of determining the defect existed, and failing to recall all affected vehicles.

1069. Defendant violated the common-law claim of negligent failure to recall, in that New GM knew or should have known that the Defective Vehicles were dangerous and/or were likely to be dangerous when used in a reasonably foreseeable manner; New GM became aware of the attendant risks after the Defective Vehicles were sold; New GM continued to gain information further corroborating the Ignition Switch Defects; and New GM failed to adequately recall the Defective Vehicles in a timely manner, which failure was a substantial factor in causing the California Class harm, including diminished value and out-of-pocket costs.

1070. Defendant committed unfair business acts and practices in violation of § 17200 when it concealed the existence and nature of the Ignition Switch Defect and the other Defects

and represented that the Class Vehicles were reliable and safe when, in fact, they are not. The Ignition Switch Defect and the other Defects present safety hazards for occupants of the Class Vehicles.

1071. New GM also violated the unfairness prong of § 17200 by failing to properly administer the numerous recalls of Defendant's vehicles for the Initiation Switch Defect and the other Defects. As alleged above, the recalls have proceeded unreasonably slowly in light of the safety-related nature of the Defects, and have been plagued with shortages of replacement parts as well as a paucity of loaner vehicles available for Class Members whose Vehicles are in the process of being repaired. Even worse, many consumers continue to experience safety problems with the Defective Vehicles, even after the defective parts have been replaced pursuant to the recalls.

1072. Defendant violated the fraudulent prong of § 17200 because the misrepresentations and omissions regarding the safety and reliability of their vehicles as set forth in this Complaint were likely to deceive a reasonable consumer, and the information would be material to a reasonable consumer.

1073. Defendant committed fraudulent business acts and practices in violation of § 17200 when they concealed the existence and nature of the Ignition Switch Defect and the other Defects, while representing in their marketing, advertising, and other broadly disseminated representations that the Class Vehicles were reliable and safe when, in fact, they are not. Defendant's representations and active concealment of the Defect are likely to mislead the public with regard to the true defective nature of the Class Vehicles.

1074. Defendant has violated the unfair prong of § 17200 because the acts and practices set forth in the Complaint, including the manufacture and sale of vehicles with the

Ignition Switch Defect that unintentionally shifts from the "run" position to the "accessory" or "off" position causing loss of electrical power and turning off the engine, and Defendant's failure to adequately investigate, disclose and remedy, offend established public policy, and because the harm they cause to consumers greatly outweighs any benefits associated with those practices. Defendant's conduct has also impaired competition within the automotive vehicles market and has prevented the California Class from making fully informed decisions about whether to purchase or lease Class Vehicles and/or the price to be paid to purchase or lease Class Vehicles.

1075. The California Class has suffered injuries in fact, including the loss of money or property, as a result of Defendant's unfair, unlawful, and/or deceptive practices. As set forth in the allegations concerning each California Class member, in purchasing or leasing their vehicles, the California Class relied on the misrepresentations and/or omissions of Defendant with respect of the safety and reliability of the vehicles. Defendant's representations turned out not to be true. Had the California Class known this they would not have purchased or leased their Class Vehicles and/or paid as much for them.

1076. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant's businesses. Defendant's wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the State of California and nationwide.

1077. As a direct and proximate result of Defendant's unfair and deceptive practices, the California Class Members have suffered and will continue to suffer actual damages.

1078. The California Class requests that this Court enter such orders or judgments as may be necessary to enjoin New GM from continuing its unfair, unlawful, and/or deceptive

practices, as provided in Cal. Bus. & Prof. Code § 17203; and for such other relief set forth below.

1079. The California Class also requests equitable and injunctive relief in the form of Court supervision of New GM's numerous recalls of the various Class Vehicles, to ensure that all affected vehicles are recalled and that the recalls properly and adequately cure the Ignition Switch Defect and the other Defects.

SEVENTEENTH CLAIM FOR RELIEF

VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (CALIFORNIA "LEMON LAW") (CAL. CIV. CODE §§ 1791.1 & 1792)

1080. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of the California Class.

1081. The California Class members who purchased or leased the Defective Vehicles in California are "buyers" within the meaning of CAL. CIV. CODE § 1791(b).

1082. The Defective Vehicles are "consumer goods" within the meaning of CIV. CODE § 1791(a).

1083. Old GM was a "manufacturer" of the Defective Vehicles within the meaning of CAL. CIV. CODE § 1791(j), and, in purchasing Old GM, New GM expressly assumed liability and responsibility for "payment of all [Old GM's] Liabilities arising under…Lemon Laws," including California's Lemon Law, the Song-Beverly Act.

1084. Old GM and New GM impliedly warranted to the California Class that its Defective Vehicles were "merchantable" within the meaning of CAL. CIV. CODE §§ 1791.1(a) & 1792; however, the Defective Vehicles do not have the quality that a buyer would reasonably expect, and were therefore not merchantable.

1085. CAL. CIV. CODE § 1791.1(a) states:

> "Implied warranty of merchantability" or "implied warranty that goods are merchantable" means that the consumer goods meet each of the following:
>
> (1) Pass without objection in the trade under the contract description.
>
> (2) Are fit for the ordinary purposes for which such goods are used.
>
> (3) Are adequately contained, packaged, and labeled.
>
> (4) Conform to the promises or affirmations of fact made on the container or label.

1086. The Defective Vehicles would not pass without objection in the automotive trade because of the ignition switch defects that cause the Defective Vehicles to inadvertently shut down during ordinary driving conditions, leading to an unreasonable likelihood of accident and an unreasonable likelihood that such accidents would cause serious bodily harm or death to vehicle occupants.

1087. Because of the ignition switch defects, the Defective Vehicles are not safe to drive and thus not fit for ordinary purposes.

1088. The Defective Vehicles are not adequately labeled because the labeling fails to disclose the ignition switch defects and does not advise Class members to avoid attaching anything to their vehicle key rings. Old GM and New GM failed to warn about the dangerous safety defects in the Defective Vehicles.

1089. Old GM and New GM breached the implied warranty of merchantability by manufacturing and selling Defective Vehicles containing defects leading to the sudden and unintended shut down of the vehicles during ordinary driving conditions. These defects have

deprived the California Class of the benefit of their bargain and have caused the Defective Vehicles to depreciate in value.

1090. Notice of breach is not required because the California Class members did not purchase their automobiles directly from New GM.

1091. As a direct and proximate result of Old GM and New GM's breach of their duties under California's Lemon Law (for which New GM expressly assumed liability), the California Class members received goods whose dangerous condition substantially impairs their value to the California Class members. The California Class has been damaged by the diminished value of the vehicles, the products' malfunctioning, and the non-use of their Defective Vehicles.

1092. Under CAL. CIV. CODE §§ 1791.1(d) & 1794, the California Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Defective Vehicles, or the overpayment or diminution in value of their Defective Vehicles.

1093. Under CAL. CIV. CODE § 1794, the California Class members are entitled to costs and attorneys' fees.

EIGHTEENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1094. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought only on behalf of the California Class.

1095. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1096. The Companies knew these representations were false when made.

1097. The vehicles purchased or leased by the California Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1098. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the California Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1099. The aforementioned concealment was material, because if it had been disclosed the California Class would not have bought, leased or retained their vehicles.

1100. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1101. The California Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1102. As a result of their reliance, the California Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1103. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the California Class. The California Class are therefore entitled to an award of punitive damages.

NINETEENTH CLAIM FOR RELIEF

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW
CAL. BUS. & PROF. CODE § 17500, *et. seq.*
(Asserted on Behalf of the California Class)

1104. This Claim for Relief is brought by the California Class.

1105. California Business and Professions Code § 17500 states: "It is unlawful for any… corporation… with intent directly or indirectly to dispose of real or personal property… to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated… from this state before the public in any state, in any newspaper or other publication, or any advertising device,… or in any other manner or means whatever, including over the Internet, any statement… which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...."

1106. Defendant caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to the Defendant, to be untrue and misleading to consumers and the California Class.

1107. Defendant violated section 17500 because the misrepresentations and omissions regarding the safety and reliability of their vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

1108. The California Class Members have suffered injuries in fact, including the loss of money or property, as a result of Defendant' unfair, unlawful, and/or deceptive practices. In purchasing or leasing their vehicles, the California Class Members relied on the misrepresentations and/or omissions of Defendant with respect to the safety and reliability of their vehicles. Defendant' representations turned out not to be true. Had the California Class Members known this, they would not have purchased or leased their Class Vehicles and/or paid as much for them.

1109. Accordingly, the California Class Members overpaid for their Class Vehicles and did not receive the benefit of their bargain. One way to measure this overpayment, or lost benefit of the bargain, at the moment of purchase is by the value consumers place on the vehicles now that the truth has been exposed. Both trade-in prices and auction prices for Class Vehicles have declined as a result of Defendant' misconduct. This decline in value measures the overpayment, or lost benefit of the bargain, at the time of the California Class Members' purchases.

1110. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant' businesses. Defendant' wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the State of California and nationwide.

1111. The California Class requests that this Court enter such orders or judgments as may be necessary to enjoin Defendant from continuing their unfair, unlawful, and/or deceptive practices, and for such other relief set forth below.

TWENTIETH CLAIM FOR RELIEF

NEGLIGENT FAILURE TO RECALL
(Asserted on Behalf of the California Class)

1112. This claim is brought on behalf of the California Class.

1113. New GM knew or reasonably should have known that the Defective Vehicles were dangerous and/or were likely to be dangerous when used in a reasonably foreseeable manner.

1114. New GM either knew of the ignition switch-related defects in the Defective Vehicles before the vehicles were sold, or became aware of them and their attendant risks after the vehicles was sold.

1115. New GM continued to gain information further corroborating the ignition switch-related defects and their risks from its inception until this year.

1116. New GM failed to adequately recall the Defective Vehicles in a timely manner.

1117. Purchasers of the Defective Vehicles, including the California Class, were harmed by New GM's failure to adequately recall all the Defective Vehicles in a timely manner and have suffered damages, including, without limitation, damage to other components of the Defective Vehicles caused by the ignition switch-related defects, the diminished value of the Defective Vehicles, the cost of modification of the defective ignition switch systems, and the costs associated with the loss of use of the Defective Vehicles.

1118. New GM's failure to timely and adequately recall the Defective Vehicles was a substantial factor in causing the purchasers' harm, including that of the California Class.

COLORADO

TWENTY-FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT
(COL. REV. STAT. § 6-1-101, *et. seq.*)

1119. This claim is brought on behalf of Class members who are Colorado residents (the "Colorado Class").

1120. Old GM and New GM are "persons" under § 6-1-102(6) of the Colorado Consumer Protection Act ("Colorado CPA"), COL. REV. STAT. § 6-1-101, *et. seq.*

1121. The Colorado Class members are "consumers" for purposes of COL. REV. STAT § 6-1-113(1)(a) who purchased or leased one or more Defective Vehicles.

1122. The Colorado CPA prohibits deceptive trade practices in the course of a person's business. Old GM and New GM engaged in deceptive trade practices prohibited by the Colorado CPA, including: (1) knowingly making a false representation as to the characteristics, uses, and benefits of the Defective Vehicles that had the capacity or tendency to deceive Class members; (2) representing that the Defective Vehicles are of a particular standard, quality, and grade even though both Companies knew or should have known they are not; (3) advertising the Defective Vehicles with the intent not to sell them as advertised; and (4) failing to disclose material information concerning the Defective Vehicles that was known to Old GM and New GM at the time of advertisement or sale with the intent to induce Class members to purchase, lease or retain the Defective Vehicles.

1123. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

1124. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective

Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Colorado CPA, and also has successor liability for the violations of Old GM.

1125. As alleged above, both Companies knew of the ignition switch defects, while the Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1126. The Companies knew or should have known that their conduct violated the Colorado CPA.

1127. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1128. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1129. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the

defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1130. The Companies each owed the Colorado Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Colorado Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Colorado Class that contradicted these representations.

1131. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Colorado Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1132. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Colorado Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Colorado Class.

1133. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Colorado Class. Had the Colorado Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1134. All members of the Colorado Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Colorado Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Colorado Class own vehicles that are not safe.

1135. The Colorado Class have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1136. The Colorado Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Colorado CPA, and these violations present

a continuing risk to the Colorado Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1137. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1138. As a direct and proximate result of the Companies' violations of the Colorado CPA, the Colorado Class have suffered injury-in-fact and/or actual damage.

1139. Pursuant to COLO. REV. STAT. § 6-1-113, the Colorado Class seeks monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and discretionary trebling of such damages, or (b) statutory damages in the amount of $500 for each Colorado Class Member.

1140. The Colorado Class also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Colorado CPA.

TWENTY-SECOND CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (COL. REV. STAT. § 4-2-314)

1141. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of Class members who are Colorado residents.

1142. Old and New GM were merchants with respect to motor vehicles within the meaning of COL. REV. STAT. § 4-2-314.

1143. Under COL. REV. STAT. § 4-2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Colorado Class purchased their Defective Vehicles.

1144. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1145. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Colorado Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1146. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Colorado Class has been damaged in an amount to be proven at trial. New GM has successor liability for Old GM's breach.

TWENTY-THIRD CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1147. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of the Colorado Class.

1148. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1149. The Companies knew these representations were false when made.

1150. The vehicles purchased or leased by the Colorado Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1151. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Colorado Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1152. The aforementioned concealment was material, because if it had been disclosed the Colorado Class would not have bought, leased or retained their vehicles.

1153. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1154. The Colorado Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1155. As a result of their reliance, the Colorado Class have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1156. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Colorado Class. The Colorado Class are therefore entitled to an award of punitive damages.

CONNECTICUT

TWENTY-FOURTH CLAIM FOR RELIEF

VIOLATION OF CONNECTICUT UNLAWFUL TRADE PRACTICES ACT
(CONN. GEN. STAT. § 42-110a, *et. seq.*)

1157. This claim is brought on behalf of Class members who are Connecticut residents (the "Connecticut Class").

1158. The Connecticut Unfair Trade Practices Act ("Connecticut UTPA") provides: "No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." CONN. GEN. STAT. § 42-110b(a).

1159. Old GM was, and New GM is, a "person" within the meaning of CONN. GEN. STAT. § 42-110a(3). Both Companies were engaged in in "trade" or "commerce" within the meaning of CONN. GEN. STAT. § 42-110a(4).

1160. Old GM and New GM participated in deceptive trade practices that violated the Connecticut UTPA as described herein. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Connecticut UTPA, and also has successor liability for the violations of Old GM.

1161. As alleged above, both Companies knew of the ignition switch defects, while the Connecticut Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1162. The Companies knew or should have known that their conduct violated the Connecticut UTPA.

1163. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1164. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1165. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1166. The Companies each owed the Connecticut Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Connecticut Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Connecticut Class that contradicted these representations.

1167. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Connecticut Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1168. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Connecticut Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Connecticut Class.

1169. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Connecticut Class. Had the Connecticut Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1170. All members of the Connecticut Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Connecticut Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and

failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Connecticut Class own vehicles that are not safe.

1171. The Connecticut Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1172. The Connecticut Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Connecticut UTPA, and these violations present a continuing risk to the Connecticut Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1173. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1174. As a direct and proximate result of the Companies' violations of the Connecticut UTPA, the Connecticut Class has suffered injury-in-fact and/or actual damage.

1175. The Connecticut Class is entitled to recover their actual damages, punitive damages, and attorneys' fees pursuant to CONN. GEN. STAT. § 42-110g.

1176. New GM and Old GM acted with a reckless indifference to another's rights or wanton or intentional violation to another's rights and otherwise engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights and safety of others.

1177. Pursuant to CONN. GEN. STAT. § 42-110g(c), the Connecticut Class will mail a copy of the complaint to Connecticut's Attorney General.

TWENTY-FIFTH CLAIM FOR RELIEF

FRAUDULENT CONCEALMENT

1178. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of the Connecticut Class.

1179. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1180. The Companies knew these representations were false when made.

1181. The vehicles purchased or leased by the Connecticut Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1182. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Connecticut Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1183. The aforementioned concealment was material, because if it had been disclosed the Connecticut Class would not have bought, leased or retained their vehicles.

1184. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1185. The Connecticut Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1186. As a result of their reliance, the Connecticut Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1187. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Connecticut Class. The Connecticut Class is therefore entitled to an award of punitive damages.

DELAWARE

TWENTY-SIXTH CLAIM FOR RELIEF

VIOLATION OF THE DELAWARE CONSUMER FRAUD ACT
(6 DEL. CODE § 2513, *et. seq.*)

1188. This claim is brought on behalf of Class members who are Delaware residents (the "Delaware Class").

1189. New GM and Old GM are both "persons" within the meaning of 6 DEL. CODE § 2511(7).

1190. The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the "act, use or employment by any person 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 such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby." 6 DEL. CODE § 2513(a).

1191. Old GM and New GM participated in deceptive trade practices that violated the Delaware CFA as described herein. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Delaware CFA, and also has successor liability for the violations of Old GM.

1192. As alleged above, both Companies knew of the ignition switch defects, while the Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1193. The Companies knew or should have known that their conduct violated the Delaware CFA.

1194. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1195. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1196. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1197. The Companies each owed the Delaware Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Delaware Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Delaware Class that contradicted these representations.

1198. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Delaware Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1199. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Delaware Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Delaware Class.

1200. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Delaware Class. Had the Delaware Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1201. All members of the Delaware Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Delaware Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Delaware Class own vehicles that are not safe.

1202. The Delaware Class have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1203. The Delaware Class Members risks irreparable injury as a result of the Companies' act and omissions in violation of the Delaware CFA, and these violations present a continuing risk to the Delaware Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1204. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1205. As a direct and proximate result of the Companies' violations of the Delaware CFA, the Delaware Class have suffered injury-in-fact and/or actual damage.

1206. The Delaware Class seeks damages under the Delaware CFA for injury resulting from the direct and natural consequences of the Companies' unlawful conduct. *See*, *e.g.*, *Stephenson v. Capano Dev.*, *Inc.*, 462 A.2d 1069, 1077 (Del. 1983). The Delaware Class also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Delaware CFA.

1207. New GM and Old GM engaged in gross, oppressive, or aggravated conduct justifying the imposition of punitive damages.

TWENTY-SEVENTH CLAIM FOR RELIEF

VIOLATION OF THE DELAWARE DECEPTIVE TRADE PRACTICES ACT
(6 DEL. CODE § 2532, *et. seq.*)

1208. Old GM and New GM are "persons" within the meaning of 6 DEL. CODE § 2531(5).

1209. Delaware's Deceptive Trade Practices Act ("Delaware DTPA") prohibits a person from engaging in a "deceptive trade practice," which includes: "(5) Represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have"; "(7) Represent[ing] that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another"; "(9) Advertis[ing] goods or services with intent not to sell them as advertised"; or "(12) Engag[ing] in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." 6 DEL. CODE § 2532.

1210. Old GM and New GM engaged in deceptive trade practices in violation of the Delaware DTPA by willfully failing to disclose and actively concealing the dangerous risk of ignition switch defects in the Defective Vehicles as described above. The Companies also engaged in deceptive trade practices in violation of the Delaware DTPA by representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Defective Vehicles are of a particular standard and quality when they are not; advertising the Defective Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

1211. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

1212. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Delaware DTPA, and also has successor liability for the violations of Old GM.

1213. As alleged above, both Companies knew of the ignition switch defects, while the Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1214. The Companies knew or should have known that their conduct violated the Delaware DTPA.

1215. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1216. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently

shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1217. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1218. The Companies each owed the Delaware Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Delaware Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Delaware Class that contradicted these representations.

1219. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Delaware Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1220. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Delaware Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Delaware Class.

1221. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Delaware Class. Had the Delaware Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1222. All members of the Delaware Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Delaware Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Delaware Class own vehicles that are not safe.

1223. The Delaware Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that

no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1224. The Delaware Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Delaware DTPA, and these violations present a continuing risk to the Delaware Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1225. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1226. As a direct and proximate result of the Companies' violations of the Delaware DTPA, the Delaware Class have suffered injury-in-fact and/or actual damage.

1227. The Delaware Class seeks injunctive relief and, if awarded damages under Delaware common law or Delaware Consumer Fraud Act, treble damages pursuant to 6 DEL. CODE § 2533(c).

1228. The Delaware Class also seeks punitive damages based on the outrageousness and recklessness of the Companies' conduct and the high net worth of New GM.

TWENTY-EIGHTH CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (6 DEL. CODE § 2-314)

1229. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of the Delaware Class.

1230. Old GM and New GM were merchants with respect to motor vehicles within the meaning of 6 DEL. CODE § 2-104(1).

1231. Under 6 DEL. CODE § 2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Delaware Class purchased their Defective Vehicles.

1232. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1233. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Delaware Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1234. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Delaware Class have been damaged in an amount to be proven at trial. New GM has successor liability for Old GM's breach.

TWENTY-NINTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1235. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of Class members who are Delaware residents.

1236. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1237. The Companies knew these representations were false when made.

1238. The vehicles purchased or leased by the Delaware Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down,

with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1239. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Delaware Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1240. The aforementioned concealment was material, because if it had been disclosed the Delaware Class would not have bought, leased or retained their vehicles.

1241. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1242. The Delaware Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1243. As a result of their reliance, the Delaware Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1244. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Delaware Class. The Delaware Class is therefore entitled to an award of punitive damages.

DISTRICT OF COLUMBIA

THIRTIETH CLAIM FOR RELIEF

VIOLATION OF THE CONSUMER PROTECTION PROCEDURES ACT
(D.C. CODE § 28-3901, *et. seq.*)

1245. This claim is brought on behalf of Class members who are District of Columbia residents (the "District of Columbia Class").

1246. Old GM and New GM are "persons" under the Consumer Protection Procedures Act ("District of Columbia CPPA"), D.C. CODE § 28-3901(a)(1).

1247. Class members are "consumers," as defined by D.C. CODE § 28-3901(1)(2), who purchased or leased one or more Defective Vehicles.

1248. Old GM's and New GM's actions as set forth herein constitute "trade practices" under D.C. CODE § 28-3901.

1249. Both Old GM and New GM participated in unfair or deceptive acts or practices that violated the District of Columbia CPPA. By failing to disclose and actively concealing the ignition switch defect in the Defective Vehicles, Old GM and New GM engaged in unfair or deceptive practices prohibited by the District of Columbia CPPA, D.C. CODE § 28-3901, *et. seq.*, including: (1) representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Defective Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Defective Vehicles with the intent not to sell them as advertised; (4) representing that the subject of a transaction involving the Defective Vehicles has been supplied in accordance with a previous

representation when it has not; (5) misrepresenting as to a material fact which has a tendency to mislead; and (6) failing to state a material fact when such failure tends to mislead.

1250. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the District of Columbia CPPA, and also has successor liability for the violations of Old GM.

1251. As alleged above, both Companies knew of the ignition switch defects, while the Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1252. The Companies knew or should have known that their conduct violated the District of Columbia CPPA.

1253. As alleged above, each of the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1254. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently

shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1255. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1256. The Companies each owed the District of Columbia Class an independent duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the District of Columbia Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the District of Columbia Class that contradicted these representations.

1257. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the District of Columbia Class, passengers, other motorists,

pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1258. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the District of Columbia Class, about the true safety and reliability of Defective Vehicles. The Companies each intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the District of Columbia Class.

1259. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the District of Columbia Class. Had the District of Columbia Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1260. All members of the District of Columbia Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The District of Columbia Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the District of Columbia Class own vehicles that are not safe.

1261. The District of Columbia Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's

egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1262. The District of Columbia Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the District of Columbia CPPA, and these violations present a continuing risk to the District of Columbia Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1263. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1264. As a direct and proximate result of the Companies' violations of the District of Columbia CPPA, the District of Columbia Class has suffered injury-in-fact and/or actual damage.

1265. The District of Columbia Class is entitled to recover from New GM treble damages or $1,500, whichever is greater, punitive damages, reasonable attorneys' fees, and any other relief the Court deems proper, under D.C. CODE § 28-3901.

1266. The District of Columbia Class seeks punitive damages against New GM because both Old GM's and New GM's conduct evidences malice and/or egregious conduct. Old GM and New GM maliciously and egregiously misrepresented the safety and reliability of the Defective Vehicles, deceived Class members on life-or-death matters, and concealed material facts that only it knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the Defective Vehicles it repeatedly promised Class members were

safe. Old GM's and New GM's unlawful conduct constitutes malice warranting punitive damages.

THIRTY-FIRST CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (D.C. CODE § 28:2-314)

1267. In the event that the Court declines to certify a nationwide class under Michigan law, this claim is brought solely on behalf of Class members who are District of Columbia residents.

1268. Old GM and New GM were merchants with respect to motor vehicles within the meaning of D.C. CODE § 28:2-104(1).

1269. Under D.C. CODE § 28:2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the District of Columbia Class purchased their Defective Vehicles.

1270. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1271. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the District of Columbia Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1272. As a direct and proximate result of Old GM's breach of the implied warranty of merchantability, the District of Columbia Class has been damaged in an amount to be proven at trial. New GM has successor liability for Old GM's breach.

THIRTY-SECOND CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1273. In the event that the Court declines to certify a nationwide class under Michigan law, this claim is brought solely on behalf of the District of Columbia Class.

1274. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1275. The Companies knew these representations were false when made.

1276. The vehicles purchased or leased by the District of Columbia Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1277. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the District of Columbia Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1278. The aforementioned concealment was material, because if it had been disclosed the District of Columbia Class would not have bought, leased or retained their vehicles.

1279. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used

motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1280. The District of Columbia Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1281. As a result of their reliance, the District of Columbia Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1282. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the District of Columbia Class. The District of Columbia Class are therefore entitled to an award of punitive damages.

FLORIDA

THIRTY-THIRD CLAIM FOR RELIEF

VIOLATION OF FLORIDA'S UNFAIR & DECEPTIVE TRADE PRACTICES ACT (FLA. STAT. § 501.201, *et. seq.*)

1283. This claim is brought solely on behalf of Class members who are Florida residents (the "Florida Class").

1284. The Florida Class are "consumers" within the meaning of Florida Unfair and Deceptive Trade Practices Act ("FUDTPA"), FLA. STAT. § 501.203(7).

1285. The Companies engaged in "trade or commerce" within the meaning of FLA. STAT. § 501.203(8).

1286. FUDTPA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.…" FLA. STAT. § 501.204(1). Old GM and New GM participated in unfair and deceptive trade practices that violated the FUDTPA as described herein.

1287. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defect in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the FUDTPA, and also has successor liability for the violations of Old GM.

1288. As alleged above, both Companies knew of the ignition switch defects, while the Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1289. The Companies knew or should have known that their conduct violated the FUDTPA.

1290. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1291. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1292. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1293. The Companies each owed the Florida Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Florida Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Florida Class that contradicted these representations.

1294. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Florida Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1295. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Florida Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Florida Class.

1296. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Florida Class. Had the Florida Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1297. All members of the Florida Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Florida Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Florida Class own vehicles that are not safe.

1298. The Florida Class have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-

publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1299. The Florida Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the FUDTPA, and these violations present a continuing risk to the Florida Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1300. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1301. As a direct and proximate result of the Companies' violations of the FUDTPA, the Florida Class has suffered injury-in-fact and/or actual damage.

1302. The Florida Class are entitled to recover their actual damages under FLA. STAT. § 501.211(2) and attorneys' fees under FLA. STAT. § 501.2105(1).

1303. The Florida Class also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the FUDTPA.

THIRTY-FOURTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1304. In the event that the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of the Florida Class.

1305. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1306. The Companies knew these representations were false when made.

1307. The vehicles purchased or leased by the Florida Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1308. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Florida Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1309. The aforementioned concealment was material, because if it had been disclosed the Florida Class would not have bought, leased or retained their vehicles.

1310. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1311. The Florida Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1312. As a result of their reliance, the Florida Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1313. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Florida Class. the Florida Class are therefore entitled to an award of punitive damages.

GEORGIA

THIRTY-FIFTH CLAIM FOR RELIEF

VIOLATION OF GEORGIA'S FAIR BUSINESS PRACTICES ACT
(GA. CODE ANN. § 10-1-390, *et. seq.*)

1314. This claim is brought solely on behalf of Class members who are Georgia residents (the "Georgia Class").

1315. The Georgia Fair Business Practices Act ("Georgia FBPA") declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful, GA. CODE. ANN. § 10-1-393(a), including but not limited to "(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," "(7) [r]epresenting that goods or services are of a particular standard, quality, or grade… if they are of another," and "(9) [a]dvertising goods or services with intent not to sell them as advertised," GA. CODE. ANN. § 10-1-393.

1316. By failing to disclose and actively concealing the ignition switch defects in the Defective Vehicles, Old GM and New GM engaged in unfair or deceptive practices prohibited by the FBPA, including: (1) representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Defective Vehicles are

of a particular standard, quality, and grade when they are not; and (3) advertising the Defective Vehicles with the intent not to sell them as advertised. Both Old GM and New GM participated in unfair or deceptive acts or practices that violated the Georgia FBPA.

1317. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defect in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Georgia FBPA, and also has successor liability for the violations of Old GM.

1318. As alleged above, both Companies knew of the ignition switch defects, while the Georgia Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1319. The Companies knew or should have known that their conduct violated the Georgia FBPA.

1320. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1321. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently

shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1322. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1323. The Companies each owed the Georgia Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Georgia Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Georgia Class that contradicted these representations.

1324. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Georgia Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1325. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Georgia Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Georgia Class.

1326. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Georgia Class. Had the Georgia Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1327. All members of the Georgia Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Georgia Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Georgia Class own vehicles that are not safe.

1328. The Georgia Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1329. The Georgia Class Members risks irreparable injury as a result of the Companies' act and omissions in violation of the Georgia FBPA, and these violations present a continuing risk to the Georgia Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1330. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1331. As a direct and proximate result of the Companies' violations of the Georgia FBPA, the Georgia Class has suffered injury-in-fact and/or actual damage.

1332. The Georgia Class is entitled to recover damages and exemplary damages (for intentional violations) per GA. CODE. ANN § 10-1-399(a).

1333. The Georgia Class also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Georgia FBPA per GA. CODE. ANN § 10-1-399.

1334. Georgia Plaintiffs have complied with the notice requirement set forth in GA. CODE. ANN § 10-1-399(b) by virtue of the notice previously provided in the context of the underlying action styled *Dinco, et al. v GM*, 2:14-cv-03638-JVS-AN (C.D. Cal.), and other underlying actions, as well as additional notice in the form of a demand letter sent on October 12, 2014.

THIRTY-SIXTH CLAIM FOR RELIEF

VIOLATION OF GEORGIA'S UNIFORM DECEPTIVE TRADE PRACTICES ACT (GA. CODE ANN. § 10-1-370, *et. seq.*)

1335. The Companies and the Georgia Class are "persons' within the meaning of Georgia Uniform Deceptive Trade Practices Act ("Georgia UDTPA"), GA. CODE. ANN § 10-1-371(5).

1336. The Georgia UDTPA prohibits "deceptive trade practices," which include the "misrepresentation of standard or quality of goods or services," and "engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." GA. CODE. ANN § 10-1-372(a). By failing to disclose and actively concealing the ignition switch defects in the Defective Vehicles, Old GM and New GM engaged in deceptive trade practices prohibited by the Georgia UDTPA.

1337. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defect in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Georgia UDTPA, and also has successor liability for the violations of Old GM.

1338. As alleged above, both Companies knew of the ignition switch defects, while the Georgia Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1339. The Companies knew or should have known that their conduct violated the Georgia UDTPA.

1340. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1341. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1342. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1343. The Companies each owed the Georgia Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Georgia Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Georgia Class that contradicted these representations.

1344. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1345. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Georgia Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Georgia Class.

1346. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Georgia Class. Had the Georgia Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1347. All members of the Georgia Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Georgia Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Georgia Class own vehicles that are not safe.

1348. The Georgia Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the

many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1349. The Georgia Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Georgia UDTPA, and these violations present a continuing risk to the Georgia Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1350. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1351. As a direct and proximate result of the Companies' violations of the Georgia UDTPA, and the Georgia Class have suffered injury-in-fact and/or actual damage.

1352. Plaintiffs seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Georgia UDTPA per GA. CODE. ANN § 10-1-373.

THIRTY-SEVENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1353. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of the Georgia Class.

1354. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1355. The Companies knew these representations were false when made.

1356. The vehicles purchased or leased by the Georgia Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with

the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1357. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Georgia Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1358. The aforementioned concealment was material, because if it had been disclosed the Georgia Class would not have bought, leased or retained their vehicles.

1359. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1360. The Georgia Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1361. As a result of their reliance, the Georgia Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1362. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Georgia Class. The Georgia Class is therefore entitled to an award of punitive damages.

HAWAII

THIRTY-EIGHTH CLAIM FOR RELIEF

UNFAIR AND DECEPTIVE ACTS IN VIOLATION OF HAWAII LAW
(HAW. REV. STAT. § 480, *et. seq.*)

1365. This claim is brought on behalf of Class members who are Hawaii residents (the "Hawaii Class").

1366. Old GM and New GM are "persons" under HAW. REV. STAT. § 480-1.

1367. Class members are "consumer[s]" as defined by HAW. REV. STAT. § 480-1, who purchased or leased one or more Defective Vehicles.

1368. Old GM and New GM's acts or practices as set forth above occurred in the conduct of trade or commerce.

1369. The Hawaii Act § 480-2(a) prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.…" By failing to disclose and actively concealing the ignition switch defects in the Defective Vehicles, Old GM and New GM engaged in unfair and deceptive trade practices prohibited by the Hawaii Act.

1370. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defect in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or

omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Hawaii Act, and also has successor liability for the violations of Old GM.

1371. As alleged above, both Companies knew of the ignition switch defects, while the Hawaii Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1372. The Companies knew or should have known that their conduct violated the Hawaii Act.

1373. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1374. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1375. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1376. The Companies each owed the Hawaii Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Hawaii Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Hawaii Class that contradicted these representations.

1377. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Hawaii Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1378. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Hawaii Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Hawaii Class.

1379. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Hawaii Class. Had the Hawaii Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1380. All members of the Hawaii Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Hawaii Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Hawaii Class own vehicles that are not safe.

1381. The Hawaii Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1382. The Hawaii Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Hawaii Act, and these violations present a continuing risk to the Hawaii Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1383. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1384. As a direct and proximate result of the Companies' violations of the Hawaii Act, the Hawaii Class has suffered injury-in-fact and/or actual damage.

1385. Pursuant to HAW. REV. STAT. § 480-13, the Hawaii Class seeks monetary relief against New GM measured as the greater of (a) $1,000 and (b) threefold actual damages in an amount to be determined at trial.

1386. Under HAW. REV. STAT. § 480-13.5, the Hawaii Class seeks an additional award against New GM of up to $10,000 for each violation directed at a Hawaiian elder. Old GM and N or should have known that their conduct was directed to one or more Class members who are elders. Old GM and New GM's conduct caused one or more of these elders to suffer a substantial loss of property set aside for retirement or for personal or family care and maintenance, or assets essential to the health or welfare of the elder. One or more Hawaii Class members who are elders are substantially more vulnerable to Old GM and New GM's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and each of them suffered substantial physical, emotional, or economic damage resulting from Old GM and New GM's conduct.

THIRTY-NINTH CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (HAW. REV. STAT. § 490:2-314)

1387. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Hawaii residents.

1388. Old GM and New GM were merchants with respect to motor vehicles within the meaning of HAW. REV. STAT. § 490:2-104(1).

1389. Under HAW. REV. STAT. § 490:2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Hawaii Class purchased their Defective Vehicles.

1390. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1391. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Hawaii Class before or within a reasonable amount of time after GM issued the recall and the allegations of vehicle defects became public.

1392. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Hawaii Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

FORTIETH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1393. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of the Hawaii Class.

1394. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1395. The Companies knew these representations were false when made.

1396. The vehicles purchased or leased by the Hawaii Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1397. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Hawaii Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1398. The aforementioned concealment was material, because if it had been disclosed the Hawaii Class would not have bought, leased or retained their vehicles.

1399. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1400. The Hawaii Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1401. As a result of their reliance, the Hawaii Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1402. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Hawaii Class. The Hawaii Class are therefore entitled to an award of punitive damages.

IDAHO

FORTY-FIRST CLAIM FOR RELIEF

VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT
(IDAHO CIV. CODE § 48-601, *et. seq.*)

1403. This claim is brought on behalf of Class members who are Idaho residents (the "Idaho Class").

1404. Old GM and New GM are "persons" under the Idaho Consumer Protection Act ("Idaho CPA"), IDAHO CIV. CODE § 48-602(1).

1405. Old GM and New GM's acts or practices as set forth above occurred in the conduct of "trade" or "commerce" under IDAHO CIV. CODE § 48-602(2).

1406. Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Idaho CPA. By failing to disclose and actively concealing the dangerous ignition switch defects in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Idaho CPA, including: (1) representing that the Defective Vehicles have characteristics, uses, and benefits which they do not have; (2) representing that the Defective Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Defective Vehicles with the intent not to sell them as advertised; (4) engaging in acts or practices which are otherwise misleading, false, or deceptive to the consumer; and (5) engaging in any unconscionable method, act or practice in the conduct of trade or commerce. *See* IDAHO CIV. CODE § 48-603.

1407. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing

deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Idaho CPA, and also has successor liability for the violations of Old GM.

1408. As alleged above, both Companies knew of the ignition switch defects, while the Idaho Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1409. The Companies knew or should have known that their conduct violated the Idaho CPA.

1410. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1411. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1412. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers

to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1413. The Companies each owed the Idaho Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Idaho Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Idaho Class that contradicted these representations.

1414. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Idaho Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1415. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Idaho Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Idaho Class.

1416. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Idaho Class. Had the Idaho Class known that their

vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1417. All members of the Idaho Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Idaho Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Idaho Class own vehicles that are not safe.

1418. The Idaho Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1419. The Idaho Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Idaho CPA, and these violations present a continuing risk to the Idaho Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1420. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1421. As a direct and proximate result of the Companies' violations of the Idaho CPA, the Idaho Class has suffered injury-in-fact and/or actual damage.

1422. Pursuant to IDAHO CODE § 48-608, the Idaho Class seeks monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $1,000 for each Idaho Class Member.

1423. The Idaho Class also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Idaho CPA.

1424. The Idaho Class members also seek punitive damages against New GM because both Old GM and New GM's conduct evidences an extreme deviation from reasonable standards. Old GM and New GM flagrantly, maliciously, and fraudulently misrepresented the safety and reliability of the Defective Vehicles, deceived Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly promised Class members were safe. Old GM and New GM's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

FORTY-SECOND CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1425. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of the Idaho Class.

1426. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1427. The Companies knew these representations were false when made.

1428. The vehicles purchased or leased by the Idaho Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1429. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Idaho Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1430. The aforementioned concealment was material, because if it had been disclosed the Idaho Class would not have bought, leased or retained their vehicles.

1431. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1432. The Idaho Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1433. As a result of their reliance, the Idaho Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1434. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Idaho Class. The Idaho Class is therefore entitled to an award of punitive damages.

ILLINOIS

FORTY-THIRD CLAIM FOR RELIEF

VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (815 ILCS 505/1, *et. seq.* and 720 ilcs 295/1a)

1435. This claim is brought on behalf of Class members who are Illinois residents (the "Illinois Class").

1436. Old GM and New GM are "persons" as that term is defined in 815 ILCS 505/1(c).

1437. The Illinois Class are "consumers" as that term is defined in 815 ILCS 505/1(e).

1438. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA") prohibits "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… in the conduct of trade or commerce… whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2.

1439. Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Illinois CFA. By failing to disclose and actively concealing the dangerous

ignition switch defects in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Illinois CFA.

1440. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Illinois CFA, and also has successor liability for the violations of Old GM.

1441. As alleged above, both Companies knew of the ignition switch defects, while the Illinois Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1442. The Companies knew or should have known that their conduct violated the Illinois CFA.

1443. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1444. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently

shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1445. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1446. The Companies each owed the Illinois Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Illinois Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Illinois Class that contradicted these representations.

1447. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Illinois Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1448. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Illinois Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Illinois Class.

1449. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Illinois Class. Had the Illinois Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1450. All members of the Illinois Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Illinois Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Illinois Class own vehicles that are not safe.

1451. The Illinois Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1452. The Illinois Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Illinois CFA, and these violations present a continuing risk to the Illinois Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1453. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1454. As a direct and proximate result of the Companies' violations of the Illinois CFA, the Illinois Class has suffered injury-in-fact and/or actual damage.

1455. Pursuant to 815 ILCS 505/10a(a), the Illinois Class seeks monetary relief against New GM in the amount of actual damages, as well as punitive damages because New GM acted with fraud and/or malice and/or was grossly negligent.

1456. The Illinois Class also seeks an order enjoining New GM's unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under 815 ILCS. § 505/1 *et. seq.*

FORTY-FOURTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1457. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought solely on behalf of the Illinois Class.

1458. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1459. The Companies knew these representations were false when made.

1460. The vehicles purchased or leased by the Illinois Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with

the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1461. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Illinois Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1462. The aforementioned concealment was material, because if it had been disclosed the Illinois Class would not have bought, leased or retained their vehicles.

1463. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1464. The Illinois Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1465. As a result of their reliance, the Illinois Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1466. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Illinois Class. The Illinois Class is therefore entitled to an award of punitive damages.

INDIANA

FORTY-FIFTH CLAIM FOR RELIEF

VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT (Ind. Code § 24-5-0.5-3)

1467. This claim is brought on behalf of Class members who are Indiana residents (the "Indiana Class").

1468. Old GM and New GM are "persons" within the meaning of IND. CODE § 24-5-0.5-2(2) and "suppliers" within the meaning of IND. CODE § 24-5-0.5-2(a)(3).

1469. The Indiana Class Members' purchases of the Defective Vehicles are "consumer transactions" within the meaning of IND. CODE § 24-5-0.5-2(a)(1).

1470. Indiana's Deceptive Consumer Sales Act ("Indiana DCSA") prohibits a person from engaging in a "deceptive trade practice," which includes representing: "(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection it does not have; (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style or model, if it is not and if the supplier knows or should reasonably know that it is not;… (7) That the supplier has a sponsorship, approval or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have;… (c) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both

of the supplier who places such a representation thereon or therein, or who authored such materials, and such suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false." IND. CODE § 24-5-0.5-3.

1471. Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Indiana DCSA. By failing to disclose and actively concealing the dangerous ignition switch defects in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Indiana DCSA. The Companies also engaged in unlawful trade practices by: (1) representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Defective Vehicles are of a particular standard and quality when they are not; (3) advertising the Defective Vehicles with the intent not to sell them as advertised; and (4) otherwise engaging in conduct likely to deceive.

1472. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

1473. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defect in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for

engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Indiana DCSA, and also has successor liability for the violations of Old GM.

1474. As alleged above, both Companies knew of the ignition switch defects, while the Indiana was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1475. The Companies knew or should have known that their conduct violated the Indiana DCSA.

1476. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1477. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1478. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1479. The Companies each owed the Indiana Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Indiana Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Indiana Class that contradicted these representations.

1480. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Indiana Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1481. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Indiana Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Indiana Class.

1482. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Indiana Class. Had the Indiana Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1483. All members of the Indiana Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Indiana Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and

failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Indiana Class own vehicles that are not safe.

1484. The Indiana Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1485. The Indiana Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Indiana DCSA, and these violations present a continuing risk to the Indiana Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1486. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1487. As a direct and proximate result of the Companies' violations of the Indiana DCSA, the Indiana Class has suffered injury-in-fact and/or actual damage.

1488. Pursuant to IND. CODE § 24-5-0.5-4, the Indiana Class seeks monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined

at trial and (b) statutory damages in the amount of $500 for each Indiana Class Member, including treble damages up to $1,000 for New GM's willfully deceptive acts.

1489. The Indiana Class also seeks punitive damages based on the outrageousness and recklessness of the Companies' conduct and New GM's high net worth.

1490. Indiana Plaintiffs have complied with the notice requirement set forth in Indiana Code § 24-5-0.5-5(a) by virtue of the notice previously provided in the context of the underlying action styled *Saclo, et al. v. GM*, 8:14-cv-00604-JVS-AN (C.D. Cal.), and other underlying actions, as well as additional notice in the form of a demand letter sent on October 12, 2014.

FORTY-SIXTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (IND. CODE § 26-1-2-314)

1491. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Indiana Class.

1492. Old GM and New GM were merchants with respect to motor vehicles within the meaning of IND. CODE. § 26-1-2-104(1).

1493. Under IND. CODE. § 26-1-2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Indiana Class purchased their Defective Vehicles.

1494. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1495. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Indiana Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1496. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Indiana Class has been damaged in an amount to be proven at trial. New GM has successor liability for Old GM's breach.

FORTY-SEVENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1497. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Indiana residents.

1498. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1499. The Companies knew these representations were false when made.

1500. The vehicles purchased or leased by the Indiana Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1501. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Indiana Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1502. The aforementioned concealment was material, because if it had been disclosed the Indiana Class would not have bought, leased or retained their vehicles.

1503. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1504. The Indiana Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1505. As a result of their reliance, the Indiana Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1506. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Indiana Class. The Indiana Class is therefore entitled to an award of punitive damages.

IOWA

FORTY-EIGHTH CLAIM FOR RELIEF

VIOLATIONS OF THE PRIVATE RIGHT OF ACTION FOR CONSUMER FRAUDS ACT (IOWA CODE § 714h.1, *et. seq.*)

1507. This claim is brought on behalf of Class members who are Iowa residents (the "Iowa Class").

1508. Old GM and New GM are "persons" under IOWA CODE § 714H.2(7).

1509. The Iowa Class are "consumers," as defined by IOWA CODE § 714H.2(3), who purchased or leased one or more Defective Vehicles.

1510. The Iowa Private Right of Action for Consumer Frauds Act ("Iowa CFA") prohibits any "practice or act the person knows or reasonably should know is an unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission in connection with the advertisement, sale, or lease of consumer merchandise…." IOWA CODE § 714H.3. Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Iowa CFA. By failing to disclose and actively concealing the dangerous ignition switch defects in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Iowa CFA.

1511. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

1512. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or

commerce in violation of the Iowa CFA, and also has successor liability for the violations of Old GM.

1513. As alleged above, both Companies knew of the ignition switch defects, while the Iowa Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1514. The Companies knew or should have known that their conduct violated the Iowa CFA.

1515. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1516. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1517. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1518. The Companies each owed the Iowa Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Iowa Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Iowa Class that contradicted these representations.

1519. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Iowa Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1520. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Iowa Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Iowa Class.

1521. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Iowa Class. Had the Iowa Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1522. All members of the Iowa Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Iowa Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Iowa Class own vehicles that are not safe.

1523. The Iowa Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1524. The Iowa Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Iowa CFA, and these violations present a continuing risk to the Iowa Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1525. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1526. As a direct and proximate result of the Companies' violations of the Iowa CFA, the Iowa Class has suffered injury-in-fact and/or actual damage.

1527. Pursuant to IOWA CODE § 714H.5, the Iowa Class seeks an order enjoining New GM's unfair and/or deceptive acts or practices; actual damages; in addition to an award of actual damages, statutory damages up to three times the amount of actual damages awarded as a result of New GM's willful and wanton disregard for the rights or safety of others; attorneys' fees; and such other equitable relief as the Court deems necessary to protect the public from further violations of the Iowa CFA.

FORTY-NINTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1528. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Iowa Class.

1529. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1530. The Companies knew these representations were false when made.

1531. The vehicles purchased or leased by the Iowa Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1532. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Iowa Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1533. The aforementioned concealment was material, because if it had been disclosed the Iowa Class would not have bought, leased or retained their vehicles.

1534. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1535. The Iowa Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1536. As a result of their reliance, the Iowa Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1537. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Iowa Class. The Iowa Class is entitled to an award of punitive damages.

KANSAS

FIFTIETH CLAIM FOR RELIEF

VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT
(KAN. STAT. ANN. § 50-623, *et. seq.*)

1538. This claim is brought on behalf of Class members who are Kansas residents (the "Kansas Class").

1539. Old GM and New GM are "supplier[s]" under the Kansas Consumer Protection Act ("Kansas CPA"), KAN. STAT. ANN. § 50-624(1).

1540. Class members are "consumers," within the meaning of KAN. STAT. ANN. § 50-624(b), who purchased or leased one or more Defective Vehicles.

1541. The sale of the Defective Vehicles to the Class members was a "consumer transaction" within the meaning of KAN. STAT. ANN. § 50-624(c).

1542. The Kansas CPA states "[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction," KAN. STAT. ANN. § 50-626(a), and that deceptive acts or practices include: (1) knowingly making representations or with reason to know that "(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;" and "(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;" "(2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;" and "(3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact." The Kansas CPA also provides that "[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction." KAN. STAT. ANN. § 50-627(a).

1543. Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Kansas CPA. By failing to disclose and actively concealing the dangerous ignition switch defect in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Kansas CPA. The Companies also engaged in unlawful trade practices by: (1) representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Defective Vehicles are of a particular standard and quality when they are not; (3) advertising the

Defective Vehicles with the intent not to sell them as advertised; (4) willfully using, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact; (5) willfully failing to state a material fact, or the willfully concealing, suppressing or omitting a material fact; and (6) otherwise engaging in an unconscionable act or practice in connection with a consumer transaction.

1544. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

1545. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Kansas CPA, and also has successor liability for the violations of Old GM.

1546. As alleged above, both Companies knew of the ignition switch defects, while the Kansas Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1547. The Companies knew or should have known that their conduct violated the Kansas CPA.

1548. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1549. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1550. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1551. The Companies each owed the Kansas Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Kansas Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Kansas Class that contradicted these representations.

1552. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Kansas Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1553. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Kansas Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Kansas Class.

1554. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Kansas Class. Had the Kansas Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1555. All members of the Kansas Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Kansas Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Kansas Class own vehicles that are not safe.

1556. The Kansas Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1557. The Kansas Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Kansas CPA, and these violations present a continuing risk to the Kansas Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1558. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1559. As a direct and proximate result of the Companies' violations of the Kansas CPA, the Kansas Class has suffered injury-in-fact and/or actual damage.

1560. Pursuant to KAN. STAT. ANN. § 50-634, the Kansas Class seeks monetary relief against Defendant measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $10,000 for each Kansas Class Member.

1561. The Kansas Class also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under KAN. STAT. ANN § 50-623 *et. seq.*

FIFTY-FIRST CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (KAN. STAT. ANN. § 84-2-314)

1562. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Kansas Class.

1563. Old GM and New GM were merchants with respect to motor vehicles within the meaning of KAN. STAT. ANN. § 84-2-104(1).

1564. Under KAN. STAT. ANN. § 84-2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Kansas Class purchased their Defective Vehicles.

1565. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1566. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Kansas Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1567. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Kansas Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

FIFTY-SECOND CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1568. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Kansas Class.

1569. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1570. The Companies knew these representations were false when made.

1571. The vehicles purchased or leased by the Kansas Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1572. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Kansas Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1573. The aforementioned concealment was material, because if it had been disclosed the Kansas Class would not have bought, leased or retained their vehicles.

1574. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1575. The Kansas Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1576. As a result of their reliance, the Kansas Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1577. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Kansas Class. The Kansas Class is therefore entitled to an award of punitive damages.

KENTUCKY

FIFTY-THIRD CLAIM FOR RELIEF

VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT
(KY. REV. STAT. § 367.110, *et. seq.*)

1578. This claim is brought on behalf of Class members who are Kentucky residents (the "Kentucky Class").

1579. The Companies and the Kentucky Class are "persons" within the meaning of the KY. REV. STAT. § 367.110(1).

1580. The Companies engaged in "trade" or "commerce" within the meaning of KY. REV. STAT. § 367.110(2).

1581. The Kentucky Consumer Protection Act ("Kentucky CPA") makes unlawful "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce…." KY. REV. STAT. § 367.170(1). Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Kentucky CPA. By failing to disclose and

actively concealing the dangerous ignition switch defect in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Kentucky CPA.

1582. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

1583. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Kentucky CPA, and also has successor liability for the violations of Old GM.

1584. As alleged above, both Companies knew of the ignition switch defects, while the Kentucky Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1585. The Companies knew or should have known that their conduct violated the Kentucky CPA.

1586. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1587. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1588. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1589. The Companies each owed the Kentucky Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Kentucky Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Kentucky Class that contradicted these representations.

1590. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Kentucky Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1591. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Kentucky Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Kentucky Class.

1592. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Kentucky Class. Had the Kentucky Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1593. All members of the Kentucky Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Kentucky Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Kentucky Class own vehicles that are not safe.

1594. The Kentucky Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's

failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1595. The Kentucky Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Kentucky CPA, and these violations present a continuing risk to the Kentucky Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1596. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1597. As a direct and proximate result of the Companies' violations of the Kentucky CPA, the Kentucky Class has suffered injury-in-fact and/or actual damage.

1598. Pursuant to KY. REV. STAT. ANN. § 367.220, the Kentucky Class seeks to recover actual damages in an amount to be determined at trial; an order enjoining New GM's unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under KY. REV. STAT. ANN. § 367.220.

FIFTY-FOURTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1599. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Kentucky residents.

1600. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1601. The Companies knew these representations were false when made.

1602. The vehicles purchased or leased by the Kentucky Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1603. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Kentucky Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1604. The aforementioned concealment was material, because if it had been disclosed the Kentucky Class would not have bought, leased or retained their vehicles.

1605. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1606. The Kentucky Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1607. As a result of their reliance, the Kentucky Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1608. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Kentucky Class. The Kentucky Class is entitled to an award of punitive damages.

LOUISIANA

FIFTY-FIFTH CLAIM FOR RELIEF

VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW
(LA. REV. STAT. § 51:1401, *et. seq.*)

1609. This claim is brought on behalf of Class members who are Louisiana residents (the "Louisiana Class").

1610. The Companies and the Louisiana Class are "persons" within the meaning of the LA. REV. STAT. § 51:1402(8).

1611. The Louisiana Class members are "consumers" within the meaning of the LA. REV. STAT. § 51:1402(1).

1612. The Companies engaged in "trade" or "commerce" within the meaning of LA. REV. STAT. § 51:1402(9).

1613. The Louisiana Unfair Trade Practices and Consumer Protection Law ("Louisiana CPL") makes unlawful "deceptive acts or practices in the conduct of any trade or commerce…" LA. REV. STAT. § 51:1405(A). Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Louisiana CPL. By failing to disclose and actively concealing the dangerous ignition switch defect in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Louisiana CPL.

1614. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Louisiana CPL, and also has successor liability for the violations of Old GM.

1615. As alleged above, both Companies knew of the ignition switch defects, while the Louisiana Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1616. The Companies knew or should have known that their conduct violated the Louisiana CPL.

1617. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1618. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1619. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1620. The Companies each owed the Louisiana Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Louisiana Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Louisiana Class that contradicted these representations.

1621. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Louisiana Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1622. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Louisiana Class, about the true safety and reliability of

Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Louisiana Class.

1623. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Louisiana Class. Had the Louisiana Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1624. All members of the Louisiana Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Louisiana Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Louisiana Class own vehicles that are not safe.

1625. The Louisiana Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1626. The Louisiana Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Louisiana CPL, and these violations present a continuing risk to the Louisiana Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1627. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1628. As a direct and proximate result of the Companies' violations of the Louisiana CPL, the Louisiana Class have suffered injury-in-fact and/or actual damage.

1629. Pursuant to LA. REV. STAT. § 51:1409, the Louisiana Class seeks to recover actual damages in an amount to be determined at trial; treble damages for New GM's knowing violations of the Louisiana CPL; an order enjoining New GM's unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under LA. REV. STAT. § 51:1409.

1630. Pursuant to LA. REV. STAT. § 51:1409(B), the Louisiana Class will mail a copy of this complaint to Louisiana's Attorney General

FIFTY-SIXTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(LA. CIV. CODE ART. 2520, 2524)

1631. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Louisiana Class.

1632. At the time the Louisiana Class acquired their Defective Vehicles, those vehicles had a redhibitory defect within the meaning of LA. CIV. CODE ART. 2520, in that (a) the defective ignition switches rendered the use of the Defective Vehicles so inconvenient that the Louisiana Class either would not have purchased the Defective Vehicles had they

known of the defect, or, because the defective ignition switches so diminished the usefulness and/or value of the Defective Vehicles such that it must be presumed that the Louisiana Class would have purchased the Defective Vehicles, but for a lesser price.

1633. No notice of the defect is required under LA. CIV. CODE ART. 2520, since Old GM had knowledge of a redhibitory defect in the Defective Vehicles at the time they were sold to the Louisiana Class.

1634. Under LA. CIV. CODE ART. 2524, a warranty that the Defective Vehicles were in merchantable condition, or fit for ordinary use, was implied by law in the transactions when the Louisiana Class purchased their Defective Vehicles.

1635. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1636. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Louisiana Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1637. As a direct and proximate result of Old GM's sale of vehicles with redhibitory defects, and in violation of the implied warranty that the Defective Vehicles were fit for ordinary use, the Louisiana Class is entitled to either rescission or damages from New GM in an amount to be proven at trial.

1638. New GM also has successor liability for Old GM's breach.

FIFTY-SEVENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1639. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Louisiana Class.

1640. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1641. The Companies knew these representations were false when made.

1642. The vehicles purchased or leased by the Louisiana Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1643. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Louisiana Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1644. The aforementioned concealment was material, because if it had been disclosed the Louisiana Class would not have bought, leased or retained their vehicles.

1645. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1646. The Louisiana Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1647. As a result of their reliance, the Louisiana Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1648. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Louisiana Class. The Louisiana Class is entitled to an award of punitive damages.

FIFTY-EIGHTH CLAIM FOR RELIEF

REDHIBITION
LA. CIV. CODE ART. 2520, *et. seq.* and 2545
(On Behalf of the Louisiana State Class)

1649. Under Louisiana law, the seller and manufacturer warrants the buyer against redhibitory defects or vices in the thing sold. LA. CIV. CODE ART. 2520. A defect is redhibitory under two circumstances. First, a defect is redhibitory when it renders the thing useless, or renders its use so inconvenient that it must be presumed that a buyer would not have bought the thing had he known of the defect. *Id.* The existence of such a defect gives a buyer the right to obtain rescission of the sale. *Id.* Second, a defect is redhibitory when it diminishes the usefulness or the value of the thing so that it must be presumed that a buyer would still have bought it, but for a lesser price. *Id.* The existence of such a defect entitles the buyer to a reduction in the price. *Id.*

1650. Old GM and New GM defectively designed, manufactured, sold, or otherwise placed in the stream of commerce Vehicles that are defective.

1651. Old GM and New GM have known of the defects and the safety hazards that result from the defects, as alleged herein, and have failed to adequately address those safety concerns.

1652. New GM is responsible for damages caused by the failure of its products to conform to well-defined standards. In particular, the Defective Vehicles contain vices or defects which have rendered them useless or their use so inconvenient and unsafe that reasonable buyers would not have purchased them had they known of the defects, or at the least, would not have paid as much for the Vehicles as they did. The Louisiana Class members are entitled to obtain either rescission or a reduction in the purchase/lease price of the Vehicles from New GM.

1653. Further, under Louisiana law, Old GM and New GM are deemed to know that the Vehicles contained redhibitory defects pursuant to LA. CIV. CODE ART. 2545. New GM is liable for the bad faith sale of defective products with knowledge of the defects and thus is liable to the Louisiana Class for the price of the Vehicles, with interest from the purchase or lease date, as well as reasonable expenses occasioned by the sale or lease of the Vehicles, as well as attorneys' fees.

1654. Due to the defects and redhibitory vices in the Vehicles sold or leased to the Louisiana Class, they have suffered damages under Louisiana law.

MAINE

FIFTY-NINTH CLAIM FOR RELIEF

VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT
(ME. REV. STAT. ANN. TIT. 5 § 205-a, *et. seq.*)

1655. This claim is brought on behalf of Class members who are Maine residents (the "Maine Class").

1656. The Companies, and the Maine Class are, "persons" within the meaning of ME. REV. STAT. ANN. TIT. 5 § 206(2).

1657. The Companies are engaged in "trade" or "commerce" within the meaning of ME. REV. STAT. ANN. TIT. § 206(3).

1658. The Maine Unfair Trade Practices Act ("Maine UTPA") makes unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce…." ME. REV. STAT. ANN. TIT. 5 § 207. In the course of the Companies' business, they each willfully failed to disclose and actively concealed the dangerous risk caused by the ignition switch defects in the Defective Vehicles. Accordingly, the Companies engaged in unfair or deceptive acts or practices. Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Maine UTPA. By failing to disclose and actively concealing the dangerous ignition switch defect in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Maine UTPA.

1659. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Maine UTPA, and also has successor liability for the violations of Old GM.

1660. As alleged above, both Companies knew of the ignition switch defects, while the Maine Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1661. The Companies knew or should have known that their conduct violated the Maine UTPA.

1662. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1663. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1664. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1665. The Companies each owed the Maine Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Maine Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Maine Class that contradicted these representations.

1666. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Maine Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1667. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Maine Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Maine Class.

1668. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Maine Class. Had the Maine Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1669. All members of the Maine Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Maine Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and

failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Maine Class own vehicles that are not safe.

1670. The Maine Class have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1671. The Maine Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Maine UTPA, and these violations present a continuing risk to the Maine Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1672. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1673. As a direct and proximate result of the Companies' violations of the Maine UTPA, the Maine Class has suffered injury-in-fact and/or actual damage.

1674. Pursuant to ME. REV. STAT. ANN. TIT. 5 § 213, the Maine Class seeks an order enjoining Defendant's unfair and/or deceptive acts or practices, damages, punitive damages,

and attorneys' fees, costs, and any other just and proper relief available under the Maine UTPA.

1675. On October 12, 2014, Plaintiffs sent a notice letter complying with ME. REV. STAT. ANN. TIT. 5, § 213(1-A). Plaintiffs presently do not claim the damages relief asserted in this Complaint under the Maine UTPA until and unless New GM fails to remedy its unlawful conduct towards the Class within the requisite time period, after which Plaintiffs seek all damages and relief to which Plaintiffs and the Maine Class are entitled.

1676. Pursuant to ME. REV. STAT. ANN. TIT. 5 § 213(3), Plaintiffs will mail a copy of this complaint to Maine's Attorney General.

SIXTIETH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(ME. REV. STAT. ANN. TIT. 11 § 2-314)

1677. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Maine residents.

1678. Old GM and New GM were merchants with respect to motor vehicles within the meaning of ME. REV. STAT. ANN. TIT. 11 § 2-104(1).

1679. Under ME. REV. STAT. ANN. TIT. 11 § 2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Maine Class purchased their Defective Vehicles.

1680. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1681. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Maine Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1682. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Maine Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

SIXTY-FIRST CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1683. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Maine residents.

1684. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1685. The Companies knew these representations were false when made.

1686. The vehicles purchased or leased by the Maine Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1687. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Maine Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1688. The aforementioned concealment was material, because if it had been disclosed the Maine Class would not have bought, leased or retained their vehicles.

1689. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1690. The Maine Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1691. As a result of their reliance, the Maine Class been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1692. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Maine Class, who are therefore entitled to an award of punitive damages.

MARYLAND

SIXTY-SECOND CLAIM FOR RELIEF

VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT
(MD. CODE COM. LAW § 13-101, *et. seq.*)

1693. This claim is brought on behalf of Class members who are Maryland residents (the "Maryland Class").

1694. The Companies and the Maryland Class are "persons" within the meaning of MD. CODE COM. LAW § 13-101(h).

1695. The Maryland Consumer Protection Act ("Maryland CPA") provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. MD. COM. LAW CODE § 13-303. Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Maryland CPA. By failing to disclose and actively concealing the dangerous ignition switch defect in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Maryland CPA.

1696. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

1697. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Maryland CPA, and also has successor liability for the violations of Old GM.

1698. As alleged above, both Companies knew of the ignition switch defects, while the Maryland Class was deceived by the Companies' omission into believing the Defective

Vehicles were safe, and the information could not have reasonably been known by the consumer.

1699. The Companies knew or should have known that their conduct violated the Maryland CPA.

1700. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1701. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1702. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1703. The Companies each owed the Maryland Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Maryland Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Maryland Class that contradicted these representations.

1704. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Maryland Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1705. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Maryland Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Maryland Class.

1706. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Maryland Class. Had the Maryland Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1707. The Maryland Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Maryland Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective

Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Maryland Class own vehicles that are not safe.

1708. The Maryland Class have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1709. The Maryland Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Maryland CPA, and these violations present a continuing risk to them as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1710. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1711. As a direct and proximate result of the Companies' violations of the Maryland CPA, the Maryland Class has suffered injury-in-fact and/or actual damage.

1712. Pursuant to MD. CODE COM. LAW § 13-408, the Maryland Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Maryland CPA.

SIXTY-THIRD CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (MD. CODE COM. LAW § 2-314)

1713. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Maryland residents.

1714. Old GM and New GM were merchants with respect to motor vehicles within the meaning of MD. COM. LAW § 2-104(1).

1715. Under MD. COM. LAW § 2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Maryland Class purchased their Defective Vehicles.

1716. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1717. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Maryland Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1718. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Maryland Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

SIXTY-FOURTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1719. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Maryland residents.

1720. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1721. The Companies knew these representations were false when made.

1722. The vehicles purchased or leased were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1723. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Maryland Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1724. The aforementioned concealment was material, because if it had been disclosed the Maryland Class would not have bought, leased or retained their vehicles.

1725. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1726. The Maryland Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1727. As a result of their reliance, the Maryland Class been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1728. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Maryland Class, who are therefore entitled to an award of punitive damages.

MASSACHUSETTS

SIXTY-FIFTH CLAIM FOR RELIEF

DECEPTIVE ACTS OR PRACTICES PROHIBITED BY MASSACHUSETTS LAW
(MASS. GEN. LAWS CH. 93A, § 1, *et. seq.*)

1729. This claim is brought on behalf of Class members who are Massachusetts residents (the "Massachusetts Class or "The MA Class"").

1730. The Companies and the Massachusetts Class are "persons" within the meaning of MASS. GEN. LAWS ch. 93A, § 1(a).

1731. The Companies engaged in "trade" or "commerce" within the meaning of MASS. GEN. LAWS ch. 93A, § 1(b).

1732. Massachusetts law (the "Massachusetts Act") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." MASS. GEN. LAWS ch. 93A, § 2. Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Massachusetts Act. By failing to disclose and actively concealing the dangerous ignition

switch defect in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Massachusetts Act.

1733. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Massachusetts Act, and also has successor liability for the violations of Old GM.

1734. As alleged above, both Companies knew of the ignition switch defects, while the Massachusetts Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1735. The Companies knew or should have known that their conduct violated the Massachusetts Act.

1736. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1737. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently

shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1738. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1739. The Companies each owed the MA Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the MA Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the MA Class that contradicted these representations.

1740. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the MA Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1741. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the MA Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Massachusetts Class.

1742. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Massachusetts Class. Had the Massachusetts Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1743. The Massachusetts Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Massachusetts Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Massachusetts Class owns vehicles that are not safe.

1744. The Massachusetts Class Members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1745. Massachusetts Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Massachusetts Act, and these violations present a continuing risk to the MA Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1746. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1747. As a direct and proximate result of the Companies' violations of the Massachusetts Act, the Massachusetts Class have suffered injury-in-fact and/or actual damage.

1748. Pursuant to MASS. GEN. LAWS ch. 93A, § 9, the Massachusetts Class seeks monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $25 for each Massachusetts Class Member. Because Defendant's conduct was committed willfully and knowingly, up to three times actual damages, but no less than two times actual damages, is warranted as a recovery for each Massachusetts Class Member.

1749. The Massachusetts Class also seeks an order enjoining New GM's unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, costs, and any other just and proper relief available under the Massachusetts Act.

1750. Massachusetts Plaintiffs have complied with the notice requirement set forth in MASS. GEN. LAWS ch. 93A, § 9(3) by virtue of the notice previously provided in the context of the underlying action styled *Dinco, et al. v GM*, 2:14-cv-03638-JVS-AN (C.D. Cal.), and other underlying actions, as well as additional notice in the form of a demand letter sent on October 12, 2014.

SIXTY-SIXTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (ALM GL. CH. 106, § 2-314)

1751. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Massachusetts residents.

1752. Old GM and New GM were merchants with respect to motor vehicles within the meaning of ALM GL CH. 106, § 2-104(1).

1753. Under ALM GL CH. 106, § 2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the Defective Vehicle transactions.

1754. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1755. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Massachusetts Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1756. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Massachusetts Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

SIXTY-SEVENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1757. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Massachusetts residents.

1758. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1759. The Companies knew these representations were false when made.

1760. The vehicles purchased or leased by the MA Class, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1761. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the MA Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1762. The aforementioned concealment was material, because if it had been disclosed the MA Class would not have bought, leased or retained their vehicles.

1763. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1764. The MA Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1765. As a result of their reliance, MA Class Members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1766. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Massachusetts Class, who are therefore entitled to an award of punitive damages.

MICHIGAN

SIXTY-EIGHTH CLAIM FOR RELIEF

VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT
(MICH. COMP. LAWS § 445.903, *et. seq.*)

1767. This claim is brought under Michigan law on behalf of the Michigan Class for equitable injunctive relief , actual damages, and statutory penalties.

1768. Michigan Class Members were "person[s]" within the meaning of the MICH. COMP. LAWS § 445.902(1)(d).

1769. At all relevant times hereto, the Companies were "persons" engaged in "trade or commerce" within the meaning of the MICH. COMP. LAWS § 445.902(1)(d) and (g).

1770. The Michigan Consumer Protection Act ("Michigan CPA") prohibits "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce…." MICH. COMP. LAWS § 445.903(1). Old GM and New GM engaged in unfair, unconscionable, or deceptive methods, acts or practices prohibited by the Michigan CPA,

including: "(c) Representing that goods or services have… characteristics… that they do not have.…;" "(e) Representing that goods or services are of a particular standard… if they are of another;" "(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;" "(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;" "(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is;" and "(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner." MICH. COMP. LAWS § 445.903(1). By failing to disclose and actively concealing the dangerous ignition switch defect in the Defective Vehicles, Old GM and New GM both participated in unfair, deceptive, and unconscionable acts that violated the Michigan CPA.

1771. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defect in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Michigan CPA, and also has successor liability for the violations of Old GM.

1772. As alleged above, both Companies knew of the ignition switch defects, and the Michigan Class was deceived by the Companies' omissions into believing the Defective

Vehicles were safe. The true information could not have reasonably been known by the consumer.

1773. The Companies knew or should have known that their conduct violated the Michigan CPA.

1774. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1775. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1776. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1777. The Companies each owed the Michigan Class an independent duty, based on their respective knowledge, to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they each:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1778. The Defective Vehicles posed and/or continue to pose an unreasonable risk of death or serious bodily injury to the Michigan Class passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1779. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Michigan Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Michigan Class.

1780. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Michigan Class. Had the Michigan Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1781. The Michigan Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Michigan Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective

Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Michigan Class owns vehicles that are not safe.

1782. The Michigan Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1783. Michigan Class Members were—and continue to be—at risk of irreparable injury as a result of the respective Companies' acts and omissions in violation of the Michigan CPA, and these violations present a continuing risk to the Michigan Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1784. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1785. As a direct and proximate result of the Companies' violations of the Michigan CPA, the Michigan Class has suffered injury-in-fact and/or actual damage.

1786. The Michigan Class seeks injunctive relief to enjoin New GM from continuing its unfair and deceptive acts; monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $250 for each Michigan Class Member; reasonable attorneys' fees; declaratory

relief in the nature of a judicial determination of whether each Company's conduct violated the Michigan Statute, the just total amount of penalties to be assessed against each thereunder, and the formula and procedure for fair and equitable allocation of statutory penalties among the Michigan Class; and any other just and proper relief available under MICH. COMP. LAWS § 445.911.

1787. The Michigan Class also seeks punitive damages against New GM because it carried out despicable conduct with willful and conscious disregard of the rights and safety of others. New GM intentionally and willfully misrepresented the safety and reliability of Defective Vehicles, deceived Michigan Class Members on life-or-death matters, and concealed material facts that only it knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the Defective Vehicles it repeatedly promised Michigan Class Members were safe. New GM's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

SIXTY-NINTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (MICH. COMP. LAWS § 440.2314)

1788. This claim is brought on behalf of Michigan residents (the "Michigan Class").

1789. Old GM and New GM were merchants with respect to motor vehicles within the meaning of MICH. COMP. LAWS § 440.2314(1).

1790. Under MICH. COMP. LAWS § 440.2314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when Michigan Class members purchased their Defective Vehicles.

1791. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective

Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1792. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Michigan Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1793. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Michigan Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

1794. The Michigan Class also seeks available equitable and/or injunctive relief. Based on New GM's continuing failures to fix the known dangerous defects, the Michigan Class seeks a declaration that New GM has not adequately implemented its recall commitments and requirements and general commitments to fix its failed processes, and injunctive relief in the form of judicial supervision over the recall process is warranted. The Michigan Class also seeks the establishment of a New GM-funded program for Plaintiffs and Class members to recover out of pocket costs incurred.

SEVENTIETH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1795. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Michigan residents.

1796. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1797. The Companies knew these representations were false when made.

1798. The vehicles purchased or leased by the Michigan Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1799. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Michigan Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1800. The aforementioned concealment was material, because if it had been disclosed the Michigan Class would not have bought, leased or retained their vehicles.

1801. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1802. The Michigan Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1803. As a result of their reliance, the Michigan Class Members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1804. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Michigan Class, who are therefore entitled to an award of punitive damages.

MINNESOTA

SEVENTY-FIRST CLAIM FOR RELIEF

VIOLATION OF MINNESOTA PREVENTION OF CONSUMER FRAUD ACT
(MINN. STAT. § 325f.68, *et. seq.*)

1805. This claim is brought on behalf of Class members who are Minnesota residents (the "Minnesota Class").

1806. The Defective Vehicles constitute "merchandise" within the meaning of MINN. STAT. § 325F.68(2).

1807. The Minnesota Prevention of Consumer Fraud Act ("Minnesota CFA") prohibits "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby…" MINN. STAT. § 325F.69(1). Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Minnesota CFA. By failing to disclose and actively concealing the dangerous ignition switch defects in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Minnesota CFA.

1808. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

1809. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Minnesota CFA, and also has successor liability for the violations of Old GM.

1810. As alleged above, both Companies knew of the ignition switch defects, while the Minnesota Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1811. The Companies knew or should have known that their conduct violated the Minnesota CFA.

1812. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1813. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently

shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1814. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1815. The Companies each owed the Minnesota Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Minnesota Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Minnesota Class that contradicted these representations.

1816. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Minnesota Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1817. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Minnesota Class.

1818. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Minnesota Class. Had the Minnesota Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1819. The Minnesota Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Minnesota Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Minnesota Class owns vehicles that are not safe.

1820. The Minnesota Class Members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1821. Minnesota Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Minnesota CFA, and these violations present a continuing risk to them as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1822. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1823. As a direct and proximate result of the Companies' violations of the Minnesota CFA, the Minnesota Class has suffered injury-in-fact and/or actual damage.

1824. Pursuant to MINN. STAT. § 8.31(3a), the Minnesota Class seeks actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota CFA.

1825. The Minnesota Class also seeks punitive damages under MINN. STAT. § 549.20(1)(a) give the clear and convincing evidence that New GM's acts show deliberate disregard for the rights or safety of others.

SEVENTY-SECOND CLAIM FOR RELIEF

VIOLATION OF MINNESOTA UNIFORM DECEPTIVE TRADE PRACTICES ACT
(MINN. STAT. § 325d.43-48, *et. seq.*)

1826. This claim is brought on behalf of Class members who are Minnesota residents.

1827. The Minnesota Deceptive Trade Practices Act ("Minnesota DTPA") prohibits deceptive trade practices, which occur when a person "(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" "(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" and "(9) advertises goods or services with intent not to sell them as advertised." MINN. STAT.

§ 325D.44. In the course of the Companies' business, they each willfully failed to disclose and actively concealed the dangerous risk caused by the ignition switch defects in the Defective Vehicles and engaged in deceptive practices by representing that Defective Vehicles have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have; representing that Defective Vehicles are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and advertising Defective Vehicles with intent not to sell them as advertised. Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Minnesota DTPA. By failing to disclose and actively concealing the dangerous ignition switch defects in the Defective Vehicles, both Old GM and New GM engaged in deceptive business practices prohibited by the Minnesota DTPA.

1828. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

1829. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Minnesota DTPA, and also has successor liability for the violations of Old GM.

1830. As alleged above, both Companies knew of the ignition switch defects, while the Minnesota Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1831. The Companies knew or should have known that their conduct violated the Minnesota DTPA.

1832. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1833. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1834. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1835. The Companies each owed the Minnesota Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Minnesota that contradicted these representations.

1836. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Minnesota Class passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1837. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Minnesota Class.

1838. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Minnesota Class. Had the Minnesota Class Members known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1839. The Minnesota Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Minnesota Class Members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and

failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Minnesota Class owns vehicles that are not safe.

1840. The Minnesota Class Members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1841. The Minnesota Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Minnesota DTPA, and these violations present a continuing risk to the Minnesota Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1842. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1843. As a direct and proximate result of the Companies' violations of the Minnesota DTPA, the Minnesota Class has suffered injury-in-fact and/or actual damages.

1844. Pursuant to MINN. STAT. § 8.31(3a) and 325D.45, the Minnesota Class seeks actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota DTPA.

1845. The Minnesota Class also seeks punitive damages under MINN. STAT. § 549.20(1)(a) give the clear and convincing evidence that New GM's acts show deliberate disregard for the rights or safety of others.

SEVENTY-THIRD CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (MINN. STAT. § 336.2-314)

1846. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Minnesota residents.

1847. Old GM and New GM were merchants with respect to motor vehicles within the meaning of MINN. STAT. § 336.2-104(1).

1848. Under MINN. STAT. § 336.2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Minnesota Class purchased their Defective Vehicles.

1849. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1850. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and

communications sent by the Minnesota Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1851. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Minnesota Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

SEVENTY-FOURTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1852. This claim is brought on behalf of Class members who are Minnesota residents.

1853. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1854. The Companies knew these representations were false when made.

1855. The vehicles purchased or leased by the Minnesota Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1856. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Minnesota Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1857. The aforementioned concealment was material, because if it had been disclosed the Minnesota Class Members would not have bought, leased or retained their vehicles.

1858. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used

motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1859. The Minnesota Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1860. As a result of their reliance, they have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1861. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Minnesota Class, who are therefore entitled to an award of punitive damages.

MISSISSIPPI

SEVENTY-FIFTH CLAIM FOR RELIEF

VIOLATION OF MISSISSIPPI CONSUMER PROTECTION ACT
(MISS. CODE. ANN. § 75-24-1, *et. seq.*)

1862. This claim is brought solely on behalf of Class members who are Mississippi residents (the "Mississippi Class").

1863. The Mississippi Consumer Protection Act ("Mississippi CPA") prohibits "unfair or deceptive trade practices in or affecting commerce…." MISS. CODE. ANN. § 75-24-5(1). Unfair or deceptive practices include, but are not limited to, "(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or

quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;" "(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" and "(i) Advertising goods or services with intent not to sell them as advertised." Old GM and New GM participated in deceptive trade practices that violated the Mississippi CPA as described herein, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; and advertising Defective Vehicles with the intent not to sell them as advertised.

1864. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defect in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Mississippi CPA, and also has successor liability for the violations of Old GM.

1865. As alleged above, both Companies knew of the ignition switch defects, while the Mississippi Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1866. The Companies knew or should have known that their conduct violated the Mississippi CPA.

1867. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1868. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1869. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1870. The Companies each owed the Mississippi Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Mississippi Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts that contradicted these representations.

1871. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Mississippi Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1872. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Mississippi, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Mississippi Class.

1873. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Mississippi Class. Had the Mississippi Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1874. All members of the Mississippi Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Mississippi Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Mississippi Class owns vehicles that are not safe.

1875. The Mississippi Class Members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1876. The Mississippi Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Mississippi CPA, and these violations present a continuing risk to the Mississippi Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1877. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1878. As a direct and proximate result of the Companies' violations of the Mississippi CPA, the Mississippi Class has suffered injury-in-fact and/or actual damage.

1879. The actual damages of the Mississippi Class will be determined at trial, and the Mississippi Class seeks these damages as well as any other just and proper relief available under the Mississippi CPA.

SEVENTY-SIXTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (MISS. CODE ANN. § 75-2-314)

1880. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is solely on behalf of Class members who are Mississippi residents.

1881. Old GM and New GM were merchants with respect to motor vehicles within the meaning of MISS. CODE ANN. § 75-2-104(1).

1882. Under MISS. CODE ANN. § 75-2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Mississippi Class purchased their Defective Vehicles.

1883. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1884. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Mississippi Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1885. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, the Mississippi Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

SEVENTY-SEVENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1886. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Mississippi residents.

1887. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1888. The Companies knew these representations were false when made.

1889. The vehicles purchased or leased by the Mississippi Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1890. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision, because the Mississippi Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1891. The aforementioned concealment was material, because if it had been disclosed the Mississippi Class would not have bought, leased or retained their vehicles.

1892. The aforementioned representations were also material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1893. The Mississippi Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1894. As a result of their reliance, the Mississippi Class Members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1895. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Mississippi Class, who are therefore entitled to an award of punitive damages.

MISSOURI

SEVENTY-EIGHTH CLAIM FOR RELIEF

VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT
(MO. REV. STAT. § 407.010, *et. seq.*)

1896. Plaintiffs bring this claim on behalf of Class members who are Missouri residents (the "Missouri Class") .

1897. New GM, Old GM, and the Missouri Class are "persons" within the meaning of MO. REV. STAT. § 407.010(5).

1898. Old GM and New GM engaged in "trade" or "commerce" within the meaning of MO. REV. STAT. § 407.010(7).

1899. The Missouri Merchandising Practices Act ("Missouri MPA") makes unlawful the "act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise…." MO. REV. STAT. § 407.020.

1900. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity

to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Missouri MPA, and also has successor liability for the violations of Old GM.

1901. As alleged above, both Companies knew of the ignition switch defects, while the Missouri Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1902. The Companies knew or should have known that their conduct violated the Missouri MPA.

1903. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1904. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1905. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the

defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1906. The Companies each owed the Missouri Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Missouri Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Missouri Class that contradicted these representations.

1907. The Defective Vehicles pose an unreasonable risk of death or serious bodily injury to the Missouri Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1908. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Missouri Class.

1909. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Missouri Class. Had the Missouri Class known that

their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1910. All members of the Missouri Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Missouri Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Missouri Class owns vehicles that are not safe.

1911. The Missouri Class Members have been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1912. The Missouri Class Members risk irreparable injury as a result of the Companies' acts and omissions in violation of the Missouri MPA, and these violations present a continuing risk to them as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1913. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1914. As a direct and proximate result of the Companies' violations of the Missouri MPA, the Missouri Class has suffered injury-in-fact and/or actual damage.

1915. New GM is liable to the Missouri Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive relief enjoining New GM's unfair and deceptive practices, and any other just and proper relief under MO. REV. STAT. § 407.025.

1916. Pursuant to MO. REV. STAT. § 407.010, Plaintiffs will serve the Missouri Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

1917. Both companies conduct as described herein is unethical, oppressive, or unscrupulous and/or it presented a risk of substantial injury to consumers whose vehicles were prone to fail at times and under circumstances that could have resulted in death. Such acts are unfair practices in violation of 15 Mo. Code Reg. 60-8.020.

SEVENTY-NINTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (MO. REV. STAT. § 400.2-314)

1918. In the event the Court declines to certify a nationwide Class under

1919. Michigan law, Plaintiffs bring this claim on behalf the Missouri Class.

1920. Old GM and New GM were merchants with respect to motor vehicles.

1921. Under MO. REV. STAT. § 400.2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Missouri Class purchased their Defective Vehicles.

1922. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1923. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by Missouri Class members before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1924. As a direct and proximate result of Old GM and New GM's breach of the warranties of merchantability, the Missouri Class has been damaged in an amount to be proven at trial. New GM has successor liability for Old GM's breach.

EIGHTIETH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1925. In the event the Court declines to certify a nationwide Class under Michigan law, Plaintiffs bring this claim on behalf the Missouri Class.

1926. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1927. The Companies knew these representations were false when made.

1928. The vehicles purchased or leased by the Missouri Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1929. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the Missouri Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1930. The aforementioned concealment was material because if it had been disclosed the Missouri Class would not have bought, leased or retained their vehicles. When Missouri Class members bought a Defective Vehicle for personal, family, or household purposes, they reasonably expected the vehicle would not change ignition position unless the driver turned the key.

1931. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing, or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1932. Missouri Class members relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

1933. As a result of their reliance, the Missouri Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1934. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Missouri Class. Missouri Class members are therefore entitled to an award of punitive damages.

MONTANA

EIGHTY-FIRST CLAIM FOR RELIEF

VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973
(MONT. CODE ANN. § 30-14-101, *et. seq.*)

1935. This claim is brought on behalf of Class members who are Montana residents (the "Montana Class").

1936. Old GM, New GM, and the Montana Class are "person[s]" within the meaning of MONT. CODE ANN. § 30-14-102(6).

1937. Montana Class members are "consumer[s]" under MONT. CODE ANN. § 30-14-102(1).

1938. The sale or lease of the Defective Vehicles to Montana Class members occurred within "trade and commerce" within the meaning of MONT. CODE ANN. § 30-14-102(8), and the Companies committed deceptive and unfair acts in the conduct of "trade and commerce" as defined in that statutory section.

1939. The Montana Unfair Trade Practices and Consumer Protection Act ("Montana CPA") makes unlawful any "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." MONT. CODE ANN. § 30-14-103. By failing to disclose and actively concealing the dangerous ignition switch defects in the Defective Vehicles, both Old GM and New GM engaged in unfair and deceptive acts or practices in violation of the Montana CPA.

1940. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Montana CPA, and also has successor liability for the violations of Old GM.

1941. As alleged above, both Companies knew of the ignition switch defects, while the Montana Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1942. The Companies knew or should have known that their conduct violated the Montana CPA.

1943. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1944. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1945. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1946. The Companies each owed the Montana Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Montana Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Montana Class that contradicted these representations.

1947. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Montana Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1948. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Montana Class, about the true safety and reliability of

Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Montana Class.

1949. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Montana Class. When Montana Class members bought their Defective Vehicles, they reasonably expected the vehicle would not change ignition position unless the driver turned the key. Had Montana Class members known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1950. All members of the Montana Class suffered ascertainable loss caused by the Companies' failure to disclose material information. Montana Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and Montana Class members own vehicles that are not safe.

1951. The Montana Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so

tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1952. Montana Class members risk irreparable injury as a result of the Companies' acts and omissions in violation of the Montana CPA, and these violations present a continuing risk to the Montana Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1953. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1954. As a direct and proximate result of the Companies' violations of the Montana CPA, the Montana Class has suffered injury-in-fact and/or actual damage.

1955. Because the Companies' unlawful methods, acts, and practices have caused Montana Class members to suffer an ascertainable loss of money and property, the Montana Class seeks from New GM actual damages or $500, whichever is greater, discretionary treble damages, reasonable attorneys' fees, an order enjoining New GM's unfair, unlawful and/or deceptive practices, and any other relief the Court considers necessary or proper, under MONT. CODE ANN. § 30-14-133.

EIGHTY-SECOND CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (MONT. CODE § 30-2-314)

1956. In the event the Court declines to certify a nationwide Class, Plaintiffs bring this claim on behalf of the Montana Class.

1957. Old GM and New GM were merchants with respect to motor vehicles under MONT. CODE § 30-2-104.

1958. Under MONT. CODE § 30-2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when Montana Class members purchased their Defective Vehicles.

1959. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision. .

1960. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by Montana Class members before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1961. As a direct and proximate result of Old GM and New GM's breach of the warranties of merchantability, the Montana Class has been damaged in an amount to be proven at trial. New GM has successor liability for Old GM's breach.

EIGHTY-THIRD CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1962. In the event the Court declines to certify a nationwide Class under Michigan law, Plaintiffs bring this claim on behalf of the Montana Class.

1963. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

1964. The Companies knew these representations were false when made.

1965. The vehicles purchased or leased by the Montana Class were, in fact, defective, unsafe, and unreliable, because the vehicles were subject to sudden unintended shutdown,

with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

1966. The Companies had a duty to disclose that these vehicles were defective, unsafe, and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the Montana Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

1967. The aforementioned concealment was material because if it had been disclosed the Montana Class would not have bought, leased, or retained their vehicles.

1968. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing, or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

1969. The Montana Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing, or retaining the Defective Vehicles.

1970. As a result of their reliance, Montana Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

1971. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Montana Class. Montana Class members are therefore entitled to an award of punitive damages.

NEBRASKA

EIGHTY-FOURTH CLAIM FOR RELIEF

VIOLATION OF THE NEBRASKA CONSUMER PROTECTION ACT
(NEB. REV. STAT. § 59-1601, *et. seq.*)

1972. This claim is brought on behalf of Class members who are Nebraska residents (the "Nebraska Class").

1973. Old GM, New GM, and Nebraska Class members are "person[s]" under the Nebraska Consumer Protection Act ("Nebraska CPA"), NEB. REV. STAT. § 59-1601(1).

1974. The Companies' actions as set forth herein occurred in the conduct of trade or commerce as defined under NEB. REV. STAT. § 59-1601(2).

1975. The Nebraska CPA prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." NEB. REV. STAT. § 59-1602. The conduct of Old GM and New GM as set forth herein constitutes unfair or deceptive acts or practices.

1976. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or

commerce in violation of the Nebraska CPA, and also has successor liability for the violations of Old GM.

1977. As alleged above, both Companies knew of the ignition switch defects, while the Nebraska Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

1978. The Companies knew or should have known that their conduct violated the Nebraska CPA.

1979. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1980. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

1981. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

1982. The Companies each owed the Nebraska Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Nebraska Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Nebraska Class that contradicted these representations.

1983. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Nebraska Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

1984. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Nebraska Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Nebraska Class.

1985. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Nebraska Class. When the Nebraska Class members bought a Defective Vehicles, they reasonably expected the vehicle would not change ignition position unless the driver turned the key. Had the Nebraska Class known that their vehicles

had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

1986. All members of the Nebraska Class suffered ascertainable loss caused by the Companies' failure to disclose material information. Nebraska Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and Nebraska Class members own vehicles that are not safe.

1987. The Nebraska Class has been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

1988. Nebraska Class Members risk irreparable injury as a result of the Companies' acts and omissions in violation of the MPA, and these violations present a continuing risk to the Nebraska Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

1989. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

1990. As a direct and proximate result of the Companies' violations of the Nebraska CPA, the Nebraska Class has suffered injury-in-fact and/or actual damage.

1991. Because the Companies' conduct caused injury to Class members' property through violations of the Nebraska CPA, the Nebraska Class seeks recovery of actual damages, as well as enhanced damages up to $1,000, an order enjoining New GM's unfair or deceptive acts and practices, costs of Court, reasonable attorneys' fees, and any other just and proper relief available under NEB. REV. STAT. § 59-1609.

EIGHTY-FIFTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (NEB. REV. STAT. NEB. § 2-314)

1992. In the event the Court declines to certify a nationwide Class, Plaintiffs bring this claim on behalf of the Nebraska Class.

1993. Old GM and New GM were merchants with respect to motor vehicles.

1994. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when Nebraska Class members purchased their Defective Vehicles.

1995. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

1996. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by Nebraska Class members before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1997. As a direct and proximate result of Old GM and New GM's breach of the warranties of merchantability, the Nebraska Class has been damaged in an amount to be proven at trial. New GM has successor liability for Old GM's breach.

EIGHTY-SIXTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

1998. In the event the Court declines to certify a nationwide Class under Michigan law, Plaintiffs bring this claim on behalf of the Nebraska Class.

1999. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2000. The Companies knew these representations were false when made.

2001. The vehicles purchased or leased by the Nebraska Class were, in fact, defective, unsafe, and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2002. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the Nebraska Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2003. The aforementioned concealment was material because if it had been disclosed the Nebraska Class would not have bought, leased, or retained their vehicles.

2004. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing, or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2005. The Nebraska Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2006. As a result of their reliance, the Nebraska Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2007. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Nebraska Class. Nebraska Class members are therefore entitled to an award of punitive damages.

NEVADA

EIGHTY-SEVENTH CLAIM FOR RELIEF

VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT (NEV. REV. STAT. § 598.0903, *Et. seq.*)

2008. This claim is brought on behalf of Class members who are Nevada residents (the "Nevada Class").

2009. The Nevada Deceptive Trade Practices Act ("Nevada DTPA"), NEV. REV. STAT. § 598.0903, *et. seq.* prohibits deceptive trade practices. NEV. REV. STAT. § 598.0915 provides that a person engages in a "deceptive trade practice" if, in the course of business or occupation, the person: "(5) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith"; "(7) Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model"; "(9) Advertises goods or services with intent not to sell or lease them as advertised"; or "(15) Knowingly makes any other false representation in a transaction."

2010. Old GM and New GM both engaged in deceptive trade practices that violated the Nevada DTPA, including: knowingly representing that Defective Vehicles have uses and benefits which they do not have; representing that Defective Vehicles are of a particular standard, quality, and grade when they are not; advertising Defective Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Defective Vehicles has been supplied in accordance with a previous representation when it has not; and knowingly making other false representations in a transaction.

2011. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

2012. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity

to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Nevada DTPA, and also has successor liability for the violations of Old GM.

2013. As alleged above, both Companies knew of the ignition switch defects, while the Nevada Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2014. The Companies knew or should have known that their conduct violated the Nevada DTPA.

2015. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2016. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2017. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the

defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2018. The Companies each owed the Nevada Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Nevada Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Nevada Class that contradicted these representations.

2019. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Nevada Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2020. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Nevada Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Nevada Class.

2021. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Nevada Class. Had the Nevada Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2022. All members of the Nevada Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Nevada Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Nevada Class members own vehicles that are not safe.

2023. The Nevada Class has been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2024. Nevada Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Nevada DTPA, and these violations present a continuing risk

to the Nevada Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2025. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2026. As a direct and proximate result of the Companies' violations of the Nevada DTPA, the Nevada Class has suffered injury-in-fact and/or actual damage.

2027. Accordingly, the Nevada Class seeks their actual damages, punitive damages, an order enjoining New GM's deceptive acts or practices, costs of Court, attorney's fees, and all other appropriate and available remedies under the Nevada Deceptive Trade Practices Act. NEV. REV. STAT. § 41.600.

EIGHTY-EIGHTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(NEV. REV. STAT. § 104.2314)

2028. In the event the Court declines to certify a nationwide Class, Plaintiffs bring this claim on behalf of the Nevada Class.

2029. Old GM and New GM were merchants with respect to motor vehicles.

2030. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Nevada Class purchased their Defective Vehicles.

2031. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2032. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, internal investigations, and by numerous individual letters and communications sent by the Nevada Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2033. As a direct and proximate result of Old GM and New GM's breach of the warranties of merchantability, the Nevada Class has been damaged in an amount to be proven at trial. New GM has successor liability for Old GM's breach.

EIGHTY-NINTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2034. In the event the Court declines to certify a nationwide Class, Plaintiffs bring this claim solely on behalf of Class members who are Nevada residents.

2035. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2036. The Companies knew these representations were false when made.

2037. The vehicles purchased or leased by the Nevada Class were, in fact, defective, unsafe, and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2038. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the Nevada Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2039. The aforementioned concealment was material because if it had been disclosed the Nevada Class would not have bought, leased, or retained their vehicles.

2040. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing, or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2041. The Nevada Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing, or retaining the Defective Vehicles.

2042. As a result of their reliance, the Nevada Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2043. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Nevada Class. Nevada Class members are therefore entitled to an award of punitive damages.

NEW HAMPSHIRE

NINETIETH CLAIM FOR RELIEF

VIOLATION OF N.H. CONSUMER PROTECTION ACT
(N.H. REV. STAT. ANN. § 358-A:1, Et. seq.)

2062. This claim is brought on behalf of Class members who are New Hampshire residents (the "New Hampshire Class").

2063. The New Hampshire Class, Old GM and New GM are or were "person[s]" under the New Hampshire Consumer Protection Act ("New Hampshire CPA"), N.H. REV. STAT. ANN. § 358-A:1.

2064. The Companies' actions as set forth herein occurred in the conduct of trade or commerce as defined under N.H. REV. STAT. ANN. § 358-A:1.

2065. The New Hampshire CPA prohibits a person, in the conduct of any trade or commerce, from using "any unfair or deceptive act or practice," including "but… not limited to, the following:…(V) Representing that goods or services have… characteristics,… uses, benefits, or quantities that they do not have;" "(VII) Representing that goods or services are of a particular standard, quality, or grade,… if they are of another;" and "(IX) Advertising goods or services with intent not to sell them as advertised." N.H. REV. STAT. ANN. § 358-A:2.

2066. The Companies both participated in unfair or deceptive acts or practices that violated the New Hampshire CPA as described above and below. By failing to disclose and actively concealing the dangerous risk of ignition switch movement, engine shutdown, and airbag disabling in Defective Vehicles, the Companies engaged in deceptive business practices prohibited by the CPA, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard, quality, and grade when they are not; advertising Defective Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Defective Vehicles has been supplied in accordance with a previous representation when it has not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce.

2067. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the New Hampshire CPA, and also has successor liability for the violations of Old GM.

2068. As alleged above, both Companies knew of the ignition switch defects, while the New Hampshire Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2069. The Companies knew or should have known that their conduct violated the New Hampshire CPA.

2070. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2071. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2072. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2073. The Companies each owed the New Hampshire Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the New Hampshire Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the New Hampshire Class that contradicted these representations.

2074. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the New Hampshire Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2075. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the New Hampshire Class about the true safety and

reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the New Hampshire Class.

2076. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the New Hampshire Class. Had the New Hampshire Class Members known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2077. All members of the New Hampshire Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The New Hampshire Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the New Hampshire Class owns vehicles that are not safe.

2078. The New Hampshire Class Members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2079. New Hampshire Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the New Hampshire CPA, and these violations present a continuing risk to them as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2080. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2081. As a direct and proximate result of the Companies' violations of the New Hampshire CPA, the New Hampshire Class has suffered injury-in-fact and/or actual damage.

2082. Because the Companies' willful conduct caused injury to New Hampshire Class members' property through violations of the New Hampshire CPA, the New Hampshire Class seeks recovery of actual damages or $1,000, whichever is greater, treble damages, costs and reasonable attorneys' fees, an order enjoining New GM's unfair and/or deceptive acts and practices, and any other just and proper relief under N.H. REV. STAT. § 358-A:10.

NINETY-FIRST CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (N.H. REV. STAT. ANN. § 382-A:2-314)

2083. In the event the Court declines to certify a nationwide Class, this claim is brought on behalf of Class members who are New Hampshire residents.

2084. Old GM and New GM were merchants with respect to motor vehicles.

2085. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the New Hampshire Class Members purchased their Defective Vehicles.

2086. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective

Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2087. Old GM and New GM were provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by the New Hampshire Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2088. As a direct and proximate result of Old GM's breach of the warranties of merchantability, the New Hampshire Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach

NINETY-SECOND CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2089. In the event the Court declines to certify a nationwide Class, this claim is brought on behalf of Class members who are New Hampshire residents.

2090. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2091. The Companies knew these representations were false when made.

2092. The vehicles purchased or leased by the New Hampshire Class was, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2093. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the

event of a collision because the New Hampshire Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2094. The aforementioned concealment was material because if it had been disclosed the New Hampshire Class would not have bought, leased or retained their vehicles.

2095. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2096. The New Hampshire Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2097. As a result of their reliance, the New Hampshire Class Members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2098. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the New Hampshire Class, who are therefore entitled to an award of punitive damages.

NEW JERSEY

NINETY-THIRD CLAIM FOR RELIEF

VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT
(N.J. STAT. ANN. § 56:8-1, *Et. seq.*)

2099. This claim is on behalf of Class members who are New Jersey residents (the "New Jersey Class").

2100. The New Jersey Class, New GM and Old GM are or were "person[s]" within the meaning of N.J. STAT. ANN. § 56:8-1(d).

2101. Old GM and New GM engaged in the "sale" of "merchandise" within the meaning of N.J. STAT. ANN. § 56:8-1(c), (d).

2102. The New Jersey Consumer Fraud Act ("New Jersey CFA") makes unlawful "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby…" N.J. STAT. ANN. § 56:8-2. The Companies engaged in unconscionable or deceptive acts or practices that violated the New Jersey CFA as described above and below, and did so with the intent that Class members rely upon their acts, concealment, suppression or omissions.

2103. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing

deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the New Jersey CFA, and also has successor liability for the violations of Old GM.

2104. As alleged above, both Companies knew of the ignition switch defects, while the New Jersey Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2105. The Companies knew or should have known that their conduct violated the New Jersey CFA.

2106. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2107. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2108. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers

to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2109. The Companies each owed the New Jersey Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the New Jersey Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the New Jersey Class that contradicted these representations.

2110. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the New Jersey Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2111. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the New Jersey Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the New Jersey Class.

2112. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the New Jersey Class. Had the New Jersey Class known

that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2113. All members of the New Jersey Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The New Jersey Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the New Jersey Class owns vehicles that are not safe.

2114. The New Jersey Class Members have been damaged by the Companies' misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase the them—let alone pay what would otherwise be fair market value for the vehicles.

2115. New Jersey Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the New Jersey CFA, and these violations present a continuing risk to them as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2116. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2117. As a direct and proximate result of the Companies' violations of the New Jersey CFA, the New Jersey Class has suffered injury-in-fact and/or actual damage.

2118. The New Jersey Class is entitled to recover legal and/or equitable relief including an order enjoining New GM's unlawful conduct, treble damages, costs and reasonable attorneys' fees pursuant to N.J. STAT. ANN. § 56:8-19, and any other just and appropriate relief.

2119. Pursuant to N.J. STAT. ANN. § 56:8-20, the New Jersey Class will mail a copy of the complaint to New Jersey's Attorney General within ten (10) days of filing it with the Court.

NINETY-FOURTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(N.J. STAT. ANN. § 12A:2-314)

2120. In the event the Court declines to certify a nationwide Class, this claim is brought on behalf of Class members who are New Jersey residents.

2121. Old GM and New GM were merchants with respect to motor vehicles.

2122. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the New Jersey Class purchased their Defective Vehicles.

2123. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that

permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2124. Old GM and New GM were provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by the New Jersey Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2125. As a direct and proximate result of Old GM and New GM's breach of the warranties of merchantability, the New Jersey Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

NINETY-FIFTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2126. In the event the Court declines to certify a nationwide Class, this claim is on behalf of Class members who are New Jersey residents.

2127. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2128. The Companies knew these representations were false when made.

2129. The vehicles purchased or leased by the New Jersey Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2130. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the

event of a collision because the New Jersey Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2131. The aforementioned concealment was material because if it had been disclosed the New Jersey Class would not have bought, leased or retained their vehicles.

2132. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2133. The New Jersey Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements – in purchasing, leasing or retaining the Defective Vehicles.

2134. As a result of their reliance, the New Jersey Class Members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2135. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the New Jersey Class, who are therefore entitled to an award of punitive damages.

NEW MEXICO

NINETY-SIXTH CLAIM FOR RELIEF

VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT (N.M. STAT. ANN. § 57-12-1, *et. seq.*)

2136. This claim is on behalf of Class members who are New Mexico residents (the "New Mexico Class").

2137. Old GM, New GM, and the New Mexico Class members are or were "person[s]" under the New Mexico Unfair Trade Practices Act ("New Mexico UTPA"), N.M. STAT. ANN. § 57-12-2.

2138. The Companies' actions as set forth herein occurred in the conduct of trade or commerce as defined under N.M. STAT. ANN. § 57-12-2.

2139. The New Mexico UTPA makes unlawful "a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services… by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person," including but not limited to "(14) failing to state a material fact if doing so deceives or tends to deceive." N.M. STAT. ANN. § 57-12-2(D)(14). The Companies' acts and omissions described herein constitute unfair or deceptive acts or practices under N.M. STAT. ANN. § 57-12-2(D). In addition, the Companies' actions constitute unconscionable actions under N.M. STAT. ANN. § 57-12-2(E), since they took advantage of the lack of knowledge, ability, experience, and capacity of the New Mexico Class members to a grossly unfair degree.

2140. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity

to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the New Mexico UTPA, and also has successor liability for the violations of Old GM.

2141. As alleged above, both Companies knew of the ignition switch defects, while the New Mexico Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2142. The Companies knew or should have known that their conduct violated the New Mexico UTPA.

2143. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2144. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2145. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the

defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2146. The Companies each owed the New Mexico Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the New Mexico Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the New Mexico Class that contradicted these representations.

2147. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the New Mexico Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2148. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the New Mexico Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the New Mexico Class.

2149. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the New Mexico Class. Had the New Mexico Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2150. All members of the New Mexico Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The New Mexico Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the New Mexico Class owns vehicles that are not safe.

2151. The New Mexico Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2152. The New Mexico Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the New Mexico UTPA, and these violations

present a continuing risk to them as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2153. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2154. As a direct and proximate result of the Companies' violations of the New Mexico UTPA, and the New Mexico Class has suffered injury-in-fact and/or actual damage.

2155. New Mexico Class members seek punitive damages against New GM because the Companies' conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith. The Companies fraudulently and willfully misrepresented the safety and reliability of New GM-branded vehicles, deceived New Mexico Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting the myriad flaws in the New GM-branded vehicles the Companies repeatedly promised New Mexico Class members were safe. Because the Companies' conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith, it warrants punitive damages.

2156. Because the Companies' unconscionable, willful conduct caused actual harm to Class members, the Class seeks recovery of actual damages or $100, whichever is greater, discretionary treble damages or $300 (whichever is greater), punitive damages, and reasonable attorneys' fees and costs, as well as all other proper and just relief available under N.M. STAT. ANN. § 57-12-10.

NINETY-SEVENTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(N.M. STAT. ANN. § 55-2-314)

2157. In the event the Court declines to certify a nationwide Class, this claim is brought on behalf of Class members who are New Mexico residents.

2158. Old GM and New GM were a merchants with respect to motor vehicles.

2159. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the New Mexico Class purchased their Defective Vehicles.

2160. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision. .

2161. Old GM and New GM were provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by the New Mexico Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2162. As a direct and proximate result of Old GM and New GM's breach of the warranties of merchantability, the New Mexico Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

NINETY-EIGHTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2163. In the event the Court declines to certify a nationwide Class, this claim is on behalf of Class members who are New Mexico residents.

2164. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2165. The Companies knew these representations were false when made.

2166. The vehicles purchased or leased by the New Mexico Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2167. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the New Mexico Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2168. The aforementioned concealment was material because if it had been disclosed they would not have bought, leased or retained their vehicles.

2169. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2170. The New Mexico Class relied on the Companies' reputation – along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements – in purchasing, leasing or retaining the Defective Vehicles.

2171. As a result of their reliance, the New Mexico Class Members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2172. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the New Mexico Class, who are therefore entitled to an award of punitive damages.

NEW YORK

NINETY-NINTH CLAIM FOR RELIEF

DECEPTIVE ACTS OR PRACTICES
(N.Y. GEN. BUS. LAW § 349 AND 350)

2173. This claim is on behalf of Class members residing in New York (the "New York Class").

2174. The New York Class members are "person[s]" within the meaning of New York General Business Law ("New York GBL"), N.Y. GEN. BUS. LAW § 349(h).

2175. New GM is, and Old GM was, a "person," "firm," "corporation," or "association" within the meaning of N.Y. GEN. BUS. LAW § 349(b).

2176. The New York GBL makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce." N.Y. GEN. BUS. LAW § 349. The Companies' conduct, as described above and below, constitutes "deceptive acts or practices" within the meaning of the New York GBL. Furthermore, the Companies' deceptive acts and practices,

which were intended to mislead consumers who were in the process of purchasing and/or leasing the Defective Vehicles, was conduct directed at consumers.

2177. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

2178. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the New York GBL, and also has successor liability for the violations of Old GM.

2179. As alleged above, both Companies knew of the ignition switch defects, while the New York Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2180. The Companies knew or should have known that their conduct violated the New York GBL.

2181. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2182. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2183. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2184. The Companies each owed the New York Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the New York Class s; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the New York Class that contradicted these representations.

2185. The Defective Vehicles posed and /or pose an unreasonable risk of death or serious bodily injury to the New York Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2186. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the New York Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the New York Class.

2187. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the New York Class. Had the New York Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2188. All members of the New York Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The New York Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the New York Class owns vehicles that are not safe.

2189. The New York Class members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished

because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2190. The New York Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the New York GBL, and these violations present a continuing risk to the New York Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2191. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2192. As a direct and proximate result of the Companies' violations of the New York GBL, the New York Class has suffered injury-in-fact and/or actual damage.

2193. New York Class members seek punitive damages against New GM because the Companies' conduct was egregious. The Companies misrepresented the safety and reliability of millions of New GM-branded vehicles, concealed myriad defects in millions of New GM-branded vehicles and the systemic safety issues plaguing the Company, deceived Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting the serious flaw in its culture and in millions of New GM-branded vehicles. The Companies' egregious conduct warrants punitive damages.

2194. Because the Companies' willful and knowing conduct caused injury to Class members, the New York Class seeks recovery of actual damages or $50, whichever is greater,

discretionary treble damages up to $1,000, punitive damages, reasonable attorneys' fees and costs, an order enjoining New GM's deceptive conduct, and any other just and proper relief available under N.Y. GEN. BUS. LAW § 349.

ONE HUNDREDTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (N.Y. U.C.C. § 2-314)

2195. In the event the Court declines to certify a nationwide Class, this claim is brought on behalf of Class members who are New York residents.

2196. Old GM and New GM are merchants with respect to motor vehicles.

2197. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the New York Class purchased their Defective Vehicles.

2198. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision. .

2199. Old GM and New GM were provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by the New York Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2200. As a direct and proximate result of Old GM and New GM's breach of the warranties of merchantability, the New York Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

ONE HUNDRED FIRST CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2201. In the event the Court declines to certify a nationwide Class, this claim is brought solely on behalf of Class members who are New York residents.

2202. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2203. The Companies knew these representations were false when made.

2204. The vehicles purchased or leased by the New York Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2205. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the New York Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2206. The aforementioned concealment was material because if it had been disclosed the New York Class would not have bought, leased or retained their vehicles.

2207. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2208. The New York Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2209. As a result of their reliance, the New York Class have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2210. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the New York Class, who are therefore entitled to an award of punitive damages.

ONE HUNDRED SECOND CLAIM FOR RELIEF

VIOLATION OF NEW YORK'S FALSE ADVERTISING ACT
(N.Y. GEN. BUS. LAW § 350)
(Asserted on Behalf of the New York Class)

2211. This claim is brought on behalf of the New York Class.

2212. Old GM and New GM have been are New GM is engaged in the "conduct of… business, trade or commerce" within the meaning of N.Y. GEN. BUS. LAW § 350.

2213. NEW YORK GEN. BUS. LAW § 350 makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce." False advertising includes "advertising, including labeling, of a commodity… if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in light of… representations [made] with respect to the commodity.…" N.Y. GEN. BUS. LAW § 350-a.

2214. Old GM and New GM caused to be made or disseminated through New York, through advertising, marketing and other publications, statements that were untrue or

misleading, and that were known, or which by the exercise of reasonable care should have been known to them, to be untrue and misleading to consumers and New York Class.

2215. Old GM and New GM have violated § 350 because the misrepresentations and omissions regarding the Defects, as set forth above, were material and likely to deceive a reasonable consumer.

2216. The New York Class has suffered an injury, including the loss of money or property, as a result of New GM's false advertising. In purchasing or leasing their vehicles, the New York Class relied on the misrepresentation and/or omissions relating to the safety and reliability of the Defective Vehicles. Those representations were false and/or misleading because the Defects may cause the engine to shutdown, disabling power steering, power brakes, and disabling deployment of safety airbags. Had the New York Class known this, they would not have purchased or leased their Defective Vehicles and/or paid as much for them.

2217. Pursuant to N.Y. GEN. BUS. LAW § 350-e, the New York Class seeks monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500 each for each New York Class Member. Because the conduct was committed willfully and knowingly, the New York Class is entitled to recover three times actual damages, up to $10,000, for each New York Class Member.

2218. The New York Class also seeks an order enjoining the unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under N.Y. GEN. BUS. LAW §§ 349–350.

NORTH CAROLINA

ONE HUNDRED THIRD CLAIM FOR RELIEF

VIOLATION OF NORTH CAROLINA'S UNFAIR AND DECEPTIVE ACTS AND PRACTICES ACT (N.C. GEN. STAT. § 75-1.1 *et. seq.*)

2219. This claim is on behalf of Class members who are North Carolina residents (the "North Carolina Class").

2220. New GM and Old GM engaged in "commerce" within the meaning of N.C. GEN. STAT. § 75-1.1(b).

2221. The North Carolina Act broadly prohibits "unfair or deceptive acts or practices in or affecting commerce." N.C. GEN. STAT. § 75-1.1(a). As alleged above and below, the Companies willfully committed unfair or deceptive acts or practices in violation of the North Carolina Act.

2222. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the North Carolina Act, and also has successor liability for the violations of Old GM.

2223. As alleged above, both Companies knew of the ignition switch defects, while the North Carolina Class was deceived by the Companies' omission into believing the

Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2224. The Companies knew or should have known that their conduct violated the North Carolina Act.

2225. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2226. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2227. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2228. The Companies each owed the North Carolina Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the North Carolina Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the North Carolina Class that contradicted these representations.

2229. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the North Carolina Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2230. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the North Carolina Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the North Carolina Class.

2231. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the North Carolina Class. Had the North Carolina Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2232. The North Carolina Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The North Carolina Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective

Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the North Carolina Class own vehicles that are not safe.

2233. The North Carolina Class members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2234. North Carolina Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the North Carolina Act, and these violations present a continuing risk to them as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2235. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2236. As a direct and proximate result of the Companies' violations of the North Carolina Act, the North Carolina Class has suffered injury-in-fact and/or actual damage.

2237. North Carolina Class members seek punitive damages against New GM because the Companies' conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith. The Companies fraudulently and willfully misrepresented the safety and reliability of the Defective Vehicles, deceived North Carolina Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations

nightmare of correcting the myriad flaws in the Defective Vehicles it repeatedly promised Class members were safe. Because the Companies' conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith, it warrants punitive damages.

2238. Plaintiffs seek an order for treble their actual damages, an order enjoining New GM's unlawful acts, costs of Court, attorney's fees, and any other just and proper relief available under N.C. GEN. STAT. § 75-16.

ONE HUNDRED FOURTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (N.C. GEN. STAT. § 25-2-314)

2239. In the event the Court declines to certify a nationwide Class, this claim is on behalf of Class members who are North Carolina residents.

2240. Old GM and New GM were merchants with respect to motor vehicles.

2241. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the North Carolina Class purchased their Defective Vehicles.

2242. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2243. Old GM and New GM were provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by the North Carolina Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2244. As a direct and proximate result of Old GM and New GM's breach of the warranties of merchantability, the North Carolina Class have been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

ONE HUNDRED FIFTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2245. In the event the Court declines to certify a nationwide Class, this claim is on behalf of Class members who are North Carolina residents.

2246. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2247. The Companies knew these representations were false when made.

2248. The vehicles purchased or leased by the North Carolina Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2249. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the North Carolina Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2250. The aforementioned concealment was material because if it had been disclosed they would not have bought, leased or retained their vehicles.

2251. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false

because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2252. The North Carolina Class relied on the Companies' reputation – along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements – in purchasing, leasing or retaining the Defective Vehicles.

2253. As a result of their reliance, the North Carolina Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2254. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the North Carolina Class, who are therefore entitled to an award of punitive damages.

NORTH DAKOTA

ONE HUNDRED SIXTH CLAIM FOR RELIEF

VIOLATION OF THE NORTH DAKOTA CONSUMER FRAUD ACT
(N.D. CENT. CODE § 51-15-02)

2255. This claim is on behalf of Class members who are North Dakota residents (the "North Dakota Class").

2256. The North Dakota Class members, Old GM and New GM are or were "persons" within the meaning of N.D. CENT. CODE § 51-15-02.

2257. The Companies engaged in the "sale" of "merchandise" within the meaning of N.D. CENT. CODE § 51-15-02.

2258. The North Dakota Consumer Fraud Act ("North Dakota CFA") makes unlawful "[t]he act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise…." N.D. CENT. CODE § 51-15-02. As set forth above and below, the Companies committed deceptive acts or practices, with the intent that Class members rely thereon in connection with their purchase or lease of the Defective Vehicles.

2259. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the North Dakota CFA, and also has successor liability for the violations of Old GM.

2260. As alleged above, both Companies knew of the ignition switch defects, while the North Dakota Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2261. The Companies knew or should have known that their conduct violated the North Dakota CFA.

2262. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2263. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2264. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2265. The Companies each owed the North Dakota Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the North Dakota Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the North Dakota Class that contradicted these representations.

2266. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the North Dakota Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2267. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the North Dakota Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the North Dakota Class.

2268. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the North Dakota Class. Had the North Dakota Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2269. The North Dakota Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The North Dakota Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the North Dakota Class owns vehicles that are not safe.

2270. The North Dakota Class members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2271. North Dakota Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the North Dakota CFA, and these violations present a continuing risk to the North Dakota Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2272. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2273. As a direct and proximate result of the Companies' violations of the North Dakota CFA, the North Dakota Class has suffered injury-in-fact and/or actual damage.

2274. North Dakota Class members seek punitive damages against New GM because the Companies' conduct was egregious. The Companies misrepresented the safety and reliability of millions of Defective Vehicles, concealed myriad defects in millions of Defective Vehicles and the systemic safety issues plaguing the Company, deceived North Dakota Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting the serious flaw in

its culture and in millions of New GM-branded vehicles. The Companies' egregious conduct warrants punitive damages.

2275. Further, the Companies knowingly committed the conduct described above, and thus, under N.D. CENT. CODE § 51-15-09, New GM is liable to the North Dakota Class for treble damages in amounts to be proven at trial, as well as attorneys' fees, costs, and disbursements. The North Dakota Class further seeks an order enjoining New GM's unfair and/or deceptive acts or practices, and other just and proper available relief under the North Dakota CFA.

ONE HUNDRED SEVENTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (N.D. CENT. CODE § 41-02-31)

2276. In the event the Court declines to certify a nationwide Class, this claim is on behalf of Class members who are North Dakota residents.

2277. Old GM and New GM were merchants with respect to motor vehicles.

2278. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the North Dakota Class members purchased their Defective Vehicles.

2279. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2280. Old GM and New GM were provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and

communications sent by the North Dakota Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2281. As a direct and proximate result of Old GM's breach of the warranties of merchantability, the North Dakota Class has been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

ONE HUNDRED EIGHTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2282. In the event the Court declines to certify a nationwide Class, this claim is on behalf of Class members who are North Dakota residents.

2283. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2284. The Companies knew these representations were false when made.

2285. The Defective Vehicles were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2286. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the North Dakota Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2287. The aforementioned concealment was material because if it had been disclosed they would not have bought, leased or retained their vehicles.

2288. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor

vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2289. The North Dakota Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2290. As a result of their reliance, the North Dakota Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2291. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the North Dakota Class, who are therefore entitled to an award of punitive damages.

OHIO

ONE HUNDRED NINTH CLAIM FOR RELIEF

VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT
(OHIO REV. CODE ANN. § 1345.01, *et. seq.*)

2292. This claim is on behalf of Class members who are Ohio residents (the "Ohio Class").

2293. New GM is and Old GM was a "supplier" as that term is defined in OHIO REV. CODE § 1345.01(C).

2294. The Ohio Class members are "consumer[s]" as that term is defined in OHIO REV. CODE § 1345.01(D), and their purchases and leases of the Defective Vehicles are "consumer transaction[s]" within the meaning of OHIO REV. CODE § 1345.01(A).

2295. The Ohio Consumer Sales Practices Act ("Ohio CSPA"), OHIO REV. CODE § 1345.02, broadly prohibits unfair or deceptive acts or practices in connection with a consumer transaction. Specifically, and without limitation of the broad prohibition, the Act prohibits suppliers from representing (i) that goods have characteristics or uses or benefits which they do not have; (ii) that their goods are of a particular quality or grade they are not; and (iii) the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not. *Id.* The conduct of the Companies as alleged above and below constitutes unfair and/or deceptive consumer sales practices in violation of OHIO REV. CODE ANN. § 1345.02.

2296. By failing to disclose and actively concealing the dangerous risk of ignition switch movement, engine shutdown, and airbag disabling in Defective Vehicles, the Companies engaged in deceptive business practices prohibited by the Ohio CSPA, including: representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard, quality, and grade when they are not; representing that the subject of a transaction involving Defective Vehicles has been supplied in accordance with a previous representation when it has not; and engaging in other unfair or deceptive acts or practices.

2297. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

2298. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Ohio CSPA, and also has successor liability for the violations of Old GM.

2299. As alleged above, both Companies knew of the ignition switch defects, while the Ohio Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2300. The Companies knew or should have known that their conduct violated the Ohio CSPA Act.

2301. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2302. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2303. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2304. The Companies each owed the Ohio Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Ohio Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Ohio Class that contradicted these representations.

2305. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Ohio Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2306. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Ohio Class, about the true safety and reliability of

Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Ohio Class.

2307. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Ohio Class. Had the Ohio Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2308. The Ohio Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Ohio Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Ohio Class owns vehicles that are not safe.

2309. The Ohio Class members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2310. Ohio Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Ohio CSPA, and these violations present a continuing risk to

the Ohio Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2311. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2312. As a direct and proximate result of the Companies' violations of the Ohio CSPA, the Ohio Class has suffered injury-in-fact and/or actual damage.

2313. Ohio Class members seek punitive damages against New GM because the Companies' conduct was egregious. The Companies misrepresented the safety and reliability of millions of Defective Vehicles, concealed myriad defects in millions of Defective Vehicles and the systemic safety issues plaguing the Companies, deceived Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting the serious flaw in its culture and in millions of New GM-branded vehicles. The Companies' egregious conduct warrants punitive damages.

2314. The Ohio Class specifically does not allege herein a claim for violation of OHIO REV. CODE § 1345.72.

2315. The Companies were on notice pursuant to OHIO REV. CODE ANN. § 1345.09(B) that their actions constituted unfair, deceptive, and unconscionable practices by, for example, *Mason v. Mercedes-Benz USA, LLC*, No. 85031, 2005 Ohio App. LEXIS 3911, at *33 (S.D. Ohio Aug. 18, 2005), and *Lilly v. Hewlett-Packard Co.*, No. 1:05-CV-465 , 2006 U.S. Dist. LEXIS 22114, at *17-18 (S.D. Ohio Apr. 21, 2006). Further, the Companies' conduct as alleged above constitutes an act or practice previously declared to be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 and previously determined by Ohio courts to violate Ohio's Consumer Sales Practices Act and was

committed after the decisions containing these determinations were made available for public inspection under division (A)(3) of O.R.C. § 1345.05. The applicable rule and Ohio court opinions include, but are not limited to: OAC 109:4-3-16; *Mason v. Mercedes-Benz USA*, *LLC*, OPIF # 10002382*,* 2005 Ohio 4296 (Ohio Ct. App. 2005); *Khouri v. Lewis*, OPIF # 10001995, Cuyahoga Common Pleas No. 342098 (2001); *State ex rel. Montgomery v. Canterbury*, Franklin App. No. 98CVH054085 (2000); *Fribourg v. Vandemark* (July 26, 1999), Clermont App. No CA99-02-017, unreported (PIF # 10001874); *State ex rel. Betty D. Montgomery v. Ford Motor Co.*, OPIF #10002123; *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.*, OPIF #10002025; *Bellinger v. Hewlett-Packard Co.*, OPIF #10002077, No. 20744, 2002 Ohio App. LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002); *Borror v. MarineMax of Ohio*, OPIF #10002388, No. OT-06-010, 2007 Ohio App. LEXIS 525 (Ohio Ct. App. Feb. 9, 2007); *State ex rel. Jim Petro v. Craftmatic Organization, Inc.*, OPIF #10002347; *Mark J. Cranford, et al v. Joseph Airport Ford, Inc.*, OPIF #10001586; State ex rel. *William J. Brown v. Harold Lyons, et al.*, OPIF #10000304; *Brinkman v. Mazda Motor of America, Inc.*, OPIF #10001427; *Mosley v. Performance Mitsubishi aka Automanage*, OPIF #10001326; *Walls v. Harry Williams dba Butch's Auto Sales*, OPIF #10001524; and, *Brown v. Spears*, OPIF #10000403.

2316. As a result of the foregoing wrongful conduct of New GM, the Ohio Class has been damaged in an amount to be proven at trial, and seek all just and proper remedies, including, but not limited to, actual and statutory damages, an order enjoining New GM's deceptive and unfair conduct, treble damages, court costs and reasonable attorneys' fees, pursuant to OHIO REV. CODE § 1345.09, *et. seq.*

ONE HUNDRED TENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2317. In the event the Court declines to certify a nationwide Class, this claim is on behalf of Class members who are Ohio residents.

2318. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2319. The Companies knew these representations were false when made.

2320. The vehicles purchased or leased by the Ohio Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2321. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the Ohio Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2322. The aforementioned concealment was material because if it had been disclosed the Ohio Class would not have bought, leased or retained their vehicles.

2323. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2324. The Ohio Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2325. As a result of their reliance, the Ohio Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2326. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Ohio Class, who are therefore entitled to an award of punitive damages.

ONE HUNDRED ELEVENTH CLAIM FOR RELIEF

IMPLIED WARRANTY IN TORT
(On Behalf of the Ohio Class)

2327. This claim is on behalf of the Ohio Class.

2328. The Vehicles contained a design defect, namely, a faulty ignition system that fails under reasonably foreseeable use, resulting in loss of brakes, power steering, and airbags, among others, as detailed herein more fully.

2329. The design, manufacturing, and/or assembly defects existed at the time these Vehicles containing the defective ignition systems left the possession or control of Old GM.

2330. Based upon the dangerous product defects, Old GM and then New GM failed to meet the expectations of a reasonable consumer. The Vehicles failed their ordinary, intended use because the ignition systems in the Vehicles do not function as a reasonable consumer would expect. Moreover, it presents a serious danger to the Ohio Class that cannot be eliminated without significant cost.

2331. The design defects in the Vehicles were the direct and proximate cause of economic damages to the Ohio Class.

OKLAHOMA

ONE HUNDRED TWELFTH CLAIM FOR RELIEF

VIOLATION OF OKLAHOMA CONSUMER PROTECTION ACT
(OKLA. STAT. TIT. 15 § 751, *et. seq.*)

2332. This claim is on behalf of Class members who are Oklahoma residents (the "Oklahoma Class").

2333. Oklahoma Class members are "persons" under the Oklahoma Consumer Protection Act ("Oklahoma CPA"), OKLA. STAT. TIT. 15 § 752.

2334. Old GM was, and New GM is a "person," "corporation," or "association" within the meaning of OKLA. STAT. TIT. 15 § 15-751(1).

2335. The sale or lease of the Defective Vehicles to the Oklahoma Class members was a "consumer transaction" within the meaning of OKLA. STAT. TIT. 15 § 752, and the Companies' actions as set forth herein occurred in the conduct of trade or commerce.

2336. The Oklahoma CPA declares unlawful, *inter* alia, the following acts or practices when committed in the course of business: "mak[ing] a false or misleading representation, knowingly or with reason to know, as to the characteristics…, uses, [or] benefits, of the subject of a consumer transaction," or making a false representation, "knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another or "[a]dvertis[ing], knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;" and otherwise committing "an unfair or deceptive trade practice." *See* OKLA. STAT. TIT. 15, § 753.

2337. By failing to disclose and actively concealing the dangerous risk of ignition switch movement, engine shutdown, and airbag disabling in Defective Vehicles, the Companies engaged in unfair and deceptive business practices prohibited by the Oklahoma CPA, including: representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard, quality, and grade when they are not; and advertising Defective Vehicles with the intent not to sell or lease them as advertised; misrepresenting, omitting and engaging in other practices that have deceived or could reasonably be expected to deceive or mislead; and engaging in practices which offend established public policy or are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

2338. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Oklahoma CPA, and also has successor liability for the violations of Old GM.

2339. As alleged above, both Companies knew of the ignition switch defects, while the Oklahoma Class was deceived by the Companies' omission into believing the Defective

Vehicles were safe, and the information could not have reasonably been known by the consumer.

2340. The Companies knew or should have known that their conduct violated the Oklahoma CPA.

2341. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2342. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2343. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2344. The Companies each owed the Oklahoma Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Oklahoma Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Oklahoma Class that contradicted these representations.

2345. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Oklahoma Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2346. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Oklahoma Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Oklahoma Class.

2347. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Oklahoma Class. Had the Oklahoma Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2348. The Oklahoma Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Oklahoma Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective

Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Oklahoma Class own vehicles that are not safe.

2349. The Oklahoma Class have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2350. Oklahoma Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the Oklahoma CPA, and these violations present a continuing risk to them as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2351. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2352. As a direct and proximate result of the Companies' violations of the Oklahoma CPA, the Oklahoma Class has suffered injury-in-fact and/or actual damage.

2353. Oklahoma Class members seek punitive damages against New GM because the Companies' conduct was egregious. The Companies misrepresented the safety and reliability of millions of Defective Vehicles, concealed myriad defects in millions of Defective Vehicles and the systemic safety issues plaguing the Companies, deceived Oklahoma Class members on life-or-death matters, and concealed material facts that only it knew, all to avoid the

expense and public relations nightmare of correcting the serious flaw in its culture and in millions of New GM-branded vehicles. The Companies' egregious conduct warrants punitive damages.

2354. The Companies' conduct as alleged herein was unconscionable since (1) the Companies, knowingly or with reason to know, took advantage of consumers reasonably unable to protect their interests because of their age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor; (2) at the time the consumer transaction was entered into, Old GM knew or had reason to know that price grossly exceeded the price at which similar vehicles were readily obtainable in similar transactions by like consumers; and (3) Old GM knew or had reason to know that the transaction Old GM induced the consumer to enter into was excessively one-sided in favor of Old GM.

2355. Because the Companies' unconscionable conduct caused injury to Oklahoma Class members, the Oklahoma Class seeks recovery of actual damages, discretionary penalties up to $2,000 per violation, and reasonable attorneys' fees, under OKLA. STAT. TIT. 15 § 761.1. The Oklahoma Class further seeks an order enjoining New GM's unfair and/or deceptive acts or practices, and any other just and proper relief available under the Oklahoma CPA.

ONE HUNDRED THIRTEENTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(12A OKLA. STAT. ANN. § 2-314)

2356. In the event the Court declines to certify a nationwide Class, this claim is on behalf of Class members who are Oklahoma residents.

2357. Old GM and New GM were merchants with respect to motor vehicles.

2358. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions when the Oklahoma Class purchased their Defective Vehicles.

2359. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shutdown of power steering and power brakes and the non-deployment of airbags in the event of a collision. .

2360. Old GM and New GM were provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by the Oklahoma Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2361. As a direct and proximate result of Old GM and New GM's breach of the warranties of merchantability, the Oklahoma Class have been damaged in an amount to be proven at trial. New GM also has successor liability for Old GM's breach.

ONE HUNDRED FOURTEENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2362. In the event the Court declines to certify a nationwide Class, this claim is on behalf of Class members who are Oklahoma residents.

2363. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2364. The Companies knew these representations were false when made.

2365. The vehicles purchased or leased by the Oklahoma Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended

shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2366. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shutdown, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the Oklahoma Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2367. The aforementioned concealment was material because if it had been disclosed the Oklahoma Class would not have bought, leased or retained their vehicles.

2368. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2369. The Oklahoma Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2370. As a result of their reliance, the Oklahoma Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2371. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Oklahoma Class, who are therefore entitled to an award of punitive damages.

OREGON

ONE HUNDRED FIFTEENTH CLAIM FOR RELIEF

VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT
(OR. REV. STAT. § 646.605, *et. seq.*)

2372. This claim is brought on behalf of Class members who are Oregon residents (the "Oregon Class")

2373. Old GM was, and New GM is, a person within the meaning of OR. REV. STAT. § 646.605(4).

2374. The Defective Vehicles at issue are "goods" obtained primarily for personal family or household purposes within the meaning of OR. REV. STAT. § 646.605(6).

2375. The Oregon Unfair Trade Practices Act ("Oregon UTPA") prohibits a person from, in the course of the person's business, doing any of the following: "(e) Represent[ing] that… goods… have… characteristics… uses, benefits,… or qualities that [they] do not have; (g) Represent[ing] that… goods… are of a particular standard [or] quality… if they are of another; (i) Advertis[ing]… goods or services with intent not to provide [them] as advertised;" and "(u) engag[ing] in any other unfair or deceptive conduct in trade or commerce." OR. REV. STAT. § 646.608(1).

2376. The Companies engaged in unlawful trade practices, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they

are not; advertising Defective Vehicles with the intent not to sell them as advertised; and engaging in other unfair or deceptive acts.

2377. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

2378. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Oregon UTPA, and also has successor liability for the violations of Old GM.

2379. As alleged above, both Companies knew of the ignition switch defects, while the Oregon Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2380. The Companies knew or should have known that their conduct violated the Oregon UTPA.

2381. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2382. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2383. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2384. The Companies each owed the Oregon Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Oregon Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Oregon Class that contradicted these representations.

2385. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Oregon Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2386. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Oregon Class.

2387. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Oregon Class. Had the Oregon Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2388. The Oregon Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Oregon Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Oregon Class own vehicles that are not safe.

2389. The Oregon Class members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's

egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, has so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2390. Oregon Class members risk irreparable injury as a result of the Companies' acts and omissions in violation of the Oregon UTPA, and these violations present a continuing risk to the Oregon Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2391. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2392. As a direct and proximate result of the Companies' violations of the Oregon UTPA, the Oregon Class has suffered injury-in-fact and/or actual damage.

2393. The Oregon Class is entitled to recover the greater of actual damages or $200 pursuant to OR. REV. STAT. § 646.638(1). The Oregon Class is also entitled to punitive damages because the Companies engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of others.

2394. Pursuant to OR. REV. STAT. § 646.638(2), Plaintiffs will mail a copy of the complaint to Oregon's attorney general.

ONE HUNDRED SIXTEENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT
(BASED ON OREGON LAW)

2395. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Oregon residents.

2396. As set forth above, Old GM concealed and/or suppressed material facts concerning the safety of its vehicles.

2397. Old GM had a duty to disclose these safety issues because it consistently marketed its vehicles as safe and proclaimed that safety was one of Old GM's highest corporate priorities. Once Old GM made representations to the public about safety, it was under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

2398. In addition, Old New GM had a duty to disclose these omitted material facts because they were known and/or accessible only to Old GM who had superior knowledge and access to the facts, and Old GM knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle inadvertently shuts down, and whether a vehicle's power steering, power brakes and airbags become inoperable during ordinary driving conditions, are material safety concerns. Old GM possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

2399. Old GM actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce the Oregon Class to purchase Defective Vehicles at a higher price for the vehicles, which did not match the vehicles' true value.

2400. New GM still has not made full and adequate disclosure and continues to defraud the Oregon Class.

2401. The Oregon Class members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Oregon Class' actions were justified. Old GM and New GM were in exclusive control of the material facts and such facts were not known to the public or the Oregon Class.

2402. As a result of the concealment and/or suppression of the facts, the Oregon Class sustained damage. For those Oregon Class members who elect to affirm the sale, these damages, include the difference between the actual value of that which the Oregon Class paid and the actual value of that which they received, together with additional damages arising from the sales transaction, amounts expended in reliance upon the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits. Those who want to rescind their purchases are entitled to restitution and consequential damages.

2403. The Companies' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of the Oregon Class' rights and well-being to enrich the Companies. The Companies' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

PENNSYLVANIA

ONE HUNDRED SEVENTEENTH CLAIM FOR RELIEF

VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW
(73 P.S. § 201-1, *et. seq.*)

2404. This claim is brought on behalf of Class members who are Pennsylvania residents (the "Pennsylvania Class")

2405. The Class purchased or leased their Defective Vehicles primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

2406. All of the acts complained of herein were perpetrated by the Companies in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

2407. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including: (i) "Representing that goods or services have… characteristics,…. Benefits or qualities that they do not have;" (ii) "Representing that goods or services are of a particular standard, quality or grade…if they are of another;:" (iii) "Advertising goods or services with intent not to sell them as advertised;" and (iv) "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding." 73 P.S. § 201-2(4).

2408. The Companies engaged in unlawful trade practices, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; advertising Defective Vehicles with the intent not to sell them as advertised; and engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

2409. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or

commerce in violation of the Pennsylvania CPL, and also has successor liability for the violations of Old GM.

2410. As alleged above, both Companies knew of the ignition switch defects, while the Pennsylvania Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2411. The Companies knew or should have known that their conduct violated the Pennsylvania CPL.

2412. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2413. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2414. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. New GM also knew of a serious safety issues and a myriad of serious defects in a host of New GM vehicles. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2415. The Companies each owed the Pennsylvania Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Pennsylvania Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Pennsylvania Class that contradicted these representations.

2416. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Pennsylvania Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2417. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Pennsylvania Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Pennsylvania Class.

2418. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Pennsylvania Class. Had the Pennsylvania Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2419. The Pennsylvania Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Pennsylvania Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Pennsylvania Class owns vehicles that are not safe.

2420. The Pennsylvania Class has been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls has so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2421. Pennsylvania Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Pennsylvania Act, and these violations present a continuing risk to them as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2422. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2423. As a direct and proximate result of the Companies' violations of the Pennsylvania CPL, the Pennsylvania Class have suffered injury-in-fact and/or actual damage.

2424. New GM is liable to the Pennsylvania Class for treble their actual damages or $100, whichever is greater, and attorneys' fees, costs. 73 P.S. § 201-9.2(a). The Pennsylvania Class are also entitled to an award of punitive damages given that the Companies' conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

ONE HUNDRED EIGHTEENTH CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(13 PA. CONS. STAT. ANN. § 2314)

2425. This claim is brought solely on behalf of Class members who are Pennsylvania residents.

2426. Old GM was and New GM is a merchant with respect to motor vehicles.

2427. A warranty that the Defective Vehicles were in merchantable condition was implied by law when Old GM sold the Defective Vehicles to Plaintiffs and the Class.

2428. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended stalling to occur during ordinary driving conditions; when the vehicles stall, the power brakes and power steering become inoperable and the vehicles' airbags will not deploy,

2429. Old GM and New GM were provided notice of these issues by numerous complaints filed against it, by its own internal investigations, and by numerous individual letters and communications sent by the Pennsylvania Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2430. As a direct and proximate result of Old GM and New GM's breach of the warranties of merchantability, the Pennsylvania Class has been damaged in an amount to be proven at trial.

ONE HUNDRED NINETEENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2431. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Pennsylvania residents.

2432. As set forth above, both Old GM and New GM concealed and/or suppressed material facts concerning the safety of the Defective Vehicles.

2433. Both Companies had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety was one of the Companies' highest corporate priorities. Once the Companies made representations to the public about safety, they were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

2434. In addition, the Companies had a duty to disclose these omitted material facts because they were known and/or accessible only to the Companies who had superior knowledge and access to the facts, and the Companies new they were not known to or reasonably discoverable by the Pennsylvania Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle inadvertently shuts down, and whether a vehicle's power steering, power brakes and airbags become inoperable during ordinary driving conditions, are material safety concerns. The

Companies possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

2435. The Companies actively concealed and/or suppressed these material facts with the intent to induce the Pennsylvania Class to purchase Defective Vehicles at a higher price for the vehicles, which did not match the vehicles' true value. The Companies also concealed and withheld the information in order to prevent a public relations nightmare and harm to the Companies' profits that would result from disclosure.

2436. New GM still has not made full and adequate disclosure and continues to defraud the Pennsylvania Class.

2437. The Pennsylvania Class was unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Pennsylvania Class' actions were justified. The Companies were in exclusive control of the material facts and such facts were not known to the public or the Pennsylvania Class.

2438. As a result of the concealment and/or suppression of the facts, the Pennsylvania Class sustained damage. For those who elect to affirm the sale, these damages include the difference between the actual value of that which the Class member paid and the actual value of that which she received, together with additional damages arising from the sales transaction, amounts expended in reliance upon the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits. Those who want to rescind the purchase are entitled to restitution and consequential damages.

2439. The Companies' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of the Pennsylvania Class' rights and well-being to enrich the Companies. The Companies' conduct warrants an assessment of punitive damages

in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

RHODE ISLAND

ONE HUNDRED TWENTIETH CLAIM FOR RELIEF

VIOLATION OF THE RHODE ISLAND UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT
(R.I. GEN. LAWS § 6-13.1, *et. seq.*)

2440. This claim is brought solely on behalf of Class members who are Rhode Island residents (the "Rhode Island Class").

2441. The Rhode Island Class members purchased or leased one or more Defective Vehicles primarily for personal, family, or household purposes within the meaning of R.I. GEN. LAWS § 6-13.1-5.2(a).

2442. Rhode Island's Unfair Trade Practices and Consumer Protection Act ("Rhode Island CPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce" including: "(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have"; "(vii) Representing that goods or services are of a particular standard, quality, or grade…, if they are of another"; "(ix) Advertising goods or services with intent not to sell them as advertised"; "(xii) Engaging in any other conduct that similarly creates a likelihood of confusion or of misunderstanding"; "(xiii) Engaging in any act or practice that is unfair or deceptive to the consumer"; and "(xiv) Using any other methods, acts or practices which mislead or deceive members of the public in a material respect." R.I. GEN. LAWS § 6-13.1-1(6).

2443. The Companies engaged in unlawful trade practices, including: (1) representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Defective Vehicles are of a particular

standard and quality when they are not; (3) advertising the Defective Vehicles with the intent not to sell them as advertised; and (4) otherwise engaging in conduct that is unfair or deceptive and likely to deceive.

2444. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

2445. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Rhode Island CPA, and also has successor liability for the violations of Old GM.

2446. As alleged above, both Companies knew of the ignition switch defects, while the Rhode Island Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2447. The Companies knew or should have known that their conduct violated the Rhode Island CPA.

2448. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2449. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shutdown in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2450. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2451. The Companies each owed the Rhode Island Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Rhode Island Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Rhode Island Class that contradicted these representations.

2452. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Rhode Island Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2453. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Rhode Island Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Rhode Island Class.

2454. The propensity of the Defective Vehicles to inadvertently shutdown during ordinary operation was material to the Rhode Island Class. Had they known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2455. The Rhode Island Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Rhode Island Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Rhode Island Class owns vehicles that are not safe.

2456. The Rhode Island Class have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-

publicized conduct and the never-ending and piecemeal nature of New GM's recalls has so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2457. The Rhode Island Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Rhode Island CPA, and these violations present a continuing risk to them as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2458. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2459. As a direct and proximate result of the Companies' violations of the Rhode Island CPA, the Rhode Island Class have suffered injury-in-fact and/or actual damage.

2460. The Rhode Island Class are entitled to recover the greater of actual damages or $200 pursuant to R.I. GEN. LAWS § 6-13.1-5.2(a). The Rhode Island Class also seeks punitive damages in the discretion of the Court because of the Companies' egregious disregard of consumer and public safety and its long-running concealment of the serious safety defects and their tragic consequences.

ONE HUNDRED TWENTY-FIRST CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(R.I. GEN. LAWS § 6A-2-314)

2461. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Rhode Island residents.

2462. Old GM and New GM were merchants with respect to motor vehicles.

2463. A warranty that the Defective Vehicles were in merchantable condition was implied by law when the Rhode Island Class purchased their Defective Vehicles.

2464. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended stalling to occur during ordinary driving conditions; when the vehicles stall, the power brakes and power steering become inoperable and the vehicles' airbags will not deploy,

2465. Old GM was provided notice of these issues by numerous complaints filed against it, by its own internal investigations, and by numerous individual letters and communications sent by the Rhode Island Class before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2466. As a direct and proximate result of Old GM's breach of the warranties of merchantability, the Rhode Island Class has been damaged in an amount to be proven at trial.

ONE HUNDRED TWENTY-SECOND CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2467. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of Class members who are Rhode Island residents.

2468. As set forth above, Both Old GM and New GM concealed and/or suppressed material facts concerning the safety of the Defective Vehicles.

2469. The Companies had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety was one of the Companies' highest corporate priorities. Once the Companies made representations to the public about safety, they were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify

those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

2470. In addition, the Companies had a duty to disclose these omitted material facts because they were known and/or accessible only to the Companies who had superior knowledge and access to the facts, and the Companies knew they were not known to or reasonably discoverable by the Rhode Island Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle inadvertently shuts down, and whether a vehicle's power steering, power brakes and airbags become inoperable during ordinary driving conditions, are material safety concerns. The Companies possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

2471. The Companies actively concealed and/or suppressed these material facts with the intent to induce the Rhode Island Class to purchase Defective Vehicles at a higher price for the vehicles, which did not match the vehicles' true value. The Companies also concealed and withheld the information in order to prevent a public relations nightmare and harm to the Companies' profits that would result from disclosure.

2472. The Rhode Island Class members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Rhode Island Class' actions were justified. The Companies were in exclusive control of the material facts and such facts were not known to the public or the Rhode Island Class.

2473. As a result of the concealment and/or suppression of the facts, the Rhode Island Class sustained damage. For those who elect to affirm the sale, these damages include

the difference between the actual value of that which the Rhode Island Class member paid and the actual value of what she received, together with additional damages arising from the sales transaction, amounts expended in reliance upon the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits. Those who want to rescind the purchase are entitled to restitution and consequential damages.

2474. The Companies' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of the Rhode Island Class' rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

SOUTH CAROLINA

ONE HUNDRED TWENTY-THIRD CLAIM FOR RELIEF

VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT (S.C. CODE ANN. § 39-5-10, *et. seq.*)

2475. This claim is brought on behalf of Class members who are South Carolina residents (the "South Carolina Class").

2476. Old GM was, and New GM is, a "person" under S.C. CODE ANN. § 39-5-10.

2477. The South Carolina Unfair Trade Practices Act ("South Carolina UTPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce.…" S.C. CODE § 39-5-20(a). The Companies engaged in unfair and deceptive acts or practices and violated the South Carolina UTPA by failing to disclose and actively concealing the dangerous risk caused by the ignition switch defects in the Defective Vehicles.

2478. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

2479. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the South Carolina UTPA, and also has successor liability for the violations of Old GM.

2480. As alleged above, both Companies knew of the ignition switch defects, while the South Carolina Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2481. The Companies knew or should have known that their conduct violated the South Carolina UTPA.

2482. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2483. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2484. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2485. The Companies each owed the South Carolina Class a duty to disclose the defective nature of the Defective Vehicles, including the dangerous risks posed by the defective ignition switches, because the Companies:

a. Possessed exclusive knowledge of the defects rendering the Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with the Defective Vehicles in order to hide the life-threatening problems from Plaintiff; and/or

c. Made incomplete representations about the safety and reliability of the Defective Vehicles, while purposefully withholding material facts from Plaintiffs and the Class that contradicted these representations.

2486. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the South Carolina Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2487. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the South Carolina Class, about the true safety and reliability

of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the South Carolina Class.

2488. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the South Carolina Class. Had the South Carolina Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2489. All members of the South Carolina Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The South Carolina Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the South Carolina Class own vehicles that are not safe.

2490. The South Carolina Class have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls has so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2491. South Carolina Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the South Carolina UTPA, and these violations

present a continuing risk to the South Carolina Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2492. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2493. As a direct and proximate result of the Companies' violations of the South Carolina UTPA, the South Carolina Class members have suffered injury-in-fact and/or actual damage.

2494. Pursuant to S.C. CODE ANN. § 39-5-140(a), the South Carolina Class seeks monetary relief against New GM to recover for their economic losses. Because the Companies' actions were willful and knowing, the South Carolina Class members' damages should be trebled. *Id.*

2495. The South Carolina Class further alleges that the Companies' malicious and deliberate conduct warrants an assessment of punitive damages because the Companies carried out despicable conduct with willful and conscious disregard of the rights and safety of others, subjecting the South Carolina Class to cruel and unjust hardship as a result. The Companies intentionally and willfully misrepresented the safety and reliability of the Defective Vehicles, deceived the South Carolina Class on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly promised the South Carolina Class was safe. New GM's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

2496. The South Carolina Class further seeks an order enjoining New GM's unfair or deceptive acts or practices.

ONE HUNDRED TWENTY-FOURTH CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (S.C. CODE § 36-2-314)

2497. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the South Carolina Class.

2498. Old GM and New GM are merchants with respect to motor vehicles under S.C. CODE § 36-2-314.

2499. Under S.C. CODE § 36-2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law when the South Carolina Class purchased the vehicles.

2500. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended stalling to occur during ordinary driving conditions; when the vehicles stall, the power brakes and power steering become inoperable and the vehicles' airbags will not deploy,

2501. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, their own internal investigations, and by numerous individual letters and communications sent by the South Carolina Class members before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2502. As a direct and proximate result of Old GM and New GM's breach of the warranty of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

ONE HUNDRED TWENTY-FIFTH CLAIM FOR RELIEF

VIOLATIONS OF THE SOUTH CAROLINA REGULATION OF MANUFACTURERS, DISTRIBUTORS, AND DEALERS ACT
(S.C. CODE ANN. § 56-15-10, *et. seq.*)

2503. This claim is brought solely on behalf of the South Carolina Class.

2504. Old GM and New GM were "manufacturer[s]" as set forth in S.C. CODE ANN. § 56-15-10, as they were engaged in the business of manufacturing or assembling new and unused motor vehicles.

2505. Old GM and New GM participated in unfair or deceptive acts or practices that violated the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act"), S.C. CODE ANN. § 56-15-30.

2506. Old GM and New GM engaged in actions which were arbitrary, in bad faith, unconscionable, and which caused damage to Plaintiffs, the Class, and to the public.

2507. Old GM and New GM's bad faith and unconscionable actions include, but are not limited to: (1) representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with the intent not to sell them as advertised, (4) representing that a transaction involving Defective Vehicles confers or involves rights, remedies, and obligations which it does not, and (5) representing that the subject of a transaction involving Defective Vehicles has been supplied in accordance with a previous representation when it has not.

2508. Old GM and New GM resorted to and used false and misleading advertisements in connection with its business. As alleged above, Old GM and New GM made numerous material statements about the safety and reliability of Defective Vehicles that

were either false or misleading. Each of these statements contributed to the deceptive context of Old GM and New GM's unlawful advertising and representations as a whole.

2509. Pursuant to S.C. CODE ANN. § 56-15-110(2), members of the South Carolina Class bring this action on behalf of themselves as the action is one of common or general interest to many persons and the parties are too numerous to bring them all before the court.

2510. The South Carolina Class members are entitled to double the actual damages, the cost of the suit, attorney's fees pursuant to S.C. CODE ANN. § 56-15-110. The South Carolina Class also seeks injunctive relief under S.C. CODE ANN. § 56-15-110. The South Carolina Class also seeks treble damages because Old GM and New GM acted maliciously.

SOUTH DAKOTA

ONE HUNDRED TWENTY-SIXTH CLAIM FOR RELIEF

VIOLATION OF THE SOUTH DAKOTA DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION LAW (S.D. CODIFIED LAWS § 37-24-6)

2511. This claim is brought on behalf of Class members who are South Dakota residents (the "South Dakota Class").

2512. The South Dakota Deceptive Trade Practices and Consumer Protection Law ("South Dakota CPL") prohibits deceptive acts or practices, which are defined for relevant purposes to include "[k]nowingly act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby [.]" S.D. CODIFIED LAWS § 37-24-6(1). The conduct of Old GM and New GM as set forth herein constitutes deceptive acts or practices, fraud, false promises, misrepresentation, concealment, suppression, and omission of material facts in violation of S.D. Codified Laws § 37-24-6 and 37-24-31,

including, but not limited to, Old GM and New GM's manufacture and sale of vehicles with an ignition switch defect which the Old GM and New GM failed to adequately investigate, disclose, and remedy, the Companies' misrepresentations and omissions regarding the safety and reliability of the Defective Vehicles, and the Companies' misrepresentations concerning a host of other defects and safety issues.

2513. The Companies' actions as set forth above occurred in the conduct of trade or commerce.

2514. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the South Dakota CPL, and also has successor liability for the violations of Old GM.

2515. As alleged above, both Companies knew of the ignition switch defects, while the South Dakota Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2516. The Companies knew or should have known that their conduct violated the South Dakota CPL.

2517. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2518. Old GM and New GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM and New GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2519. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2520. The Companies each owed the South Dakota Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the South Dakota Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the South Dakota Class that contradicted these representations.

2521. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the South Dakota Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2522. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the South Dakota Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the South Dakota Class.

2523. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the South Dakota Class. Had the South Dakota Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2524. All members of the South Dakota Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The South Dakota Class overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the South Dakota Class own vehicles that are not safe.

2525. The South Dakota Class members have been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2526. South Dakota Class Members risk irreparable injury as a result of the Companies' act and omissions in violation of the South Dakota CPL, and these violations present a continuing risk to the South Dakota Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2527. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2528. As a direct and proximate result of the Companies' violations of the South Dakota CPL, the South Dakota Class members have suffered injury-in-fact and/or actual damage.

2529. Under S.D. CODIFIED LAWS § 37-24-31, the South Dakota Class is entitled to a recovery of their actual damages suffered as a result of New GM's acts and practices, including the acts and practices of Old GM for which New GM has successor liability.

ONE HUNDRED TWENTY-SEVENTH CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(S.D. CODIFIED LAWS § 57a-2-314)

2530. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the South Dakota Class.

2531. Old GM and New GM were merchants with respect to motor vehicles.

2532. South Dakota law imposed a warranty that the Defective Vehicles were merchantable when the South Dakota Class purchased their Defective Vehicles.

2533. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2534. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

ONE HUNDRED TWENTY-EIGHTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2535. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the South Dakota Class.

2536. As set forth above, both Old GM and New GM concealed and/or suppressed material facts concerning the safety of the Defective Vehicles.

2537. The Companies had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety was one of the

Companies' highest corporate priorities. Once the Companies made representations to the public about safety, they were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

2538. In addition, the Companies had a duty to disclose these omitted material facts because they were known and/or accessible only to the Companies who had superior knowledge and access to the facts, and the Companies knew they were not known to or reasonably discoverable by the South Dakota Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle inadvertently shuts down, and whether a vehicle's power steering, power brakes and airbags become inoperable during ordinary driving conditions, are material safety concerns. The Companies possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

2539. The Companies actively concealed and/or suppressed these material facts with the intent to induce the South Dakota Class to purchase Defective Vehicles at a higher price for the vehicles, which did not match the vehicles' true value. The Companies also concealed and withheld the information in order to prevent a public relations nightmare and harm to the Companies' profits that would result from disclosure.

2540. The South Dakota Class members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The South Dakota Class' actions were justified. The Companies were in exclusive

control of the material facts and such facts were not known to the public or the South Dakota Class.

2541. As a result of the concealment and/or suppression of the facts, the South Dakota Class sustained damage. For those the South Dakota Class members who elect to affirm the sale, these damages include the difference between the actual value of that which members of the South Dakota Class paid and the actual value of that which they received, together with additional damages arising from the sales transaction, amounts expended in reliance upon the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits. For those members of the South Dakota Class who want to rescind the purchase, then those South Dakota Class members are entitled to restitution and consequential damages.

2542. The Companies' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of the South Dakota Class's rights and well-being to enrich Old GM and New GM. Old GM and New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

TENNESSEE

ONE HUNDRED TWENTY-NINTH CLAIM FOR RELIEF

VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT
(TENN. CODE ANN. § 47-18-101, *et. seq.*)

2543. This claim is brought on behalf of Class members who are Tennessee residents (the "Tennessee Class").

2544. Tennessee Class members are "natural person[s]" and "consumer[s]" within the meaning of TENN. CODE ANN. § 47-18-103(2).

2545. Old GM was, and New GM is, a "person" within the meaning of TENN. CODE ANN. § 47-18-103(2) (the "Act").

2546. All of the Companies' conduct complained of herein affected "trade," "commerce" or "consumer transactions" within the meaning of TENN. CODE ANN. § 47-18-103(19).

2547. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits "[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce," including but not limited to: "(5) Representing that goods or services have… characteristics, [or]… benefits… that they do not have…;" "(7) Representing that goods or services are of a particular standard, quality or grade… if they are of another;" and "Advertising goods or services with intent not to sell them as advertised." TENN. CODE ANN. § 47-18-104. The Companies violated the Tennessee CPA by engaging in unfair or deceptive acts, including representing that Defective Vehicles have characteristics or benefits that they did not have; representing that Defective Vehicles are of a particular standard, quality, or grade when they are of another; and advertising Defective Vehicles with intent not to sell them as advertised.

2548. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or

commerce in violation of the Tennessee CPA, and also has successor liability for the violations of Old GM.

2549. As alleged above, both Companies knew of the ignition switch defects, while the Tennessee Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2550. The Companies knew or should have known that their conduct violated the Tennessee CPA.

2551. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2552. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2553. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2554. The Companies each owed Tennessee Class members a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Tennessee Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Tennessee Class that contradicted these representations.

2555. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Tennessee Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2556. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Tennessee Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Tennessee Class.

2557. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Tennessee Class. Had the Tennessee Class members known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2558. All members of the Tennessee Class suffered ascertainable loss caused by the Companies' failure to disclose material information. The Tennessee Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and the Tennessee Class members own vehicles that are not safe.

2559. Tennessee Class members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2560. Plaintiffs and Tennessee Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Tennessee CPA, and these violations present a continuing risk to the Tennessee Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2561. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2562. As a direct and proximate result of the Companies' violations of the Tennessee CPA, the Tennessee Class members have suffered injury-in-fact and/or actual damage.

2563. Pursuant to TENN. CODE § 47-18-109(a), the Tennessee Class seeks monetary relief against New GM measured as actual damages in an amount to be determined at trial, treble damages as a result of the Companies' willful or knowing violations, and any other just and proper relief available under the Tennessee CPA.

ONE HUNDRED THIRTIETH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2564. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Tennessee Class.

2565. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2566. The Companies knew these representations were false when made.

2567. The vehicles purchased or leased by the Tennessee Class were, in fact, defective, unsafe, and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2568. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the Tennessee Class members relied on the Companies' representations that the vehicles they purchased and retained were safe and free from defects.

2569. The aforementioned concealment was material because if it had been disclosed the Tennessee Class members would not have bought, leased or retained the vehicles.

2570. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2571. The Tennessee Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2572. As a result of their reliance, Tennessee Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2573. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Tennessee Class. The Tennessee Class members are therefore entitled to an award of punitive damages.

TEXAS

ONE HUNDRED THIRTY-FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES — CONSUMER PROTECTION ACT
(TEX. BUS. & COM. CODE §§ 17.41, *et. seq.*)

2574. This claim is brought on behalf of Class members who are Texas residents (the "Texas Class").

2575. Members of the Texas Class are individuals, partnerships, and corporations with assets of less than $25 million (or are controlled by corporations or entities with less than $25 million in assets). *See* TEX. BUS. & COM. CODE § 17.41,

2576. The Texas Deceptive Trade Practices-Consumer Protection Act ("Texas DTPA") prohibits "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce," TEX. BUS. & COM. CODE § 17.46(a), and an "unconscionable action or course of action," which means "an act or practice which, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree." TEX. BUS. & COM. CODE § 17.45(5); TEX. BUS. & COM. CODE § 17.50(a)(3). The Companies have committed false, misleading, unconscionable and deceptive acts or practices in the conduct of trade or commerce.

2577. The Companies also violated the Texas DTPA by (1) representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Defective Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Defective Vehicles with the intent not to sell them as advertised; and (4) failing to disclose information concerning the Defective Vehicles with the intent to induce consumers to purchase or lease the Defective Vehicles.

2578. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment,

suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Texas DTPA, and also has successor liability for the violations of Old GM.

2579. As alleged above, both Companies knew of the ignition switch defects, while the Texas Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2580. The Companies knew or should have known that their conduct violated the Texas DTPA.

2581. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2582. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2583. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2584. The Companies each owed Texas Class members a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Texas Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Texas Class that contradicted these representations.

2585. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Texas Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2586. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Texas Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Texas Class.

2587. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Texas Class. Had Texas Class members known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2588. All members of the Texas Class suffered ascertainable loss caused by the Companies' failure to disclose material information. Texas Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and Texas Class members own vehicles that are not safe.

2589. Texas Class members have been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2590. Texas Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Texas DTPA, and these violations present a continuing risk to the Texas Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2591. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2592. As a direct and proximate result of the Companies' violations of the Texas DTPA, Texas Class members have suffered injury-in-fact and/or actual damage.

2593. Pursuant to TEX. BUS. & COM. CODE § 17.50(a)(1) and (b), the Texas Class seeks monetary relief against New GM measured as actual damages in an amount to be determined at trial, treble damages for the Companies' knowing violations of the Texas DTPA, and any other just and proper relief available under the Texas DTPA.

2594. For those Texas Class members who wish to rescind their purchases, they are entitled under TEX. BUS. & COM. CODE § 17.50(b)(4) to rescission and other relief necessary to restore any money or property that was acquired from them based on violations of the Texas DTPA.

2595. The Texas Class also seeks court costs and attorneys' fees under § 17.50(d) of the Texas DTPA.

2596. Texas Plaintiffs have complied with the notice requirement set forth in TEX. BUS. & COM. CODE § 17.505(a) by virtue of the notice previously provided in the context of the underlying action styled *Ramirez, et al. v. GM*, 2:14-cv-02344-JVS-AN (C.D. Cal.), and other underlying actions, as well as additional notice in the form of a demand letter sent on October 12, 2014.

2597. Upon filing this Complaint and as required by TEX. BUS. & COM. CODE § 17.501, Plaintiffs will provide the consumer protection division of the Attorney General's office a copy of the demand letter and a copy of the complaint.

ONE HUNDRED THIRTY-SECOND CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(TEX. BUS. & COM. CODE § 2.314)

2598. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Texas Class.

2599. Old GM and New GM were merchants with respect to motor vehicles under TEX. BUS. & COM. CODE § 2.104.

2600. Under TEX. BUS. & COM. CODE § 2.314, a warranty that the Defective Vehicles were in merchantable condition was implied by law in the transactions in which Texas Class members purchased their Defective Vehicles.

2601. Old GM and New GM impliedly warranted that the vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use—transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

2602. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2603. As a direct and proximate result of Old GM and New GM's breach of the implied warranty of merchantability, Texas Class members have been damaged in an amount to be proven at trial.

ONE HUNDRED THIRTY-THIRD CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2604. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Texas Class.

2605. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2606. The Companies knew these representations were false when made.

2607. The vehicles purchased or leased by the Texas Class were, in fact, defective, unsafe, and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2608. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because Texas Class members relied on the Companies' representations that the vehicles they were purchasing were safe.

2609. The aforementioned concealment was material because if it had been disclosed Texas Class members would not have bought, leased, or retained their vehicles, or would have paid less for the vehicles.

2610. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing, or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch

systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2611. Texas Class members relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2612. As a result of their reliance, Texas Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2613. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Texas Class. Texas Class members are therefore entitled to an award of punitive damages.

UTAH

ONE HUNDRED THIRTY-FOURTH CLAIM FOR RELIEF

VIOLATION OF UTAH CONSUMER SALES PRACTICES ACT
(UTAH CODE ANN. § 13-11-1, *et. seq.*)

2614. This claim is brought on behalf of Class members who are Utah residents (the "Utah Class").

2615. Old GM was and New GM is a "supplier" under the Utah Consumer Sales Practices Act ("Utah CSPA"), UTAH CODE ANN. § 13-11-3.

2616. Utah Class members are "persons" under UTAH CODE ANN. § 13-11-3.

2617. The sale of the Defective Vehicles to the Utah Class members was a "consumer transaction" within the meaning of UTAH CODE ANN. § 13-11-3.

2618. The Utah CSPA makes unlawful any "deceptive act or practice by a supplier in connection with a consumer transaction" under UTAH CODE ANN. § 13-11-4. Specifically, "a supplier commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not" or "(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not." UTAH CODE ANN. § 13-11-4. "An unconscionable act or practice by a supplier in connection with a consumer transaction" also violates the Utah CSPA. UTAH CODE ANN. § 13-11-5.

2619. The Companies committed deceptive acts or practices in the conduct of trade or commerce, by, among other things, engaging in unconscionable acts, representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; and representing that the Defective Vehicles are of a particular standard, quality, and grade when they are not

2620. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or

commerce in violation of the Utah CSPA, and also has successor liability for the violations of Old GM.

2621. As alleged above, both Companies knew of the ignition switch defects, while the Utah Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2622. The Companies knew or should have known that their conduct violated the Utah CSPA.

2623. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2624. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2625. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2626. The Companies each owed Utah Class members a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Utah Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Utah Class that contradicted these representations.

2627. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Utah Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2628. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Utah Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Utah Class.

2629. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to Utah Class members. Had the Utah Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2630. All members of the Utah Class suffered ascertainable loss caused by the Companies' failure to disclose material information. Utah Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and Utah Class members own vehicles that are not safe.

2631. Utah Class members have been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2632. Utah Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Utah CSPA, and these violations present a continuing risk to Utah Class members as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2633. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2634. As a direct and proximate result of the Companies' violations of the Utah CSPA, Utah Class members have suffered injury-in-fact and/or actual damage.

2635. Pursuant to UTAH CODE ANN. § 13-11-4, the Utah Class seek monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $2,000 for each Utah Class member, reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA.

ONE HUNDRED THIRTY-FIFTH CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(UTAH CODE ANN. § 70A-2-314)

2636. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Utah Class.

2637. Old GM and New GM were at all relevant times merchants with respect to motor vehicles.

2638. Old GM and New GM impliedly warranted that its vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use—transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

2639. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2640. As a direct and proximate result of the Companies' breach of the implied warranty of merchantability, Utah Class members have been damaged in an amount to be proven at trial.

VERMONT

ONE HUNDRED THIRTY-SIXTH CLAIM FOR RELIEF

VIOLATION OF VERMONT CONSUMER FRAUD ACT
(VT. STAT. ANN. TIT. 9, § 2451 *et. seq.*)

2641. This claim is brought on behalf of Class members who are Vermont residents (the "Vermont Class").

2642. Old GM was, and New GM is, a seller within the meaning of VT. STAT. ANN. TIT. 9, § 2451(a)(c).

2643. The Vermont Consumer Fraud Act ("Vermont CFA") makes unlawful "[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce…." VT. STAT. ANN. TIT. 9, § 2453(a). The Companies engaged in unfair and deceptive acts or practices in trade or commerce in violation of the Vermont CFA by failing to disclose and actively concealing the ignition switch defects in the Defective Vehicles.

2644. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or

commerce in violation of the Vermont CFA, and also has successor liability for the violations of Old GM.

2645. As alleged above, both Companies knew of the ignition switch defects, while the Vermont Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2646. The Companies knew or should have known that their conduct violated the Vermont CFA.

2647. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2648. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2649. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2650. The Companies each owed Plaintiffs a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Vermont Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Vermont Class that contradicted these representations.

2651. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Vermont Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2652. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Vermont Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Vermont Class.

2653. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to Vermont Class members. Had Vermont Class members known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2654. All members of the Vermont Class suffered ascertainable loss caused by the Companies' failure to disclose material information. Vermont Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and Vermont Class members own vehicles that are not safe.

2655. Vermont Class members have been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2656. Vermont Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Vermont CFA, and these violations present a continuing risk to the Vermont Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2657. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2658. As a direct and proximate result of the Companies' violations of the Vermont CFA, Vermont Class members have suffered injury-in-fact and/or actual damage.

2659. Vermont Class members are entitled to recover "appropriate equitable relief" and "the amount of [their] damages, or the consideration or the value of the consideration given by [them], reasonable attorney's fees, and exemplary damages not exceeding three times the value of the consideration given by [them]" pursuant to VT. STAT. ANN. TIT. 9, § 2461(b).

ONE HUNDRED THIRTY-SEVENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2660. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Vermont Class.

2661. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2662. The Companies knew these representations were false when made.

2663. The vehicles purchased or leased by Vermont Class members were, in fact, defective, unsafe, and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2664. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because Vermont Class members relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2665. The aforementioned concealment was material because if it had been disclosed Vermont Class members would not have bought, leased, or retained their vehicles.

2666. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing, or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2667. Vermont Class members relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2668. As a result of their reliance, Vermont Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2669. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Vermont Class. Vermont Class members are therefore entitled to an award of punitive damages.

VIRGINIA

ONE HUNDRED THIRTY-EIGHTH CLAIM FOR RELIEF

VIOLATION OF VIRGINIA CONSUMER PROTECTION ACT
(VA. CODE ANN. 15 §§ 59.1-196, *et. seq.*)

2670. This claim is brought solely on behalf of Class members who are Virginia residents (the "Virginia Class").

2671. Old GM was and New GM are "supplier[s]" under VA. CODE ANN. § 59.1-198.

2672. The sale of the Defective Vehicles to Virginia Class members was a "consumer transaction" within the meaning of VA. CODE ANN. § 59.1-198.

2673. The Virginia Consumer Protection Act ("Virginia CPA") lists prohibited "practices" which include: "5. Misrepresenting that good or services have certain characteristics;" "6. Misrepresenting that goods or services are of a particular standard, quality, grade style, or model;" "8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised;" "9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;" and "14. Using any other deception, fraud, or misrepresentation in connection with a consumer transaction." VA. CODE ANN. § 59.1-200. The Companies violated the Virginia CPA by misrepresenting the Defective Vehicles had certain quantities, characteristics, ingredients, uses, or benefits; misrepresenting that Defective Vehicles were of a particular standard, quality, grade, style, or model when they were another; advertising Defective Vehicles with intent not to sell them as advertised; and otherwise "using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

2674. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment,

suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Virginia CPA, and also has successor liability for the violations of Old GM.

2675. As alleged above, both Companies knew of the ignition switch defects, while the Virginia Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2676. The Companies knew or should have known that their conduct violated the Virginia CPA.

2677. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2678. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2679. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2680. The Companies each owed Virginia Class members a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Virginia Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Virginia Class that contradicted these representations.

2681. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Virginia Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2682. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Virginia Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Virginia Class.

2683. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to Virginia Class members. Had Virginia Class members known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2684. All members of the Virginia Class suffered ascertainable loss caused by the Companies' failure to disclose material information. Virginia Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and Virginia Class members own vehicles that are not safe.

2685. Virginia Class members have been damaged by New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of New GM's failure to timely disclose and remedy the serious defects. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2686. Virginia Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Virginia CPA, and these violations present a continuing risk to the Virginia Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2687. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2688. As a direct and proximate result of the Companies' violations of the Virginia CPA, Virginia Class members have suffered injury-in-fact and/or actual damage.

2689. Pursuant to VA. CODE ANN. § 59.1-204, Virginia Class members seek monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500 for each Virginia Class Member. Because the Companies' conduct was committed willfully and knowingly, the Virginia Classis entitled to recover, for each Virginia Class Member, the greater of (a) three times actual damages or (b) $1,000.

2690. Plaintiffs also seek an order enjoining New GM's unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under General Business Law § 59.1-204, *et. seq.*

ONE HUNDRED THIRTY-NINTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(VA. CODE ANN. § 8.2-314)

2691. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Virginia Class.

2692. Old GM and New GM were at all relevant times merchants with respect to motor vehicles.

2693. Old GM and New GM impliedly warranted that their vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use—transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

2694. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective

Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2695. As a direct and proximate result of the Companies' breach of the implied warranty of merchantability, the Virginia Class has been damaged in an amount to be proven at trial.

ONE HUNDRED FORTIETH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2696. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Virginia Class.

2697. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2698. The Companies knew these representations were false when made.

2699. The vehicles purchased or leased by Virginia Class members were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2700. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because Virginia Class members relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2701. The aforementioned concealment was material because if it had been disclosed Virginia Class members would not have bought, leased, or retained their vehicles.

2702. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2703. Virginia Class members relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2704. As a result of their reliance, the Virginia Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2705. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Virginia Class. Virginia Class members are therefore entitled to an award of punitive damages.

WASHINGTON

ONE HUNDRED FORTY-FIRST CLAIM FOR RELIEF

VIOLATION OF THE CONSUMER PROTECTION ACT
(REV. CODE WASH. ANN. §§ 19.86.010, *et. seq.*)

2706. This claim is brought on behalf of Class members who are Washington residents (the "Washington Class").

2707. The Companies committed the acts complained of herein in the course of "trade" or "commerce" within the meaning of WASH. REV. CODE. WASH. ANN. §§ 19.96.010.

2708. The Washington Consumer Protection Act ("Washington CPA") broadly prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." WASH. REV. CODE. WASH. ANN. §§ 19.96.010. The Companies engaged in unfair and deceptive acts and practices and violated the Washington CPA by failing to disclose and actively concealing the ignition switch defects in the Defective Vehicles.

2709. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Washington CPA, and also has successor liability for the violations of Old GM.

2710. As alleged above, both Companies knew of the ignition switch defects, while the Washington Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2711. The Companies knew or should have known that their conduct violated the Washington CPA.

2712. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2713. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2714. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2715. The Companies each owed Washington Class members a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from Washington Class members; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully

withholding material facts from Washington Class members that contradicted these representations.

2716. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Washington Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2717. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Washington Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Washington Class.

2718. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to Washington Class members. Had the Washington Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2719. All members of the Washington Class suffered ascertainable loss caused by the Companies' failure to disclose material information. Washington Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and Washington Class members own vehicles that are not safe.

2720. Washington Class members have been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2721. Washington Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Washington CPA, and these violations present a continuing risk to the Washington Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2722. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2723. As a direct and proximate result of the Companies' violations of the Washington Act, Washington Class members have suffered injury-in-fact and/or actual damage.

2724. New GM is liable to the Washington Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages, as well as any other remedies the Court may deem appropriate under REV. CODE. WASH. ANN. § 19.86.090.

2725. Pursuant to WASH. REV. CODE. WASH. ANN. § 19.86.095, Plaintiffs will serve the Washington Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

ONE HUNDRED FORTY-SECOND CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2726. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Washington Class.

2727. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2728. The Companies knew these representations were false when made.

2729. The vehicles purchased or leased by Washington Class members were, in fact, defective, unsafe, and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2730. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because Washington Class members relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2731. The aforementioned concealment was material because if it had been disclosed the Washington Class would not have bought, leased, or retained their vehicles.

2732. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing, or retaining a new or used motor

vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2733. Washington Class members relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing or retaining the Defective Vehicles.

2734. As a result of their reliance, the Washington Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

WEST VIRGINIA

ONE HUNDRED FORTY-THIRD CLAIM FOR RELIEF

VIOLATIONS OF THE CONSUMER CREDIT AND PROTECTION ACT (W. VA. CODE § 46a-1-101, *et. seq.*)

2735. This claim is brought on behalf of Class members who are West Virginia residents (the "West Virginia Class").

2736. Old GM was, and New GM is, a "person" under W.VA. CODE § 46A-1-102(31).

2737. West Virginia Class members are "consumers," as defined by W.VA. CODE §§ and 46A-1-102(12) and 46A-6-102(2), who purchased or leased one or more Defective Vehicles.

2738. The Companies engaged in trade or commerce as defined by W. VA. CODE § 46A-6-102(6).

2739. The West Virginia Consumer Credit and Protection Act ("West Virginia CCPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce.…" W. VA. CODE § 46A-6-104. Without limitation, "unfair or deceptive" acts or practices include:

> (I) Advertising goods or services with intent not to sell them as advertised;
>
> (K) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;
>
> (L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;
>
> (M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;
>
> (N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

W. VA. CODE § 46A-6-102(7).

2740. By failing to disclose and actively concealing the dangerous risks posed by the defective ignition switches in the Defective Vehicles, the Companies engaged in deceptive business practices prohibited by the West Virginia CCPA, including: (1) representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Defective Vehicles are of a particular standard, quality, and grade

when they are not; (3) advertising the Defective Vehicles with the intent not to sell them as advertised; (4) representing that a transaction involving the Defective Vehicles confers or involves rights, remedies, and obligations which it does not; and (5) representing that the subject of a transaction involving the Defective Vehicles has been supplied in accordance with a previous representation when it has not.

2741. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the West Virginia CCPA, and also has successor liability for the violations of Old GM.

2742. As alleged above, both Companies knew of the ignition switch defects, while the West Virginia Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2743. The Companies knew or should have known that their conduct violated the West Virginia Act.

2744. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2745. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2746. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2747. The Companies each owed the West Virginia Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the West Virginia Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the West Virginia Class that contradicted these representations.

2748. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the West Virginia Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2749. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the West Virginia Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the West Virginia Class.

2750. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the West Virginia Class. Had West Virginia Class members known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2751. All members of the West Virginia Class suffered ascertainable loss caused by the Companies' failure to disclose material information. West Virginia Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and West Virginia Class members own vehicles that are not safe.

2752. West Virginia Class members have been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished

because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2753. West Virginia Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the West Virginia CCPA, and these violations present a continuing risk to the West Virginia Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2754. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2755. As a direct and proximate result of the Companies' violations of the West Virginia CCPA, West Virginia Class members have suffered injury-in-fact and/or actual damage.

2756. Pursuant to W. VA. CODE § 46A-1-106, the West Virginia Class seeks monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $200 per violation of the West Virginia CCPA for each West Virginia Class member.

2757. The West Virginia Class also seeks punitive damages against New GM because the Companies carried out despicable conduct with willful and conscious disregard of the rights and safety of others, subjecting the West Virginia Class to cruel and unjust hardship as a result. The Companies intentionally and willfully misrepresented the safety and reliability

of the Defective Vehicles, deceived the West Virginia Class on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the Defective Vehicles it repeatedly promised the West Virginia Class was safe. The Companies' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

2758. The West Virginia Class believes that the recalls and repairs instituted by New GM have not been adequate, and that some or all of the Defective Vehicles will remain defective even after New GM's "remedy" is implemented.

2759. The West Virginia Class further seeks an order enjoining New GM's unfair or deceptive acts or practices, restitution, punitive damages, costs of Court, attorney's fees under W. VA. CODE § 46A-5-101, *et. seq.*, and any other just and proper relief available under the West Virginia CCPA.

2760. West Virginia Plaintiffs have complied with the notice requirement set forth in W. VA. CODE § 46A-6-106(b) by virtue of the notice previously provided in the context of the underlying action styled *Ramirez, et al. v. GM*, 2:14-cv-02344-JVS-AN (C.D. Cal.), and other underlying actions, as well as additional notice in the form of a demand letter sent on October 12, 2014.

ONE HUNDRED FORTY-FOURTH CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(W. VA. CODE § 46-2-314)

2761. In the event the Court declines to certify a nationwide Class, Plaintiffs bring this claim on behalf of the West Virginia Class.

2762. Old GM and New GM were at all relevant times sellers of motor vehicles under W. VA. CODE § 46-2-314, and were also "merchant[s]" as the term is used in W. VA. CODE § 46A-6-107 and § 46-2-314.

2763. Under W. VA. CODE § 46-2-314, a warranty that the Defective Vehicles were in merchantable condition was implied by law when West Virginia Class members purchased their Defective Vehicles.

2764. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2765. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, their own internal investigations, and by numerous individual letters and communications sent by West Virginia Class members before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2766. As a direct and proximate result of Old GM and New GM's breach of the warranty of merchantability, the West Virginia Class been damaged in an amount to be proven at trial.

ONE HUNDRED FORTY-FIFTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2767. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the West Virginia Class.

2768. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2769. The Companies knew these representations were false when made.

2770. The vehicles purchased or leased by West Virginia Class members were, in fact, defective, unsafe, and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2771. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because West Virginia Class members relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2772. The aforementioned concealment was material because if it had been disclosed West Virginia Class members would not have bought, leased or retained their vehicles.

2773. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2774. The West Virginia Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative

assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing, or retaining the Defective Vehicles.

2775. As a result of their reliance, the West Virginia Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2776. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the West Virginia Class. West Virginia Class members are therefore entitled to an award of punitive damages.

WISCONSIN

ONE HUNDRED FORTY-SIXTH CLAIM FOR RELIEF

VIOLATIONS OF THE WISCONSIN DECEPTIVE TRADE PRACTICES ACT (WIS. STAT. § 110.18)

2777. This claim is brought on behalf of Class members who are Wisconsin residents (the "Wisconsin Class").

2778. The Companies are a "person, firm, corporation or association" within the meaning of WIS. STAT. § 100.18(1).

2779. The Wisconsin Class members are members of "the public" within the meaning of WIS. STAT. § 100.18(1). Wisconsin Class members purchased or leased one or more Class Vehicles.

2780. The Wisconsin Deceptive Trade Practices Act ("Wisconsin DTPA") prohibits a "representation or statement of fact which is untrue, deceptive or misleading." WIS. STAT. § 100.18(1). The Companies engaged in unfair and deceptive acts and practices and violated the Wisconsin DTPA by making misrepresentations and failing to disclose and actively concealing the ignition switch defects in the Defective Vehicles.

2781. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Wisconsin DTPA, and also has successor liability for the violations of Old GM.

2782. As alleged above, both Companies knew of the ignition switch defects, while the Wisconsin Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2783. The Companies knew or should have known that their conduct violated the Wisconsin DTPA.

2784. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2785. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2786. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2787. The Companies each owed Wisconsin Class members a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Wisconsin Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Wisconsin Class that contradicted these representations.

2788. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Wisconsin Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2789. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Wisconsin Class, about the true safety and reliability of

Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Wisconsin Class.

2790. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Wisconsin Class. Had the Wisconsin Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2791. All members of the Wisconsin Class suffered ascertainable loss caused by the Companies' failure to disclose material information. Wisconsin Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and Wisconsin Class members own vehicles that are not safe.

2792. The Wisconsin Class has been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2793. Wisconsin Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Wisconsin DTPA, and these violations present a continuing risk to the Wisconsin Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest.

2794. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2795. As a direct and proximate result of the Companies' violations of the Wisconsin DTPA, Wisconsin Class members have suffered injury-in-fact and/or actual damage.

2796. The Wisconsin Class is entitled to damages and other relief provided for under WIS. STAT. § 110.18(11)(b)(2). Because the Companies' conduct was committed knowingly and/or intentionally, the Wisconsin Class is entitled to treble damages.

2797. The Wisconsin Class also seeks court costs and attorneys' fees under WIS. STAT. § 110.18(11)(b)(2).

ONE HUNDRED FORTY-SEVENTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2798. In the event the Court declines to certify a nationwide Class, this claim is brought on behalf of the Wisconsin Class.

2799. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2800. The Companies knew these representations were false when made.

2801. The vehicles purchased or leased by the Wisconsin Class were, in fact, defective, unsafe, and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2802. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the Wisconsin Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2803. The aforementioned concealment was material because if it had been disclosed Wisconsin Class members would not have bought, leased, or retained their vehicles.

2804. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing, or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2805. The Wisconsin Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing, or retaining the Defective Vehicles.

2806. As a result of their reliance, the Wisconsin Class has been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2807. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Wisconsin Class. Wisconsin Class members are therefore entitled to an award of punitive damages.

WYOMING

ONE HUNDRED FORTY-EIGHTH CLAIM FOR RELIEF

VIOLATION OF THE WYOMING CONSUMER PROTECTION ACT
(WYO. STAT. § 40-12-105 *et. seq.*)

2808. This claim is brought on behalf of Class members who are Wyoming residents (the "Wyoming Class").

2809. The Wyoming Class members, Old GM, and New GM are "persons" within the meaning of WYO. STAT. § 40-12-102(a)(i).

2810. The sales of the Defective Vehicles to the Wyoming Class were "consumer transaction[s]" within the meaning of WYO. STAT. § 40-12-105.

2811. Under the Wyoming Consumer Protection Act ("Wyoming CPA"), a person engages in a deceptive trade practice when, in the course of its business and in connection with a consumer transaction it knowingly: "(iii) Represents that merchandise is of a particular standard, grade, style or model, if it is not"; "(v) Represents that merchandise has been supplied in accordance with a previous representation, if it has not…"; "(viii) Represents that a consumer transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations if the representation is false"; "(x) Advertises merchandise with intent not to sell it as advertised"; or "(xv) Engages in unfair or deceptive acts or practices." WYO. STAT. § 45-12-105.

2812. The Companies willfully failed to disclose and actively concealed the ignition switch defects in the Defective Vehicles as described above in violation of the Wyoming CPA. The Companies engaged in deceptive trade practices, including (among other things) representing that the Defective Vehicles are of a particular standard and grade, which they are

not; advertising the Defective Vehicles with the intent not to sell them as advertised; and overall engaging in unfair and deceptive acts or practices.

2813. In the course of their business, both Old GM and New GM willfully failed to disclose and actively concealed the dangerous ignition switch defects in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Old GM and New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Defective Vehicles. New GM is directly liable for engaging in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Wyoming CPA, and also has successor liability for the violations of Old GM.

2814. As alleged above, both Companies knew of the ignition switch defects, while the Wyoming Class was deceived by the Companies' omission into believing the Defective Vehicles were safe, and the information could not have reasonably been known by the consumer.

2815. The Companies knew or should have known that their conduct violated the Wyoming CPA.

2816. As alleged above, the Companies made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2817. Old GM engaged in a deceptive trade practice when it failed to disclose material information concerning the Defective Vehicles which it knew at the time of the sale. Old GM deliberately withheld the information about the vehicles' propensity to inadvertently

shut down in order to ensure that consumers would purchase its vehicles and to induce the consumer to enter into a transaction.

2818. From its inception in 2009, New GM has known of the ignition switch defects that exist in millions of Defective Vehicles sold in the United States. But, to protect its profits and to avoid remediation costs and a public relations nightmare, New GM concealed the defects and their tragic consequences and allowed unsuspecting new and used car purchasers to continue to buy the Defective Vehicles and allowed all Defective Vehicle owners to continue driving highly dangerous vehicles.

2819. The Companies each owed the Wyoming Class a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of ignition switch movement, engine shutdown, and disabled safety airbags, because they:

a. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Wyoming Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the Wyoming Class that contradicted these representations.

2820. The Defective Vehicles posed and/or pose an unreasonable risk of death or serious bodily injury to the Wyoming Class, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of sudden and unintended engine shutdown.

2821. The Companies' unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Wyoming Class, about the true safety and reliability of Defective Vehicles. The Companies intentionally and knowingly misrepresented material facts regarding the Defective Vehicles with an intent to mislead the Wyoming Class.

2822. The propensity of the Defective Vehicles to inadvertently shut down during ordinary operation was material to the Wyoming Class. Had the Wyoming Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles, or would have paid less for them than they did.

2823. All members of the Wyoming Class suffered ascertainable loss caused by the Companies' failure to disclose material information. Wyoming Class members overpaid for their vehicles and did not receive the benefit of their bargain. As the result of the concealment and failure to remedy the serious safety defect, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles has diminished now that the safety issues in the Defective Vehicles, and the many other serious safety issues and myriad defects in the Companies' vehicles have come to light, and Wyoming Class members own vehicles that are not safe.

2824. The Wyoming Class has been damaged by Old GM and New GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding vehicles whose value has greatly diminished because of Old GM and New GM's failure to timely disclose and remedy the serious defects. Old GM and New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls, and the many other serious defects in Old GM and New GM vehicles, have so tarnished the Defective Vehicles that no reasonable consumer

would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

2825. Wyoming Class members risk irreparable injury as a result of the Companies' act and omissions in violation of the Wyoming CPA, and these violations present a continuing risk to the Wyoming Class as well as to the general public. The Companies' unlawful acts and practices complained of herein affect the public interest

2826. The recalls and repairs instituted by New GM have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles.

2827. As a direct and proximate result of the Companies' violations of the Wyoming CPA, Wyoming Class members have suffered injury-in-fact and/or actual damage.

2828. Pursuant to WYO. STAT. § 40-12-108(a), the Wyoming Class seeks monetary relief against New GM measured as actual damages in an amount to be determined at trial, in addition to any other just and proper relief available under the Wyoming CPA.

2829. On October 12, 2014, Plaintiffs sent a notice letter complying with WYO. STAT. § 45-12-109. Plaintiffs presently do not claim the damages relief asserted in this Complaint under the Wyoming CPA until and unless New GM fails to remedy its unlawful conduct towards the class within the requisite time period, after which Plaintiffs seek all damages and relief to which Plaintiffs and the Wyoming Class are entitled.

ONE HUNDRED FORTY-NINTH CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (WYO. STAT. § 34.1-2-314)

2830. In the event the Court declines to certify a nationwide Class, Plaintiffs brings this claim on behalf of the Wyoming Class.

2831. Old GM and New GM were at all relevant times merchants with respect to motor vehicles.

2832. Under Wyoming law, a warranty that the Defective Vehicles were in merchantable condition was implied when Wyoming Class members purchased their Defective Vehicles.

2833. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the non-deployment of airbags in the event of a collision.

2834. Old GM and New GM were provided notice of these issues by numerous complaints filed against them, their own internal investigations, and by numerous individual letters and communications sent by Wyoming Class members before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2835. As a direct and proximate result of Old GM and New GM's breach of the warranty of merchantability, the Wyoming Class has been damaged in an amount to be proven at trial.

ONE HUNDRED FIFTIETH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT

2836. In the event the Court declines to certify a nationwide Class under Michigan law, this claim is brought on behalf of the Wyoming Class.

2837. As described above, Old GM and New GM made material omissions and affirmative misrepresentations regarding the Defective Vehicles.

2838. The Companies knew these representations were false when made.

2839. The vehicles purchased or leased by the Wyoming Class were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision.

2840. The Companies had a duty to disclose that these vehicles were defective, unsafe and unreliable in that the vehicles were subject to sudden unintended shut down, with the attendant loss of power steering, power brakes, and the non-deployment of airbags in the event of a collision because the Wyoming Class relied on the Companies' representations that the vehicles they were purchasing and retaining were safe and free from defects.

2841. The aforementioned concealment was material because if it had been disclosed the Wyoming Class would not have bought, leased, or retained their vehicles.

2842. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing, leasing, or retaining a new or used motor vehicle. The Companies knew or recklessly disregarded that their representations were false because they knew that people had died as the result of the vehicles' defective ignition switch systems. The Companies intentionally made the false statements in order to sell vehicles and avoid the expense and public relations nightmare of a recall.

2843. The Wyoming Class relied on the Companies' reputation—along with their failure to disclose the ignition switch system problems and the Companies' affirmative assurance that its vehicles were safe and reliable and other similar false statements—in purchasing, leasing, or retaining the Defective Vehicles.

2844. As a result of their reliance, Wyoming Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

2845. The Companies' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of the Wyoming Class. Wyoming Class members are therefore entitled to an award of punitive damages.

ONE HUNDRED FIFTY-FIRST CLAIM FOR RELIEF

NEGLIGENCE
(On Behalf of the Arkansas, Louisiana, Maryland, and Ohio Classes)

2846. Plaintiffs Camille Burns, Jennifer Crowder, Robert Wyman, George Mathis, Jayn Roush, Bonnie Taylor, and Sharon Dorsey ("Plaintiffs," for purposes of this Count) bring this Count on behalf of the Arkansas, Louisiana, Maryland, and Ohio State Classes ("Negligence Classes").

2847. Old GM and New GM have designed, manufactured, sold, or otherwise placed in the stream of commerce Vehicles with defects, as set forth above.

2848. Od GM and New GM had a duty to design and manufacture a product that would be safe for its intended and foreseeable uses and users, including the use to which its products were put by Plaintiffs and the other members of the Negligence Classes. Old GM and New GM breached their duties to Plaintiffs and the other members of the Negligence Classes because they were negligent in the design, development, manufacture, and testing of the Vehicles, and New GM is responsible for this negligence.

2849. Old GM and New GM were negligent in the design, development, manufacture, and testing of the Vehicles because they knew, or in the exercise of reasonable care should have known, that the Vehicles equipped with defective ignition systems pose an unreasonable

risk of death or serious bodily injury to Plaintiffs and the other members of the Negligence Classes, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents in which brakes, power steering, and airbags are all rendered inoperable.

2850. Whereupon Plaintiffs, individually and on behalf of the other members of the Negligence Classes, respectfully rely upon the Restatement (Second) of Torts § 395.

2851. Old GM and New GM further breached their duties to Plaintiffs and the other members of the Negligence Classes by supplying directly or through a third person defective Vehicles to be used by such foreseeable persons as Plaintiffs and the other members of the Negligence Classes when:

a. Old GM and New GM knew or had reason to know that the Vehicles were dangerous or likely to be dangerous for the use for which they were supplied; and

b. Old GM and New GM failed to exercise reasonable care to inform customers of the dangerous condition or of the facts under which the Vehicles are likely to be dangerous.

2852. Old GM and New GM had a continuing duty to warn and instruct the intended and foreseeable users of its Vehicles, including Plaintiffs and the other members of the Negligence Classes, of the defective condition of the Vehicles and the high degree of risk attendant to using the Vehicles. Plaintiffs and the other members of the Negligence Classes were entitled to know that the Vehicles, in their ordinary operation, were not reasonably safe for their intended and ordinary purposes and uses.

2853. At all times at which Old GM and New GM knew or should have known of the defects described herein, Old GM and New GM breached its duty to Plaintiffs and the other

members of the Negligence Classes because it failed to warn and instruct the intended and foreseeable users of its Vehicles of the defective condition of the Vehicles and the high degree of risk attendant to using the Vehicles.

2854. As a direct and proximate result of Old GM and New GM's negligence, Plaintiffs and the other members of the Negligence Classes suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Classes as defined herein, respectfully request that this Court enter a judgment against New GM and in favor of Plaintiffs and the Classes, and grant the following relief:

A. Determine that this action may be maintained and certified as a class action on a nationwide, statewide, and/or multistate basis under Rule 23(b)(1), 23(b)(2) and/or 23(b)(3); or alternatively, certify all questions, issues and claims that are appropriately certified under 23(c)(4); and that it designate and appoint Plaintiffs as Class Representatives, and appoint Class Counsel under Rule 23(g).

B. Declare, adjudge, and decree the conduct of New GM, as alleged herein, to be unlawful, unfair, and/or deceptive; enjoin any such future conduct; and issue an injunction under which the Court will, *inter alia*: (1) monitor New GM's response to problems with its recalls, defects in its replacement parts, and efforts to improve its safety processes, and (2) establish by Court decree and administrator, under Court supervision, a program funded by New GM, under which claims can be made and paid for Class members' recall-related out-of-pocket expenses and costs;

C. Award Plaintiffs and Class members their actual, compensatory and/or statutory damages, according to proof;

D. Award Plaintiffs and the Class members punitive and exemplary damages in an amount sufficient to punish New GM for its misconduct and deter the repetition of such conduct by New GM or others;

E. Award Plaintiffs and Class members their reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest;

F. Award Plaintiffs and Class members restitution and/or disgorgement of New GM's ill-gotten gains for the conduct described in this Complaint; and

G. Award Plaintiffs and Class members such other, further and different relief as the case may require; or as determined to be just, equitable, and proper by this Court.

JURY TRIAL DEMANDED

Plaintiffs request a trial by jury on all claims so triable.

Dated: October 14, 2014

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Exhibit J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:	14-MD-2543 (JMF)
GENERAL MOTORS LLC IGNITION SWITCH LITIGATION	**CONSOLIDATED COMPLAINT CONCERNING ALL GM-BRANDED VEHICLES THAT WERE ACQUIRED JULY 11, 2009 OR LATER**
This Document Relates to All Actions	

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This Consolidated and Amended Complaint ("Complaint") is filed as a civil action in this Court and is intended to serve as the Plaintiffs' Master Class Action Complaint for purposes of discovery, pre-trial motions and rulings (including for choice of law rulings relevant to Rule 23 of the Federal Rules of Civil Procedure, and class certification itself), and trial of certified claims or common questions in these multi-district litigation ("MDL") proceedings. This pleading, consistent with Fed. R. Civ. P. 1's directive to secure the "just, speedy and inexpensive determinations of every action and proceeding," extensively details New GM's unprecedented abrogation of basic standards of safety, truthfulness, and accountability to the detriment of tens-of-millions of consumers and the public at large. This Complaint draws upon an array of sources, including a careful review of the documents produced to date (including tens-of-thousands of pages of unheeded consumer complaints), New GM's own public concessions, and other extensive materials. Notwithstanding the foregoing, certain claims or issues for certain parties may, consistent with 28 U.S.C. § 1407 and the case law thereunder, be matters for determination on remand by transferor courts.

This pleading neither waives nor dismisses any claims for relief against any defendant not included in this pleading that are asserted by any other plaintiffs in actions that have been or will be made part of this MDL proceeding, except by operation of the class notice and (with respect to any Rule 23(b)(3) class) any opt-out provisions on claims or common questions asserted in this Complaint and certified by this Court.

I. INTRODUCTION

1. Rule No. 1: Manufacturers of any product—from toys to automobiles—must manufacture and sell products that are, above all else, safe to use. Not only is safety essential to long-term brand value and corporate success, it's also required by law.

2. Rule No. 2: Manufacturers must also tell the complete truth about the safety of their products. When a safety defect does occur, manufacturers must initiate some form of recall to address the problem.

3. New GM violated both of these rules. It manufactured and sold over 27 million vehicles that were not safe. New GM also failed to disclose the truth about its ability to manufacture and sell safe and reliable vehicles, and failed to remedy the defects in millions of GM-branded vehicles that were on the road.

4. New GM led consumers in the United States and worldwide to believe that, after bankruptcy, it was a new company. For example, in numerous public announcements and public filings, such as in its 2012 Annual Report, New GM repeatedly proclaimed that it was a company committed to innovation, safety, and maintaining a strong brand. An example from its 2012 Annual Report:

TO OUR STOCKHOLDERS:

Last year, I closed my letter to you by talking about how GM was changing its processes and culture in order to build the best vehicles in the world much more efficiently and profitably. This year, I want to pick up where I left off, and articulate what success looks like for you as stockholders, and for everyone else who depends on us. »

5. New GM was successful in selling its "processes and culture change" and building "the best vehicles in the world" story. Sales of all New GM models went up, and New GM became profitable. As far as the public knew, a new General Motors was born, and the GM brand once again stood strong in the eyes of consumers.

6. New GM's brand image was an illusion given New GM's egregious failure to disclose, and the affirmative concealment of, ignition switch defects and a plethora of other safety defects in GM-branded vehicles. New GM concealed the existence of the many known safety defects plaguing many models and years of GM-branded vehicles, and New GM valued cost-cutting over safety, while concurrently marketing New GM vehicles as "safe" and "reliable," and claiming that it built the "world's best vehicles." Consequently, New GM enticed Plaintiffs and all GM-branded vehicle purchasers to buy or lease vehicles that have now diminished in value, as the truth about the New GM brand has come out and a stigma has attached to all GM-branded vehicles.

7. A vehicle made by a reputable manufacturer of safe and reliable vehicles is worth more than an otherwise similar vehicle made by a disreputable manufacturer that is known to devalue safety and to conceal serious defects from consumers and regulators. New GM vehicle Safety Chief, Jeff Boyer, recently highlighted the heightened materiality to consumers of safety: "Nothing is more important than the safety of our customers in the vehicles they drive." Yet New GM failed to live up to this commitment, instead choosing to conceal at least 60 serious defects in over 27 million GM-branded vehicles sold in the United States. And the value of all GM-branded Vehicles has diminished as a result of the widespread publication of those defects and New GM's corporate culture of ignoring and concealing safety defects.

8. The systematic concealment of known defects was deliberate, as New GM followed a consistent pattern of endless "investigation" and delay each time it became aware of a given defect. Recently revealed documents show that New GM valued cost-cutting over safety, trained its personnel to ***never*** use the word "defect," "stall," or other words suggesting that any GM-branded vehicles are defective, routinely chose the cheapest part supplier without regard to safety, and discouraged employees from acting to address safety issues.

9. In addition, GM was plagued by what CEO Mary Barra calls "transactional decision making," in which GM employees "color[] inside the lines of their own precise job description without thinking independently or holistically," *i.e.*, without looking at the larger issue of safety.[1]

10. In light of New GM's systemic devaluation of safety issues, it is not surprising that, from the date of its inception, New GM itself produced a grossly inordinate number of vehicles with serious safety defects. Until this year, New GM was successful in concealing both its disregard of safety and the myriad defects that resulted from that disregard.

11. According to the administrator of the National Highway Traffic Safety Administration ("NHTSA"), New GM worked to hide documents from NHTSA and created firewalls to prevent people within New GM from "connecting the dots" with respect to safety issues and defects. New GM did so to keep information about safety issues and defects secret.

12. The array of concealed defects is astounding and goes far beyond the ignition switch defects, the belated revelation of which sparked GM's 2014 serial recalls. The defects affected virtually every safety system in GM-branded vehicles, including but by no means limited to the airbags, seatbelts, brakes, brake lights, electronic stability control, windshield

[1] TIME MAGAZINE, October 6, 2014, p. 36.

wipers, sensing and diagnostic modules, and warning chimes. This defect list includes at least the following parts, many of which effect the vehicle's safety: (1) ignition switch, (2) power steering, (3) airbags, (4) brake lights, (5) shift cables, (6) safety belts, (7) ignition lock cylinders, (8) key design, (9) ignition key, (10) transmission oil cooler lines, (11) power management mode software defect, (12) substandard front passenger airbags, (13) light control modules, (14) front axle shafts, (15) brake boosts, (16) low-beam headlights, (17) vacuum line brake boosters, (18) fuel gauges, (19) accelerator, (20) flexible flat cable airbags, (21) windshield wipers, (22) brake rotors, (23) passenger-side airbags, (24) electronic stability control, (25) steering tie-rods, (26) automatic transmission shift cable adjusters, (27) fuse blocks, (28) diesel transfer pumps, (29) radio warning chimes, (30) shorting bars, (31) front passenger airbag end caps, (32) sensing and diagnostic modules ("SDM"), (33) sonic turbine shafts, (34) electrical systems, and (35) the seatbelt tensioning system.

13. New GM has received reports of crashes, deaths, injuries, and safety concerns expressed by GM's customers that put New GM on notice of the serious safety issues presented by many of these defects. Given the continuity of engineers, corporate counsel, and other key personnel from Old GM to New GM, New GM knew and was fully aware of the now infamous ignition switch defect (and many other serious defects in numerous models of GM-branded vehicles) ***from the very date of its inception on July 10, 2009***. New GM was not born innocent, and its public commitment to culture and process change remain entirely hollow.

14. New GM's claims that the defects were known only to lower level engineers is false. For example, current CEO Mary Barra, while head of product development, was informed in 2011 of a safety defect in the electronic power steering of several models. Despite 4,800

consumer complaints and more than 30,000 warranty repairs, GM waited until 2014 to disclose this defect.

15. Despite the dangerous nature of many of the defects and their effects on critical safety systems, New GM concealed the existence of the defects, created new defects, and failed to begin to remedy the problems from the date of its inception until this year.

16. New GM's now highly publicized campaign of deception in connection with the ignition switch defect first revealed in February 2014 sent shockwaves throughout the country and jump-started the ever-burgeoning erosion of consumer confidence in the New GM brand. Unfortunately for all owners of vehicles sold by New GM, the ignition switch defect announced in February 2014 was only one of a seemingly never-ending parade of recalls in 2014—many concerning safety defects that had been long known to New GM.

17. On May 16, 2014, New GM entered into a Consent Order with NHTSA in which it admitted that it violated the TREAD Act by not disclosing the ignition switch defect that gave rise to the February and March 2014 recalls, and agreed to pay the maximum available civil penalties for its violations.

18. New GM's CEO, Mary Barra, has admitted in a video message that: "Something went wrong with our process…, and terrible things happened." But that admission is cold comfort for Plaintiffs and the Class, whose vehicles have diminished in value as a result of New GM's deception.

19. New GM systematically and repeatedly breached its obligations and duties to its customers to make truthful and full disclosures concerning its vehicles—particularly, the safety and reliability of its vehicles and the importance of safety to the Company. New GM's false representations and/or omissions concerning the safety and reliability of its vehicles, and its

concealment of a plethora of known safety defects plaguing its vehicles and its brand, caused Plaintiffs and the Class to purchase GM-branded vehicles under false pretenses.

20. Plaintiffs and the Class have been damaged by New GM's conduct, misrepresentations, concealment, and non-disclosure of the numerous defects plaguing over 27 million GM-branded vehicles. Now that the truth is emerging, and consumers are aware that New GM concealed known safety defects in many models and years of its vehicles, and that the Company de-valued safety and systemically encouraged its employees to conceal serious defects, the entire New GM brand is greatly tarnished by the revelation that the Company is untrustworthy and does not stand behind its vehicles. The value of GM-branded vehicles has therefore diminished because of New GM's failure to timely disclose and remedy the many serious defects in GM-branded vehicles after the truth of New GM's safety record and culture of deceit was exposed. Examples: The 2010 and the 2011 Chevrolet Camaro have both seen a diminished value of $2,000 when compared to the value of comparable vehicles; the 2009 Pontiac Solstice has diminished $2,900 in value; the 2010 Cadillac STS diminished in value by $1,235 in September 2014; and the 2010 Buick LaCrosse by $649 in that same month. New GM's egregious and widely publicized conduct and the never-ending and piecemeal nature of New GM's recalls has so tarnished GM-branded vehicles that no reasonable consumer would have paid the price they did when the New GM brand supposedly meant safety and success.

21. Plaintiffs pursue their claims on behalf of a Class generally and initially defined as all persons who purchased or leased a GM-branded between July 11, 2009, and July 3, 2014 (the "Affected Vehicles") and who (i) still own or lease an Affected Vehicle, (ii) sold an Affected Vehicle on or after February 14, 2014, and/or (iii) purchased or leased an Affected Vehicle that was declared a total loss after an accident on or after February 14, 2014. Plaintiffs

assert claims for a nationwide class applying Michigan law for claims of fraudulent concealment, unjust enrichment, the implied warranty of merchantability, and the Magnuson-Moss Warranty Act. Plaintiffs also assert claims based upon the laws of all fifty states and the District of Columbia for a class in each jurisdiction for damages, statutory penalties, and declaratory, equitable and injunctive relief against New GM for, among other things, violations of state unfair and deceptive trade practice acts, as more specifically set forth in the claims for relief asserted below.

II. JURISDICTION AND VENUE

22. This Court has diversity jurisdiction over this action under 28 U.S.C. §§ 1332(a) and (d) because the amount in controversy for the Class exceeds $5,000,000, and Plaintiffs and other Class members are citizens of a different state than Defendant.

23. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit to the Court's jurisdiction. This Court has personal jurisdiction over New GM because New GM conducts substantial business in this District, and some of the actions giving rise to the complaint took place in this District.

24. Venue is proper in this District under 28 U.S.C. § 1391 because New GM, as a corporation, is deemed to reside in any judicial district in which it is subject to personal jurisdiction. Additionally, New GM transacts business within the District, and some of the events establishing the claims arose in this District.

III. PARTIES

25. Pursuant to the Court's instructions that Plaintiffs could file directly in the MDL court and reserve the right to have filed in another district, this Complaint is filed by each new Plaintiff as if they had filed in the district in which they reside.

A. Plaintiffs

26. Unless otherwise indicated, each Plaintiff purchased or leased his or her GM-branded vehicle primarily for personal, family, or household use.

1. Melissa Cave—Alabama

27. Plaintiff and proposed Nationwide and Alabama State Class Representative Melissa Cave is a resident and citizen of New Hope, Alabama. Ms. Cave purchased a used 2006 Chevrolet Cobalt on February 15, 2013, at High Country Toyota in Scottsboro, Alabama for approximately $7,000. Her vehicle was not covered by a warranty. Ms. Cave drives 23 miles to work and during her drive she has known her Cobalt to shut off more than 50 times in a trip. On June 21, 2014, Ms. Cave totaled her car after it shut off while she was driving approximately 35-40 miles per hour. She sustained injuries to her knee, bruising from the seatbelt, and chemical burns to her thumb and hand from the airbag. Had she known about the problems with her GM-branded vehicle, she would not have purchased the car.

2. Valeria Glenn—Alabama

28. Plaintiff Valeria Glenn resides in Alabaster, Alabama. She purchased a used 2006 Pontiac Solstice in February 2013 in Pelham, Alabama for $13,000. The vehicle has a 100,000 mile warranty. Ms. Glenn has experienced shut downs and locking of her steering wheel while driving her vehicle. Ms. Glenn had her ignition switch replaced pursuant to the recall. Since that time, the air conditioning in her vehicle is no longer working, although it worked fine before the replacement. Knowing what she now knows about the safety defects in many GM-branded vehicles, and the Solstice in particular, she would not have purchased the vehicle and does not feel safe driving the vehicle.

3. Barbara Hill—Arizona

29. Plaintiff and proposed Nationwide and Arizona State Class Representative Barbara Hill is a resident and citizen of Mesa, Arizona. Ms. Hill purchased a used 2007

Chevrolet Cobalt on July 9, 2012, for approximately $12,000 at the Auto Nation in Tempe, Arizona. Ms. Hill purchased the Cobalt after performing research about vehicles and, based on that research, believing the Cobalt to be a safe and reliable vehicle. She no longer feels safe driving the vehicle. Ms. Hill had her ignition switch replaced in May 2014, but she does not trust that the replacement will resolve the vehicle's safety defect. Had she known about the problems with her GM-branded vehicle, she would he would not have purchased the car.

4. Courtney Williams—Arkansas

30. Plaintiff and proposed Nationwide and Arkansas State Class Representative Courtney Williams is a resident and citizen of West Memphis, Arkansas. Mr. Williams purchased a used 2011 Chevrolet Camaro on or about April 15, 2013, at Frank Fletcher Dodge in Sherwood, Arkansas for over $33,585. Mr. Williams experienced at least one complete shutdown of the Camaro on or about September 17, 2014, after driving over a bump in the road. He has also experienced difficulty in steering his vehicle. Mr. Williams has not yet had his car repaired under the recall because New GM informed him the parts are not yet available. Mr. Williams believes he suffered a diminution of value in his vehicle due to the ignition switch defects, the recalls and the surrounding publicity. He would not have purchased the Camaro, or he would have paid less for it, had he known about these defects.

5. Nettleton Auto Sales, Inc.—Nationwide Dealer and Arkansas Class Representative

31. Plaintiff and proposed Nationwide and Arkansas State Class Representative Nettleton Auto Sales, Inc. maintains its principal place of business in Jonesboro, Arkansas. Nettleton Auto Sales, Inc. purchased the following GM-branded vehicles with the intention to resale same:

- Vehicle #1: used 2009 Chevy HHR on March 27, 2014, in Nashville, Tennessee for $10,865, plus $1,268.32 in shipping costs;

- Vehicle #2: used 2011 Chevy HHR on February 14, 2014, in Jonesboro, Arkansas for $5,850, plus $1,079.49 in shipping and repair costs; and

- Vehicle #3: used 2010 Chevy HHR on March 12, 2014, in Jonesboro, Arkansas for $6,000, plus $5,028.13 in additional shipping and repair costs.

32. The 2009 HHR is still in the possession of Nettleton Auto Sales, Inc. The other two have been sold to Arkansas consumers. The 2011 HHR is currently covered by a warranty, while the other two are not. The 2011 HHR had its ignition switch replaced on June 30, 2014, and the other two vehicles have not had the repair performed. Nettleton Auto Sales, Inc. continues to try and sell the 2009 HHR. The 2011 HHR was sold to consumers on June 28, 2014, in fair condition for $8,500 with mileage of 126,682. The 2010 HHR was sold to consumers on June 4, 2014, in fair condition for $12,900 with 86,960 in mileage. Nettleton Auto Sales, Inc. believes the value of its vehicle have been diminished as a result of the defects. It would not have purchased these cars if New GM had been honest about the safety defects.

6. Anna Andrews—California

33. Plaintiff and proposed Nationwide and California State Class Representative Anna Andrews is a resident and citizen of La Quinta, CA. She purchased a used 2010 Buick LaCrosse in Cathedral City, California on August 25, 2011, for $36,686.86. Ms. Andrews purchased her LaCrosse, in part, because she wanted a safely designed and manufactured vehicle. She further believed that New GM was a reputable manufacturer of safe and reliable vehicles and that the Company stands behind its vehicles once they are on the road. Plaintiff did not learn of the many defects in GM-branded vehicles until shortly before filing this lawsuit.

Had New GM disclosed the many defects in GM-branded vehicles, Plaintiff would either not have purchased her LaCrosse, or would have paid less than she did.

7. Marc Koppelman—California

34. Plaintiff and proposed Nationwide and California State Class Representative Marc Koppelman is a resident and citizen of Torrance, California. Mr. Koppelman purchased a certified used 2010 Chevy HHR in 2012 in California for approximately $12,900.00. The 2010 Chevy HHR was still covered under the original factory warranty, and the dealership provided an additional 1-year warranty as part of the purchase price. Mr. Koppelman's decision to buy the car was influenced by the perceived safety associated with the car's airbag system and advertising touting the car's reliability. This was important to Mr. Koppelman because his wife was going to be the principal driver. In June 2012, about 4 months after he purchased the vehicle, while driving in Maryland on a residential street, the HHR lost power and lost power steering. Mr. Koppelman managed to pump the brakes and get the car safely off the road. When he received his recall notice, Mr. Koppelman called his GM dealership and they told him that he should reduce the weight on his keychain. Mr. Koppelman had to wait for the dealer to receive the new parts so that his HHR would be repaired under the recall. In August 2014, the recall repair work was completed. After the GM dealers gave him "the run-around" with regard to getting the new part installed, he and his wife considered selling the vehicle. In late May or early June 2014, Mr. Koppelman researched his car on Kelley Blue Book and it was valued at approximately $9,200. He went to his local dealer, Martin Chevrolet in Torrance, California, and they only offered him $6,100 to trade it in. Mr. Koppelman was shocked at the low number so he declined to sell it. He then took the vehicle to another GM dealer in Long Beach, California and they quoted him a similar value as the last dealership. They told him that due to the recalls, the HHR's value had declined, and they were even lowering the retail prices on their

own vehicles for sale. In mid-July 2014, Mr. Koppelman checked Kelley Blue Book again and saw that his car value dropped to approximately $8,400. He remembers comparable HHRs were selling for $12,000-14,000 retail at the time the recalls were first announced, but now the retail price has dropped to approximately $10,000. Mr. Koppelman was a loyal GM-brand owner, having previously owned Corvettes, Buicks, and Cadillacs, but now he says he will never purchase a GM-branded vehicle again. Mr. Koppelman would not have purchased this vehicle had New GM been honest about the safety defects.

8. David Padilla—California

35. Plaintiff and proposed Nationwide and California State Class Representative David Padilla is a resident and citizen of Stockton, California. Mr. Padilla purchased a new 2010 Chevy Cobalt in April 2010 in Stockton, California for $21,690.27. The vehicle was under warranty when he purchased it. On one occasion, Mr. Padilla was backing out of his garage when his vehicle inexplicably shut off. As a result, Mr. Padilla was afraid to drive his vehicle. Those fears increased once he learned of the ignition switch recall and the risks posed by the defects. Mr. Padilla had the ignition switch replaced under the recall repair program. He believes the value of his vehicle has been diminished as a result of the defects. Mr. Padilla would not have purchased this car if New GM had been honest about the safety defects.

9. Daniel Ratzlaff—California

36. Plaintiff and proposed Nationwide and California State Class Representative Daniel Ratzlaff is a resident and citizen of Quartz Hill, California. Mr. Ratzlaff purchased a used a 2005 Chevy Equinox in October 2013 in Palmdale, California for $10,000. The vehicle was under warranty when he purchased it, and he also purchased an extended warranty which expires in 2015. Mr. Ratzlaff chose the Equinox, in part, because he wanted a safely designed and manufactured vehicle. He saw advertisements for GM-branded vehicles before he purchased the

Equinox and, although he does not recall the specifics of the advertisements, he does recall that safety and quality were consistent themes across the advertisements he saw. These representations about safety and quality influenced Mr. Ratzlaff's decision to purchase the Equinox. Mr. Ratzlaff experienced the ignition switch defect described by the General Motors recall. On several occasions, he remembers all electrical systems turning off, including air bags and dash-signaling monitor information. He would have to consistently turn the ignition switch on and off until the condition resolved, and felt that he was in danger. He did not learn of the ignition switch defects until about March 2014. Had he known about the ignition switch defects, he would not have purchased his Equinox, or would have paid less than he did, and would not have retained the vehicle.

10. Randall Pina—California

37. Plaintiff Randall Pina resides in Soledad, California. On or about April 25, 2011, Mr. Pina purchased a new 2011 Chevrolet HHR in Fresno, California for $23,270.99. Mr. Pina still owns the 2011 Chevrolet HHR, which is under extended warranty until April 25, 2018. Mr. Pina's vehicle is one of the cars recently identified by New GM as a Defective Vehicle. He believes that he overspent on a lower quality product and acquired a vehicle that posed an undisclosed risk to his health and safety. One of New GM's main selling points has been the efficiency, cost effectiveness, and safety of its vehicles. Plaintiff's purchase was based, in significant part, on these representations and assertions by New GM. New GM failed to disclose that most of its models over the last few years have contained defective ignition switches that pose a serious risk of injury and death to the driver and occupants, as well as other motorists and pedestrians on the road. If New GM had disclosed the nature and extent of its problems, Plaintiff would not have purchased a vehicle from New GM, or would not have purchased that the vehicle for the price paid.

11. Nathan Terry—Colorado

38. Plaintiff and proposed Nationwide and Colorado State Class Representative Nathan Terry is a resident and citizen of Loveland, Colorado. Mr. Terry purchased a used 2007 Pontiac G5 GT on January 4, 2011, in Westminster, Colorado for $10,589.49. He also purchased a three-year warranty on the vehicle. Mr. Terry decided to purchase this GM-branded vehicle after a thorough investigation, including online advertisements and reviews, regarding the brand and model's safety, reliability, and quality. Mr. Terry's car inadvertently shut down on him twice while driving. In one instance, he was in high traffic on the highway when the vehicle lost power and he had to force the car over to the shoulder of the road, a task made more difficult by the fact that his power steering had also shut down. Mr. Terry learned of the ignition switch defects in March 2014. The recall repairs were performed thereafter, after waiting for the parts to arrive. In the last month or two, in preparation to sell his car, Mr. Terry checked Kelley Blue Book against his vehicle, which was in excellent condition with low mileage and fully-equipped, and it was valued at $7,041. He then checked thirteen other 2007 Pontiac G5 GT models for sale at dealerships in his vicinity, and their advertised sale prices ranged from $7,367 to $9,000. Finally, he checked four models for sale by private owners, with sale prices ranging from $6,800 to $7,840. Several dozen private buyers contacted Mr. Terry about his vehicle, and three visited him to test drive it. All three potential buyers seemed to like the car, but were aware of the numerous GM recalls, including the ignition switch recalls pertaining to the model. Even though he listed his car at the $7,041 Kelley Blue Book price, the average offer for the car was $4,500. His bargaining value was noticeably impeded, as all potential buyers repeatedly referred to the recalls in their negotiations. It was clear to Mr. Terry that the potential buyers knew about these recalls and used it to their advantage. As he browsed dealerships at the same time, he also found the trade-in value was grossly hurt by the recalls. Again, all dealerships mentioned the safety

and recall issues, and out of six trade-in offers, the highest was $2,634. Because of the negative effects of the recalls on his vehicle value, Mr. Terry was eventually forced to sell the vehicle to CarMax at nearly half his vehicle's Kelley Blue Book value. Mr. Terry would not have purchased this GM-branded vehicle, or any GM-branded vehicle, had he known about its safety defects and New GM's deception. He will never purchase a GM-branded vehicle again.

12. LaTonia Tucker—Delaware

39. Plaintiff and proposed Nationwide and Delaware State Class Representative LaTonia Tucker is a resident and citizen of Dover, Delaware. Ms. Tucker purchased a used HHR in Dover, Delaware, in October 2013 for $8,000. She purchased the vehicle with a six month warranty. Ms. Tucker purchased the HHR because she drives long distances on the highway to and from work and wanted a safe vehicle. Ms. Tucker experienced a stall while driving her vehicle on a highway; she was able to stop the car at the side of the road. It took several tries before she was able to restart the vehicle. After this event, she took her car to a mechanic, but the mechanic was unable to determine the cause of the stall. Even after having her ignition switch replaced pursuant to the recall, Ms. Tucker feels unsafe driving her vehicle. The vehicle also now has a noise it did not have before the ignition switch was replaced, but the dealership told her it is unable to find anything wrong with her vehicle. She has grandchildren, and does not feel safe allowing them as passengers in her vehicle. Had she known about the problems with her GM-branded vehicle, she would not have purchased the car.

13. Pajja Jackson—District of Columbia

Plaintiff and proposed Nationwide and District of Columbia State Class Representative Pajja Jackson is a resident and citizen of Washington, D.C. Mr. Jackson's grandmother purchased a new 2011 Buick Regal on August 23, 2010, in Mississippi for $31,393.40. The vehicle was covered under the standard manufacturer's warranty when she purchased it. After

his grandmother fell ill last year, Mr. Jackson took possession of the car and assumed its payments. Over the course of 2013, he paid the remaining $10,000 owed on the note and had the car re-titled in his name. Ever since he began driving the vehicle, Mr. Jackson has experienced the brakes locking up on him a handful of times. The worst incident occurred when he was driving at the airport. He was driving regularly and touched on his brakes when they seized up unexpectedly. He repeatedly pumped the brakes and they eventually unlocked. Then, this summer, the car's battery exploded and its acidic vapors infiltrated the car. Mr. Jackson took the vehicle into a GM dealership to have the battery issue repaired. This prompted Mr. Jackson to investigate the problems with his vehicle and the GM-brand in general. This investigation led him to the ignition switch defect, as well as the myriad of other recalls and problems associated with GM vehicles. Mr. Jackson also recently researched the value of his vehicle via the Internet and learned that his car was only selling for approximately $15,000. Because of his concern for both the safety of his vehicle and its dropping value, he has considered trying to sell it. But Mr. Jackson has refrained from doing so because his vehicle is paid off and he does not wish to incur a new car payment. As a father of two sons, ages one and four, Mr. Jackson is worried about the safety of driving his vehicle with his kids in the car. He no longer trusts the GM brand. Had he known about the safety defects and risks posed by his car and the GM-brand, he would not have purchased this car, but rather would have chosen another manufacturer.

14. Kim Genovese—Florida

40. Plaintiff and proposed Nationwide and Florida State Class Representative Kim Genovese is a resident and citizen of Lake Worth, Florida. Ms. Genovese purchased a used 2005 Saturn Ion in late 2009 in Boynton Beach, Florida for $5,500. She also purchased a 90-day warranty on the vehicle. She purchased because she believed that it was a reliable and safe vehicle with a good engine, and because it was a small, fuel efficient vehicle. Ms. Genovese has

experienced over 20 shutdown incidents with her vehicle. On many of these occasions, her vehicle would stop in the middle of the road and, sometimes, in the middle of an intersection; to restart her vehicle she would have to turn the key from the off position back to the on position. She also experienced issues with the vehicle not starting on multiple occasions. Upon hearing of the recall, Ms. Genovese stopped driving her vehicle and purchased another vehicle that she hopes is safer. On June 5, 2014, Ms. Genovese's Saturn Ion's ignition switch was replaced pursuant to the recall. Her husband still drives the vehicle because she doubts that anyone would purchase the vehicle given the widespread knowledge about the recalls. Knowing what Ms. Genovese now knows about the safety defect of her Saturn Ion, she would not have purchased the vehicle.

15. Rhonda Haskins—Florida

41. Plaintiff and proposed Nationwide and Florida State Class Representative Rhonda Haskins is a resident and citizen of Ocala, Florida. Ms. Haskins purchased a used 2007 Chevy Cobalt on November 15, 2013, in Ocala, Florida for $8,473.00. The vehicle was under a 30-day or 1,000 mile warranty when she purchased it. Approximately two or three times, Ms. Haskins' vehicle has shut-off while she was sitting idle in her Cobalt and her knee touched the ignition switch or key area. Ms. Haskins is concerned about her ongoing safety in driving the vehicle and believes its value is now greatly diminished as a result of the ignition switch defects. Ms. Haskins did not learn about the ignition switch defects until March 2014. She would not have purchased this vehicle had she known about the safety defects.

16. Joni Ferden-Precht—Florida

Plaintiff and proposed Nationwide and Florida State Class Representative Joni Ferden-Precht is a resident and citizen of Miami Lakes, Florida. Ms. Ferden-Precht purchased a new 2011 Chevy Traverse on May 27, 2011, in Miami Lakes, Florida for $33,262.17. The vehicle

was covered by the manufacturer's standard warranty when she purchased it. In deciding to buy this vehicle, Ms. Ferden-Precht consulted Chevy's advertising materials for the Traverse and also conducted many Internet searches on the vehicle model. She also saw TV advertisements and Miami Lakes Auto Mall newspaper advertisements about the Traverse. These advertisements and representations mentioned the safety and reliability of the Traverse, which influenced her decision to purchase the vehicle. Ms. Ferden-Precht experienced an airbag service light illuminating intermittently in her vehicle on multiple occasions before having her vehicle repaired under the airbag recall. She was concerned for her safety so she stopped driving her vehicle during these times, and because she did not receive a loaner vehicle, she was forced to car pool and find alternative means of transportation. Ms. Ferden-Precht would not have purchased this vehicle had she known about the safety defects.

17. Nykea Fox—Georgia

42. Plaintiff and proposed Nationwide and Georgia State Class Representative Nykea Fox is a resident and citizen of Marietta, Georgia. Ms. Fox purchased a used 2010 Chevrolet HHR in December 2012, from Steve Raymond Chevrolet in Smyrna, Georgia for approximately $17,000. Her vehicle was covered by a warranty at the time of purchase and she believes it may still be covered by a warranty. At the time, Internet searches showed that the vehicle appeared to have a good reputation for safety and reliability, with few negative comments. This fact and New GM's reputation as a quality brand—at the time—influenced her decision to buy the vehicle. Ms. Fox believed her vehicle was safe and defect free when she purchased it.

Ms. Fox's vehicle has shut off spontaneously several times in 2013. On one occasion, it shut off spontaneously while she was driving near her home. The vehicle gearshift was in "drive" and the ignition key was in the "run" position. On several other occasions at the end of a period of driving, the vehicle turned off when she attempted to move the vehicle into "park" mode.

Ms. Fox also experienced other problems with the ignition. On several occasions in 2013, the key got stuck in the ignition. Plaintiff Fox was ultimately successful in removing the key from the ignition, but it took a great deal of effort each time. Ms. Fox's ignition switch was replaced in the summer of 2014 in connection with the recalls. At the same time, New GM replaced other vehicle parts in connection with a separate power-steering recall. Ms. Fox sent the car in for ignition switch repairs in May of 2014 and received the vehicle back in August of 2014. Had New GM disclosed the defects in its vehicles, Ms. Fox would either not have purchased the vehicle, or would have paid less.

18. Barry Wilborn—Georgia

43. Plaintiff and proposed Nationwide and Georgia State Class Representative Barry Wilborn is a resident and citizen of Milner, Georgia. He purchased a used 2007 Chevrolet Cobalt in 2013 in Canton, Georgia in a private sale for $4,000. The car was not under warranty at the time of purchase. Within months of purchasing the vehicle, he experienced multiple shut downs while driving. The most recent shut down occurred while driving 60 mph on the highway; he had to veer to the right to avoid hitting another vehicle, went down an embankment and had to have his vehicle towed home. Following the last shut down, he substantially reduced his use of the vehicle because he thought it unsafe. Once he learned of the recall, he stopped driving the vehicle altogether. Mr. Wilborn purchased the vehicle because he believed New GM's representations that the vehicle was safe and reliable, and also based on its mileage rating. Mr. Wilborn's had his ignition switch replaced after his vehicle was at the dealership for over one month. Knowing what he now knows about the safety defects in many GM-branded vehicles, he would not have purchased the vehicle.

19. Patrick Painter—Illinois

44. Plaintiff and proposed Nationwide and Illinois State Class Representative Patrick Painter is a resident and citizen of Monee, Illinois. Mr. Painter purchased a new 2010 Chevy Cobalt in April 2011 at a GM dealership in Joliet, Illinois for approximately $21,000. His car was under warranty at the time he purchased it. In the summer of 2012, Mr. Painter had the ignition replaced because the vehicle would not turn off and the key could not be removed from the ignition. He recently received the ignition switch recall notice in the mail, but has not yet had the recall repairs performed. Mr. Painter believes the value of his vehicle has diminished, and he would either not have purchased the vehicle, or would have paid less for it, had New GM disclosed the defects in its vehicles.

20. Karen Rodman—Indiana

45. Plaintiff and proposed Nationwide and Indiana State Class Representative Karen Rodman is a resident and citizen of Kendallville, Indiana. Ms. Rodman purchased a used 2004 Saturn Ion in 2013 in Fort Wayne, Indiana, for $6,000. The vehicle did not have a warranty. Ms. Rodman purchased the vehicle because she thought it was safe and reliable. Since purchasing the vehicle, however, she has experienced many stalling incidents. On one occasion, she was going to the doctor and stopped at a red light. The car shut down and would not restart, and she had to have the vehicle towed. Ms. Rodman had the ignition switch replaced pursuant to the recall in or around June 2014. She continues to have the same stalling problems since the replacement that she had before the ignition switch was replaced. Ms. Rodman is afraid to drive her vehicle, but it is her only form of transportation; she would like a different vehicle that is safe to drive. Had she known about the problems with her GM-branded vehicle, she would not have purchased the car.

21. Alphonso Wright—Indiana

46. Plaintiff and proposed Nationwide and Indiana State Class Representative Alphonso Wright is a resident and citizen of Fishers, Indiana. Mr. Wright purchased a used 2005 Chevrolet Cobalt on August 16, 2012, in Indianapolis, Indiana for $9,727.99. His vehicle was not covered by a written warranty at the time of purchase. On two separate occasions, in January 2013 and April 2014, Mr. Wright's vehicle shut down while he was driving over train tracks. The steering locked on both occasions as well. After waiting approximately one month for the parts to arrive, Mr. Wright's vehicle had the recall repair done on June 5, 2014. Mr. Wright was truly frightened by his two inadvertent shut down experiences, and would not have purchased his car if he had known about the defects in his GM-branded vehicle.

22. Charles David Loterbour—Iowa

47. Plaintiff and proposed Nationwide and Iowa State Class Representative Charles David Loterbour is a resident and citizen of Des Moines, Iowa. He purchased a used 2010 HHR in October 2011 in Iowa City for $15,274. He purchased the vehicle with the original manufacturer's warranty, along with Reliant Repair Protection. He purchased the HHR over other vehicles because of New GM representations that it is rated higher for safety and fuel mileage than many other vehicles. The dealership also touted the multiple airbag system and the traction control system in the HHR. Mr. Loterbour experienced problems with his vehicle beginning in September 2012, including problems disengaging the ignition key, being unable to turn the vehicle off without disconnecting the battery, and a loss of power steering. The dealership replaced the ignition switch in 2012 in response to these problems. Since the recall announcement, the dealership informed Mr. Loterbour that it replaced the ignition switch in 2012 with an "old style" ignition switch, and he would need it replaced under the recall. Knowing what he now knows about the safety defects in many GM-branded vehicles, he would not have

purchased the vehicle and will never again purchase another GM-branded vehicle. He would trade in his vehicle if the opportunity arises, but he doubts that will happen with the current recalls.

23. Trina & John Marvin Brutche Jr.—Kansas

48. Plaintiffs and proposed Nationwide and Kansas Class Representatives Trina and John Marvin Brutche, Jr., husband and wife, are residents and citizens of Goodland, Kansas. The Brutches purchased a used 2009 Impala LTZ on June 14, 2014, in Grand Junction, Colorado for $15,471. They did not purchase any warranty other than the manufacturer's warranty. John is a longtime Chevrolet fan, and he has preferred to purchase them because he believes, based on advertising he has seen over the years, that Chevrolets are excellent quality, reliable family cars. The Brutches purchased the Impala just two weeks before its recall was announced. Several times, John experienced the steering on the Impala becoming tight or heavy. He continues to drive the Impala on a daily basis, but he would like to get the recall repairs performed. He called about the recall, and New GM directed him to his local dealer to schedule the maintenance. When John called his local dealer, they acted as if New GM's referral for service did not make sense. The dealer reported that the recall parts were not available, so no repair has been performed yet. The Brutches would not have purchased their vehicle, or they would have paid less for it, had they known about these defects.

24. Phyllis Hartzell—Kansas

49. Plaintiff and proposed Nationwide and Kansas State Class Representative Phyllis Hartzell is a resident and citizen of Burlingame, Kansas. Ms. Hartzell purchased a used 2006 Saturn Ion in 2011 in Burlingame, Kansas. The vehicle had a 30-day dealer warranty. Ms. Hartzell purchased the vehicle because she thought it was safe and reliable and would be a good vehicle for transporting her grandchildren. She no longer feels safe driving the vehicle and

will no longer drive her grandchildren in the car. As of September 2014, Ms. Hartzell is still awaiting replacement of her ignition switch; she contacts her dealership regularly, and they continue to tell her they do not have parts but should have them soon. Had she known about the problems with her GM-branded vehicle, she would not have purchased the car and will never again purchase a GM-branded vehicle.

25. Elizabeth Stewart—Kentucky

50. Plaintiff and proposed Nationwide and Kentucky State Class Representative Elizabeth Stewart is a resident and citizen of Raceland, Kentucky. She purchased a used 2010 Chevrolet Cobalt in February 2012 from a dealer in Paintsville, Kentucky for $14,000. Ms. Stewart's Chevrolet Cobalt was under factory warranty when she purchased it, and she also purchased an extended bumper-to-bumper warranty. The factory warranty and extended warranty have both expired. Around the time of her purchase, Ms. Stewart recalls seeing several commercials in which GM touted the Cobalt's safety and stated that it is the best vehicle in its class. She believed the vehicle was safe and defect free when she purchased it. Just two-and-a-half months after buying the car, in April 2012, Ms. Stewart experienced her first inadvertent shut down. She was driving in Kentucky when the engine suddenly shut off while the key was still turned and the transmission was in "drive." The loss of power made the steering wheel almost impossible to turn. Ms. Stewart managed to get to the side of the road and, thankfully, was not injured. She was also thankful that her children were not in the vehicle at the time, especially given that she purchased it primarily for use as the family car. Ms. Stewart experienced many similar shut downs between the purchase date of February 2012 and July 2014, when the ignition switch was replaced under the recall. Even post-recall "repair," Ms. Stewart has issues with the car indicative of power loss, where the headlights dim and the steering wheel locks up. GM should have disclosed these defects when Ms. Stewart purchased

the vehicle. Had New GM disclosed the defects in its vehicles, Ms. Stewart would either not have purchased the vehicle, or would have paid less.

26. Lisa West—Louisiana

51. Plaintiff and proposed Nationwide and Louisiana State Class Representative Lisa West is a resident and citizen of Baton Rouge, Louisiana. Ms. West purchased a used 2008 Chevrolet Cobalt on August 3, 2010 from All Star Hyundai in Baton Rouge for $9,621. Her vehicle was covered by a warranty at the time of purchase. It expired last year. At the time she purchased it, the GM dealer told her it was a very safe vehicle. Had New GM disclosed the defects in its vehicles, Ms. West would either not have purchased the vehicle, or would have paid less.

27. Michelangelo De Ieso—Maine

52. Plaintiff and proposed Nationwide and Maine State Class Representative Michelangelo De Ieso is a resident and citizen of Dover-Foxcroft, Maine. Mr. De Ieso purchased a used 2008 Pontiac Solstice on June 20, 2013, in Auburn, Massachusetts for $20,250.00. The vehicle was not under warranty when he purchased it. Mr. De Ieso did not learn about the ignition switch defects until March 2014. Mr. De Ieso is concerned about his safety in driving the vehicle and believes its value is now greatly diminished as a result of the ignition switch defects. As a precaution, Mr. De Ieso has not driven his vehicle since June 2014 and continues to wait to have the recall work performed on his vehicle. In fact, he purchased another non-GM vehicle to drive in the interim. In addition, he has tried to sell his Solstice privately but has been unsuccessful. He would not have purchased this vehicle had he known about the safety defects.

28. Harry Albert—Maryland

53. Plaintiff and proposed Nationwide and Maryland State Class Representative Harry Albert is a resident and citizen of Montgomery Village, Maryland. Mr. Albert purchased a

new 2012 Chevrolet Camaro from Ourisman's Rockmont Chevrolet in Rockville, Maryland, in October 2012 for $34,000. On at least three occasions, the power in Mr. Albert's Camaro failed during normal vehicle operation. During the second of these incidents, on May 13, 2014, Mr. Albert was operating his vehicle on a roadway at the posted speed when his power failed. Mr. Albert was nearly rear-ended by the vehicle traveling behind him, but the vehicle swerved and avoided a collision. Mr. Albert's knees did not impact the ignition key during this event. He was able to restart the Camaro and immediately took it to the Ourisman Rockmont dealership for testing. The dealership tested the vehicle, but could find nothing wrong. Less than one month later, Mr. Albert's vehicle experienced another power failure when he was turning into a parking lot. Again, he was almost rear-ended. This time, Ourisman Rockmont provided Mr. Albert with a loaner car while it attempted to determine the source of the problem. Shortly thereafter, New GM publicly announced the recall of the Camaro vehicles, but Mr. Albert did not learn of the ignition switch defect in his vehicle until June 2014. He took it back to the Ourisman Rockmont dealership, and they removed the blade from the ignition key fob and put it on a keychain and returned the vehicle to him. Mr. Albert was nonetheless so afraid to drive his Camaro that he traded it in for a used 2013 Chevy Impala in July 2014 in Germantown, Maryland. He received $27,000 for his Camaro, and paid $17,999 for the Impala. At the time of his trade-in, Mr. Albert did not yet know about the ignition switch recall out on his Impala. He would not have purchased the Camaro had he known about the safety defects, and now he is concerned about the safety of his Impala.

29. Bryan Mettee—Maryland

54. Plaintiff and proposed Nationwide and Maryland State Class Representative Bryan Mettee is a resident and citizen of Jarrettsville, Maryland. Mr. Mettee purchased a used 2006 Chevy Cobalt in 2012 from a dealership in Maryland for $10,000. He also purchased a

"bumper to bumper" warranty for the lifetime of the car, as well as an extended warranty. Mr. Mettee has experienced his ignition shutting down at least ten separate times during normal driving conditions. The first incident occurred in September 2013 while he was going approximately 35-40 miles per hour. He had to use the emergency brake to stop the car. In all instances he knows his knee did not bump into the ignition switch or keys when the car shut off. He visited the dealership no less than three times to attempt to resolve the shutdown issues, but in all cases the problem resumed after the dealer purported to fix it, and all were out of pocket repair costs. It was only after all this hassle that he received the recall notice. His ignition switch was repaired shortly after he received the recall notice. Had New GM disclosed the defects in its vehicles, Mr. Mettee would either not have purchased the vehicle, or would have paid less for it.

30. Richard Leger—Massachusetts

55. Plaintiff and proposed Nationwide and Massachusetts State Class Representative Richard Leger is a resident and citizen of Franklin, Massachusetts. Mr. Leger purchased a used Pontiac G5 in Attleboro, Massachusetts, in 2013 for $8,000. He purchased the vehicle with a 90-day warranty. Mr. Leger purchased the vehicle because he thought it was safe. Mr. Leger's vehicle started experiencing stalling in November 2013. The first time was at a traffic light, when the car just shut down. That happened several more times. He also experienced loss and/or locking of the power steering. He does not feel safe driving the car, nor does he feel safe having his children drive it. Mr. Leger has attempted to have the ignition switch replaced several times, but each time he went to the dealership the part was not available. As of September 2014, he has not had his ignition switch replaced pursuant to the recall. Had he known about the problems with his GM-branded vehicle, he would not have purchased the car.

31. Rafael Lanis—Michigan

56. Plaintiff and proposed Nationwide and Michigan State Class Representative Rafael Lanis is a resident and citizen of Birmingham, Michigan. Mr. Lanis purchased a used 2006 Chevy Cobalt in July 2011 at auction at Westland Auto Care in Michigan for $2,800. His car was no longer under warranty at the time he purchased it. Mr. Lanis has experienced his ignition shutting down approximately ten separate times after starting his car and then removing his hand from the key. It also shut down once while sitting idle at a traffic light. His ignition switch was repaired approximately one month after he received the recall notice, in April 2014. But his car was affected by further recalls and when he tried to secure a loaner from New GM before repairing his ignition switch, they refused. Mr. Lanis tried to sell his vehicle over the last 4-5 months but has been unsuccessful. He noted that the Kelley Blue Book value of his car has dropped from $4,700 to $4,000 since announcement of the recalls. Had New GM disclosed the defects in its vehicles, Mr. Lanis would either not have purchased the vehicle, or would have paid less for it.

32. Sheree Anderson—Michigan

57. Plaintiff and proposed Nationwide and Michigan State Class Representative Sheree Anderson is a resident and citizen of Detroit, Michigan. Ms. Anderson purchased a used 2008 Chevy HHR on November 15, 2011, in Michigan for approximately $16,500. The vehicle had a warranty on it when she purchased it. Ms. Anderson chose the HHR in part because she desired a safe vehicle. Ms. Anderson did not learn about the ignition switch defects until March 2014. Although Ms. Anderson has not experienced her vehicle shutting down while driving, she is concerned for her safety as a result of the ignition switch defects. She must continue to drive her vehicle, however, because it is her main form of transportation, and she must drive it to work every day. Ms. Anderson's HHR received the ignition switch recall repair work on June 10,

2014. She believes the value of her vehicle is now greatly diminished as a result of the ignition switch defects. Had she known about the ignition switch defects, she would either not have purchased the HHR or would have paid less for it.

33. Anna Allhouse—Minnesota

58. Plaintiff and proposed Nationwide and Minnesota State Class Representative Anna Allhouse is a resident and citizen of Clarks Grove, Minnesota. Ms. Allhouse purchased a used 2007 Chevy HHR in 2012 in Minnesota for approximately $12,000. Her car was under warranty when she purchased it, and she also purchased an extended warranty and gap insurance from the dealership at the same time. The car is currently under warranty. Ms. Allhouse experienced one incident related to the car shutting off on its own. In the winter of 2013, she was backing out of her driveway, and the car suddenly turned off. She was able to restart the car and was not involved in an accident. After receiving the recall notice, Ms. Allhouse took her car to the GM dealer. They told her there was nothing wrong with her ignition. Ms. Allhouse still owes approximately $9,800 on the vehicle. Recently, she tried to trade it in for a new vehicle at the same dealership but was told they would only offer $2,000 for the car. Ms. Allhouse has two small children and wanted a safe, reliable vehicle. She would never have purchased a GM-branded vehicle if she knew about the defects.

34. Elizabeth D. Johnson—Mississippi

59. Plaintiff and proposed Nationwide and Mississippi State Class Representative Elizabeth D. Johnson is a resident and citizen of Jackson, Mississippi. Ms. Johnson purchased a used 2007 Chevrolet Cobalt on March 27, 2012, from Bond Auto Sales, Jackson, Mississippi for $7,200.00. Ms. Johnson twice had her vehicle shut down and on one occasion was in an accident as a result, her airbags did not deploy. Her car was totaled and she has lost value as a result.

Ms. Johnson would not have purchased the vehicle, or paid as much, if she had known the vehicle was a safety hazard.

35. Linda Wright—Mississippi

60. Plaintiff and proposed Nationwide and Mississippi State Class Representative Linda Wright is a resident and citizen of Greenwood, Mississippi. Ms. Wright purchased a used 2007 Chevrolet Cobalt on July 8, 2013, in Greenwood, Mississippi for $4,300. At the time she purchased her vehicle, it was not covered by a warranty. On two occasions, on November 13, 2013, and May 18, 2014, Ms. Wright experienced her engine shutting down while operating the vehicle under normal driving conditions at 25-40 miles per hour. Each time, she was forced to try and steer the car to the side of the road before restarting the engine. The steering also locked up in both instances. Her vehicle had the ignition switch repair done at a dealership in Greenwood, Mississippi. Had New GM disclosed the defects in its vehicles, Ms. Wright would either not have purchased the vehicle, or would have paid less.

36. Cynthia Hawkins—Missouri

61. Plaintiff and proposed Nationwide and Missouri State Class Representative Cynthia Hawkins is a resident and citizen of Pevely, Missouri. Ms. Hawkins purchased a used 2010 Chevy Cobalt on July 23, 2013, in Missouri for approximately $13,000. The car was not under warranty when she purchased it. She believed the car was a good family car and one that a teenager could drive. Ms. Hawkins did not receive a recall notice, but rather heard about it on the news and immediately contacted her GM dealer. The dealer told her the parts were not available. Ms. Hawkins could not drive her vehicle from April 7, 2014, to August 29, 2014, while she awaited the recall repair parts to come in and be installed in her car. Since announcement of the recalls, she believes her car's value has decreased significantly, and it

prevents her from re-selling it for a fair price. Ms. Hawkins would not have purchased this GM-branded vehicle had she known about these defects.

37. Ronald Robinson—Missouri

62. Plaintiff and proposed Nationwide and Missouri State Class Representative Ronald Robinson is a resident and citizen of Bridgeton, Missouri. Mr. Robinson purchased a used 2010 Chevy Impala in June 2010 in Missouri for approximately $16,000. He purchased an extended warranty that expires on March 16, 2015, or at 82,000 miles. Before purchasing, Mr. Robinson viewed email advertising highlighting the quality of the GM product, and this positively impacted his decision to buy the car. Mr. Robinson first heard about the recalls in the summer of 2014. He contacted his local dealer to inquire about his Impala, and they told him his specific make and model was not being recalled. Then just a few months later in August 2014, he received a notice in the mail about his car being recalled for the ignition switch defect. Mr. Robinson's vehicle has still not been repaired, however, because the GM dealership told him the parts are not available—and they do not know when they will become available. He believes his car's value has diminished and he is worried about trying to sell the car now because he does not believe he can get a fair price for it. Mr. Robinson would not have purchased this GM-branded vehicle had he known about these defects, and under no circumstances would he have even considered buying the car for a lesser price.

38. Patricia Backus—Montana

63. Plaintiff and proposed Nationwide and Montana State Class Representative Patricia Backus is a resident and citizen of Bigfork, Montana. Ms. Backus purchased a used 2006 HHR in 2012 in Idaho for $10,900. Ms. Backus purchased a short-term warranty, which she cancelled shortly after purchasing the vehicle. Ms. Backus purchased the HHR because she believed it reliable and safe. Within six months of purchasing the vehicle, she experienced a stall

while approaching a traffic light. She had three additional shut downs while driving. During these incidents, she had no control of the steering, and, on at least one of the occasions, her steering locked. It took Ms. Backus several attempts for her vehicle to turn back on. She no longer feels safe driving the vehicle even though the ignition switch was replaced, and since learning about the recall she is angry towards New GM for keeping the safety defect a secret. Ms. Backus had her ignition switch replaced in August 2014. Since the replacement, the radio in her vehicle turns off. Had she known about the problems with her GM-branded vehicle, she would not have purchased the car. She will never purchase another GM-branded vehicle.

39. Susan Rangel—Nebraska

64. Plaintiff and proposed Nationwide and Nebraska Class Representative Susan Rangel is a resident and citizen of North Platte, Nebraska. She purchased a used 2008 Chevrolet Cobalt in the fall of 2009 at Jerry Remus Chevrolet in North Platte, Nebraska, for $14,000. At the time of purchase, the vehicle had the original manufacturer's warranty. Ms. Rangel purchased the vehicle believing it to be safe and reliable. When she learned about the recall, she requested a rental/loaner vehicle because she did not believe the vehicle was safe to drive, but she was informed by New GM that she would not be given a loaner vehicle. The dealership replaced the ignition switch in June 2014 pursuant to the recall. Nevertheless, Ms. Rangel does not believe the vehicle is safe for her family to drive and has attempted to sell the vehicle. As of September 2014, those efforts have been unsuccessful. Had she known about the problems with her GM-branded vehicle, she would he would not have purchased the car and will never again purchase another GM-branded vehicle.

40. Sandra Horton—Nevada

65. Plaintiff and proposed Nationwide and Nevada State Class Representative Sandra Horton is a resident and citizen of Las Vegas, Nevada. Ms. Horton purchased a used 2007

Pontiac Solstice in October 2013 in Nevada for $10,000. Her car was not under warranty at the time of purchase. On several occasions she has experienced issues with her vehicle that are consistent with the ignition switch defects. Her vehicle was repaired under the recall, but only after waiting four months for the parts to arrive. New GM did not provide her with a loaner vehicle during this waiting period. Ms. Horton would not have purchased her GM-branded vehicle had she known about its safety defects.

41. Gene Reagan—New Jersey

66. Plaintiff and proposed Nationwide and New Jersey State Class Representative Gene Reagan is a resident and citizen of South Amboy, New Jersey. Mr. Reagan purchased a new 2010 HHR in December 2009, at a dealership in Middletown, New Jersey, for approximately $20,000. His vehicle had a standard warranty, but he does not recall its details. Mr. Reagan purchased a GM-branded vehicle because he believed that New GM stood for safety and reliability. Mr. Reagan has experienced several safety problems with his vehicle, including his ignition locking and inability to turn the key to the "on" position, requiring the car to be towed to the dealership. Because of his ignition problems, Mr. Reagan had his ignition replaced approximately three years ago. That did not solve the problems he was experiencing with his vehicle. As of September 2014, Mr. Reagan is still awaiting replacement of his ignition switch pursuant to the recall and feels nervous driving it in its current defective condition. Had he known about the problems with his GM-branded vehicle, and particularly that New GM was building vehicles plagued with defects and not committed to safety and reliability, he would he would not have purchased the car. Mr. Reagan will never purchase another GM-branded vehicle.

42. Lorraine De Vargas—New Mexico

67. Plaintiff and proposed Nationwide and New Mexico State Class Representative Lorraine De Vargas is a resident and citizen of Santa Fe, New Mexico. Ms. De Vargas purchased a used 2005 Saturn Ion on November 25, 2009, in Santa Fe, New Mexico for $5,000. There was no warranty on the vehicle when Ms. De Vargas purchased it. Ms. De Vargas bought her Ion in part because of her desire for a safe vehicle. Ms. De Vargas was involved in an accident on December 14, 2012. While Ms. De Vargas was driving her Ion, the vehicle shut down unexpectedly and caused her to collide with a fence at 25-30 miles per hour. Her airbags failed to deploy. The vehicle damage has been repaired, and while she is thankful to have survived the accident with no injuries, Ms. De Vargas must continue to drive her Ion to work every day. She is concerned about the safety of her vehicle, the impact the defects have had on the value of her vehicle, and the costs she has incurred in fixing the vehicle previously. Ms. De Vargas did not learn of the ignition switch defects until March 2014. She believes that New GM withheld information about the safety of its vehicles.

43. Javier Delacruz—New Mexico

68. Plaintiff and proposed Nationwide and Alabama State Class Representative Javier Delacruz is a resident and citizen of Albuquerque, New Mexico. Mr. Delacruz purchased a new 2009 Chevy Cobalt in September 2009 in Albuquerque, New Mexico for $20,698. The vehicle was under warranty when he purchased it. In 2011, Mr. Delacruz could not shut-off his vehicle and the ignition switch was replaced. Mr. Delacruz fears driving his vehicle due to the ignition switch recall and the risks posed by the defects. Mr. Delacruz had the ignition switch replaced, again, this year as a result of the recall. He believes the value of his vehicle has been diminished as a result of the defects. Mr. Delacruz would not have purchased this car if New GM had been honest about the safety defects.

44. Renate Glyttov—New York

69. Plaintiff and proposed Nationwide and New York State Class Representative Renate Glyttov is a resident and citizen of New Windsor, New York. Ms. Glyttov purchased a used 2009 Chevrolet HHR on March 28, 2012 from Barton Birks Chevrolet in Newburgh, New York for $15,995. Ms. Glyttov's vehicle was covered by a certified pre-owned limited warranty that expired on March 28, 2013, as well as a standard maintenance plan that was effective from her purchase date until March 28, 2014. Ms. Glyttov has purchased many GM-branded vehicles, believing that they were safe and reliable vehicles based on the strength of the brand name. Operating under the belief that GM was a quality brand and that the vehicle would be safe and reliable and defect-free, she purchased her HHR. Ms. Glyttov's vehicle regularly shut off spontaneously on many occasions in 2012 and 2013 while traveling around New Windsor, New York; Newburgh, New York; Wallkill, New York; and in Pennsylvania when driving onto an off ramp of I-84. The vehicle would shut off when Ms. Glyttov drove on bumpy roads or hit a pothole. On each occasion, the vehicle gearshift was in "drive" and the ignition key was in the "run" position. Ms. Glyttov also experienced other problems with the ignition. On several occasions in 2012 and 2013, she put the key in the ignition, but the key would not turn and would then get stuck in the ignition. Eventually the key would move after attempting to turn the ignition on for several minutes. On May 16, 2012, Ms. Glyttov's ignition lock cylinder was replaced during a routine oil change. Plaintiff Glyttov experienced numerous shut off events after this replacement. Ms. Glyttov's ignition switch was replaced in connection with the recalls initiated in response to the ignition switch defects. First, Ms. Glyttov's ignition key was replaced on April 16, 2014, and then her ignition switch was replaced on June 11, 2014. Ms. Glyttov would not have purchased the vehicle had she known of the defects.

45. Nicole Mason—New York

70. Plaintiff and proposed Nationwide and New York State Class Representative Nicole Mason is a resident and citizen of Rochester, New York. Ms. Mason purchased a new 2010 Chevrolet Cobalt on May 17, 2010, from Bob Johnson Chevrolet in Rochester, New York for $22,010.47. Ms. Mason purchased an extended warranty that covers the vehicle for 72 months or 48,000 miles. Ms. Mason reviewed advertisements for the Cobalt that ran in her local newspaper, the *Democrat & Chronicle*, and her decision to buy the vehicle was influenced by these advertisements. Ms. Mason believed the Chevrolet Cobalt was a safe and reliable vehicle. Ms. Mason's vehicle has spontaneously shut off on at least three occasions. The vehicle first shut off on September 3, 2010, near Emerson and Glide streets in Rochester, New York when Ms. Mason's daughter, Jessica Mason, was driving it home from a test to get her drivers' license. The vehicle shut off a second time on September 16, 2010, in Rochester, New York when Jessica Mason was traveling on Britton Road. Most recently, on September 4, 2014, the vehicle shut off while Ms. Mason was driving it in Myrtle Beach, South Carolina. On each shutdown occasion, the vehicle lost power for no apparent reason. Ms. Mason and her daughter were not driving on a bumpy road and did not hit the ignition switch with their knees. On each occasion, the vehicle gearshift was in "drive" and the ignition key was in the "run" position. On the September 16, 2010 incident, Jessica Mason was forced to use the emergency break to get the vehicle to stop and avoid an accident. The vehicle would not turn back on immediately and had to be towed to Ms. Mason's home. Ms. Mason took the vehicle to a GM dealer after the September 16, 2010 incident, but the dealer could not identify a cause for the shut off and made no repairs to the vehicle. Ms. Mason's ignition switch was replaced in June 2014 in connection with the recalls initiated in response to the ignition switch defect. Had New GM disclosed the defects in its vehicles, Ms. Mason would either not have purchased the vehicle, or would have paid less.

46. Steven Sileo—New York

71. Plaintiff and proposed Nationwide and New York State Class Representative Steven Sileo is a resident and citizen of Skillman, New York. Mr. Sileo purchased a used 2009 Chevy Cobalt in July 2010 in Burlington, New Jersey for $10,000. The vehicle was under warranty when he purchased it. Although Mr. Sileo has not experienced any issues with his Cobalt, he fears driving his vehicle after learning of the ignition switch recall and the risks posed by the defects. Mr. Sileo is still waiting for the recall repair work to be completed on his vehicle. He is eager to sell the vehicle but cannot honestly market it without the ignition switch being replaced. Also, he believes the value of his vehicle has been diminished as a result of the defects and the stigma with the GM brand. Mr. Sileo would not have purchased this car if New GM was honest about the safety defects.

47. Dawn Tefft—New York

72. Plaintiff and proposed Nationwide and New York State Class Representative Dawn Tefft is a resident and citizen of Mt. Upton, New York. Ms. Tefft purchased a used 2010 Chevy Cobalt on June 21, 2011, in Sidney, New York for $13,695.50. There was no warranty on the vehicle when Ms. Tefft purchased it. Ms. Tefft bought her Cobalt in part because of her desire for a safe vehicle. Ms. Tefft was involved in a serious accident on October 24, 2013, while driving to work. While Ms. Tefft was driving her Cobalt, the vehicle shut down unexpectedly and caused her to collide head-on with a bridge at 40-45 miles per hour. The airbags failed to deploy, and the vehicle was totaled as a result of the accident. Ms. Tefft did not learn about the ignition switch defects until March 2014. Had she been aware of the ignition switch defects, Ms. Tefft would either not have purchased her Cobalt or would have paid less for it.

48. Silas Walton—North Carolina

73. Plaintiff and proposed Nationwide and North Carolina State Class Representative Silas Walton is a resident and citizen of Fayetteville, North Carolina. Mr. Walton purchased a used 2008 Chevrolet Cobalt in 2010 in Clarksville, Tennessee for between $14,000 and $15,000. The vehicle was under warranty, but he does not recall the warranty terms. Mr. Walton purchased the vehicle because he thought it was a reliable and safe vehicle. Mr. Walton often experienced problems with starting the vehicle and turning the key to any position. On at least one occasion, he experienced a shutdown in his vehicle, which caused the steering wheel to lock. This occurred while he was driving downhill on a highway. At first, he was unable to control the car, but eventually he was able to maneuver it to the side of the road. After about ten minutes, he was able to restart the vehicle. Mr. Walton had the ignition switch replaced in the summer of 2014; however, his key continues to stick in the ignition. He remains concerned about driving the vehicle. Had he known about the problems with his GM-branded vehicle, he would not have purchased the car and will never again trust New GM.

49. Jolene Mulske—North Dakota

74. Plaintiff and proposed Nationwide and North Dakota State Class Representative Jolene Mulske is a resident and citizen of Gladstone, North Dakota. Ms. Mulske purchased a used 2005 Chevrolet Cobalt in 2010 in Dickinson, North Dakota, for approximately $10,000. Ms. Mulske purchased the vehicle because she wanted a safe and reliable vehicle for her daughter to drive. Ms. Mulske had the ignition switch replaced in the summer of 2014, but she and her daughter are afraid to drive it now. Had she known about the problems with her GM-branded vehicle, she would not have purchased the car and will never again purchase a New GM vehicle.

50. Peggy Robinson—Ohio

75. Plaintiff and proposed Nationwide and Ohio State Class Representative Peggy Robinson is a resident and citizen of Cincinnati, Ohio. Ms. Robinson purchased a used 2004 Saturn Ion in 2013 in Cincinnati, Ohio for $4,999. Ms. Robinson purchased the Ion because she thought it was safe. Within six months of purchasing the vehicle, she began experiencing shut downs while driving. The shut downs occurred two or three times per week on average. She no longer feels safe driving the vehicle, especially because she has children. Ms. Robinson had her ignition switch replaced in August 2014, and she has experienced two shut downs since then. Had she known about the problems with her GM-branded vehicle, she would he would not have purchased the car.

51. Jerrile Gordon—Oklahoma

76. Plaintiff and proposed Nationwide and Oklahoma State Class Representative Jerrile Gordon is a resident and citizen of Del City, Oklahoma. Mr. Gordon purchased a used 2006 Chevy Cobalt on September 3, 2011, in Oklahoma City, Oklahoma for $14,950. Mr. Gordon chose the Cobalt, in part, because he wanted a safely designed and manufactured car. Mr. Gordon's vehicle has shut down on four separate occasions between December 2011 and July 2012. In two instances, he was driving on the highway when the shut downs occurred, and he had to steer his vehicle to the side of the road to restart. On the other two occasions, his car shut off while driving over a bump in the road. Mr. Gordon did not learn of the ignition switch defects until March 2014. Had he been aware of the ignition switch defects, Mr. Gordon would either not have purchased his Cobalt or would have paid less for it than he did.

52. Bruce and Denise Wright—Oklahoma

77. Plaintiffs and proposed Nationwide and Oklahoma State Class Representatives Bruce and Denise Wright, husband and wife, are residents and citizens of Enid, Oklahoma. If

not for this MDL, the Wrights would have filed a class action in the United States District Court for the Western District of Oklahoma. The Wrights purchased a new 2011 Chevrolet Camaro on March 18, 2011, in Norman, Oklahoma for $31,000. The vehicle was covered by a standard three year, 36,000 mile warranty. Prior to buying, they saw television, print, and billboard ads regarding the vehicle's five star rating and safety. Ms. Wright drove the vehicle daily to and from her and Mr. Wright's places of work. The Wrights learned of the June 30, 2014 recall affecting their Camaro in July 2014 through the news media, and they called the local GM dealership to confirm the recall and the safety concerns relating to recall. Afterwards, Ms. Wright was no longer comfortable driving the Camaro, so they proceeded to dispose of the vehicle as quickly as practical. They traded the car to a local Ford dealership on August 9, 2014. The Wrights believe they suffered a diminution of value in their vehicle due to the ignition switch defects and the surrounding publicity, and that they could have received more for their Camaro but for the defect. Had New GM disclosed the defects in its vehicles, Plaintiff would either not have purchased the vehicle, or would have paid less.

53. Jennifer Reeder—Oklahoma

78. Plaintiff and proposed Nationwide and Oklahoma State Class Representative Jennifer Reeder is a resident and citizen of Oklahoma City, Oklahoma. If not for the MDL, Ms. Reeder would have filed a class action in the Unites States District Court for the Western District of Oklahoma. Ms. Reeder purchased a used 2012 Chevrolet Impala on August 30, 2013, in Norman, Oklahoma, from David Stanley Chevrolet for $18,595. Ms. Reeder also purchased an extended warranty for the vehicle from David Stanley Chevrolet at the time of purchase. On or about July 26, 2014, Ms. Reeder was unable to remove the key from the ignition, and the steering and brakes would not lock. After 30 minutes of manipulating the key in an effort to remove it from the ignition, she was forced to leave the key in the ignition overnight; her

husband was able to remove the key from the ignition the following day. Ms. Reeder was unaware of any recall notice affecting her Impala until, some time shortly after the key became stuck in the ignition overnight, a neighbor informed her about the recall covering Impalas. Ms. Reeder watched the television concerning the recalls and researched the vehicle recalls online, but she never received a written recall notice in the mail regarding her Impala. Ms. Reeder and her son, both of whom drive the Impala to and from work, would have liked to discontinue driving the Impala until the ignition system was repaired, but they were unable to do so because it would have left her family with a single means of transportation among herself, her husband, and her son due to their other vehicle, a Chevrolet Cobalt, already being totaled in a defect-related crash. The family could not afford to pay for a rental car. Finally, on September 16, 2014, a GM dealership notified her that it was ready to repair the Impala. The repair was performed on September 22, 2014, and the dealership provided her with a loaner or rental vehicle that day while the repairs were performed. At the time the repair was performed, Ms. Reeder reported to the dealership that the Impala's engine light sometimes comes on unexpectedly and, occasionally, the vehicle will not start at all. Replacing the battery has not eliminated the problem. The dealership reported that there were no recalls related to such electrical problems, and they did not do anything to fix it. The electrical problem has recurred since the ignition recall repair. Ms. Reeder believes she has suffered a diminution of value in her vehicle due to the ignition switch defects, recalls, and surrounding publicity.

79. Ms. Reeder also purchased a used 2010 Chevrolet Cobalt on or about February 5, 2014, in Del City, Oklahoma, from Ricks Auto Sales for $9,595. Ms. Reeder purchased an extended warranty for the Cobalt from Ricks Auto Sales at the same time. Ms. Reeder purchased the vehicle primarily for Anthony Reeder, her son, for his personal, family, and household use.

On May 19, 2014, Anthony Reeder was driving in bumper-to-bumper traffic when the vehicle suddenly shut off, the brakes became ineffective, the steering wheel stopped operating, and he struck the vehicle in front of him, totaling the Cobalt and injuring Anthony. Ms. Reeder and Mr. Reeder were unaware of any recall on the Cobalt until after the accident when they learned of the recall from a neighbor. They had never received any recall notice in the mail. After the accident, Ms. Reeder and her son have been and are currently sharing Ms. Reeder's 2012 Chevrolet Impala, because they cannot afford another car due to the balance remaining on the financing note of the Cobalt. From sharing the Impala, they have increased the miles accumulated on it so much that they have used up its extended warranty. A combined total of 45,000 miles were added to the Impala since the crash of the Cobalt, and they had to pay the $2,500 deductible not paid by the insurance company for the totaled Ion. Ms. Reeder also claims damages for the decreased value of the Impala because of its increased usage in the absence of the Cobalt, the difference in the amount of the cost of gasoline between Mr. Reeder using the Impala and using the better-mileage Cobalt, the value of the extended warranty on the Impala used up by the excess of miles, and the increase in her auto insurance premiums as a result of the accident caused by the Cobalt's defective design being attributed to Mr. Reeder. The difference between the settlement paid to Ms. Reeder by her insurance company, Geico, on the Cobalt after the wreck and her loan for the vehicle left her with an outstanding balance of more than $1,500. In valuing the Cobalt, Geico took into account values of vehicles on dates after the July 13, 2014 announcement of the ignition recall on Cobalts and other GM Vehicles received wide publicity. The valuation Geico thus arrived at was lower than it would have been had the defect not been present in the Cobalt and other models. Geico's valuation explicitly noted the existence of the recalls complained of herein.

54. Deneise Burton—Oklahoma

80. Plaintiff and proposed Nationwide and Oklahoma State Class Representative Deneise Burton is a resident and citizen of Warr Acres, Oklahoma. Ms. Burton purchased a used 2007 Saturn Ion on September 8, 2012 in Oklahoma for $11,995. She also purchased a limited warranty for 24 months or 24,000 miles. Once, in April 2013, her engine shut off while backing out of her driveway after her knee bumped the ignition switch area, knocking her keys from the ignition. Her ignition switch was repaired after she received the recall notice. In two attempts before GM agreed to provide her a loaner vehicle so as not to risk her and her children's lives while using the car and waiting for the repair parts to arrive. She has tried to sell her vehicle since the recalls were announced, but the value of her vehicle is now too low. Ms. Burton would not have purchased her vehicle, or she would have paid less for it, had she known about these defects.

55. Janice Bagley—Pennsylvania

81. Plaintiff and proposed Nationwide and Pennsylvania State Class Representative Janice Bagley is a resident and citizen of Patton, Pennsylvania. Ms. Bagley purchased a used 2007 Chevrolet Cobalt in 2013 in Carroltown, Pennsylvania, for approximately $6,000. The vehicle had a 30-day warranty at the time of purchase. Ms. Bagley purchased the Cobalt because she had owned GM-branded vehicles in the past, thought her previous vehicles to be safe and reliable, and believed the Cobalt also would be safe and reliable. She also thought it would be a safe, reliable vehicle for her 19 year old daughter to drive. Within the first 30 days of owning the vehicle, she experienced two stalling events; a few weeks later she had a third stalling incident. Each time she took the vehicle to a mechanic because she was concerned she would be stranded one day. In February 2014, she was involved in an accident when a deer ran in front of her; she was driving 35 miles per hour yet her airbags did not deploy. Following the recall, she

made the connection between the frontal collision and airbag failure and the safety recall. Ms. Bagley had her ignition switch replaced in June or July of 2014. Had she known about the problems with her GM-branded vehicle, she would not have purchased the car and will never again purchase any GM-branded vehicle.

56. Janelle Davis—South Dakota

82. Plaintiff and proposed Nationwide and South Dakota State Class Representative Janelle Davis is a resident and citizen of South Sunburst, South Dakota. Ms. Davis purchased a used 2006 Chevrolet Cobalt in 2011 in Sioux Falls, South Dakota, for $7,200. Ms. Davis purchased the vehicle because she thought it was a reliable and safe vehicle and also because it has good mileage ratings. When Ms. Davis learned about the recall, she contacted the dealership about a loaner vehicle because she has a one year old daughter and did not feel safe driving her in a vehicle with a safety defect. She was denied a loaner and/or rental vehicle, even though she told the dealership about her fear of driving her one year old daughter in an unsafe vehicle, because she had not experienced shut downs or stalls. Ms. Davis had her ignition switch replaced pursuant to the recall in the summer of 2014. Had she known about the problems with her GM-branded vehicle, she would not have purchased the car.

57. Louise Tindell—Tennessee

83. Plaintiff and proposed Nationwide and Tennessee State Class Representative Louise Tindell is a resident and citizen of Murfeesboro, Tennessee. Ms. Tindell purchased a used 2007 Saturn Ion in 2010 in Murfeesboro, Tennessee, for approximately $10,000. The vehicle was under warranty; she believes there were two years remaining on the warranty at the time she purchased the car. When Ms. Tindell believed that the Ion was a safe and reliable vehicle. Within seven months of purchasing the vehicle, Ms. Tindell's vehicle shut down while she was driving. She veered to the right, came to a stop, and waited before turning her car back

on. On another occasion, her vehicle shut down on her way to church. These events make her afraid to drive her car, and, since learning about the recall, she is angry towards New GM for keeping the safety defect a secret. Ms. Tindell had her ignition switch replaced in approximately June 2014. Since the replacement, she has experienced problems with her seat belts. She no longer trusts the Ion; she will never feel safe regardless of repairs or replacement parts. She continues to fear she will experience more shut downs. Had Ms. Tindell known about the problems with her GM-branded vehicle, she would not have purchased the car. She now tries to drive as infrequently as possible, and when she does she is fearful.

58. Michael Graciano—Texas

84. Plaintiff and proposed Nationwide and Texas State Class Representative Michael Graciano is a resident and citizen of Arlington, Texas. On October 17, 2011, Mr. Graciano purchased a used 2007 Chevrolet Cobalt from a dealership in Arlington, Texas, for $22,197.20. Prior to March 4, 2014, his fiancé and her daughter had experienced the car stalling on numerous occasions with a corresponding loss of power steering. They had the car looked at by family members experienced in car repair and one independent repair shop, but no one was able to diagnose the problem. Mr. Graciano received a safety recall notice pertaining to his vehicle in March 2014. After receiving the notice, Mr. Graciano and his fiancé, fearful for her daughter's safety, instructed her not to drive the car any more. Mr. Graciano's fiancé called a local Chevrolet dealer in Colorado twice in March 2014 about having the recall repair performed and each time she was told the dealer did not have the necessary parts, and each time the dealer failed to offer a loaner vehicle. The car was eventually serviced under the recall by AutoNation Chevrolet North in Denver, Colorado, and Mr. Graciano's fiancé's daughter was provided with a rental car as a loaner vehicle. While Mr. Graciano waited on repair of the Cobalt, his fiancé's daughter moved to Texas to go to college, bringing the rental car with her. Finally, in

approximately mid-June, the dealer called to say the recall repair had been made, some two months after the car was left with the dealer. Had New GM disclosed the defects in its vehicles, Mr. Graciano would not have purchased the Cobalt.

59. Keisha Hunter—Texas

85. Plaintiff and proposed Nationwide and Texas State Class Representative Keisha Hunter is a resident and citizen of Fort Worth, Texas. Ms. Hunter purchased a used 2006 Chevy Cobalt on March 22, 2013, in Arlington, Texas for $24,965.01. Ms. Hunter chose the Cobalt in part because she wanted a safe vehicle. Ms. Hunter is concerned for her safety and the diminished value of her vehicle as a result of the ignition switch defects. Ms. Hunter did not learn of the ignition switch defects until March 2014. Had she been aware of the of the ignition switch defects, Ms. Hunter would either not have purchased her Cobalt or would have paid less for it than she did.

60. Alexis Crockett—Utah

86. Plaintiff and proposed Nationwide and Utah State Class Representative Alexis Crockett is a resident and citizen of Eagle Mountain, Utah. Ms. Crockett purchased a used 2005 Chevrolet Cobalt in 2013 in Oehi, Utah, for $5,200. The vehicle did not have a warranty. Ms. Crockett experienced problems turning the vehicle on and off on numerous occasions; she also had difficulty removing the key from the ignition. In some weeks, the key would get stuck in the ignition several times. She also has experienced stalling when reversing out of her driveway. Ms. Crockett has not had her ignition switch replaced pursuant to the recall as of September 2014. She regularly calls the dealership and is told that the part is not ready; she has been told by another dealership that her vehicle is not on the recall list. Ms. Crockett is afraid to drive her vehicle, especially when she has to transport her siblings to see her father which requires highway driving. She would like to sell her vehicle but has to pay more than the car is now

worth, so cannot afford to sell it. Had she known about the problems with her GM-branded vehicle, she would not have purchased the car.

61. Ashlee Hall-Abbott—Virginia

Plaintiff and proposed Nationwide and Virginia State Class Representative Ashlee Hall-Abbott is a resident and citizen of Hampton, Virginia. Ms. Hall-Abbott and her husband Brian Abbott purchased a new 2014 Chevy Silverado in March 2014 at Hampton Chevrolet in Hampton, Virginia for $38,204.19. Her vehicle is currently covered by GM's two-year, 100,000-mile warranty and an unlimited lifetime warranty through Hampton Chevrolet. Ever since purchasing the truck earlier this year, Ms. Hall-Abbott's vehicle has been repaired under at least three or four separate recalls, and she just recently received what she believes is the fifth recall notice in the mail. She and her husband recently went to the GM dealership to inquire about trading in the Silverado for a Chevy Tahoe. The dealership finance manager immediately declined the offer, however, saying the dealership would be upside down in negative equity if they accepted. Had Ms. Hall-Abbott and her husband known about the safety defects and problems associated with their Silverado, they would have purchased another vehicle.

62. Michael Garcia—Washington

87. Plaintiff and proposed Nationwide and Washington State Class Representative Michael Garcia is a resident and citizen of Yakima, Washington. Mr. Garcia purchased a used 2010 Chevy Cobalt in June 2011 in Mt. Vernon, Washington for $16,470. The vehicle was under warranty when he purchased it. Mr. Garcia fears driving his vehicle due to the ignition switch recall and the risks posed by the defects. Mr. Garcia had the ignition switch replaced under the recall repair program. He believes the value of his vehicle has been diminished as a result of the defects. Mr. Garcia would not have purchased this car had New GM been honest about the safety defects.

63. Tony Hiller—Washington

88. Plaintiff and proposed Nationwide and Washington State Class Representative Tony Hiller is a resident and citizen of Sumner, Washington. He purchased a used 2009 Chevrolet HHR in March of 2013 in Puyallup, Washington for $10,965.50. The car was not under warranty at the time of purchase. After learning of the recall, Mr. Hiller simulated a shutdown incident. He pulled lightly on his key and the vehicle shut off. On July 23, 2014, Mr. Hiller's ignition switch was replaced pursuant to the recall. Mr. Hiller traded in his HHR on August 8, 2014 because he does not believe the vehicle is safe to drive. He believes he received less in trade in value due to the recall and the safety defects in the vehicle. Knowing what he now knows about the safety defects in many GM-branded vehicles, he would not have purchased the vehicle.

64. Melinda Graley—West Virginia

89. Plaintiff and proposed Nationwide and West Virginia State Class Representative Melinda Graley is a resident of Alum Creek, West Virginia. Ms. Graley purchased a used 2003 Saturn Ion in March 2012 in Charleston, West Virginia for $13,000. The car was not under warranty at the time of purchase. In February, Ms. Graley's husband was driving the car when it inadvertently shut down, causing him to crash into an embankment. Ms. Graley also experienced steering lock-up events with her car. In one instance, it locked up on her while she was driving up a hill in the mountains, causing her car to drift left into the oncoming lane. She narrowly avoided colliding with a coal truck. The vehicle was serviced under an ignition switch recall in June 2014. During those three months her dealership called on multiple instances, insisting she return the loaner vehicle because there was "nothing wrong" with her ignition switch and that her vehicle never failed. With the assistance of her counsel, Ms. Graley was able to refuse these demands and retain her loaner through June when her car was finally repaired.

Ms. Graley attempted to sell her car to a dealership, CNO Motors, in August 2014. They only offered her $1,000 for the car, however, so she decided not to sell it. Had GM disclosed the defects in its vehicles, Ms. Graley would either not have purchased the vehicle, or would have paid less.

65. Nancy Bellow—Wisconsin

90. Plaintiff and proposed Nationwide and Wisconsin State Class Representative Nancy Bellow is a resident and citizen of Oconto Falls, Wisconsin. She purchased a used 2007 Chevrolet Cobalt in late March or early April 2012 at King Buick in Oconto, Wisconsin for $10,000. The car was not under warranty at the time of purchase. She purchased the vehicle after reading advertisements about the Cobalt on the Internet. Her ignition switch was not repaired under the recall until September 18, 2014, and she was never offered a loaner car during this waiting period. Knowing what she now knows about the safety defects in many GM-branded manufactured vehicles, she would not have purchased the vehicle.

66. Henry Redic—Wisconsin

91. Plaintiff and proposed Nationwide and Wisconsin State Class Representative Henry Redic is a resident and citizen of Milwaukee, Wisconsin. Mr. Redic purchased a used 2008 Buick Lucerne on September 19, 2011, from Joe Van Horn Chevrolet Inc. in Milwaukee, Wisconsin for $15,876. Mr. Redic's vehicle was covered by a written warranty and is currently covered by two extended warranties: the Advantage Contract # AD40 473150 and the Advantage Wrap Plan. Mr. Redic has owned six Buicks and has long favored this vehicle model. He purchased the vehicle at issue based on his belief that the GM brand was a trusted name and that the Buick was a safe and reliable vehicle. Mr. Redic believed his vehicle was safe and defect free when he purchased it. Mr. Redic's vehicle has spontaneously shut off on six different occasions. The first shut off occurred on July 13, 2013, in Chicago, Illinois. Mr. Redic

was driving over railroad tracks in heavy traffic when his vehicle suddenly shut off. He attempted to pull the vehicle over without causing an accident but was unable to do so and side-swiped a utility pole. The second incident occurred in Milwaukee, Wisconsin on September 1, 2013, when the vehicle shut off after hitting a pothole. The remaining four shut off incidents also occurred in Milwaukee, Wisconsin after hitting potholes, but Mr. Redic does not recall the precise dates of those incidents. Aside from the incident on July 13, 2013, Mr. Redic was able pull the vehicle to the side of the road and allow it to coast until he was able to get it to stop. Mr. Redic would not have purchased the vehicle had he known of the defects.

67. Scott Schultz—Wisconsin

92. Plaintiff and proposed Nationwide and Wisconsin State Representative Scott Schultz is a resident and citizen of Medford, Wisconsin. Mr. Schultz purchased a used 2006 Saturn Ion in 2011 from a Chevy dealership in Wisconsin for $5,000-6,000. The vehicle was not covered by a warranty. Mr. Schultz's vehicle has shut off on him approximately ten times. The worst incident occurred in March or April 2014 when the car shut off and he had to maneuver to avoid an incoming vehicle and ditch. The power steering and brakes were also disabled when the vehicle shut off. Other times the car shut off while driving on gravel roads or railroad tracks. It is possible his knee hit the ignition switch on some occasions, but he does not recall. He only kept two keys on his key fob. His car first shut down about six months after purchasing it, and the most recent time occurred in the spring of 2014. In all instances, it took all his strength to turn the steering wheel and apply the brakes. The ignition switch on his vehicle has not been repaired under the recall because he got tired of waiting for the parts and traded it in around August 2014. Mr. Schultz also tried selling his vehicle in a private sale but no one was interested due to the recall issues on the vehicle. He checked the car's value on Kelley Blue Book and it was $3,700-4,700 for trade in value. When he traded the car in around August 2014, he only got

$3,500 for it. Mr. Schultz believes the value of his vehicle has been diminished and would not have purchased the car, or would have at least paid less for it, had he known about these defects.

68. Bedford Auto Sales, Inc.—Nationwide Dealer and Ohio State Class Representative

93. Nationwide Class and Ohio State Class representative Bedford Auto Sales, Inc. maintains its principal place in Bedford, Ohio. Plaintiff Bedford Auto Sales, Inc. purchased the following vehicles with the intention to resale same:

YEAR	MAKE	MODEL	VIN #	DATE PURCHASED
2005	COBALT	CBT	1G1AK12F657528414	2/13/2014
2005	COBALT	CBT	1G1AK52F757653669	2/13/2014
2007	COBALT	BLT	1G1AL15F277386297	12/16/2013
2005	COBALT	BLT	1G1AZ54F357576386	12/12/2013
2007	COBALT	BLS	1G1AK55FX77285373	4/7/2014
2006	COBALT	BLS	1G1AK55F967690011	12/5/2013
2007	COBALT	BLT	1G1AL55F677243540	2/13/2014
2006	COBALT	BLT	1G1AL15FX67834767	6/10/2013
2006	COBALT	BLT	1G1AL55F967662819	3/15/2014
2006	COBALT	BLS	1G1AK55F567673559	10/28/2013
2007	COBALT	BLT	1G1AL55F777398968	4/11/2014
2006	COBALT	BLS	1G1AK15F767730210	4/7/2014
2005	COBALT	BLS	1G1AL54F757575811	3/27/2014
2005	COBALT	BLS	1G1AL52F257540483	3/21/2014
2005	COBALT	BLS	1G1AL12FX57605136	4/12/2014
2006	COBALT	BSS	1G1AM18B367638417	3/28/2014
2006	COBALT	BLS	1G1AK55F567809334	3/24/2014
2005	COBALT	BLS	1G1AL14F357618727	2/21/2014
2006	COBALT	BLS	1G1AK55F967759635	4/14/2014
2006	HHR	HHR	3GNDA23P46S533920	9/30/2013
2003	SATURN	SI2	1G8AJ52F43Z164264	3/15/2014
2003	SATURN	SI3	1G8AL52F83Z104269	2/21/2014
2004	SATURN	SI1	1G8AG52F64Z111307	3/24/2014
2006	SATURN	SI2	1G8AN15FZ6Z130753	1/28/2014
2007	SATURN	SI3	1G8AL55F57Z113173	4/9/2014
2007	SATURN	SI2	1G8AJ55F97Z120648	2/24/2014
2007	SATURN	SI2	1G8AJ55F57Z171497	1/15/2014
2007	SATURN	SI2	1G8AJ55F57Z199235	3/3/2014

94. At the time the transactions for the purchase of these vehicles were made, Plaintiff Bedford Auto Sales, Inc. did not know the vehicles were defective. Plaintiff Bedford Auto Sales, Inc. relied on GM to produce a safely designed and manufactured vehicle.

95. Plaintiff Bedford Auto Sales, Inc. continues to pay interest on these vehicles that sit on the lot. Plaintiff Bedford Auto has attempted to have the vehicles repaired through Jay Buick GMC in Bedford, Ohio on four occasions, and was informed the dealership did not have the parts to perform the repairs. Plaintiff Bedford Auto Sales, Inc. has been unable to sell these vehicles, or had to sell the vehicles at a discounted rate, given the safety recall.

96. As a result of the vehicle defect and subsequent recalls, Plaintiff Bedford Auto Sales, Inc. has been unable to re-sell these vehicles, or had to sell the vehicles at a discounted rate, and is incurring considerable expense, financial loss, and economic damage as a result.

B. Defendant

97. Defendant General Motors LLC ("New GM") is a Delaware limited liability company with its principal place of business located at 300 Renaissance Center, Detroit, Michigan, and is a citizen of the States of Delaware and Michigan. The sole member and owner of General Motors LLC is General Motors Holding LLC. General Motors Holdings LLC is a Delaware limited liability company with its principal place of business in the State of Michigan. The sole member and owner of General Motors Holdings LLC is General Motors Company, which is a Delaware Corporation with its principal place of business in the State of Michigan, and is a citizen of the States of Delaware and Michigan. New GM was incorporated in 2009 and, effective on July 10, 2009, acquired substantially all assets and assumed certain liabilities of General Motors Corporation through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code.

Among the liabilities and obligations expressly assumed by New GM are the following:

> From and after the Closing, Purchaser [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code, and similar laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by [Old GM].

IV. FACTUAL ALLEGATIONS

A. New GM Falsely Promoted All of Its Vehicles as Safe, Reliable, and High-Quality

98. New GM was financially successful in emerging from the Old GM bankruptcy. Sales of all its models went up, and New GM became profitable. New GM claimed to have turned over a new leaf in the bankruptcy—a new GM was born, and the GM brand once again stood strong in the eyes of consumers—or so the world thought.

99. In 2010, New GM sold 4.26 million vehicles globally, an average of one every 7.4 seconds. Joel Ewanick, New GM's global chief marketing officer at the time, described the success of one of its brands in a statement to the press: "Chevrolet's dedication to compelling designs, quality, durability and great value is a winning formula that resonates with consumers around the world."[2]

100. New GM repeatedly proclaimed to the world and U.S. consumers that, once it emerged from bankruptcy in 2009, it was a new and improved company committed to innovation, safety, and maintaining a strong brand:

[2] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2011/Jan/0117_chev_ global.

General Motors Company 2010 Annual Report, cover page.

101. In New GM's 2010 Annual Report, New GM proclaimed its products would "improve safety and enhance the overall driving experience for our customers:"

> As we regain our financial footing, we expect the number of new product launches to steadily rise over the next several years. And these new products will increasingly embrace advanced technology to reduce fuel consumption and emissions, improve safety and enhance the overall driving experience for our customers.

General Motors Company 2010 Annual Report, pp. 4, 10.

102. New GM claimed it would create vehicles that would define the industry standard:

> BUILDING THE NEW GM
> We are moving with increased speed and agility, and implementing change faster than ever before. We are becoming a company with the capability, resources and confidence to play offense, not defense. Instead of creating new vehicles that are just better than their predecessors, we're working to design, build and sell vehicles that define the industry standard.

General Motors Company 2010 Annual Report, p. 5.

103. In its 2010 Annual Report, New GM told consumers that it built the world's best vehicles:

> *We truly are building a new GM, from the inside out. Our vision is clear: to design, build, and sell the world's best vehicles, and we have a new business model to bring that vision to life. We have a lower cost structure, a stronger balance sheet, and a dramatically lower risk profile. We have a new leadership team – a strong mix of executive talent from outside the industry and automotive veterans – and a passionate, rejuvenated workforce.*

> *"Our plan is to steadily invest in creating world-class vehicles, which will continuously drive our cycle of great design, high quality and higher profitability."*

General Motors Company 2010 Annual Report, p. 2.

104. New GM represented that it was building vehicles with design excellence, quality, and performance:

> *And across the globe, other GM vehicles are gaining similar acclaim for design excellence, quality, and performance, including the Holden Commodore in Australia. Chevrolet Agile in Brazil, Buick LaCrosse in China, and many others.*
>
> *The company's progress is early evidence of a new business model that begins and ends with great vehicles. We are leveraging our global resources and scale to maintain stringent cost management while taking advantage of growth and revenue opportunities around the world, to ultimately deliver sustainable results for all of our shareholders.*

General Motors Company 2010 Annual Report, p. 3.

105. These themes were repeatedly put forward as the core message about New GM's Brand:

The new General Motors has one clear vision: to design, build and sell the world's best vehicles. Our new business model revolves around this vision, focusing on fewer brands, compelling vehicle design, innovative technology, improved manufacturing productivity and streamlined, more efficient inventory processes. The end result is products that delight customers and generate higher volumes and margins—and ultimately deliver more cash to invest in our future vehicles.

A New Vision, a New Business Model

Our vision is simple, straightforward and clear: to design, build and sell the world's best vehicles. That doesn't mean just making our vehicles better than the ones they replace. We have set a higher standard for the new GM—and that means building the best.

Our vision comes to life in a continuous cycle that starts, ends and begins again with great vehicle designs. To accelerate the momentum we've already created, we reduced our North American portfolio from eight brands to four: Chevrolet, Buick, Cadillac and GMC. Worldwide, we're aggressively developing and leveraging global vehicle architectures to maximize our talent and resources and achieve optimum economies of scale.

Across our manufacturing operations, we have largely eliminated overcapacity in North America while making progress in Europe, and we're committed to managing inventory with a new level of discipline. By using our manufacturing capacity more efficiently and maintaining leaner vehicle inventories, we are reducing the need to offer sales incentives on our vehicles. These moves, combined with offering attractive, high-quality vehicles, are driving healthier margins—and at the same time building stronger brands.

Our new business model creates a self-sustaining cycle of reinvestment that drives continuous improvement in vehicle design, manufacturing discipline, brand strength, pricing and margins, because we are now able to make money at the bottom as well as the top of the industry cycles.

We are seeing positive results already. In the United States, for example, improved design, content and quality have resulted in solid gains in segment share, average transaction prices and projected residual values for the Chevrolet Equinox, Buick LaCrosse and Cadillac SRX. This is just the beginning.

General Motors Company 2010 Annual Report, p. 6.

106. New GM represented that it had a world-class lineup in North America:

A World-Class Lineup in North America

Chevrolet Cruze
Global success is no surprise for the new Chevrolet Cruze, which is sold in more than 60 countries around the world. In addition to a 42 mpg Eco model (sold in North America), Cruze's globally influenced design is complemented by its exceptional quietness, high quality and attention to detail not matched by the competition.

Buick Regal
The sport-injected Buick Regal is the brand's latest addition, attracting a whole new demographic for the Buick brand. The newly designed Buick lineup, which saw 52 percent volume growth in 2010 in the United States alone, is appealing to a broader spectrum of buyers.

Chevrolet Equinox
The Chevrolet Equinox delivers best-in-segment 32-mpg highway fuel economy in a sleek, roomy new package. With the success of the Equinox and other strong-selling crossovers, GM leads the U.S. industry in total unit sales for the segment.

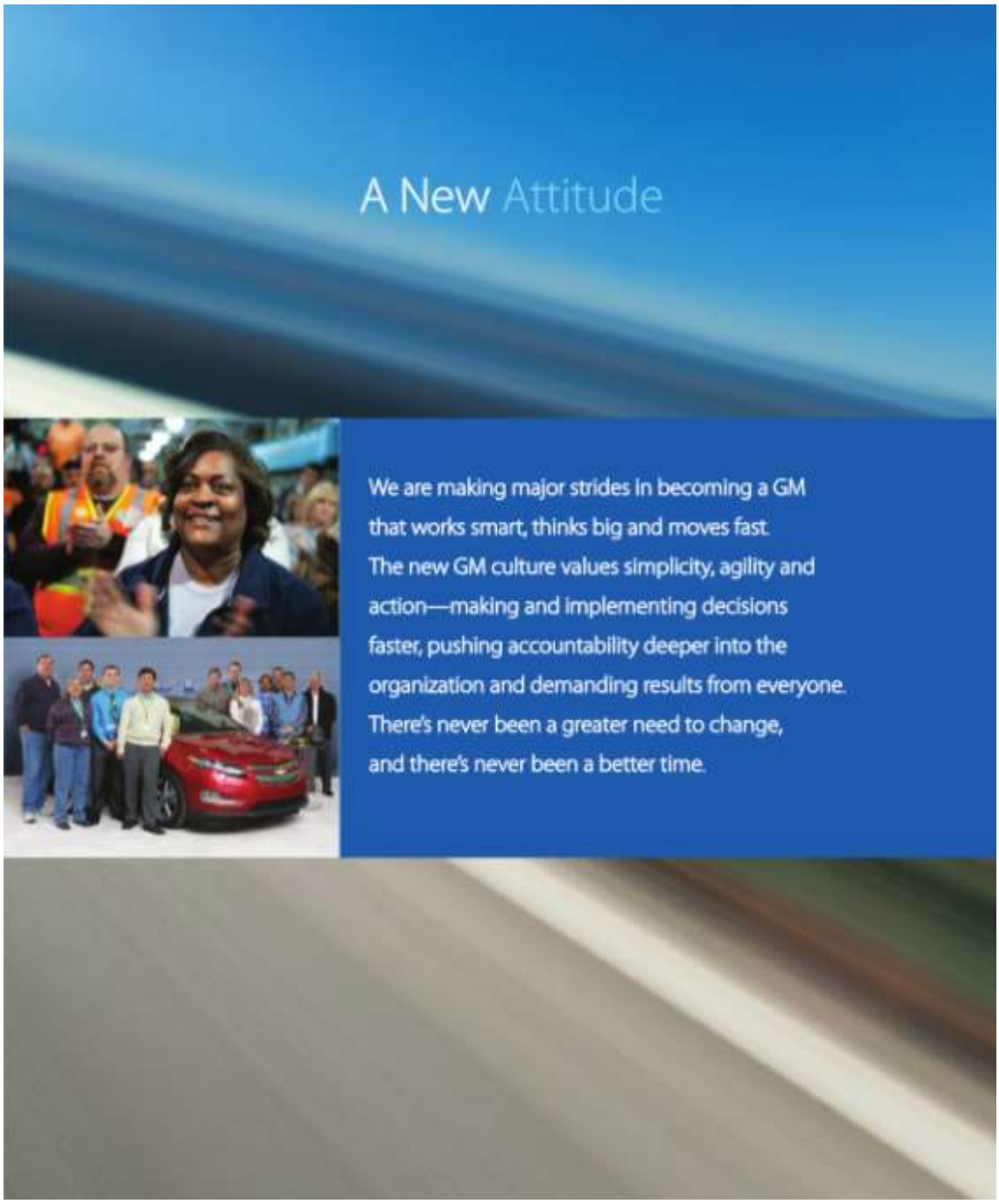
Chevrolet Sonic
Stylish four-door sedan and sporty five-door hatchback versions of the Chevrolet Sonic will be in U.S. showrooms in fall 2011. Currently the only small car built in the United States, it will be sold as the Aveo in other parts of the world.

Buick LaCrosse
Buick builds on the brand's momentum in the United States and China with the fuel-efficient LaCrosse. With eAssist technology, the LaCrosse achieves an expected 37 mpg on the highway.

Buick Verano
The all-new Buick Verano, which will be available in late 2011, appeals to customers in the United States, Canada and Mexico who want great fuel economy and luxury in a smaller but premium package.

General Motors Company 2010 Annual Report, pp. 12-13.

107. New GM boasted of its new "culture":

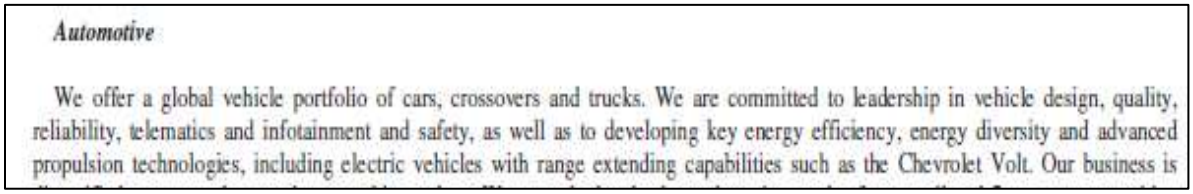


General Motors Company 2010 Annual Report, p. 16.

108. In its 2011 Annual Report, New GM proclaimed that it was putting its customers first:

General Motors Company 2011 Annual Report, p. 1.

109. New GM also announced that it is committed to leadership in vehicle safety:



General Motors Company 2011 Annual Report, p. 11.

110. In a "Letter to Stockholders" contained in its 2011 Annual Report, New GM noted that its brand had grown in value and that it designed the "World's Best Vehicles":

Dear Stockholder:

Your company is on the move once again. While there were highs and lows in 2011, our overall report card shows very solid marks, including record net income attributable to common stockholders of $7.6 billion and EBIT-adjusted income of $8.3 billion.

- *GM's overall momentum, including a 13 percent sales increase in the United States, created new jobs and drove investments. We have announced investments in 29 U.S. facilities totaling more than $7.1 billion since July 2009, with more than 17,500 jobs created or retained.*

Design, Build and Sell the World's Best Vehicles

This pillar is intended to keep the customer at the center of everything we do, and success is pretty easy to define. It means creating vehicles that people desire, value and are proud to own. When we get this right, it transforms our reputation and the company's bottom line.

General Motors Company 2011 Annual Report, p. 2.

Strengthen Brand Value

Clarity of purpose and consistency of execution are the cornerstones of our product strategy, and two brands will drive our global growth. They are Chevrolet, which embodies the qualities of value, reliability, performance, and expressive design; and Cadillac, which creates luxury vehicles that are provocative and powerful. At the same time the Holden, Buick, GMC, Baojun, Opel and Vauxhall brands are being carefully cultivated to satisfy as many customers as possible in select regions.

Each day the cultural change underway at GM becomes more striking. The old internally focused, consensus-driven and overly complicated GM is being reinvented brick by brick, by truly accountable executives who know how to take calculated risks and lead global teams that are committed to building the best vehicles in the world as efficiently as we can.

That's the crux of our plan. The plan is something we can control. We like the results we're starting to see and we're going to stick to it – always.

General Motors Company 2011 Annual Report, p. 3.

These themes continued in GM's 2012 Annual Report:

DANIEL F. AKERSON
Chairman & Chief Executive Officer
with the 2014 Cadillac CTS

TO OUR STOCKHOLDERS:

Last year, I closed my letter to you by talking about how GM was changing its processes and culture in order to build the best vehicles in the world much more efficiently and profitably. This year, I want to pick up where I left off, and articulate what success looks like for you as stockholders, and for everyone else who depends on us. >>

General Motors Company 2012 Annual Report, p. 3.

111. New GM boasted of its "focus on the customer" and its desire to be "great" and produce "quality" vehicles:

> *What is immutable is our focus on the customer, which requires us to go from "good" today to "great" in everything we do, including product design, initial quality, durability, and service after the sale.*

General Motors Company 2012 Annual Report, p. 4.

112. New GM also indicated it had changed its structure to create more "accountability" which, as shown below, was a blatant falsehood:

That work continues, and it has been complemented by changes to our design and engineering organization that have flattened the structure and created more accountability for produce execution, profitability and customer satisfaction.

General Motors Company 2012 Annual Report, p. 10.

113. And New GM represented that product quality was a key focus—another blatant falsehood:

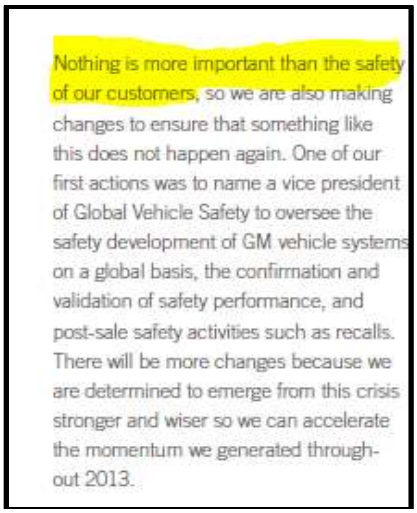
Product quality and long-term durability are two other areas that demand our unrelenting attention, even though we are doing well on key measures.

General Motors Company 2012 Annual Report, p. 10.

114. New GM's 2013 Annual Report stated, "Today's GM is born of the passion of our people to bring our customers the finest cars and trucks we've ever built":

General Motors Company 2013 Annual Report, inside front cover dual page, (unnumbered).

115. Most importantly given its inaccuracy and the damage wrought in this case, New GM proclaimed, "Nothing is more important than the safety of our customers":



Nothing is more important than the safety of our customers, so we are also making changes to ensure that something like this does not happen again. One of our first actions was to name a vice president of Global Vehicle Safety to oversee the safety development of GM vehicle systems on a global basis, the confirmation and validation of safety performance, and post-sale safety activities such as recalls. There will be more changes because we are determined to emerge from this crisis stronger and wiser so we can accelerate the momentum we generated throughout 2013.

General Motors Company 2013 Annual Report, p. 4.

B. New GM's Advertising and Marketing Literature Falsely Claimed that GM Placed Safety and Quality First

116. In May of 2014, New GM sponsored the North American Conference on Elderly Mobility. Gay Kent, director of New GM global vehicle safety and a presenter at the conference, proclaimed the primacy of safety within New GM's new company culture: "The safety of all our customers is our utmost concern."[3]

117. New GM vigorously incorporated this messaging into its public-facing communications. In advertisements and company literature, New GM consistently promoted all its vehicles as safe and reliable, and presented itself as a responsible manufacturer that stands behind GM-branded vehicles after they are sold. Examples of New GM's misleading claims of safety and reliability made in public statements, advertisements, and literature provided with its vehicles follow.

118. An online ad for "GM certified" used vehicles that ran from July 6, 2009, until April 5, 2010, stated that "GM certified means no worries."

[3] https://media.gm.com/media/us/en/gm/news.detail./content/Pages/news/us/en/2014/May/0514-cameras.

119. In April 2010, General Motors Company Chairman and CEO Ed Whitacre starred in a video commercial on behalf of New GM. In it, Mr. Whitacre acknowledged that not all Americans wanted to give New GM a second chance, but that New GM wanted to make itself a company that "all Americans can be proud of again" and "exceed every goal [Americans] set for [General Motors]." He stated that New GM was "designing, building, and selling the best cars in the world." He continued by saying that New GM has "unmatched lifesaving technology" to keep customers safe. He concluded by inviting the viewer to take a look at "the new GM."[4]

120. A radio ad that ran from New GM's inception until July 16, 2010, stated that "[a]t GM, building quality cars is the most important thing we can do."

121. On November 10, 2010, New GM published a video that told consumers that New GM actually prevents any defects from reaching consumers. The video, entitled "Andy Danko: The White Glove Quality Check," explains that there are "quality processes in the plant that prevent any defects from getting out." The video also promoted the ideal that, when a customer buys a New GM vehicle, they "drive it down the road and they never go back to the dealer."[5]

[4] https://www.youtube.com/watch?v=jbXpV0aqEM4.

[5] https://www.youtube.com/watch?v=JRFO8UzoNho&list=UUxN-Csvy_9sveql5HJviDjA.

122. In 2010, New GM ran a television advertisement for its Chevrolet brand that implied its vehicles were safe by showing parents bringing their newborn babies home from the hospital, with the tagline "as long as there are babies, there will be Chevys to bring them home."[6]

123. Another 2010 television ad informed consumers that "Chevrolet's ingenuity and integrity remain strong, exploring new areas of design and power, while continuing to make some of the safest vehicles on earth."

124. New GM's 2010 brochure for the Chevy Cobalt states, "Chevy Cobalt is savvy when it comes to standard safety" and "you'll see we've thought about safety so you don't have to." It also states "[w]e're filling our cars and trucks with the kind of thinking, features and craftsmanship you'd expect to pay a lot more for."[7]

[6] https://www.youtube.com/watch?v=rb28vTN382g.

[7] https://www.auto-brochures.com/makes/Chevrolet/Cobalt/Chevrolet_US%20Cobalt_2010.pdf.

COBALT

STREET-SMART ABOUT SAFETY.

Chevy Cobalt is savvy when it comes to standard safety. It's equipped with dual frontal air bags and HEAD-CURTAIN SIDE-IMPACT AIR BAGS,[2] the OnStar[4] Safe & Sound Plan (standard for the first year), and a Driver Information Center that alerts you to tire pressure, oil life and many other vehicle functions and also includes personalization settings. The STABILITRAK Electronic Stability Control System (including Traction Control) is standard on SS models. Factor in antilock brakes – standard on 2LT and SS, available on LS and 1LT – and you'll see we've thought about safety so you don't have to.

CHEVY To us, it's pretty simple: Build vehicles that anyone would be proud to own, and put them within reach. We offer more models than Toyota or Honda with 30 MPG HIGHWAY OR BETTER! We're backing our quality with the BEST COVERAGE IN AMERICA, which includes the 100,000 mile/5-year[2] transferable Powertrain Limited Warranty plus Roadside Assistance and Courtesy Transportation Programs. We're filling our cars and trucks with the kind of thinking, features and craftsmanship you'd expect to pay a lot more for. This philosophy has earned us more *CONSUMERS DIGEST* "BEST BUY" awards for 2009 models[3] than any other brand. So owning a Chevy isn't just a source of transportation. It's a source of pride. CHEVY.COM

125. New GM's 2010 Chevy HHR brochure proclaims, "PLAY IT SAFE" and "It's easier to have fun when you have less to worry about."[8]

HHR

PLAY IT SAFE.

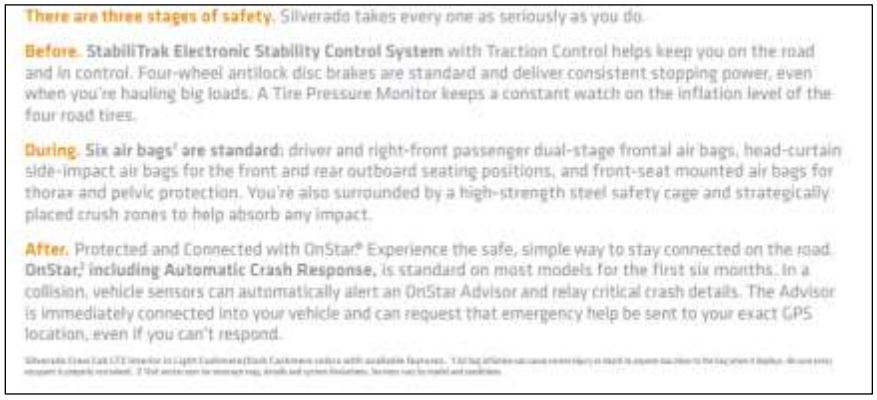
It's easier to have fun when you have less to worry about. HHR earned FIVE-STAR ratings for both frontal and side-impact crash tests.[3] HHR comes with standard side-impact air bags,[2] as well as the STABILITRAK Electronic Stability Control System (including Traction Control) and antilock brakes to help keep you confident while you're on the road. And ONSTAR[4] with the Safe & Sound Plan – standard for the first year – includes Automatic Crash Response with built-in vehicle sensors that can send an alert to OnStar. Even if you don't respond, an OnStar Advisor can request that emergency help be sent right away.

An available rearview camera system helps keep certain stationary objects like bikes in view when backing up (available summer 2009).

SAFETY CHECKLIST	2010 CHEVY HHR	2009 HONDA ELEMENT	2009 MAZDA5 SPORT
StabiliTrak Electronic Stability Control System (or similar)	YES	Yes	No
Traction Control	YES	Yes	No
OnStar[4] with the Safe & Sound Plan (standard for the first year)	YES	No	No

[8] https://www.auto-brochures.com/makes/Chevrolet/HHR/Chevrolet_US%20HHR_2010.pdf.

126. New GM's brochure for the 2011 Chevrolet Silverado states, "Silverado – the most dependable, long-lasting full size pickups on the road." It goes on to say, "There are three stages of safety. Silverado takes every one as seriously as you do."[9]



127. The brochure for the 2011 Cadillac DTS and STS states, "Passenger safety is a primary consideration throughout the engineering process," and "[t]he STS and DTS were carefully designed to provide a host of features to help you from getting into a collision in the first place."[10]

[9] https://www.auto-brochures.com/makes/Chevrolet/Silverado/Chevrolet_US%20Silverado_2011.pdf.

[10] https://www.auto-brochures.com/makes/Cadillac/Cadillac_US%20STS-DTS_2011.pdf.

128. On August 29, 2011, New GM's website advertised: "Chevrolet provides consumers with fuel-efficient, safe and reliable vehicles that deliver high quality, expressive design, spirited performance and value."[11]

129. On September 29, 2011, New GM announced on the "News" portion of its website the introduction of front center airbags. The announcement included a quote from Gay Kent, New GM Executive Director of Vehicle Safety and Crashworthiness, who stated that: "This technology is a further demonstration of New GM's above-and-beyond commitment to provide continuous occupant protection before, during and after a crash."[12]

130. On December 27, 2011, Gay Kent was quoted in an interview on New GM's website as saying: "Our safety strategy is about providing continuous protection for our customers before, during and after a crash."[13]

[11] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2014/Jul/0731-mpg.

[12] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2011/Sep/0929_airbag.

[13] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2011/Dec/1227_safety.

131. New GM's brochure for the 2012 Chevrolet Impala proclaims: "A safety philosophy that RUNS DEEP," and that "if a moderate to severe collision does happen, Impala is designed to respond quickly":[14]

132. New GM's brochure for the 2012 Cadillac CTS announces, "At Cadillac, we believe the best way to survive a collision is to avoid one in the first place," and "Active safety begins with a responsive engine, powerful brakes, and an agile suspension."[15]

[14] https://www.chevrolet.com/content/dam/Chevrolet/northamerica/usa/nscwebsite/en/Home/Help%20Center/Download%20a%20Brochure/02_PDFs/2012_Impala_eBrochure.pdf.

[15] https://www.auto-brochures.com/makes/Cadillac/CTS/Cadillac_US%20CTS_2012.pdf.

133. On January 3, 2012, Gay Kent, New GM Executive Director of Vehicle Safety, was quoted on New GM's website as saying: "From the largest vehicles in our lineup to the smallest, we are putting overall crashworthiness and state-of-the-art safety technologies at the top of the list of must-haves."[16]

134. An online national ad campaign for New GM in April 2012 stressed "Safety. Utility. Performance."

135. On June 5, 2012, New GM posted an article on its website announcing that its Malibu Eco had received top safety ratings from the National Highway Traffic Safety Administration and the Insurance Institute for Highway Safety. The article includes the following quotes: "With the Malibu Eco, Chevrolet has earned seven 2012 TOP SAFETY PICK awards," said IIHS President Adrian Lund. "The IIHS and NHTSA results demonstrate GM's commitment to state-of-the-art crash protection." And, "We are now seeing the results from our commitment to design the highest-rated vehicles in the world in safety performance," said Gay Kent, New GM Executive Director of Vehicle Safety. "Earning these top safety ratings

[16] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2012/Jan/0103_sonic.

demonstrates the strength of the Malibu's advanced structure, overall crashworthiness and effectiveness of the vehicle's state-of-the-art safety technologies."[17]

136. On June 5, 2012, New GM posted an article on its website entitled "Chevrolet Backs New Vehicle Lineup with Guarantee," which included the following statement: "We have transformed the Chevrolet lineup, so there is no better time than now to reach out to new customers with the love it or return it guarantee and very attractive, bottom line pricing," said Chris Perry, Chevrolet global vice president of marketing. "We think customers who have been driving competitive makes or even older Chevrolets will be very pleased by today's Chevrolet designs, easy-to-use technologies, comprehensive safety and the quality built into all of our cars, trucks and crossovers."[18]

137. On November 5, 2012, New GM published a video to advertise its "Safety Alert Seat" and other safety sensors. The video described older safety systems and then added that new systems "can offer drivers even more protection." A Cadillac Safety Engineer added that "are a variety of crash avoidance sensors that work together to help the driver avoid crashes." The engineer then discussed all the sensors and the safety alert seat on the Cadillac XTS, leaving the viewer with the impression safety was a top priority at Cadillac.[19]

[17] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2012/Jun/0605_malibu safety.

[18] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2012/Jul/0710_ confidence.

[19] https://www.youtube.com/watch?v=CBEvflZMTeM.

138. New GM's brochure for the 2013 Chevrolet Traverse states, "Traverse provides peace of mind with an array of innovative safety features," and "[i]t helps protect against the unexpected."[20]

139. A national print ad campaign in April 2013 states that, "[w]hen lives are on the line, you need a dependable vehicle you can rely on. Chevrolet and GM … for power, performance and safety."

[20] https://www.auto-brochures.com/makes/Chevrolet/Traverse/Chevrolet_US%20Traverse_2013.pdf.

140. On November 8, 2013, New GM posted a press release on its website regarding GMC, referring to it as "one of the industry's healthiest brands":[21]

> **About GMC**
> **GMC** has manufactured trucks since 1902, and is one of the industry's healthiest brands. Innovation and engineering excellence is built into all GMC vehicles and the brand is evolving to offer more fuel-efficient trucks and crossovers, including the Terrain small SUV and Acadia crossover. The 2014 Sierra half-ton pickup boasts all-new powertrains and design, and the Sierra Heavy Duty pickups are the most capable and powerful trucks ever built by GMC. Every retail GMC model, including Yukon and Yukon XL full-size SUVs, is now available in Denali luxury trim. Details on all GMC models are available at http://www.gmc.com/, on Twitter at @thisisgmc or at http://www.facebook.com/gmc.

141. A December 2013 New GM testimonial ad stated that "GM has been able to deliver a quality product that satisfies my need for dignity and safety."

142. In 2013, New GM proclaimed on its website, https://www.gm.com, the company's passion for building and selling the world's best vehicles as "the hallmark of our customer-driven culture":[22]

[21] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2013/Nov/1108-truck-lightweighting.

[22] https://www.gm.com/company/aboutGM/our_company.

143. On the same website in 2013, New GM stated: "At GM, it's about getting everything right for our customers – from the way we design, engineer and manufacture our vehicles, all the way through the ownership experience."[23]

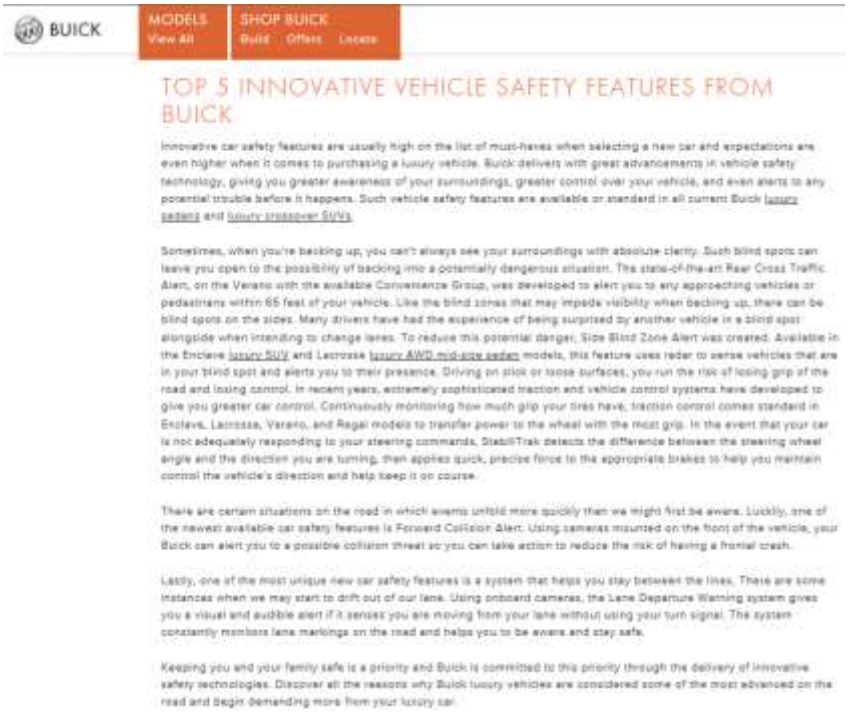
144. On its website, Chevrolet.com, New GM promises that it is "Putting safety ON TOP," and that "Chevy Makes Safety a Top Priority":[24]

145. On its website, Buick.com, New GM represents that "Keeping you and your family safe is a priority":[25]

[23] https://www.gm.com/vision/quality_safety/it_begins_with_a_commitment_to_Quality.

[24] https://www.chevrolet.com/culture/article/vehicle-safety-preparation.

[25] https://www.buick.com/top-vehicle-safety-features.



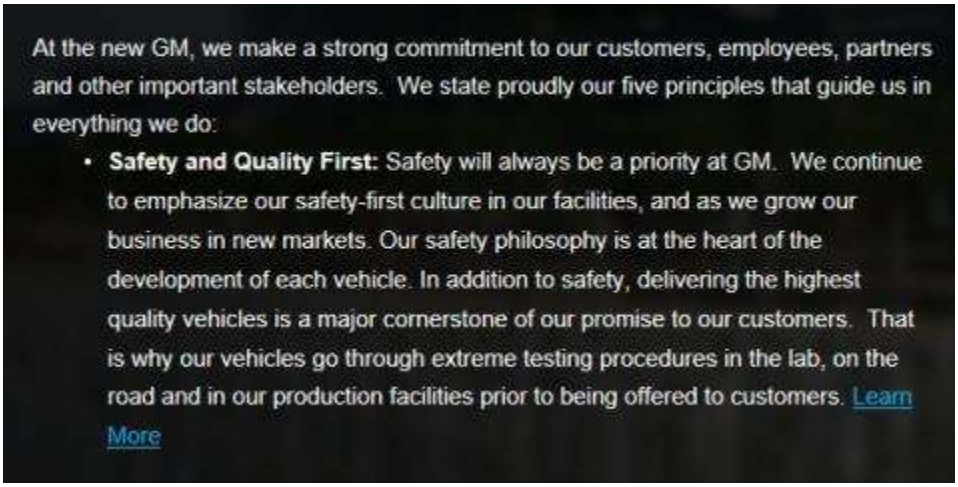
146. New GM's website currently touts its purported "Commitment to Safety," which is "at the top of the agenda at GM:"[26]

> *Innovation: Quality & Safety; GM's Commitment to Safety; Quality and safety are at the top of the agenda at GM, as we work on technology improvements in crash avoidance and crashworthiness to augment the post-event benefits of OnStar, like advanced automatic crash notification.*
>
> *Understanding what you want and need from your vehicle helps GM proactively design and test features that help keep you safe and enjoy the drive. Our engineers thoroughly test our vehicles for durability, comfort, and noise minimization before you think about them. The same quality process ensures our safety technology performs when you need it.*

147. New GM's website further promises "Safety and Quality First: Safety will always be a priority at New GM. We continue to emphasize our safety-first culture in our facilities," and that, "[i]n addition to safety, delivering the highest quality vehicles is a major cornerstone of our promise to our customers":[27]

[26] https://www.gm.com/vision/quality_safety/gms_commitment_tosafety.

[27] https://www.gm.com/company/aboutGM/our_company.



148. New GM's current website states that "leading the way is our seasoned leadership team who set high standards for our company so that we can give you the best cars and trucks. This means that we are committed to delivering vehicles with compelling designs, flawless quality, and reliability, and leading safety, fuel economy and infotainment features…"[28]

149. In its 2011 10-K SEC filing, New GM stated "We are a leading global automotive company. Our vision is to design, build and sell the world's best vehicles. We seek to distinguish our vehicles through superior design, quality, reliability, telematics (wireless voice and data) and infotainment and safety within their respective segments." General Motors 2011 Form 10-K, p. 50.[29]

150. New GM made these and similar representations to boost vehicle sales while knowing that millions of GM-branded vehicles, across numerous models and years, were plagued with serious and concealed safety defects. New GM was well aware of the impact vehicle recalls, and their timeliness, have on its brand image. In its 2010 Form 10-K submitted to the United States Securities and Exchange Commission ("SEC"), New GM admitted that "Product recalls can harm our reputation and cause us to lose customers, particularly if those

[28] https://www.gm.com/company/aboutGM/our_company.

[29] https://www.sec.gov/Archives/edgar/data/1467858/000119312511051462/d10k.htm.

recalls cause consumers to question the safety or reliability of our products. Any costs incurred or lost sales caused by future product recalls could materially adversely affect our business." General Motors 2010 Form 10-K, p. 31.[30] This is precisely why New GM decided to disregard safety issues and conceal them.

C. Contrary to its Barrage of Representations about Safety and Quality, New GM Concealed and Disregarded Safety Issues as a Way of Doing Business

151. Ever since its inception, New GM possessed vastly superior (if not exclusive) knowledge and information to that of consumers about the design and function of GM-branded vehicles and the existence of the defects in those vehicles.

152. Recently revealed information presents a disturbing picture of New GM's approach to safety issues—both in the design and manufacturing stages, and in discovering and responding to defects in GM-branded vehicles that have already been sold.

153. New GM made very clear to its personnel that cost-cutting was more important than safety, deprived its personnel of necessary resources for spotting and remedying defects, trained its employees not to reveal known defects, and rebuked those who attempted to "push hard" on safety issues.

154. In stark contrast to New GM's public mantra that "Nothing is more important than the safety of our customers" and similar statements, a prime "directive" at New GM was "cost is everything."[31] The messages from top leadership at New GM to employees, as well as their actions, were focused on the need to control cost.[32]

[30] https://www.sec.gov/Archives/edgar/data/1467858/000119312510078119/d10k.htm#toc85733_4.

[31] Valukas Report at 249.

[32] *Id.* at 250.

155. One New GM engineer stated that emphasis on cost control at New GM "permeates the fabric of the whole culture."[33]

156. According to Mark Reuss (President of GMNA from 2009-2013 before succeeding Mary Barra as Executive Vice President for Global Product Development, Purchasing and Supply Chain in 2014), cost and time-cutting principles known as the "Big 4" at New GM "emphasized timing over quality."[34]

157. New GM's focus on cost-cutting created major disincentives to personnel who might wish to address safety issues. For example, those responsible for a vehicle were responsible for its costs, but if they wanted to make a change that incurred cost and affected other vehicles, they also became responsible for the costs incurred in the other vehicles.

158. As another cost-cutting measure, parts were sourced to the lowest bidder, even if they were not the highest quality parts.[35]

159. Because of New GM's focus on cost-cutting, New GM engineers did not believe they had extra funds to spend on product improvements.[36]

160. New GM's focus on cost-cutting also made it harder for New GM personnel to discover safety defects, as in the case of the "TREAD Reporting team."

161. New GM used its TREAD database (known as "TREAD") to store the data required to be reported quarterly to NHTSA under the TREAD Act.[37] From the date of its

[33] *Id.*

[34] *Id.*

[35] *Id.* at 251.

[36] *Id.*

[37] *Id.* at 306.

inception in 2009, TREAD has been the principal database used by New GM to track incidents related to its vehicles.[38]

162. From 2003-2007 or 2008, the TREAD Reporting team had eight employees who would conduct monthly searches and prepare scatter graphs to identify spikes in the number of accidents or complaints with respect to various GM-branded vehicles. The TREAD Reporting team reports went to a review panel and sometimes spawned investigations to determine if any safety defect existed.[39]

163. In or around 2007-08, Old GM reduced the TREAD Reporting team from eight to three employees, and pared down the monthly data mining process.[40] In 2010, New GM restored two people to the team, but they did not participate in the TREAD database searches.[41] Moreover, until 2014, the TREAD Reporting team did not have sufficient resources to obtain any of the advanced data mining software programs available in the industry to better identify and understand potential defects.[42]

164. By starving the TREAD Reporting team of the resources it needed to identify potential safety issues, New GM helped to insure that safety issues would not come to light.

165. "[T]here was resistance or reluctance to raise issues or concerns in the GM culture." The culture, atmosphere and supervisor response at New GM "discouraged individuals from raising safety concerns."[43]

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[38] *Id*.

[39] *Id*. at 307.

[40] *Id*.

[41] *Id*. at 307-308.

[42] *Id*. at 208.

[43] *Id*. at 252.

166. New GM CEO, Mary Barra, experienced instances where New GM engineers were "unwilling to identify issues out of concern that it would delay the launch" of a vehicle.[44]

167. New GM supervisors warned employees to "never put anything above the company" and "never put the company at risk."[45]

168. New GM systematically "pushed back" on describing matters as safety issues and, as a result, "GM personnel failed to raise significant issues to key decision-makers."[46]

169. So, for example, New GM discouraged the use of the word "stall" in Technical Service Bulletins ("TSBs") that it sometimes sent to dealers about issues in GM-branded vehicles. According to Steve Oakley, who drafted a Technical Service Bulletin in connection with the ignition switch defects, "the term 'stall' is a 'hot' word that GM generally does not use in bulletins because it may raise a concern about vehicle safety, which suggests GM should recall the vehicle, not issue a bulletin."[47] Other New GM personnel confirmed Oakley on this point, stating that "there was concern about the use of 'stall' in a TSB because such language might draw the attention of NHTSA."[48]

170. Oakley further noted that "he was reluctant to push hard on safety issues because of his perception that his predecessor had been pushed out of the job for doing just that."[49]

171. Many New GM employees "did not take notes at all at critical safety meetings because they believed New GM lawyers did not want such notes taken."[50]

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[44] *Id.*

[45] *Id.* at 252-253.

[46] *Id.* at 253.

[47] *Id.* at 92.

[48] *Id.* at 93.

[49] *Id.*

[50] *Id.* at 254.

172. A New GM training document released by NHTSA as an attachment to its Consent Order sheds further light on the lengths to which New GM went to ensure that known defects were concealed. It appears that the defects were concealed pursuant to a company policy that New GM inherited from Old GM. The document consists of slides from a 2008 Technical Learning Symposium for "designing engineers," "company vehicle drivers," and other employees at Old GM. On information and belief, the vast majority of employees who participated in this webinar presentation continued on in their same positions at New GM after July 10, 2009.

173. The presentation focused on recalls and the "reasons for recalls."

174. One major component of the presentation was captioned "Documentation Guidelines," and focused on what employees should (and should not say) when describing problems in vehicles. Employees were instructed to "[w]rite smart," and to "[b]e factual, not fantastic" in their writing. In practice, "factual" was a euphemism for avoiding facts and relevant details.

175. New GM vehicle drivers were given examples of comments to avoid, including the following: "This is a safety and security issue"; "I believe the wheels are too soft and weak and could cause a serious problem"; and "Dangerous … almost caused accident."

176. In documents used for reports and presentations, employees were advised to avoid a long list of words, including: "bad," "dangerous," "defect," "defective," "failed," "flawed," "life-threatening," "problem," "safety," "safety-related," and "serious."

177. In truly Orwellian fashion, the company advised employees to use the words (1) "Issue, Condition [or] Matter" instead of "Problem"; (2) "Has Potential Safety Implications" instead of "Safety"; (3) "Broke and separated 10 mm" instead of "Failed"; (4)

"Above/Below/Exceeds Specification" instead of "Good [or] Bad"; and (5) "Does not perform to design" instead of "Defect/Defective."

178. As NHTSA's Acting Administrator Friedman noted at the May 16, 2014 press conference announcing the Ignition Switch Defect Consent Order, it was New GM's company policy to avoid using words that might suggest the existence of a safety defect:

> *GM must rethink the corporate philosophy reflected in the documents we reviewed, including training materials that explicitly discouraged employees from using words like 'defect,' 'dangerous,' 'safety related,' and many more essential terms for engineers and investigators to clearly communicate up the chain when they suspect a problem.*

179. Thus, New GM trained its employees to conceal the existence of known safety defects from consumers and regulators. Indeed, it is nearly impossible to convey the potential existence of a safety defect without using the words "safety" or "defect" or similarly strong language that was forbidden at New GM.

180. So institutionalized was the "phenomenon of avoiding responsibility" at New GM that the practice was given a name: "the 'GM salute,'" which was "a crossing of the arms and pointing outward towards others, indicating that the responsibility belongs to someone else, not me."[51]

181. CEO Mary Barra described a related phenomenon, "known as the 'GM nod," which was "when everyone nods in agreement to a proposed plan of action, but then leaves the room with no intention to follow through, and the nod is an empty gesture."[52]

182. According to the New GM Report prepared by Anton R. Valukas (known as the "Valukas Report"), part of the failure to properly correct the ignition switch defect was due to

[51] GM Report at 255.

[52] *Id.* at 256.

problems with New GM's organizational structure[53] and a corporate culture that did not care enough about safety.[54] Other culprits included a lack of open and honest communication with NHTSA regarding safety issues,[55] and the improper conduct and handling of safety issues by lawyers within New GM's Legal Staff.[56] On information and belief, all of these issues independently and in tandem helped cause the concealment of, and failure to remedy, the many defects that have led to the spate of recalls in 2014.

183. An automobile manufacturer has a duty to promptly disclose and remedy defects. New GM knowingly concealed information about material safety hazards from the driving public, its own customers, and the Class, thereby allowing unsuspecting vehicle owners and lessees to continue unknowingly driving patently unsafe vehicles that posed a mortal danger to themselves, their passengers and loved ones, other drivers, and pedestrians.

184. Not only did New GM take far too long in failing to address or remedy the defects, it deliberately worked to cover-up, hide, omit, fraudulently conceal, and/or suppress material facts from the Class who relied upon it to the detriment of the Class.

D. New GM's Deceptions Continued In Its Public Discussions of the Ignition Switch Recalls

185. From the CEO on down, GM has once again embarked on a public relations campaign to convince consumers and regulators that, ***this time***, New GM has sincerely reformed.

186. On February 25, 2014, New GM North America President Alan Batey publicly apologized and again reiterated New GM's purported commitment to safety: "Ensuring our

[53] *Id*. at 259-260.

[54] *Id*. at 260-61.

[55] *Id*. at 263.

[56] *Id*. at 264.

customers' safety is our first order of business. We are deeply sorry and we are working to address this issue as quickly as we can."[57]

187. In a press release on March 18, 2014, New GM announced that Jeff Boyer had been named to the newly created position of Vice President, Global Vehicle Safety. In the press release, New GM quoted Mr. Boyer as stating that: "Nothing is more important than the safety of our customers in the vehicles they drive. Today's GM is committed to this, and I'm ready to take on this assignment."[58]

188. On May 13, 2014, New GM published a video to defend its product and maintain that the ignition defect will never occur when only a single key is used. Jeff Boyer addressed viewers and told them New GM's Milford Proving Ground is one of "the largest and most comprehensive testing facilities in the world." He told viewers that if you use a New GM single key that there is no safety risk.[59]

189. As of July 2014, New GM continues to praise its safety testing. It published a video entitled "90 Years of Safety Testing at New GM's Milford Proving Ground." The narrator describes New GM's testing facility as "one of the world's top automotive facilities" where data

[57] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2014/Feb/0225-ion.

[58] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2014/mar/0318-boyer.

[59] https://www.youtube.com/watch?v=rXO7F3aUBAY.

is "analyzed for customer safety." The narrator concludes by saying, "[o]ver the past ninety years one thing remained unchanged, GM continues to develop and use the most advanced technologies available to deliver customers the safest vehicles possible."[60]

190. On July 31, 2014, Jack Jensen, the New GM engineering group manager for the "Milford Proving Ground" dummy lab, told customers that "[w]e have more sophisticated dummies, computers to monitor crashes and new facilities to observe different types of potential hazards. All those things together give our engineers the ability to design a broad range of vehicles that safely get our customers where they need to go."[61]

191. As discussed in this Complaint, these most recent statements from New GM personnel contrast starkly with New GM's wholly inadequate response to remedy the defects in its vehicles, including the ignition switch defect.

E. There Are Serious Safety Defects in Millions of GM-Branded Vehicles Across Many Models and Years and, Until Recently, New GM Concealed Them from Consumers

192. Over the first nine-months of 2014, New GM announced at least 60 recalls for more than 60 separate defects affecting over 27 million GM-branded vehicles sold in the United

[60] https://www.youtube.com/watch?v=BPQdlJZvZhE&list=UUxN-Csvy_9sveql5HJviDjA.

[61] https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2014/Jul/0731-mpg.

States from model years 1997-2014. The numbers of recalls and serious safety defects are unprecedented, and can only lead to one conclusion: New GM was concealing the fact that it was incapable of building safe vehicles free from defects. For context, in 2013, the whole auto industry in the United States issued recalls affecting 23 million vehicles, and the record for the whole industry in a given year is 31 million (in 2004). Thus, New GM's recalls just 10 months into this year impacts more vehicles than the ***entire industry's*** recalls did last year and is approaching the ***industry-wide*** record for a single year.

193. Even more disturbingly, the available evidence shows a common pattern: From its inception in 2009, New GM knew about an ever-growing list of serious safety defects in millions of GM-branded vehicles, but concealed them from consumers and regulators in order to cut costs, boost sales, and avoid the cost and publicity of recalls.

194. Unsurprisingly in light of New GM's systemic devaluation of safety issues, the evidence also shows that New GM has manufactured and sold a grossly inordinate number of vehicles with serious safety defects.

195. New GM inherited from Old GM a company that valued cost-cutting over safety, actively discouraged its personnel from taking a "hard line" on safety issues, avoided using "hot" words like "stall" that might attract the attention of NHTSA and suggest that a recall was required, and trained its employees to not use words such as "defect" or "problem" that might flag the existence of a safety issue. New GM did nothing to change these practices.

196. The Center for Auto Safety recently stated that it has identified 2,004 death and injury reports filed by New GM with federal regulators in connection with vehicles that have

recently been recalled.[62] Most or all of these deaths and injuries would have been avoided had New GM complied with its TREAD Act obligations over the past five years.

197. The many defects concealed and/or created by New GM affect important safety systems in GM-branded vehicles, including the ignition, power steering, airbags, brake lights, gearshift systems, and seatbelts.

198. The available evidence shows a consistent pattern: New GM learned about a particular defect and, often only at the prodding of regulatory authorities, "investigated" the defect and decided upon a "root cause." New GM then took minimal action—such as issuing a carefully worded "Technical Service Bulletin" to its dealers, or even recalling a limited number of the vehicles with the defect. All the while, the true nature and scope of the defects were kept under wraps, vehicles affected by the defects remained on the road, New GM continued to create new defects in new vehicles, and New GM enticed Class members to purchase its vehicles by touting the safety, quality, and reliability of its vehicles, and presenting itself as a manufacturer that stands behind its products.

199. Many of the most significant defects are discussed below.

F. The Ignition Switch System Defects

200. More than 13 million GM-branded vehicles contain a uniformly designed ignition switch and cylinder, which is substantially similar for all the vehicles, with the key position of the lock module located low on the steering column, in close proximity to a driver's knee. The ignition switch in these vehicles, the "Defective Ignition Switch Vehicles," is prone to fail during ordinary and foreseeable driving situations. New GM initially recalled 2.1 million of these Defective Ignition Switch Vehicles in February and March of 2014, and it was this initial recall

[62] *See Thousands of Accident Reports Filed Involving Recalled GM Cars: Report*, Irvin Jackson (June 3, 2014).

that set in motion the avalanche of recalls that is described in this Complaint. In June and July of 2014, New GM recalled an additional 11 million vehicles, ostensibly for distinct safety defects involving the ignition and ignition key. As set forth below, however, each of these recalls involves a defective ignition switch, and the consequences of product failure in each of the recalled vehicles is substantially similar, if not identical. Because the defects and the safety consequences are so similar, it is likely (and Plaintiffs hereby allege) that each of the defects involves a defective ignition switch that is placed in an unreasonable position on the steering cylinder and that is capable of disabling the airbag system in normal and foreseeable driving circumstances.

201. More specifically, the ignition switch can inadvertently move from the "run" to the "accessory" or "off" position at any time during normal and proper operation of the Defective Ignition Switch Vehicles. The ignition switch is most likely to move when the vehicle is jarred or travels across a bumpy road; if the key chain is heavy; if a driver inadvertently touches the ignition key with his or her knee; or for a host of additional reasons. When the ignition switch inadvertently moves out of the "run" position, the vehicle suddenly and unexpectedly loses engine power, power steering, and power brakes, and certain safety features are disabled, including the vehicle's airbags. This leaves occupants vulnerable to crashes, serious injuries, and death.

202. The ignition switch systems at issue are defective in at least three major respects. First, the switches are simply weak; because of a faulty "detent plunger," the switch can inadvertently move from the "run" to the "accessory" position. Second, because the ignition switch is placed low on the steering column, the driver's knee can easily bump the key (or the hanging fob below the key) and cause the switch to inadvertently move from the "run" to the

"accessory" or "off" position. Third, when the ignition switch moves from the "run" to the "accessory" or "off" position, the vehicle's power is disabled. This also immediately disables the airbags. Thus, when power is lost during ordinary operation of the vehicle, a driver is left without the protection of the airbag system even if he or she is traveling at high speeds.

203. Vehicles with defective ignition switches are therefore unreasonably prone to be involved in accidents, and those accidents are unreasonably likely to result in serious bodily harm or death to the drivers and passengers of the vehicles.

204. Indeed, New GM itself has acknowledged that the defective ignition switches pose an "increas[ed] risk of injury or fatality" and has linked the ignition switch defect to at least 13 deaths and over 50 crashes. Ken Feinberg, who was hired by New GM to settle wrongful death claims arising from the ignition switch defects, has already linked the defect to 21 deaths, and has over 100 potential wrongful death claims still to review. The Center for Auto Safety studied collisions in just two vehicle makes, and linked the defect to over 300 accidents. There is every reason to believe that as more information is made public, these numbers will continue to grow.

205. Alarmingly, New GM knew of the deadly ignition switch defects and their dangerous consequences from the date of its creation on July 10, 2009, but concealed its knowledge from consumers and regulators. To this day, New GM continues to conceal material facts regarding the extent and nature of this safety defect, as well as what steps must be taken to remedy the defect.

206. While New GM has instituted a recall of millions vehicles for defective ignition switches, it knew—***and its own engineering documents reflect***—that the defects transcend the design of the ignition switch and also include the placement of the ignition switch on the steering

column, a lack of adequate protection of the ignition switch from forces of inadvertent driver contact, and the need to redesign the airbag system so that it is not immediately disabled when the ignition switch fails in ordinary and foreseeable driving situations. To fully remedy the problem and render the Defective Ignition Switch Vehicles safe and of economic value to their owners again, New GM must address these additional issues (and perhaps others).

207. Further, and as set forth more fully below, New GM's recall of the Defective Ignition Switch Vehicles has been, to date, incomplete and inadequate, and it underscores New GM's ongoing fraudulent concealment and fraudulent misrepresentation of the nature and extent of the defects. New GM has long known of and understood the ignition switch defects, and its failure to fully remedy the problems associated with this defect underscores the necessity of this class litigation.

1. New GM learns of the defective ignition switch.

208. On July 10, 2009, the United States Bankruptcy Court approved the sale of General Motors Corporation, which was converted into General Motors, LLC, or New GM. From its creation, New GM, which retained the vast majority of Old GM's senior level executives and engineers, knew that Old GM had manufactured and sold millions of vehicles afflicted with the ignition switch defects.

209. In setting forth the knowledge of Old GM in connection with the ignition switch and other defects set forth herein, Plaintiffs ***do not*** seek to hold New GM liable for the actions of Old GM. Instead, the knowledge of Old GM is important and relevant because it is ***directly attributable*** to New GM. In light of its knowledge of the ignition switch defects, and the myriad other defects, New GM had (and breached) its legal obligations to Plaintiffs and the Class.

210. In part, New GM's knowledge of the ignition switch defects arises from the fact that key personnel with knowledge of the defects were employed by New GM when Old GM

ceased to exist. Moreover, many of these employees held managerial and decision making authority in Old GM, and accepted similar positions with New GM. For example, the design research engineer who was responsible for the rollout of the defective ignition switch in the Saturn Ion was Ray DeGiorgio. Mr. DeGiorgio continued to serve as an engineer at New GM until April 2014, when he was suspended (and ultimately fired) as a result of his involvement in the ignition switch crisis.

211. Mr. DeGiorgio was hardly the only employee who retained his Old GM position with New GM. Other Old GM employees who were retained and given decision making authority in New GM include: current CEO Mary T. Barra; director of product investigations Carmen Benavides; Program Engineering Manager Gary Altman; engineer Jim Federico; vice presidents for product safety John Calabrese and Alicia Boler-Davis; vice president of regulatory affairs Michael Robinson; director of product investigations Gay Kent; general counsel and vice president Michael P. Milliken; and in-house product liability lawyer William Kemp.

212. Indeed, on or around the day of its formation as an entity, New GM acquired notice and full knowledge of the facts set forth below.

213. In 2001, during pre-production testing of the 2003 Saturn Ion, GM engineers learned that the vehicle's ignition switch could unintentionally move from the "run" to the "accessory" or "off" position. GM further learned that where the ignition switch moved from "run" to "accessory" or "off," the vehicle's engine would stall and/or lose power.

214. Delphi Mechatronics ("Delphi"), the manufacturer of many of the defective ignition switches in the Defective Ignition Switch Vehicles, informed Old GM that the ignition switch did not meet Old GM's design specifications. Rather than delay production of the Saturn Ion in order to ensure that the ignition switch met specifications, Old GM's design release

engineer, Ray DeGiorgio, simply lowered the specification requirements and approved use of ignition switches that he knew did not meet Old GM's specifications.

215. In 2004, Old GM engineers reported that the ignition switch on the Saturn Ion was so weak and the ignition placed so low on the steering column that the driver's knee could easily bump the key and turn off the vehicle.

216. This defect was sufficiently serious for an Old GM engineer to conclude, in January 2004, that "[t]his is a basic design flaw and should be corrected if we want repeat sales."

217. A July 1, 2004 report by Siemens VDO Automotive analyzed the relationship between the ignition switch in GM-branded vehicles and the airbag system. The Siemens report concluded that when a GM-branded vehicle experienced a power failure, the airbag sensors were disabled. The Siemens report was distributed to at least five Old GM engineers. The Chevrolet Cobalt was in pre-production at this time.

218. In 2004, Old GM began manufacturing and selling the 2005 Chevrolet Cobalt. Old GM installed the same ignition switch in the 2005 Cobalt as it did in the Saturn Ion.

219. During testing of the Cobalt, Old GM engineer Gary Altman observed an incident in which a Cobalt suddenly lost engine power because the ignition switch moved out of the "run" position during vehicle operation.

220. In late 2004, while testing was ongoing on the Cobalt, Chief Cobalt Engineer Doug Parks asked Mr. Altman to investigate a journalist's complaint that he had turned off a Cobalt vehicle by hitting his knee against the key fob.

221. Old GM opened an engineering inquiry known as a Problem Resolution Tracking System "Problem Resolution" to evaluate a number of potential solutions to this moving engine stall problem. At this time, Problem Resolution issues were analyzed by a Current Production

Improvement Team ("Improvement Team"). The Improvement Team that examined the Cobalt issue beginning in late 2004 included a cross-section of business people and engineers, including Altman and Lori Queen, Vehicle Line Executive on the case.

222. Doug Parks, Chief Cobalt Engineer, was also active in Problem Resolution. On March 1, 2005, he attended a meeting whose subject was "vehicle can be keyed off with knee while driving." Parks also attended a June 14, 2005 meeting that included slides discussing a NEW YORK TIMES article that described how the Cobalt's engine could cut out because of the ignition switch problem.

223. In 2005, Parks sent an email with the subject, "Inadvertent Ign turn-off." In the email, Parks wrote, "For service, can we come up with a 'plug' to go into the key that centers the ring through the middle of the key and not the edge/slot? This appears to me to be the only real, quick solution."

224. After considering this and a number of other solutions (including changes to the key position and measures to increase the torque in the ignition switch), the CPIT examining the issue decided to do nothing.

225. Old and New GM engineer Gary Altman recently admitted that engineering managers (including himself and Ray DeGiorgio) knew about ignition switch problems in the Cobalt that could cause these vehicles to stall, and disable power steering and brakes, but launched the vehicle anyway because they believed that the vehicles could be safely coasted off the road after a stall. Mr. Altman insisted that "the [Cobalt] was maneuverable and controllable" with the power steering and power brakes inoperable.

226. On February 28, 2005, Old GM issued a bulletin to its dealers regarding engine-stalling incidents in 2005 Cobalts and 2005 Pontiac Pursuits (the Canadian version of the Pontiac G5).

227. In the February 28, 2005 bulletin, Old GM provided the following recommendations and instructions to its dealers—but not to the public in general:

> There is potential for the driver to inadvertently turn off the ignition due to low key ignition cylinder torque/effort. The concern is more likely to occur if the driver is short and has a large heavy key chain.
>
> In the case this condition was documented, the driver's knee would contact the key chain while the vehicle was turning. The steering column was adjusted all the way down. This is more likely to happen to a person that is short as they will have the seat positioned closer to the steering column.
>
> In cases that fit this profile, question the customer thoroughly to determine if this may be the cause. The customer should be advised of this potential and to take steps, such as removing unessential items from their key chains, to prevent it.
>
> Please follow this diagnosis process thoroughly and complete each step. If the condition exhibited is resolved without completing every step, the remaining steps do not need to be performed.

228. On June 19, 2005, the NEW YORK TIMES reported that Chevrolet dealers were advising some Cobalt owners to remove items from heavy key rings so that they would not inadvertently move the ignition into the "off" position. The article's author reported that his wife had bumped the steering column with her knee while driving on the freeway and the engine "just went dead."

229. The NEW YORK TIMES contacted Old GM and Alan Adler, manager for safety communications, provided the following statement:

> In rare cases when a combination of factors is present, a Chevrolet Cobalt driver can cut power to the engine by inadvertently bumping the ignition key to the accessory or off position while the

> car is running. Service advisers are telling customers they can virtually eliminate the possibility by taking several steps, including removing nonessential material from their key rings.

230. Between February 2005 and December 2005, Old GM opened multiple Problem Resolution inquiries regarding reports of power failure and/or engine shutdown in Defective Ignition Switch Vehicles.

231. One of these, opened by quality brand manager Steve Oakley in March 2005, was prompted by Old GM engineer Jack Weber, who reported turning off a Cobalt with his knee while driving. After Oakley opened the PRTS, Gary Altman advised that the inadvertent shut down was not a safety issue.

232. As part of Problem Resolution, Oakley asked William Chase, an Old GM warranty engineer, to estimate the warranty impact of the ignition switch defect in the Cobalt and Pontiac G5 vehicles. Chase estimated that for Cobalt and G5 vehicles on the road for 26 months, 12.40 out of every 1,000 vehicles would experience inadvertent power failure while driving.

233. In September 2005, Old GM received notice that Amber Marie Rose, a 16 year old resident of Clinton, Maryland, was killed in an accident after her 2005 Chevrolet Cobalt drove off the road and struck a tree head-on. During Old GM's investigation, it learned that the ignition switch in Amber's Cobalt was in the "accessory" or "off" position at the time of the collision. Upon information and belief, Old GM subsequently entered into a confidential settlement agreement with Amber's mother.

234. In December 2005, Old GM issued Technical Service Bulletin 05-02-35-007. The Bulletin applied to 2005-2006 Chevrolet Cobalts, 2006 Chevrolet HHRs, 2005-2006 Pontiac Pursuits, 2006 Pontiac Solstices, and 2003-2006 Saturn Ions. The Bulletin explained that "[t]here is potential for the driver to inadvertently turn off the ignition due to low ignition key cylinder torque/effort."

235. What Old GM failed to say in this Technical Service Bulletin was that it knew that there had been fatal incidents involving vehicles with the ignition switch defect. On November 17, 2005—shortly after Amber's death and immediately before Old GM issued the December Bulletin—a Cobalt went off the road and hit a tree in Baldwin, Louisiana. The front airbags did not deploy in this accident. Old GM received notice of the accident, opened a file, and referred to it as the "Colbert" incident.

236. On February 10, 2006, in Lanexa, Virginia—shortly after Old GM issued the Technical Service Bulletin—a 2005 Cobalt flew off of the road and hit a light pole. As with the Colbert incident (above), the frontal airbags failed to deploy in this incident as well. The download of the SDM (the vehicle's "black box") showed the key was in the "accessory/off" position at the time of the crash. Old GM received notice of this accident, opened a file, and referred to it as the "Carroll" incident.

237. On March 14, 2006, in Frederick, Maryland, a 2005 Cobalt traveled off the road and struck a utility pole. The frontal airbags did not deploy in this incident. The download of the SDM showed the key was in the "accessory/off" position at the time of the crash. Old GM received notice of this incident, opened a file, and referred to it as the "Oakley" incident.

238. In April 2006, Old GM design engineer Ray DeGiorgio approved a design change for the Chevrolet Cobalt's ignition switch, as proposed by Delphi. The changes included a new detent plunger and spring and were intended to generate greater torque values in the ignition switch. These values, though improved, were still consistently below Old GM's design specifications. Despite its redesign of the ignition switch, Old GM did not change the part number for the switch.

239. In congressional testimony in 2014, New GM CEO Mary Barra acknowledged that Old GM should have changed the part number when it redesigned the ignition switch, and that its failure to do so did not meet industry standard behavior. (Old GM's failure to change the part number constituted an act of concealment of the defect.)

240. In October 2006, Old GM updated Technical Service Bulletin 05-02-35-007 to include additional model years: the 2007 Saturn Ion and Sky, 2007 Chevrolet HHR, 2007 Cobalt, and 2007 Pontiac Solstice and G5. These vehicles had the same safety-related defects in the ignition switch systems as the vehicles in the original Bulletin.

241. On December 29, 2006, in Sellenville, Pennsylvania, a 2005 Cobalt drove off the road and hit a tree. The frontal airbags failed to deploy in this incident. Old GM received notice of this incident, opened a file, and referred to it as the "Frei" incident.

242. On February 6, 2007, in Shaker Township, Pennsylvania, a 2006 Cobalt sailed off the road and struck a truck. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. Old GM received notice of this incident, opened a file, and referred to it as the "White" incident.

243. On August 6, 2007, in Cross Lanes, West Virginia, a 2006 Cobalt rear-ended a truck. The frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "McCormick" incident.

244. On September 25, 2007, in New Orleans, Louisiana, a 2007 Cobalt lost control and struck a guardrail. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "Gathe" incident.

245. On October 16, 2007, in Lyndhurst, Ohio, a 2005 Cobalt traveled off road and hit a tree. The frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "Breen" incident.

246. On April 5, 2008, in Sommerville, Tennessee, a 2006 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. Old GM received notice of this incident, opened a file, and referred to it as the "Freeman" incident.

247. On May 21, 2008, in Argyle, Wisconsin, a 2007 G5 traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. Old GM received notice of this incident, opened a file, and referred to it as the "Wild" incident.

248. On May 28, 2008, in Lufkin, Texas, a 2007 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "McDonald" incident.

249. On September 13, 2008, in Lincoln Township, Michigan, a 2006 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "Harding" incident.

250. On November 29, 2008, in Rolling Hills Estates, California, a 2008 Cobalt traveled off the road and hit a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "Dunn" incident.

251. On December 6, 2008, in Lake Placid, Florida, a 2007 Cobalt traveled off the road and hit a utility pole. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. Old GM received notice of this incident, opened a file, and referred to it as the "Grondona" incident.

252. In February 2009, Old GM opened another Problem Resolution regarding the ignition switches in the Defective Ignition Switch Vehicles. Old GM engineers decided at this time to change the top of the Chevrolet Cobalt key from a "slot" to a "hole" design, as had originally been suggested in 2005. The new key design was produced for the 2010 model year. Old GM did not provide these redesigned keys to the owners or lessees of any of the vehicles implicated in prior Technical Service Bulletins, including the 2005-2007 Cobalts.

253. Just prior to its bankruptcy sale, Old GM met with Continental Automotive Systems US, its airbag supplier for the Cobalt, Ion, and other Defective Ignition Switch Vehicles. Old GM requested that Continental download SDM data from a 2006 Chevrolet Cobalt accident where the airbags failed to deploy. In a report dated May 11, 2009, Continental analyzed the SDM data and concluded that the SDM ignition state changed from "run" to "off" during the accident. According to Continental, this, in turn, disabled the airbags. Old GM did not disclose this finding to NHTSA, despite its knowledge that NHTSA was interested in airbag non-deployment incidents in Chevrolet Cobalt vehicles.

2. New GM continues to conceal the ignition switch defect.

254. In March 2010, New GM recalled nearly 1.1 million Cobalt and Pontiac G5 vehicles for faulty power steering issues. In recalling these vehicles, New GM recognized that loss of power steering, standing alone, was grounds for a safety recall. Yet, incredibly, New GM claims it did not view the ignition switch defect as a "safety issue," but only a "customer

convenience issue." Despite its knowledge of the ignition switch defect, New GM did not include the ignition switch defect in this recall. Further, although the Saturn Ion used the same steering system as the Cobalt and Pontiac G5 (and had the same ignition switch defect), New GM did not recall any Saturn Ion vehicles at this time.

255. On March 10, 2010, Brooke Melton was driving her 2005 Cobalt on a two-lane highway in Paulding County, Georgia. While she was driving, her key turned from the "run" to the "accessory/off" position causing her engine to shut off. After her engine shut off, she lost control of her Cobalt, which traveled into an oncoming traffic lane, where it collided with an oncoming car. Brooke was killed in the crash. New GM received notice of this incident.

256. On December 31, 2010, in Rutherford County Tennessee, a 2006 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. New GM received notice of this incident, opened a file, and referred to it as the "Chansuthus" incident.

257. On December 31, 2010, in Harlingen, Texas, a 2006 Cobalt traveled off the road and struck a curb. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. New GM received notice of this incident, opened a file, and referred to it as the "Najera" incident.

258. On March 22, 2011, Ryan Jahr, a New GM engineer, downloaded the SDM from Brooke Melton's Cobalt. The information from the SDM download showed that the key in Brooke's Cobalt turned from the "run" to the "accessory/off" position 3-4 seconds before the crash. On June 24, 2011, Brooke Melton's parents, Ken and Beth Melton, filed a lawsuit against New GM.

259. In August 2011, New GM assigned Engineering Group Manager Brian Stouffer to assist with a Field Performance Evaluation that it had opened to investigate frontal airbag non-deployment incidents in Chevrolet Cobalts and Pontiac G5s.

260. On December 18, 2011, in Parksville, South Carolina, a 2007 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. New GM received notice of this incident, opened a file, and referred to it as the "Sullivan" incident.

261. In early 2012, Mr. Stouffer asked Jim Federico, who reported directly to Mary Barra, to oversee the Field Performance Evaluation investigation into frontal airbag non-deployment incidents. Federico was named the "executive champion" for the investigation to help coordinate resources.

262. In May 2012, New GM engineers tested the torque on numerous ignition switches of 2005-2009 Chevrolet Cobalt, 2009 Pontiac G5, 2006-2009 HHR, and 2003-2007 Saturn Ion vehicles that were parked in a junkyard. The results of these tests showed that the torque required to turn the ignition switches from the "run" to the "accessory" or "off" position in most of these vehicles did not meet GM's minimum torque specification requirements. These results were reported to Mr. Stouffer and other members of the Field Performance Evaluation team.

263. In September 2012, Stouffer requested assistance from a "Red X Team" as part of the Field Performance Evaluation investigation. The Red X Team was a group of engineers within New GM assigned to find the root cause of the airbag non-deployments in frontal accidents involving Chevrolet Cobalts and Pontiac G5s. By that time, however, it was clear that

the root cause of the airbag non-deployments in a majority of the frontal accidents was the defective ignition switch and airbag system.

264. Indeed, Mr. Stouffer acknowledged in his request for assistance that the Chevrolet Cobalt could experience a power failure during an off-road event, or if the driver's knee contacted the key and turned off the ignition. Mr. Stouffer further acknowledged that such a loss of power could cause the airbags not to deploy.

265. At this time, New GM did not provide this information to NHTSA or the public.

266. Acting NHTSA Administrator David Friedman recently stated, "at least by 2012, GM staff was very explicit about an unreasonable risk to safety" from the ignition switches in the Defective Ignition Switch Vehicles.

267. Mr. Friedman continued: "GM engineers knew about the defect. GM lawyers knew about the defect. But GM did not act to protect Americans from the defect."

268. There is significant evidence that multiple in-house attorneys also knew of and understood the ignition switch defect. These attorneys, including Michael Milliken, negotiated settlement agreements with families whose loved ones had been killed and/or injured while operating a Defective Ignition Switch Vehicle. In spite of this knowledge, New GM's attorneys concealed their knowledge and neglected to question whether the Defective Ignition Switch Vehicles should be recalled. This quest to keep the ignition switch defect secret delayed its public disclosure and contributed to increased death and injury as a result of the ignition switch defect.

269. During the Field Performance Evaluation process, New GM determined that, although increasing the detent in the ignition switch would reduce the chance that the key would

inadvertently move from the "run" to the "accessory" or "off" position, it would not be a total solution to the problem.

270. Indeed, the New GM engineers identified several additional ways to actually fix the problem. These ideas included adding a shroud to prevent a driver's knee from contacting the key, modifying the key and lock cylinder to orient the key in an upward facing orientation when in the run position, and adding a push button to the lock cylinder to prevent it from slipping out of "run." New GM rejected each of these ideas.

271. The photographs below are of a New GM engineer in the driver's seat of a Cobalt during the investigation of Cobalt engine stalling incidents:

272. These photographs show the dangerous position of the key in the lock module on the steering column, as well as the key with the slot, which allow the key fob to hang too low off the steering column. New GM engineers understood that the key fob can be impacted and pinched between the driver's knee and the steering column, and that this will cause the key to inadvertently turn from the "run" to the "accessory" or "off" position. The photographs show that the New GM engineers understood that increasing the detent in the ignition switch would

not be a total solution to the problem. They also show why New GM engineers believed that additional changes (such as the shroud) were necessary to fix the defects with the ignition switch.

273. The New GM engineers clearly understood that increasing the detent in the ignition switch alone was not a solution to the problem. But New GM concealed—and continues to conceal—from the public the full nature and extent of the defects.

274. On October 4, 2012, there was a meeting of the Red X Team during which Mr. Federico gave an update of the Cobalt airbag non-deployment investigation. According to an email from Mr. Stouffer on the same date, the "primary discussion was on what it would take to keep the SDM active if the ignition key was turned to the accessory mode." Despite this recognition by New GM engineers that the SDM should remain active if the key is turned to the "accessory" or "off" position, New GM took no action to remedy the ignition switch defect or notify customers that the defect existed.

275. During the October 4, 2012 meeting, Mr. Stouffer and other members of the Red X Team also discussed "revising the ignition switch to increase the effort to turn the key from Run to Accessory."

276. On October 4, 2012, Mr. Stouffer emailed Ray DeGiorgio and asked him to "develop a high level proposal on what it would take to create a new switch for service with higher efforts." On October 5, 2012, DeGiorgio responded:

> Brian,
>
> In order to provide you with a HIGH level proposal, I need to understand what my requirements are. what is the TORQUE that you desire?
>
> Without this information I cannot develop a proposal.

277. On October 5, Stouffer responded to DeGiorgio's email, stating:

> Ray,

> As I said in my original statement, I currently don't know what the torque value needs to be. Significant work is required to determine the torque. What is requested is a high level understanding of what it would take to create a new switch.

278. DeGiorgio replied to Stouffer the following morning:

> Brian,
>
> Not knowing what my requirements are I will take a SWAG at the Torque required for a new switch. Here is my level proposal
>
> **Assumption is 100 N cm Torque.**
>
> • New switch design = Engineering Cost Estimate approx. $300,000
>
> • Lead Time = 18 – 24 months from issuance of GM Purchase Order and supplier selection.
>
> Let me know if you have any additional questions.

279. Stouffer later admitted in a deposition that DeGiorgio's reference to "SWAG" was an acronym for "Silly Wild-Ass Guess."

280. DeGiorgio's cavalier attitude exemplifies New GM's approach to the safety-related defects that existed in the ignition switch and airbag system in the Defective Ignition Switch Vehicles. Rather than seriously addressing the safety-related defects, DeGiorgio's emails show he understood the ignition switches were contributing to the crashes and fatalities and he could not care less.

281. It is also obvious from this email exchange that Stouffer, who was a leader of the Red X Team, had no problem with DeGiorgio's cavalier and condescending response to the request that he evaluate the redesign of the ignition switches.

282. In December 2012, in Pensacola, Florida, Ebram Handy, a New GM engineer, participated in an inspection of components from Brooke Melton's Cobalt, including the ignition switch. At that inspection, Handy, along with Mark Hood, a mechanical engineer retained by the

Meltons, conducted testing on the ignition switch from Brooke Melton's vehicle, as well as a replacement ignition switch for the 2005 Cobalt.

283. At that inspection, Handy observed that the results of the testing showed that the torque performance on the ignition switch from Brooke Melton's Cobalt was well below Old GM's minimum torque performance specifications. Handy also observed that the torque performance on the replacement ignition switch was significantly higher than the torque performance on the ignition switch in Brooke Melton's Cobalt.

284. On April 29, 2013, Ray DeGiorgio, the chief design engineer for the ignition switches in these Defective Ignition Switch Vehicles, was deposed. At his deposition, Mr. DeGiorgio was questioned about his knowledge of differences in the ignition switches in early model-year Cobalts and the switches installed in later model-year Cobalts:

> Q. And I'll ask the same question. You were not aware before today that GM had changed the spring – the spring on the ignition switch had been changed from '05 to the replacement switch?
>
> MR. HOLLADAY: Object to the form. Lack of predicate and foundation. You can answer.
>
> THE WITNESS: I was not aware of a detent plunger switch change. We certainly did not approve a detent plunger design change.
>
> Q. Well, suppliers aren't supposed to make changes such as this without GM's approval, correct?
>
> A. That is correct.
>
> Q. And you are saying that no one at GM, as far as you know, was aware of this before today?
>
> MR. HOLLADAY: Object. Lack of predicate and foundation. You can answer.
>
> THE WITNESS: I am not aware about this change.

285. When Mr. DeGiorgio testified, he knew that he personally had authorized the ignition switch design change in 2006, but he stated unequivocally that no such change had occurred.

3. New GM receives complaints of power failures in Defective Ignition Switch Vehicles.

286. Throughout the entirety of its corporate existence, New GM received numerous and repeated complaints of moving engine stalls and/or power failures. These complaints are yet more evidence that New GM was fully aware of the ignition switch defect and should have timely announced a recall much sooner than it did.

287. New GM was aware of these problems year after year and nationwide, as reflected not only by the internal documents reflecting knowledge and cover-up at high levels, but in the thousands of customer complaints, some of which are reflected in the common fact patterns presented by the experiences of the named plaintiffs (as discussed above), but also, and not by way of limitation, by the records of their internal complaint logs and documents.

288. To demonstrate the pervasiveness and consistency of the problems, and by way of examples, New GM received and reviewed complaints of safety issues from Class members with Defective Ignition Switch Vehicles in Puerto Rico and in the States of Alaska, Arkansas, Connecticut, Delaware, Hawaii, Indiana, Kansas, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Virginia, and Vermont. Documents produced by New GM pursuant to Order No. 12 (Sept. 10, 2014, ECF No. 296) show that New GM was aware of customer complaints of stalling Defective Ignition Switch Vehicles in all of these states and territories. New GM opened at least 38 complaint files between September 2009 and February 2014. Further, in December 2010, GM closed at least 40 complaint files—which Old GM had opened before the bankruptcy sale in July 2009—without

disclosing the safety defect to the customers, thus indicating that Old GM's knowledge of these Defective Ignition Switch Vehicles carried over to New GM.

289. During the years 2010 to the present, GM's Technical Assistance Center received hundreds, if not thousands, of complaints concerning stalling or misperforming vehicles due to ignition issues, including "heavy key chains."

290. Within the complaint files which GM closed after the bankruptcy sale—those opened both before and after the bankruptcy sale—at least six customers complained they did not feel safe in their vehicles because of the stalling. Three customers described accidents caused by stalling. The airbags did not deploy in one of these accidents.

291. Another customer, who contacted New GM in February 2014, complained that he was aware that people were dying from this defect and that he refused to risk the lives of himself, his wife, and his children. He was nearly rear-ended when his vehicle stalled at 60 mph.

292. Finally, a customer contacted New GM in January 2011 complaining that he had read various online forums describing the stalling problem and expressing his outrage that New GM had done nothing to solve the problem. This customer's car stalled at 65 mph on the Interstate.

4. New GM recalls 2.1 million vehicles with defective ignition switches.

293. Under continuing pressure to produce high-ranking employees for deposition in the Melton litigation, New GM's Field Performance Review Committee and Executive Field Action Decision Committee ("Decision Committee") finally ordered a recall of ***some*** vehicles with defective ignition switches on January 31, 2014.

294. Initially, the Decision Committee ordered a recall of only the Chevrolet Cobalt and Pontiac G5 for model years 2005-2007.

295. After additional analysis, the Decision Committee expanded the recall on February 24, 2014 to include the Chevrolet HHR and Pontiac Solstice for model years 2006 and 2007, the Saturn Ion for model years 2003-2007, and the Saturn Sky for model year 2007.

296. Public criticism in the wake of these recalls was withering. On March 17, 2014, Mary Barra issued an internal video, which was broadcast to employees. In the video, Ms. Barra admits:

> Scrutiny of the recall has expanded beyond the review by the federal regulators at NHTSA, the National Highway Traffic Safety Administration. As of now, two congressional committees have announced that they will examine the issue. And it's been reported that the Department of Justice is looking into this matter. . . . These are serious developments that shouldn't surprise anyone. After all, something went wrong with our process in this instance and terrible things happened.

297. The public backlash continued and intensified. Eventually, GM expanded the ignition switch recall yet again on March 28, 2014. This expansion covered all model years of the Chevrolet Cobalt and HHR, the Pontiac G5 and Solstice, and the Saturn Ion and Sky. The expanded recall brought the total number of vehicles recalled for defective ignition switches to 2,191,146.

298. Several high-ranking New GM employees were summoned to testify before Congress, including Ms. Barra and executive vice president and in-house counsel Michael Milliken. Further, in an effort to counter the negative backlash, New GM announced that it had hired Anton R. Valukas to conduct an internal investigation into the decade-long concealment of the ignition switch defect.

299. As individuals came forward who had been injured and/or whose loved ones were killed in the Defective Ignition Switch Vehicles, the public criticism continued. Under intense, continuing pressure, New GM agreed in April 2014 to hire Ken Feinberg to design and

administer a claims program in order to compensate certain victims who were injured or killed in the Defective Ignition Switch Vehicles. Ms. Barra explained to Congress: "[W]e will make the best decisions for our customers, recognizing that we have legal obligations and responsibilities as well as moral obligations. We are committed to our customers, and we are going to work very hard to do the right thing for our customers."

300. New GM's compensation of such individuals, however, was limited to the protocol set forth in the Feinberg Compensation Fund. In the courts, New GM has taken the position that any accident that occurred prior to its bankruptcy is barred by the bankruptcy sale order. In addition, New GM has argued that it has no responsibility whatsoever for the manufacture and sale of any vehicle prior to July 10, 2009. This position is obviously inconsistent with the statements Ms. Barra provided to Congress and the public at large.

5. New GM recalls over 10 million additional vehicles for ignition switch defects in June and July of 2014.

301. By actively concealing the ignition switch defects in the Defective Ignition Switch Vehicles, and by continuing to manufacture and sell millions of such vehicles for years after it acquired knowledge of the defects, New GM engaged in unlawful and fraudulent practices in violation of the law.

302. Following the waves of negative publicity surrounding New GM's recall of the first 2.1 million Defective Ignition Switch Vehicles, New GM was forced to issue a series of additional recalls for more than 10 million additional Defective Ignition Switch Vehicles, as summarized below.

303. Even so, safety regulators received dozens of complaints of moving stalls and/or power failures in the vehicles covered by New GM's June and July 2014 recalls; New GM still did nothing.

304. NHTSA's website contains more than 100 complaints about vehicle stalls for the 2006-2009 Impalas alone. In one 2012 complaint, an Impala stalled in the middle of a large intersection. The owner took it to a dealer four times but could not get it repaired. The complainant stated, "I'm fearful I will be the one causing a fatal pile-up."

305. New GM admits knowing that ignition switch defects have been linked to at least three deaths and eight injuries in the vehicle model years covered by its June and July recalls. The fatal accidents occurred in 2003 and 2004 Chevrolet Impalas in which the airbags failed to deploy.

a. June 19, 2014 Recall—Camaro Recall

306. On June 19, 2014, New GM recalled 464,712 model year 2010 through 2014 Chevrolet Camaro vehicles in the United States (NHTSA Recall Number 14V-346).

307. The great majority of the defective Camaros were sold by New GM, though some indeterminate number of the 117,959 model year 2010 Camaros were manufactured by Old GM, and some smaller number were sold by Old GM.

308. According to the recall notice, the driver of an affected Camaro may accidentally hit the ignition key with his or her knee, unintentionally knocking the key out of the "run" position and turning off the engine. If the key is not in the "run" position, the airbags may not deploy during a collision. Additionally, when the key is moved out of the "run" position, the vehicle will experience a loss of engine power, loss of power steering, and loss of power brakes.

309. Between 2010 and 2014, NHTSA received numerous complaints of power failures in 2010-2014 Camaros. These complaints started as early as January 2010, months after New GM's formation.

310. One complainant described an incident in which his model year 2010 Camaro lost all power while he was driving 55-65 mph down a mountain road in heavy traffic. The

complainant was able to stop the vehicle by jamming it into a guardrail. He stated that he was lucky he was not killed. When he notified his dealership, however, they told him there was nothing wrong with the vehicle.

311. Another complainant, in May 2010, described several instances in which his moving Camaro's power failed, including one instance in which he was driving on the highway at 70 mph. This complainant concluded his report by asking, "Will I have a head[-]on collision while trying to pass another car?"

312. Between 2010 and 2014, NHTSA received numerous complaints reporting engine stalls during normal and regular Camaro operations.

313. For example, on May 3, 2010, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

> WHILE DRIVING TO THE DEALERSHIP IN BROOKDALE, MN. ON FREEWAY APPROX 70MPH WHEN CAR COMPLETELY GOES DEAD. QUICKLY I PUT IT IN NEUTRAL AND TURNED IT BACK ON AND COMPLAINED TO DEALER. DRIVING IN ST CLOUD,MN AT INTOWN SPEEDS WHEN THE CAR SHUTS DOWN AGAIN. THEN IT ALSO SHUT DOWN TWICE ON ME IN BRAINERD, MN AT A SPEED OF 50MPH WHILE DRIVING NORMAL. THEN ON 3 MAY 2010 I WAS GOING AROUND A CURVE WITH 2 FRIENDS WHEN IT AGAIN SHUT DOWN AT APPROXIMATELY 60 MPH. THIS TIME WHILE ON THE CURVE I WENT INTO THE DITCH AND HIT A MAIL BOX. THUS CAUSING DAMAGE TO THE RIGHT FRONT OF THE CAR. THE CAR WAS TOWED AND IS PRESENTLY AT THE DEALERSHIP IN BRAINERD, MN. THIS CAR IS TO DANGEROUS TO DRIVE; WILL I HAVE A HEAD[-]ON COLLISION WHILE TRYING TO PASS ANOTHER CAR?

314. On October 20, 2010, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

> 2010 CHEVROLET CHEVY CAMARO V6, SUDDEN LOSS OF POWER, COMPLETE ELECTRICAL FAILURE, AND ENGINE SHUTDOWN WHILE DRIVING 30 MPH IN SUBDIVISION.

> PULLED TO SIDE OF ROAD. TURNED CAR "OFF" AND BACK ON. DROVE TO DEALER WHO SAID THEY COULD FIND NO PROBLEM AND NOTHING RECORDED IN CAR'S COMPUTER. GOOGLED RECALL OF V8 TO SHOW DEALER, BUT DEALER SAID THIS WAS UNRELATED.

315. On March 6, 2012, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

> WHILE DRIVING VEHICLE FIRST SHUT OFF AT A RED LIGHT FOR NO REASON ON FEB 28 2012 SAME INCIDENT ON MARCH 1ST SHUT OFF A RED LIGHT THIRD TIME IT WAS WHILE DRIVING 10 MPH MAKING A TURN IN A PARKING SPOT. WAS ABLE TO TURN BACK CAR ON WITH NO PROBLEMS BUT IT IS OF GREAT CONCERN NOW IF THIS SHOULD HAPPEN AT A HIGH SPEED I AM SURE CAR CAN CAUSE INJURIES TO OTHERS AS WELL AS MYSELF.

316. On October 9, 2012, New GM became aware of a complaint filed with NHTSA involving a 2012 Camaro in which the following was reported:

> THE CONTACT OWNS A 2012 CHEVROLET CAMARO. THE CONTACT STATED THAT WHILE DRIVING 50 MPH, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT WAS ABLE TO RESTART THE VEHICLE. THE MANUFACTURER WAS CONTACTED AND HAD THE VEHICLE TOWED TO A LOCAL DEALER. THE DEALER RESET THE COMPUTER BUT THE REPAIR DID NOT REMEDY THE ISSUE. THE CONTACT TOOK THE VEHICLE BACK TO THE DEALER WHERE THE DEALER RESET THE COMPUTER A SECOND TIME. THE DEALER ALSO DROVE THE VEHICLE FOR ONE HUNDRED MILES AND COULD NOT DUPLICATE THE STALLING ISSUE. THE VEHICLE CONTINUED TO STALL SPORADICALLY. THE FAILURE MILEAGE WAS 4,200.

317. On July 3, 2013, New GM became aware of a complaint filed with NHTSA involving a 2013 Camaro in which the following was reported:

> THE CONTACT OWNS A 2013 CHEVROLET CAMARO. THE CONTACT STATED THAT WHILE DRIVING APPROXIMATELY 55 MPH, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT MENTIONED THAT

> THE FAILURE WOULD RECUR INTERMITTENTLY. THE VEHICLE WAS TAKEN TO A DEALER FOR A DIAGNOSTIC WHERE THE FAILURE WAS UNABLE TO BE REPLICATED. THE MANUFACTURER WAS NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 1,460 AND THE CURRENT MILEAGE WAS 1,800.

318. On August 4, 2013, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

> I PURCHASED MY 2010 CHEVY CAMARO 2SS, IN FEBRUARY OF 2012. IT HAD 4,400 MILES ON IT. ABOUT A MONTH OR TWO, AFTER I BOUGHT IT, IT COMPLETELY SHUT OFF ON ME, ON A MAJOR HIGHWAY, WHILE DOING 65 MPH. I THREW IT INTO NEUTRAL AND TURNED THE KEY AND IT STARTED RIGHT BACK UP. ABOUT A MONTH AFTER THAT, I WAS DOING ABOUT 20MPH ON A BACK ROAD AND IT DID THE SAME EXACT THING. JUST RECENTLY, ABOUT 2 WEEKS AGO, I WAS IN 6TH GEAR, ON CRUISE DOING 60MPH AND I FELT THE CAR "JERK" OR BUCK" A LITTLE BIT. FOLLOWED IMMEDIATELY BY THE CAR DECELERATING. I DOWN-SHIFTED TO 4TH GEAR AND WAS GIVING IT GAS, BUT STILL WOULDN'T SPEED UP. IT FELL DOWN TO ABOUT 40MPH, BEFORE FINALLY CATCHING ITSELF AND SPEEDING BACK UP. ABOUT A MILE LATER, I GOT OFF MY EXIT AND WAS COMING DOWN TO THE STOP SIGN,WHEN ALL THE INDICATOR LIGHTS CAME ON FOR ABOUT 10 SECONDS. THEY WENT OFF AND I MADE A LEFT HAND TURN AND WENT ABOUT A MILE UP THE ROAD. AT THAT POINT, THE CAR COMPLETELY SHUT OFF DOING ABOUT 35MPH. THERE WAS HEAVY TRAFFIC, SO I PULLED OVER AND STARTED IT BACK UP. I CALLED THE CHEVY DEALERSHIP, WHERE I BOUGHT IT FROM, AND THEY HAD NO OPENINGS FOR A WEEK. SO I TOOK IT LAST WEEK TO GET IT CHECKED AND THEY FOUND NOTHING THAT COULD HAVE CAUSED IT, THEY SAY. I AM VERY UPSET, BUT VERY THANKFUL THAT MY TWO CHILDREN WERE NOT WITH ME WHEN IT HAPPENED. I AM CURRENTLY CONTEMPLATING TRADING IT IN, CUZ I AM WORRIED THAT IF IT HAPPENS AGAIN,AND MY CHILDREN ARE IN THE CAR, THAT IT MIGHT SHUT OFF IN VERY CONGESTED BUMPER TO BUMPER TRAFFIC, ON THE HIGHWAY AT NIGHT, AND A TRACTOR TRAILER IS BEHIND ME AND I CAN'T GET IT STARTED OR SOMEONE

> DOESN'T SEE ME CUZ MY LIGHTS WOULD BE OFF. THE THOUGHT OF THAT COMPLETELY SCARES ME.

319. On September 28, 2013, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

> THE CONTACT OWNS A 2010 CHEVROLET CAMARO. THE CONTACT STATED THAT WHILE DRIVING 5 MPH AND MAKING A TURN, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT WAS ABLE TO RESTART THE VEHICLE BUT THE FAILURE RECURRED. THE VEHICLE WAS TAKEN TO A DEALER WHO PERFORMED A DIAGNOSTIC AND REPLACED A COMPONENT TO CORRECT THE FAILURE. THE CONTACT WAS UNABLE TO DETERMINE THE EXACT COMPONENT HOWEVER, THE FAILURE RECURRED WITHOUT WARNING. THE VEHICLE WAS TAKEN TO DEALER HOWEVER, NO FAILURE WAS DETERMINED. THE MANUFACTURER WAS MADE AWARE OF THE ISSUE AND AN INCIDENT RECORDER WAS INSTALLED ON THE VEHICLE TO DETERMINE ANY FUTURE FAILURES. THE FAILURE MILEAGE WAS 23,000. THE CURRENT MILEAGE WAS 24,000.

320. On October 2, 2013, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

> I REACHED OUT TO [XXX], GM CEO ON MAY 24, 2013 WITH A STRONG CONCERNS OF POWER FAILURE FOR THE 2ND TIME WHILE DRIVING THE VEHICLE; CAUSING ME NOT TO HAVE CONTROL WHILE THE VEHICLE WAS DRIVEN. THUS IT WAS ALSO NOTED THAT I ORIGINALLY REACHED OUT TO GM TO REQUEST A REPLACED VEHICLE WHILE MY VEHICLE WAS UNDER WARRANTY DUE TO THE VEHICLE LOSING POWER ON A MAJOR FREEWAY; WHICH WAS LIFE THREATENING; HOWEVER THE RESPONSE BACK FROM GM WAS A DECLINED LETTER THAT I RECEIVED ENSURING ME THAT THE VEHICLE WAS SAFE TO DRIVE. I TRAVEL MAJOR FREEWAYS AS PART OF CAREER SO HAVING A RELIABLE VEHICLE IS IMPERATIVE AS FOR I VALUE MY LIFE. [XXX], SENIOR VICE PRESIDENT OF GLOBAL QUALITY & CUSTOMER EXPERIENCE HAS NOT RETURNED MY CALLS AND NOW GM IS ALSO NOT HONORING THE WARRANTY TOO. AFTER ASSISTING ME

> WITH MY CAR FOR 5 MONTHS .PLEASE NOT MY 2010 CAMARO SS IS PARK AS FOR IT'S NOT SAFE TO DRIVE. GM OFFER ME A CONTRACT TO SIGN THAT WOULD GUARANTEE "NO FAULT TO GM ". I COULDN'T NOT DUE THEM SHOULD MY CAMARO HARM MYSELF OR OTHERS WHILE DRIVING IT. ADDITIONALLY, I WAS TOLD THAT GM KNOWS THERE IS A PROBLEM WITH THE CAMARO BUT CAN'T FIND THE PROBLEM. IT'S HAS BEEN NOTED THAT THE CORRECTIONS THAT I NEED TO HAVE MADE IN ORDER TO BE SAFE IN THE GM VEHICLE CANNOT BE OBTAINED AS FOR MY VEHICLE HAS BEEN KEEP CHEVY FOR SHOP 5 MONTHS. ….

321. On October 16, 2013, New GM became aware of a complaint filed with NHTSA concerning a 2013 Camaro, in which the following was reported:

> THE CONTACT OWNS A 2013 CHEVROLET CAMARO. THE CONTACT STATED THAT WHILE MAKING A U-TURN, THE VEHICLE STALLED WITHOUT WARNING. THE VEHICLE WAS NOT TAKEN TO A DEALER FOR DIAGNOSIS OF THE FAILURE. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE VEHICLE WAS NOT REPAIRED. THE APPROXIMATE FAILURE AND CURRENT MILEAGE WAS 830.

322. On April 20, 2014, New GM became aware of a complaint filed with NHTSA concerning a 2014 Camaro, in which the following was reported:

> AS I WAS TURNING THE CORNER ON TO WOODWARD AVENUE MY CAR JUST SHUT DOWN. THE CAR WENT TOTALLY BLACK AND SHUT DOWN IN THE MIDDLE OF THE TURN ON THIS VERY BUSY-MAIN THOROUGHFARE.

323. On April 30, 2014, New GM became aware of a complaint filed with NHTSA concerning a 2014 Camaro, in which the following was reported:

> WITHIN TWO WEEKS AFTER PURCHASING MY CAR IT STALLED TWICE--BOTH WHEN STOPPED AT RED LIGHTS. I TOOK CAR TO DEALERSHIP AND THEY DID A ROAD TEST BUT COULD NOT REPLICATE. ON 4/9/2014 I WAS MAKING A RIGHT HAND TURN AND THE CAR STALLED IN THE MIDDLE OF THE INTERSECTION. I RESTARTED THE CAR, DROVE TO MY OFFICE AND THE CAR STALLED WHEN TURNING INTO THE PARKING GARAGE AND

AGAIN WHEN TURNING INTO THE PARKING SPACE. TOOK TO THE DEALERSHIP THE FOLLOWING DAY AND THEY KEPT FOR AN EXTENDED TEST DRIVE BUT COULD NOT REPLICATE THE PROBLEM. SINCE THERE WERE NOT ANY CODES THE CAR WAS RETURNED TO ME.

324. On May 6, 2014, New GM became aware of a complaint filed with NHTSA concerning a 2014 Camaro, in which the following was reported:

DRIVING ON CRUISE CONTROL. KNEE BUMPED KEY, ENGINE TURNED OFF AT 60 MPH. POWER STEERING AND BRAKES STILL WORKED, BUT ENGINE WAS OFF.

325. On May 9, 2014, New GM became aware of a complaint filed with NHTSA involving a 2013 Camaro, in which the following was reported:

THE CONTACT INDICATED WHILE TRAVELING 60 MPH ON A MAJOR HIGHWAY, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT WAS ABLE TO MOVE THE VEHICLE OVER TO THE SHOULDER AND AFTER SEVERAL ATTEMPTS THE VEHICLE WAS ABLE TO RESTART. THE VEHICLE WAS TO BE FURTHER INSPECTED, DIAGNOSED AND REPAIRED BY AN AUTHORIZED DEALER BUT IT WAS NOT REPAIRED. THE CONTACT WAS NOTIFIED OF NHTSA CAMPAIGN ID NUMBER: 14V346000 (ELECTRICAL SYSTEM) AFTER EXPERIENCING THE FAILURE MULTIPLE TIMES AND WAS WAITING FOR PARTS TO GET THE VEHICLE REPAIRED. THE MANUFACTURER WAS NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 28,000.

326. On May 19, 2014, New GM became aware of a complaint filed with NHTSA involving a 2013 Camaro, in which the following was reported:

WHILE DRIVING DOWN I 75 IN OCALA FLORIDA CAR STALLED IN MIDDLE OF HIGHWAY . I PULLED OVER TO SHOULDER AND HAD TO RESTART CAR. I TOOK IT IN TO A DEALER AND THEY SAID THEY COULD NOT FIND ANY THING WRONG. THEY SAID TAKE THE CAR.

327. On May 20, 2014, New GM became aware of a complaint filed with NHTSA involving a 2012 Camaro, in which the following was reported:

> WHEN THE IGNITION SWITCH/ KEY IS SLIGHTLY BUMPED WITH KNEE, THE CAR SHUTS OFF. THREE TIMES NOW. DEALERSHIP NOT RESPONSIVE. TAUGHT MY TEEN DRIVERS WHAT TO DO IF THIS HAPPENS AND THIS SAVED MY DAUGHTER'S LIFE WHEN IT HAPPENED TO HER.

328. Astoundingly, the *sole* remedy provided by New GM in its recall will be to "remove the key blade from the original flip key/RKE transmitter assemblies provided with the vehicle, and provide two new keys and two key rings per key."

329. The proposed "remedy" is insufficient, because it does not address (i) the poor placement of the ignition switch such that the keys are vulnerable to being "kneed" by the driver; (ii) the airbag algorithm that can render the airbags inoperable *even when the vehicles are travelling at a high speed*; and (iii) the possible need for a new switch with higher torque.

330. Indeed, on July 31, 2014, after the recall was announced, New GM became aware of a complaint filed with NHTSA involving a 2014 Camaro, in which the following was reported:

> I WAS TURNING ONTO THE HIGHWAY THAT THE SPEED LIMIT IS 65 MPH FROM A SIDE ROAD. I WAITED FOR ONCOMING TRAFFIC TO PASS AND THEN PULLED OUT. AS I PULLED OUT, TURNING RIGHT, MY CAR HAD A SUDDEN LOSS OF POWER. I TRIED TO RESTART AND IT WOULD NOT RESTART. I HAD DIFFICULTY PULLING OVER TO THE SIDE OF THE ROAD DUE TO THE STEERING WHEEL BEING STIFF AND HARD TO HANDLE. AFTER I GOT TO THE SIDE OF THE ROAD, I WAS ABLE TO RESTART MY CAR. I ***DID NOT BUMP THE IGNITION SWITCH WHEN THIS HAPPENED EITHER***. [Emphasis added.]

b. June 20, 2014 recall—ignition key slot defect.

331. On June 20, 2014, New GM recalled 3,141,731 vehicles in the United States for ignition switch, or ignition key slot, defects (NHTSA Recall Number 14V- 355). New GM announced to NHTSA and the public that the recall concerns an ignition key slot defect.

332. 2,349,095 of the vehicles subject to this recall were made by Old GM. 792,636 vehicles were made and/or sold by New GM.

333. The following vehicles were included in the June 20, 2014 recall: 2005-2009 Buick Lacrosse, 2006-2014 Chevrolet Impala, 2000-2005 Cadillac Deville, 2004-2011 Cadillac DTS, 2006-2011 Buick Lucerne, 2004-2005 Buick Regal LS and RS, and 2006-2008 Chevrolet Monte Carlo.

334. The recall notice states, "In the affected vehicles, the weight on the key ring and/or road conditions or some other jarring event may cause the ignition switch to move out of the run position, turning off the engine."

335. Further, "[i]f the key is not in the run position, the air bags may not deploy if the vehicle is involved in a crash, increasing the risk of injury. Additionally, a key knocked out of the run position could cause loss of engine power, power steering, and power braking, increasing the risk of a vehicle crash."

336. During its existence GM has received hundreds of complaints at its Technical Assistance Center in which the weight of the key chain was identified as a source of the problem.[63]

337. The vehicles included in this recall were built on the same platform and their defective ignition switches are likely due to weak detent plungers, just like the Cobalt and other Defective Ignition Switch Vehicles recalled in February and March of 2014.

338. New GM was aware of the ignition switch defect in these vehicles from the date of its inception on July 10, 2009, as it acquired on that date all of the knowledge possessed by Old GM given the continuity in personnel, databases, and operations from Old GM to New GM.

[63] *See, e.g.*, GM-MDL-254300011834-35.

In addition, New GM acquired additional information thereafter. The information, all of which was known to New GM, included the following facts:

a. On August 30, 2005, Ms. Andres sent an email to Old GM employee Jim Zito and copied ten other Old GM employees, including Ray DeGiorgio. Ms. Andres, in her email, stated, "I picked up the vehicle from repair. No repairs were done. . . . The technician said there is nothing they can do to repair it. He said it is just the design of the switch. He said other switches, like on the trucks, have a stronger detent and don't experience this."

b. Ms. Andres' email continued: "I think this is a serious safety problem, especially if this switch is on multiple programs. I'm thinking big recall. I was driving 45 mph when I hit the pothole and the car shut off and I had a car driving behind me that swerved around me. I don't like to imagine a customer driving with their kids in the back seat, on I-75 and hitting a pothole, in rush-hour traffic. I think you should seriously consider changing this part to a switch with a stronger detent."

c. Ray DeGiorgio, who reportedly designed the ignition switches installed in the 2006 Chevrolet Impala vehicles, replied to Ms. Andres' email, stating that he had recently driven a 2006 Impala and "did not experience this condition."

339. On or after July 10, 2009, senior executives and engineers at New GM knew that some of the information relayed to allay Ms. Andres' concerns was inaccurate. For example, Ray DeGiorgio knew that there had been "issues with detents being too light." Instead of relaying those "issues," Mr. DeGiorgio falsely stated that there were no such "issues."

340. Plaintiffs are informed and believe that New GM has tried to characterize the recall of these 3.14 million vehicles as being different than the recall for the ignition switch defect in the Cobalts and other Defective Ignition Switch Vehicles when in reality and for all

practical purposes it is for exactly the same defect that creates exactly the same safety risks. New GM has attempted to label and describe the ignition key slot defect as being different in order to provide it with cover and an explanation for why it did not recall these 3.14 million vehicles much earlier, and why it is not providing a new ignition switch for the 3.14 million vehicles.

341. From 2001 to the present, Old GM and New GM received numerous reports from consumers regarding complaints, crashes, injuries, and deaths linked to this safety defect. The following are examples of just a few of the many reports and complaints regarding the defect.

342. On January 23, 2001, Old GM became aware of a complaint filed with NHTSA involving a 2000 Cadillac Deville and an incident that occurred on January 23, 2001, in which the following was reported:

> COMPLETE ELECTRICAL SYSTEM AND ENGINE SHUTDOWN WHILE DRIVING. HAPPENED THREE DIFFERENT TIMES TO DATE. DEALER IS UNABLE TO DETERMINE CAUSE OF FAILURE. THIS CONDITION DEEMED TO BE EXTREMELY HAZARDOUS BY OWNER. NHTSA ID Number: 739850.

343. On June 12, 2001, Old GM became aware of a complaint filed with NHTSA involving a 2000 Cadillac Deville and an incident that occurred on June 12, 2001, in which the following was reported:

> INTERMITTENTLY AT 60MPH VEHICLE WILL STALL OUT AND DIE. MOST TIMES VEHICLE WILL START UP IMMEDIATELY AFTER. DEALER HAS REPLACED MAIN CONSOLE 3 TIMES, AND ABS BRAKES. BUT, PROBLEM HAS NOT BEEN CORRECTED. MANUFACTURER HAS BEEN NOTIFIED.*AK NHTSA ID Number: 890227.

344. On January 27, 2003, Old GM became aware of a complaint filed with NHTSA involving a 2001 Cadillac Deville and an incident that occurred on January 27, 2003, in which the following was reported:

> WHILE DRIVING AT HIGHWAY SPEED ENGINE SHUT DOWN, CAUSING AN ACCIDENT. PLEASE PROVIDE ANY ADDITIONAL INFORMATION.*AK NHTSA ID Number: 10004759.

345. On September 18, 2007, Old GM became aware of a complaint filed with NHTSA involving a 2006 Chevrolet Impala and an incident that occurred on September 15, 2006, in which it was reported that:

> TL*THE CONTACTS SON OWNS A 2006 CHEVROLET IMPALA. WHILE DRIVING APPROXIMATELY 33 MPH AT NIGHT, THE CONTACTS SON CRASHED INTO A STALLED VEHICLE. HE STRUCK THE VEHICLE ON THE DRIVER SIDE DOOR AND NEITHER THE DRIVER NOR THE PASSENGER SIDE AIR BAGS DEPLOYED. THE DRIVER SUSTAINED MINOR INJURIES TO HIS WRIST. THE VEHICLE SUSTAINED MAJOR FRONT END DAMAGE. THE DEALER WAS NOTIFIED AND STATED THAT THE CRASH HAD TO HAVE BEEN A DIRECT HIT ON THE SENSOR. THE CURRENT AND FAILURE MILEAGES WERE 21,600. THE CONSUMER STATED THE AIR BAGS DID NOT DEPLOY. THE CONSUMER PROVIDED PHOTOS OF THE VEHICLE. UPDATED 10/10/07 *TR NHTSA ID Number: 10203350.

346. On April 02, 2009, GM became aware of a complaint filed with NHTSA involving a 2005 Buick LaCrosse and an incident that occurred on April 02, 2009, in which the following was reported:

> POWER STEERING WENT OUT COMPLETELY, NO WARNING JUST OUT. HAD A VERY HARD TIME STEERING CAR. LUCKY KNOW ONE WAS HURT. *TR NHTSA ID Number: 10263976.

347. The reports regarding the defect continued to be reported to New GM. For example, on February 15, 2010, New GM became aware of a complaint filed with NHTSA involving a 2008 Buick LaCrosse and an incident that occurred on February 13, 2010, in which a driver reported:

> WHILE DRIVING AT 55MPH I RAN OVER A ROAD BUMP AND MY 2008 BUICK LACROSSE SUPER SHUT

> OFF(STALLED). I COASTED TO THE BURM, HIT BRAKES TO A STOP. THE CAR STARTED ON THE FIRST TRY. CONTINUED MY TRIP WITH NO INCIDENCES. TOOK TO DEALER AND NO CODES SHOWED IN THEIR COMPUTER. CALLED GM CUSTOMER ASSISTANCE AND THEY GAVE ME A CASE NUMBER. NO BULLETINS. SCARY TO DRIVE. TRAFFIC WAS LIGHT THIS TIME BUT MAY NOT BE THE NEXT TIME. *TR. NHTSA ID Number: 10310692.

348. On April 21, 2010, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick Lucerne and an incident that occurred on March 22, 2010, in which the following was reported:

> 06 BUICK LUCERNE PURCHASED 12-3-09, DIES OUT COMPLETELY WHILE DRIVING AT VARIOUS SPEEDS. THE CAR HAS SHUT OFF ON THE HIGHWAY 3 TIMES WITH A CHILD IN THE CAR. IT HAS OCCURRED A TOTAL OF 7 TIMES BETWEEN 1-08-10 AND 4-17-10. THE CAR IS UNDER FACTORY WARRANTY AND HAS BEEN SERVICED 7 TIMES BY 3 DIFFERENT BUICK DEALERSHIPS. *TR NHTSA ID Number: 10326754.

349. On April 29, 2010, New GM became aware of a complaint filed with NHTSA involving a 2005 Buick LaCrosse and an incident that occurred on March 21, 2010, in which it was reported that:

> TRAVELING ON INTERSTATE 57 DURING DAYTIME HOURS. WHILE CRUISING AT 73 MILES PER HOUR IN THE RIGHT HAND LANE, THE VEHICLE SPUTTERED AND LOST ALL POWER. I COASTED TO A STOP OFF THE SIDE OF THE ROAD. I RESTARTED THE VEHICLE AND EVERYTHING SEEMED OK, SO I CONTINUED ON. A LITTLE LATER IT SPUTTERED AGAIN AND STARTED LOSING POWER. THE POWER CAME BACK BEFORE IT CAME TO A COMPLETE STOP. I CALLED ON STAR FOR A DIAGNOSTIC CHECK AND THEY TOLD ME I HAD A FUEL SYSTEM PROBLEM AND THAT IF THE CAR WOULD RUN TO CONTINUE THAT IT WAS NOT A SAFETY ISSUE. THEY TOLD ME TO TAKE IT TO A DEALER FOR REPAIRS WHEN I GOT HOME. I TOOK THE CAR WORDEN-MARTEN SERVICE CENTER FOR REPAIRS ON MARCH 23RD. TO REPAIR THE CAR THEY: 1.REPLACED CAT CONVERTER AND OXYGEN SENSOR 125CGMPP- $750.47 A SECOND

> INCIDENT OCCURRED WHILE TRAVELING ON INTERSTATE 57 DURING DAYTIME HOURS. I WAS PASSING A SEMI TRACTOR TRAILER WITH THREE CARS FOLLOWING ME WHILE CRUISING AT 73 MILES PER HOUR WHEN THE VEHICLE SPUTTERED AND LOST ALL POWER PUTTING ME IN A VERY DANGEROUS SITUATION. THE VEHICLE COASTED DOWN TO ABOUT 60 MILES PER HOUR BEFORE IT KICKED BACK IN. I IN THE MEAN TIME HAD DROPPED BACK BEHIND THE SEMI WITH THE THREE CARS BEHIND ME AND WHEN I COULD I PULLED BACK INTO THE RIGHT HAND LANE. THIS WAS A VERY DANGEROUS SITUATION FOR ME AND MY WIFE. I CALLED ON STAR FOR A DIAGNOSTIC CHECK AND THEY TOLD ME THAT EVERYTHING WAS OK. I TOOK THE CAR WORDEN-MARTEN SERVICE CENTER FOR REPAIRS AGAIN ON APRIL 19TH TO REPAIR THE CAR THEY: 1.REPLACED MASS -AIR FLOW UNIT AND SENSOR $131.39 WHO KNOWS IF IT IS FIXED RIGHT THIS TIME? THIS WAS A VERY DANGEROUS SITUATION TO BE IN FOR THE CAR TO FAIL. *TR NHTSA ID Number: 10328071.

350. On June 2, 2010, New GM became aware of a complaint filed with NHTSA involving a 2007 Buick LaCrosse and an incident that occurred on March 1, 2010, in which the following was reported:

> 2007 BUICK LACROSSE SEDAN. CONSUMER STATES MAJOR SAFETY DEFECT. CONSUMER REPORTS WHILE DRIVING THE ENGINE SHUT DOWN 3 TIMES FOR NO APPARENT REASON *TGW NHTSA ID Number: 10334834.

351. On February 20, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Chevrolet Monte Carlo and an incident that occurred on January 16, 2014, in which the following was reported:

> I WAS DRIVING GOING APPROXIMATELY 45 MPH, I HIT A POT HOLE AND MY VEHICLE CUT OFF. THIS HAS HAPPENED THREE TIMES SINCE JANUARY. THE SAME THING HAPPENED THE SECOND TIME. THE LAST TIME IT OCCURRED WAS TUESDAY, FEBRUARY 18. THIS TIME I WAS ON THE EXPRESSWAY TRAVELING APPROXIMATELY 75 MPH, HIT A BUMP AND IT CUT OFF. THE CAR STARTS BACK UP WHEN I PUT IT IN NEUTRAL. *TR NHTSA ID Number: 10565104.

352. On March 3, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Chevrolet Impala and an incident that occurred on February 29, 2012, in which the following was reported:

> I WAS DRIVING MY COMPANY ASSIGNED CAR DOWN A STEEP HILL WHEN THE ENGINE STALLED WITHOUT WARNING. THIS HAS HAPPENED 5 OTHER TIMES WITH THIS VEHICLE. THIS WAS THE FIRST TIME I WAS TRAVELING FAST THOUGH. IT'S LIKE THE ENGINE JUST TURNS OFF. THE LIGHTS ARE STILL ON BUT I LOSE THE POWER STEERING AND BRAKES. IT WAS TERRIFYING AND EXTREMELY DANGEROUS. THIS PROBLEM HAPPENS COMPLETELY RANDOMLY WITH NO WARNING. IT HAS HAPPENED TO OTHERS IN MY COMPANY WITH THEIR IMPALAS. I LOOKED ONLINE AND FOUND NUMEROUS OTHER INSTANCES OF CHEVY IMPALAS OF VARIOUS MODEL YEARS DOING THE SAME THING. IT IS CURRENTLY IN THE REPAIR SHOP AND THE MECHANIC CAN'T DUPLICATE THE PROBLEM. I TOLD THEM ITS RANDOM AND OCCURS ABOUT EVERY 4 MONTHS OR SO. I AM AFRAID I WILL HAVE TO GET BACK IN THIS DEATH TRAP DUE TO MY EMPLOYER MAKING ME. PLEASE HELP- I DON'T WANT TO DIE BECAUSE CHEVROLET HAS A PROBLEM WITH THEIR ELECTRICAL SYSTEMS IN THEIR CARS. *TR NHTSA ID Number: 10567458.

353. On March 11, 2014, New GM became aware of a complaint filed with NHTSA involving a 2007 Cadillac DTS and an incident that occurred on January 27, 2013, in which the following was reported:

> ENGINE STOPPED. ALL POWER EQUIPMENT CEASED TO FUNCTION. I WAS ABLE TO GET TO THE SIDE OF THE FREEWAY. PUT THE CAR IN NEUTRAL, TURNED THE KEY AND THE CAR STARTED AND CONTINUED FOR THE DURATION OF THE 200 MILE TRIP. THE SECOND TIME APPROXIMATELY THREE WEEKS AGO MY WIFE WAS DRIVING IN HEAVY CITY TRAFFIC WHEN THE SAME PROBLEM OCCURRED AND SHE LOST THE USE OF ALL POWER EQUIPMENT. SHE WAS ABLE TO PUT THE CAR IN PARK AND GET IT STARTED AGAIN WITHOUT INCIDENT. I CALLED GM COMPLAINT DEPARTMENT. THEY INSTRUCTED ME TO TAKE THE CAR TO A DEALERSHIP

> AND HAVE A DIAGNOSTIC TEST DONE ON IT. THIS WAS DONE AND NOTHING WAS FOUND TO BE WRONG WITH THE VEHICLE. I AGAIN CALLED CADILLAC COMPLAINT DEPARTMENT AND OPENED A CASE. THIS TIME I WAS TOLD TO TAKE THE CAR BACK TO THE DEALERSHIP AND ASK THE SERVICE DEPARTMENT TO RECHECK IT. I INFORMED THEM I HAVE THE DIAGNOSTIC REPORT SHOWING NOTHING WRONG WAS FOUND. THEY SUGGESTED I TAKE IT BACK AND HAVE THE SERVICE PEOPLE DRIVE THE CAR. THIS DIDN'T MAKE ANY SENSE BECAUSE I DON'T KNOW WHEN AND WHERE THE PROBLEM WILL OCCUR AGAIN. WHAT WAS I TO DO FOR A CAR WHILE THE DEALERSHIP HAD MINE? I INQUIRED OF THE CADILLAC REPRESENTATIVE IF THIS CAR MAY HAVE THE SAME IGNITION AS THE CARS CURRENTLY BEING RECALLED BY GM. THEY WERE UNABLE TO ANSWER THAT QUESTION. THEY FINALLY STATED THE ONLY REMEDY WAS TO TAKE IT BACK TO THE DEALERSHIP. IF THIS PROBLEM OCCURS AGAIN SOMEONE COULD EASILY GET INJURED OR KILLED. I WOULD APPRECIATE ANY ASSISTANCE YOU CAN GIVE ME ON HOW TO RESOLVE THIS MATTER. NHTSA ID Number: 10568491.

354. On March 19, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick LaCrosse and an incident that occurred on March 15, 2014, in which the following was reported:

> WHILE DRIVING UP A LONG INCLINE ON I-10 VEHICLE BEHAVED AS IF THE IGNITION HAD BEEN TURNED OFF AND KEY REMOVED. IE: ENGINE OFF, NO LIGHTS OR ACCESSORIES, NO WARNING LIGHTS ON DASH. TRAFFIC WAS HEAVY AND MY WIFE WAS FORTUNATE TO SAFELY COAST INTO SHOULDER. INCIDENT RECORDED WITH BUICK, HAVE REFERENCE NUMBER. *TR NHTSA ID Number: 10573586.

355. On June 20, 2014, New GM became aware of a complaint filed with NHTSA involving a 2008 Buick LaCrosse and an incident that occurred on August 30, 2013, in which the following was reported:

> THE IGNITION CONTROL MODULE (NOT THE IGNITION SWITCH) FAILED SUDDENLY WHILE DRIVING ON THE

> HIGHWAY, CAUSING THE ENGINE TO SHUT OFF SUDDENLY AND WITHOUT WARNING. THE CAR WAS TRAVELING DOWNHILL, SO THE INITIAL INDICATION WAS LOSS OF POWER STEERING. I WAS ABLE TO PULL ONTO THE SHOULDER AND THEN REALIZED THAT THE ENGINE HAD DIED AND WOULD NOT RESTART. WHILE NO CRASH OR INJURY OCCURRED, THE POTENTIAL FOR A SERIOUS CRASH WAS QUITE HIGH. NHTSA ID Number: 10604820.

356. On July 1, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick LaCrosse and an incident that occurred on October 25, 2012, in which the following was reported:

> TRAVELING 40 MPH ON A FOUR LANE ABOUT TO PASS A TRUCK. MOTOR STOPPED, POWER STEERING OUT, POWER BRAKES OUT, MANAGED TO COAST ACROSS THREE LANES TO SHOULDER TO PARK. WALKED 1/4 MILES TO STORE CALLED A LOCAL GARAGE. CAR STILL WOULD NOT START, TOWED TO HIS GARAGE. CHECKED GAS, FUEL PRESSURE OKAY BUT NO SPARK. MOVED SOME CONNECTORS AROUND THE STARTING MODULE AND CAR STARTED. HAVE NOT HAD ANY PROBLEMS SINCE, HAVE THE FEAR THAT I WILL BE ON A CHICAGO TOLL ROAD AND IT WILL STOP AGAIN. NHTSA ID Number: 10607535.

357. On July 12, 2014, New GM became aware of a complaint filed with NHTSA involving a 2009 Chevrolet Impala and an incident that occurred on March 19, 2010, in which the following was reported:

> I HAD JUST TURNED ONTO THIS ROAD, HAD NOT EVEN GONE A MILE. NO SPEED, NO BLACK MARKS, CAR SHUT DOWN RAN OFF THE ROAD AND HIT A TREE STUMP. TOTAL THE CAR. THE STEERING WHEEL WAS BENT ALMOST IN HALF. I HAVE PICTURES OF THE CAR. I GOT THIS CAR NEW, SO ALL MILES WE'RE PUT ON IT BY ME. I BROKE MY HIP, BACK, KNEE, DISLOCATED MY ELBOW, CRUSHED MY ANKLE AND FOOT. HAD A HEAD INJURY, A DEFLATED LUNG. I WAS IN THE HOSPITAL FOR TWO MONTHS AND A NURSING HOME FOR A MONTH. I HAVE HAD 14 SURGERIES. STILL NOT ABLE TO WORK OR DO A LOT OF THINGS FOR MY SELF. WITH THE RECALLS

SHOWING THE ISSUES OF THE ENGINE SHUTTING OFF, I NEED THIS LOOKED INTO. NHTSA ID Number: 10610093.

358. On July 24, 2014, New GM became aware of a complaint filed with NHTSA involving a 2008 Buick LaCrosse and an incident that occurred on July 15, 2014, in which the following was reported:

WHILE DRIVING NORTH ON ALTERNATE 69 HIGHWAY AT 65 MPH AT 5:00 P.M., MY VEHICLE ABRUPTLY LOSS POWER EVEN THOUGH I TRIED TO ACCELERATE. THE ENGINE SHUT OFF SUDDENLY AND WITHOUT WARNING. VEHICLE SLOWED TO A COMPLETE STOP. I WAS DRIVING IN THE MIDDLE LANE AND WAS UNABLE TO GET IN THE SHOULDER LANE BECAUSE I HAD NO PICKUP (UNABLE TO GIVE GAS TO ACCELERATE) SO MY HUSBAND AND I WERE CAUGHT IN FIVE 5:00 TRAFFIC WITH CARS WHIPPING AROUND US ON BOTH SIDES AND MANY EXCEEDING 65 MPH. I PUT ON MY EMERGENCY LIGHTS AND IMMEDIATELY CALLED ON-STAR. I WAS UNABLE TO RESTART THE ENGINE. THANK GOD FOR ON-STAR BECAUSE FROM THAT POINT ON, I WAS IN TERROR WITNESSING CARS COMING UPON US NOT SLOWING UNTIL THEY REALIZED I WAS AT A STAND STILL WITH LIGHTS FLASHING. THE CARS WOULD SWERVE TO KEEP FROM HITTING US. IT TOOK THE HIGHWAY PATROL AND POLICE 15 MINUTES TO GET TO US BUT DURING THAT TIME, I RELIVED VISIONS OF US BEING KILLED ON THE HIGHWAY. I CANÂ€™T DESCRIBE THE HORROR, LOOKING OUT MY REAR VIEW MIRROR, WITNESSING OUR DEMISE TIME AFTER TIME. THOSE 15 MINUTES SEEMED LIKE AN ETERNITY. WHEN THE HIGHWAY PATROL ARRIVED THEY CLOSED LANES AND ASSISTED IN PUSHING CAR OUT OF THE HIGHLY TRAFFIC LANES. IT TOOK MY HUSBAND AND I BOTH TO TURN THE STEERING WHILE IN NEUTRAL. THE CAR WAS TOWED TO CONKLIN FANGMAN KC DEALERSHIP AND I HAD TO REPLACE IGNITION COIL AND MODULE THAT COST ME $933.16. THEY SAID THESE PARTS WERE NOT ON THE RECALL LIST, WHICH I HAVE FOUND OUT SINCE THEN GM HAS PUT DEALERSHIPS ON NOTICE OF THIS PROBLEM. IT HAS SOMETHING TO DO WITH SUPPLYING ENOUGH MANUFACTURED PARTS TO TAKE CARE OF RECALL. IF I COULD AFFORD TO PURCHASE ANOTHER CAR I WOULD BECAUSE I DONÂ€™T FEEL SAFE ANY LONGER IN THIS CAR. EMOTIONALLY I AM STILL

> SUFFERING FROM THE TRAUMA. NHTSA ID Number: 10604820.

359. Notwithstanding New GM's recall, the reports and complaints relating to this defect have continued to pour into New GM. Such complaints and reports indicate that New GM's proffered recall "fix" does not work.

360. For example, on August 2, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick LaCrosse and an incident that occurred on July 12, 2014, in which the following was reported:

> WHILE TRAVELING IN THE FAST LANE ON THE GARDEN STATE PARKWAY I HIT A BUMP IN THE ROAD, THE AUTO SHUT OFF.WITH A CONCRETE DIVIDER ALONG SIDE AND AUTOS APPROACHING AT HIGH SPEED, MY WIFE AND DAUGHTER SCREEMING I MANAGED TO GET TO THE END OF THE DIVIDER WERE I COULD TURN OFF THE AUTO RESTARTED ON 1ST TRY BUT VERY SCARY. NHTSA ID Number: 10618391.

361. On August 18, 2014, New GM became aware of a complaint filed with NHTSA involving a 2007 Buick LaCrosse and an incident that occurred on August 18, 2014, in which the following was reported:

> TL* THE CONTACT OWNS A 2007 BUICK LACROSSE. THE CONTACT STATED WHILE DRIVING APPROXIMATELY 60 MPH, SHE HIT A POT HOLE AND THE VEHICLE STALLED. THE VEHICLE COASTED TO THE SHOULDER OF THE ROAD. THE VEHICLE WAS RESTARTED AND THE CONTACT WAS ABLE TO DRIVE THE VEHICLE AS NORMAL. THE CONTACT RECEIVED A RECALL NOTICE UNDER NHTSA CAMPAIGN NUMBER: 14V355000 (ELECTRICAL SYSTEM), HOWEVER THE PARTS NEEDED FOR THE REPAIRS WAS UNAVAILABLE. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 110,000. NHTSA ID Number: 10626067.

362. On August 20, 2014, New GM became aware of a complaint filed with NHTSA involving a 2007 Chevrolet Impala and an incident that occurred on August 6, 2014, in which it was reported that:

> TL* THE CONTACT OWNS A 2007 CHEVROLET IMPALA. THE CONTACT STATED THAT WHILE DRIVING 25 MPH, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT RECEIVED A NOTIFICATION FOR RECALL NHTSA CAMPAIGN NUMBER: 14V355000 (ELECTRICAL SYSTEM). THE VEHICLE WAS TAKEN TO AN INDEPENDENT MECHANIC WHERE THE TECHNICIAN ADVISED THE CONTACT TO REMOVE THE KEY FOB AND ANY OTHER OBJECTS. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE FAILURE MILEAGE WAS 79,000. NHTSA ID Number: 10626659.

363. On August 27, 2014, New GM became aware of the following complaint filed with NHTSA involving a 2008 Chevrolet Impala and an incident that occurred on August 27, 2014, in which it was reported that:

> TL-THE CONTACT OWNS A 2008 CHEVROLET IMPALA. THE CONTACT STATED WHILE DRIVING APPROXIMATELY 50 MPH, THE VEHICLE LOST POWER AND THE STEERING WHEEL SEIZED WITHOUT WARNING. AS A RESULT, THE CONTACT CRASHED INTO A POLE AND THE AIR BAGS FAILED TO DEPLOY. THE CONTACT SUSTAINED A CONCUSION, SPRAINED NECK, AND WHIPLASH WHICH REQUIRED MEDICAL ATTENTION. THE POLICE WAS NOT FILED. THE VEHICLE WAS TOWED TO A TOWING COMPANY. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN ID NUMBER: 14V355000 (ELECTRICAL SYSTEM), HOWEVER THE PARTS ARE NOT AVAILABLE TO PERFORM THE REPAIRS. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 70,000. MF. NHTSA ID Number: 10628704.

364. Old GM and later New GM knew that this serious safety defect existed for years yet did nothing to warn the public or even attempt to correct the defect in these vehicles until late June of 2014 when New GM finally made the decision to implement a recall.

365. The "fix" that New GM plans as part of the recall is to modify the ignition key from a "slotted" key to "hole" key. This is insufficient and does not adequately address the safety risks posed by the defect. The ignition key and switch remain prone to inadvertently move from the "run" to the "accessory" position. Simply changing the key slot or taking other keys and fobs off of key rings is New GM's attempt to make consumers responsible for the safety of GM-branded vehicles and to divert its own responsibility to make GM-branded vehicles safe. New GM's "fix" does not adequately address the inherent dangers and safety threats posed by the defect in the design.

366. In addition, New GM is not addressing the other design issues that create safety risks in connection with this defect. New GM is not altering the algorithm that prevents the airbags from deploying when the ignition leaves the "run" position even when the vehicle is moving at high speed. And New GM is not altering the placement of the ignition switch in an area where the driver's knees may inadvertently cause the ignition to move out of the "run" position.

c. July 2 and 3, 2014 recalls—unintended ignition rotation defect.

367. On July 2, 2014, New GM recalled 554,328 vehicles in the United States for ignition switch defects (Recall Number 14V-394). The July 2 recall applied to the 2003-2014 Cadillac CTS and the 2004-2006 Cadillac SRX.

368. The recall notice explains that the weight on the key ring and/or road conditions or some other jarring event may cause the ignition switch to move out of the "run" position,

turning off the engine. Further, if the key is not in the "run" position, the airbags may not deploy in the event of a collision, increasing the risk of injury.

369. On July 3, 2014, New GM recalled 6,729,742 additional vehicles in the United States for ignition switch defects (Recall No. 14V-400).

370. The following vehicles were included in this recall: 1997-2005 Chevrolet Malibu, 2000-2005 Chevrolet Impala, 2000-2005 Chevrolet Monte Carlo, 2000-2005 Pontiac Grand Am, 2004-2008 Pontiac Grand Prix, 1998-2002 Oldsmobile Intrigue, and 1999-2004 Oldsmobile Alero.

371. The recall notice states that the weight on the key and/or road conditions or some other jarring event may cause the ignition switch to move out of the "run" position, turning off the engine. If the key is not in the "run" position, the airbags may not deploy if the vehicle is involved in a collision, increasing the risk of injury.

372. In both of these recalls, New GM notified NHTSA and the public that the recall was intended to address a defect involving unintended or "inadvertent key rotation" within the ignition switch of the vehicles. As with the ignition key defect announced June 20, however, the defects for which these vehicles have been recalled is directly related to the ignition switch defect in the Cobalt and other Defective Ignition Switch Vehicles and involves the same safety risks and dangers.

373. 7,175,896 of the recalled vehicles were manufactured by Old GM. 108,174 of the vehicles were manufactured and sold by New GM.

374. Once again, the unintended ignition rotation defect is substantially similar to and relates directly to the other ignition switch defects, including the defects that gave rise to the initial recall of 2.1 million Cobalts and other vehicles in February and March of 2014. Like the

other ignition switch defects, the unintended ignition key rotation defect poses a serious and dangerous safety risk because it can cause a vehicle to stall while in motion by causing the key in the ignition to inadvertently move from the "on" or "run" position to "off" or "accessory" position. Like the other ignition switch defects, the unintended ignition key rotation defect can result in a loss of power steering, power braking, and increase the risk of a crash. And as with the other ignition switch defects, if a crash occurs, the airbags will not deploy because of the unintended ignition key rotation defect.

375. The unintended ignition key rotation defect involves several problems, and they are identical to the problems in the other Defective Ignition Switch Vehicles: a weak detent plunger, the low positioning of the ignition on the steering column, and the algorithm that renders the airbags inoperable when the vehicle leaves the "run" position.

376. The 2003-2006 Cadillac CTS and the 2004-2006 Cadillac SRX use the same Delphi switch and have inadequate torque for the "run"-"accessory" direction of the key rotation. This was known to Old and New GM, and was the basis for a change that was made to a stronger detent plunger for the 2007 and later model years of the SRX model. The 2007 and later CTS vehicles used a switch manufactured by Dalian Alps.

377. In 2010, New GM changed the CTS key from a "slot" to a "hole" design to "reduce an observed nuisance" of the key fob contacting the driver's leg. But in 2012, a New GM employee reported two running stalls of a 2012 CTS that had a "hole" key and the stronger detent plunger switch. When New GM did testing in 2014 of the "slot" versus "hole" keys, it confirmed that the weaker detent plunger-equipped switches used in the older CTS and SRX could inadvertently move from "run" to "accessory" or "off" when the "vehicle goes off road or experience some other jarring event."

378. Plaintiffs are informed and believe that New GM has tried to characterize the recall of these 7.3 million vehicles as being different than the other ignition switch defects that gave rise to the February recall ***even though*** these recalls are aimed at addressing the same defects and safety risks as those that gave rise to the other ignition switch defect recalls. New GM has attempted to portray the unintended ignition key rotation defect as being different from the other ignition switch defects in order to deflect attention from the severity and pervasiveness of the ignition switch defect and to try to provide a story and plausible explanation for why it did not recall these 7.3 million vehicles much earlier, and to avoid providing new, stronger ignition switches as a remedy.

379. Further, New GM acquired knowledge of the defects in these vehicles on July 10, 2009. On that date, it acquired knowledge of the following facts, as well as others not pleaded herein:

a. In January of 2003, Old GM opened an internal investigation after it received complaints from a Michigan GM dealership that a customer had experienced a power failure while operating his model year 2003 Pontiac Grand Am.

b. During the investigation, Old GM's Brand Quality Manager for the Grand Am visited the dealership and requested that the affected customer demonstrate the problem. The customer was able to recreate the shutdown event by driving over a speed bump at approximately 30-35 mph.

c. The customer's key ring was allegedly quite heavy. It contained approximately 50 keys and a set of brass knuckles.

d. In May 2003, Old GM issued a voicemail to dealerships describing the defective ignition condition experienced by the customer in the Grand Am. Old GM identified

the relevant population of the Affected Vehicles as the 1999-2003 Chevrolet Malibu, Oldsmobile Alero, and Pontiac Grand Am.

e. Old GM did not recall these vehicles. Nor did it provide owners and/or lessees with notice of the defective condition. Instead, its voicemail directed dealerships to pay attention to the key size and mass of the customer's key ring.

f. On July 24, 2003, Old GM issued an engineering work order to increase the detent plunger force on the ignition switch for the 1999-2003 Chevrolet Malibu, Oldsmobile Alero, and Pontiac Grand Am vehicles. Old GM engineers allegedly increased the detent plunger force and changed the part number of the ignition switch. The new parts were installed beginning in the model year 2004 Malibu, Alero, and Grand Am vehicles.

g. Old GM issued a separate engineering work order in March 2004 to increase the detent plunger force on the ignition switch in the Pontiac Grand Prix. Old GM engineers did not change the part number for the new Pontiac Grand Prix ignition switch.

h. Then-Old GM design engineer Ray DeGiorgio signed the work order in March 2004 authorizing the part change for the Grand Prix ignition switch. Ray DeGiorgio maintained his position as design engineer with New GM.

i. On or around August 25, 2005, Laura Andres, an Old GM design engineer (who remains employed with New GM), sent an email describing ignition switch issues that she experienced while operating a 2006 Chevrolet Impala on the highway. Ms. Andres' email stated, "While driving home from work on my usual route, I was driving about 45 mph, where the road changes from paved to gravel & then back to paved, some of the gravel had worn away, and the pavement acted as a speed bump when I went over it. The car shut off. I took the car in for

repairs. The technician thinks it might be the ignition detent, because in a road test in the parking lot it also shut off."

j. Old GM employee Larry S. Dickinson, Jr. forwarded Ms. Andres' email on August 25, 2005 to four Old GM employees. Mr. Dickinson asked, "Is this a condition we would expect to occur under some impacts?"

k. On August 29, 2005, Old GM employee Jim Zito forwarded the messages to Ray DeGiorgio and asked, "Do we have any history with the ignition switch as far as it being sensitive to road bumps?"

l. Mr. DeGiorgio responded the same day, stating, "To date there has never been any issues with the detents being too light."

380. From 2002 to the present, Old GM and New GM received numerous reports from consumers regarding complaints, crashes, injuries, and deaths linked to this safety defect. The following are just a handful of examples of some of the reports known to Old GM and New GM.

381. On September 16, 2002, Old GM became aware of a complaint filed with NHTSA regarding a 2002 Oldsmobile Intrigue involving an incident that occurred on March 16, 2002, in which the following was reported:

> WHILE DRIVING AT 30 MPH CONSUMER RAN HEAD ON INTO A STEEL GATE, AND THEN HIT THREE TREES. UPON IMPACT, NONE OF THE AIR BAGS DEPLOYED. CONTACTED DEALER. PLEASE PROVIDE FURTHER INFORMATION. *AK **NHTSA ID Number:** 8018687.

382. On November 22, 2002, Old GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS involving an incident that occurred on July 1, 2002, in which it was reported that:

> THE CAR STALLS AT 25 MPH TO 45 MPH, OVER 20 OCCURANCES, DEALER ATTEMPTED 3 REPAIRS. DT NHTSA ID Number: 770030.

383. On January 21, 2003, Old GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS, in which the following was reported:

> WHILE DRIVING AT ANY SPEED,THE VEHICLE WILL SUDDENLY SHUT OFF. THE STEERING WHEEL AND THE BRAKE PEDAL BECOMES VERY STIFF. CONSUMER FEELS ITS VERY UNSAFE TO DRIVE. PLEASE PROVIDE ANY FURTHER INFORMATION. NHTSA ID Number: 10004288.

384. On June 30, 2003, Old GM became aware of a complaint filed with NHTSA regarding a 2001 Oldsmobile Intrigue which involved the following report:

> CONSUMER NOTICED THAT WHILE TRAVELING DOWN HILL AT 40-45 MPH BRAKES FAILED, CAUSING CONSUMER TO RUN INTO THREES AND A POLE. UPON IMPACT, AIR BAGS DID NOT DEPLOY. *AK NHTSA ID Number: 10026252.

385. On March 11, 2004, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac CTS involving an incident that occurred on March 11, 2004, in which the following was reported:

> CONSUMER STATED WHILE DRIVING AT 55-MPH VEHICLE STALLED, CAUSING CONSUMER TO PULL OFF THE ROAD. DEALER INSPECTED VEHICLE SEVERAL TIMES, BUT COULD NOT DUPLICATE OR CORRECT THE PROBLEM. *AK NHTSA ID Number: 10062993.

386. On March 11, 2004, Old GM became aware of a complaint with NHTSA regarding a 2003 Oldsmobile Alero incident that occurred on July 26, 2003, in which the following was reported:

> THE VEHICLE DIES. WHILE CRUISING AT ANY SPEED, THE HYDRAULIC BRAKES & STEERING FAILED DUE TO THE ENGINE DYING. THERE IS NO SET PATTERN, IT MIGHT STALL 6 TIMES IN ONE DAY, THEN TWICE THE NEXT DAY. THEN GO 4 DAYS WITH NO OCURRENCE, THEN IT WILL STALL ONCE A DAY FOR 3 DAYS. THEN GO A WEEK WITH NO OCURRENCE, THEN STALL 4 TIMES A DAY FOR 5 DAYS, ETC., ETC. IN EVERY OCURRENCE, IT TAKES APPROXIMATELY 10 MINUTES BEFORE IT WILL

> START BACK UP. AT HIGH SPEEDS, IT IS EXTREMELY TOO DANGEROUS TO DRIVE. WE'VE TAKEN IT TO THE DEALER, UNDER EXTENDED WARRANTY, THE REQUIRED 4 TIMES UNDER THE LEMON LAW PROCESS. THE DEALER CANNOT ASCERTAIN, NOR FIX THE PROBLEM. IT HAPPENED TO THE DEALER AT LEAST ONCE WHEN WE TOOK IT IN. I DOUBT THEY WILL ADMIT IT, HOWEVER, MY WIFE WAS WITNESS. THE CAR IS A 2003. EVEN THOUGH I BOUGHT IT IN JULY 2003, IT WAS CONSIDERED A USED CAR. GM HAS DENIED OUR CLAIM SINCE THE LEMON LAW DOES NOT APPLY TO USED CARS. THE CAR HAS BEEN PERMANENTLY PARKED SINCE NOVEMBER 2003. WE WERE FORCED TO BUY ANOTHER CAR. THE DEALER WOULD NOT TRADE. THIS HAS RESULTED IN A BADLUCK SITUATION FOR US. WE CANNOT AFFORD 2 CAR PAYMENTS / 2 INSURANCE PREMIUMS, NOR CAN WE AFFORD $300.00 PER HOUR TO SUE GM. I STOPPED MAKING PAYMENTS IN DECEMBER 2003. I HAVE KEPT THE FINANCE COMPANY ABREAST OF THE SITUATION. THEY HAVE NOT REPOSSED AS OF YET. THEY WANT ME TO TRY TO SELL IT. CAN YOU HELP ?*AK NHTSA ID Number: 10061898.

387. On July 20, 2004, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac SRX, involving an incident that occurred on July 9, 2004, in which the following was reported:

> THE CAR DIES AFTER TRAVELING ON HIGHWAY. IT GOES FROM 65 MPH TO 0. THE BRAKES, STEERING, AND COMPLETE POWER DIES. YOU HAVE NO CONTROL OVER THE CAR AT THIS POINT. I HAVE ALMOST BEEN HIT 5 TIMES NOW. ALSO, WHEN THE CARS DOES TURN BACK ON IT WILL ONLY GO 10 MPH AND SOMETIMES WHEN YOU TURN IT BACK ON THE RPM'S WILL GO TO THE MAX. IT SOUNDS LIKE THE CAR IS GOING TO EXPLODE. THIS CAR IS A DEATH TRAP. *LA NHTSA ID Number: 10082289.

388. In August 2004, Old GM became aware of a complaint filed with NHTSA regarding a 2004 Chevrolet Malibu incident that occurred on June 30, 2004, in which it was reported that:

> WHILE TRAVELING AT ANY SPEED VEHICLE STALLED. WITHOUT CONSUMER HAD SEVERAL CLOSE CALLS OF BEING REAR ENDED. VEHICLE WAS SERVICED SEVERAL TIMES, BUT PROBLEM RECURRED. *AK. NHTSA ID Number: 10089418.

389. Another report in August of 2004 which Old GM became aware of involved a 2004 Chevrolet Malibu incident that occurred on August 3, 2004, in which it was reported that:

> WHEN DRIVING, THE VEHICLE TO CUT OFF. THE DEALER COULD NOT FIND ANY DEFECTS. *JB. NHTSA ID Number: 10087966.

390. On October 23, 2004, Old GM became aware of a complaint with NHTSA regarding a 2003 Chevrolet Monte Carlo, in which the following was reported:

> VEHICLE CONTINUOUSLY EXPERIENCED AN ELECTRICAL SYSTEM FAILURE. AS A RESULT, THERE'WAS AN ELECTRICAL SHUT DOWN WHICH RESULTED IN THE ENGINE DYING/ STEERING WHEEL LOCKING UP, AND LOSS OF BRAKE POWER.*AK NHTSA ID Number: 10044624.

391. On April 26, 2005, Old GM became aware of a complaint filed with NHTSA involving a 2005 Pontiac Grand Prix, pertaining to an incident that occurred on December 29, 2004, in which the following was reported:

> 2005 PONTIAC GRAND PRIX GT SEDAN VIN #[XXX] PURCHASED 12/16/2004. INTERMITTENTLY VEHICLE STALLS/ LOSS OF POWER IN THE ENGINE. WHILE DRIVING THE VEHICLE IT WILL SUDDENLY JUST LOSES POWER. YOU CONTINUE TO PRESS THE ACCELERATOR PEDAL AND THEN THE ENGINE WILL SUDDENLY TAKE BACK OFF AT A GREAT SPEED. THIS HAS HAPPENED WHILE DRIVING NORMALLY WITHOUT TRYING TO ACCELERATE AND ALSO WHILE TRYING TO ACCELERATE. THE CAR HAS LOST POWER WHILE TRYING TO MERGE IN TRAFFIC. THE CAR HAS LOST POWER WHILE TRYING TO CROSS HIGHWAYS. THE CAR HAS LOST POWER WHILE JUST DRIVING DOWN THE ROAD. GMC HAS PERFORMED THE FOLLOWING REPAIRS WITHOUT FIXING THE PROBLEM. 12/30/2004 [XXX]- MODULE, POWERTRAIN CONTROL-ENGINE

> REPROGRAMMING. 01/24/2005 [XXX]-SOLENOID,PRESSURE CONTROL-REPLACED. 02/04/2005 [XXX]-MODULE, PCM/VCM-REPLACED. 02/14/2005 [XXX]-PEDAL,ACCELERATOR-REPLACED. DEALERSHIP PURCHASED FROM CAPITAL BUICK-PONTIAC-GMC 225-293-3500. DEALERSHIP HAS ADVISED THAT THEY DO NOT KNOW WHAT IS WRONG WITH THE CAR. WE HAVE BEEN TOLD THAT WE HAVE TO GO DIRECT TO PONTIAC WITH THE PROBLEM. HAVE BEEN IN CONTACT WITH PONTIAC SINCE 02/15/05. PONTIAC ADVISED THAT THEY WERE GOING TO RESEARCH THE PROBLEM AND SEE IF ANY OTHER GRAND PRI WAS REPORTING LIKE PROBLEMS. SO FAR THE ONLY ADVICE FROM PONTIAC IS THEY WANT US TO COME IN AND TAKE ANOTHER GRAND PRIX OFF THE LOT AND SEE IF WE CAN GET THIS CAR TO DUPLICATE THE SAME PROBLEM. THIS DID NOT IMPRESS ME AT ALL. SO AFTER WAITING FOR 2-1/2 MONTHS FOR PONTIAC TO DO SOMETHING TO FIX THE PROBLEM, I HAVE DECIDED TO REPORT THIS TO NHTSA. *AK *JS INFORMATION REDACTED PURSUANT TO THE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6) NHTSA ID Number: 10118501.

392. In May 2005, Old GM became aware of a complaint filed with NHTSA regarding a 2004 Chevrolet Malibu incident that occurred on July 18, 2004, in which it was reported that:

> THE CAR CUT OFF WHILE I WAS DRIVING AND IN HEAVY TRAFFIC MORE THAN ONCE. THERE WAS NO WARNING THAT THIS WOULD HAPPEN. THE CAR WAS SERVICED BEFORE FOR THIS PROBLEM BUT IT CONTINUED TO HAPPEN. I HAVE HAD 3 RECALLS, THE HORN FUSE HAS BEEN REPLACED TWICE, AND THE BLINKER IS CURRENTLY OUT. THE STEERING COLLAR HAS ALSO BEEN REPLACED. THIS CAR WAS SUPPOSED TO BE A NEW CAR. NHTSA ID Number: 10123684.

393. On June 2, 2005, Old GM became aware of a complaint with NHTSA regarding a 2004 Pontiac Grand Am incident that occurred on February 18, 2005, in which the following was reported:

> 2004 PONTIAC GRAND PRIX SHUTS DOWN WHILE DRIVING AND THE POWER STEERING AND BRAKING ABILITY ARE LOST.*MR *NM. NHTSA ID Number: 10124713.

394. On August 12, 2005, Old GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS, regarding an incident that occurred on January 3, 2005, in which it was reported that:

> DT: VEHICLE LOST POWER WHEN THE CONSUMER HIT THE BRAKES. THE TRANSMISSION JOLTS AND THEN THE ENGINE SHUTS OFF. IT HAS BEEN TO THE DEALER 6 TIMES SINCE JANUARY. THE DEALER TRIED SOMETHING DIFFERENT EVERY TIME SHE TOOK IT IN. MANUFACTURER SAID SHE COULD HAVE A NEW VEHICLE IF SHE PAID FOR IT. SHE WANTED TO GET RID OF THE VEHICLE.*AK THE CHECK ENGINE LIGHT ILLUMINATED. *JB NHTSA ID Number: 10127580.

395. On August 26, 2005, Old GM became aware of a complaint with NHTSA regarding a 2004 Pontiac Grand Am incident that occurred on August 26, 2005, in which the following was reported:

> WHILE DRIVING MY 2004 PONTIAC GRAND AM THE CAR FAILED AT 30 MPH. IT COMPLETELY SHUT OFF LEAVING ME WITH NO POWER STEERING AND NO WAY TO REGAIN CONTROL OF THE CAR UNTIL COMING TO A COMPLETE STOP TO RESTART IT. ONCE I HAD STOPPED IT DID RESTART WITHOUT INCIDENT. ONE WEEK LATER THE CAR FAILED TO START AT ALL NOT EVEN TURNING OVER. WHEN THE PROBLEM WAS DIAGNOSED AT THE GARAGE IT WAS FOUND TO BE A FAULTY "IGNITION CONTROL MODULE" IN THE CAR. AT THIS TIME THE PART WAS REPLACED ONLY TO FAIL AGAIN WITHIN 2 MONTHS TIME AGAIN WHILE I WAS DRIVING THIS TIME IN A MUCH MORE HAZARDOUS CONDITION BEING THAT I WAS ON THE HIGHWAY AND WAS TRAVELING AT 50 MPH AND HAD TO TRAVEL ACROSS TWO LANES OF TRAFFIC TO EVEN PULL OVER TO TRY TO RESTART IT. THE CAR CONTINUED TO START AND SHUT OFF ALL THE WAY TO THE SERVICE GARAGE WHERE IT WAS AGAIN FOUND TO BE A FAULTY "IGNITION CONTROL MODULE". IN ANOTHER TWO WEEKS TIME THE CAR FAILED TO START AND WHEN DIAGNOSED THIS TIME IT WAS SAID TO HAVE "ELECTRICAL PROBLEMS" POSSIBLE THE "POWER CONTROL MODULE". AT THIS TIME THE CAR IS STILL UNDRIVEABLE AND UNSAFE FOR TRAVEL. *JB NHTSA ID Number: 10134303.

396. On September 22, 2005, Old GM became aware of a complaint filed with NHTSA involving a 2005 Cadillac CTS, concerning an incident that occurred on September 16, 2005, in which the following was reported:

> DT: 2005 CADILLAC CTS – THE CALLER'S VEHICLE WAS INVOLVED IN AN ACCIDENT WHILE DRIVING AT 55 MPH. UPON IMPACT, AIR BAGS DID NOT DEPLOY. THE VEHICLE WENT OFF THE ROAD AND HIT A TREE. THIS WAS ON THE DRIVER'S SIDE FRONT. THERE WERE NO INDICATOR LIGHTS ON PRIOR TO THE ACCIDENT. THE VEHICLE HAS NOT BEEN INSPECTED BY THE DEALERSHIP, AND INSURANCE COMPANY TOTALED THE VEHICLE. THE CALLER SAW NO REASON FOR THE AIR BAGS NOT TO DEPLOY. . TWO INJURED WERE INJURED IN THIS CRASH. T A POLICE REPORT WAS TAKEN. THERE WAS NO FIRE. *AK NHTSA ID Number: 10137348.

397. On September 29, 2006, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac CTS and an incident that occurred on September 29, 2006, in which the following was reported:

> DT*: THE CONTACT STATED AT VARIOUS SPEEDS WITHOUT WARNING, THE VEHICLE LOST POWER AND WOULD NOT ACCELERATE ABOVE 20 MPH. ALSO, WITHOUT WARNING, THE VEHICLE STALLED ON SEVERAL OCCASIONS, AND WOULD NOT RESTART. THE VEHICLE WAS TOWED TO THE DEALERSHIP, WHO REPLACED THE THROTTLE TWICE AND THE THROTTLE BODY ASSEMBLY HARNESS, BUT THE PROBLEM PERSISTED. *AK UPDATED 10/25/2006 – *NM NHTSA ID Number: 10169594.

398. On April 18, 2007, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac SRX, regarding an incident that occurred on April 13, 2007, in which it was reported that:

> TL*THE CONTACT OWNS A 2004 CADILLAC SRX. THE ENGINE STALLED WITHOUT WARNING AND CAUSED ANOTHER VEHICLE TO CRASH INTO THE VEHICLE. THE VEHICLE WAS ABLE TO RESTART A FEW MINUTES

> AFTER THE CRASH. THE DEALER AND MANUFACTURER WAS UNABLE TO DIAGNOSE THE FAILURE. THE MANUFACTURER HAD THE VEHICLE INSPECTED BY A CADILLAC SPECIALIST WHO WAS UNABLE TO DIAGNOSE THE FAILURE. THE DEALER UPDATED THE COMPUTER FOUR TIMES, BUT THE ENGINE CONTINUED TO STALL. THE CURRENT AND FAILURE MILEAGES WERE 48,000. NHTSA ID Number: 10188245.

399. On September 20, 2007, Old GM became aware of a complaint filed with NHTSA involving a 2007 Cadillac CTS, in connection with an incident that occurred on January 1, 2007, in which it was reported that:

> TL*THE CONTACT OWNS A 2007 CADILLAC CTS. WHILE DRIVING 40 MPH, THE VEHICLE SHUT OFF WITHOUT WARNING. THE FAILURE OCCURRED ON FIVE SEPARATE OCCASIONS. THE DEALER WAS UNABLE TO DUPLICATE THE FAILURE. AS OF SEPTEMBER 20, 2007, THE DEALER HAD NOT REPAIRED THE VEHICLE. THE POWERTRAIN WAS UNKNOWN. THE FAILURE MILEAGE WAS 2,000 AND CURRENT MILEAGE WAS 11,998. NHTSA ID Number: 10203516.

400. On September 24, 2007, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac SRX, regarding an incident that occurred on January 1, 2005, in which the following was reported:

> TL*THE CONTACT OWNS A 2004 CADILLAC SRX. WHILE DRIVING 5 MPH OR GREATER, THE VEHICLE WOULD SHUT OFF WITHOUT WARNING. THE DEALER STATED THAT THE BATTERY CAUSED THE FAILURE AND THEY REPLACED THE BATTERY. APPROXIMATELY EIGHT MONTHS LATER, THE FAILURE RECURRED. THE DEALER STATED THAT THE BATTERY CAUSED THE FAILURE AND REPLACED IT A SECOND TIME. APPROXIMATELY THREE MONTHS LATER, THE FAILURE OCCURRED AGAIN. SHE WAS ABLE TO RESTART THE VEHICLE. THE DEALER WAS UNABLE TO DUPLICATE THE FAILURE, HOWEVER, THEY REPLACED THE CRANK SHAFT SENSOR. THE FAILURE CONTINUES TO PERSIST. AS OF SEPTEMBER 24, 2007, THE DEALER HAD NOT REPAIRED THE VEHICLE. THE POWERTRAIN WAS UNKNOWN. THE

> FAILURE MILEAGE WAS 8,000 AND CURRENT MILEAGE WAS 70,580. NHTSA ID Number: 10203943.

401. On June 18, 2008, Old GM became aware of a complaint filed with NHTSA involving a 2006 Cadillac CTS and an incident that occurred on June 17, 2008, in which it was reported that:

> TL*THE CONTACT OWNS A 2006 CADILLAC CTS. WHILE DRIVING 60 MPH AT NIGHT, THE VEHICLE SHUT OFF AND LOST TOTAL POWER. WHEN THE FAILURE OCCURRED, THE VEHICLE CONTINUED TO ROLL AS IF IT WERE IN NEUTRAL. THERE WERE NO WARNING INDICATORS PRIOR TO THE FAILURE. THE CONTACT FEELS THAT THIS IS A SAFETY HAZARD BECAUSE IT COULD HAVE RESULTED IN A SERIOUS CRASH. THE VEHICLE WAS TAKEN TO THE DEALER TWICE FOR REPAIR FOR THE SAME FAILURE IN FEBURARY OF 2008 AND JUNE 17, 2008. THE FIRST TIME THE CAUSE OF THE FAILURE WAS IDENTIFIED AS A GLITCH WITH THE COMPUTER SWITCH THAT CONTROLS THE TRANSMISSION. AT THE SECOND VISIT, THE SHOP EXPLAINED THAT THEY COULD NOT IDENTIFY THE FAILURE. IT WOULD HAVE TO RECUR IN ORDER FOR THEM TO DIAGNOSE THE FAILURE PROPERLY. THE CURRENT AND FAILURE MILEAGES WERE 43,000. NHTSA ID Number: 10231507.

402. On October 14, 2008, Old GM became aware of a complaint filed with NHTSA involving a 2008 Cadillac CTS and an incident that occurred on April 5, 2008, in which it was reported that:

> WHILE DRIVING MY 2008 CTS, WITH NO ADVANCE NOTICE, THE ENGINE JUST DIED. IT SEEMED TO RUN OUT OF GAS. MY FUEL GAUGE READ BETWEEN 1/2 TO 3/4 FULL. THIS HAPPENED 3 DIFFERENT OCCASIONS. ALL 3 TIMES I HAD TO HAVE IT TOWED BACK TO THE DEALERSHIP THAT I PURCHASED THE CAR FROM. ALL 3 TIMES I GOT DIFFERENT REASONS IT HAPPENED, FROM BAD FUEL PUMP IN GAS TANK, TO SOME TYPE OF BAD CONNECTION, ETC. AFTER THIS HAPPENED THE 3RD TIME, I DEMANDED A NEW CAR, WHICH I RECEIVED. I HAVE HAD NO PROBLEMS WITH THIS CTS, RUNS GREAT. *TR NHTSA ID Number: 10245423.

403. On November 13, 2008, Old GM became aware of a complaint with NHTSA regarding a 2001 Oldsmobile Intrigue, in which the following was reported:

> L*THE CONTACT OWNS A 2001 OLDSMOBILE INTRIGUE. WHILE DRIVING 35 MPH, THE VEHICLE CONTINUOUSLY STALLS AND HESITATES. IN ADDITION, THE INSTRUMENT PANEL INDICATORS WOULD ILLUMINATE AT RANDOM. THE VEHICLE FAILED INSPECTION AND THE CRANKSHAFT SENSOR WAS REPLACED, WHICH HELPED WITH THE STALLING AND HESITATION; HOWEVER, THE CHECK ENGINE INDICATOR WAS STILL ILLUMINATED. DAYS AFTER THE CRANKSHAFT SENSOR WAS REPLACED, THE VEHICLE FAILED TO START. HOWEVER, ALL OF THE INSTRUMENT PANEL INDICATORS FLASHED ON AND OFF. AFTER NUMEROUS ATTEMPTS TO START THE VEHICLE, HE HAD IT JUMPSTARTED. THE VEHICLE WAS THEN ABLE TO START. WHILE DRIVING HOME, ALL OF THE LIGHTING FLASHED AND THE VEHICLE SUDDENLY SHUT OFF. THE VEHICLE LOST ALL ELECTRICAL POWER AND POWER STEERING ABILITY. THE CONTACT MANAGED TO PARK THE VEHICLE IN A PARKING LOT AND HAD IT TOWED THE FOLLOWING DAY TO A REPAIR SHOP. THE VEHICLE IS CURRENTLY STILL IN THE SHOP. THE VEHICLE HAS BEEN RECALLED IN CANADA AND HE BELIEVES THAT IT SHOULD ALSO BE RECALLED IN THE UNITED STATES. THE FAILURE MILEAGE WAS UNKNOWN AND THE CURRENT MILEAGE WAS 106,000. NHTSA ID Number: 10248694.

404. On December 10, 2008, Old GM became aware of a complaint filed with NHTSA regarding a 2004 Oldsmobile Alero and an incident that occurred on December 10, 2008, in which the following was reported:

> I WAS DRIVING DOWN THE ROAD IN RUSH HOUR GOING APPROX. 55 MPH AND MY CAR COMPLETELY SHUT OFF, THE GAUGES SHUT DOWN, LOST POWER STEERING. HAD TO PULL OFF THE ROAD AS SAFELY AS POSSIBLE, PLACE VEHICLE IN PARK AND RESTART CAR. MY CAR HAS SHUT DOWN PREVIOUSLY TO THIS INCIDENT AND FEEL AS THOUGH IT NEEDS SERIOUS INVESTIGATION. I COULD HAVE BEEN ON THE HIGHWAY AND BEEN KILLED. THIS ALSO HAS HAPPENED WHEN IN A SPIN

> OUT AS WELL THOUGH THIS PARTICULAR INCIDENT WAS RANDOM. *TR NHTSA ID Number: 10251280.

405. On March 31, 2009, Old GM became aware a complaint filed with NHTSA regarding a 2005 Chevrolet Malibu incident that occurred on May 30, 2008, in which it was reported that:

> TL*THE CONTACT OWNS A 2005 CHEVROLET MALIBU. THE CONTACT STATED THAT THE POWER WINDOWS, LOCKS, LINKAGES, AND IGNITION SWITCH SPORADICALLY BECOME INOPERATIVE. SHE TOOK THE VEHICLE TO THE DEALER AND THEY REPLACED THE IGNITION SWITCH AT THE COST OF $495. THE MANUFACTURER STATED THAT THEY WOULD NOT ASSUME RESPONSIBILITY FOR ANY REPAIRS BECAUSE THE VEHICLE EXCEEDED ITS MILEAGE. ALL REMEDIES AS OF MARCH 31, 2009 HAVE BEEN INSUFFICIENT IN CORRECTING THE FAILURES. THE FAILURE MILEAGE WAS 45,000 AND CURRENT MILEAGE WAS 51,000. NHTSA ID Number: 10263716.

406. The defects did not get any safer and the reports did not stop when Old GM ceased to exist. To the contrary, New GM continued receiving the same reports involving the same defects. For example, on August 11, 2010, New GM became aware of the following complaint filed with NHTSA involving a 2005 Cadillac CTS, the incident occurred on May 15, 2010, in which it was reported:

> TL*THE CONTACT OWNS A 2005 CADILLAC CTS. WHILE DRIVING 40 MPH, ALL OF THE SAFETY LIGHTS ON THE DASHBOARD ILLUMINATED WHEN THE VEHICLE STALLED. THE VEHICLE WAS TURNED BACK ON IT BEGAN TO FUNCTION NORMALLY. THE FAILURE OCCURRED TWICE. THE DEALER WAS CONTACTED AND THEY STATED THAT SHE NEEDED TO BRING IT IN TO HAVE IT DIAGNOSED AGAIN. THE DEALER PREVIOUSLY STATED THAT THEY WERE UNABLE TO DUPLICATE THE FAILURE. THE VEHICLE WAS NOT REPAIRED. THE FAILURE MILEAGE WAS 4100 AND THE CURRENT MILEAGE WAS 58,000. NHTSA ID Number: 10348743.

407. On April 16, 2012, New GM became aware of a complaint filed with NHTSA involving a 2005 Cadillac SRX and an incident that occurred on March 31, 2012, in which the following was reported:

> TL* THE CONTACT OWNS A 2005 CADILLAC SRX. WHILE DRIVING APPROXIMATELY 45 MPH, THE CONTACT STATED THAT THE STEERING BECAME DIFFICULT TO MANEUVER AND HE LOST CONTROL OF THE VEHICLE. THERE WERE NO WARNING LIGHTS ILLUMINATED ON THE INSTRUMENT PANEL. THE CONTACT THEN CRASHED INTO A HIGHWAY DIVIDER AND INTO ANOTHER VEHICLE. THERE WERE NO INJURIES. THE VEHICLE WAS TOWED TO AN AUTO CENTER AND THE MECHANIC STATED THAT THERE WAS A RECALL UNDER NHTSA CAMPAIGN ID NUMBER 06V125000 (SUSPENSION:REAR), THAT MAY BE RELATED TO THE FAILURE. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE AND STATED THAT THE VIN WAS NOT INCLUDED IN THE RECALL. THE VEHICLE WAS NOT REPAIRED. THE APPROXIMATE FAILURE MILEAGE WAS 46,000. NHTSA ID Number: 10455394.

408. On March 20, 2013, New GM became aware of a complaint filed with NHTSA regarding a 2003 Chevrolet Impala incident that occurred on March 1, 2013, in which it was reported that:

> CAR WILL SHUT DOWN WHILE DRIVING AND SECURITY LIGHT WILL FLASH. HAS DONE IT NUMEROUS TIMES, WORRIED IT WILL CAUSE AN ACCIDENT. THERE ARE MULTIPLE CASES OF THIS PROBLEM ON INTERNET. *TR NHTSA ID Number: 10503840.

409. On May 12, 2013, New GM became aware of the following complaint filed with NHTSA regarding a 2005 Chevrolet Malibu incident that occurred on May 11, 2012, in which the following was reported:

> I WAS AT A STOP SIGN WENT TO PRESS GAS PEDAL TO TURN ONTO ROAD AND THE CAR JUST SHUT OFF NO WARNING LIGHTS CAME ON NOR DID IT SHOW ANY CODES. GOT OUT OF CAR POPPED TRUNK PULLED RELAY FUSE OUT PUT IT BACK IN AND IT CRANKED

> UP,THEN ON MY WAY HOME FROM WORK,GOING ABOUT 25 MPH AND IT JUST SHUT DOWN AGAIN,I REPEATED PULLING OUT RELAY FUSE AND PUT IT BACK IN THEN WAITED A MINUTE THEN IT CRANKED AND I DROVE STRAIGHT HOME. *TR NHTSA ID Number: 10458198.

410. On February 26, 2014, New GM became aware of a complaint filed with NHTSA involving a 2004 Pontiac Grand Prix, concerning an incident that occurred on May 10, 2005, in which it was reported that:

> TL – THE CONTACT OWNS A 2004 PONTIAC GRAND PRIX. THE CONTACT STATED THAT WHILE DRIVING AT VARIOUS SPEEDS AND GOING OVER A BUMP, THE VEHICLE WOULD STALL WITHOUT WARNING. THE VEHICLE WAS TAKEN TO THE DEALER. THE TECHNICIAN WAS UNABLE TO DIAGNOSE THE FAILURE. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE VEHICLE WAS NOT REPAIRED. THE VIN WAS NOT AVAILABLE. THE FAILURE MILEAGE WAS 12,000 AND THE CURRENT MILEAGE WAS 82,000. KMJ NHTSA ID Number: 10566118.

411. On March 13, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Pontiac Grand Prix and an incident that occurred on February 27, 2014, in which a driver reported:

> I WAS DRIVING HOME FROM WORK AND WHEN I TURNED A CORNER, THE ENGINE CUT OUT. I BELIEVE IT WAS FROM THE KEY FLIPPING TO ACCESSORY. I'VE HEARD THAT THIS HAS CAUSED CRASHES THAT HAVE KILLED PEOPLE AND WOULD LIKE THIS FIXED. THIS IS THE FIRST TIME IT HAPPENED, BUT NOW I'M WORRIED EVERY TIME I DRIVE IT THAT THIS IS GOING TO HAPPEN AND I DON'T FEEL SAFE LETTING MY WIFE DRIVE THE CAR NOW. WHY ARE THE 2006 PONTIAC GRAND PRIX VEHICLES NOT PART OF THE RECALL FROM GM? *TR NHTSA ID Number: 10569215.

412. On April 1, 2014, New GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS and an incident that occurred on January 1, 2008, in which the following was reported:

> TL* THE CONTACT OWNS A 2003 CADILLAC CTS. THE CONTACT STATED THAT THE VEHICLE EXHIBITED A RECURRING STALLING FAILURE. THE VEHICLE WAS TAKEN TO THE DEALER NUMEROUS TIMES WHERE SEVERAL UNKNOWN REPAIRS WERE PERFORMED ON THE VEHICLE BUT TO NO AVAIL. THE FAILURE MILEAGE WAS 59,730 AND THE CURRENT MILEAGE WAS 79,000. UPDATED 06/30/14 MA UPDATED 07/3/2014 *JS NHTSA ID Number: 10576468.

413. On April 1, 2014, New GM became aware of a complaint with NHTSA regarding a 2003 Chevrolet Monte Carlo and an incident that occurred on September 16, 2013, in which the following was reported:

> WHILE DRIVING AT ANY SPEED THE IGNITION SYSTEM WOULD RESET LIGHTING UP THE DISPLAY CLUSTER JUST AS IF THE KEY WAS TURNED OFF AND BACK ON. THIS WOULD CAUSE A MOMENTARY SHUTDOWN OF THE ENGINE. THE PROBLEM SEEMED TO BE MORE PREVAILANT WHILE TURNING THE WHEEL FOR A CURVE OR TURN OFF THE ROAD. THE TURN SIGNAL UNIT WAS FIRST SUSPECT SINCE IT SEEMED TO CORRELATE WITH APPLYING THE TURN SIGNAL AND TURNING THE WHEEL. THE CONDITION WORSENED TO THE IGNITION SHUTDOWN FOR LONGER PERIODS SHUTTING DOWN THE ENGINE CAUSING STEERING AND BRAKING TO BE SHUT DOWN AND FINALLY DIFFICULTY STARTING THE CAR. AFTER 2 VISITS TO A GM SERVICE CENTER THE PROBLEM WAS FOUND TO BE A FAULTY IGNITION THAT WAS REPLACED AND THE PROBLEM HAS NOT RECURRED. NHTSA ID Number: 10576201.

414. On April 8, 2014, New GM became aware of a complaint with NHTSA regarding a 2003 Chevrolet Impala and an incident that occurred on August 14, 2011 and the following was reported:

> I HAVE HAD INCIDENTS SEVERAL TIMES OVER THE YEARS WHERE I WOULD HIT A BUMP IN THE ROAD AND MY CAR WOULD COMPLETLY SHUT OFF. I HAVE ALSO HAD SEVERAL INCIDENTS WHERE I WAS TRAVELING DOWN THE EXPRESSWAY AND MY CAR TURNED OFF ON ME. I HAD TO SHIFT MY CAR INTO NEUTRAL AND RESTART IT TO CONTINUE GOING. I WAS FORTUNATE NOT TO HAVE AN ACCIDENT. NHTSA ID Number: 10578158.

415. On May 14, 2014, New GM became aware of a complaint filed with NHTSA regarding a 2004 Chevrolet Impala incident that occurred on April 5, 2013 and was reported that:

> CHEVY IMPALA 2004 LS- THE VEHICLE IS STOPPING COMPLETELY WHILE DRIVING OR SITTING AT INTERSECTION. THERE IS NO WARNING, NO MESSAGE, IT JUST DIES. THE STEERING GOES WHEN THIS HAPPENS SO I CANNOT EVEN GET OFF THE ROAD. THEN THERE ARE TIMES THAT THE CAR WILL NOT START AT ALL AND I HAVE BEEN STRANDED. EVENTUALLY AFTER ABOUT 20 MINUTES THE CAR WILL START- I HAVE ALREADY REPLACED THE STARTER BUT THE PROBLEM STILL EXISTS. I HAVE HAD THE CAR CHECKED OUT AT 2 DIFFERENT SHOPS (FIRESTONE) AND THEY CANNOT FIND THE PROBLEM. THERE ARE NO CODES COMING UP. THEY ARE COMPLETELY PERPLEXED. CHEVY STATES THEIR MECHANICS ARE BETTER. ALSO THE CLUSTER PANEL IS GONE AND CHEVY IS AWARE OF THE PROBLEM BUT THEY ONLY RECALLED CERTAIN MODELS AND DID NOT INCLUDE THE IMPALAS. I HAVE 2 ESTIMATES REGARDING FIXING THIS PROBLEM BUT THE QUOTES ARE $500.00. I DO NOT FEEL THAT I SHOULD HAVE TO PAY FOR THIS WHEN CHEVY KNEW THEY HAD THIS PROBLEM WITH CLUSTER PANELS AND OMITTED THE IMPALAS IN THEIR RECALL. SO, TO RECAP: THE CAR DIES IN TRAFFIC (ALMOST HIT TWICE), I DO NOT KNOW HOW MUCH GAS I HAVE, HOW FAST I AM GOING, OR IF THE CAR IS OVERHEATING. IN DEALING WITH CHEVY I WAS TOLD TO TAKE THE CAR TO A CHEVY DEALERSHIP. THEY GAVE ME A PLACE THAT IS 2 1/2 HOURS HOUSE AWAY FROM MY HOME. I WAS ALSO TOLD THAT I WOULD HAVE THE HONOR OF PAYING FOR THE DIAGNOSTICS. IN RESEARCHING THIS PROBLEM, I HAVE PULLED UP SEVERAL COMPLAINTS FROM OTHER CHEVY IMPALA 2004 OWNERS THAT ARE EXPERIENCING THE SAME MULTIPLE PROBLEMS. I ALSO

> NOTICED THAT MOST OF THE COMPLAINTS ARE STATING THAT THE SAME ISSUES OCCURRED AT APPROX. THE SAME MILEAGE AS MINE. I HAVE DISCUSSED THIS WITH CHEVY CUSTOMER SERVICE AND BASICALLY THAT WAS IGNORED. THIS CAR IS HAZARDOUS TO DRIVE AND POTENTIALLY WILL CAUSE BODILY HARM. DEALING WITH CHEVY IS POINTLESS. ALL THEY CAN THINK OF IS HOW MUCH MONEY THEIR DEFECTS WILL BRING IN. *TR NHTSA ID Number: 10512006.

416. New GM has publicly admitted that it was aware of at least seven (7) crashes, eight (8) injuries, and three (3) deaths linked to this serious safety defect before deciding to finally implement a recall. However, in reality, the number of reports and complaints is much higher.

417. Moreover, notwithstanding years of notice and knowledge of the defect, on top of numerous complaints and reports from consumers, including reports of crashes, injuries, and deaths, New GM delayed and did not implement a recall involving this defect until July of 2014.

418. New GM replicated the "knee to key" report in 2012 causing inadvertent key rotation and a running stall. New GM recalled all of the CTS and SRX and gave out new keys to those that did not have "hole" keys, and two key rings so the fob could be kept on one, and the ignition key on another. New GM's supposed recall fix does not address the defect or the safety risks that it poses, including insufficient amount of torque to resist rotation from the "run" to "accessory" position under reasonably foreseeable conditions, and puts the burden on drivers to alter their behavior and carry their ignition keys separately from their other keys, and even from their remote fob. The real answer must include the replacement of all the switches with ones that have sufficient torque to resist foreseeable rotational forces. The consequences of an unwanted rotation from the "run" to "accessory" position are the same in all these cars: loss of power

(stalling), loss of power steering, loss of power brakes after one or two depressions of the brake pedal, and suppression of seat belt pretensioners and airbag deployments.

419. In addition, New GM is not addressing the other design issues that create safety risks in connection with this defect. New GM is not altering the algorithm that prevents the airbags from deploying when the ignition leaves the "run" position, even when the vehicle is moving. And New GM is not altering the placement of the ignition in an area where the driver's knees may inadvertently cause the ignition to move out of the "run" position. Moreover, notwithstanding years of notice and knowledge of the defect, on top of numerous complaints and reports from consumers, including reports of crashes, injuries, and deaths, New GM delayed and did not implement a recall involving this defect until July of 2014.

6. Yet another ignition switch recall is made on September 4, 2014.

420. On September 4, 2014, New GM recalled 46,873 MY 2011-2013 Chevrolet Caprice and 2008-2009 Pontiac G8 vehicles for yet another ignition switch defect (NHTSA Recall Number 14-V-510).

421. New GM explains that, in these Defective Ignition Switch Vehicles, "there is a risk, under certain conditions, that some drivers may bump the ignition key with their knee and unintentionally move the key away from the 'run' position." New GM admits that, when this happens, "engine power, and power braking will be affected, increasing the risk of a crash." Moreover, "[t]he timing of the key movement out of the 'run' position, relative to the activation of the sending algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes."[64]

[64] New GM's Part 573 Safety Recall Report, Sept. 4, 2014.

422. This recall is directly related to the other ignition switch recalls and involves the same safety risks and dangers. The defect poses a serious and dangerous safety risk because the key in the ignition switch can rotate and consequently cause the ignition to switch from the "on" or "run" position to the "off" or "accessory" position, which causes the loss of engine power, stalling, loss of speed control, loss of power steering, loss of power braking, and increases the risk of a crash. Moreover, as with the ignition switch torque defect, if a crash occurs, the airbags may not deploy.

423. According to New GM, in late June 2014, "GM Holden began investigating potential operator knee-to-key interference in Holden-produced vehicles consistent with Safety's learning from" earlier ignition switch recalls, NHTSA recall nos. 14V-346 and 14V-355.[65]

424. New GM "analyzed vehicle test results, warranty data, TREAD data, NHTSA Vehicle Owner Questionnaires, and other data."[66] This belated review, concerning vehicles that were sold as long as six years earlier, led to the August 27, 2014 decision to conduct a safety recall.[67]

425. Once again, a review of NHTSA's website shows that New GM was long on notice of ignition switch issues in the vehicles subject to the September 4 recall.

426. For example, on February 10, 2010, New GM became aware of an incident involving a 2009 Pontiac G8 that occurred on November 23, 2009, and again on January 26, 2010, in which the following was reported to NHTSA:

> FIRST OCCURRED ON 11/23/2009. ON THE INTERSTATE IT LOSES ALL POWER, ENGINE SHUTS DOWN, IGNITION STOPS, POWER STEERING STOPS, BRAKES FAIL - COMPLETE VEHICLE STOPPAGE AND FULL OPERATING

[65] *Id.*

[66] *Id.*

[67] *Id.*

> SYSTEMS SHUT DOWN WITHOUT WARNING AT 70 MPH, TWICE! SECOND OCCURRENCE WAS 1/26/2010.

8. On May 22, 2013, New GM became aware of an incident involving a 2008 Pontiac G8 that occurred on May 18, 2013, in which the following was reported:

> THE CONTACT OWNS A 2008 PONTIAC G8. THE CONTACT STATED THAT WHILE DRIVING 50 MPH, THE VEHICLE STALLED WITHOUT WARNING. THE FAILURE RECURRED TWICE. THE VEHICLE WAS TOWED TO THE DEALER FOR DIAGNOSIS, BUT THE DEALER WAS UNABLE TO DUPLICATE THE PROBLEM. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOT NOTIFIED. THE APPROXIMATE FAILURE MILEAGE WAS 60,000.

427. Consistent with its pattern in the June and July recalls, New GM's proposed remedy is to provide these Defective Ignition Switch Vehicle owners with a "revised key blade and housing assembly, in which the blade has been indexed by 90 degrees."[68] Until the remedy is provided, New GM asserts, "it is very important that drivers adjust their seat and steering column to allow clearance between their knee and the ignition key."[69] New GM sent its recall notice to NHTSA one week later, on September 4, 2014.

428. New GM's supposed fix does not address the defect or the safety risks that the defect poses, including the apparent insufficient torque to resist rotation from the "run" to the "accessory" position under reasonably foreseeable driving conditions, and puts the burden on drivers to alter their behavior and carry their ignition keys separately from their other keys, and even from their remote fob. The real answer must include the replacement of all the switches with ones that have sufficient torque to resist foreseeable rotational forces.

429. In addition, New GM is not addressing the other design issues that create safety risks in connection with this defect. New GM is not altering the algorithm that prevents the

[68] New GM's Part 573 Safety Recall Report, Sept. 4, 2014.

[69] *Id.*

airbags from deploying when the ignition leaves the "run" position, even when the vehicle is moving. And New GM is not altering the placement of the ignition in an area where the driver's knee may inadvertently cause the ignition to move out of the "run" position.

430. The September 4 recall is, like the earlier defective ignition switch recalls, too little and too late.

7. The ignition switch recalls are inadequate and poorly conducted.

431. New GM sent its first recall notices to the owners of vehicles with defective ignition switches in late February and early March of 2014. New GM's recall letter minimized the risk of the ignition switch defect, indicating that ignition problems would occur only "under certain circumstances." New GM's recall notification emphasized that the risk of power failure increased if the "key ring is carrying added weight . . . or your vehicle experiences rough road conditions."

432. To repair the Defective Ignition Switch Vehicles, New GM is replacing the defective ignition switch with a new, presumably improved, ignition switch. At the time it announced the recall of these Defective Ignition Switch Vehicles, however, New GM did not have replacement switches ready. New GM CEO Mary Barra told Congress that New GM would start replacing ignition switches beginning in April of 2014.

433. New GM later revised its timeline, notifying NHTSA that all replacement switches would be ready by October 4, 2014.

434. New GM's repair of the defective switches has proceeded painfully slowly. As of August 5, 2014, New GM had repaired only 683,196 of the 2.1 million Defective Ignition Switch Vehicles.

435. On September 8, 2014, Ms. Barra told CNBC radio that the repair process was "substantially complete." Nonetheless, at that time, New GM had repaired only 1 million vehicles.

436. Meanwhile, dealerships across the country have struggled to implement New GM's repair process. One dealership in Kalamazoo, Michigan, hired a "recall concierge" simply to deal with the myriad issues raised by the recall repair process.

437. Although New GM has touted to courts around the country that it is offering to provide any concerned driver with a temporary loaner vehicle while he or she awaits a replacement part (for some over five months and counting), GM's recall letter failed to inform vehicle owners whether temporary loaner vehicles would be made available while they awaited replacement parts. The letter also provided no time frame in which repairs would be completed.

438. To add insult to injury, the New GM recall is fraught with problems for consumers. Many consumers are unable to obtain a loaner vehicle despite New GM's promise to provide them with one pending repair. When individuals have been fortunate enough to obtain a loaner, they often experience problems associated with the loaner program. Even worse, many consumers continue to experience safety problems with the Defective Ignition Switch Vehicles, even after the ignition switch has been replaced pursuant to the recall.

a. New GM failed to alert drivers of recalled vehicles to the possibility of obtaining a loaner vehicle, and when consumers are aware, they often find that loaner vehicles are not available.

439. One common problem consumers have faced and continue to face is the difficulty, if not impossibility, of obtaining a rental or loaner vehicle while awaiting the replacement part for their Defective Ignition Switch Vehicle pursuant to the recall. Yet since it announced the recall, New GM has represented to the government and courts across the country

that it is offering consumers temporary loaner vehicles, free of charge, while those consumers wait for their Defective Ignition Switch Vehicle to be repaired.

440. New GM did not make this information easily accessible for consumers. Shortly after the recall was announced, for example, New GM published a website at gmignitionupdate.com. The front page of that website does not inform consumers that they are eligible to obtain a temporary replacement vehicle.

441. Indeed, consumers must click on the Frequently Asked Questions page to learn about New GM's offer. Even there, the information is not included in a section entitled, "What will GM do?" Neither is it included in a section entitled, "What should you do if you have an affected vehicle?"

442. To learn that New GM is offering temporary loaner vehicles, a class member must click on a section under the heading, "Parts Availability & Repair Timing." A subsection entitled, "Who is eligible for a rental vehicle?" states that "[a]ny affected customer who is concerned about operating their vehicle may request courtesy transportation. Dealership service management is empowered to place the customer into a rental or loaner vehicle until parts are available to repair the customer's vehicle."

443. Numerous owners and/or lessees of Defective Ignition Switch Vehicles were unaware that New GM was offering temporary loaner vehicles. As a result, many class members driving one of the Defective Ignition Switch Vehicles and who are rightfully fearful of continuing to drive their vehicles in light of the now-disclosed safety defect are denied an alternate vehicle pre-repair. They either are forced to drive their unsafe Defective Ignition Switch Vehicles out of necessity, and fear every time they sit behind the wheel they could be involved in an accident that will injure them or an innocent bystander, or to park their vehicles

while awaiting the replacement part for their vehicles and seek alternative means of transportation.

444. Upon information and belief, New GM also did not widely distribute its temporary loaner vehicle guarantee to dealerships across the country. Many dealerships do not know and have not been informed about New GM's promise to provide rental/loaner vehicles to owners of vehicles awaiting the ignition switch replacement part.

445. Further, licensed New GM dealerships aware of the loaner program quickly exhausted their supply of loaner vehicles early into the recall. Numerous dealerships then refused interested consumers. Because New GM's ignition repair website only states that "[d]ealership service management" is empowered to provide a temporary loaner vehicle, many such class members reasonably believed that their sole avenue for relief was foreclosed when their dealership refused.

446. Even where class members have inquired directly with New GM for provision of a temporary loaner vehicle, numerous Class members have been refused.

447. Such refusals not only violate New GM's representations but also cause Class members substantial inconvenience and expense, such as:

a. Class members who cannot perform their jobs because they are denied a loaner/rental, despite repeated requests to both the dealership and the New GM hotline; and

b. Class members who are denied a rental/loaner vehicle because they have only property loss or property damage insurance coverage on their Defective Ignition Switch Vehicle rather than full coverage.

448. Further, even when a loaner vehicle is provided, consumers experience varied and numerous problems with the program. Among the problems encountered:

a. Class members incur substantially increased gasoline expenses with their loaner vehicles because the loaner is far less fuel efficient than the Defective Ignition Switch Vehicle;

b. Class members incur substantially increased monthly insurance premium—up to hundreds more per month—than they pay for their Defective Ignition Switch Vehicle because the loaner vehicle is newer and more expensive; and

c. Class members are threatened with charges for the loaner vehicle if they do not pick up their Defective Ignition Switch Vehicle immediately when it is repaired. Class members have experienced these threats even when their Defective Ignition Switch Vehicle sat idle for months at a dealership awaiting repair and the dealership provided no notice that it would repair the vehicle until the repair was complete.

b. The repair is inadequate and/or results in new vehicle defects.

449. Yet another common problem with the recall that plaintiffs are experiencing is the replacement part is not remedying the safety defect. Numerous class members report repeated stalls and shut downs ***after*** their vehicles are purportedly repaired pursuant to the recall. Indeed, the most common complaint is that the vehicle continues to have unintended stalls while driving, the very safety defect the recall is intended to correct. What is more, dealerships and New GM have been known to accuse vehicle owners who report stalls and shut downs following their ignition switch being replaced of lying.

450. Yet from its inception, New GM has known that simply replacing the ignition switches on the Defective Ignition Switch Vehicles is not a solution to the potential for the key to inadvertently turn from the "run" to the "accessory/off" position in these vehicles. The necessary modifications New GM is undertaking with respect to the Defective Ignition Switch

Vehicles' ignition switches and keys are insufficient to make the Defective Ignition Switch Vehicles safe or to restore their value.

451. New GM's recall fails to address the design defect that causes the key fob/chain to hang too low on the steering column. During testing of the Defective Ignition Switch Vehicles, Old GM and New GM engineers repeatedly observed that the Defective Ignition Switch Vehicle's ignition switch could be moved to the "accessory/off" position when a driver touched the ignition key with his or her knee during ordinary and foreseeable driving conditions. New GM's recall repairs fail to address such occurrences. New GM's recall is thus inadequate to remedy the defective product.

452. Further, New GM's recall fails to address the defective airbag system, which disables the airbag immediately when the engine shuts off. The loss of airbags is a serious safety condition, especially because it can happen when the Defective Ignition Switch Vehicle is traveling at highway speeds.

453. Following replacement of the ignition switch pursuant to the recall, problems occurring with the Defective Ignition Switch Vehicles include, but are not limited to: (i) stalls and shut down on roads and highways; (ii) the ignition key does not fully turn to the "off" position and, instead, becomes stuck in the "accessory" position; (iii) the ignition key cannot be removed when the engine is off; (iv) power steering fails; and (v) cars are returned following replacement of the ignition switch with new parts in non-working order that were in working order prior to the "repair," such as airbag light remaining on, horn not working, broken door locking mechanism, and locking steering wheel.

454. Among the specific problems experienced in connection with the recall are:

a. Accidents in Defective Ignition Switch Vehicles as a result of unintended shut downs or stalls, ***after*** the ignition switch has been replaced pursuant to the recall;

b. Class members have been threatened with charges for leaving Defective Ignition Switch Vehicles at the dealership once the replacement part is installed pursuant to the recall, even in circumstances where the Defective Ignition Switch Vehicle has been at the dealership for months awaiting the repair and the dealership did not provide timely notice of the repair's completion;

c. Class members have been charged the costs of a replacement battery when their Defective Ignition Switch Vehicle's battery dies on the dealership lot while waiting for months for the ignition switch replacement parts;

d. Class members' Defective Ignition Switch Vehicles, following replacement of the ignition switch pursuant to the recall, often are returned without the ability to turn the ignition key to the "off" position and, instead, the key becomes stuck in the "accessory" position, and/or the driver is unable to remove the key at all; and

e. When Defective Ignition Switch Vehicles are returned after months of storage at the dealership (pursuant to New GM's instruction to the dealerships to store the vehicles while they await repair), new damages have appeared on the vehicle and/or additional mileage has appeared on the odometer.

c. The recall is untimely.

455. At the time it announced the first ignition switch recalls, New GM acknowledged that it was not prepared to begin replacing defective ignition switches with presumably non-defective switches.

456. New GM informed NHTSA that it would complete 100% of the ignition switch replacements on or before October 4, 2014. New GM has not met that deadline.

457. The recall is delayed even further because even the replacement ignition switches are sometimes defective. Various news outlets have reported on New GM's delivery of faulty replacement switches. The DETROIT NEWS reported on July 9, 2014, that New GM notified dealerships that it had delivered 542 ignition switch kits with faulty tabs. Those switches, some of which were delivered to a dealership in New York, were sent back to New GM.

458. The recall causes continuing problems to the class members, including:

a. Class members must wait months for Defective Ignition Switch Vehicles to be repaired and, while the Defective Ignition Switch Vehicle sits on the dealership's lot, the Vehicle's registration expires;

b. Class members have experienced unintended stalls and power failures in Defective Ignition Switch Vehicles while they await repair of their vehicle and were refused a loaner vehicle in the interim, or did not know loaner vehicles were available;

c. Class members have been involved in accidents when they experienced an unintended stall in the Defective Ignition Switch Vehicle while waiting for replacement parts and repair; and

d. Class members who have only their Defective Ignition Switch Vehicle face daily inconveniences and additional expenses to obtain alternate transportation, but refuse to drive their Defective Ignition Switch Vehicle.

459. These delays have real and significant consequences for members of the Class. As one illustrative example of the worst, yet entirely foreseeable, outcome of this common problem known to New GM, on September 27, 2014, the NEW YORK TIMES reported that Laura Gass, a 27-year-old owner of a 2006 Saturn Ion, was killed just days after she received her recall notice. That notice informed her that replacement parts were not yet

available. The notice also did not inform Ms. Gass that she was eligible to obtain a loaner vehicle should she not wish to drive her defective Saturn. Ms. Gass needed transportation, and was unaware that New GM was prepared to provide temporary transportation to replace her defective automobile. As a result, she continued to drive her defective Ion, a turn of events that had disastrous consequences. On March 18, 2014, the ignition switch in Ms. Gass's Saturn slipped to the "accessory" or "off" position, the power to the vehicle failed, and she was unable to control the vehicle as it collided with a truck on the interstate. Ms. Gass was killed, but the tragedy should have been prevented.

d. The repair of the other ignition switch defects.

460. The repair of the vehicles recalled for ignition switch-related problems in June and July 2014—the Camaro recall, the ignition key slot recall, and the unintended key rotation recall—is also proceeding in a problematic fashion.

461. Owners of these vehicles—more than 10 million—have been notified that their vehicle is defective, but no replacement parts are available. New GM has not provided a timeline within which it will repair these vehicles.

462. Further, because New GM claims that the defect afflicting these vehicles is distinct from the ignition switch defect affecting the 2.1 million vehicles in its initial recall of Defective Ignition Switch Vehicles, it has offered owners significantly less safe alternatives. New GM has not offered loaner vehicles to owners of these ten million vehicles. It has simply advised them to remove everything from the key chain.

463. Of course, the recall notice for each of these 10 million vehicles notes the possibility that the vehicle may experience a moving stall and/or power failure by traveling across a bumpy roadway or when a driver's knee inadvertently contacts the ignition key.

464. What is more, New GM's proposed repair of these vehicles is wholly inadequate. New GM will modify the ignition key for all the affected vehicles so that the key is less susceptible to movement. New GM's proposed remedy, however, does nothing to prevent one from impacting the ignition key with one's knee during ordinary and foreseeable driving conditions. It does nothing to ensure that the airbag system is not disabled if and when the ignition switch moves into the "accessory" or "off" position. And it does not address the fact that many of the affected vehicles contain ignition switches with inadequate "detent plungers."

465. New GM's proposed repairs are an attempt to rid itself of safety problems on the cheap. Indeed, New GM is not offering temporary rental vehicles to those affected customers driving the vehicles recalled in June and early July. Nor will GM reimburse owners for any previous repairs aimed at preventing inadvertent power failure in these subject vehicles.

466. According to New GM spokesperson Alan Adler, and despite the fact that the June and July recalls are aimed at safety problems that are substantially similar, if not identical, to those present in the February and March ignition switch recalls, the recall of more than 10 million vehicles in June and July was to remedy "key issues," not because the vehicles contain bad ignition switches.

467. This statement is belied by the facts on the ground. Many Class members have experienced power failures and engine stalls, and many individuals have been in accidents attributable to such failures. Court supervision and involvement is required in order to force New GM to provide its customers with a repair that will truly make the Defective Ignition Switch Vehicles safe for ordinary and foreseeable driving conditions.

G. Other Safety and Important Defects Affecting Numerous GM-branded Vehicles

468. As if the plethora of recalls for ignition switch defects was not enough to taint New GM's brand and put the lie to New GM's repeated statements that it values safety and

reliability above all else, New GM has been forced to issue scores of other recalls this year involving myriad serious safety defects in a wide range of GM-branded vehicles—many of which defects were known to New GM for years.

469. Moreover, New GM's ongoing and systemic devaluation of safety issues has given rise to a host of new Defective Ignition Switch Vehicles created by New GM.

470. Many (but by no means all) of the serious defects revealed in New GM's never-ending series of recalls are discussed below.

1. Other safety defects affecting the ignition in GM-branded vehicles.

a. Ignition lock cylinder defect in vehicles also affected by the ignition switch defect that gave rise to the first recall of 2.1 million defective ignition switch vehicles.

471. On April 9, 2014, New GM recalled 2,191,014 GM-branded vehicles with faulty ignition lock cylinders.[70] Though the vehicles are the same as those affected by the ignition switch torque defect,[71] the lock cylinder defect is distinct.

472. In these vehicles, faulty ignition lock cylinders can allow removal of the ignition key while the engine is not in the "off" position. If the ignition key is removed when the ignition is not in the "off" position, unintended vehicle motion may occur. That could cause a crash and injury to the vehicle's occupants or pedestrians. Some of the vehicles with faulty ignition lock cylinders may fail to conform to Federal Motor Vehicle Safety Standard number 114, "*Theft Prevention and Rollaway Prevention*."[72]

473. According to New GM's Chronology that it submitted to NHTSA on April 23, 2014, the ignition lock cylinder defect arose out of New GM's notorious recalls for defective

[70] New GM Letter to NHTSA dated April 9, 2014.

[71] Namely, MY 2005-2010 Chevrolet Cobalts, 2006-2011 Chevrolet HHRs, 2007-2010 Pontiac G5s, 2003-2007 Saturn Ions, and 2007-2010 Saturn Skys. *See id.*

[72] New GM Notice to NHTSA dated April 9, 2014, at 1.

ignition switch systems in the Chevrolet Cobalt, Chevrolet HHR, Pontiac G5, Pontiac Solstice, Saturn ION, and Saturn Sky vehicles. Those three recalls occurred in February and March of 2014.[73]

474. In late February or March 2014, New GM personnel participating in the ignition switch recalls observed that the keys could sometimes be removed from the ignition cylinders when the ignition was not in the "off" position. This led to further investigation.

475. After investigation, New GM's findings were presented at a Decision Committee meeting on April 3, 2014. New GM noted several hundred instances of potential key pullout issues in vehicles covered by the previous ignition switch recalls, and specifically listed 139 instances identified from records relating to customer and dealer reports to GM call centers, 479 instances identified from warranty repair data, one legal claim, and six instances identified from NHTSA VOQ information. New GM investigators also identified 16 roll-away instances associated with the key pullout issue from records relating to customer and dealer reports to GM call centers and legal claims information.

476. New GM noted that excessive wear to ignition tumblers and keys may be the cause of the key pullout issue. New GM also considered the possibility that some vehicles may have experienced key pullout issues at the time they were manufactured, based on information that included the following: (a) a majority of instances of key pullouts that had been identified in the recall population were in early-year Saturn Ion and Chevrolet Cobalt vehicles, and in addition, repair order data indicated vehicles within that population had experienced a repair potentially related to key pullout issues as early as 47 days from the date on which the vehicle was put into service; and (b) an engineering inquiry known within New GM as a Problem

[73] *See* Attachment B to New GM's letter to NHTSA dated April 23, 2014 ("Chronology").

Resolution related to key pullout issues was initiated in June 2005, which resulted in an engineering work order to modify the ignition cylinder going forward.

477. A majority of the key pullout instances identified involved 2003-2004 model year Saturn Ion and 2005 model year Chevrolet Cobalt vehicles. An April 3 New GM PowerPoint identified 358 instances of key pullouts involving those vehicles.

478. In addition, with respect to early-year Saturn Ion and Chevrolet Cobalt vehicles, the April 3 PowerPoint materials discussed the number of days that elapsed between the "In Service Date" of those vehicles (the date they first hit the road) and the "Repair Date." The April 3 PowerPoint stated that, with respect to the 2003 model year Saturn Ion, a vehicle was reported as experiencing a potential key pullout repair as early as 47 days from its "In Service Date;" with respect to the 2004 model year Saturn Ion, a vehicle was reported as experiencing a potential key pullout repair as early as 106 days from its "In Service Date;" with respect to the 2005 model year Chevrolet Cobalt, a vehicle was reported as experiencing a potential key pullout repair as early as 173 days from its "In Service Date;" and with respect to the 2006 model year Chevrolet Cobalt, a vehicle was reported as experiencing a potential key pullout repair as early as 169 days from its "In Service Date." The length of time between the "In Service Date" and the "Repair Date" suggested that these vehicles were defective at the time of manufacture.

479. The PowerPoint at the April 3 Decision Committee meeting also discussed a Problem Resolution that was initiated in June 2005 which related to key pullout issues in the Chevrolet Cobalt (PRTS N 183836). According to PRTS N 183836: "Tolerance stack up condition permits key to be removed from lock cylinder while driving." The "Description of Root Cause Investigation Progress and Verification" stated, "[a]s noted a tolerance stack up exists in between the internal components of the cylinder." According to a "Summary," "A

tolerance stack up condition exists between components internal to the cylinder which will allow some keys to be removed." Problem Resolution identified the following "Solution": "A change to the sidebar of the ignition cylinder will occur to eliminate the stack-up conditions that exist in the cylinder."

480. In response to PRTS N 183836, New GM issued an engineering work order to "[c]hange shape of ignition cylinder sidebar top from flat to crowned."

481. According to the work order: "Profile and overall height of ignition cylinder sidebar [will be] changed in order to assist in preventing key pullout on certain keycodes. Profile of sidebar to be domed as opposed to flat and overall height to be increased by 0.23mm."

482. According to PRTS N 183836, this "solution fix[ed] the problem" going forward. An entry in Problem Resolution made on March 2, 2007 stated: "There were no incidents of the key coming out of the ignition cylinder in the run position during a review of thirty vehicles…." A "Summary" in Problem Resolution stated: "Because there were no incidents of the key coming out of the ignition cylinder in the run position during a review of thirty vehicles[,] this PRTS issue should be closed." PRTS N 183836 was the only PRTS discussed at the April 3, 2014, Decision Committee meeting, although it is not the only engineering or field report relating to potential key pullout issues.

483. This data led the Decision Committee to conclude that 2003-2004 model year Saturn Ion vehicles and 2005 and some 2006 model year Chevrolet Cobalt vehicles failed to conform to FMVSS 114. In addition, the Decision Committee concluded that a defect related to motor vehicle safety existed, and decided to recall all vehicles covered by the first, second, and third ignition switch torque recalls to prevent unintended vehicle motion potentially caused by key pullout issues that could result in a vehicle crash and occupant or pedestrian injuries. For

vehicles that were built with a defective ignition cylinder that have not previously had the ignition cylinder replaced with a redesigned part, the recall called for dealers to replace the ignition cylinder and provide two new ignition/door keys for each vehicle.

b. Ignition lock cylinder defect affecting over 200,000 additional GM-branded vehicles.

484. On August 7, 2014, New GM recalled 202,155 MY 2002-2004 Saturn Vue vehicles.[74] In the affected vehicles, the ignition key can be removed when the vehicle is not in the "off" position.[75] If this happens, the vehicle can roll away, increasing the risk for a crash and occupant or pedestrian injuries.[76]

485. Following New GM's April 9, 2014 recall announcement regarding ignition switch defects, New GM reviewed field and warranty data for potential instances of ignition cylinders that permit the operator to remove the ignition key when the key is not in the "off" position in other vehicles outside of those already recalled.[77] New GM identified 152 reports of vehicle roll away and/or ignition keys being removed when the key is not in the "off" position in the 2002-2004 MY Saturn Vue vehicles.[78]

486. After reviewing this data with NHTSA on June 17, 2014, July 7, 2014, and July 24, 2014, GM instituted a safety recall on July 31, 2014.[79]

[74] *See* August 7, 2014 Letter from New GM to NHTSA.

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id.*

2. Defects affecting the occupant safety restraint system in GM-branded vehicles.

a. Safety defects of the airbag systems of GM-branded vehicles.

(1) Wiring harness defect.

487. On March 17, 2014, New GM recalled nearly 1.2 million model year 2008-2013 Buick Enclave, 2009-2013 Chevrolet Traverse, 2008-2013 GMC Acadia, and 2008-2010 Saturn Outlook vehicles for a dangerous defect involving airbags and seatbelt pretensioners.

488. The affected vehicles were sold with defective wiring harnesses. Increased resistance in the wiring harnesses of driver and passenger seat-mounted, side-impact airbag in the affected vehicles may cause the side impact airbags, front center airbags, and seat belt pretensioners to not deploy in a crash. The vehicles' failure to deploy airbags and pretensioners in a crash increases the risk of injury and death to the drivers and front-seat passengers.

489. Once again, New GM knew of the dangerous airbag defect long before it took anything approaching the requisite remedial action.

490. As the wiring harness connectors in the side impact airbags corrode or loosen over time, resistance will increase. The airbag sensing system will interpret this increase in resistance as a fault, which then triggers illumination of the "SERVICE AIR BAG" message on the vehicle's dashboard. This message may be intermittent at first and the airbags and pretensioners will still deploy. But over time, the resistance can build to the point where the SIABs, pretensioners, and front center airbags will not deploy in the event of a collision.[80]

491. The problem apparently arose when Old GM made the change from using gold-plated terminals to connect its wire harnesses to cheaper tin terminals in 2007.

[80] *See* New GM Notice to NHTSA dated March 17, 2014, at 1.

492. In June 2008, Old GM noticed increased warranty claims for airbag service on certain of its vehicles and determined it was due to increased resistance in airbag wiring. After analysis of the tin connectors in September 2008, Old GM determined that corrosion and wear to the connectors was causing the increased resistance in the airbag wiring. It released a technical service bulletin on November 25, 2008, for 2008-2009 Buick Enclave, 2009 Chevy Traverse, 2008-2009 GMC Acadia, and 2008-2009 Saturn Outlook models, instructing dealers to repair the defect by using Nyogel grease, securing the connectors, and adding slack to the line. Old GM also began the transition back to gold-plated terminals in certain vehicles. At that point, Old GM suspended all investigation into the defective airbag wiring and took no further action.[81]

493. In November 2009, New GM learned of similar reports of increased airbag service messages in 2010 Chevy Malibu and 2010 Pontiac G6 vehicles. After investigation, New GM concluded that corrosion and wear in the same tin connector was the root of the airbag problems in the Malibu and G6 models.[82]

494. In January 2010, after review of the Malibu and G6 airbag connector issues, New GM concluded that ignoring the service airbag message could increase the resistance such that a side impact airbag might not deploy in a side impact collision. On May 11, 2010, New GM issued a Customer Satisfaction Bulletin for the Malibu and G6 models and instructed dealers to secure both front seat-mounted, side-impact airbag wire harnesses and, if necessary, reroute the wire harness.[83]

495. From February to May 2010, New GM revisited the data on vehicles with faulty harness wiring issues, and noted another spike in the volume of the airbag service warranty

[81] *See* New GM Notification Campaign No. 14V-118 dated March 31, 2014, at 1-2.

[82] *Id.* at 2.

[83] *Id.*

claims. This led New GM to conclude that the November 2008 bulletin was "not entirely effective in correcting the [wiring defect present in the vehicles]." On November 23, 2010, New GM issued another Customer Satisfaction Bulletin for certain 2008 Buick Enclave, 2008 Saturn Outlook, and 2008 GMC Acadia models built from October 2007 to March 2008, instructing dealers to secure side impact airbag harnesses and re-route or replace the side impact airbag connectors.[84]

496. New GM issued a revised Customer Service Bulletin on February 3, 2011, requiring replacement of the front seat-mounted side-impact airbag connectors in the same faulty vehicles mentioned in the November 2010 bulletin. In July 2011, New GM again replaced its connector, this time with a Tyco-manufactured connector featuring a silver-sealed terminal.[85]

497. But in 2012, New GM noticed another spike in the volume of warranty claims relating to side impact airbag connectors in vehicles built in the second half of 2011. After further analysis of the Tyco connectors, it discovered that inadequate crimping of the connector terminal was causing increased system resistance. In response, New GM issued an internal bulletin for 2011-2012 Buick Enclave, Chevy Traverse, and GMC Acadia vehicles, recommending dealers repair affected vehicles by replacing the original connector with a new sealed connector.[86]

498. The defect was still uncured, however, because in 2013 New GM again noted an increase in service repairs and buyback activity due to illuminated airbag service lights. On October 4, 2013, New GM opened an investigation into airbag connector issues in 2011-2013

[84] *See id.* at 3.

[85] *See id.*

[86] *See id.* at 4.

Buick Enclave, Chevy Traverse, and GMC Acadia models. The investigation revealed an increase in warranty claims for vehicles built in late 2011 and early 2012.[87]

499. On February 10, 2014, New GM concluded that corrosion and crimping issues were again the root cause of the airbag problems.[88]

500. New GM initially planned to issue a less-urgent Customer Satisfaction Program to address the airbag flaw in the 2010-2013 vehicles. But it wasn't until a call with NHTSA on March 14, 2014, that New GM finally issued a full-blown safety recall on the vehicles with the faulty harness wiring—years after it first learned of the defective airbag connectors, after four investigations into the defect, and after issuing at least six service bulletins on the topic. The recall as first approved covered only 912,000 vehicles, but on March 16, 2014, it was increased to cover approximately 1.2 million vehicles.[89]

501. On March 17, 2014, New GM issued a recall for 1,176,407 vehicles potentially afflicted with the defective airbag system. The recall instructs dealers to remove driver and passenger SIAB connectors and splice and solder the wires together.[90]

(2) Driver-side airbag shorting-bar defect.

502. On June 5, 2014, New GM issued a safety recall of 38,636 MY 2012 Chevrolet Cruze, 2012 Chevrolet Camaro, 2012 Chevrolet Sonic, and 2012 Buick Verano vehicles with a driver's airbag shorting bar defect.

503. In the affected vehicles, the driver side frontal airbag has a shorting bar which may intermittently contact the airbag terminals. If the bar and terminals are contacting each other at the time of a crash, the airbag will not deploy, increasing the driver's risk of injury. New

[87] *See id.*

[88] *See id.* at 5.

[89] *See id*.

[90] *See id*.

GM admits awareness of one crash with an injury where the relevant diagnostic trouble code was found at the time the vehicle was repaired. New GM is aware of other crashes involving these vehicles where airbags did not deploy but claims not to know if they were related to this defect.

504. New GM knew about the driver's airbag shorting bar defect in 2012. In fact, New GM conducted two previous recalls in connection with the shorting bar defect condition involving 7,116 vehicles—one on October 31, 2012, and one on January 24, 2013.[91] Yet it would take New GM nearly two years to finally order a broader recall.

505. On May 31, 2013, after New GM's two incomplete recalls, NHTSA opened an investigation into reports of allegations of the non-deployment of air bags. New GM responded to this investigation on September 13, 2013.

506. On November 1, 2013, NHTSA questioned New GM about: (i) the exclusion of 390 vehicles which met the criteria for the two previous safety recalls; (ii) the 30-day in-service cutoff used for the recall population of one previous recall; and (iii) twelve additional build days which, as of the June 2013 data pull in the investigation, had an elevated warranty rate. In response to NHTSA's concerns, New GM added additional vehicles to the recall.

507. After announcement of the initial ignition switch torque defect in February and March of 2014, New GM re-examined its records relating to the driver's airbag shorting defect. This review finally prompted New GM to expand the recall population on May 29, 2014—***long after the problem should have been remedied.***

(3) Driver-side airbag inflator defect.

508. On June 25, 2014, New GM recalled 29,019 MY 2013-2014 Chevrolet Cruze vehicles with a driver-side airbag inflator defect.

[91] *See* New GM's Letters to NHTSA dated 10/31/2012 and 1/24/2013, respectively.

509. In the affected vehicles, the driver's front airbag inflator may have been manufactured with an incorrect part. In the event of a crash necessitating deployment of the driver-side airbag, the airbag's inflator may rupture and the airbag may not inflate. The rupture could cause metal fragments to strike and injure the vehicle's occupants. Additionally, if the airbag does not inflate, the driver will be at increased risk of injury.[92]

510. New GM was named in a lawsuit on or about May 1, 2014 involving a 2013 Chevrolet Cruze and an improperly deployed driver-side airbag that caused an injury to the driver.[93] The lawsuit prompted an inspection of "the case vehicle," the assignment of a New GM Product Investigations engineer, and discussions with NHTSA.[94]

511. Meanwhile, the airbag supplier, Takata Corporation/TK Holdings Inc., conducted its own analysis. New GM removed airbags with "build dates near the build date of the case vehicle," and sent them to Takata.[95] Subsequently, on June 20, 2014, Takata informed New GM it had "discovered [the] root cause" of the driver-side airbag defect through analysis of one of the airbags sent by New GM.[96]

512. Shortly thereafter, on June 23, 2014, New GM decided to conduct a safety recall.[97]

(4) Roof-rail airbag defect.

513. On June 18, 2014, New GM recalled 16,932 MY 2011 Cadillac CTS vehicles with a roof-rail airbag defect.

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[92] *See* New GM's Letter to NHTSA dated June 25, 2014.

[93] *Id.*

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] *Id.*

514. In the affected vehicles, vibrations from the drive shaft may cause the vehicle's roll over sensor to command the roof rail airbags to deploy. If the roof rail airbags deploy unexpectedly, there is an increased risk of crash and injury to the occupants.[98]

515. According to New GM, the defect is caused by a loss of grease from the center constant velocity joint; the loss of grease causes vibrations of the propeller shaft that are transferred to the roll over sensor in the vehicle floor above the shaft. The vibrations can cause the deployment of the roof rail airbags.[99]

516. On October 28, 2010, a new supplier began shipping propeller shafts for MY 2011 Cadillac CTS vehicles; these propeller shafts used a metal gasket from the constant velocity joint (as opposed to the liquid sealing system used by the previous supplier).[100] ***This new metal gasket design was not validated or approved by New GM***.[101]

517. On June 27, 2011, a Problem Resolution Tracking System (PRTS) was opened concerning this defect. The PRTS resulted in the "purge" of the metal gasket design.[102] Then, on August 1, 2011, New GM issued an Engineering Work Order banning the metal gasket design, and mandating the use of the liquid sealing system. Yet New GM "closed the investigation without action in October 2012."[103]

518. Inexplicably, New GM waited until June of 2014 before finally recalling the affected vehicles.

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[98] *See* June 18, 2014 New GM Letter to NHTSA.

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.*

[103] *Id.*

(5) Passenger-side airbag defect.

519. On May 16, 2014, GM recalled 1,953 MY 2015 Cadillac Escalade and Escalade ESV vehicles with a passenger-side airbag defect.

520. The affected vehicles do not conform to Federal Motor Vehicle Safety Standard number 208, "Occupant Crash Protection." In these vehicles, the airbag module is secured to a chute adhered to the backside of the instrument panel with an insufficiently heated infrared weld. As a result, the front passenger-side airbag will only partially deploy in the event of crash, and this will increase the risk of occupant injury.[104]

521. On April 28, 2014, during product validation testing of the "Platinum" Escalade (a planned interim 2015 model), the passenger-side front airbag did not properly deploy.[105] New GM then obtained information from the supplier Johnson Controls Inc. concerning the portion of the Escalade instrument panel through which the frontal airbag deploys.[106] In particular, New GM requested information on chute weld integrity.[107]

522. On May 13, 2014, Johnson Controls informed New GM engineering that it had modified its infrared weld process on April 2, 2014 and "corrected" that process on April 29, 2014. New GM claims that it was unaware of the changes until May 13, 2014.[108]

523. On May 14, 2014, the Decision Committee decided to conduct a "noncompliance recall." On May 16, 2014, GM obtained a list of suspected serial numbers from Johnson Controls, which GM then matched to VINs through records obtained from the scanning process

[104] *See* May 16, 2014 Letter from New GM to NHTSA.

[105] *See* May 27, 2014 Letter from New GM to NHTSA.

[106] *Id.*

[107] *Id.*

[108] *Id.*

used during instrument panel sub-assembly.[109] A recall notice was issued on May 16, 2014 for 1,953 vehicles, each of which will have the Johnson Controls part replaced.[110]

524. Subsequently, GM discovered errors in the scanning process, and decided to expand the recall population to include any VINs that could have received parts bearing the suspect Johnson Controls serial numbers.[111] GM therefore issued a second recall notice on May 27, 2014. With respect to this second set of 885 vehicles, they will be inspected to see if they were made with Johnson Controls parts bearing suspect serial numbers. If they are, the part will be replaced.[112]

(6) Sport seat side-impact airbag defect.

525. On June 18, 2014, New GM issued a safety recall for 712 MY 2014 Chevrolet Corvette vehicles with a sport seat side-impact airbag defect.

526. The affected vehicles do not meet a Technical Working Group Side Airbag Injury Assessment Reference Value specifications for protecting unbelted, out-of-position young children from injury. In a crash necessitating side impact airbag deployment, an unbelted, out-of-position three-year-old child may be at an increased risk of neck injury.

(7) Passenger-side airbag inflator defect.

527. On June 5, 2014, New GM recalled 61 MY 2013 Chevrolet Spark and 2013 Buick Encore vehicles with a passenger side airbag inflator defect.

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[109] *Id.*

[110] *Id.*

[111] *Id.*

[112] *Id.*

528. In the affected vehicles, because of an improper weld, the front passenger airbag end cap could separate from the airbag inflator. This can prevent the airbag from deploying properly, and creates an increased risk of injury to the front passenger.[113]

529. New GM was alerted to this issue on July 10, 2013, when a customer brought an affected vehicle into a dealership with "an airbag readiness light 'ON' condition."[114] After replacing the side frontal airbag, the dealer shipped the original airbag to New GM for warranty analysis.

530. In September 2013, New GM "noted" the "weld condition of the end cap." New GM then sent the airbag to the airbag supplier, S&T Motive, who sent it on to the inflator supplier, ARC Automotive Inc., for "root cause" analysis.[115] S&T and ARC did not conclude their analysis until April 2014.[116]

531. Based upon the information provided by S&T and ARC, in May 2014 New GM Engineering linked the defect to inflators produced on December 17, 2012. ARC records show that on that date, an inflator end cap separated during testing, but that ARC nonetheless shipped quarantined inflators to S&T where they were used in passenger side frontal airbags beginning on December 29, 2012.[117]

532. On May 29, 2014—nearly one year after being presented with a faulty airbag—New GM's Safety Field Action Committee finally decided to conduct a safety recall.[118]

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[113] *See* June 5, 2014 Letter from New GM to NHTSA.

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

(8) Front passenger airbag defect.

533. On March 17, 2014, New GM issued a noncompliance recall of 303,013 MY 2009-2014 GMC Savana vehicles with a passenger-side instrument panel defect.[119]

534. In the affected vehicles, in certain frontal impact collisions below the airbag deployment threshold, the panel covering the airbag may not sufficiently absorb the impact of the collision. These vehicles therefore do not meet the requirements of Federal Motor Vehicle Safety Standard number 201, "Occupant Protection in Interior Impact."[120]

535. The defect apparently arose in early 2009, when the passenger-side airbag housing was changed from steel to plastic.[121] Inexplicably, New GM did not act to remedy this defect until March of 2014.

b. Safety defects of the seat belt systems in GM-branded vehicles.

(1) Seat belt connector cable defect.

536. On May 20, 2014, New GM issued a safety recall for nearly 1.4 million model year 2009-2014 Buick Enclave, 2009-2014 Chevrolet Traverse, 2009-2014 GMC Acadia, and 2009-2010 Saturn Outlook vehicles with a dangerous safety belt defect.

537. In the affected vehicles, "[t]he flexible steel cable that connects the safety belt to the vehicle at the outside of the front outside of the front outboard seating positions can fatigue and separate over time as a result of occupant movement into the seat. In a crash, a separated cable could increase the risk of injury to the occupant."[122]

[119] *See* March 31, 2014 Letter from New GM to NHTSA.

[120] *Id.*

[121] *Id.*

[122] *See* New GM Notice to NHTSA dated May 19, 2014, at 1.

538. New GM waited more than two years after learning about this defect before disclosing it or remedying it.[123] This delay is consistent with New GM's long period of concealment of the other defects as set forth above.

539. New GM first learned of the seat belt defect no later than February 10, 2012, when a dealer reported that a seat belt buckle separated from the anchor at the attaching cable in a 2010 GMC Acadia.[124] On March 7, 2012, after notification and analysis of the returned part, the supplier determined the problem was caused by fatigue of the cable.[125]

540. On April 20, 2012, New GM received another part exhibiting the defect from a dealership.[126] New GM also did a warranty analysis that turned up three additional occurrences of similar complaints.[127] But New GM did not order a field review until June 4, 2012.[128] The review, on June 11, 2012, covered just 68 vehicles, and turned up no cable damage.[129]

541. New GM received another part exhibiting the defect on August 28, 2013, from GM Canada Product Investigations.[130] After further testing in October 2013, New GM duplicated the defect condition, determining that, in some seat positions, the sleeve can present the buckle in a manner that can subject the cable to bending during customer entry into the vehicle.[131] New GM duplicated the condition again in a second vehicle in November 2013.[132] And then just a month later, on December 18, 2013, New GM received another part exhibiting

[123] *See* New GM Notice to NHTSA dated May 30, 2014, at 1-3.

[124] *Id.* at 1.

[125] *Id.* at 2.

[126] *Id.*

[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] *Id.*

the condition from GM Canada Product Investigations.[133] But still New GM did not issue a safety recall.

542. Further testing between February and April 2014 confirmed the defect resulted from fatigue of the cable.[134] This was the same root cause New GM identified as early as March 7, 2012. Finally, on April 14, 2014, these findings were turned over to New GM Product Investigations and assigned an investigation number.[135]

543. On May 19, 2014, New GM decided to conduct a recall of the affected vehicles.[136]

(2) Seat belt retractor defect.

544. On June 11, 2014, New GM recalled 28,789 MY 2004-2011 Saab 9-3 Convertible vehicles with a seat belt retractor defect.

545. In the affected vehicles, the driver's side front seat belt retractor may break, causing the seat belt webbing spooled out by the user not to retract.[137] In the event of a crash, a seat belt that has not retracted may not properly restrain the seat occupant, increasing the risk of injury to the driver.[138]

546. By September of 2009 New GM was aware of an issue with seat belt retractors in MY 2004 Saab 9-3 vehicles; at that time, NHTSA informed New GM that it received 5 Vehicle Owner Questionnaires "alleging that the driver seat belt will no longer retract on 2004 Saab 0-3

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] New GM Notice to NHTSA dated May 19, 2014, at 1.

[137] *See* New GM's June 11, 2013 Letter to NHTSA.

[138] *See id.*

vehicles built after September 30, 2003."[139] In December 2009-January 2010, New GM conducted a survey "of customers who had a retractor replaced to determine how many were due" to a break in the Automatic Tensioning System that causes "webbing spooled out by the user not to retract."[140]

547. On February 9, 2010, New GM issued a recall for the driver side retractor, but only in certain MY 2004 Saab 9-3 sedans—some 14,126 vehicles.[141] New GM would wait another four years before attempting to address the full scope of the seatbelt retractor defect in Saab 9-3 vehicles.

548. New GM finally opened an investigation into the seat belt retractor defect in other Saab 9-3 vehicles in February of this year, and that was "in response to NHTSA Vehicle Owner Questionnaires claiming issues with the driver side front seat belt retractor" in the affected vehicles.[142] As a result, New GM eventually recalled 28,789 MY 2004-2011 Saab 9-3 convertible vehicles on June 11, 2014.

(3) Frontal lap-belt pretensioner defect.

549. On August 7, 2014, New GM recalled 48,059 MY 2013 Cadillac ATS and 2013 Buick Encore vehicles with a defect in the front lap-belt pretensioners.[143]

550. In the affected vehicles, the driver and passenger lap-belt pretensioner cables may not lock in a retracted position; that allows the seat belts to extend when pulled upon.[144] If the

[139] *See* New GM's February 9, 2010 Letter to NHTSA.

[140] *Id.*

[141] *Id.*

[142] *See* New GM's June 11, 2013 Letter to NHTSA.

[143] *See* August 7, 2014 Letter from New GM to NHTSA.

[144] *Id.*

seat belts do not remain locked in the retracted position, the seat occupant may not be adequately restrained in a crash, increasing the risk of injury.[145]

551. In July 2012, GM Korea learned that the lap-belt pretensioner cable and seat belt webbing slipped out after being retracted.[146] Several months later, New GM changed the rivet position on the pretensioner bracket and the design of the pretension mounting bolt.[147] This change was made after New GM started production on the 2013 MY Buick Encore.[148]

552. In October 2012, New GM testing on a pre-production 2014 MY Cadillac CTS revealed that the driver side front seat belt anchor pretensioner cables retracted upon deployment to pull in the lap-belt webbing, as intended, but did not lock in that position; that allowed the retracted webbing to return ("pay out") to its original position under loading, which was not intended.[149]

553. On November 13, 2012, New GM modified the design of the lap-belt pretensioner for the Cadillac CTS, Cadillac ATS, and Cadillac ELR vehicles to include a modified bolt, relocation of a rivet in the cam housing to reposition the locking cam, and a change in torque of the lap-belt pretensioner bolt to seat.[150] These changes were implemented in the 2014 MY Cadillac CTS and Cadillac ELR, but not in the 2013 MY Cadillac ATS.[151]

554. Despite making these adjustments to later MY vehicles only, New GM did not launch an investigation into the performance of the lap-belt pretensioners in the 2013 MY Buick

[145] *Id.*

[146] *See* August 21, 2014 Letter from New GM to NHTSA.

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.*

[151] *Id.*

Encore and Cadillac ATS until mid-April, 2013.[152] New GM claims that during this year-long investigation period it found no issues potentially relating to the pay out of the lap-belt pretensioners.[153]

555. Nonetheless, New GM decided to issue a safety recall for the affected vehicles on July 31, 2014.[154] It later expanded the recall by 55 additional vehicles, to a total population of 48,114, on August 19, 2014.[155]

3. Safety defects affecting seats in GM-branded vehicles.

556. On July 22, 2014, New GM issued a safety recall of 414,333 MY 2010-2012 Chevrolet Equinox, MY 2011-2012 Chevrolet Camaro, MY 2010-2012 Cadillac SRX, MY 2010-2012 GMC Terrain, MY 2011-2012 Buick Regal, and MY 2011-2012 Buick LaCrosse vehicles with a power height adjustable seats defect.[156]

557. In the affected vehicles, the bolt that secures the height adjuster in the driver and front passenger seats may become loose or fall out. If the bolt falls out, the seat will drop suddenly to the lowest vertical position. The sudden drop can affect the driver's ability to safely operate the vehicle, and can increase the risk of injury to the driver and the front-seat passenger if there is an accident. New GM admits to knowledge of at least one crash caused by this defect.[157]

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[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] *See* July 22, 2014 Letter from New GM to NHTSA.

[157] *Id.*

558. New GM was aware of this defect by July 10, 2013 when the crash occurred, and by July 22, 2013, New GM was aware that the crash was caused when the bolt on the height adjuster fell out.[158]

559. By September 5, 2013, New GM was aware of 27 cases of loose or missing height adjuster bolts in Camaro vehicles.[159] Yet New GM waited until July 15, 2014 before it made the decision to conduct a safety recall.

4. Safety defects affecting the brakes in GM-branded vehicles.

a. Brake light defect.

560. On May 14, 2014, New GM issued a safety recall of approximately 2.4 million model year 2004-2012 Chevrolet Malibu, 2004-2007 Malibu Maxx, 2005-2010 Pontiac G6, and 2007-2010 Saturn Aura vehicles with a dangerous brake light defect.

561. In the affected vehicles, the brake lamps may fail to illuminate when the brakes are applied or illuminate when the brakes are not engaged; the same defect can disable cruise control, traction control, electronic stability control, and panic brake assist operation, thereby increasing the risk of collisions and injuries.[160]

562. Once again, New GM knew of the dangerous brake light defect for years before it took anything approaching the requisite remedial action. In fact, although the brake light defect has caused at least 13 crashes since 2008, New GM did not recall all 2.4 million vehicles with the defect until May 2014.

563. According to New GM, the brake defect originates in the Body Control Module connection system. "Increased resistance can develop in the [Body Control Module] connection

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[158] *Id.*

[159] *Id.*

[160] *See* New GM Notification Campaign No. 14V-252 dated May 28, 2014, at 1.

system and result in voltage fluctuations or intermittency in the Brake Apply Sensor (BAS) circuit that can cause service brakes lamp malfunction."[161] The result is brake lamps that may illuminate when the brakes are not being applied and may not illuminate when the brakes are being applied.[162]

564. The same defect can also cause the vehicle to get stuck in cruise control if it is engaged, or cause cruise control to not engage, and may also disable the traction control, electronic stability control, and panic-braking assist features.[163]

565. New GM now acknowledges that the brake light defect "may increase the risk of a crash."[164]

566. As early as September 2008, NHTSA opened an investigation for MY 2005-2007 Pontiac G6 vehicles involving allegations that the brake lights may turn on when the driver does not depress the brake pedal and may ***not*** turn on when the driver ***does*** depress the brake pedal.[165]

567. During its investigation of the brake light defect in 2008, Old GM found elevated warranty claims for the brake light defect for MY 2005 and 2006 vehicles built in January 2005, and found "fretting corrosion in the [Body Control Module] C2 connector was the root cause" of the problem.[166] Old GM and its part supplier Delphi decided that applying dielectric grease to the [Body Control Module] C2 connector would be "an effective countermeasure to the fretting

[161] *Id.*

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] *Id.* at 2.

[166] *Id.*

corrosion."[167] Beginning in November of 2008, the Company began applying dielectric grease in its vehicle assembly plants.[168]

568. On December 4, 2008, Old GM issued a Technical Service Bulletin recommending the application of dielectric grease to the Body Control Module C2 connector for the MY 2005-2009 Pontiac G6, 2004-2007 Chevrolet Malibu/Malibu Maxx, 2008 Malibu Classic, and 2007-2009 Saturn Aura vehicles.[169] One month later, in January 2009, Old GM recalled only a small subset of the vehicles with the brake light defect—8,000 MY 2005-2006 Pontiac G6 vehicles built during the month of January 2005.[170]

569. Not surprisingly, the brake light problem was far from resolved.

570. In October 2010, New GM released an updated Technical Service Bulletin regarding "intermittent brake lamp malfunctions," and added MY 2008-2009 Chevrolet Malibu/Malibu Maxx vehicles to the list of vehicles for which it recommended the application of dielectric grease to the Body Control Module C2 connector.[171]

571. In September of 2011, New GM received an information request from Canadian authorities regarding brake light defect complaints in vehicles that had not yet been recalled. Then, in June 2012, NHTSA provided New GM with additional complaints "that were outside of the build dates for the brake lamp malfunctions on the Pontiac G6" vehicles that had been recalled.[172]

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[167] *Id.*

[168] *Id* at 3.

[169] *Id.* at 2.

[170] *Id.*

[171] *Id.*

[172] *Id.*

572. In February of 2013, NHTSA opened a "Recall Query" in the face of 324 complaints "that the brake lights do not operate properly" in Pontiac G6, Malibu, and Aura vehicles that had not yet been recalled.[173]

573. In response, New GM asserts that it "investigated these occurrences looking for root causes that could be additional contributors to the previously identified fretting corrosion," but that it continued to believe that "fretting corrosion in the [Body Control Module] C2 connector" was the "root cause" of the brake light defect.[174]

574. In June of 2013, NHTSA upgraded its "Recall Query" concerning brake light problems to an "Engineering Analysis."[175]

575. In August 2013, New GM found an elevated warranty rate for Body Control module C2 connectors in vehicles built *after* Old GM had begun applying dielectric grease to Body Control Module C2 connectors at its assembly plants in November of 2008.[176] In November of 2013, New GM concluded that "the amount of dielectric grease applied in the assembly plant starting November 2008 was insufficient…."[177]

576. Finally, in March of 2014, "[New] GM engineering teams began conducting analysis and physical testing to measure the effectiveness of potential countermeasures to address fretting corrosion. As a result, New GM determined that additional remedies were needed to address fretting corrosion."[178]

577. On May 7, 2014, New GM finally decided to conduct a safety recall.

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[173] *Id.* at 3.

[174] *Id.*

[175] *Id.*

[176] *Id.*

[177] *Id.*

[178] *Id.* at 4.

578. According to New GM, "Dealers are to attach the wiring harness to the [Body Control Module] CM with a spacer, apply dielectric lubricant to both the [Body Control Module] CR and harness connector, and on the BAS and harness connector, and relearn the brake pedal home position."[179]

579. New GM sat on and concealed its knowledge of the brake light defect for years, and did not even consider available countermeasures (other than the application of grease that had proven ineffective) until March of this year.

b. Brake booster pump defect.

580. On March 17, 2014, New GM issued a safety recall of 63,903 MY 2013-2014 Cadillac XTS vehicles with a brake booster pump defect.

581. In the affected vehicles, a cavity plug on the brake boost pump connector may dislodge and allow corrosion of the brake booster pump relay connector. This can have an adverse impact on the vehicle's brakes and increase the risk of collision. This same defect can also cause a fire in the vehicle resulting from the electrical shore in the relay connector.

582. In June of 2013, New GM learned that a fire occurred in a 2013 Cadillac XTS vehicle while it was being transported between car dealerships. Upon investigation, New GM determined that the fire originated near the brake booster pump relay connector, but could not determine the "root cause" of the fire.

583. A second vehicle fire in a 2013 Cadillac XTS occurred in September of 2013. In November 2013, the same team of New GM investigators examined the second vehicle, but, again, could not determine the "root cause" of the fire.

[179] *Id.*

584. In December 2013, New GM identified two warranty claims submitted by dealers related to complaints by customers about vibrations in the braking system of their vehicles. The New GM team investigating the two prior 2013 Cadillac XTS fires inspected these parts and discovered the relay connector in both vehicles had melted.

585. In January 2014, New GM determined that pressure in the relay connector increased when the brake booster pump vent hose was obstructed or pinched. Further testing revealed that pressure from an obstructed vent hose could force out the cavity plugs in the relay connector, and in the absence of the plugs, water, and other contaminants can enter and corrode the relay connector, causing a short and leading to a fire or melting.

586. On March 11, 2014, New GM issued a safety recall for the affected vehicles.

c. Hydraulic boost assist defect.

587. On May 13, 2014, New GM recalled 140,067 model year 2014 Chevrolet Malibu vehicles with a hydraulic brake boost assist defect.[180]

588. In the affected vehicles, the "hydraulic boost assist" may be disabled; when that happens, slowing or stopping the vehicle requires harder brake pedal force, and the vehicle will travel a greater distance before stopping. Therefore, these vehicles do not comply with Federal Motor Vehicle Safety Standard number 135, "Light Vehicle Brake Systems," and are at increased risk of collision.[181]

d. Brake rotor defect.

589. On May 7, 2014, New GM recalled 8,208 MY 2014 Chevrolet Malibu and Buick LaCrosse vehicles with a brake rotor defect.

[180] *See* May 13, 2014 Letter from New GM to NHTSA.

[181] *Id.*

590. In the affected vehicles, New GM may have accidentally installed rear brake rotors on the front brakes. The rear rotors are thinner than the front rotors, and the use of rear rotors in the front of the vehicle may result in a front brake pad detaching from the caliper. The detachment of a break pad from the caliper can cause a sudden reduction in braking which lengthens the distance required to stop the vehicle and increases the risk of a crash.

e. Reduced brake performance defect.

591. On July 28, 2014, New GM recalled 1,968 MY 2009-2010 Chevrolet Aveo and 2009 Pontiac G3 vehicles.[182] Affected vehicles may contain brake fluid which does not protect against corrosion of the valves inside the anti-lock brake system module, affecting the closing motion of the valves.[183] If the anti-lock brake system valve corrodes it may result in longer brake pedal travel or reduced performance, increasing the risk of a vehicle crash.[184]

592. New GM was aware of this defect as far back as August 2012, when it initiated a customer satisfaction campaign.[185] The campaign commenced in November 2012, and New GM estimates that, to date, approximately 34% of Chevrolet Aveo and Pontiac G3 vehicles included in the customer satisfaction campaign are not yet repaired.[186] On July 19, 2014, New GM decided to conduct a safety recall for vehicles that had been included in the customer satisfaction program but had not had the service repair performed.[187]

[182] *See* July 28, 2014 Letter from New GM to NHTSA.

[183] *Id.*

[184] *Id.*

[185] *Id.*

[186] *Id.*

[187] *Id.*

f. Parking brake defect.

593. On September 20, 2014, GM recalled more than 221,000 MY 2014-15 Chevrolet Impala and 2013-15 model Cadillac XTS vehicles because of a parking-brake defect.

594. In the affected vehicles, the brake pads can stay partly engaged, which can lead to "excessive brake heat that may result in a fire," according to documents posted on the NHTSA website.

595. NHTSA said the fire risk stemmed from the rear brakes generating "significant heat, smoke and sparks." The agency also warned that drivers of the Affected Vehicles might experience "poor vehicle acceleration, undesired deceleration, excessive brake heat and premature wear to some brake components."

5. Safety defects affecting the steering in GM-branded vehicles.

a. Sudden power-steering failure defect.

596. Between 2003 and 2010, over 1.3 million GM-branded vehicles in the United States were sold with a safety defect that causes the vehicle's electric power steering ("power steering") to suddenly fail during ordinary driving conditions and revert back to manual steering, requiring greater effort by the driver to steer the vehicle and increasing the risk of collisions and injuries.

597. The affected vehicles are MY 2004-2006 and 2008-2009 Chevrolet Malibu, 2004-2006 Chevrolet Malibu Maxx, 2009-2010 Chevrolet HHR, 2010 Chevrolet Cobalt, 2005-2006 and 2008-2009 Pontiac G6, 2004-2007 Saturn Ion, and 2008-2009 Saturn Aura vehicles.

598. As with the ignition switch defects and many of the other defects, New GM was aware of the power steering defect long before it took anything approaching full remedial action.

599. When the power steering fails, a message appears on the vehicle's dashboard, and a chime sounds to inform the driver. Although steering control can be maintained through manual steering, greater driver effort is required, and the risk of an accident is increased.

600. In 2010, New GM first recalled Chevy Cobalt and Pontiac G5 models for these power steering issues, yet it did *not* recall the many other vehicles that had the very same power steering defect.

601. Documents released by NHTSA show that New GM waited years to recall nearly 335,000 Saturn Ions for power-steering failure—despite receiving nearly 4,800 consumer complaints and more than 30,000 claims for warranty repairs. That translates to a complaint rate of 14.3 incidents per thousand vehicles and a warranty claim rate of 9.1 percent. By way of comparison, NHTSA has described as "high" a complaint rate of 250 complaints per 100,000 vehicles.[188] Here, the rate translates to 1,430 complaints per 100,000 vehicles.

602. In response to the consumer complaints, in September 2011, NHTSA opened an investigation into the power-steering defect in Saturn Ions.

603. NHTSA database records show complaints from Ion owners as early as June 2004, with the first injury reported in May 2007.

604. NHTSA has linked approximately 12 crashes and two injuries to the power-steering defect in the Ions.

605. In September 2011, after NHTSA began to make inquiries about the safety of the Saturn Ion, GM acknowledged that it had received almost 3,500 customer reports claiming a sudden loss of power steering in 2004-2007 Ion vehicles.

[188] *See* https://www-odi.nhtsa.dot.gov/cars/problems/defect/-results.cfm?action_number=EA06002&SearchType= QuickSearch&summary=true.

606. The following month, New GM engineer Terry Woychowski informed current CEO Mary Barra—then head of product development—that there was a serious power-steering issue in Saturn Ions, and that it may be the same power steering issue that plagued the Chevy Cobalt and Pontiac G5. Ms. Barra was also informed of the ongoing NHTSA investigation. At the time, NHTSA reportedly came close to concluding that Saturn Ions should have been included in New GM's 2010 steering recall of Cobalt and G5 vehicles.

607. Instead of recalling the Saturn Ion, GM sent dealers a service bulletin in May of 2012 identifying complaints about the steering system in the vehicle.

608. By the time GM finally recalled the Saturn Ion—four years later, in March 2014—NHTSA had received more than 1,200 complaints about the vehicle's power steering. Similar complaints resulted in over 30,000 warranty claims with GM.

609. After announcing the March 31, 2014 recall, Jeff Boyer, New GM's Vice President of Global Vehicle Safety, acknowledged that New GM recalled some of these same vehicle models previously for the ***same issue***, but that New GM "did not do enough."

610. According to an analysis by the NEW YORK TIMES published on April 20, 2014, New GM has "repeatedly used technical service bulletins to dealers and sometimes car owners as stopgap safety measures instead of ordering a timely recall."

611. Former NHTSA head Joan Claybrook echoed this conclusion, stating, "There's no question that service bulletins have been used where recalls should have been."

612. NHTSA has recently criticized New GM for issuing service bulletins on at least four additional occasions in which a recall would have been more appropriate and in which New GM later, in fact, recalled the subject vehicles.

613. These inappropriate uses of service bulletins prompted Frank Borris, the top defect investigator for NHTSA, to write to New GM's product investigations director, Carmen Benavides, in July 2013, complaining that "GM is slow to communicate, slow to act, and, at times, requires additional effort . . . that we do not feel is necessary with some of [GM's] peers."

614. Mr. Borris' correspondence was circulated widely among New GM's top executives. Upon information and belief, the following employees received a copy: John Calabrese and Alicia Boler-Davis, two vice presidents for product safety; Michael Robinson, vice president of regulatory affairs; engineer Jim Federico; Gay Kent, director of product investigations who had been involved in safety issues with the Cobalt since 2006; and William Kemp, an in-house product liability lawyer.

b. Power steering hose clamp defect.

615. On June 18, 2014, New GM issued a safety recall of 57,192 MY 2015 Chevrolet Silverado 2500/3500 HD and 2015 GMC Sierra 2500/3500 HD vehicles with a power steering hose clamp defect.

616. In the affected vehicles, the power steering hose clamp may disconnect from the power steering pump or gear, causing a loss of power steering fluid. A loss of power steering fluid can result in a loss of power steering assist and power brake assist, increasing the risk of a crash.

c. Power steering control module defect.

617. On July 22, 2014, New GM recalled 57,242 MY 2014 Chevrolet Impala vehicles with a Power Steering Control Module defect.

618. Drivers of the affected vehicles may experience reduced or no power steering assist at start-up or while driving due to a poor electrical ground connection to the Power Steering Control Module. If power steering is lost, the vehicle will revert to manual steering

mode. Manual steering requires greater driver effort and increases the risk of accident. New GM acknowledges one crash related to this condition.

619. On May 17, 2013, New GM received a report of a 2014 Impala losing communication with the Power Steering Control Module. On or about May 24, 2013, New GM determined the root cause was a poor electrical connection at the Power Steering Control Module grounding stud wheelhouse assembly.

620. But New GM's initial efforts to implement new procedures and fix the issue were unsuccessful. In January 2014, New GM reviewed warranty data and discovered 72 claims related to loss of assist or the Service Power Steering message after implementation of New GM's process improvements.

621. Then, on February 25, 2014, New GM received notice of a crash involving a 2014 Impala that was built in 2013. The crash occurred when the Impala lost its power steering, and crashed into another vehicle as a result.

622. In response, New GM monitored field and warranty data related to this defect and, as of June 24, 2014, it identified 253 warranty claims related to loss of power steering assist or Service Power Steering messages.

623. On July 15, 2014, New GM finally issued a safety recall for the vehicles, having been unsuccessful in its efforts to minimize and conceal the defect.

d. Lower control arm ball joint defect.

624. On July 18, 2014, New GM issued a safety recall of 1,919 MY 2014-2015 Chevrolet Spark vehicles with a lower control arm ball joint defect.

625. The affected vehicles were assembled with a lower control arm bolt not fastened to specification. This can cause the separation of the lower control arm from the steering

knuckle while the vehicle is being driven, and result in the loss of steering control. The loss of steering control in turn creates a risk of accident.[189]

e. Steering tie-rod defect.

626. On May 13, 2014, New GM issued a safety recall of 477 MY 2014 Chevrolet Silverado, 2014 GMC Sierra, and 2015 Chevrolet Tahoe vehicles with a steering tie-rod defect.

627. In the affected vehicles, the tie-rod threaded attachment may not be properly tightened to the steering gear rack. An improperly tightened tie-rod attachment may allow the tie-rod to separate from the steering rack and greatly increases the risk of a vehicle crash.[190]

f. Joint fastener torque defect.

628. On June 30, 2014, New GM issued a safety recall of 106 MY 2014 Chevrolet Camaro, 2014 Chevrolet Impala, 2014 Buick Regal, and 2014 Cadillac XTS vehicles with a joint fastener torque defect.

629. In the affected vehicles, joint fasteners were not properly torqued to specification at the assembly plant. As a result of improper torque, the fasteners may "back out" and cause a "loss of steering," increasing the risk of a crash.[191]

630. New GM claims that it was alerted to the problem by a warranty claim filed on December 23, 2013, at a California dealership for a Chevrolet Impala built at New GM's Oshawa car assembly plant in Ontario, Canada. Yet the Oshawa plant was not informed of the issue until March 4, 2014.[192]

631. Between March 4 and March 14, 2014, the Oshawa plant conducted a "root cause" investigation and concluded that the problem was caused by an improperly fastened

[189] *See* July 18, 2014 Letter from New GM to NHTSA.

[190] *See* May 27, 2014 Letter from New GM to NHTSA.

[191] *See* July 2, 2014 Letter from New GM to NHTSA.

[192] *Id.*

"Superhold" joint. Though the Impala was electronically flagged for failing to meet the requisite torque level, the employee in charge of correcting the torque level failed to do so.[193]

632. On or about March 14, 2014, New GM learned of two more warranty claims concerning improperly fastened Superhold joints. Both of the vehicles were approved by the same employee who had approved the corrective action for the joint involved in the December 23, 2013 warranty claim. The two additional vehicles were also flagged for corrective action, but the employee failed to correct the problem.[194]

633. On March 20, 2014, New GM concluded the derelict employee had approved 112 vehicles after they were flagged for corrective action to the Superhold joint.[195]

634. Yet New GM waited until June 25, 2014 before deciding to conduct a safety recall.

6. Safety defects affecting the powertrain in GM-branded vehicles.

a. Transmission shift cable defect affecting 1.1 million Chevrolet and Pontiac vehicles.

635. On May 19, 2014, New GM issued a safety recall for more than 1.1 million MY 2007-2008 Chevrolet Saturn, 2004-2008 Chevrolet Malibu, 2004-2007 Chevrolet Malibu Maxx, and 2005-2008 Pontiac G6 vehicles with dangerously defective transmission shift cables.

636. In the affected vehicles, the shift cable may fracture at any time, preventing the driver from switching gears or placing the transmission in the "park" position. According to New GM, "[i]f the driver cannot place the vehicle in park, and exits the vehicle without applying the park brake, the vehicle could roll away and a crash could occur without prior warning."[196]

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[193] *Id.*

[194] *Id.*

[195] *Id.*

[196] *See* New GM letter to NHTSA Re: NHTSA Campaign No. 14V-224 dated May 22, 2014, at 1.

637. Yet again, New GM knew of the shift cable defect long before it issued the recent recall of more than 1.1 million vehicles with the defect.

638. In May of 2011, NHTSA informed New GM that it had opened an investigation into failed transmission cables in 2007 model year Saturn Aura vehicles. In response, New GM noted "a cable failure model in which a tear to the conduit jacket could allow moisture to corrode the interior steel wires, resulting in degradation of shift cable performance, and eventually, a possible shift cable failure."[197]

639. Upon reviewing these findings, New GM's Executive Field Action Committee conducted a "special coverage field action for the 2007-2008 MY Saturn Aura vehicles equipped with 4 speed transmissions and built with Leggett & Platt cables." New GM apparently chose that cut-off date because, on November 1, 2007, Kongsberg Automotive replaced Leggett & Platt as the cable provider.[198]

640. New GM did not recall any of the vehicles with the shift cable defect at this time, and limited its "special coverage field action" to the 2007-2008 Aura vehicles even though "the same or similar Leggett & Platt cables were used on … Pontiac G6 and Chevrolet Malibu (MMX380) vehicles."

641. In March 2012, NHTSA sent New GM an Engineering Assessment request to investigate transmission shift cable failures in 2007-2008 MY Aura, Pontiac G6, and Chevrolet Malibu.[199]

642. In responding to the Engineering Assessment request, New GM for the first time "noticed elevated warranty rates in vehicles built with Kongsberg shift cables." Similar to their

[197] *Id.* at 2.

[198] *Id.*

[199] *Id.*

predecessor vehicles built with Leggett & Platt shift cables, in the vehicles built with Kongsberg shift cables "the tabs on the transmission shift cable end may fracture and separate without warning, resulting in failure of the transmission shift cable and possible unintended vehicle movement."[200]

643. On September 13, 2012, the Decision Committee decided to conduct a safety recall. This initial recall was limited to 2008-2010 MY Saturn Aura, Pontiac G6, and Chevrolet Malibu vehicles with 4-speed transmission built with Kongsberg shifter cables, as well as 2007-2008 MY Saturn Aura and 2005-2007 MY Pontiac G6 vehicles with 4-speed transmissions which may have been serviced with Kongsberg shift cables.[201]

644. But the shift cable problem was far from resolved.

645. In March of 2013, NHTSA sent New GM a second Engineering Assessment concerning allegations of failure of the transmission shift cables on all 2007-2008 MY Saturn Aura, Chevrolet Malibu, and Pontiac G6 vehicles.[202]

646. New GM continued its standard process of "investigation" and delay. But by May 9, 2014, New GM was forced to concede that "the same cable failure mode found with the Saturn Aura 4-speed transmission" was present in a wide population of vehicles.[203]

647. Finally, on May 19, 2014, New GM decided to conduct a safety recall of more than 1.1 million vehicles with the shift cable defect.

b. Transmission shift cable defect affecting Cadillac vehicles.

648. On June 18, 2014, New GM issued a safety recall of 90,750 MY 2013-2014 Cadillac ATS and 2014 Cadillac CTS vehicles with a transmission shift cable defect.

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[200] *Id.*

[201] *Id.*

[202] *Id.*

[203] *Id.*

649. In the affected vehicles, the transmission shift cable may detach from either the bracket on the transmission shifter or the bracket on the transmission. If the cable detaches while the vehicle is being driven, the transmission gear selection may not match the indicated gear and the vehicle may move in an unintended or unexpected direction, increasing the risk of a crash. Furthermore, when the driver goes to stop and park the vehicle, the transmission may not be in "PARK" even though the driver has selected the "PARK" position. If the vehicle is not in the "PARK" position, there is a risk the vehicle will roll away as the driver and other occupants exit the vehicle or anytime thereafter. A vehicle rollaway causes a risk of injury to exiting occupants and bystanders.

650. On March 20, 2014, a New GM dealership contacted an assembly plant about a detached transmission shift cable. The assembly plant investigated and discovered one additional detached shift cable in the plant.

651. New GM assigned a product investigation engineer was assigned, and from March 24 to June 2, 2014, New GM examined warranty claims and plant assembly procedures and performed vehicle inspections. Based on these findings, New GM issued a safety recall on June 11, 2014.

c. Transmission oil cooler line defect.

652. On March 31, 2014, New GM issued a safety recall of 489,936 MY 2014 Chevy Silverado, 2014 GMC Sierra, 2014 GMC Yukon, 2014 GMC Yukon XL, 2015 Chevy Tahoe, and 2015 Chevy Suburban vehicles with a transmission oil cooler line defect.

653. In the affected vehicles, the transmission oil cooler lines may not be securely seated in the fitting. This can cause transmission oil to leak from the fitting, where it can contact a hot surface and cause a vehicle fire.

654. On September 4, 2013, a New GM assembly plant in Silao, Mexico experienced two instances in which a transmission oil cooler line became disconnected from the thermal bypass valve in 2014 pick-up trucks on the K2XX platform during pressure tests. As a result, New GM required the supplier of the transmission oil cooler lines and thermal bypass valve assembly (collectively the "transmission oil cooler assembly") for these vehicles to issue a Quality Alert for its facility concerning the transmission oil cooler assemblies. The supplier sorted the over 3,000 TOC assemblies at its facility, performed manual pull checks and visual inspections, and found no defects.

655. New GM also conducted manual pull checks and visual inspections on the transmission oil cooler assemblies in the two New GM assembly plants responsible for the K2XX platform at the time (Silao, Mexico and Fort Wayne, Indiana), and identified no defects.

656. On September 19, 2013, the supplier provided New GM with a plan to ensure that the transmission oil cooler lines were properly connected to the thermal bypass valve going forward. In addition to continuing its individual pull tests to verify that these connections were secure, the supplier planned to add a manual alignment feature to the three machines that it used to connect the transmission oil cooler lines to the thermal bypass valve boxes. The supplier completed these upgrades on October 28, 2013.

657. On January 2, 2014, New GM's Product Investigations, Field Performance Assessment, and K2XX program teams received an investigator's report concerning a 2014 Chevrolet Silverado that caught fire during a test drive from a dealer in Gulfport, Mississippi on December 16, 2013. New GM's on-site investigation of the vehicle revealed that a transmission oil cooler line had disconnected from the thermal bypass valve box. The build date for this vehicle was October 10, 2013, and the build date for the transmission oil cooler assembly was

September 28, 2013, prior to the supplier's October 28, 2013 completion of its machinery upgrades.

658. On January 3, 2014, New GM issued a Quality Alert to its assembly plants for K2XX vehicles, advising them to manually inspect the transmission oil cooler assemblies from the supplier to ensure that the transmission oil cooler lines were securely connected. New GM also informed the supplier of the Mississippi event.

659. On January 15, 2014, New GM learned that a 2014 Chevrolet Silverado had recently caught fire while being driven by a dealer salesperson. New GM's investigation of the incident determined that one of the vehicle's transmission oil cooler lines was disconnected from the thermal bypass valve box. The vehicle was built on November 12, 2013.

660. On January 29, after completing its investigation, New GM followed up with its K2XX assembly plants, and found no additional cases involving disconnected transmission oil cooler lines after the January 3 Quality Alert.

661. On January 31, 2014, a team from New GM traveled to the supplier's facility to work with the supplier on its thermal valve assembly process. By February 27, 2014, the supplier added pressure transducers to the machine fixtures used to connect the transmission oil cooler lines to the thermal bypass valve boxes to directly monitor the delivery of air pressure to the pull-test apparatus.

662. On March 23, 2014, a 2015 GMC Yukon caught fire during a test drive from a dealership in Anaheim, California. On March 24, 2014, New GM formed a team to investigate the incident; the team was dispatched to Anaheim that afternoon. On the morning of March 25, 2014, the New GM team examined the vehicle in Anaheim and determined that the incident was caused by a transmission oil cooler line that was disconnected from the thermal bypass valve

box. The assembly plants for K2XX vehicles were placed on hold and instructed to inspect all transmission oil cooler assemblies in stock, as well as those in completed vehicles. A team from New GM also traveled to the supplier on March 25, 2014, to further evaluate the assembly process.

663. On March 26, 2014, New GM personnel along with personnel from the supplier examined the transmission oil cooler assembly from the Anaheim vehicle. The group concluded that a transmission oil cooler line had not been properly connected to the thermal bypass valve box. The build date for the thermal valve assembly in the Anaheim vehicle was determined to be January 16, 2014, after the supplier's October 28, 2013 machinery upgrades, but before its February 27, 2014 process changes.

664. On March 27, 2014, the Product Investigator assigned to this matter received a list of warranty claims relating to transmission fluid leaks in K2XX vehicles, which he had requested on March 24. From that list, he identified five warranty claims, ranging from August 30, 2013, to November 20, 2013, that potentially involved insecure connections of transmission oil cooler lines to the thermal bypass valve box, none of which resulted in a fire. All five vehicles were built before the supplier completed its machinery upgrades on October 28, 2013.

665. Also on March 27, 2014, following discussions with New GM, the supplier began using an assurance cap in connecting the transmission oil cooler lines to the thermal bypass valve boxes to ensure that the transmission oil cooler lines are properly secured.

666. On March 28, 2014, New GM decided to initiate a recall of vehicles built on the K2XX platform so that they can be inspected to ensure that the transmission oil cooler lines are properly secured to the thermal bypass valve box.

d. Transfer case control module software defect.

667. On June 26, 2014, New GM issued a safety recall of 392,459 MY 2014-2015 Chevrolet Silverado, 2015 Chevrolet Tahoe, 2015 Chevrolet Suburban, 2014-2015 GMC Sierra, 2015 GMC Yukon, and 2015 GMC Yukon XL vehicles with a transfer case control module software defect.

668. In the affected vehicles, the transfer case may electronically switch to neutral without input from the driver. If the transfer case switches to neutral while the vehicle is parked and the parking brake is not in use, the vehicle may roll away and cause injury to bystanders. If the transfer case switches to neutral while the vehicle is being driven, the vehicle will lose drive power, increasing the risk of a crash.

669. New GM first observed this defect on February 14, 2014, when a 2015 model year development vehicle, under slight acceleration at approximately 70 mph, shifted into a partial neutral position without operator input. When the vehicle shifted into neutral, the driver lost power, could not shift out of neutral, and was forced to stop driving. Once the vehicle stopped, the transfer case was in a complete neutral state and could not be moved out of neutral.

670. On or about February 17, 2014, New GM contacted Magna International Inc., the supplier of the transfer case and the Transfer Case Control Module ("TCCM") hardware and software, to investigate the incident. Magna took the suspect TCCM for testing.

671. From mid-February through mid-March, Magna continued to conduct testing. On March 18, Magna provided its first report to New GM but at that time, Magna had not fully identified the root cause.

672. On March 27, Magna provided an updated report that identified three scenarios that could cause a transfer case to transfer to neutral.

673. Between late March and April, New GM engineers continued to meet with Magna to identify additional conditions that would cause the unwanted transfer to neutral. New GM engineers also analyzed warranty information to identify claims for similar unwanted transfer conditions.

674. Two warranty claims for unwanted transfers were identified that appeared to match the conditions exhibited on February 14, 2014. Those warranty claims were submitted on March 3 and March 18, 2014. On April 23, 2014, a Product Investigation engineer was assigned. A Problem Resolution case was initiated on May 20, 2014.

675. The issue was presented to Open Investigation Review on June 16, 2014, and on June 18, 2014, New GM decided to conduct a safety recall.

e. Acceleration-lag defect.

676. On April 24, 2014, New GM issued a safety recall of 50,571 MY 2013 Cadillac SRX vehicles with an acceleration-lag defect.

677. In the affected vehicles, there may be a three to four-second lag in acceleration due to faulty transmission control module programming. That can increase the risk of a crash.

678. On October 24, 2013, New GM's transmission calibration group learned of an incident involving hesitation in a company owned vehicle. New GM obtained the vehicle to investigate and recorded one possible event showing a one second hesitation.

679. In early December 2013, New GM identified additional reports of hesitation from the New GM company-owned vehicle driver fleet, as well as NHTSA VOQs involving complaints of transmission hesitation in the 2013 SRX vehicles.

680. In mid-February 2014, the transmission calibration team obtained additional company vehicles and repurchased customer vehicles that were reported to have transmission hesitation in order to install data loggers and attempt to reproduce the defect. On February 20,

2014, and February 27, 2014, New GM captured two longer hesitation events consistent with customer reports.

681. In response to the investigation, New GM issued a safety recall for the affected vehicles on April 17, 2014.

f. Transmission turbine shaft fracture defect.

682. On June 11, 2014, New GM recalled 21,567 MY 2012 Chevrolet Sonic vehicles equipped with a 6 Speed Automatic Transmission and a 1.8L Four Cylinder Engine suffering from a turbine shaft fracture defect.

683. In the affected vehicles, the transmission turbine shaft may fracture. If the transmission turbine shaft fracture occurs during vehicle operation in first or second gear, the vehicle will not upshift to the third through sixth gears, limiting the vehicle's speed. If the fracture occurs during operation in third through sixth gear, the vehicle will coast until it slows enough to downshift to first or second gear, increasing the risk of a crash.[204]

684. The turbine shafts at issue were made by Sundram Fasteners Ltd.[205] In November 2013, New GM learned of two broken turbine shafts in the affected vehicles when transmissions were returned to New GM's Warranty Parts Center. New GM sent the shafts to Sundram, but Sundram did not identify any "non-conformities."[206] But "[s]ubsequent investigation by GM identified a quality issue" with the Sundram turbine shafts.[207]

685. By late January 2014, 5 or 6 more transmissions "were returned to the WPC for the same concern." That prompted a warranty search for related claims by New GM's "Quality Reliability Durability (QRD) lead for Gears and Shafts and Validation Engineer for Global Front

[204] *See* June 11, 2014 Letter from New GM to NHTSA.

[205] *Id.*

[206] *Id.*

[207] *Id.*

Wheel 6 Speed Transmission…." That search revealed "a clear increase in incidents for 2012 Sonic built with 6T30 turbine shaft[s] during late February to June of 2012."[208]

686. In March of 2014, New GM engineers found that turbine shafts made "in the suspect window were found to have a sharp corner and not a smooth radius in the spline." Testing done in April of 2014 apparently showed a lower life expectancy for "shafts with sharp corners" as opposed to "shafts with smooth radii."[209]

687. On June 4, 2014, New GM "decided to conduct a safety recall," and New GM did so on June 11, 2014.[210]

g. Automatic transmission shift cable adjuster.

688. On February 20, 2014, New GM issued a noncompliance recall of 352 MY 2014 Buick Enclave, Buick LaCrosse, Buick Regal, Buick Verano, Chevrolet Cruze, Chevrolet Impala, Chevrolet Malibu, Chevrolet Traverse, and GMC Acadia vehicles with defective automatic transmission shift cable adjusters.[211]

689. In the affected vehicles, one end of the transmission shift cable adjuster body has four legs that snap over a ball stud on the transmission shift lever. One or more of these legs may have been fractured during installation. If any of the legs are fractured, the transmission shift cable adjuster may disengage from the transmission shift lever. When that happens, the driver may be unable to shift gears, and the indicated gear position may not be accurate. If the adjuster is disengaged when the driver attempts to stop and park the vehicle, the driver may be able to shift the lever to the "PARK" position but the vehicle transmission may not be in the

[208] *Id.*

[209] *Id.*

[210] *Id.*

[211] *See* February 20, 2014 Letter from New GM to NHTSA.

"PARK" gear position. That creates the risk that the vehicle will roll away as the driver and other occupants exit the vehicle, or anytime thereafter.[212]

690. These vehicles may not conform with Federal Motor Vehicle Safety Standard 102 for Transmission Shift Lever Sequence Starter Interlock and Transmission Braking Effect, or Federal Motor Vehicle Safety Standard 114 for Theft Protection and Rollaway Prevention.

7. Other serious defects affecting GM-branded vehicles.

a. Power management mode software defect.

691. On January 13, 2014, New GM issued a safety recall of 324,970 MY 2014 Chevy Silverado and GMC Sierra Vehicles with a Power Management Mode software defect.[213]

692. In the affected vehicles, the exhaust components can overheat, melt nearby plastic parts, and cause an engine fire. GM acknowledges that the Power Management Mode software defect is responsible for at least six fires in the affected vehicles.[214]

b. Light control module defect.

693. On May 16, 2014, New GM issued a safety recall of 217,578 model year 2004-2008 Chevrolet Aveo vehicles with a light control module defect.[215]

694. In the vehicles, heat generated within the daytime running lamp module in the center console in the instrument panel may melt the module and cause a vehicle fire.[216] New GM first became aware of this issue when two Suzuki Forenza vehicles suffered interior fires in

[212] *Id.*

[213] *See* New GM Letter to NHTSA dated January 23, 2014.

[214] *Id.*

[215] *See* May 30, 2014 Letter from New GM to NHTSA.

[216] *Id.*

March of 2012; an investigation conducted by GM North America found evidence that the fires emanated from the connection of the wiring at the module.[217]

695. New GM took no remedial action at this time.

696. Then in May of 2012, New GM conducted a TREAD data and NHTSA VOQ search for "thermal issues" related. The search uncovered 13 customer claims and two VOQs "that implied the DRL as the source of the issue."[218]

697. Finally, on May 16, 2014, New GM decided to conduct a safety recall.

698. New GM does not provide adequate explanation for why it took more than two years for it to remedy the problem it was aware of by March of 2012.

699. On May 16, 2014, GM recalled 218,214 MY 2004-2008 Chevrolet Aveo (subcompact) and 2004-2008 Chevrolet Optra (subcompact) vehicles. In these vehicles, heat generated within the light control module in the center console in the instrument panel may melt the module and cause a vehicle fire.

c. Electrical short in driver's door module defect.

700. On June 30, 2014, New GM issued a safety recall of 181,984 model year 2005-2007 Chevrolet Trailblazer, 2006 Chevrolet Trailblazer EXT, 2005-2007 Buick Rainier, 2005-2007 GMC Envoy, 2006 GMC Envoy XL, 2005-2007 Isuzu Ascender, and 2005-2007 Saab 9-7x vehicles with a defect that can cause an electrical short in the driver's door module.[219]

701. In the affected vehicles, an electrical short in the driver's door module may occur that can disable the power door lock and window switches and overheat the module. The overheated module can then cause a fire in the affected vehicles.

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[217] *Id.*

[218] *Id.*

[219] *See* July 2, 2014 Letter from New GM to NHTSA.

702. The defect apparently arose from an earlier "repair" provided by New GM for certain vehicles which consisted of applying a "protective coating" to the modules. The "repair" allowed fluids to enter the driver's door module, and a short could result.[220]

703. New GM finally identified this issue, and issued a safety recall on June 30, 2014.

d. Front axle shaft defect.

704. On March 28, 2014, New GM issued a safety recall of 174,046 model year 2013-2014 Chevrolet Cruze vehicles with dangerous front axle shaft defect.[221]

705. In the affected vehicles, the right front axle shaft may fracture and separate. If this happens while the vehicle is being driven, the vehicle will lose power and coast to a halt. If a vehicle with a fractured shaft is parked and the parking brake is not applied, the vehicle may move unexpectedly and cause accident and injury.[222]

706. New GM admits to knowledge of "several dozen" half-shaft fractures through its warranty data.[223]

707. The several dozen instances could have been prevented. Indeed, in September of 2013, New GM conducted a safety recall of model year 2013-2014 Chevrolet Cruze vehicles, but limited the recall to (i) vehicles built between January 24, 2013-August 1, 2013 and (ii) had manual transmission.[224] New GM did so even though both manual and automatic Cruze vehicles used "half shafts containing tubular bars manufactured by GM's second-tier supplier, Korea Delphi Automotive Systems Corporation."[225]

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[220] *Id.*

[221] *See* March 28, 2014 Letter from New GM to NHTSA.

[222] *Id.*

[223] "GM recalls 172,000 Chevrolet Cruze Sedans over front axle half-shaft," *Bloomberg*, March 31, 2014.

[224] *See* April 11, 2014 Letter from New GM to NHTSA.

[225] *Id.*

708. The 2013 recall was inadequate. By February of 2014, New GM was aware of at least 47 claims of fractured tubular bars in model year 2013-2014 Cruze vehicles with automatic transmission. New GM also learned that some of the manual Cruze vehicles that were "repaired" in the 2013 recall had ***subsequently*** suffered fractured half shafts. Finally, New GM learned of fractured half-shaft in Cruze vehicles that were built ***after*** the August 1, 2013 build-date cutoff for the 2013 recall.[226]

709. Finally, on March 26, 2014, New GM issued a safety recall that included (i) broader "build-date" coverage; (ii) both manual and automatic Cruze vehicles, and (iii) some manual Cruze vehicles that had been improperly repaired in the 2013 recall.

e. Seat hook weld defect.

710. On July 22, 2014, New GM recalled 124,007 model year 2014 Chevrolet SS, 2014 Chevrolet Caprice, 2014 Chevrolet Caprice PPC, 2014 Chevrolet Silverado 1500, 2015 Chevrolet Silverado 2500/3500 HD, 2013-2014 Buick Encore, 2013-2014 Cadillac ATS, 2014 Cadillac CTS, 2014 Cadillac ELR, 2014 GMC Sierra 1500, and 2015 GMC Sierra 2500/3500 HD vehicles with a seat hook weld defect.[227]

711. In the affected vehicles, as the result of an incomplete weld on the seat hook bracket assembly, in a "high load" situation, "the hook may separate from the seat track, increasing the risk of occupant injury in a crash."[228]

f. Front turn signal bulb defect.

712. On July 21, 2014, New GM recalled 120,426 model year 2013 Chevrolet Malibu and 2011-2013 Buick Regal vehicles with a front turn signal bulb defect.

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[226] *Id.*

[227] *See* July 22, 2014 Letter from New GM to NHTSA.

[228] *Id.*

713. In the affected vehicles, the driver will see a rapidly flashing turn signal arrow in the instrument cluster if both bulbs in one turn signal are burned out; but if only one bulb on either side burns out, there will be no signal to the driver. The failure to properly warn the driver that a turn signal is inoperable increases the risk of accident.

714. New GM first learned of the defect on September 6, 2012, when it conducted a read-across review on turn signal bulb outage and discovered that when one of the two front turn signal bulbs on either side burns out, there was no indication to the driver, and that the remaining functioning bulb did not likely meet the photometric requirements for turn signal lamps under Federal Motor Vehicle Safety Standards. On September 26, 2012, New GM confirmed these vehicles did not comply with federal standards.

715. However, New GM attempted to categorize this noncompliance as "inconsequential as it relate[s] to motor vehicle safety" by submitting a petition for exemption from the notification and remedy requirements of the Motor Vehicle Safety Act on October 25, 2012. On July 15, 2014, New GM's petition was denied, and the company was forced to issue a recall.

g. Low-beam headlight defect.

716. On May 14, 2014, New GM issued a safety recall of 103,158 MY 2005-2007 Chevrolet Corvette vehicles with a low-beam headlight defect.

717. In the affected vehicles, the underhood bussed electrical center housing can expand and cause the headlamp low beam relay control circuit wire to bend. When the wire is repeatedly bent, it can fracture and cause a loss of low-beam headlamp illumination. The loss of illumination decreases the driver's visibility and the vehicle's conspicuity to other motorists, increasing the risk of a crash.

718. In May of 2013, prompted by 30 reports from drivers of the affected vehicles, NHTSA opened a preliminary evaluation of allegations of simultaneous loss of both low-beam headlights without warning in the affected vehicles. The preliminary investigation looked at the low-beam headlights and all associated components, including but not limited to, switches, fuses and fuse box, and wiring and connectors. New GM did not respond to the preliminary evaluation until June 27, 2013.

719. On August 23, 2013, NHTSA upgraded the preliminary evaluation to an engineering analysis and expanded the vehicle scope to include MY 2005-2013 Chevrolet Corvette vehicles. NHTSA provided New GM with Vehicle Owners' Questionnaires related to customer complaints of loss of low-beam headlamps.

720. On January 14, 2014, New GM responded to the engineering analysis and had ongoing discussions with NHTSA through February 2014 regarding the Corvette vehicle.

721. But New GM did nothing further until May 1, 2014, when it finally reviewed and analyzed warranty data and other records accumulated since NHTSA's August 2013 data request. At this time NHTSA also provided New GM additional Vehicle Owners' Questionnaires received since January 2014. After New GM analyzed the data received by model year for the affected vehicles, it presented its findings to the Field Performance Evaluation Review Committee on May 5, 2014, and on May 7, 2014, New GM decided to conduct a safety recall to remedy the low-beam headlight defect.

h. Radio chime defect.

722. On June 5, 2014, New GM issued a noncompliance recall of 57,512 MY 2014 Chevrolet Silverado LD, 2015 Chevrolet Silverado HD, 2015 Chevrolet Suburban, 2015 Chevrolet Tahoe, 2014 GMC Sierra LD, and 2015 GMC Sierra HD vehicles with a radio chime defect.

723. In the affected vehicles, the radios may become inoperative; when that happens, there is no audible chime to notify the driver if the door is opened with the key in the ignition and no audible seat belt warning indicating that the seat belts are not buckled. These vehicles fail to comply with the requirements of FMVSS numbers 114, "Theft Protection and Rollaway Prevention," and 208, "Occupant Crash Protection." Without an audible indicator, the driver may not be aware that the driver's door is open while the key is in the ignition, and that creates a risk of a vehicle rollaway. Additionally, there will be no reminder that the driver's or front seat passenger's seat belt is not buckled, which increases the risk of injury in a crash.

724. New GM ordered a vehicle stop-shipment on April 28, 2014. From April 30, 2014, through May 6, 2014, affected base radios were re-flashed with updated software at assembly plants, and on May 21, 2014, a service bulletin was issued with instructions to update the software in the affected vehicles.

725. But New GM's efforts did not comply with the FMVSS, as it learned on May 28, 2014, after consulting its regulatory engineers. New GM issued a noncompliance recall on May 29, 2014.

i. Fuel gauge defect.

726. On April 29, 2014, New GM issued a safety recall of 51,460 MY 2014 Chevrolet Traverse, GMC Acadia, and Buick Enclave vehicles with a fuel gauge defect.

727. In the affected vehicles, the engine control module software may cause inaccurate fuel gauge readings. An inaccurate fuel gauge may result in the vehicle unexpectedly running out of fuel and stalling, and thereby increases the risk of accident.

728. In July 2013, New GM began producing the 2014 MY Buick Enclave, Chevrolet Traverse, and GMC Acadia vehicles with a revised software calibration to better predict fuel

levels. The revised calibration takes into account actions such as refueling events, sloshing of fuel during operation, and consumption rates to better predict fuel level readings.

729. But in August 2013, New GM received feedback from rental fleet customers regarding errors in gauge readings predominantly at the "full" end of the range. Many rental customers complained they were charged a fuel surcharge for vehicles that had been refueled but were still reading less than full. In response, on September 23, 2013, New GM switched back to using the 2013 MY fuel gauge software and calibration in new productions and issued a service bulletin to address the issue in vehicles already out in the market.

730. On November 19, 2013, New GM was put on notice of a quality concern regarding inaccurate fuel gauge readings and warranty claims indicating "running out of fuel." It conducted further searches and, as of December 6, 2013, discovered approximately 1,000 complaints of inaccurate fuel gauge readings, with the majority of these reading less than full, and 62 related to running out fuel.

731. On January 9, 2014, New GM proposed only a customer satisfaction field action. NHTSA took the matter under consideration to provide additional feedback, and returned with information supporting a safety recall in lieu of a customer satisfaction field action.

732. Hence, New GM finally decided to recall the affected vehicles on April 22, 2014.

j. Windshield wiper system defect.

733. On May 14, 2014, New GM recalled 19,225 MY 2014 Cadillac CTS vehicles with a windshield wiper system defect.

734. In the affected vehicles, a defect leaves the windshield wiper system prone to failure; though the windshield wipers systems are particularly prone to failure after a vehicle jump start occurs while the wipers are on and restricted by snow and ice, "an unstable voltage in

the vehicle can reproduce this condition without an external jump start." Inoperative windshield wipers can decrease the driver's visibility and increase the risk of a crash.[229]

735. On January 17, 2014, New GM received a warranty claim and an inoperative wiper module from an affected vehicle. The supplier, BOSCH, examined the module and determined that the MOSFET (metal-oxide-semiconductor field-effect transistor) "Trench 4" was damaged. (A "Trench" is a design style of a MOSFET). New GM engineering and BOSCH then investigated possible causes of MOSFET damage from the part manufacturing through the vehicle assembly processes.[230]

736. On February 26, 2014, BOSCH began using MOSFET Trench 3 instead of Trench 4.

737. On April 15, 2014, "GM was able to reproduce electrical overstress inputs that could create a damaged MOSFET failure in a vehicle with restricted wipers during a jumpstart. GM tested the MOSFET Trench 3 for electrical overstress and they did not exhibit the same failure." BOSCH then "duplicated the MOSFET [Trench] electrical overstress condition on a bench without a vehicle jumpstart."[231]

738. On May 7, 2014, New GM decided to conduct a safety recall, and the recall notice was issued on May 14, 2014.

k. Console bin door latch defect.

739. On August 7, 2014, New GM issued a safety recall of 14,940 MY 2014-2015 Chevrolet Impala vehicles with a console bin door latch defect.[232]

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[229] *See* May 28, 2014 Letter to NHTSA.

[230] *Id.*

[231] *Id.*

[232] *See* August 7, 2014 Letter from New GM to NHTSA.

740. In the affected vehicles, the inertia latch on the front console bin compartment door may not engage in the event of a rear collision and the front console compartment door may open, increasing the risk of occupant injury.[233] These vehicles fail to comply with the requirements of FMVSS No. 201, "Occupant Protection In Interior Impact."[234]

l. Driver door wiring splice defect.

741. On June 11, 2014, New GM recalled 14,765 MY 2014 Buick LaCrosse vehicles with a driver door wiring splice defect.

742. In the affected vehicles, a wiring splice in the driver's door may corrode and break, resulting in the absence of an audible chime to notify the driver if the door is opened while the key is in the ignition. Additionally, the Retained Accessory Power module may stay active for ten minutes allowing the operation of the passenger windows, rear windows, and sunroof. As such, these vehicles fail to comply with the requirements of FMVSS numbers 114, "Theft Protection and Rollaway Prevention," and 118, "Power-Operated Window, Partition, and Roof Panel Systems." Without an audible indicator, the driver may not be aware that the driver's door is open while the key is in the ignition, increasing the risk of a vehicle rollaway. If the passenger windows, rear windows, and sunroof can function when the vehicle is turned off and the driver is not in the vehicle, there is an increased risk of injury if an unsupervised occupant operates the power closures.

743. New GM first learned of this defect on August 21, 2013, when a test fleet vehicle reported an inoperable driver window swift. New GM added the issue to Problem Resolution.

744. But New GM did not perform a warranty analysis until nearly eight months later in April 2014. The warranty analysis identified additional claims for this condition for harnesses

[233] *Id.*

[234] *Id.*

produced July 2013 through September 2013. On April 21, 2014, the issue was reviewed and a New GM engineer identified "two FMVSS standards, 114 and 118, that may be impacted."

745. A Product Investigations Engineer was assigned to investigate further. On May 8, 2014, a review of TREAD data and additional warranty files revealed additional related claims.

746. New GM finally issued a safety recall on June 4, 2014.

m. Overloaded feed defect.

747. On July 2, 2014, New GM recalled 9,371 MY 2007-2011 Chevrolet Silverado and 2007-2011 GMC Sierra HD vehicles with an overloaded feed defect.

748. In the affected vehicles, an overload in the feed may cause the underhood fusible link to melt due to electrical overload, resulting in potential smoke or flames that could damage the electrical center cover and/or the nearby wiring harness conduit.

749. Sometime prior to January 2012, New GM received reports of four underhood fires resulting from an auxiliary battery fusible link wire melting, opening circuit, and contacting surrounding components. On January 19, 2012, New GM initiated a Customer Satisfaction Program to close a product investigation into the reported fires. New GM states a design change had already been implemented into production in June 2011.

750. More than two years later, on May 5, 2014, the Engineering Analysis department requested that Product Investigations conduct an investigation to confirm the complete population was included in the Customer Satisfaction Program and that the remedy was effective. From May 20 to May 23, 2014, data was reviewed from a recent pull of New GM reports and warranty. The investigation revealed that while all identified vehicles reported to have an incident were included in the original investigation and vehicle population, two vehicles involved in the Customer Satisfaction Program experienced incidents, including one fire,

subsequent to the Customer Satisfaction Program. Both of these vehicles had not had the repair performed.

751. After review during an Open Investigation Review on June 23, 2014, and on June 25, 2014, New GM issued a safety recall for vehicles not yet repaired under the Customer Satisfaction Program.

n. Windshield wiper module assembly defect.

752. On June 26, 2014, New GM recalled 4,794 MY 2013-2014 Chevrolet Caprice and 2014 Chevrolet SS vehicles with a windshield wiper module assembly defect.

753. In the affected vehicles, the motor gear teeth may become stripped and the wipers inoperable. Inoperable wipers increase the risk of accident in inclement conditions.

754. After noting an increase in warranty claims, New GM requested that dealers return parts related to wiper motor warranty claims on February 14, 2014.

755. Nearly three months later, on May 1, 2014, New GM held a meeting with the supplier of the wiper motor and learned that the supplier had used unauthorized grease in the motors built from January 15, 2013 to August 5, 2013. The supplier changed back to the authorized grease after a July 24, 2013 lot test revealed the gear teeth stripping. New GM claims that, prior to May 1, 2014, it was unaware of the grease changes or the gear stripping condition.

756. A root cause investigation between May 7, 2014, and June 3, 2014, conducted by the supplier with New GM Engineering participation, determined the source of the problem was the unauthorized grease and its improper application to the wiper motor gear teeth.

757. On June 19, 2014, New GM decided to conduct a safety recall.

o. Engine block heater power cord insulation defect.

758. On July 2, 2014, New GM issued a safety recall of 2,990 MY 2013-2014 Chevrolet Cruze, 2012-2014 Chevrolet Sonic, 2013-2014 Buick Encore, and 2013-2014 Buick Verano vehicles with an engine block heater power cord insulation defect.

759. In the affected vehicles the insulation on the engine block heater cord can be damaged, exposing the wires. Exposed wires increase the risk of electrical shock and personal injury if the cord is handled while plugged in.

p. Rear shock absorber defect.

760. On June 27, 2014, New GM issued a safety recall of 1,939 MY 2014 Chevrolet Corvette vehicles with a rear shock absorber defect.

761. In the affected vehicles, an insufficient weld in the rear shocks can cause the shock absorber tube to separate from the shock absorber bracket. That separation may cause a sudden change in vehicle handling behavior that can startle drivers and increase the risk of a crash.[235]

q. Electronic stability control defect.

762. On March 26, 2014, New GM issued a safety recall for 656 MY 2014 Cadillac ELR vehicles with an electronic stability control defect.

763. In the affected vehicles, the electronic stability control system software may inhibit certain diagnostics and fail to alert the driver that the electronic stability control system is partially or fully disabled. Therefore, these vehicles fail to conform to FMVSS number 126, "Electronic Stability Control Systems." A driver who is not alerted to an electronic stability

[235] *See* June 26, 2014 Letter from New GM to NHTSA.

control system malfunction may continue driving with a disabled system. That may result in the loss of directional control, greatly increasing the risk of a crash.[236]

r. Unsecured floor mat defect.

764. On June 18, 2014, New GM issued a safety recall of 184 MY 2014 Chevrolet Silverado LD and 2014 GMC Sierra LD vehicles with an unsecured floor mat defect.

765. The affected vehicles built with the optional vinyl flooring option and equipped with the optional All-Weather Floor Mats do not have the retention features necessary to properly secure the floor mat on the driver's side. The driver's floor mat can shift such that it interferes with the accelerator pedal, and thus increases the risk of a crash.[237]

766. On January 20, 2014, a New GM dealership informed New GM marketing that vehicles in affected class of vehicles have no floor mat retention features. Accordingly, New GM should not have permitted that combination of options (the vinyl floor and All-Weather Floor Mats). On January 22, 2014, New GM revised its systems to prevent vehicles being ordered with that combination.[238]

767. New GM waited another month before cancelling all orders for the vinyl flooring and All-Weather Floor Mats on February 24, 2014. Then, on February 25, 2014, New GM instructed its Accessory Distribution Centers not to ship All-Weather Floor Mats to vehicles with the vinyl flooring option.[239] New GM informed dealerships with affected vehicles, and advised them to remove and destroy any floor mats installed in the vehicles. New GM also issued an

[236] *See* March 26, 2014 Letter from New GM to NHTSA.

[237] *See* June 18, 2014 Letter from New GM to NHTSA.

[238] *Id.*

[239] *Id.*

Engineering Work Order to restrict orders for All-Weather Floor Mats to vehicles with the carpet floor covering option.[240]

768. Inexplicably, though New GM presented this issue to the Field Performance Evaluation group on February 25, 2014, it was not until June 11, 2014 that New GM decided to conduct a safety recall.[241]

s. Fuse block defect.

769. On May 23, 2014, New GM issued a safety recall of 58 MY 2015 Chevrolet Silverado HD and GMC Sierra HD vehicles with a fuse block defect.

770. In the affected vehicles, the retention clips that attach the fuse block to the vehicle body can become loose allowing the fuse block to move out of position. When this occurs, exposed conductors in the fuse block may contact the mounting studs or other metallic components, which in turn causes a "short to ground" event. That can result in an arcing condition, igniting nearby combustible materials and starting an engine fire.[242]

771. New GM became aware of this issue by January 30, 2014, when the fuse block became disconnected and resulted in the fiber wheel liner catching fire during testing of an affected vehicle at the Flint Assembly Plant. New GM put a hold on all vehicles with suspect fuse block, and assigned an internal investigator to the issue.[243]

772. On February 3, 2014, New GM issued a Stop Delivery Order on all of the vehicles with the suspect fuse block and informed NHTSA of the issue. At the time, New GM

[240] *Id.*

[241] *Id.*

[242] *See* May 30, 2014 Letter from New GM to NHTSA.

[243] *Id.*

claims, only one of the affected vehicles had been sold; New GM contacted that customer and repaired the sold vehicle.[244]

773. New GM issued a Service Update Bulletin (SUB 14034) for all unsold vehicles with the defective fuse blocks, and provided its dealership with repair kits in February of 2014.[245] New GM revised the repair after it discovered a susceptibility to corrosion during a March 2014 durability test—but only used the enhanced kit for the vehicles that had not already been repaired by May of 2014.[246]

774. On May 7, 2014, New GM found that there were 58 affected vehicles that had not been repaired. Inexplicably, 20 of the 58 vehicles had been sold—even though New GM had known about the defect prior to the sales.[247]

775. On May 19, 2014, New GM decided to conduct a safety recall of all 58 affected vehicles.[248]

t. Diesel transfer pump defect.

776. On April 24, 2014, New GM issued a safety recall of 51 MY 2015 GMC Sierra HD and 2015 Chevrolet Silverado HD vehicles.

777. In the affected vehicles, the fuel pipe tube nuts on both sides of the diesel fuel transfer pump may not be tightened to the properly torque. That can result in a diesel fuel leak, which can cause a vehicle fire.[249]

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[244] *Id.*

[245] *Id.*

[246] *Id.*

[247] *Id.*

[248] *Id.*

[249] *See* April 24, 2014 Letter from New GM to NHTSA.

u. Rear suspension toe adjuster link defect.

778. On September 17, 2014, New GM issued a safety recall for 290,241 MY 2010-2015 Cadillac SRX and 2011-2012 Saab 9-4x vehicles with a rear suspension toe adjuster link defect that can cause vehicles to sway or wander on the road.[250]

779. According to New GM, in the affected vehicles, "the jam nut in the rear suspension toe adjuster link may not be torqued to the proper specification. A loose toe adjuster link can cause the vehicle to sway or wander at highway speed, activate the vehicle's electronic stability control system, and cause excessive wear to the threads in the link….If the threads in the link become worn, the link may separate."[251] If the link separates, that "would create sudden vehicle instability, increasing the risk of a crash."[252]

780. Once again, New GM should have picked up on this defect years earlier. In fact, in 2011, New GM conducted a safety recall of Cadillac CTS vehicles with a similar rear suspension toe adjuster link defect.[253]

781. New GM claims that, ever since 2011, it had been "monitor[ing] warranty data associated with the suspension systems in Cadillac SRX vehicles, which utilized similar rear suspension components" to the Cadillac CTS vehicles that were recalled in 2011.[254] "As of July 2014, [New] GM had received 83 warranty claims, 14 TREAD reports, and two NHTSA VOQs relating to the rear suspension system on 2010 through 2012 MY Cadillac SRX vehicles."[255]

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[250] *See* New GM's Sept. 17, 2014 Part 573 Safety Report.

[251] *Id.*

[252] *Id.*

[253] *Id.*

[254] *Id.*

[255] *Id.*

782. Between July 14 and early September 2014, GM "determined that the rear suspension adjuster link jam nuts in some 2010-2015 MY Cadillac SRX vehicles may not have been torqued to the proper specification"[256]—***just as in the case of the Cadillac CTS vehicles that had been recalled several years earlier.***

783. Finally, on September 10, 2014, New GM decided to conduct a safety recall of the Cadillac SRX vehicles.

784. New GM offers no explanation as to why it took so long to finally expand the recall to cover vehicles sharing the same components and the same defects with vehicles that had been recalled several years earlier.

v. Hood latch defect

785. On September 23, 2014, New GM recalled 89,294 MY 2013-2015 Chevrolet Spark vehicles with a hood latch defect.[257]

786. According to New GM, the affected vehicles "were manufactured with a secondary hood latch that may prematurely corrode at the latch pivot causing the striker to get stuck out of position and preventing the striker from properly engaging the hood latch."[258] If this happens, "the vehicle's hood may open unexpectedly," and that will "likely" impair the driver's vision and increase the risk of a collision.[259]

787. In November 2013, the secondary hood latch in the affected vehicles "failed a 10-year component level corrosion test." By February 2014, New GM determined that "the anti-

[256] *Id.*

[257] *See* New GM's September 23, 2014 Part 573 Safety Recall Report.

[258] *Id.*

[259] *Id.*

corrosion coating applied to the secondary hood latch was deficient and did not meet" the company's requirements.[260]

788. New GM commenced a search for the "root cause" of the defect from March 24 through September 18, 2014. New GM found that, in the earlier MY Chevrolet Sparks, "all secondary hood latches were coated with an 'ED' coat (electro deposition of zinc phosphate) rather than the required 'MFC-A' coat (e.g., a phosphate and oil based corrosion protection coat)." As of July 31, 2014, MFC-A coating was used for the Sparks.[261]

789. New GM's investigation found 10 warranty cases in the U.S. for premature corrosion of the hood latches.[262]

790. On September 18, 2014, New GM decided to conduct a safety recall.

w. Electrical short defect.

791. On October 2, 2014, New GM announced a recall of 117,652 MY 2013-2014 Chevrolet Tahoe, 2013-2014 Chevrolet Suburban, 2013-2014 GMC Yukon, 2013-2014 GMC Yukon, 2013-2014 Cadillac Escalade, 2013-2014 Cadillac CTS, 2014 Chevrolet Traverse, 2014 GMC Acadia, 2014 Buick Enclave, 2014 Chevrolet Express, 2014 GMC Savana, 2014 Chevrolet Silverado, and 2014 GMC Sierra vehicles with a defect that can cause an electrical short.[263]

792. In the affected vehicles, due to a defect in the chassis control module, metal slivers can cause an electrical short that results in the vehicle stalling or not starting.[264] This creates a serious risk of accident.

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[260] *Id.*

[261] *Id.*

[262] *Id.*

[263] *See "GM recalls 117,651 vehicles for potential electrical short issue*," Reuters (Oct. 2, 2014).

[264] *Id.*

793. As of this writing, New GM has not yet released further information about this defect or the recall.

H. New GM's Deception Recalls Has Harmed Plaintiffs and the Class

794. New GM was well aware that vehicle recalls, especially untimely ones, can taint its brand image and the value of GM vehicles. In its 2010 Form 10-K submitted to the SEC, New GM admitted that "Product recalls can harm our reputation and cause us to lose customers, particularly if those recalls cause consumers to question the safety or reliability of our products. Any costs incurred or lost sales caused by future product recalls could materially adversely affect our business."[265]

795. Unfortunately for owners of GM-branded vehicles, New GM was correct. It is difficult to find a brand whose reputation has taken as great a beating as has the New GM brand starting in February 2014 when the first ignition switch recall occurred.

796. In fact, the public outcry has been significant in response to the ongoing revelations of the massive number of defects New GM concealed, and the massive number of defective vehicles New GM has sold. The following are illustrative examples of the almost constant beating the New GM brand has taken ever since the first ignition switch recall was announced on July 13, 2014.

797. After the announcement the first ignition switch recall the media was highly critical of GM. For example, a CBS February 27, 2014, news report headlined:

By AIMEE PICCHI / MONEYWATCH / February 27, 2014, 1:42 PM

Did GM wait too long to issue its recall?

[265] General Motors 2010 Form 10-K, p. 31, available at https:llwww.sec.gov/Archives/edgar/data/1467858/000119312510078119/dlOk.htm#toc85733 4.

798. The CBS report had a video link:[266]

Play VIDEO

13 deaths now linked to GM faulty ignition switches, recall expanded

799. On March 13, 2014 a CNN report was entitled:

Feds demand answers from GM on recall defect

By **Mike M. Ahlers, CNN**

updated 7:51 AM EDT, Thu March 13, 2014

800. On March 16, 2014, Reuters reported as follows:

Owners of recalled GM cars feel angry, vindicated

(Reuters) – As details emerge about how General Motors Co dealt with faulty ignition switches in some of its models, car owners are increasingly angry after learning that the automaker knowingly allowed them to drive defective vehicles.

Saturn Ion owner Nancy Bowman of Washington, Michigan, said she is outraged that GM allowed her to drive a "death trap." She said her car had so many ignition problems she was afraid to resell it to an innocent buyer.

She bought the 2004 model car new and still drives it after extensive repairs and multiple run-ins with a Saturn dealer she called dismissive.

[266] http://www.cbsnews.com/news/did-general-motors-wait-too-long -to-issue-its-recall/.

"Five times the car died right out from under me after hitting a bump in the road," she wrote in a 2013 posting on a complaint website, arfc.org, that says it sends information to the National Highway Traffic Safety Administration (NHTSA).

Every time I brought it in they said it was an isolated incident. Couldn't find the problem, so they acted like I was an idiot.

801. On March 24, 2014, the NEW YORK TIMES issued an article entitled:

BUSINESS DAY

General Motors Misled Grieving Families on a Lethal Flaw

By HILARY STOUT, BILL VLASIC, DANIELLE IVORY and REBECCA R. RUIZ MARCH 24, 2014

802. It contained a troublesome account of GM's conduct:

It was nearly five years ago that any doubts were laid to rest among engineers at General Motors about a dangerous and faulty ignition switch. At a meeting on May 15, 2009, they learned that data in the black boxes of Chevrolet Cobalts confirmed a potentially fatal defect existed in hundreds of thousands of cars.

But in the months and years that followed, as a trove of internal documents and studies mounted, G.M. told the families of accident victims and other customers that it did not have enough evidence of any defect in their cars, interviews, letters and legal documents show. Last month, G.M. recalled 1.6 million Cobalts and other small cars, saying that if the switch was bumped or weighed down it could shut off the engine's power and disable air bags.

In one case, G.M. threatened to come after the family of an accident victim for reimbursement of legal fees if the family did not withdraw its lawsuit. In another instance, it dismissed a family with a terse, formulaic letter, saying there was no basis for claims.

* * *

Since the engineers' meeting in May 2009, at least 23 fatal crashes have involved the recalled models, resulting in 26 deaths. G.M. reported the accidents to the government under a system called Early Warning Reporting, which requires automakers to disclose claims they receive blaming vehicle defects for serious injuries or deaths.

A New York Times review of 19 of those accidents – where victims were identified through interviews with survivors, family members, lawyers and law enforcement officials – found that G.M.

pushed back against families in at least two of the accidents, and reached settlements that required the victims to keep the discussions confidential.

* * *

In other instances, G.M. ignored repeated calls, families said. "We did call G.M.," said Leslie Dueno, whose 18-year-old son, Christopher Hamberg, was killed on June 12, 2009 – not quite a month after the critical May 15 meeting of G.M. engineers about the ignition data – driving his 2007 Cobalt home before dawn in Houston. He lost control at 45 miles per hour and hit a curb, then a tree, the police report said. "Nobody ever called me. They never followed up. Ever."

Last month's recalls of the Cobalt and five other models encompassed model years 2003 through 2007. G.M. faces numerous investigations, including one by the Justice Department looking into the company's disclosures in its 2009 bankruptcy filing as well as what it told regulators.

"We are conducting an unsparing, comprehensive review of the circumstances leading to the ignition switch recall," G.M. said in a statement on Monday. "As part of that review we are examining previous claims and our response to them. If anything changes as a result of our review, we will promptly bring that to the attention of regulators."

G.M. has said it has evidence of 12 deaths tied to the switch problem, but it has declined to give details other than to say that they all occurred in 2009 or earlier. It says it has no conclusive evidence of more recent deaths tied to the switch.

* * *

It was unclear how many of the 26 deaths since the 2009 meeting were related to the faulty ignition, but some appeared to fit patterns that reflected the problem, such as an inexplicable loss of control or air bags that did not deploy. In some cases, the drivers had put themselves at risk, including having high blood-alcohol levels or texting.

Still, by the time Benjamin Hair, 20, crashed into a tree in Charlottesville, Va., on Dec. 13, 2009, while driving a Pontiac G5 home, G.M. had conducted five internal studies about the ignition problem, its records indicate.

…

Consumer complaints and claims came to the company in a variety of ways – through lawsuits, calls, letters and emails, warranty claims, or insurance claims. G.M.'s legal staff was the recipient of lawsuits, insurance information, accident reports and any other litigation-related paperwork. But warranty claims and customer calls were routed through the sales and service division – a vast bureaucracy that occupies most of one tower at G.M.'s headquarters in Detroit. Because the legal staff reports to the chief executive, and the sales department to the head of G.M. North America, it is unclear whether they share information related to a specific car, like the Cobalt.

803. NPR ran a story on March 31, 2014:


news : business

Timeline: A History Of GM's Ignition Switch Defect

by TANYA BASU

March 31, 2014 4:33 PM ET

804. The NPR story raised questions about GM's candor:

NPR looked into the timeline of events that led to the recall. It's long and winding, and it presents many questions about how GM handled the situation: How long did the company know of the problem? Why did the company not inform federal safety officials of the problem sooner? Why weren't recalls done sooner? And did GM continue to manufacture models knowing of the defect?

805. On May 11, 2014, the CHICAGO TRIBUNE ran an article entitled:

GM ranked worst automaker by U.S. suppliers: survey

DETROIT (Reuters) – General Motors Co, already locked in a public relations crisis because of a deadly ignition defect that has triggered the recall of 2.6 million vehicles, has a new perception problem on its hands.

The U.S. company is now considered the worst big automaker to deal with, according to a new survey of top suppliers to the car industry in the United States.

Those so-called "Tier 1" suppliers say GM is now their least favorite big customer, according to the rankings, less popular even than Chrysler, the unit of Fiat Chrysler Automobiles FIA.MI, which since 2008 had consistently earned that dubious distinction.

Suppliers gave GM low marks on all kinds of key measures, including its overall trustworthiness, its communication skills, and its protection of intellectual property.

806. On May 25, 2014, an article reported on a 2.4 million vehicle recall:

> # When Will GM's Recall Mess End?
>
> **General Motors** (NYSE: GM) on Tuesday said it is recalling about 2.4 million additional vehicles in four separate recalls for a variety of problems, including faulty seat belts and gearshift troubles.
>
> This announcement came on the heels of another set of GM recalls, announced last Thursday, covering 2.7 million vehicles. Including the four recalls announced on Tuesday, GM has issued a total of 30 recalls in the U.S. so far in 2014, encompassing about 13.8 million vehicles.
>
> That's a stupendous number.[267]

807. On May 26, 2014, the NEW YORK TIMES ran an article:

> BUSINESS DAY
>
> ***13 Deaths, Untold Heartache, From G.M. Defect***
>
> By REBECCA R. RUIZ, DANIELLE IVORY and HILARY STOUT MAY 26, 2014

808. The article once again pointed blame at GM:

> BEN WHEELER, Tex. – For most of the last decade, Candice Anderson has carried unspeakable guilt over the death of her boyfriend. He was killed in 2004 in a car accident here, and she was at the wheel. At one point, Ms. Anderson, who had a trace of Xanax in her blood, even faced a manslaughter charge. She was 21.
>
> All these years, Ms. Anderson – now engaged and a mother – has been a devoted visitor to his grave. She tidies it every season, sweeping away leaves and setting down blue daisies with gold glitter for his birthday, miniature lit trees for Christmas, stones with etched sayings for the anniversary of their accident.
>
> "It's torn me up," Ms. Anderson said of the death of Gene Mikale Erickson. "I've always wondered, was it really my fault?"

[267] http://www.fool.com/investing/general/2014/05/25/when-will-gms-recall-mess-end.aspx.

> Last week, she learned it was not.
>
> * * *
>
> Inside G.M., the nation's largest automaker, some of the 13 victims appear on charts and graphs with a date and a single word: "fatal."

809. News of GM's misconduct and of the recalls made the front page of every major newspaper and was the lead story on every major television news program in the country.

810. The congressional hearings where GM executives were subject to harsh questioning and criticism were widely reported in every type of media.

811. In June 2014 GM recalled another 8.2 million vehicles and again these recalls received widespread attention in the press. The stories often included charts and graphs depicting the ever-growing list of vehicles recalled:

> **GM to recall 8.2 million more vehicles over ignition-switch defect**
>
> *POSTED AT 3:21 PM ON JUNE 30, 2014*
>
> The recall blues continue at GM, as does the scope of their previously hidden ignition-switch defect. The world's largest automaker added 8.45 million more vehicles to its list, with some models going back to 1997. This puts GM over the 28-million mark for cars recalled on a global basis in 2014, and over 26 million domestic.[268]

812. The coverage did not simply die down as often happens. On July 15, 2014, the NEW YORK TIMES ran an article entitled, "Documents Show General Motors Kept Silent on Fatal Crashes."

813. By August 2, 2014, the press was reporting that New GM used vehicles were losing value:

[268] http://hotair.com/archives/2014/06/30/gm-to-recall-8-2-million-more-vehicles-over-ignition-switch-defect-8-45-million-overall/.

THE DALLAS MORNING NEWS

August 2, 2014 Saturday
1 Edition

SECTION: BRIEFING; Pg. 10

LENGTH: 80 words

HEADLINE: GM vehicles' resale values are taking a hit as safety recalls mount

BODY:

Although General Motors' sales remained solid in the midst of its recent record recalls, some vehicles experienced significant drops in their resale values.

In an analysis of more than 11 million used cars for sale between March and June of this year, iSeeCars.com found that the resale values of the main vehicles in GM's recalls dropped 14 percent from the same period last year.

814. An August 5, 2014 article also reported that used GM vehicles were suffering loss in value due to the recalls:[269]

AUTOS GM

Used GM cars affected by recall getting hurt in the marketplace

by Doron Levin @FortuneMagazine AUGUST 5, 2014, 2:25 PM EDT

Ignition recall caused resale values to take a hit—some Pontiac, Saturn and Chevy models were most affected.

General Motors Co. GM -0.41% has been fortunate to avoid a collapse of new-vehicle sales since the ignition-switch safety crisis blew up in January, engulfing the automaker in litigation, a federal criminal probe and Congressional inquiries.

Used GM vehicles – models affected by the recall – meanwhile have taken a substantial hit in value, according to a study by iSeeCars.com, an online search engine. GM's new-vehicles sales

[269] Doron Levin, FORTUNE MAGAZINE, August 5, 2014.

are up 3.5% in the U.S. through July in a market that has risen 5% in terms of unit sales.

(Holders of GM stock have gotten whacked as well since January, the value of shares falling nearly 18%, compared with a S&P 500 Index that has risen 4% during the period.)

The operators of the search engine said they created an algorithm to determine the market value of six GM cars affected by the recall, based on asking prices of used vehicles on dealer lots from March to June 2013, compared to a year later. The change in value also was compared to the dropping value of all used cars in the U.S., which has been occurring for the past few months. The sample size was 11 million cars.

The average price of the recalled GM models dropped 14% from March to June 2014, compared to a year earlier and adjusted for inflation. The drop in value of all similar models was 6.7% during the same period.

Phong Ly, chief executive and co-founder of iSeeCars.com said "recalls are playing a role in motivating sellers to sell their used cars and at a lower price point than they otherwise would." His company provides free information to car shoppers and sells sales leads to dealers.

815. The crisis that affected the GM Brand was so significant that GM stock has been battered. A September 22, 2014 report observed:[270]

GM Falls Deeper Into The Abyss

Sep. 22, 2014 7:55 AM ET | About: General Motors Company (GM)

Summary

- GM has been in a rut since the ignition switch recalls.
- More and more, GM is coming off as a perpetually troubled business.
- We continue to avoid General Motors stock.

[270] *See* http://seekingalpha.com/article/2511545-gm-falls-deeper-into-the-abyss.

> We previously wrote about GM (NYSE:GM) and placed a $31 price target on it here. Our basic argument was that GM was going to have trouble presenting itself into the mainstream as a reputable brand to buy after the ignition switch recall.
>
> Late Sunday, it was announced that GM was recalling 222,500 vehicles due to brake pad malfunction. This number towers over the amount of normal recalls that come during the course of business. It's also involving vehicles that were made from 2013 to 2015, a clear indicator that these vehicles (manufactured by the post-bankruptcy GM) should have had a renewed focus of safety on them from the beginning.

816. The impact on the value of GM-brand is also evidenced by the decline in GM's stock price which hit a 52 week low on October 10, 2014.

817. New GM's unprecedented concealment of a large number of serious defects, and its irresponsible approach to safety, quality, and reliability issues, has caused damage to Plaintiffs and the Class.

818. A vehicle made by a reputable manufacturer of safe, high quality, and reliable vehicles who stands behind its vehicles after they are sold is worth more than an otherwise similar vehicle made by a disreputable manufacturer known for selling defective vehicles and for concealing and failing to remedy serious defects after the vehicles are sold.

819. A vehicle purchased or leased under the reasonable assumption that it is safe and reliable is worth more than a vehicle of questionable safety, quality, and reliability due to the manufacturer's recent history of concealing serious defects from consumers and regulators.

820. Purchasers and lessees of GM-branded vehicles after the July 10, 2009 inception of New GM paid more for the vehicles than they would have had New GM disclosed the many defects it had a duty to disclose in GM-branded vehicles, and disclosed that GM's culture and business model was such that it did not produce safe, high quality, and reliable vehicles. Because New GM concealed the defects and the fact that it was a disreputable brand that valued

cost-cutting over safety, Plaintiffs and the Class did not receive the benefit of their bargain. And the value of all their vehicles has diminished as the result of New GM's deceptive conduct.

821. On information and belief, an estimate of the diminished value in class vehicles not subject to the ignition switch recall is illustrated by way of example as follows for a few Model Year 2013 vehicles:

GMC	Terrain	September Diminished Value: $1,052
GMC	Sierra 1500	September Diminished Value: $325
Buick	Lacrosse	September Diminished Value: $954
Chevrolet	Suburban	September Diminished Value: $854
Cadillac	CTS	September Diminished Value: $867
Cadillac	XTS	September Diminished Value: $1,722

822. Another example is the diminished value of illustrative 2011 models:

GMC	Terrain	September Diminished Value: $891
Buick	Lacrosse	September Diminished Value: $1,017

823. GM-branded vehicles not involved in the ignition switch recall experienced declines in value when the ignition switch recalls occurred due to the impact on the perception of buyers concerning New GM's promises of safety and reliability. As news of New GM's culture of deceit grew, so did diminished value. The following estimates are examples:

	Diminished Value as of 03/2014	Diminished Value as of 09/2014
2008 Cadillac STS	$249	$1,243
2008 GMC Acadia	$730	$1,011
2010 GMC Terrain	$403	$912

824. GM vehicles subject to the ignition switch recall also have suffered diminished value by way of example:

	Diminished Value as of 03/2014	Diminished Value as of 09/2014
2008 Cobalt	$256	$357
2008 HHR	$162	$477
2009 Sky	$173	$429

825. If New GM had timely disclosed the many defects as required by the TREAD Act, the law of fraudulent concealment, and consumer laws set forth below, Class members' vehicles would be considerably more valuable than they are now and/or Class members would have paid less than they did. Because of New GM's now highly publicized campaign of deception, and its belated, piecemeal and ever-expanding recalls, so much stigma has attached to the New GM brand that no rational consumer would pay what otherwise would have been fair market value for the Affected Vehicles.

V. TOLLING OF THE STATUTES OF LIMITATION

A. Discovery Rule Tolling

826. Within the time period of any applicable statutes of limitation, Plaintiffs and the other Class members could not have discovered through the exercise of reasonable diligence that New GM was concealing scores of defects and misrepresenting the Company's true position on safety issues.

827. Plaintiffs and the other Class members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that New GM did not report information within its knowledge to federal authorities (including NHTSA), its dealerships or consumers, nor would a reasonable and diligent investigation have disclosed that New GM had information in its

possession about the existence and dangerousness of numerous defects and opted to conceal that information until shortly before this action was filed, and nor would such an investigation have disclosed that New GM valued cost-cutting over safety and actively discouraged its personnel from uncovering or raising safety issues.

828. All applicable statutes of limitation have been tolled by operation of the discovery rule.

B. Fraudulent Concealment Tolling

829. All applicable statutes of limitation have also been tolled by New GM's knowing and active fraudulent concealment and denial of the facts alleged herein throughout the time period relevant to this action.

830. Instead of disclosing the myriad safety defects and disregard of safety of which it was aware, New GM falsely represented that its vehicles were safe, reliable, and of high quality, and that it was a reputable manufacturer that stood behind GM-branded vehicles after they were sold.

C. Estoppel

831. New GM was under a continuous duty to disclose to Plaintiffs and the other Class members the true character, quality, and nature of the Defective Ignition Switch Vehicles.

832. New GM knowingly, affirmatively, and actively concealed the true nature, quality, and character of the Defective Ignition Switch Vehicles from consumers.

833. New GM was also under a continuous duty to disclose to Plaintiffs and the Class that scores of other defects plagued GM-branded vehicles, and that it systematically devalued safety.

834. Based on the foregoing, New GM is estopped from relying on any statutes of limitations in defense of this action.

VI. CHOICE OF LAW ALLEGATIONS

835. Plaintiffs allege that Michigan law applies nationwide to Plaintiffs' claims for fraudulent concealment, unjust enrichment, breach of the implied warranty of merchantability, and the Magnuson-Moss Warranty Act based in part on the following allegations.

836. New GM is headquartered in Detroit, Michigan.

837. New GM does substantial business in Michigan, with a significant portion of the proposed Nationwide Class located in Michigan.

838. On information and belief, Michigan hosts a significant number of New GM's U.S. operations.

839. In addition, the conduct that forms the basis for each and every Class members' claims against New GM emanated from New GM's headquarters in Detroit, Michigan.

840. New GM personnel responsible for customer communications are located at GM's Michigan headquarters, and the core decision not to disclose the array of defects to consumers was made and implemented from there.

841. The Red X team, an engineering team whose purpose is to find the cause of an engineering design defect, is located in Detroit, Michigan.

842. Some or all of the marketing campaigns falsely promoting New GM cars as safe and reliable were conceived and designed in Michigan.

843. New GM personnel responsible for managing New GM's customer service division are located at the New GM Michigan headquarters. The "Customer Assistance Centers" directs customers to call the following numbers: 1-800-222-1020 (Chevrolet), 1-800-521-7300 (Buick), 1-800-462-8782 (GMC), 1-800-458-8006 (Cadillac), 1-800-762-2737 (Pontiac), 1-800-732-5493 (HUMMER), and 1-800-553-6000 (Saturn), which are landlines in Detroit, Michigan. Customers are directed to send correspondence to GM Company, P.O. Box 33170,

Detroit, MI 48232-5170. In addition, personnel from New GM in Detroit, Michigan, also communicate via e-mail with customers concerned about the ignition switch and other safety defects.

844. Many of the key Michigan personnel with knowledge of the array of defects remained in their same positions once New GM took over Old GM. For example, the Design Research Engineer who was responsible for the rollout of the defective ignition switch in 2003 was Ray DeGiorgio. Mr. DeGiorgio continued to serve as an engineer at New GM until April 2014.

845. GM's presence is more substantial in Michigan than any other state.

VII. CLASS ALLEGATIONS

A. The Nationwide Class

846. Under Rules 23(a), 23(b)(2), and/or 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and a Class initially defined as follows for claims under Michigan law (the "Nationwide Class"):

> All persons in the United States who purchased or leased a GM-branded vehicle between July 11, 2009 and July 3, 2014 (the "Affected Vehicles") and who (i) still own or lease an Affected Vehicle, (ii) sold an Affected Vehicle on or after February 14, 2014, and/or (iii) purchased or leased an Affected Vehicle that was declared a total loss after an accident on or after February 14, 2014.

847. Excluded from the Nationwide Class are New GM, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of New GM, New GM Dealers; Class Counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons.

848. The following vehicles, if sold or leased between July 11, 2009 and July 3, 2014, are among the Affected Vehicles for the Nationwide Class (in addition to Old GM vehicles sold as used during that same time period):

MY 2009							
CHEVROLET	**BUICK**	**GMC**	**CADILLAC**	**SATURN**	**PONTIAC**	**HUMMER**	**SAAB**
Avalanche	Enclave	Acadia	CTS	Aura	G3	H2	9-3
Aveo	LaCrosse	Canyon	CTS-V	Aura Hybrid	G6	H3	9-5
Colorado	Lucerne	Envoy	DTS	Outlook	G8		9-7X
Corvette		Savana Cargo Van	Escalade	VUE	Solstice		
Equinox		Sierra 1500	Escalade ESV	VUE Hybrid	Torrent		
Express Cargo Van		Sierra 2500HD	Escalade EXT		Vibe		
Express Passenger		Sierra 3500HD	Escalade Hybrid				
Impala		Yukon	SRX				
Malibu		Yukon XL	STS				
Silverado 1500			STS-V				
Silverado 1500 Hybrid			XLR				
Silverado 3500HD			XLR-V				
Suburban							
Tahoe							
Tahoe Hybrid							
Trailblazer							
Traverse							
Impala Police							

MY 2010							
CHEVROLET	**BUICK**	**GMC**	**CADILLAC**	**SATURN**	**PONTIAC**	**HUMMER**	**SAAB**
Avalanche	Enclave	Acadia	CTS Sedan	Aura	G6	H2	9-3
Aveo	LaCrosse	Canyon	CTS-V	Outlook	Vibe	H3 SUV	9-5
Camaro	Lucerne	Savana Cargo Van	CTS Wagon	VUE		H3T	
Colorado		Sierra 1500	DTS				
Corvette		Sierra 2500HD	Escalade				
Equinox		Sierra 3500HD	Escalade ESV				
Express Cargo Van		Terrain	Escalade EXT				
Express Passenger		Yukon	Escalade Hybrid				
Impala		Yukon XL	SRX				

MY 2010							
CHEVROLET	**BUICK**	**GMC**	**CADILLAC**	**SATURN**	**PONTIAC**	**HUMMER**	**SAAB**
Malibu			STS				
Malibu Hybrid							
Silverado 1500							
Silverado 1500 Hybrid							
Silverado 2500HD							
Silverado 3500HD							
Suburban							
Tahoe							
Tahoe Hybrid							
Traverse							

MY 2011							
CHEVROLET	**BUICK**	**GMC**	**CADILLAC**	**SATURN**	**PONTIAC**	**HUMMER**	**SAAB**
Avalanche	Enclave	Acadia	CTS Coupe	N/A	N/A	N/A	N/A
Aveo	LaCrosse	Canyon	CTS Sedan				
Camaro	Lucerne	Savana Cargo Van	CTS Wagon				
Caprice Police Patrol Vehicle	Regal	Sierra 1500	CTS-V Coupe				
Caprice							
Colorado		Sierra 2500HD	CTS-V Sedan				
Corvette		Sierra 3500HD	CTS-V Wagon				
Cruze		Terrain	DTS				
Equinox		Yukon	Escalade				
Express Cargo Van		Yukon XL	Escalade ESV				
Express Passenger			Escalade EXT				
Impala			Escalade Hybrid				
Malibu			SRX				
Silverado 1500			STS				
Silverado 1500 Hybrid							
Silverado 2500HD							
Silverado 3500HD							
Suburban							
Tahoe							
Tahoe Hybrid							

MY 2011							
CHEVROLET	BUICK	GMC	CADILLAC	SATURN	PONTIAC	HUMMER	SAAB
Traverse							
Volt							
Impala Police							

MY 2012							
CHEVROLET	BUICK	GMC	CADILLAC	SATURN	PONTIAC	HUMMER	SAAB
Avalanche	Enclave	Acadia	CTS Coupe	N/A	N/A	N/A	N/A
Camaro	LaCrosse	Canyon	CTS Sedan				
Captiva Sport Fleet	Regal	Savana Cargo Van	CTS Wagon				
Caprice							
Colorado	Verano	Sierra 1500	CTS-V Coupe				
Corvette		Sierra 2500HD	CTS-V Sedan				
Cruze		Sierra 3500HD	CTS-V Wagon				
Equinox		Terrain	Escalade				
Express Cargo Van		Yukon	Escalade ESV				
Express Passenger		Yukon XL	Escalade EXT				
Impala			Escalade Hybrid				
Malibu			SRX				
Silverado 1500							
Silverado 1500 Hybrid							
Silverado 2500HD							
Silverado 3500HD							
Sonic							
Suburban							
Tahoe							
Tahoe Hybrid							
Traverse							
Volt							

MY 2013							
CHEVROLET	BUICK	GMC	CADILLAC	SATURN	PONTIAC	HUMMER	SAAB
Avalanche	Enclave	Acadia	ATS	N/A	N/A	N/A	N/A
Camaro	Encore	Savana Cargo Van	CTS Coupe				
Captiva Sport Fleet	LaCrosse	Sierra 1500	CTS Sedan				

MY 2013							
CHEVROLET	**BUICK**	**GMC**	**CADILLAC**	**SATURN**	**PONTIAC**	**HUMMER**	**SAAB**
Caprice							
Corvette	Regal	Sierra 2500HD	CTS Wagon				
Cruze	Verano	Sierra 3500HD	CTS-V Coupe				
Equinox		Terrain	CTS-V Sedan				
Express Cargo Van		Yukon	CTS-V Wagon				
Express Passenger		Yukon XL	Escalade				
Impala			Escalade ESV				
Malibu			Escalade EXT				
Silverado 1500			Escalade Hybrid				
Silverado 1500 Hybrid			SRX				
Silverado 2500HD			XTS				
Silverado 3500HD							
Sonic							
Spark							
Suburban							
Tahoe							
Tahoe Hybrid							
Traverse							
Volt							

MY 2014							
CHEVROLET	**BUICK**	**GMC**	**CADILLAC**	**SATURN**	**PONTIAC**	**HUMMER**	**SAAB**
Camaro	Enclave	Acadia	ATS	N/A	N/A	N/A	N/A
Captiva Sport Fleet	Encore	Savana Cargo Van	CTS Coupe				
Corvette Stingray	LaCrosse	Sierra 1500	CTS Sedan				
Cruze	Regal	Sierra 2500HD	CTS Wagon				
Equinox	Verano	Sierra 3500HD	CTS-V Coupe				
Express Cargo Van		Terrain	CTS-V Sedan				
Express Passenger		Yukon	CTS-V Wagon				
Impala		Yukon XL	ELR				
Impala Limited			Escalade				
Malibu			Escalade ESV				
Silverado 1500			SRX				

MY 2014							
CHEVROLET	**BUICK**	**GMC**	**CADILLAC**	**SATURN**	**PONTIAC**	**HUMMER**	**SAAB**
Silverado 2500HD			XTS				
Silverado 3500HD							
Sonic							
Spark							
Spark EV							
SS							
Suburban							
Tahoe							
Traverse							
Volt							

MY 2015							
CHEVROLET	**BUICK**	**GMC**	**CADILLAC**	**SATURN**	**PONTIAC**	**HUMMER**	**SAAB**
Camaro	Enclave	Acadia	ATS Coupe	N/A	N/A	N/A	N/A
Captiva Sport Fleet	LaCrosse	Savana Cargo Van	ATS Sedan				
City Express Cargo Van	Regal	Sierra 2500HD	CTS Sedan				
Equinox		Sierra 3500HD	CTS-V Coupe				
Express Cargo Van		Terrain	ELR				
Express Passenger		Yukon	Escalade				
Impala		Yukon XL	Escalade ESV				
Impala Limited			SRX				
Malibu			XTS				
Silverado 2500HD							
Silverado 3500HD							
Spark							
Spark EV							
Suburban							
Tahoe							
Traverse							
Volt							

849. Under Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiffs New Bedford Auto Sales and Nettleton Auto Sales bring this action on behalf of

themselves and a Dealer Class initially defined as follows for claims under Michigan law (the "Nationwide Dealer Class"):

> All non-GM car dealerships in the United States that, on or after February 14, 2014, have sold or leased an Affected Vehicle or retained an Affected Vehicle in their inventory, when such Affected Vehicle was purchased by the dealership between July 11, 2009 and July 3, 2014.

850. Under Rules 23(a), (b)(2) and/or 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and a Subclass initially defined as follows (the Nationwide Ignition Switch Defect Subclass):

> All persons in the United States who either (i) own or lease a Defective Ignition Switch Vehicle that was sold or leased as a new vehicle by New GM between July 11, 2009 and July 3, 2014, (ii) sold such a vehicle on or after February 14, 2014, and/or (iii) purchased or leased a Defective Ignition Switch Vehicle that was declared a total loss after an accident on or after February 14, 2014.

851. The following vehicles are included in the Nationwide Ignition Switch Defect Subclass if they were sold or leased as a new vehicle between July 11, 2009 and July 3, 2014:

RECALL	VEHICLES AFFECTED
Ignition Switch Torque Performance:	· 2009-2010 Chevy Cobalt
	· 2009-2011 Chevy HHR
	· 2009-2010 Pontiac G5
	· 2009-2010 Pontiac Solstice
	· 2009-2010 Saturn Sky
Ignition Cylinder:	· 2009-2010 Chevy Cobalt
	· 2009-2011 Chevy HHR
	· 2009-2010 Pontiac G5
	· 2009-2010 Pontiac Solstice
	· 2009-2010 Saturn Sky
Key FOB/Ignition Switch Placement:	· 2010-2014 Chevy Camaro

RECALL	VEHICLES AFFECTED
Ignition Switch/Weighted Key Ring/Key Hole Replacement:	· 2009 Buick LaCrosse
	· 2009-2011 Buick Lucerne
	· 2009-2011 Cadillac DTS
	· 2009-2014 Chevy Impala
	2011-2013 Chevy Caprice
	2009 Pontiac G8

B. State Law Classes

852. Plaintiffs allege claims, under the laws of each state and the District of Columbia, for the following Statewide Classes:

> All persons who purchased or leased a GM-branded vehicle between July 11, 2009 and July 3, 2014 (the "Affected Vehicles") and (i) who still own or lease an Affected Vehicle, (ii) who sold an Affected Vehicle on or after February 14, 2014, and/or (iii) purchased or leased an Affected Vehicle that was declared a total loss after an accident on or after February 14, 2014.

853. Plaintiffs also allege claims, under the laws of each state and the District of Columbia, for the following Statewide Ignition Switch Defect Subclasses:

> All persons who either (i) own or lease a Defective Ignition Switch Vehicle that was sold or leased as a new vehicle by New GM between July 11, 2009 and July 3, 2014, (ii) sold such a vehicle on or after February 14, 2014, and/or (iii) purchased or leased a Defective Ignition Switch Vehicle that was declared a total loss after an accident on or after February 14, 2014.

854. Excluded from each of the Classes and Subclasses are New GM, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of New GM; New GM Dealers; Class Counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons.

C. The Classes and Subclasses Meet Rule 23 Requirements

855. Plaintiffs are informed and believe that there are over 10 million Affected Vehicles nationwide and hundreds-of-thousands of the Affected Vehicles in each state, and over 2 million Defective Ignition Switch Vehicles owned or leased by members of the National Ignition Switch Defect Subclass. Individual joinder of all Class members is impracticable.

856. The Class can be readily identified using registration records, sales records, production records, and other information kept by New GM or third parties in the usual course of business and within their control.

857. Questions of law and fact are common to each of the Classes and Subclasses and predominate over questions affecting only individual members, including the following:

a. Whether numerous GM-branded vehicles suffer from serious defects;

b. Whether New GM was aware of many or all of the defects, and concealed the defects from regulators, Plaintiffs, and the Class;

c. Whether New GM misrepresented to Affected Vehicle purchasers that GM-branded vehicles are safe, reliable, and of high quality;

d. Whether New GM misrepresented itself as a reputable manufacturer that values safety and stands behind its vehicles after they are sold;

e. Whether New GM actively encouraged the concealment of known defects from regulators and consumers;

f. Whether New GM engaged in fraudulent concealment;

g. Whether New GM engaged in unfair, deceptive, unlawful, and/or fraudulent acts or practices in trade or commerce by failing to disclose that many GM-branded vehicles had serious defects;

h. Whether New GM violated various state consumer protection statutes;

i. Whether the Defective Ignition Switch Vehicles were unfit for the ordinary purposes for which they were used, in violation of the implied warranty of merchantability;

j. Whether New GM's unlawful, unfair, fraudulent, and/or deceptive practices harmed Plaintiffs and the members of the Class;

k. Whether New GM has been unjustly enriched;

l. Whether Plaintiffs and the members of the Class are entitled to equitable and/or injunctive relief;

m. What aggregate amounts of statutory penalties, as available under the laws of Michigan and other States, are sufficient to punish and deter New GM and to vindicate statutory and public policy, and how such penalties should most equitably be distributed among Class members; and

n. Whether any or all applicable limitations periods are tolled by acts of fraudulent concealment.

858. Plaintiffs' claims are typical of the claims of the Class members, and arise from the same course of conduct by New GM. The relief Plaintiffs seek is typical of the relief sought for the absent Class members.

859. Plaintiffs will fairly and adequately represent and protect the interests of all absent Class members. Plaintiffs are represented by counsel competent and experienced in product liability, consumer protection, and class action litigation.

860. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual Class members is impracticable. Because the damages suffered by each individual Class member may be

relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous. Rule 23 provides the Court with authority and flexibility to maximize the benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiffs or on its own determination, utilize the processes of Rule 23(C)(4) and/or (C)(5) certify common questions of fact or law and to designate subclasses.

861. The prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications for individual Class members, which would establish incompatible standards of conduct for New GM. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

862. Plaintiffs are not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiffs anticipate providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

863. Absent a class action, most Class members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class members' claims, it is likely that only a few Class members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class members will continue to incur damages, and Defendant's misconduct will continue without remedy.

VIII. CLAIMS FOR RELIEF

A. Nationwide Class Claims

COUNT I

FRAUDULENT CONCEALMENT
(BY NATIONWIDE AND NATIONWIDE DEALER CLASSES)

864. Plaintiffs and the Class incorporate by reference each preceding and following paragraph as though fully set forth at length herein.

865. This claim is brought on behalf of the Nationwide and Nationwide Dealer Classes, under Michigan law or alternatively, under the law of all states because there is no material difference in the law of fraudulent concealment.

866. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

867. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

868. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

869. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

870. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and

access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Nationwide and Nationwide Dealer Classes. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Nationwide and Nationwide Dealer Classes. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

871. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Nationwide and Nationwide Dealer Classes.

872. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Nationwide and Nationwide Dealer Classes and conceal material information regarding defects that exist in GM-branded vehicles.

873. Plaintiffs and the Nationwide Class and Nationwide Dealer Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Nationwide and Nationwide Dealer Classes' actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Nationwide and Nationwide Dealer Classes.

874. Because of the concealment and/or suppression of the facts, Plaintiffs and the Nationwide and Nationwide Dealer Classes sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that

existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

875. The value of all Nationwide and Nationwide Dealer Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

876. Accordingly, New GM is liable to the Nationwide and Nationwide Dealer Classes for their damages in an amount to be proven at trial.

877. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Nationwide and Nationwide Dealer Classes' rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT II

UNJUST ENRICHMENT
(BY NATIONWIDE AND NATIONWIDE DEALER CLASSES)

878. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

879. This claim for unjust enrichment is brought on behalf of the Nationwide Dealer classes under Michigan law. If Michigan law does not apply, it is brought in the alternative under the laws of the states where Plaintiffs and Class members reside.

880. New GM has received and retained a benefit from the Plaintiffs and inequity has resulted.

881. New GM was benefitted from selling defective cars for more than they were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to pay other costs.

882. It is inequitable for New GM to retain these benefits.

883. As a result of New GM's conduct, the amount of its unjust enrichment should be disgorged, in an amount according to proof.

COUNT III

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
15 U.S.C. § 2301, *et seq.*

884. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

885. Plaintiffs bring this Count on behalf of members of the Nationwide Ignition Switch Defect Subclass who are residents of the following States: Alaska, Arkansas, California, Colorado, Delaware, District of Columbia, Hawaii, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia and Wyoming (the "Class," for the purposes of this Count).

886. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).

887. The Defective Ignition Switch Vehicles are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

888. Plaintiffs are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3). They are consumers because they are persons entitled under applicable state law to enforce against the warrantor the obligations of its implied warranties.

889. New GM is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

890. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with an implied warranty.

891. New GM provided Plaintiffs and the other Class members with an implied warranty of merchantability in connection with the purchase or lease of their vehicles that is an "implied warranty" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7). As a part of the implied warranty of merchantability, New GM warranted that the Defective Ignition Switch Vehicles were fit for their ordinary purpose as safe passenger motor vehicles, would pass without objection in the trade as designed, manufactured, and marketed, and were adequately contained, packaged, and labeled.

892. New GM breached its implied warranties, as described in more detail above, and is therefore liable to Plaintiffs and the Class pursuant to 15 U.S.C. § 2310(d)(1). Without limitation, the Defective Ignition Switch Vehicles share common design defects in that they are equipped with defective ignition switch systems that can suddenly fail during normal operation, leaving occupants of the Defective Ignition Switch Vehicles vulnerable to crashes, serious injury, and death. New GM has admitted that the Defective Ignition Switch Vehicles are defective in issuing its recalls, but the recalls are woefully insufficient to address each of the defects.

893. In its capacity as a warrantor, New GM had knowledge of the inherent defects in the Defective Ignition Switch Vehicles. Any effort by New GM to limit the implied warranties

in a manner that would exclude coverage of the Defective Ignition Switch Vehicles is unconscionable, and any such effort to disclaim, or otherwise limit, liability for the Defective Ignition Switch Vehicles is null and void.

894. Any limitations New GM might seek to impose on its warranties are procedurally unconscionable. There was unequal bargaining power between New GM and Plaintiffs and the other Class members, as, at the time of purchase and lease, Plaintiffs and the other Class members had no other options for purchasing warranty coverage other than directly from New GM.

895. Any limitations New GM might seek to impose on its warranties are substantively unconscionable. New GM knew that the Defective Ignition Switch Vehicles were defective and would continue to pose safety risks after the warranties purportedly expired. New GM failed to disclose these defects to Plaintiffs and the other Class members. Thus, New GM's enforcement of the durational limitations on those warranties is harsh and shocks the conscience.

896. Plaintiffs and each of the other Class members have had sufficient direct dealings with either New GM or its agents (dealerships) to establish privity of contract between New GM, on the one hand, and Plaintiffs and each of the other Class members, on the other hand. Nonetheless, privity is not required here because Plaintiffs and each of the other Class members are intended third-party beneficiaries of contracts between New GM and its dealers, and specifically, of New GM's implied warranties. The dealers were not intended to be the ultimate consumers of the Defective Ignition Switch Vehicles and have no rights under the warranty agreements provided with the Defective Ignition Switch Vehicles; the warranty agreements were designed for and intended to benefit consumers. Finally, privity is also not required because the

Defective Ignition Switch Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

897. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and are not required to give New GM notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.

898. Plaintiffs and the other Class members would suffer economic hardship if they returned their Defective Ignition Switch Vehicles but did not receive the return of all payments made by them. Because New GM is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the other Class members have not re-accepted their Defective Ignition Switch Vehicles by retaining them.

899. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of $25. The amount in controversy of this action exceeds the sum of $50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit. Plaintiffs, individually and on behalf of the other Class members, seek all damages permitted by law, including diminution in value of their vehicles, in an amount to be proven at trial. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other Class members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have reasonably been incurred by Plaintiffs and the other Class members in connection with the commencement and prosecution of this action.

900. Further, Plaintiffs and the Class are also entitled to equitable relief under 15 U.S.C. § 2310(d)(1). Based on New GM's continuing failures to fix the known dangerous

defects, Plaintiffs seek a declaration that New GM has not adequately implemented its recall commitments and requirements and general commitments to fix its failed processes, and injunctive relief in the form of judicial supervision over the recall process is warranted. Plaintiffs also seek the establishment of the New GM-funded program for Plaintiffs and Class members to recover out of pocket costs incurred in attempting to rectify the Ignition Switch Defects in their vehicles.

COUNT IV

BREACH OF IMPLIED WARRANTY

901. Plaintiffs reallege and incorporate by reference all paragraphs as if full set forth herein.

902. Plaintiffs bring this Count on behalf of the Nationwide Ignition Switch Defect Subclass under Michigan law.

903. New GM was a merchant with respect to motor vehicles within the meaning of MICH. COMP. LAWS § 440.2314(1).

904. Under MICH. COMP. LAWS § 440.2314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

905. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

906. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent

by Plaintiffs and the Nationwide Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

907. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Nationwide Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

COUNT V

NEGLIGENCE

(On Behalf of the Arkansas, Louisiana, Maryland, and Ohio State Ignition Switch Defect Subclasses)

908. Plaintiffs bring this Count on behalf of members of the Ignition Switch Defect Subclass who reside in Arkansas, Louisiana, Maryland, and Ohio ("Negligence Subclasses").

909. New GM has designed, manufactured, sold, or otherwise placed in the stream of commerce Defective Ignition Switch Vehicles, as set forth above.

910. New GM had a duty to design and manufacture a product that would be safe for its intended and foreseeable uses and users, including the use to which its products were put by Plaintiffs and the other members of the Negligence Subclasses. New GM breached its duties to Plaintiffs and the other members of the Negligence Subclasses because they were negligent in the design, development, manufacture, and testing of the Defective Ignition Switch Vehicles, and New GM is responsible for this negligence.

911. New GM was negligent in the design, development, manufacture, and testing of the Defective Ignition Switch Vehicles because they knew, or in the exercise of reasonable care should have known, that the vehicles equipped with defective ignition systems pose an unreasonable risk of death or serious bodily injury to Plaintiffs and the other members of the

Negligence Subclasses, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents in which brakes, power steering, and airbags are all rendered inoperable.

912. Whereupon Plaintiffs, individually and on behalf of the other members of the Negligence Subclasses, respectfully rely upon the **RESTATEMENT (SECOND) OF TORTS** § 395.

913. New GM further breached its duties to Plaintiffs and the other members of the Negligence Subclasses by supplying directly or through a third person defective vehicles to be used by such foreseeable persons as Plaintiffs and the other members of the Negligence Subclasses when:

a. Old GM and New GM knew or had reason to know that the vehicles were dangerous or likely to be dangerous for the use for which they were supplied; and

b. Old GM and New GM failed to exercise reasonable care to inform customers of the dangerous condition or of the facts under which the vehicles are likely to be dangerous.

914. New GM had a continuing duty to warn and instruct the intended and foreseeable users of its vehicles, including Plaintiffs and the other members of the Negligence Subclasses, of the defective condition of the vehicles and the high degree of risk attendant to using the vehicles. Plaintiffs and the other members of the Negligence Subclasses were entitled to know that the vehicles, in their ordinary operation, were not reasonably safe for their intended and ordinary purposes and uses.

915. New GM knew or should have known of the defects described herein, New GM breached its duty to Plaintiffs and the other members of the Negligence Subclasses because it

failed to warn and instruct the intended and foreseeable users of its vehicles of the defective condition of the Vehicles and the high degree of risk attendant to using the vehicles.

916. As a direct and proximate result of New GM's negligence, Plaintiffs and the other members of the Negligence Subclasses suffered damages.

B. State Class Claims

917. The following state law class claims are asserted in addition to the Nationwide Classes.

ALABAMA

COUNT I

VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT

(ALA. CODE § 8-19-1, *et seq.*)

918. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

919. This claim is brought solely on behalf of Nationwide Class members who are Alabama residents (the "Alabama Class").

920. Plaintiffs and the Alabama Class are "consumers" within the meaning of ALA. CODE § 8-19-3(2).

921. Plaintiffs, the Alabama Class, and New GM are "persons" within the meaning of ALA. CODE § 8-19-3(5).

922. The Affected Vehicles are "goods" within the meaning of ALA. CODE § 8-19-3(3).

923. New GM was and is engaged in "trade or commerce" within the meaning of ALA. CODE § 8-19-3(8).

924. The Alabama Deceptive Trade Practices Act ("Alabama DTPA") declares several specific actions to be unlawful, including: "(5) Representing that goods or services have

sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have," "(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another," and "(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce." ALA. CODE § 8-19-5. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Alabama DTPA, including: representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not; and engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.

925. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

926. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

927. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

928. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

929. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Alabama DTPA.

930. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

931. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

932. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Alabama Class.

933. New GM knew or should have known that its conduct violated the Alabama DTPA.

934. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

935. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

936. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

937. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Alabama Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

938. Plaintiffs and the Alabama Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

939. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

940. As a direct and proximate result of New GM's violations of the Alabama DTPA, Plaintiffs and the Alabama Class have suffered injury-in-fact and/or actual damage.

941. Pursuant to ALA. CODE § 8-19-10, Plaintiffs and the Alabama Class seek monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $100 for each Plaintiff and each Alabama Class member.

942. Plaintiffs also seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the ALA. CODE § 8-19-1, *et seq.*

943. On October 8, 2014, certain Plaintiffs sent a letter complying with ALA. CODE § 8-19-10(e). Plaintiffs presently do not claim relief under the Alabama DTPA until and unless New GM fails to remedy its unlawful conduct within the requisite time period, after which Plaintiffs seek all damages and relief to which Plaintiffs and the Alabama Class are entitled.

COUNT II

FRAUD BY CONCEALMENT

944. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

945. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Alabama residents (the "Alabama Class").

946. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

947. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

948. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

949. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

950. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Alabama Class. These omitted and concealed facts were material because

they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Alabama Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

951. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Alabama Class.

952. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Alabama Class and conceal material information regarding defects that exist in GM-branded vehicles.

953. Plaintiffs and the Alabama Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Alabama Class.

954. Because of the concealment and/or suppression of the facts, Plaintiffs and the Alabama Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

955. The value of all Alabama Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has

greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

956. Accordingly, New GM is liable to the Alabama Class for their damages in an amount to be proven at trial.

957. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Alabama Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

ALASKA

COUNT I

VIOLATION OF THE ALASKA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT

(ALASKA STAT. ANN. § 45.50.471, *et seq.*)

958. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

959. This claim is brought only on behalf of Nationwide Class members who are Alaska residents (the "Alaska Class").

960. The Alaska Unfair Trade Practices And Consumer Protection Act ("Alaska CPA") declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce unlawful, including: "(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person

does not have;" "(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" "(8) advertising goods or services with intent not to sell them as advertised;" or "(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged." ALASKA STAT. ANN. § 45.50.471.

961. New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles in violation of the Alaska CPA. New GM also engaged in unlawful trade practices by representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a particular standard and quality when they are not; advertising the Affected Vehicles with the intent not to sell them as advertised; and omitting material facts in describing the Affected Vehicles.

962. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

963. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the

existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

964. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

965. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair or deceptive business practices in violation of the Alaska CPA.

966. In the course of GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

967. GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

968. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Alaska Class.

969. New GM knew or should have known that its conduct violated the Alaska CPA.

970. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

971. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

972. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

973. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Alaska Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

974. Plaintiffs and the Alaska Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or

leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

975. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

976. As a direct and proximate result of New GM's violations of the Alaska CPA, Plaintiffs and the Alaska Class have suffered injury-in-fact and/or actual damage.

977. Pursuant to ALASKA STAT. ANN. § 45.50. 535(b)(1), Plaintiffs and the Alaska Class seek monetary relief against New GM measured as the greater of (a) three times the actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500 for each Plaintiff and each Alaska Class member.

978. Plaintiffs also seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Alaska CPA.

979. On October 8, 2014, certain Plaintiffs sent a letter complying with ALASKA STAT. ANN. § 45.50. 535(b)(1). Plaintiffs presently do not claim injunctive relief under the Alaska CPA until and unless New GM fails to remedy its unlawful conduct within the requisite time period, after which Plaintiffs seek all injunctive relief to which Plaintiffs and the Alaska Class are entitled.

COUNT II

FRAUD BY CONCEALMENT

980. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

981. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Alaska residents (the "Alaska Class").

982. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

983. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

984. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

985. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

986. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Alaska Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Alaska Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

987. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Alaska Class.

988. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Alaska Class and conceal material information regarding defects that exist in GM-branded vehicles.

989. Plaintiffs and the Alaska Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Alaska Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Alaska Class.

990. Because of the concealment and/or suppression of the facts, Plaintiffs and the Alaska Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

991. The value of all Alaska Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

992. Accordingly, New GM is liable to the Alaska Class for their damages in an amount to be proven at trial.

993. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Alaska Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(ALASKA STAT. § 45.02.314)

994. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

995. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Alaska residents who are members of the Ignition Switch Defect Subclass (the "Alaska Ignition Switch Defect Subclass").

996. New GM was a merchant with respect to motor vehicles within the meaning of ALASKA STAT. § 45.02.104(a).

997. Under ALASKA STAT. § 45.02.314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

998. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems

that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

999. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Alaska Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recalls and the allegations of vehicle defects became public.

1000. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Alaska Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

ARIZONA

COUNT I

VIOLATIONS OF THE CONSUMER FRAUD ACT

(ARIZONA REV. STAT. § 44-1521, *et seq.*)

1001. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1002. This claim is brought only on behalf of Class members who are Arizona residents (the "Arizona Class").

1003. New GM, Plaintiffs, and the Arizona Class are "persons" within the meaning of the Arizona Consumer Fraud Act ("Arizona CFA"), ARIZ. REV. STAT. § 44-1521(6).

1004. The Affected Vehicles are "merchandise" within the meaning of ARIZ. REV. STAT. § 44-1521(5).

1005. The Arizona CFA provides that "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, . . . misrepresentation, or concealment,

suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale . . of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice." ARIZ. REV. STAT. § 44-1522(A).

1006. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1007. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1008. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1009. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1010. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Arizona CFA.

1011. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1012. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1013. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Arizona Class.

1014. New GM knew or should have known that its conduct violated the Arizona CFA.

1015. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1016. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1017. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1018. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Arizona Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1019. Plaintiffs and the Arizona Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1020. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1021. The recalls and repairs instituted by New GM have not been adequate.

1022. As a direct and proximate result of New GM's violations of the Arizona CFA, Plaintiffs and the Arizona Class have suffered injury-in-fact and/or actual damage.

1023. Plaintiffs and the Arizona Class seek monetary relief against New GM in an amount to be determined at trial. Plaintiffs and the Arizona Class also seek punitive damages because New GM engaged in aggravated and outrageous conduct with an evil mind.

1024. Plaintiffs also seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Arizona CFA.

COUNT II

FRAUD BY CONCEALMENT

1025. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1026. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Class members who are Arizona residents (the "Arizona Class").

1027. New GM concealed and suppressed material facts concerning the quality of its vehicles and the New GM brand.

1028. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1029. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1030. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1031. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Arizona Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Arizona Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1032. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Arizona Class.

1033. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Arizona Class and conceal material information regarding defects that exist in GM-branded vehicles.

1034. Plaintiffs and the Arizona Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts.

Plaintiffs' and the Arizona Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Arizona Class.

1035. Because of the concealment and/or suppression of the facts, Plaintiffs and the Arizona Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1036. The value of all Arizona Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1037. Accordingly, New GM is liable to the Arizona Class for their damages in an amount to be proven at trial.

1038. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Arizona Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

ARKANSAS

COUNT I

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICE ACT

(ARK. CODE ANN. § 4-88-101, *et seq*.)

1039. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1040. This claim is brought only on behalf of Class members who are Arkansas residents (the "Arkansas Class").

1041. New GM, Plaintiffs, and the Arkansas Class are "persons" within the meaning of Arkansas Deceptive Trade Practices Act ("Arkansas DTPA"), ARK. CODE ANN. § 4-88-102(5).

1042. The Affected Vehicles are "goods" within the meaning of ARK. CODE ANN. § 4-88-102(4).

1043. The Arkansas DTPA prohibits "[d]eceptive and unconscionable trade practices," which include, but are not limited to, a list of enumerated items, including "[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]" ARK. CODE ANN. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in connection with the sale or advertisement of any goods: "(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission." ARK. CODE ANN. § 4-88-108. New GM violated the Arkansas DTPA and engaged in deceptive and unconscionable trade practices by, among other things, systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles and otherwise engaging in activities with a tendency or capacity to deceive.

1044. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1045. New GM's actions as set forth above occurred in the conduct of trade or commerce.

1046. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1047. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1048. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1049. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold,

New GM engaged in deceptive and unconscionable business practices in violation of the Arkansas DTPA.

1050. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1051. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1052. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Arkansas Class.

1053. New GM knew or should have known that its conduct violated the Arkansas DTPA.

1054. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1055. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1056. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1057. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Arkansas Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1058. Plaintiffs and the Arkansas Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1059. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1060. As a direct and proximate result of New GM's violations of the Arkansas DTPA, Plaintiffs and the Arkansas Class have suffered injury-in-fact and/or actual damage.

1061. Plaintiffs and the Arkansas Class seek monetary relief against New GM in an amount to be determined at trial. Plaintiffs and the Arkansas Class also seek punitive damages because New GM acted wantonly in causing the injury or with such a conscious indifference to the consequences that malice may be inferred.

1062. Plaintiffs also seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Arkansas DTPA.

COUNT II

FRAUD BY CONCEALMENT

1063. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1064. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Class members who are Arkansas residents (the "Arkansas Class").

1065. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1066. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1067. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1068. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands

behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1069. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Arkansas Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Arkansas Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1070. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Arkansas Class.

1071. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Arkansas Class and conceal material information regarding defects that exist in GM-branded vehicles.

1072. Plaintiffs and the Arkansas Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Arkansas Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Arkansas Class.

1073. Because of the concealment and/or suppression of the facts, Plaintiffs and the Arkansas Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of

GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1074. The value of all Arkansas Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1075. Accordingly, New GM is liable to the Arkansas Class for their damages in an amount to be proven at trial.

1076. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Arkansas Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(ARK. CODE ANN. § 4-2-314)

1077. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1078. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only

on behalf of Ignition Switch Defect Subclass members who are Arkansas residents (the "Arkansas Ignition Switch Defect Subclass").

1079. New GM was a merchant with respect to motor vehicles within the meaning of ARK. CODE ANN. § 4-2-104(1).

1080. Under ARK. CODE ANN. § 4-2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1081. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1082. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Arkansas Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1083. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Arkansas Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

CALIFORNIA

COUNT I

VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT

(CAL. CIV. CODE § 1750, *et seq*.)

1084. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1085. This claim is brought only on behalf of Nationwide Class members who are California residents.

1086. New GM is a "person" under CAL. CIV. CODE § 1761(c).

1087. Plaintiffs and the California Class are "consumers," as defined by CAL. CIVIL CODE § 1761(d), who purchased or leased one or more Affected Vehicles.

1088. The California Legal Remedies Act ("CLRA") prohibits "unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer[.]" CAL. CIV. CODE § 1770(a). New GM has engaged in unfair or deceptive acts or practices that violated CAL. CIV. CODE § 1750, *et seq*., as described above and below, by among other things, representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not.

1089. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful

trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1090. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1091. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1092. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1093. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the CLRA.

1094. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed

above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1095. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1096. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the California Class.

1097. New GM knew or should have known that its conduct violated the CLRA.

1098. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1099. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1100. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed,

the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1101. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the California Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1102. Plaintiffs and the California Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1103. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1104. As a direct and proximate result of New GM's violations of the CLRA, Plaintiffs and the California Class have suffered injury-in-fact and/or actual damage.

1105. Under CAL. CIV. CODE § 1780(a), Plaintiffs and the California Class seek monetary relief against New GM measured as the diminution of the value of their vehicles caused by New GM's violations of the CLRA as alleged herein.

1106. Under CAL. CIV. CODE § 1780(b), Plaintiffs seek an additional award against New GM of up to $5,000 for each California Class member who qualifies as a "senior citizen" or "disabled person" under the CLRA. New GM knew or should have known that its conduct was directed to one or more California Class members who are senior citizens or disabled persons. New GM's conduct caused one or more of these senior citizens or disabled persons to suffer a substantial loss of property set aside for retirement or for personal or family care and maintenance, or assets essential to the health or welfare of the senior citizen or disabled person. One or more California Class members who are senior citizens or disabled persons are substantially more vulnerable to New GM's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and each of them suffered substantial physical, emotional, or economic damage resulting from New GM's conduct.

1107. Plaintiffs also seek punitive damages against New GM because it carried out reprehensible conduct with willful and conscious disregard of the rights and safety of others, subjecting Plaintiffs and the California Class to potential cruel and unjust hardship as a result. New GM intentionally and willfully deceived Plaintiffs on life-or-death matters, and concealed material facts that only New GM knew. New GM's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages under CAL. CIV. CODE § 3294.

1108. Plaintiffs further seek an order enjoining New GM's unfair or deceptive acts or practices, restitution, punitive damages, costs of court, attorneys' fees under CAL. CIV. CODE § 1780(e), and any other just and proper relief available under the CLRA.

1109. Certain Plaintiffs have sent a letter complying with CAL. CIV. CODE § 1780(b).

COUNT II

VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW

(CAL. BUS. & PROF. CODE § 17200, *et seq.*)

1110. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1111. This claim is brought only on behalf of Nationwide Class members who are California residents (the "California Class").

1112. California Business and Professions Code § 17200 prohibits any "unlawful, unfair, or fraudulent business act or practices." New GM has engaged in unlawful, fraudulent, and unfair business acts and practices in violation of the UCL.

1113. New GM violated the unlawful prong of § 17200 by the following:

a. violations of the CLRA, CAL. CIV. CODE § 1750, *et seq.*, as set forth in Count I by the acts and practices set forth in this Complaint.

b. violation of the common-law claim of negligent failure to recall, in that New GM knew or should have known that the Defective Ignition Switch Vehicles, and many other vehicles suffering myriad other defects, were dangerous and/or were likely to be dangerous when used in a reasonably foreseeable manner; New GM became aware of the attendant risks after the Defective Ignition Switch Vehicles and other defective vehicles were sold; continued to gain information further corroborating the ignition switch defects and many other defects; and failed to adequately recall the Defective Ignition Switch Vehicles and many other vehicles in a timely manner, which failure was a substantial factor in causing Plaintiffs and the Class harm, including diminished value and out-of-pocket costs.

c. violation of the National Traffic and Motor Vehicle Safety Act of 1996, codified at 49 U.S.C. §§ 30101-30170, and its regulations. Federal Motor Vehicle Safety Standard ("FMVSS") 573 governs a motor vehicle manufacturer's responsibility to notify NHTSA of a motor vehicle defect within five days of determining that the defect is safety

> related. *See* 49 C.F.R. § 573.6. New GM violated these reporting requirements by failing to report the myriad defects discussed herein within the required time, and failing to timely recall all impacted vehicles.

1114. New GM also violated the unfair and fraudulent prong of section 17200 by systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, information that was material to a reasonable consumer.

1115. New GM also violated the unfair prong of section 17200 because the acts and practices set forth in the Complaint, including systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, offend established public policy, and also because the harm New GM caused consumers greatly outweighs any benefits associated with those practices. New GM's conduct has also impaired competition within the automotive vehicles market and has prevented Plaintiffs and the California Class from making fully informed decisions about whether to lease, purchase and/or retain the Affected Vehicles.

1116. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1117. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1118. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1119. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unlawful, unfair, or fraudulent business act or practices in violation of the UCL.

1120. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1121. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1122. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the California Class.

1123. New GM knew or should have known that its conduct violated the UCL.

1124. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1125. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1126. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1127. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the California Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1128. Plaintiffs and the California Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have

purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1129. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. Its unlawful acts and practices complained of herein affect the public interest.

1130. As a direct and proximate result of New GM's violations of the UCL, Plaintiffs and the California Class have suffered injury-in-fact and/or actual damage.

1131. Plaintiffs request that this Court enter such orders or judgments as may be necessary, including a declaratory judgment that New GM has violated the UCL; an order enjoining New GM from continuing its unfair, unlawful, and/or deceptive practices; an order supervising the recalls; an order and judgment restoring to the California Class members any money lost as the result of New GM's unfair, unlawful, and deceptive trade practices, including restitution and disgorgement of any profits New GM received as a result of its unfair, unlawful, and/or deceptive practices, as provided in CAL. BUS. & PROF. CODE § 17203, CAL CIV. PROC. § 384 and CAL. CIV. CODE § 3345; and for such other relief as may be just and proper.

COUNT III

FRAUD BY CONCEALMENT

1132. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1133. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are California residents (the "California Class").

1134. New GM concealed and suppressed material facts concerning the quality of its vehicles and the New GM brand.

1135. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1136. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1137. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1138. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the California Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the California Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1139. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the California Class.

1140. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the California Class and conceal material information regarding defects that exist in GM-branded vehicles.

1141. Plaintiffs and the California Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the California Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the California Class.

1142. Because of the concealment and/or suppression of the facts, Plaintiffs and the California Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1143. The value of all California Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1144. Accordingly, New GM is liable to the California Class for their damages in an amount to be proven at trial.

1145. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the California Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT IV

VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(CAL. CIV. CODE §§ 1791.1 & 1792)

1146. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1147. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of California residents who are members of the Ignition Switch Defect Subclass (the "California Ignition Switch Defect Subclass").

1148. Plaintiffs and California Ignition Switch Defect Subclass members are "buyers" within the meaning of CAL. CIV. CODE § 1791(b).

1149. The Defective Ignition Switch Vehicles are "consumer goods" within the meaning of CIV. CODE § 1791(a).

1150. New GM was a "manufacturer" of the Defective Ignition Switch Vehicles within the meaning of CAL. CIV. CODE § 1791(j).

1151. New GM impliedly warranted to Plaintiffs and the California Ignition Switch Defect Subclass that its Defective Ignition Switch Vehicles were "merchantable" within the meaning of CAL. CIV. CODE §§ 1791.1(a) & 1792; however, the Defective Ignition Switch

Vehicles do not have the quality that a buyer would reasonably expect, and were therefore not merchantable.

1152. CAL. CIV. CODE § 1791.1(a) states:

> "Implied warranty of merchantability" or "implied warranty that goods are merchantable" means that the consumer goods meet each of the following:
>
> (1) Pass without objection in the trade under the contract description.
>
> (2) Are fit for the ordinary purposes for which such goods are used.
>
> (3) Are adequately contained, packaged, and labeled.
>
> (4) Conform to the promises or affirmations of fact made on the container or label.

1153. The Defective Ignition Switch Vehicles would not pass without objection in the automotive trade because of the ignition switch defects that cause the Defective Ignition Switch Vehicles to inadvertently shut down during ordinary driving conditions, leading to an unreasonable likelihood of accident and an unreasonable likelihood that such accidents will cause serious bodily harm or death to vehicle occupants.

1154. Because of the ignition switch defects, the Defective Ignition Switch Vehicles are not safe to drive and thus not fit for ordinary purposes.

1155. The Defective Ignition Switch Vehicles are not adequately labeled because the labeling fails to disclose the ignition switch defects and does not advise Class members to avoid attaching anything to their vehicle key rings. New GM failed to warn about the dangerous safety defects in the Defective Ignition Switch Vehicles.

1156. New GM breached the implied warranty of merchantability by selling Defective Ignition Switch Vehicles containing defects leading to the sudden and unintended shut down of

the vehicles during ordinary driving conditions. These defects have deprived Plaintiffs and the California Ignition Switch Defect Subclass of the benefit of their bargain and have caused the Defective Ignition Switch Vehicles to depreciate in value.

1157. Notice of breach is not required because Plaintiffs and California Ignition Switch Defect Subclass members did not purchase their automobiles directly from New GM.

1158. As a direct and proximate result New GM's breach of its duties under California's Lemon Law, Plaintiffs and California Ignition Switch Defect Subclass members received goods whose dangerous condition substantially impairs their value. Plaintiffs and the California Ignition Switch Defect Subclass have been damaged by the diminished value of New GM's products, the product's malfunctioning, and the nonuse of their Defective Ignition Switch Vehicles.

1159. Under CAL. CIV. CODE §§ 1791.1(d) & 1794, Plaintiffs and California Ignition Switch Defect Subclass members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Defective Ignition Switch Vehicles, or the overpayment or diminution in value of their Defective Ignition Switch Vehicles.

1160. Under CAL. CIV. CODE § 1794, Plaintiffs and California Ignition Switch Defect Subclass members are entitled to costs and attorneys' fees.

COUNT V

NEGLIGENT FAILURE TO RECALL

1161. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1162. This claim is brought only on behalf of California residents who are members of the Ignition Switch Defect Subclass (the "California Ignition Switch Defect Subclass").

1163. New GM manufactured, distributed, and sold Defective Ignition Switch Vehicles.

1164. New GM knew or reasonably should have known that the Defective Ignition Switch Vehicles were dangerous and/or were likely to be dangerous when used in a reasonably foreseeable manner.

1165. New GM either knew of the ignition switch defects before the vehicles were sold, or became aware of the ignition switch defects and their attendant risks after the vehicles were sold.

1166. New GM continued to gain information further corroborating the ignition switch defects and their risks from its inception until this year.

1167. New GM failed to adequately recall the Defective Ignition Switch Vehicles in a timely manner.

1168. Purchasers of the Defective Ignition Switch Vehicles, including the California Ignition Switch Defect Subclass, were harmed by New GM's failure to adequately recall all the Defective Ignition Switch Vehicles in a timely manner and have suffered damages, including, without limitation, damage to other components of the Defective Ignition Switch Vehicles caused by the Ignition Switch Defects, the diminished value of the Defective Ignition Switch Vehicles, the cost of modification of the defective ignition switch systems, and the costs associated with the loss of use of the Defective Ignition Switch Vehicles.

1169. New GM's failure to timely and adequately recall the Defective Ignition Switch Vehicles was a substantial factor in causing the purchasers' harm, including that of Plaintiffs and the California Ignition Switch Defect Subclass.

COLORADO

COUNT I

VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT

(COL. REV. STAT. § 6-1-101, *et seq.*)

1170. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1171. This claim is brought only on behalf of Nationwide Class members who are Colorado residents (the "Colorado Class").

1172. New GM is a "person" under § 6-1-102(6) of the Colorado Consumer Protection Act ("Colorado CPA"), COL. REV. STAT. § 6-1-101, *et seq*.

1173. Plaintiffs and Colorado Class members are "consumers" for purposes of COL. REV. STAT § 6-1-113(1)(a) who purchased or leased one or more Affected Vehicles.

1174. The Colorado CPA prohibits deceptive trade practices in the course of a person's business. New GM engaged in deceptive trade practices prohibited by the Colorado CPA, including: (1) knowingly making a false representation as to the characteristics, uses, and benefits of the Affected Vehicles that had the capacity or tendency to deceive Colorado Class members; (2) representing that the Affected Vehicles are of a particular standard, quality, and grade even though New GM knew or should have known they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; and (4) failing to disclose material information concerning the Affected Vehicles that was known to New GM at the time of advertisement or sale with the intent to induce Colorado Class members to purchase, lease or retain the Affected Vehicles.

1175. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise

engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1176. New GM's actions as set forth above occurred in the conduct of trade or commerce.

1177. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1178. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1179. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1180. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself

as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Colorado CPA.

1181. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1182. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1183. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Colorado Class.

1184. New GM knew or should have known that its conduct violated the Colorado CPA.

1185. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1186. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1187. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1188. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Colorado Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1189. Plaintiffs and the Colorado Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1190. Plaintiffs and Colorado Class members risk irreparable injury as a result of New GM's act and omissions in violation of the Colorado CPA, and these violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1191. As a direct and proximate result of New GM's violations of the Colorado CPA, Plaintiffs and the Colorado Class have suffered injury-in-fact and/or actual damage.

1192. Pursuant to COLO. REV. STAT. § 6-1-113, Plaintiffs individually and on behalf of the Colorado Class, seek monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and discretionary trebling of such damages, or (b) statutory damages in the amount of $500 for each Plaintiff and each Colorado Class member.

1193. Plaintiffs also seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Colorado CPA.

COUNT II

FRAUD BY CONCEALMENT

1194. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1195. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Colorado residents (the "Colorado Class").

1196. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1197. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1198. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1199. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1200. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Colorado Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Colorado Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1201. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Colorado Class.

1202. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Colorado Class and conceal material information regarding defects that exist in GM-branded vehicles.

1203. Plaintiffs and the Colorado Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Colorado Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Colorado Class.

1204. Because of the concealment and/or suppression of the facts, Plaintiffs and the Colorado Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1205. The value of all Colorado Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1206. Accordingly, New GM is liable to the Colorado Class for their damages in an amount to be proven at trial.

1207. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Colorado Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(COL. REV. STAT. § 4-2-314)

1208. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1209. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Colorado residents who are members of the Ignition Switch Defect Subclass (the "Colorado Ignition Switch Defect Subclass").

1210. New GM was a merchant with respect to motor vehicles.

1211. Under COL. REV. STAT. § 4-2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1212. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1213. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Colorado Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1214. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Colorado Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

CONNECTICUT

COUNT I

VIOLATION OF CONNECTICUT UNLAWFUL TRADE PRACTICES ACT

(CONN. GEN. STAT. § 42-110A, *et seq*.)

1215. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1216. This claim is brought only on behalf of Class members who are Connecticut residents (the "Connecticut Class").

1217. The Connecticut Unfair Trade Practices Act ("Connecticut UTPA") provides: "No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." CONN. GEN. STAT. § 42-110b(a).

1218. New GM is a "person" within the meaning of CONN. GEN. STAT. § 42-110a(3). New GM is in "trade" or "commerce" within the meaning of CONN. GEN. STAT. § 42-110a(4).

1219. New GM participated in deceptive trade practices that violated the Connecticut UTPA as described herein. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1220. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1221. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1222. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1223. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Connecticut UTPA.

1224. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles

were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1225. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1226. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Connecticut Class.

1227. New GM knew or should have known that its conduct violated the Connecticut UTPA.

1228. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1229. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1230. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed,

the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1231. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Connecticut Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1232. Plaintiffs and the Connecticut Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1233. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1234. As a direct and proximate result of New GM's violations of the Connecticut UTPA, Plaintiffs and the Connecticut Class have suffered injury-in-fact and/or actual damage.

1235. Plaintiffs and the Class are entitled to recover their actual damages, punitive damages, and attorneys' fees pursuant to CONN. GEN. STAT. § 42-110g.

1236. New GM acted with a reckless indifference to another's rights or wanton or intentional violation to another's rights and otherwise engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights and safety of others.

COUNT II

FRAUDULENT CONCEALMENT

1237. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1238. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Class members who are Connecticut residents (the "Connecticut Class").

1239. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1240. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1241. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1242. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1243. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Connecticut Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Connecticut Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1244. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Connecticut Class.

1245. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Connecticut Class and conceal material information regarding defects that exist in GM-branded vehicles.

1246. Plaintiffs and the Connecticut Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Connecticut Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Connecticut Class.

1247. Because of the concealment and/or suppression of the facts, Plaintiffs and the Connecticut Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded

vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1248. The value of all Connecticut Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1249. Accordingly, New GM is liable to the Connecticut Class for their damages in an amount to be proven at trial.

1250. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Connecticut Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

DELAWARE

COUNT I

VIOLATION OF THE DELAWARE CONSUMER FRAUD ACT

(6 DEL. CODE § 2513, *et seq*.)

1251. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1252. This claim is brought only on behalf of Nationwide Class members who are Delaware residents (the "Delaware Class").

1253. New GM is a "person" within the meaning of 6 DEL. CODE § 2511(7).

1254. The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the "act, use or employment by any person 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 such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby." 6 DEL. CODE § 2513(a).

1255. New GM participated in deceptive trade practices that violated the Delaware CFA as described herein. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1256. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1257. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the

existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1258. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1259. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Delaware CFA.

1260. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1261. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1262. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Delaware Class.

1263. New GM knew or should have known that its conduct violated the Delaware CFA.

1264. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1265. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1266. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1267. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Delaware Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1268. Plaintiffs and the Delaware Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been

aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1269. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1270. As a direct and proximate result of New GM's violations of the Delaware CFA, Plaintiffs and the Delaware Class have suffered injury-in-fact and/or actual damage.

1271. Plaintiffs seek damages under the Delaware CFA for injury resulting from the direct and natural consequences of New GM's unlawful conduct. *See, e.g.*, *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Plaintiffs also seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Delaware CFA.

1272. New GM engaged in gross, oppressive or aggravated conduct justifying the imposition of punitive damages.

COUNT II

VIOLATION OF THE DELAWARE DECEPTIVE TRADE PRACTICES ACT

(6 DEL. CODE § 2532, *et seq.*)

1273. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1274. This claim is brought only on behalf of Nationwide Class members who are Delaware residents (the "Delaware Class").

1275. New GM is a "person" within the meaning of 6 DEL. CODE § 2531(5).

1276. Delaware's Deceptive Trade Practices Act ("Delaware DTPA") prohibits a person from engaging in a "deceptive trade practice," which includes: "(5) Represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have"; "(7) Represent[ing] that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another"; "(9) Advertis[ing] goods or services with intent not to sell them as advertised"; or "(12) Engag[ing] in any other conduct which similarly creates a likelihood of confusion or of misunderstanding."

1277. New GM engaged in deceptive trade practices in violation of the Delaware DTPA by systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles as described above. New GM also engaged in deceptive trade practices in violation of the Delaware DTPA by representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a particular standard and quality when they are not; advertising the Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

1278. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1279. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1280. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1281. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Delaware DTPA.

1282. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1283. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1284. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Delaware Class.

1285. New GM knew or should have known that its conduct violated the Delaware DTPA.

1286. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1287. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1288. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1289. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Delaware Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1290. Plaintiffs and the Delaware Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1291. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1292. As a direct and proximate result of New GM's violations of the Delaware DTPA, Plaintiffs and the Delaware Class have suffered injury-in-fact and/or actual damage.

1293. Plaintiff seeks injunctive relief and, if awarded damages under Delaware common law or Delaware DTPA Act, treble damages pursuant to 6 DEL. CODE § 2533(c).

1294. New GM engaged in gross, oppressive or aggravated conduct justifying the imposition of punitive damages.

COUNT III

FRAUD BY CONCEALMENT

1295. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1296. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Delaware residents (the "Delaware Class").

1297. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1298. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1299. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1300. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1301. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Delaware Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Delaware Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1302. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Delaware Class.

1303. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Delaware Class and conceal material information regarding defects that exist in GM-branded vehicles.

1304. Plaintiffs and the Delaware Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Delaware Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Delaware Class.

1305. Because of the concealment and/or suppression of the facts, Plaintiffs and the Delaware Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1306. The value of all Delaware Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1307. Accordingly, New GM is liable to the Delaware Class for their damages in an amount to be proven at trial.

1308. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Delaware Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT IV

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(6 DEL. CODE § 2-314)

1309. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1310. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Delaware residents who are members of the Ignition Switch Defect Subclass (the "Delaware Ignition Switch Defect Subclass").

1311. New GM was a merchant with respect to motor vehicles within the meaning of 6 DEL. CODE § 2-104(1).

1312. Under 6 DEL. CODE § 2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1313. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1314. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Delaware Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1315. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Delaware Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

DISTRICT OF COLUMBIA

COUNT I

VIOLATION OF THE CONSUMER PROTECTION PROCEDURES ACT

(D.C. CODE § 28-3901, *et seq*.)

1316. Plaintiffs reallege and incorporate by reference all paragraphs as if fully set forth herein.

1317. This claim is brought only on behalf of Nationwide Class members who are District of Columbia residents (the "District of Columbia Class").

1318. New GM is a "person" under the Consumer Protection Procedures Act ("District of Columbia CPPA"), D.C. CODE § 28-3901(a)(1).

1319. Class members are "consumers," as defined by D.C. CODE § 28-3901(1)(2), who purchased or leased one or more Affected Vehicles.

1320. New GM's actions as set forth herein constitute "trade practices" under D.C. CODE § 28-3901.

1321. New GM participated in unfair or deceptive acts or practices that violated the District of Columbia CPPA. By systematically devaluing safety and concealing a plethora of

defects in GM-branded vehicles, New GM engaged in unfair or deceptive practices prohibited by the District of Columbia CPPA, D.C. CODE § 28-3901, *et seq.*, including: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; (4) representing that the subject of a transaction involving the Affected Vehicles has been supplied in accordance with a previous representation when it has not; (5) misrepresenting as to a material fact which has a tendency to mislead; and (6) failing to state a material fact when such failure tends to mislead.

1322. In the course of its business in trade or commerce, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1323. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1324. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1325. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1326. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the District of Columbia CCPA.

1327. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1328. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1329. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the District of Columbia Class.

1330. New GM knew or should have known that its conduct violated the District of Columbia CPPA.

1331. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1332. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1333. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1334. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the District of Columbia Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise

comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1335. Plaintiffs and the District of Columbia Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1336. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1337. As a direct and proximate result of New GM's violations of the District of Columbia CPPA, Plaintiffs and the District of Columbia Class have suffered injury-in-fact and/or actual damage.

1338. Plaintiff and the District of Columbia Class are entitled to recover treble damages or $1,500, whichever is greater, punitive damages, reasonable attorneys' fees, and any other relief the Court deems proper, under D.C. CODE § 28-3901.

1339. Plaintiffs seek punitive damages against New GM because New GM's conduct evidences malice and/or egregious conduct. New GM maliciously and egregiously misrepresented the safety and reliability of the Affected Vehicles, deceived Class members on life-or-death matters, and concealed material facts that only it knew, all to avoid the expense and public relations nightmare of correcting deadly flaws in vehicles and repeatedly promised Class

members that all vehicles were safe. New GM's unlawful conduct constitutes malice warranting punitive damages.

COUNT II

FRAUD BY CONCEALMENT

1340. Plaintiffs reallege and incorporate by reference all paragraphs as if fully set forth herein.

1341. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are District of Columbia residents (the "District of Columbia Class").

1342. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1343. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1344. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1345. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1346. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and

access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the District of Columbia Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the District of Columbia Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1347. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the District of Columbia Class.

1348. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the District of Columbia Class and conceal material information regarding defects that exist in GM-branded vehicles.

1349. Plaintiffs and the District of Columbia Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the District of Columbia Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the District of Columbia Class.

1350. Because of the concealment and/or suppression of the facts, Plaintiffs and the District of Columbia Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have

paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1351. The value of all District of Columbia Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1352. Accordingly, New GM is liable to the District of Columbia Class for their damages in an amount to be proven at trial.

1353. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the District of Columbia Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(D.C. CODE § 28:2-314)

1354. Plaintiffs reallege and incorporate by reference all paragraphs as if fully set forth herein.

1355. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of District of Columbia residents who are members of the Ignition Switch Defect Subclass (the "D.C. Ignition Switch Defect Subclass").

1356. New GM was a merchant with respect to motor vehicles within the meaning of D.C. CODE § 28:2-104(1).

1357. Under D.C. CODE § 28:2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1358. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1359. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the D.C. Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recalls and the allegations of vehicle defects became public.

1360. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the D.C. Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

FLORIDA

COUNT I

VIOLATION OF FLORIDA'S UNFAIR & DECEPTIVE TRADE PRACTICES ACT

(FLA. STAT. § 501.201, *et seq.*)

1361. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1362. This claim is brought only on behalf of Nationwide Class members who are Florida residents (the "Florida Class").

1363. Plaintiffs are "consumers" within the meaning of Florida Unfair and Deceptive Trade Practices Act ("FUDTPA"), FLA. STAT. § 501.203(7).

1364. New GM engaged in "trade or commerce" within the meaning of FLA. STAT. § 501.203(8).

1365. FUDTPA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce …" FLA. STAT. § 501.204(1). New GM participated in unfair and deceptive trade practices that violated the FUDTPA as described herein.

1366. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1367. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1368. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1369. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1370. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair, unconscionable, and deceptive business practices in violation of the FUDTPA.

1371. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1372. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1373. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Florida Class.

1374. New GM knew or should have known that its conduct violated the FUDTPA.

1375. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1376. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1377. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1378. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Florida Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable

vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1379. Plaintiffs and the Florida Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1380. Plaintiffs and Florida Class members risk irreparable injury as a result of New GM's act and omissions in violation of the FUDTPA, and these violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1381. As a direct and proximate result of New GM's violations of the FUDTPA, Plaintiffs and the Florida Class have suffered injury-in-fact and/or actual damage.

1382. Plaintiffs and the Florida Class are entitled to recover their actual damages under FLA. STAT. § 501.211(2) and attorneys' fees under FLA. STAT. § 501.2105(1).

1383. Plaintiffs also seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the FUDTPA.

COUNT II

FRAUD BY CONCEALMENT

1384. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1385. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Florida residents (the "Florida Class").

1386. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1387. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1388. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1389. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1390. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Florida Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Florida Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1391. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Florida Class.

1392. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Florida Class and conceal material information regarding defects that exist in GM-branded vehicles.

1393. Plaintiffs and the Florida Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Florida Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Florida Class.

1394. Because of the concealment and/or suppression of the facts, Plaintiffs and the Florida Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1395. The value of all Florida Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1396. Accordingly, New GM is liable to the Florida Class for their damages in an amount to be proven at trial.

1397. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Florida Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

GEORGIA

COUNT I

VIOLATION OF GEORGIA'S FAIR BUSINESS PRACTICES ACT

(GA. CODE ANN. § 10-1-390, *et seq*.)

1398. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1399. This claim is brought only on behalf of Nationwide Class members who are Georgia residents (the "Georgia Class").

1400. The Georgia Fair Business Practices Act ("Georgia FBPA") declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful, GA. CODE. ANN. § 10-1-393(a), including but not limited to "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," "[r]epresenting that goods or services are of a particular standard, quality, or grade … if they are of another," and "[a]dvertising goods or services with intent not to sell them as advertised," GA. CODE. ANN. § 10-1-393(b).

1401. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in unfair or deceptive practices prohibited by the FBPA, including: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not; and (3) advertising the Affected Vehicles with the intent not to sell them as advertised. New GM participated in unfair or deceptive acts or practices that violated the Georgia FBPA.

1402. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1403. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1404. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the

existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM -branded vehicles. New GM concealed this information as well.

1405. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1406. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Georgia FBPA.

1407. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1408. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1409. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Georgia Class.

1410. New GM knew or should have known that its conduct violated the Georgia FBPA.

1411. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1412. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1413. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1414. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Georgia Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1415. Plaintiffs and the Georgia Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the

many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1416. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1417. As a direct and proximate result of New GM's violations of the Georgia FBPA, Plaintiffs and the Georgia Class have suffered injury-in-fact and/or actual damage.

1418. Plaintiff and the Georgia Class are entitled to recover damages and exemplary damages (for intentional violations) per GA. CODE. ANN § 10-1-399(a).

1419. Plaintiffs also seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Georgia FBPA per GA. CODE. ANN § 10-1-399.

1420. On October 8, 2014, certain Plaintiffs sent a letter complying with GA. CODE. ANN § 10-1-399(b). Plaintiffs presently do not claim relief under the Georgia FBPA until and unless New GM fails to remedy its unlawful conduct within the requisite time period, after which Plaintiffs seek all damages and relief to which Plaintiffs and the Georgia Class are entitled.

COUNT II

VIOLATION OF GEORGIA'S UNIFORM DECEPTIVE TRADE PRACTICES ACT

(GA. CODE ANN. § 10-1-370, *et seq.*)

1421. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1422. This claim is brought only on behalf of Nationwide Class members who are Georgia residents (the "Georgia Class").

1423. New GM, Plaintiffs, and the Georgia Class are "persons' within the meaning of Georgia Uniform Deceptive Trade Practices Act ("Georgia UDTPA"), GA. CODE. ANN § 10-1-371(5).

1424. The Georgia UDTPA prohibits "deceptive trade practices," which include the "misrepresentation of standard or quality of goods or services," and "engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." GA. CODE. ANN § 10-1-372(a). By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive trade practices prohibited by the Georgia UDTPA.

1425. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1426. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1427. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1428. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1429. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Georgia UDTPA.

1430. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1431. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1432. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Georgia Class.

1433. New GM knew or should have known that its conduct violated the Georgia UDTPA.

1434. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1435. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1436. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1437. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Georgia Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1438. Plaintiffs and the Georgia Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1439. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1440. As a direct and proximate result of New GM's violations of the Georgia UDTPA, Plaintiffs and the Georgia Class have suffered injury-in-fact and/or actual damage.

1441. Plaintiffs seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Georgia UDTPA per GA. CODE. ANN § 10-1-373.

COUNT III

FRAUD BY CONCEALMENT

1442. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1443. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Georgia residents (the "Georgia Class").

1444. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1445. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1446. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1447. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1448. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Georgia Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Georgia Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1449. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Georgia Class.

1450. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Georgia Class and conceal material information regarding defects that exist in GM-branded vehicles.

1451. Plaintiffs and the Georgia Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Georgia Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Georgia Class.

1452. Because of the concealment and/or suppression of the facts, Plaintiffs and the Georgia Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1453. The value of all Georgia Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1454. Accordingly, New GM is liable to the Georgia Class for their damages in an amount to be proven at trial.

1455. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Georgia Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

HAWAII

COUNT I

UNFAIR AND DECEPTIVE ACTS IN VIOLATION OF HAWAII LAW

(HAW. REV. STAT. § 480, *et seq.*)

1456. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1457. This claim is brought only on behalf of Nationwide Class members who are Hawaii residents (the "Hawaii Class").

1458. New GM is a "person" under HAW. REV. STAT. § 480-1.

1459. Class members are "consumer[s]" as defined by HAW. REV. STAT. § 480-1, who purchased or leased one or more Affected Vehicles.

1460. New GM's acts or practices as set forth above occurred in the conduct of trade or commerce.

1461. The Hawaii Act § 480-2(a) prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce…." By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in unfair and deceptive trade practices prohibited by the Hawaii Act.

1462. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise

engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1463. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1464. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1465. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1466. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Hawaii Act.

1467. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1468. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1469. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Hawaii Class.

1470. New GM knew or should have known that its conduct violated the Hawaii Act.

1471. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1472. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1473. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1474. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Hawaii Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1475. Plaintiffs and the Hawaii Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1476. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1477. As a direct and proximate result of New GM's violations of the Hawaii Act, Plaintiffs and the Hawaii Class have suffered injury-in-fact and/or actual damage.

1478. Pursuant to HAW. REV. STAT. § 480-13, Plaintiffs and the Hawaii Class seek monetary relief against New GM measured as the greater of (a) $1,000 and (b) threefold actual damages in an amount to be determined at trial.

1479. Under HAW. REV. STAT. § 480-13.5, Plaintiffs seek an additional award against New GM of up to $10,000 for each violation directed at a Hawaiian elder. New GM knew or should have known that its conduct was directed to one or more Class members who are elders. New GM's conduct caused one or more of these elders to suffer a substantial loss of property set aside for retirement or for personal or family care and maintenance, or assets essential to the health or welfare of the elder. One or more Hawaii Class members who are elders are substantially more vulnerable to New GM's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and each of them suffered substantial physical, emotional, or economic damage resulting from New GM's conduct.

COUNT II

FRAUD BY CONCEALMENT

1480. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1481. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Hawaii residents (the "Hawaii Class").

1482. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1483. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1484. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1485. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1486. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Hawaii Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Hawaii Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1487. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Hawaii Class.

1488. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Hawaii Class and conceal material information regarding defects that exist in GM-branded vehicles.

1489. Plaintiffs and the Hawaii Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts.

Plaintiffs' and the Hawaii Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Hawaii Class.

1490. Because of the concealment and/or suppression of the facts, Plaintiffs and the Hawaii Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1491. The value of all Hawaii Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1492. Accordingly, New GM is liable to the Hawaii Class for their damages in an amount to be proven at trial.

1493. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Hawaii Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(HAW. REV. STAT. § 490:2-314)

1494. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1495. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Hawaii residents who are members of the Ignition Switch Defect Subclass (the "Hawaii Ignition Switch Defect Subclass").

1496. New GM was a merchant with respect to motor vehicles within the meaning of HAW. REV. STAT. § 490:2-104(1).

1497. Under HAW. REV. STAT. § 490:2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1498. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1499. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Hawaii Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1500. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Hawaii Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

IDAHO

COUNT I

VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT

(IDAHO CIV. CODE § 48-601, *et seq.*)

1501. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1502. This claim is brought only on behalf of Class members who are Idaho residents (the "Idaho Class").

1503. New GM is a "person" under the Idaho Consumer Protection Act ("Idaho CPA"), IDAHO CIV. CODE § 48-602(1).

1504. New GM's acts or practices as set forth above occurred in the conduct of "trade" or "commerce" under IDAHO CIV. CODE § 48-602(2).

1505. New GM participated in misleading, false, or deceptive acts that violated the Idaho CPA. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Idaho CPA, including: (1) representing that the Affected Vehicles have characteristics, uses, and benefits which they do not have; (2) representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; (4) engaging in acts or practices which are otherwise misleading, false, or deceptive to the consumer; and (5) engaging in any unconscionable method, act or practice in the conduct of trade or commerce. *See* IDAHO CIV. CODE § 48-603.

1506. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1507. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1508. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1509. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1510. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself

as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Idaho CPA.

1511. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1512. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1513. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Idaho Class.

1514. New GM knew or should have known that its conduct violated the Idaho CPA.

1515. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1516. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1517. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1518. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Idaho Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1519. Plaintiffs and the Idaho Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1520. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1521. As a direct and proximate result of New GM's violations of the Idaho CPA, Plaintiffs and the Idaho Class have suffered injury-in-fact and/or actual damage.

1522. Pursuant to IDAHO CODE § 48-608, Plaintiffs and the Idaho Class seek monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $1,000 for each Plaintiff and each Idaho Class member.

1523. Plaintiffs also seek an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Idaho CPA.

1524. Plaintiffs and Idaho Class members also seek punitive damages against New GM because New GM's conduct evidences an extreme deviation from reasonable standards. New GM flagrantly, maliciously, and fraudulently misrepresented the safety and reliability of the Affected Vehicles, deceived Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in vehicles it repeatedly promised Class members were safe. New GM's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

COUNT II

FRAUD BY CONCEALMENT

1525. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1526. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Idaho residents (the "Idaho Class").

1527. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1528. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1529. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1530. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1531. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Idaho Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Idaho Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1532. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Idaho Class.

1533. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Idaho Class and conceal material information regarding defects that exist in GM-branded vehicles.

1534. Plaintiffs and the Idaho Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Idaho Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Idaho Class.

1535. Because of the concealment and/or suppression of the facts, Plaintiffs and the Idaho Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1536. The value of all Idaho Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1537. Accordingly, New GM is liable to the Idaho Class for their damages in an amount to be proven at trial.

1538. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Idaho Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

ILLINOIS

COUNT I

VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

(815 ILCS 505/1, *et seq*. and 720 ILCS 295/1A)

1539. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1540. This claim is brought only on behalf of Nationwide Class members who are Illinois residents (the "Illinois Class").

1541. New GM is a "person" as that term is defined in 815 ILCS 505/1(c).

1542. Plaintiff and the Illinois Class are "consumers" as that term is defined in 815 ILCS 505/1(e).

1543. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA") prohibits "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 . . . in the conduct of trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2.

1544. New GM participated in misleading, false, or deceptive acts that violated the Illinois CFA. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Illinois CFA.

1545. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1546. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1547. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1548. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1549. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Illinois CFA.

1550. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1551. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1552. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Illinois Class.

1553. New GM knew or should have known that its conduct violated the Illinois CFA.

1554. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1555. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1556. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1557. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Illinois Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1558. Plaintiffs and the Illinois Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1559. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1560. As a direct and proximate result of New GM's violations of the Illinois CFA, Plaintiffs and the Illinois Class have suffered injury-in-fact and/or actual damage.

1561. Pursuant to 815 ILCS 505/10a(a), Plaintiffs and the Illinois Class seek monetary relief against New GM in the amount of actual damages, as well as punitive damages because New GM acted with fraud and/or malice and/or was grossly negligent.

1562. Plaintiffs also seek an order enjoining New GM's unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under 815 ILCS § 505/1 *et seq*.

COUNT II

FRAUD BY CONCEALMENT

1563. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1564. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Illinois residents (the "Illinois Class").

1565. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1566. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1567. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1568. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1569. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Illinois Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Illinois Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1570. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Illinois Class.

1571. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Illinois Class and conceal material information regarding defects that exist in GM-branded vehicles.

1572. Plaintiffs and the Illinois Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts.

Plaintiffs' and the Illinois Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Illinois Class.

1573. Because of the concealment and/or suppression of the facts, Plaintiffs and the Illinois Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1574. The value of all Illinois Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1575. Accordingly, New GM is liable to the Illinois Class for their damages in an amount to be proven at trial.

1576. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Illinois Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

INDIANA

COUNT I

VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT

(IND. CODE § 24-5-0.5-3)

1577. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1578. This claim is brought only on behalf of Nationwide Class members who are Indiana residents (the "Indiana Class").

1579. New GM is a "person" within the meaning of IND. CODE § 24-5-0.5-2(2) and a "supplier" within the meaning of IND. CODE § 24-5-.05-2(a)(3).

1580. Plaintiffs' and Indiana Class members' purchases of the Affected Vehicles are "consumer transactions" within the meaning of IND. CODE § 24-5-.05-2(a)(1).

1581. Indiana's Deceptive Consumer Sales Act ("Indiana DCSA") prohibits a person from engaging in a "deceptive trade practice," which includes representing: "(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection it does not have; (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style or model, if it is not and if the supplier knows or should reasonably know that it is not; … (7) That the supplier has a sponsorship, approval or affiliation in such consumer transaction that the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have; … (b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such a representation thereon or therein, or who authored such materials, and such suppliers who shall

state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false."

1582. New GM participated in misleading, false, or deceptive acts that violated the Indiana DCSA. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Indiana DCSA. New GM also engaged in unlawful trade practices by: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard and quality when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; and (4) otherwise engaging in conduct likely to deceive.

1583. New GM's actions as set forth above occurred in the conduct of trade or commerce.

1584. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1585. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other

serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1586. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1587. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1588. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Indiana DCSA.

1589. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1590. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1591. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Indiana Class.

1592. New GM knew or should have known that its conduct violated the Indiana DCSA.

1593. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1594. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1595. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1596. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Indiana Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable

vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1597. Plaintiffs and the Indiana Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1598. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1599. As a direct and proximate result of New GM's violations of the Indiana DCSA, Plaintiffs and the Indiana Class have suffered injury-in-fact and/or actual damage.

1600. Pursuant to IND. CODE § 24-5-0.5-4, Plaintiffs and the Indiana Class seek monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500 for each Plaintiff and each Indiana Class member, including treble damages up to $1,000 for New GM's willfully deceptive acts.

1601. Plaintiff also seeks punitive damages based on the outrageousness and recklessness of the New GM's conduct and New GM's high net worth.

1602. On October 8, 2014, certain Plaintiffs sent a letter complying with IND. CODE § 24-5-0.5-5(a). Plaintiffs presently do not claim relief under the Indiana DCSA for "curable" acts until and unless New GM fails to remedy its unlawful conduct within the requisite time

period, after which Plaintiffs seek all damages and relief to which Plaintiffs and the Indiana Class are entitled. Plaintiffs presently seek full relief for New GM's "incurable" acts.

COUNT II

FRAUD BY CONCEALMENT

1603. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1604. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Indiana residents (the "Indiana Class").

1605. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1606. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1607. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1608. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1609. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and

access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Indiana Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Indiana Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1610. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Indiana Class.

1611. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Indiana Class and conceal material information regarding defects that exist in GM-branded vehicles.

1612. Plaintiffs and the Indiana Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Indiana Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Indiana Class.

1613. Because of the concealment and/or suppression of the facts, Plaintiffs and the Indiana Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1614. The value of all Indiana Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1615. Accordingly, New GM is liable to the Indiana Class for their damages in an amount to be proven at trial.

1616. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Indiana Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(IND. CODE § 26-1-2-314)

1617. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1618. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Indiana residents who are members of the Ignition Switch Defect Subclass (the "Indiana Ignition Switch Defect Subclass").

1619. New GM was a merchant with respect to motor vehicles within the meaning of IND. CODE § 26-1-2-104(1).

1620. Under IND. CODE § 26-1-2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1621. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1622. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Indiana Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1623. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Indiana Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

IOWA

COUNT I

VIOLATIONS OF THE PRIVATE RIGHT OF ACTION FOR CONSUMER FRAUDS ACT

(IOWA CODE § 714H.1, *et seq.*)

1624. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1625. This claim is brought only on behalf of Nationwide Class members who are Iowa residents (the "Iowa Class").

1626. New GM is "person" under IOWA CODE § 714H.2(7).

1627. Plaintiff and the Iowa Class are "consumers," as defined by IOWA CODE § 714H.2(3), who purchased or leased one or more Affected Vehicles.

1628. The Iowa Private Right of Action for Consumer Frauds Act ("Iowa CFA") prohibits any "practice or act the person knows or reasonably should know is an unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission in connection with the advertisement, sale, or lease of consumer merchandise." IOWA CODE § 714H.3. New GM participated in misleading, false, or deceptive acts that violated the Iowa CFA. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Iowa CFA.

1629. New GM's actions as set forth above occurred in the conduct of trade or commerce.

1630. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1631. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1632. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1633. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1634. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Iowa CFA.

1635. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1636. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1637. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Iowa Class.

1638. New GM knew or should have known that its conduct violated the Iowa CFA.

1639. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1640. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1641. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1642. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Iowa Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1643. Plaintiffs and the Iowa Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1644. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1645. As a direct and proximate result of New GM's violations of the Iowa CFA, Plaintiffs and the Iowa Class have suffered injury-in-fact and/or actual damage.

1646. Pursuant to IOWA CODE § 714H.5, Plaintiffs seek an order enjoining New GM's unfair and/or deceptive acts or practices; actual damages; in addition to an award of actual damages, statutory damages up to three times the amount of actual damages awarded as a result of New GM's willful and wanton disregard for the rights or safety of others; attorneys' fees; and such other equitable relief as the Court deems necessary to protect the public from further violations of the Iowa CFA.

COUNT II

FRAUD BY CONCEALMENT

1647. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1648. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Iowa residents (the "Iowa Class").

1649. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1650. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1651. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1652. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1653. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Iowa Class. These omitted and concealed facts were material because they

directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Iowa Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1654. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Iowa Class.

1655. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Iowa Class and conceal material information regarding defects that exist in GM-branded vehicles.

1656. Plaintiffs and the Iowa Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Iowa Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Iowa Class.

1657. Because of the concealment and/or suppression of the facts, Plaintiffs and the Iowa Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1658. The value of all Iowa Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has

greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1659. Accordingly, New GM is liable to the Iowa Class for their damages in an amount to be proven at trial.

1660. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Iowa Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

KANSAS

COUNT I

VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT

(KAN. STAT. ANN. § 50-623, *et seq*.)

1661. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1662. This claim is brought only on behalf of Nationwide Class members who are Kansas residents (the "Kansas Class").

1663. New GM is a "supplier" under the Kansas Consumer Protection Act ("Kansas CPA"), KAN. STAT. ANN. § 50-624(l).

1664. Kansas Class members are "consumers," within the meaning of KAN. STAT. ANN. § 50-624(b), who purchased or leased one or more Affected Vehicles.

1665. The sale of the Affected Vehicles to the Kansas Class members was a "consumer transaction" within the meaning of KAN. STAT. ANN. § 50-624(c).

1666. The Kansas CPA states "[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction," KAN. STAT. ANN. § 50-626(a), and that deceptive acts or practices include: (1) knowingly making representations or with reason to know that "(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;" and "(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;" "(2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;" and "(3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact." The Kansas CPA also provides that "[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction." KAN. STAT. ANN. § 50-627(a).

1667. New GM participated in misleading, false, or deceptive acts that violated the Kansas CPA. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Kansas CPA. New GM also engaged in unlawful trade practices by: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard and quality when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; (4) willfully using, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact; (5) willfully failing to state a material fact, or the willfully concealing, suppressing or omitting a material fact; and (6) otherwise engaging in an unconscionable act or practice in connection with a consumer transaction.

1668. New GM's actions as set forth above occurred in the conduct of trade or commerce.

1669. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1670. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1671. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1672. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1673. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Kansas CPA.

1674. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1675. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1676. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Kansas Class.

1677. New GM knew or should have known that its conduct violated the Kansas CPA.

1678. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1679. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1680. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1681. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Kansas Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1682. Plaintiffs and the Kansas Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1683. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1684. As a direct and proximate result of New GM's violations of the Kansas CPA, Plaintiffs and the Kansas Class have suffered injury-in-fact and/or actual damage.

1685. Pursuant to KAN. STAT. ANN. § 50-634, Plaintiffs and the Kansas Class seek monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $10,000 for each Plaintiff and each Kansas Class member

1686. Plaintiff also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under KAN. STAT. ANN § 50-623 *et seq*.

COUNT II

FRAUD BY CONCEALMENT

1687. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1688. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Kansas residents (the "Kansas Class").

1689. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1690. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1691. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1692. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1693. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Kansas Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Kansas Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1694. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Kansas Class.

1695. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Kansas Class and conceal material information regarding defects that exist in GM-branded vehicles.

1696. Plaintiffs and the Kansas Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Kansas Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Kansas Class.

1697. Because of the concealment and/or suppression of the facts, Plaintiffs and the Kansas Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1698. The value of all Kansas Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1699. Accordingly, New GM is liable to the Kansas Class for their damages in an amount to be proven at trial.

1700. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Kansas Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(KAN. STAT. ANN. § 84-2-314)

1701. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1702. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Kansas residents who are members of the Ignition Switch Defect Subclass (the "Kansas Ignition Switch Defect Subclass").

1703. New GM was a merchant with respect to motor vehicles within the meaning of KAN. STAT. ANN. § 84-2-104(1).

1704. Under KAN. STAT. ANN. § 84-2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1705. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1706. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Kansas Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1707. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Kansas Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

KENTUCKY

COUNT I

VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT

(KY. REV. STAT. § 367.110, *et seq.*)

1708. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1709. This claim is brought only on behalf of Nationwide Class members who are Kentucky residents (the "Kentucky Class").

1710. New GM, Plaintiffs, and the Kentucky Class are "persons" within the meaning of the KY. REV. STAT. § 367.110(1).

1711. New GM engaged in "trade" or "commerce" within the meaning of KY. REV. STAT. § 367.110(2).

1712. The Kentucky Consumer Protection Act ("Kentucky CPA") makes unlawful "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce …." KY. REV. STAT. § 367.170(1). Old GM and New GM both participated in misleading, false, or deceptive acts that violated the Kentucky CPA. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Kentucky CPA.

1713. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful

trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1714. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1715. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1716. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1717. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Kentucky CPA.

1718. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed

above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1719. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1720. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Kentucky Class.

1721. New GM knew or should have known that its conduct violated the Kentucky CPA.

1722. New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1723. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1724. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1725. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Kentucky Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1726. Plaintiffs and the Kentucky Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1727. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1728. As a direct and proximate result of New GM's violations of the Kentucky CPA, Plaintiffs and the Kentucky Class have suffered injury-in-fact and/or actual damage.

1729. Pursuant to KY. REV. STAT. ANN. § 367.220, Plaintiffs and the Kentucky Class seek to recover actual damages in an amount to be determined at trial; an order enjoining

New GM's unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under KY. REV. STAT. ANN. § 367.220.

COUNT II

FRAUD BY CONCEALMENT

1730. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1731. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Kentucky residents (the "Kentucky Class").

1732. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1733. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1734. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1735. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1736. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and

access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Kentucky Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Kentucky Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1737. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Kentucky Class.

1738. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Kentucky Class and conceal material information regarding defects that exist in GM-branded vehicles.

1739. Plaintiffs and the Kentucky Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Kentucky Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Kentucky Class.

1740. Because of the concealment and/or suppression of the facts, Plaintiffs and the Kentucky Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1741. The value of all Kentucky Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1742. Accordingly, New GM is liable to the Kentucky Class for their damages in an amount to be proven at trial.

1743. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Kentucky Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

LOUISIANA

COUNT I

VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

(LA. REV. STAT. § 51:1401, *et seq.*)

1744. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1745. This claim is brought only on behalf of Nationwide Class members who are Louisiana residents (the "Louisiana Class").

1746. New GM, Plaintiffs, and the Louisiana Class are "persons" within the meaning of the LA. REV. STAT. § 51:1402(8).

1747. Plaintiffs and the Louisiana Class are "consumers" within the meaning of LA. REV. STAT. § 51:1402(1).

1748. New GM engaged in "trade" or "commerce" within the meaning of LA. REV. STAT. § 51:1402(9).

1749. The Louisiana Unfair Trade Practices and Consumer Protection Law ("Louisiana CPL") makes unlawful "deceptive acts or practices in the conduct of any trade or commerce." LA. REV. STAT. § 51:1405(A). New GM both participated in misleading, false, or deceptive acts that violated the Louisiana CPL. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Louisiana CPL.

1750. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1751. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1752. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1753. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1754. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Louisiana CPL.

1755. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1756. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1757. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Louisiana Class.

1758. New GM knew or should have known that its conduct violated the Louisiana CPL.

1759. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1760. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1761. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1762. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Louisiana Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1763. Plaintiffs and the Louisiana Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1764. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1765. As a direct and proximate result of New GM's violations of the Louisiana CPL, Plaintiffs and the Louisiana Class have suffered injury-in-fact and/or actual damage.

1766. Pursuant to LA. REV. STAT. § 51:1409, Plaintiffs and the Louisiana Class seek to recover actual damages in an amount to be determined at trial; treble damages for New GM's knowing violations of the Louisiana CPL; an order enjoining New GM's unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under LA. REV. STAT. § 51:1409.

COUNT II

FRAUD BY CONCEALMENT

1767. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1768. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Louisiana residents (the "Louisiana Class").

1769. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1770. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1771. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1772. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1773. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Louisiana Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Louisiana Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1774. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Louisiana Class.

1775. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Louisiana Class and conceal material information regarding defects that exist in GM-branded vehicles.

1776. Plaintiffs and the Louisiana Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Louisiana Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Louisiana Class.

1777. Because of the concealment and/or suppression of the facts, Plaintiffs and the Louisiana Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1778. The value of all Louisiana Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1779. Accordingly, New GM is liable to the Louisiana Class for their damages in an amount to be proven at trial.

1780. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Louisiana Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY/ WARRANTY AGAINST REDHIBITORY DEFECTS

(LA. CIV. CODE ART. 2520, 2524)

1781. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1782. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Louisiana residents who are members of the Ignition Switch Defect Subclass (the "Louisiana Ignition Switch Defect Subclass").

1783. At the time Plaintiffs and the Louisiana Class acquired their Defective Ignition Switch Vehicles, those vehicles had a redhibitory defect within the meaning of LA. CIV. CODE ART. 2520, in that (a) the defective ignition switches rendered the use of the Defective Ignition Switch Vehicles so inconvenient that Plaintiffs either would not have purchased the Defective Ignition Switch Vehicles had they known of the defect, or, because the defective ignition switches so diminished the usefulness and/or value of the Defective Ignition Switch Vehicles such that it must be presumed that the Plaintiffs would have purchased the Defective Ignition Switch Vehicles, but for a lesser price.

1784. No notice of the defect is required under LA. CIV. CODE ART. 2520, since New GM had knowledge of a redhibitory defect in the Defective Ignition Switch Vehicles at the time they were sold to Plaintiffs and the Louisiana Ignition Switch Defect Subclass.

1785. Under LA. CIV. CODE ART. 2524, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition, or fit for ordinary use, was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1786. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1787. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Louisiana Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1788. As a direct and proximate result of New GM's sale of vehicles with redhibitory defects, and in violation of the implied warranty that the Defective Ignition Switch Vehicles were fit for ordinary use, Plaintiffs and the Louisiana Class are entitled to either rescission or damages in an amount to be proven at trial.

MAINE

COUNT I

VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT

(ME. REV. STAT. ANN. TIT. 5 § 205-A, *et seq*.)

1789. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1790. This claim is brought only on behalf of Nationwide Class members who are Maine residents (the "Maine Class").

1791. New GM, Plaintiffs, and the Maine Class are "persons" within the meaning of ME. REV. STAT. ANN. TIT. § 206(2).

1792. New GM is engaged in "trade" or "commerce" within the meaning of ME. REV. STAT. ANN. TIT. § 206(3).

1793. The Maine Unfair Trade Practices Act ("Maine UTPA") makes unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce…." ME. REV. STAT. ANN. TIT. 5 § 207. In the course of New GM's business, New GM engaged in unfair or deceptive acts or practices by systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles. New GM participated in misleading, false, or deceptive acts that violated the Maine UTPA.

1794. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1795. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1796. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1797. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1798. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Maine UTPA.

1799. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1800. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1801. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Maine Class.

1802. New GM knew or should have known that its conduct violated the Maine UTPA.

1803. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1804. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1805. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1806. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Maine Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1807. Plaintiffs and the Maine Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1808. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1809. As a direct and proximate result of New GM's violations of the Maine UTPA, Plaintiffs and the Maine Class have suffered injury-in-fact and/or actual damage.

1810. Pursuant to ME. REV. STAT. ANN. TIT. 5 § 213, Plaintiffs and the Maine Class seek an order enjoining New GM's unfair and/or deceptive acts or practices, damages, punitive damages, and attorneys' fees, costs, and any other just and proper relief available under the Maine UTPA.

1811. On October 8, 2014, certain Plaintiffs sent a letter complying with ME. REV. STAT. ANN. TIT. 5, § 213(1-A). Plaintiffs presently do not claim relief under the Maine UTPA until and unless New GM fails to remedy its unlawful conduct within the requisite time period,

after which Plaintiffs seek all damages and relief to which Plaintiffs and the Maine Class are entitled.

COUNT II

FRAUD BY CONCEALMENT

1812. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1813. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Maine residents (the "Maine Class").

1814. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1815. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1816. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1817. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1818. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and

access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Maine Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Maine Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1819. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Maine Class.

1820. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Maine Class and conceal material information regarding defects that exist in GM-branded vehicles.

1821. Plaintiffs and the Maine Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Maine Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Maine Class.

1822. Because of the concealment and/or suppression of the facts, Plaintiffs and the Maine Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1823. The value of all Maine Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1824. Accordingly, New GM is liable to the Maine Class for their damages in an amount to be proven at trial.

1825. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Maine Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(ME. REV. STAT. ANN. TIT. 11 § 2-314)

1826. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1827. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Maine residents who are members of the Ignition Switch Defect Subclass (the "Maine Ignition Switch Defect Subclass").

1828. New GM was a merchant with respect to motor vehicles within the meaning of ME. REV. STAT. ANN. TIT. 11 § 2-104(1).

1829. Under ME. REV. STAT. ANN. TIT. 11 § 2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1830. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1831. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Maine Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1832. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Maine Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

MARYLAND

COUNT I

VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT

(MD. CODE COM. LAW § 13-101, *et seq.*)

1833. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1834. This claim is brought only on behalf of Nationwide Class members who are Maryland residents.

1835. New GM, Plaintiffs, and the Maryland Class are "persons" within the meaning of MD. CODE COM. LAW § 13-101(h).

1836. The Maryland Consumer Protection Act ("Maryland CPA") provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. MD. COM. LAW CODE § 13-303. New GM participated in misleading, false, or deceptive acts that violated the Maryland CPA. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Maryland CPA.

1837. New GM's actions as set forth above occurred in the conduct of trade or commerce.

1838. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1839. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1840. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1841. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1842. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Maryland CPA.

1843. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1844. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1845. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Maryland Class.

1846. New GM knew or should have known that its conduct violated the Maryland CPA.

1847. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1848. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1849. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1850. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Maryland Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1851. Plaintiffs and the Maryland Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1852. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1853. As a direct and proximate result of New GM's violations of the Maryland CPA, Plaintiffs and the Maryland Class have suffered injury-in-fact and/or actual damage.

1854. Pursuant to MD. CODE COM. LAW § 13-408, Plaintiffs and the Maryland Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Maryland CPA.

COUNT II

FRAUD BY CONCEALMENT

1855. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1856. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Maryland residents.

1857. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1858. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1859. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1860. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1861. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Maryland Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Maryland Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1862. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Maryland Class.

1863. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Maryland Class and conceal material information regarding defects that exist in GM-branded vehicles.

1864. Plaintiffs and the Maryland Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Maryland Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Maryland Class.

1865. Because of the concealment and/or suppression of the facts, Plaintiffs and the Maryland Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1866. The value of all Maryland Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1867. Accordingly, New GM is liable to the Maryland Class for their damages in an amount to be proven at trial.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(MD. CODE COM. LAW § 2-314)

1868. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1869. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Maryland residents who are members of the Ignition Switch Defect Subclass (the "Maryland Ignition Switch Defect Subclass").

1870. New GM was a merchant with respect to motor vehicles within the meaning of MD. COM. LAW § 2-104(1).

1871. Under MD. COM. LAW § 2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1872. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1873. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Maryland Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1874. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Maryland Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

MASSACHUSETTS

COUNT I

DECEPTIVE ACTS OR PRACTICES PROHIBITED BY MASSACHUSETTS LAW

(MASS. GEN. LAWS CH. 93A, § 1, *et seq.*)

1875. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1876. This claim is brought only on behalf of Nationwide Class members who are Massachusetts residents (the "Massachusetts Class").

1877. New GM, Plaintiffs, and the Massachusetts Class are "persons" within the meaning of MASS. GEN. LAWS ch. 93A, § 1(a).

1878. New GM engaged in "trade" or "commerce" within the meaning of MASS. GEN. LAWS ch. 93A, § 1(b).

1879. Massachusetts law (the "Massachusetts Act") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." MASS. GEN. LAWS ch. 93A, § 2. New GM both participated in misleading, false, or deceptive acts that violated the Massachusetts Act. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Massachusetts Act.

1880. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or

concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1881. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1882. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1883. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1884. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Massachusetts Act.

1885. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed

above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1886. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1887. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Massachusetts Class.

1888. New GM knew or should have known that its conduct violated the Massachusetts Act.

1889. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1890. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1891. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1892. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Massachusetts Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1893. Plaintiffs and the Massachusetts Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1894. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1895. As a direct and proximate result of New GM's violations of the Massachusetts Act, Plaintiffs and the Massachusetts Class have suffered injury-in-fact and/or actual damage.

1896. Pursuant to MASS. GEN. LAWS ch. 93A, § 9, Plaintiffs and the Massachusetts Class seek monetary relief against New GM measured as the greater of (a) actual damages in an

amount to be determined at trial and (b) statutory damages in the amount of $25 for each Plaintiff and each Massachusetts Class member. Because New GM's conduct was committed willfully and knowingly, Plaintiffs are entitled to recover, for each Plaintiff and each Massachusetts Class member, up to three times actual damages, but no less than two times actual damages.

1897. Plaintiffs also seek an order enjoining New GM's unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, costs, and any other just and proper relief available under the Massachusetts Act.

1898. On October 8, 2014, certain Plaintiffs sent a letter complying with MASS. GEN. LAWS ch. 93A, § 9(3). Plaintiffs presently do not claim relief under the Massachusetts Act until and unless New GM fails to remedy its unlawful conduct within the requisite time period, after which Plaintiffs seek all damages and relief to which Plaintiffs and the Massachusetts Class are entitled.

COUNT II

FRAUD BY CONCEALMENT

1899. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1900. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Massachusetts residents (the "Massachusetts Class").

1901. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1902. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1903. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1904. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1905. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Massachusetts Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Massachusetts Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1906. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Massachusetts Class.

1907. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Massachusetts Class and conceal material information regarding defects that exist in GM-branded vehicles.

1908. Plaintiffs and the Massachusetts Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Massachusetts Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Massachusetts Class.

1909. Because of the concealment and/or suppression of the facts, Plaintiffs and the Massachusetts Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1910. The value of all Massachusetts Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1911. Accordingly, New GM is liable to the Massachusetts Class for their damages in an amount to be proven at trial.

1912. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Massachusetts Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(ALM GL. CH. 106, § 2-314)

1913. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1914. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Massachusetts residents who are members of the Ignition Switch Defect Subclass (the "Massachusetts Ignition Switch Defect Subclass").

1915. New GM was a merchant with respect to motor vehicles within the meaning of ALM GL CH. 106, § 2-104(1).

1916. Under ALM GL CH. 106, § 2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1917. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1918. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Massachusetts Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1919. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Massachusetts Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

MICHIGAN

COUNT I

VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

(MICH. COMP. LAWS § 445.903, *et seq.*)

1920. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1921. This claim is brought only on behalf of Nationwide Class members who are Michigan residents (the "Michigan Class").

1922. Plaintiffs and the Michigan Class members were "person[s]" within the meaning of the MICH. COMP. LAWS § 445.902(1)(d).

1923. At all relevant times hereto, New GM was a "person" engaged in "trade or commerce" within the meaning of the MICH. COMP. LAWS § 445.902(1)(d) and (g).

1924. The Michigan Consumer Protection Act ("Michigan CPA") prohibits "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce . . ." MICH. COMP. LAWS § 445.903(1). New GM engaged in unfair, unconscionable, or deceptive methods, acts or practices prohibited by the Michigan CPA, including: "(c) Representing that

goods or services have . . . characteristics . . . that they do not have . . . .;" "(e) Representing that goods or services are of a particular standard . . . if they are of another;" "(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;" "(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;" "(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is;" and "(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner." MICH. COMP. LAWS § 445.903(1). By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM participated in unfair, deceptive, and unconscionable acts that violated the Michigan CPA.

1925. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1926. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1927. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1928. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1929. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair, unconscionable, and deceptive business practices in violation of the Michigan CPA.

1930. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1931. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1932. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Michigan Class.

1933. New GM knew or should have known that its conduct violated the Michigan CPA.

1934. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1935. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1936. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1937. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Michigan Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable

vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1938. Plaintiffs and the Michigan Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1939. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1940. As a direct and proximate result of New GM's violations of the Michigan CPA, Plaintiffs and the Michigan Class have suffered injury-in-fact and/or actual damage.

1941. Plaintiffs seek injunctive relief to enjoin New GM from continuing its unfair and deceptive acts; monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $250 for Plaintiffs and each Michigan Class member; reasonable attorneys' fees; and any other just and proper relief available under MICH. COMP. LAWS § 445.911.

1942. Plaintiffs also seek punitive damages against New GM because it carried out despicable conduct with willful and conscious disregard of the rights and safety of others. New GM intentionally and willfully misrepresented the safety and reliability of the Affected Vehicles, deceived Plaintiffs and Michigan Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations

nightmare of correcting a deadly flaw in vehicles it repeatedly promised Plaintiffs and Michigan Class members were safe. New GM's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

COUNT II

FRAUD BY CONCEALMENT

1943. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1944. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Michigan residents (the "Michigan Class").

1945. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

1946. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

1947. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

1948. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

1949. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Michigan Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Michigan Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

1950. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Michigan Class.

1951. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Michigan Class and conceal material information regarding defects that exist in GM-branded vehicles.

1952. Plaintiffs and the Michigan Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Michigan Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Michigan Class.

1953. Because of the concealment and/or suppression of the facts, Plaintiffs and the Michigan Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less

for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

1954. The value of all Michigan Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1955. Accordingly, New GM is liable to the Michigan Class for their damages in an amount to be proven at trial.

1956. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Michigan Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(MICH. COMP. LAWS § 440.2314)

1957. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1958. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Michigan residents who are members of the Ignition Switch Defect Subclass (the "Michigan Ignition Switch Defect Subclass").

1959. New GM was a merchant with respect to motor vehicles within the meaning of MICH. COMP. LAWS § 440.2314(1).

1960. Under MICH. COMP. LAWS § 440.2314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

1961. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

1962. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Michigan Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

1963. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Michigan Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

MINNESOTA

COUNT I

VIOLATION OF MINNESOTA PREVENTION OF CONSUMER FRAUD ACT

(MINN. STAT. § 325F.68, *et seq*.)

1964. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1965. This claim is brought only on behalf of Nationwide Class members who are Minnesota residents (the "Minnesota Class").

1966. The Affected Vehicles constitute "merchandise" within the meaning of MINN. STAT. § 325F.68(2).

1967. The Minnesota Prevention of Consumer Fraud Act ("Minnesota CFA") prohibits "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby . . ." MINN. STAT. § 325F.69(1). New GM participated in misleading, false, or deceptive acts that violated the Minnesota CFA. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Minnesota CFA.

1968. New GM's actions as set forth above occurred in the conduct of trade or commerce.

1969. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful

trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1970. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1971. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1972. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1973. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Minnesota CFA.

1974. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed

above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1975. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1976. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Minnesota Class.

1977. New GM knew or should have known that its conduct violated the Minnesota CFA.

1978. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

1979. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1980. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

1981. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Minnesota Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

1982. Plaintiffs and the Minnesota Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

1983. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

1984. As a direct and proximate result of New GM's violations of the Minnesota CFA, Plaintiffs and the Minnesota Class have suffered injury-in-fact and/or actual damage.

1985. Pursuant to MINN. STAT. § 8.31(3a), Plaintiffs and the Minnesota Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota CFA.

1986. Plaintiffs also seek punitive damages under MINN. STAT. § 549.20(1)(a) give the clear and convincing evidence that New GM's acts show deliberate disregard for the rights or safety of others.

COUNT II

VIOLATION OF MINNESOTA UNIFORM DECEPTIVE TRADE PRACTICES ACT

(MINN. STAT. § 325D.43-48, *et seq*.)

1987. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1988. This claim is brought only on behalf of Nationwide Class members who are Minnesota residents (the "Minnesota Class").

1989. The Minnesota Deceptive Trade Practices Act ("Minnesota DTPA") prohibits deceptive trade practices, which occur when a person "(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" "(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" and "(9) advertises goods or services with intent not to sell them as advertised." MINN. STAT. § 325D.44. In the course of the New GM's business, it systematically devalued safety and concealed a plethora of defects in GM-branded vehicles and engaged in deceptive practices by representing that Affected Vehicles have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that

they do not have; representing that Affected Vehicles are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and advertising Affected Vehicles with intent not to sell them as advertised. New GM participated in misleading, false, or deceptive acts that violated the Minnesota DTPA. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Minnesota DTPA.

1990. New GM's actions as set forth above occurred in the conduct of trade or commerce.

1991. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

1992. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

1993. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the

existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

1994. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

1995. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Minnesota DTPA.

1996. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

1997. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

1998. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Minnesota Class.

1999. New GM knew or should have known that its conduct violated the Minnesota DTPA.

2000. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2001. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2002. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2003. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Minnesota Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2004. Plaintiffs and the Minnesota Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been

aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2005. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2006. As a direct and proximate result of New GM's violations of the Minnesota DTPA, Plaintiffs and the Minnesota Class have suffered injury-in-fact and/or actual damage.

2007. Pursuant to MINN. STAT. § 8.31(3a) and 325D.45, Plaintiffs and the Minnesota Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota DTPA.

2008. Plaintiffs also seek punitive damages under MINN. STAT. § 549.20(1)(a) give the clear and convincing evidence that New GM's acts show deliberate disregard for the rights or safety of others.

COUNT III

FRAUD BY CONCEALMENT

2009. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2010. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Minnesota residents (the "Minnesota Class").

2011. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2012. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2013. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2014. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2015. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Minnesota Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Minnesota Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2016. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Minnesota Class.

2017. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Minnesota Class and conceal material information regarding defects that exist in GM-branded vehicles.

2018. Plaintiffs and the Minnesota Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Minnesota Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Minnesota Class.

2019. Because of the concealment and/or suppression of the facts, Plaintiffs and the Minnesota Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2020. The value of all Minnesota Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2021. Accordingly, New GM is liable to the Minnesota Class for their damages in an amount to be proven at trial.

2022. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Minnesota Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT IV

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(MINN. STAT. § 336.2-314)

2023. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2024. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Minnesota residents who are members of the Ignition Switch Defect Subclass (the "Minnesota Ignition Switch Defect Subclass").

2025. New GM was a merchant with respect to motor vehicles within the meaning of MINN. STAT. § 336.2-104(1).

2026. Under MINN. STAT. § 336.2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

2027. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2028. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Minnesota Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2029. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Minnesota Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

MISSISSIPPI

COUNT I

VIOLATION OF MISSISSIPPI CONSUMER PROTECTION ACT

(MISS. CODE. ANN. § 75-24-1, *et seq.*)

2030. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2031. This claim is brought only on behalf of Nationwide Class members who are Mississippi residents (the "Mississippi Class").

2032. The Mississippi Consumer Protection Act ("Mississippi CPA") prohibits "unfair or deceptive trade practices in or affecting commerce." MISS. CODE. ANN. § 75-24-5(1). Unfair or deceptive practices include, but are not limited to, "(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;" "(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" and "(i) Advertising goods or services with intent not to sell them as advertised." New GM participated

in deceptive trade practices that violated the Mississippi CPA as described herein, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; and advertising Affected Vehicles with the intent not to sell them as advertised.

2033. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2034. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2035. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2036. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2037. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Mississippi CPA.

2038. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2039. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2040. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Mississippi Class.

2041. New GM knew or should have known that its conduct violated the Mississippi CPA.

2042. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2043. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2044. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2045. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Mississippi Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2046. Plaintiffs and the Mississippi Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have

purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2047. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2048. As a direct and proximate result of New GM's violations of the Mississippi CPA, Plaintiffs and the Mississippi Class have suffered injury-in-fact and/or actual damage.

2049. Plaintiffs' actual damages in an amount to be determined at trial any other just and proper relief available under the Mississippi CPA.

COUNT II

FRAUD BY CONCEALMENT

2050. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2051. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Mississippi residents (the "Mississippi Class").

2052. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2053. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2054. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2055. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2056. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Mississippi Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Mississippi Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2057. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Mississippi Class.

2058. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Mississippi Class and conceal material information regarding defects that exist in GM-branded vehicles.

2059. Plaintiffs and the Mississippi Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Mississippi Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Mississippi Class.

2060. Because of the concealment and/or suppression of the facts, Plaintiffs and the Mississippi Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2061. The value of all Mississippi Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2062. Accordingly, New GM is liable to the Mississippi Class for their damages in an amount to be proven at trial.

2063. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Mississippi Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(MISS. CODE ANN. § 75-2-314)

2064. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2065. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Mississippi residents who are members of the Ignition Switch Defect Subclass (the "Mississippi Ignition Switch Defect Subclass").

2066. New GM was a merchant with respect to motor vehicles within the meaning of MISS. CODE ANN. § 75-2-104(1).

2067. Under MISS. CODE ANN. § 75-2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

2068. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2069. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Mississippi Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2070. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Mississippi Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

MISSOURI

COUNT I

VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT

(MO. REV. STAT. § 407.010, *et seq.*)

2071. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2072. This claim is brought only on behalf of Nationwide Class members who are Missouri residents (the "Missouri Class").

2073. New GM, Plaintiffs and the Missouri Class are "persons" within the meaning of MO. REV. STAT. § 407.010(5).

2074. New GM engaged in "trade" or "commerce" in the State of Missouri within the meaning of MO. REV. STAT. § 407.010(7).

2075. The Missouri Merchandising Practices Act ("Missouri MPA") makes unlawful the "act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise." MO. REV. STAT. § 407.020.

2076. In the course of its business, New GM systematically devalued safety and, omitted, suppressed, and concealed a plethora of defects in GM-branded vehicles as described herein. By failing to disclose these defects or facts about the defects described herein known to it or that were available to New GM upon reasonable inquiry, New GM deprived consumers of

all material facts about the safety and functionality of their vehicle. By failing to release material facts about the defect, New GM curtailed or reduced the ability of consumers to take notice of material facts about their vehicle, and/or it affirmatively operated to hide or keep those facts from consumers. 15 MO. CODE OF SERV. REG. § 60-9.110. Moreover, New GM has otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, unfair practices, and/or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2077. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but suppressed and/or concealed all of that information until recently.

2078. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM omitted, suppressed, and/or concealed this information as well.

2079. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have

recalled the vehicles years ago. Failure to do so has been part of New GM's method, act, use, and/or practice to hide, keep, curtail, and/or reduce consumers' access to material facts.

2080. By failing to disclose and by actively concealing, suppressing, or omitting the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and/or deceptive business practices and concealed, suppressed, and/or omitted material facts from consumers in connection with the purchase of their vehicles—all in violation of the Missouri MPA.

2081. In the course of New GM's business, it willfully failed to disclose and actively concealed, suppressed, and omitted the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2082. New GM's unfair or deceptive acts or practices, including these concealments, omissions, and suppressions of material facts, had a tendency or capacity to mislead, tended to create a false impression in consumers, and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2083. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Missouri Class, including without limitation by failing to disclose the defects in light of circumstances under which the omitted facts were necessary in order to correct the assumptions, inferences or representations being made by New GM about the safety or reliability of its vehicles. Consequently, the failure to

disclose such facts amounts to misleading statements pursuant to 15 MO. CODE OF SERV. REG. § 60-9.090.

2084. Because New GM knew or believed that its statements regarding safety and reliability of its vehicles were not in accord with the facts and/or had no reasonable basis for such statements in light of its knowledge of these defects, New GM engaged in fraudulent misrepresentations pursuant to 15 MO. CODE OF SERV. REG. 60-9.100.

2085. New GM's conduct as described herein is unethical, oppressive, or unscrupulous and/or it presented a risk of substantial injury to consumers whose vehicles were prone to fail at times and under circumstances that could have resulted in death. Such acts are unfair practices in violation of 15 MO. CODE OF SERV. REG. 60-8.020.

2086. New GM knew or should have known that its conduct violated the Missouri MPA.

2087. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false, misleading, and/or half-truths in violation of the Missouri MPA.

2088. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully

withholding material facts from Plaintiffs that contradicted these representations.

2089. Because New GM fraudulently concealed the many defects in GM-branded vehicles, and committed these other unlawful acts in violation of the Missouri MPA, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2090. New GM's systemic devaluation of safety and its misleading statements, deception, and/or concealment, suppression, or omission of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Missouri Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2091. Plaintiffs and the Missouri Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2092. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2093. As a direct and proximate result of New GM's violations of the Missouri MPA, Plaintiffs and the Missouri Class have suffered injury-in-fact and/or actual damage.

2094. New GM is liable to Plaintiffs and the Missouri Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive relief enjoining New GM's unfair and deceptive practices, and any other just and proper relief under MO. REV. STAT. § 407.025.

COUNT II

FRAUD BY CONCEALMENT

2095. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2096. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Missouri residents (the "Missouri Class").

2097. New GM concealed and suppressed material facts concerning the quality of its vehicles and the New GM brand.

2098. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2099. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2100. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2101. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Missouri Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Missouri Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2102. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Missouri Class.

2103. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Missouri Class and conceal material information regarding defects that exist in GM-branded vehicles.

2104. Plaintiffs and the Missouri Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Missouri Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Missouri Class.

2105. Because of the concealment and/or suppression of the facts, Plaintiffs and the Missouri Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less

for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2106. The value of all Missouri Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2107. Accordingly, New GM is liable to the Missouri Class for their damages in an amount to be proven at trial.

2108. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Missouri Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(MO. REV. STAT. § 400.2-314)

2109. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2110. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Missouri residents who are members of the Ignition Switch Defect Subclass (the "Missouri Ignition Switch Defect Subclass").

2111. New GM was a merchant with respect to motor vehicles within the meaning of MO. REV. STAT. § 400.2-314(1).

2112. Under MO. REV. STAT. § 400.2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

2113. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2114. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Missouri Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2115. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the Missouri Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

MONTANA

COUNT I

VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973

(MONT. CODE ANN. § 30-14-101, *et seq.*)

2116. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2117. This claim is brought only on behalf of Nationwide Class members who are Montana residents (the "Montana Class").

2118. New GM, Plaintiffs and the Montana Class are "persons" within the meaning of MONT. CODE ANN. § 30-14-102(6).

2119. Montana Class members are "consumer[s]" under MONT. CODE ANN. § 30-14-102(1).

2120. The sale or lease of the Affected Vehicles to Montana Class members occurred within "trade and commerce" within the meaning of MONT. CODE ANN. § 30-14-102(8), and New GM committed deceptive and unfair acts in the conduct of "trade and commerce" as defined in that statutory section.

2121. The Montana Unfair Trade Practices and Consumer Protection Act ("Montana CPA") makes unlawful any "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." MONT. CODE ANN. § 30-14-103. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in unfair and deceptive acts or practices in violation of the Montana CPA.

2122. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise

engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2123. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2124. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2125. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2126. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Montana CPA.

2127. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2128. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2129. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Montana Class.

2130. New GM knew or should have known that its conduct violated the Montana CPA.

2131. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2132. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2133. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2134. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Montana Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2135. Plaintiffs and the Montana Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2136. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2137. As a direct and proximate result of New GM's violations of the Montana CPA, Plaintiffs and the Montana Class have suffered injury-in-fact and/or actual damage.

2138. Because the New GM's unlawful methods, acts, and practices have caused Montana Class members to suffer an ascertainable loss of money and property, the Montana

Class seeks from New GM actual damages or $500, whichever is greater, discretionary treble damages, reasonable attorneys' fees, an order enjoining New GM's unfair, unlawful, and/or deceptive practices, and any other relief the Court considers necessary or proper, under MONT. CODE ANN. § 30-14-133.

COUNT II

FRAUD BY CONCEALMENT

2139. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2140. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Montana residents (the "Montana Class").

2141. New GM concealed and suppressed material facts concerning the quality of its vehicles and the New GM brand.

2142. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2143. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2144. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2145. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Montana Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Montana Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2146. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Montana Class.

2147. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Montana Class and conceal material information regarding defects that exist in GM-branded vehicles.

2148. Plaintiffs and the Montana Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Montana Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Montana Class.

2149. Because of the concealment and/or suppression of the facts, Plaintiffs and the Montana Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less

for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2150. The value of all Montana Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2151. Accordingly, New GM is liable to the Montana Class for their damages in an amount to be proven at trial.

2152. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Montana Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (MONT. CODE § 30-2-314)

2153. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2154. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Montana residents who are members of the Ignition Switch Defect Subclass (the "Montana Ignition Switch Defect Subclass").

2155. New GM was a merchant with respect to motor vehicles under MONT. CODE § 30-2-104(1) .

2156. Under MONT. CODE § 30-2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

2157. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2158. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Montana Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2159. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the Montana Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

NEBRASKA

COUNT I

VIOLATION OF THE NEBRASKA CONSUMER PROTECTION ACT

(NEB. REV. STAT. § 59-1601, *et seq.*)

2160. Plaintiff incorporates by reference all preceding and succeeding paragraphs as if set forth fully herein.

2161. This claim is brought only on behalf of Nationwide Class members who are Nebraska residents (the "Nebraska Class").

2162. New GM, Plaintiffs and Nebraska Class members are "person[s]" under the Nebraska Consumer Protection Act ("Nebraska CPA"), NEB. REV. STAT. § 59-1601(1).

2163. New GM's actions as set forth herein occurred in the conduct of trade or commerce as defined under NEB. REV. STAT. § 59-1601(2).

2164. The Nebraska CPA prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." NEB. REV. STAT. § 59-1602. The conduct New GM as set forth herein constitutes unfair or deceptive acts or practices.

2165. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2166. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2167. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from

finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2168. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2169. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Nebraska CPA.

2170. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2171. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2172. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Nebraska Class.

2173. New GM knew or should have known that its conduct violated the Nebraska CPA.

2174. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2175. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2176. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2177. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Nebraska Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2178. Plaintiffs and the Nebraska Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been

aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2179. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2180. As a direct and proximate result of New GM's violations of the Nebraska CPA, Plaintiffs and the Nebraska Class have suffered injury-in-fact and/or actual damage.

2181. Because New GM's conduct caused injury to Class members' property through violations of the Nebraska CPA, the Nebraska Class seeks recovery of actual damages, as well as enhanced damages up to $1,000, an order enjoining New GM's unfair or deceptive acts and practices, costs of Court, reasonable attorneys' fees, and any other just and proper relief available under NEB. REV. STAT. § 59-1609.

COUNT II

FRAUD BY CONCEALMENT

2182. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2183. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Nebraska residents (the "Nebraska Class").

2184. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2185. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2186. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2187. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2188. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Nebraska Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Nebraska Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2189. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Nebraska Class.

2190. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Nebraska Class and conceal material information regarding defects that exist in GM-branded vehicles.

2191. Plaintiffs and the Nebraska Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Nebraska Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Nebraska Class.

2192. Because of the concealment and/or suppression of the facts, Plaintiffs and the Nebraska Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2193. The value of all Nebraska Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2194. Accordingly, New GM is liable to the Nebraska Class for their damages in an amount to be proven at trial.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(NEB. REV. STAT. NEB. § 2-314)

2195. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2196. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Nebraska residents who are members of the Ignition Switch Defect Subclass (the "Nebraska Ignition Switch Defect Subclass").

2197. New GM was a merchant with respect to motor vehicles within the meaning of NEB. REV. STAT. § 2-104(1).

2198. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles under NEB. REV. STAT. § 2-314.

2199. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2200. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Nebraska Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2201. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the Nebraska Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

NEVADA

COUNT I

VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT

(NEV. REV. STAT. § 598.0903, *et seq*.)

2202. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2203. This claim is brought only on behalf of Nationwide Class members who are Nevada residents (the "Nevada Class").

2204. The Nevada Deceptive Trade Practices Act ("Nevada DTPA"), NEV. REV. STAT. § 598.0903, *et seq.* prohibits deceptive trade practices. NEV. REV. STAT. § 598.0915 provides that a person engages in a "deceptive trade practice" if, in the course of business or occupation, the person: "5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith"; "7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model"; "9. Advertises goods or services with intent not to sell or lease them as advertised"; or "15. Knowingly makes any other false representation in a transaction."

2205. New GM engaged in deceptive trade practices that violated the Nevada DTPA, including: knowingly representing that Affected Vehicles have uses and benefits which they do

not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not; and knowingly making other false representations in a transaction.

2206. New GM's actions as set forth above occurred in the conduct of trade or commerce.

2207. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2208. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2209. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the

existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2210. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2211. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Nevada DTPA.

2212. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2213. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2214. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Nevada Class.

2215. New GM knew or should have known that its conduct violated the Nevada DTPA.

2216. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2217. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2218. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2219. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Nevada Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2220. Plaintiffs and the Nevada Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or

leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2221. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2222. As a direct and proximate result of New GM's violations of the Nevada DTPA, Plaintiffs and the Nevada Class have suffered injury-in-fact and/or actual damage.

2223. Accordingly, Plaintiffs and the Nevada Class seek their actual damages, punitive damages, an order enjoining New GM's deceptive acts or practices, costs of Court, attorney's fees, and all other appropriate and available remedies under the Nevada Deceptive Trade Practices Act. NEV. REV. STAT. § 41.600.

COUNT II

FRAUD BY CONCEALMENT

2224. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2225. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Nevada residents (the "Nevada Class").

2226. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2227. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2228. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2229. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2230. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Nevada Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Nevada Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2231. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Nevada Class.

2232. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Nevada Class and conceal material information regarding defects that exist in GM-branded vehicles.

2233. Plaintiffs and the Nevada Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts.

Plaintiffs' and the Nevada Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Nevada Class.

2234. Because of the concealment and/or suppression of the facts, Plaintiffs and the Nevada Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2235. The value of all Nevada Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2236. Accordingly, New GM is liable to the Nevada Class for their damages in an amount to be proven at trial.

2237. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Nevada Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(NEV. REV. STAT. § 104.2314)

2238. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2239. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Nevada residents who are members of the Ignition Switch Defect Subclass (the "Nevada Ignition Switch Defect Subclass").

2240. New GM was a merchant with respect to motor vehicles within the meaning of NEV. REV. STAT. § 104.2104(1).

2241. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

2242. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2243. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Nevada Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2244. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the Nevada Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

NEW HAMPSHIRE

COUNT I

VIOLATION OF N.H. CONSUMER PROTECTION ACT

(N.H. REV. STAT. ANN. § 358-A:1, *et seq*.)

2245. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2246. This claim is brought only on behalf of Nationwide Class members who are New Hampshire residents (the "New Hampshire Class").

2247. Plaintiffs, the New Hampshire Class, and New GM are "persons" under the New Hampshire Consumer Protection Act ("New Hampshire CPA"), N.H. REV. STAT. § 358-A:1.

2248. New GM's actions as set forth herein occurred in the conduct of trade or commerce as defined under N.H. REV. STAT. § 358-A:1.

2249. The New Hampshire CPA prohibits a person, in the conduct of any trade or commerce, from using "any unfair or deceptive act or practice," including "but … not limited to, the following: . . . (V) Representing that goods or services have … characteristics, … uses, benefits, or quantities that they do not have;" "(VII) Representing that goods or services are of a particular standard, quality, or grade, … if they are of another;" and "(IX) Advertising goods or services with intent not to sell them as advertised." N.H. REV. STAT. § 358-A:2.

2250. New GM participated in unfair or deceptive acts or practices that violated the New Hampshire CPA as described above and below. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive

business practices prohibited by the CPA, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce.

2251. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2252. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2253. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the

existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2254. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2255. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the New Hampshire CPA.

2256. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2257. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2258. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the New Hampshire Class.

2259. New GM knew or should have known that its conduct violated the New Hampshire CPA.

2260. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2261. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2262. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2263. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the New Hampshire Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2264. Plaintiffs and the New Hampshire Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been

aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2265. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2266. As a direct and proximate result of New GM's violations of the New Hampshire CPA, Plaintiffs and the New Hampshire Class have suffered injury-in-fact and/or actual damage.

2267. Because New GM's willful conduct caused injury to New Hampshire Class members' property through violations of the New Hampshire CPA, the New Hampshire Class seeks recovery of actual damages or $1,000, whichever is greater, treble damages, costs and reasonable attorneys' fees, an order enjoining New GM's unfair and/or deceptive acts and practices, and any other just and proper relief under N.H. REV. STAT. § 358-A:10.

COUNT II

FRAUD BY CONCEALMENT

2268. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2269. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are New Hampshire residents (the "New Hampshire Class").

2270. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2271. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2272. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2273. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2274. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the New Hampshire Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the New Hampshire Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2275. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the New Hampshire Class.

2276. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the New Hampshire Class and conceal material information regarding defects that exist in GM-branded vehicles.

2277. Plaintiffs and the New Hampshire Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the New Hampshire Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the New Hampshire Class.

2278. Because of the concealment and/or suppression of the facts, Plaintiffs and the New Hampshire Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2279. The value of all New Hampshire Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2280. Accordingly, New GM is liable to the New Hampshire Class for their damages in an amount to be proven at trial.

2281. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the New Hampshire Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(N.H. REV. STAT. ANN. § 382-A:2-314)

2282. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2283. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of New Hampshire residents who are members of the Ignition Switch Defect Subclass (the "New Hampshire Ignition Switch Defect Subclass").

2284. New GM was a merchant with respect to motor vehicles within the meaning of N.H. REV. STAT. ANN. § 382-A:2-104(1).

2285. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles under N.H. REV. STAT. ANN. § 382-A:2-314.

2286. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2287. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the New Hampshire Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2288. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the New Hampshire Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

NEW JERSEY

COUNT I

VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT

(N.J. STAT. ANN. § 56:8-1, *et seq.*)

2289. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2290. This claim is brought only on behalf of Nationwide Class members who are New Jersey residents (the "New Jersey Class").

2291. Plaintiffs, the New Jersey Class, and New GM are or were "persons" within the meaning of N.J. STAT. ANN. § 56:8-1(d).

2292. New GM engaged in "sales" of "merchandise" within the meaning of N.J. STAT. ANN. § 56:8-1(c), (d).

2293. The New Jersey Consumer Fraud Act ("New Jersey CFA") makes unlawful "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with the intent that others rely upon such concealment,

suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby…" N.J. STAT. ANN. § 56:8-2. New GM engaged in unconscionable or deceptive acts or practices that violated the New Jersey CFA as described above and below, and did so with the intent that Class members rely upon their acts, concealment, suppression or omissions.

2294. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2295. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2296. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2297. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2298. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the New Jersey CFA.

2299. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2300. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2301. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the New Jersey Class.

2302. New GM knew or should have known that its conduct violated the New Jersey CFA.

2303. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2304. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2305. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2306. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the New Jersey Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2307. Plaintiffs and the New Jersey Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have

purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2308. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2309. As a direct and proximate result of New GM's violations of the New Jersey CFA, Plaintiffs and the New Jersey Class have suffered injury-in-fact and/or actual damage.

2310. Plaintiffs and the New Jersey Class are entitled to recover legal and/or equitable relief including an order enjoining New GM's unlawful conduct, treble damages, costs and reasonable attorneys' fees pursuant to N.J. STAT. ANN. § 56:8-19, and any other just and appropriate relief.

COUNT II

FRAUD BY CONCEALMENT

2311. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2312. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are New Jersey residents (the "New Jersey Class").

2313. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2314. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2315. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2316. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2317. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the New Jersey Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the New Jersey Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2318. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the New Jersey Class.

2319. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the New Jersey Class and conceal material information regarding defects that exist in GM-branded vehicles.

2320. Plaintiffs and the New Jersey Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts.

Plaintiffs' and the New Jersey Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the New Jersey Class.

2321. Because of the concealment and/or suppression of the facts, Plaintiffs and the New Jersey Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2322. The value of all New Jersey Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2323. Accordingly, New GM is liable to the New Jersey Class for their damages in an amount to be proven at trial.

2324. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the New Jersey Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(N.J. STAT. ANN. § 12A:2-314)

2325. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2326. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of New Jersey residents who are members of the Ignition Switch Defect Subclass (the "New Jersey Ignition Switch Defect Subclass").

2327. New GM was a merchant with respect to motor vehicles within the meaning of N.J. STAT. ANN. § 12A:2-104(1).

2328. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles under N.J. STAT. ANN. § 12A:2-104(1).

2329. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2330. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the New Jersey Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2331. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the New Jersey Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

NEW MEXICO

COUNT I

VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT

(N.M. STAT. ANN. §§ 57-12-1, *et seq.*)

2332. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2333. This claim is brought only on behalf of Nationwide Class members who are New Mexico residents (the "New Mexico Class").

2334. New GM, Plaintiffs and New Mexico Class members are or were "person[s]" under the New Mexico Unfair Trade Practices Act ("New Mexico UTPA"), N.M. STAT. ANN. § 57-12-2.

2335. New GM's actions as set forth herein occurred in the conduct of trade or commerce as defined under N.M. STAT. ANN. § 57-12-2.

2336. The New Mexico UTPA makes unlawful "a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services … by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person," including but not limited to "failing to state a material fact if doing so deceives or tends to deceive." N.M. STAT. ANN. § 57-12-2(D). New GM's acts and omissions described herein constitute unfair or deceptive acts or practices under N.M. STAT. ANN. § 57-12-2(D). In addition, New GM's actions constitute unconscionable actions under N.M. STAT. ANN. § 57-12-2(E), since they took

advantage of the lack of knowledge, ability, experience, and capacity of the New Mexico Class members to a grossly unfair degree.

2337. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2338. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2339. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2340. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2341. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the New Mexico UTPA.

2342. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2343. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2344. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the New Mexico Class.

2345. New GM knew or should have known that its conduct violated the New Mexico UTPA.

2346. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2347. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that

this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2348. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2349. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the New Mexico Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2350. Plaintiffs and the New Mexico Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2351. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2352. As a direct and proximate result of New GM's violations of the New Mexico UTPA, Plaintiffs and the New Mexico Class have suffered injury-in-fact and/or actual damage.

2353. New Mexico Class members seek punitive damages against New GM because New GM's conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith. New GM fraudulently and willfully misrepresented the safety and reliability of GM-branded vehicles, deceived New Mexico Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting the myriad flaws in the GM-branded vehicles that New GM repeatedly promised New Mexico Class members were safe. Because New GM's conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith, it warrants punitive damages.

2354. Because New GM's unconscionable, willful conduct caused actual harm to New Mexico Class members, the New Mexico Class seeks recovery of actual damages or $100, whichever is greater, discretionary treble damages, punitive damages, and reasonable attorneys' fees and costs, as well as all other proper and just relief available under N.M. STAT. ANN. § 57-12-10.

COUNT II

FRAUD BY CONCEALMENT

2355. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2356. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are New Mexico residents (the "New Mexico Class").

2357. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2358. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2359. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2360. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2361. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the New Mexico Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the New Mexico Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2362. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the New Mexico Class.

2363. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the New Mexico Class and conceal material information regarding defects that exist in GM-branded vehicles.

2364. Plaintiffs and the New Mexico Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the New Mexico Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the New Mexico Class.

2365. Because of the concealment and/or suppression of the facts, Plaintiffs and the New Mexico Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2366. The value of all New Mexico Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to

purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2367. Accordingly, New GM is liable to the New Mexico Class for their damages in an amount to be proven at trial.

2368. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the New Mexico Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(N.M. STAT. ANN. § 55-2-314)

2369. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2370. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of New Mexico residents who are members of the Ignition Switch Defect Subclass (the "New Mexico Ignition Switch Defect Subclass").

2371. New GM was a merchant with respect to motor vehicles within the meaning of N.M. STAT. ANN. § 55-2-104(1).

2372. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles under N.M. STAT. ANN. § 55-2-314.

2373. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2374. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the New Mexico Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2375. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the New Mexico Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

NEW YORK

COUNT I

DECEPTIVE ACTS OR PRACTICES

(N.Y. GEN. BUS. LAW § 349 and 350)

2376. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2377. This claim is brought only on behalf of Class members who are New York residents (the "New York Class").

2378. Plaintiffs and New York Class members are "persons" within the meaning of New York General Business Law ("New York GBL"), N.Y. GEN. BUS. LAW § 349(h).

2379. New GM is a "person," "firm," "corporation," or "association" within the meaning of N.Y. GEN. BUS. LAW § 349.

2380. The New York GBL makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce." N.Y. GEN. BUS. LAW § 349. New GM's conduct, as described above and below, constitutes "deceptive acts or practices" within the meaning of the New York GBL. Furthermore, New GM's deceptive acts and practices, which were intended to mislead consumers who were in the process of purchasing and/or leasing the Affected Vehicles, was conduct directed at consumers.

2381. New GM's actions as set forth above occurred in the conduct of trade or commerce.

2382. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2383. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2384. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2385. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2386. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the New York GBL.

2387. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2388. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2389. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the New York Class.

2390. New GM knew or should have known that its conduct violated the New York GBL.

2391. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2392. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2393. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2394. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the New York Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2395. Plaintiffs and the New York Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2396. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2397. As a direct and proximate result of New GM's violations of the New York GBL, Plaintiffs and the New York Class have suffered injury-in-fact and/or actual damage.

2398. New York Class members seek punitive damages against New GM because New GM's conduct was egregious. New GM misrepresented the safety and reliability of millions of GM-branded vehicles, concealed myriad defects in millions of GM-branded vehicles and the systemic safety issues plaguing the company, deceived Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting the serious flaw in its culture and in millions of GM-branded vehicles. New GM's egregious conduct warrants punitive damages.

2399. Because New GM's willful and knowing conduct caused injury to Class members, the New York Class seeks recovery of actual damages or $50, whichever is greater, discretionary treble damages up to $1,000, punitive damages, reasonable attorneys' fees and costs, an order enjoining New GM's deceptive conduct, and any other just and proper relief available under N.Y. GEN. BUS. LAW § 349.

COUNT II

FRAUD BY CONCEALMENT

2400. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2401. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Class members who are New York residents (the "New York Class").

2402. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2403. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2404. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2405. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2406. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the New York Class. These omitted and concealed facts were material because

they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the New York Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2407. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the New York Class.

2408. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the New York Class and conceal material information regarding defects that exist in GM-branded vehicles.

2409. Plaintiffs and the New York Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the New York Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the New York Class.

2410. Because of the concealment and/or suppression of the facts, Plaintiffs and the New York Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2411. The value of all New York Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2412. Accordingly, New GM is liable to the New York Class for their damages in an amount to be proven at trial.

2413. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the New York Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(N.Y. U.C.C. § 2-314)

2414. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2415. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of New York residents who are members of the Ignition Switch Defect Subclass (the "New York Ignition Switch Defect Subclass").

2416. New GM was a merchant with respect to motor vehicles within the meaning of N.Y. U.C.C. § 2-104(1).

2417. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles under N.Y. U.C.C. § 2-314.

2418. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2419. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the New York Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2420. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the New York Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

COUNT IV

VIOLATION OF NEW YORK'S FALSE ADVERTISING ACT

(N.Y. GEN. BUS. LAW § 350)

2421. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2422. This claim is brought only on behalf of Class members who are New York residents (the "New York Class").

2423. New GM was and is engaged in the "conduct of business, trade or commerce" within the meaning of N.Y. GEN. BUS. LAW § 350.

2424. N.Y. GEN. BUS. LAW § 350 makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce." False advertising includes "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in light of … representations [made] with respect to the commodity …." N.Y. GEN. BUS. LAW § 350-a.

2425. New GM caused to be made or disseminated through New York, through advertising, marketing and other publications, statements that were untrue or misleading, and that were known, or which by the exercise of reasonable care should have been known to New GM, to be untrue and misleading to consumers and the New York Class.

2426. New GM has violated § 350 because the misrepresentations and omissions regarding the defects, and New GM's systemic devaluation of safety, as set forth above, were material and likely to deceive a reasonable consumer.

2427. New York Class members have suffered an injury, including the loss of money or property, as a result of New GM's false advertising. In purchasing or leasing their vehicles, New York Plaintiffs and the New York Class relied on the misrepresentations and/or omissions of New GM with respect to the safety and reliability of the Affected Vehicles. New GM's representations were false and/or misleading because the concealed defects and safety issues seriously undermine the value of the Affected Vehicles. Had Plaintiffs and the New York Class known this, they would not have purchased or leased their Affected Vehicles and/or paid as much for them.

2428. Pursuant to N.Y. GEN. BUS. LAW § 350 e, the New York Class seeks monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500 each for New York Class member. Because New GM's conduct was committed willfully and knowingly, New York members are entitled to recover three times actual damages, up to $10,000, for each New York Class member.

2429. The New York Class also seeks an order enjoining New GM's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under General Business Law §§ 349–350.

NORTH CAROLINA

COUNT I

VIOLATION OF NORTH CAROLINA'S UNFAIR AND DECEPTIVE ACTS AND PRACTICES ACT

(N.C. GEN. STAT. § 75-1.1, *et seq.*)

2430. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2431. This claim is brought only on behalf of Nationwide Class members who are North Carolina residents (the "North Carolina Class").

2432. New GM engaged in "commerce" within the meaning of N.C. GEN. STAT. § 75-1.1(b).

2433. The North Carolina Act broadly prohibits "unfair or deceptive acts or practices in or affecting commerce." N.C. GEN. STAT. § 75-1.1(a). As alleged above and below, New GM willfully committed unfair or deceptive acts or practices in violation of the North Carolina Act.

2434. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2435. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2436. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2437. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2438. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold,

New GM engaged in unfair and deceptive business practices in violation of the North Carolina Act.

2439. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2440. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2441. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the North Carolina Class.

2442. New GM knew or should have known that its conduct violated the North Carolina Act.

2443. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2444. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2445. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2446. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the North Carolina Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2447. Plaintiffs and the North Carolina Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2448. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2449. As a direct and proximate result of New GM's violations of the North Carolina Act, Plaintiffs and the North Carolina Class have suffered injury-in-fact and/or actual damage.

2450. North Carolina Class members seek punitive damages against New GM because New GM's conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith. New GM fraudulently and willfully misrepresented the safety and reliability of GM-branded vehicles, deceived North Carolina Class members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting the myriad flaws in the GM-branded vehicles it repeatedly promised Class members were safe. Because New GM's conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith, it warrants punitive damages.

2451. Plaintiffs seek an order for treble their actual damages, an order enjoining New GM's unlawful acts, costs of Court, attorney's fees, and any other just and proper relief available under the North Carolina Act, N.C. GEN. STAT. § 75-16.

COUNT II

FRAUD BY CONCEALMENT

2452. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2453. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are North Carolina residents (the "North Carolina Class").

2454. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2455. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2456. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2457. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2458. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the North Carolina Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the North Carolina Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2459. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the North Carolina Class.

2460. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the North Carolina Class and conceal material information regarding defects that exist in GM-branded vehicles.

2461. Plaintiffs and the North Carolina Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed

facts. Plaintiffs' and the North Carolina Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the North Carolina Class.

2462. Because of the concealment and/or suppression of the facts, Plaintiffs and the North Carolina Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2463. The value of all North Carolina Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2464. Accordingly, New GM is liable to the North Carolina Class for their damages in an amount to be proven at trial.

2465. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the North Carolina Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(N.C. GEN. STAT. § 25-2-314)

2466. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2467. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of North Carolina residents who are members of the Ignition Switch Defect Subclass (the "North Carolina Ignition Switch Defect Subclass").

2468. New GM was a merchant with respect to motor vehicles within the meaning of N.C. GEN. STAT. § 25-2-104(1).

2469. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles under N.C. GEN. STAT. § 25-2-314.

2470. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2471. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the North Carolina Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2472. As a direct and proximate result of New GM's breach of the warranty of merchantability, Plaintiffs and the North Carolina Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

NORTH DAKOTA

COUNT I

VIOLATION OF THE NORTH DAKOTA CONSUMER FRAUD ACT

(N.D. CENT. CODE § 51-15-02)

2473. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2474. This claim is brought only on behalf of Nationwide Class members who are North Dakota residents (the "North Dakota Class").

2475. Plaintiffs, the North Dakota Class members, and New GM are "persons" within the meaning of N.D. CENT. CODE § 51-15-02(4).

2476. New GM engaged in the "sale" of "merchandise" within the meaning of N.D. CENT. CODE § 51-15-02(3), (5).

2477. The North Dakota Consumer Fraud Act ("North Dakota CFA") makes unlawful "[t]he act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise…." N.D. CENT. CODE § 51-15-02. As set forth above and below, New GM committed deceptive acts or practices, with the intent that Class members rely thereon in connection with their purchase or lease of the Affected Vehicles.

2478. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise

engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2479. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2480. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2481. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2482. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the North Dakota CFA.

2483. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2484. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2485. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the North Dakota Class.

2486. New GM knew or should have known that its conduct violated the North Dakota CFA.

2487. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2488. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully

withholding material facts from Plaintiffs that contradicted these representations.

2489. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2490. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the North Dakota Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2491. Plaintiffs and the North Dakota Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2492. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2493. As a direct and proximate result of New GM's violations of the North Dakota CFA, Plaintiffs and the North Dakota Class have suffered injury-in-fact and/or actual damage.

2494. North Dakota Class members seek punitive damages against New GM because New GM's conduct was egregious. New GM misrepresented the safety and reliability of millions of GM-branded vehicles, concealed myriad defects in millions of GM-branded vehicles and the systemic safety issues plaguing the company, deceived North Dakota Class members on life-or-death matters, and concealed material facts that only New GM knew, all to avoid the expense and public relations nightmare of correcting the serious flaw in its culture and in millions of GM-branded vehicles. New GM's egregious conduct warrants punitive damages.

2495. Further, New GM knowingly committed the conduct described above, and thus, under N.D. CENT. CODE § 51-15-09, New GM is liable to Plaintiffs and the North Dakota Class for treble damages in amounts to be proven at trial, as well as attorneys' fees, costs, and disbursements. Plaintiffs further seek an order enjoining New GM's unfair and/or deceptive acts or practices, and other just and proper available relief under the North Dakota CFA.

COUNT II

FRAUD BY CONCEALMENT

2496. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2497. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are North Dakota residents (the "North Dakota Class").

2498. New GM concealed and suppressed material facts concerning the quality of its vehicles and the New GM brand.

2499. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2500. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2501. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2502. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the North Dakota Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the North Dakota Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2503. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the North Dakota Class.

2504. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the North Dakota Class and conceal material information regarding defects that exist in GM-branded vehicles.

2505. Plaintiffs and the North Dakota Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed

facts. Plaintiffs' and the North Dakota Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the North Dakota Class.

2506. Because of the concealment and/or suppression of the facts, Plaintiffs and the North Dakota Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2507. The value of all North Dakota Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2508. Accordingly, New GM is liable to the North Dakota Class for their damages in an amount to be proven at trial.

2509. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the North Dakota Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(N.D. CENT. CODE § 41-02-31)

2510. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2511. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of North Dakota residents who are members of the Ignition Switch Defect Subclass (the "North Dakota Ignition Switch Defect Subclass").

2512. New GM was a merchant with respect to motor vehicles.

2513. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

2514. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2515. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the North Dakota Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2516. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the North Dakota Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

OHIO

COUNT I

VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT

(OHIO REV. CODE ANN. § 1345.01, *et seq.*)

2517. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2518. This claim is brought only on behalf of Nationwide Class members who are Ohio residents (the "Ohio Class").

2519. New GM is a "supplier" as that term is defined in OHIO REV. CODE § 1345.01(C).

2520. Plaintiffs and the Ohio Class are "consumers" as that term is defined in OHIO REV. CODE § 1345.01(D), and their purchases and leases of the Affected Vehicles are "consumer transactions" within the meaning of OHIO REV. CODE § 1345.01(A).

2521. The Ohio Consumer Sales Practices Act ("Ohio CSPA"), OHIO REV. CODE § 1345.02, broadly prohibits unfair or deceptive acts or practices in connection with a consumer transaction. Specifically, and without limitation of the broad prohibition, the Act prohibits suppliers from representing (i) that goods have characteristics or uses or benefits which they do not have; (ii) that their goods are of a particular quality or grade they are not; and (iii) the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not. *Id.* New GM's conduct as alleged above and below constitutes unfair and/or deceptive consumer sales practices in violation of OHIO REV. CODE § 1345.02.

2522. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the Ohio CSPA, including: representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not; and engaging in other unfair or deceptive acts or practices.

2523. New GM's actions as set forth above occurred in the conduct of trade or commerce.

2524. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2525. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2526. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from

finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2527. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2528. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Ohio CSPA.

2529. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2530. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2531. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Ohio Class.

2532. New GM knew or should have known that its conduct violated the Ohio CSPA.

2533. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2534. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2535. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2536. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Ohio Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2537. Plaintiffs and the Ohio Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the

many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2538. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2539. As a direct and proximate result of New GM's violations of the Ohio CSPA, Plaintiffs and the Ohio Class have suffered injury-in-fact and/or actual damage.

2540. Ohio Class members seek punitive damages against New GM because New GM's conduct was egregious. New GM misrepresented the safety and reliability of millions of GM-branded vehicles, concealed myriad defects in millions of GM-branded vehicles and the systemic safety issues plaguing New GM, deceived Class members on life-or-death matters, and concealed material facts that only New GM knew, all to avoid the expense and public relations nightmare of correcting the serious flaw in its culture and in millions of GM-branded vehicles. New GM's egregious conduct warrants punitive damages.

2541. Plaintiffs and the Ohio Class specifically do not allege herein a claim for violation of OHIO REV. CODE § 1345.72.

2542. New GM was on notice pursuant to OHIO REV. CODE § 1345.09(B) that its actions constituted unfair, deceptive, and unconscionable practices by, for example, *Mason v. Mercedes-Benz USA, LLC*, 2005 Ohio App. LEXIS 3911, at *33 (S.D. Ohio Aug. 18, 2005), and *Lilly v. Hewlett-Packard Co.*, 2006 U.S. Dist. LEXIS 22114, at *17-18 (S.D. Ohio Apr. 21, 2006). Further, New GM's conduct as alleged above constitutes an act or practice previously declared to

be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 and previously determined by Ohio courts to violate Ohio's Consumer Sales Practices Act and was committed after the decisions containing these determinations were made available for public inspection under division (A)(3) of O.R.C. § 1345.05. The applicable rule and Ohio court opinions include, but are not limited to: OAC 109:4-3-16; *Mason v. Mercedes-Benz USA, LLC*, 2005 Ohio 4296 (Ohio Ct. App. 2005); *Khouri v. Lewis*, Cuyahoga Common Pleas No. 342098 (2001); *State ex rel. Montgomery v. Canterbury*, Franklin App. No. 98CVH054085 (2000); and *Fribourg v. Vandemark* (July 26, 1999), Clermont App. No CA99-02-017, unreported (PIF # 10001874).

2543. As a result of the foregoing wrongful conduct of New GM, Plaintiffs and the Ohio Class have been damaged in an amount to be proven at trial, and seek all just and proper remedies, including, but not limited to, actual and statutory damages, an order enjoining New GM's deceptive and unfair conduct, treble damages, court costs and reasonable attorneys' fees, pursuant to OHIO REV. CODE § 1345.09, *et seq*.

COUNT II

FRAUD BY CONCEALMENT

2544. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2545. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Ohio residents (the "Ohio Class").

2546. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2547. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2548. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2549. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2550. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Ohio Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Ohio Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2551. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Ohio Class.

2552. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Ohio Class and conceal material information regarding defects that exist in GM-branded vehicles.

2553. Plaintiffs and the Ohio Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Ohio Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Ohio Class.

2554. Because of the concealment and/or suppression of the facts, Plaintiffs and the Ohio Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2555. The value of all Ohio Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2556. Accordingly, New GM is liable to the Ohio Class for their damages in an amount to be proven at trial.

2557. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Ohio Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

IMPLIED WARRANTY IN TORT

2558. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2559. Plaintiffs bring this claim only on behalf of Ohio residents who are members of the Ignition Switch Defect Subclass (the "Ohio Ignition Switch Defect Subclass").

2560. The Defective Ignition Switch Vehicles contained a design defect, namely, a faulty ignition system that fails under reasonably foreseeable use, resulting in stalling, loss of brakes, power steering, and airbags, among other safety issues, as detailed herein more fully.

2561. The design, manufacturing, and/or assembly defects existed at the time the Defective Ignition Switch Vehicles containing the defective ignition systems left the possession or control of New GM.

2562. Based upon the dangerous product defects, New GM failed to meet the expectations of a reasonable consumer. The Defective Ignition Switch Vehicles failed their ordinary, intended use because the ignition systems in the vehicles do not function as a reasonable consumer would expect. Moreover, the defect presents a serious danger to Plaintiffs and the other members of the Ohio Ignition Defect Subclass that cannot be eliminated without significant cost.

2563. The design defects in the vehicles were the direct and proximate cause of economic damages to Plaintiffs, as well as damages incurred or to be incurred by each of the other Ohio Ignition Switch Defect Subclass members.

OKLAHOMA

COUNT I

VIOLATION OF OKLAHOMA CONSUMER PROTECTION ACT

(OKLA. STAT. TIT. 15 § 751, *et seq.*)

2564. Plaintiffs reallege and incorporate by reference each paragraph as if set forth fully herein.

2565. This claim is brought only on behalf of Nationwide Class members who are Oklahoma residents (the "Oklahoma Class").

2566. Plaintiffs and Oklahoma Class members are "persons" under the Oklahoma Consumer Protection Act ("Oklahoma CPA"), OKLA. STAT. TIT. 15 § 752.

2567. New GM is a "person," "corporation," or "association" within the meaning of OKLA. STAT. TIT. 15 § 15-751(1).

2568. The sale or lease of the Affected Vehicles to the Oklahoma Class members was a "consumer transaction" within the meaning of OKLA. STAT. TIT. 15 § 752, and New GM's actions as set forth herein occurred in the conduct of trade or commerce.

2569. The Oklahoma CPA declares unlawful, *inter alia*, the following acts or practices when committed in the course of business: "mak[ing] a false or misleading representation, knowingly or with reason to know, as to the characteristics …, uses, [or] benefits, of the subject of a consumer transaction," or making a false representation, "knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another or "[a]dvertis[ing], knowingly or with reason to know, the subject of a consumer

transaction with intent not to sell it as advertised;" and otherwise committing "an unfair or deceptive trade practice." *See* OKLA. STAT. TIT. 15, § 753.

2570. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in unfair and deceptive business practices prohibited by the Oklahoma CPA, including: representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; and advertising Affected Vehicles with the intent not to sell or lease them as advertised; misrepresenting, omitting and engaging in other practices that have deceived or could reasonably be expected to deceive or mislead; and engaging in practices which offend established public policy or are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

2571. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2572. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2573. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2574. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2575. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive trade practices in violation of the Oklahoma CPA.

2576. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2577. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2578. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Oklahoma Class.

2579. New GM knew or should have known that its conduct violated the Oklahoma CPA.

2580. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2581. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2582. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2583. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Oklahoma Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2584. Plaintiffs and the Oklahoma Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2585. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2586. As a direct and proximate result of New GM's violations of the Oklahoma CPA, Plaintiffs and the Oklahoma Class have suffered injury-in-fact and/or actual damage.

2587. Oklahoma Class members seek punitive damages against New GM because New GM's conduct was egregious. New GM misrepresented the safety and reliability of millions of GM-branded vehicles, concealed myriad defects in millions of GM-branded vehicles and the systemic safety issues plaguing New GM, deceived Oklahoma Class members on life-or-death matters, and concealed material facts that only it knew, all to avoid the expense and public relations nightmare of correcting the serious flaw in its culture and in millions of GM-branded vehicles. New GM's egregious conduct warrants punitive damages.

2588. New GM's conduct as alleged herein was unconscionable because (1) New GM, knowingly or with reason to know, took advantage of consumers reasonably unable to protect their interests because of their age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor; (2) at the time the consumer transaction was entered into, New GM knew or had reason to know that price grossly exceeded

the price at which similar vehicles were readily obtainable in similar transactions by like consumers; and (3) New GM knew or had reason to know that the transaction New GM induced the consumer to enter into was excessively one-sided in favor of New GM.

2589. Because New GM's unconscionable conduct caused injury to Oklahoma Class members, the Oklahoma Class seeks recovery of actual damages, discretionary penalties up to $2,000 per violation, and reasonable attorneys' fees, under OKLA. STAT. TIT. 15 § 761.1. The Oklahoma Class further seeks an order enjoining New GM's unfair and/or deceptive acts or practices, and any other just and proper relief available under the Oklahoma CPA.

COUNT II

FRAUD BY CONCEALMENT

2590. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2591. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Oklahoma residents (the "Oklahoma Class").

2592. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2593. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2594. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2595. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2596. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Oklahoma Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Oklahoma Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2597. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Oklahoma Class.

2598. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Oklahoma Class and conceal material information regarding defects that exist in GM-branded vehicles.

2599. Plaintiffs and the Oklahoma Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Oklahoma Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Oklahoma Class.

2600. Because of the concealment and/or suppression of the facts, Plaintiffs and the Oklahoma Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2601. The value of all Oklahoma Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2602. Accordingly, New GM is liable to the Oklahoma Class for their damages in an amount to be proven at trial.

2603. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Oklahoma Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(12A OKLA. STAT. ANN. § 2-314)

2604. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2605. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Oklahoma residents who are members of the Ignition Switch Defect Subclass (the "Oklahoma Ignition Switch Defect Subclass").

2606. New GM was a merchant with respect to motor vehicles.

2607. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transactions when Plaintiffs purchased their Defective Ignition Switch Vehicles.

2608. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2609. New GM was provided notice of these issues by numerous complaints filed against it, internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Oklahoma Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2610. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the Oklahoma Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

OREGON

COUNT I

VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT

(OR. REV. STAT. §§ 646.605, *et seq.*)

2611. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2612. This claim is brought only on behalf of Nationwide Class members who are Oregon residents (the "Oregon Class").

2613. New GM is a person within the meaning of OR. REV. STAT. § 646.605(4).

2614. The Affected Vehicles at issue are "goods" obtained primarily for personal family or household purposes within the meaning of OR. REV. STAT. § 646.605(6).

2615. The Oregon Unfair Trade Practices Act ("Oregon UTPA") prohibits a person from, in the course of the person's business, doing any of the following: "(e) Represent[ing] that … goods … have … characteristics … uses, benefits, … or qualities that they do not have; (g) Represent[ing] that … goods … are of a particular standard [or] quality … if they are of another; (i) Advertis[ing] … goods or services with intent not to provide them as advertised;" and "(u) engag[ing] in any other unfair or deceptive conduct in trade or commerce." OR. REV. STAT. § 646.608(1).

2616. New GM engaged in unlawful trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not;

advertising Affected Vehicles with the intent not to sell them as advertised; and engaging in other unfair or deceptive acts.

2617. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2618. New GM's actions as set forth above occurred in the conduct of trade or commerce.

2619. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2620. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2621. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2622. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Oregon UTPA.

2623. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2624. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2625. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Oregon Class.

2626. New GM knew or should have known that its conduct violated the Oregon UTPA.

2627. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2628. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles, and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2629. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2630. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Oregon Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2631. Plaintiffs and the Oregon Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2632. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2633. As a direct and proximate result of New GM's violations of the Oregon UTPA, Plaintiffs and the Oregon Class have suffered injury-in-fact and/or actual damage.

2634. Plaintiffs and the Oregon Class are entitled to recover the greater of actual damages or $200 pursuant to OR. REV. STAT. § 646.638(1). Plaintiffs and the Oregon Class are also entitled to punitive damages because New GM engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of others.

COUNT II

FRAUD BY CONCEALMENT

2635. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2636. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Oregon residents (the "Oregon Class").

2637. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2638. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2639. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2640. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false

representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2641. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Oregon Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2642. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Oregon Class.

2643. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Oregon Class and conceal material information regarding defects that exist in GM-branded vehicles.

2644. Plaintiffs and the Oregon Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Oregon Class.

2645. Because of the concealment and/or suppression of the facts, Plaintiffs and the Oregon Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate

policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2646. The value of all Oregon Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2647. Accordingly, New GM is liable to the Oregon Class for their damages in an amount to be proven at trial.

2648. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Oregon Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

PENNSYLVANIA

COUNT I

VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

(73 P.S. § 201-1, *et seq*.)

2649. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2650. This claim is brought only on behalf of Nationwide Class members who are Pennsylvania residents (the "Pennsylvania Class").

2651. Plaintiffs purchased or leased their Affected Vehicles primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

2652. All of the acts complained of herein were perpetrated by New GM in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

2653. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including: (i) "Representing that goods or services have … characteristics, …. Benefits or qualities that they do not have;" (ii) "Representing that goods or services are of a particular standard, quality or grade … if they are of another;:" (iii) "Advertising goods or services with intent not to sell them as advertised;" and (iv) "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding." 73 P.S. § 201-2(4).

2654. New GM engaged in unlawful trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

2655. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or

concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2656. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2657. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2658. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2659. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Pennsylvania CPL.

2660. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed

above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2661. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2662. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Pennsylvania Class.

2663. New GM knew or should have known that its conduct violated the Pennsylvania CPL.

2664. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2665. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2666. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2667. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Pennsylvania Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2668. Plaintiffs and the Pennsylvania Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2669. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2670. As a direct and proximate result of New GM's violations of the Pennsylvania CPL, Plaintiffs and the Pennsylvania Class have suffered injury-in-fact and/or actual damage.

2671. New GM is liable to Plaintiffs and the Pennsylvania Class for treble their actual damages or $100, whichever is greater, and attorneys' fees and costs. 73 P.S. § 201-9.2(a).

Plaintiffs and the Pennsylvania Class are also entitled to an award of punitive damages given that New GM's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

COUNT II

FRAUD BY CONCEALMENT

2672. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2673. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Pennsylvania residents (the "Pennsylvania Class").

2674. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2675. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2676. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2677. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2678. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Pennsylvania Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Pennsylvania Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2679. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Pennsylvania Class.

2680. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Pennsylvania Class and conceal material information regarding defects that exist in GM-branded vehicles.

2681. Plaintiffs and the Pennsylvania Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Pennsylvania Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Pennsylvania Class.

2682. Because of the concealment and/or suppression of the facts, Plaintiffs and the Pennsylvania Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded

vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2683. The value of all Pennsylvania Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2684. Accordingly, New GM is liable to the Pennsylvania Class for their damages in an amount to be proven at trial.

2685. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Pennsylvania Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(13 PA. CONS. STAT. ANN. § 2314)

2686. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2687. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Pennsylvania residents who are members of the Ignition Switch Defect Subclass (the "Pennsylvania Ignition Switch Defect Subclass").

2688. New GM is s a merchant with respect to motor vehicles.

2689. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law when New GM sold the Defective Ignition Switch Vehicles to Plaintiffs and the Pennsylvania Ignition Switch Defect Subclass.

2690. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended stalling to occur during ordinary driving conditions; when the vehicles stall, the power brakes and power steering become inoperable and the vehicles' airbags will not deploy,

2691. New GM was provided notice of these issues by numerous complaints filed against it, by its own internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Pennsylvania Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2692. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the Pennsylvania Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

RHODE ISLAND

COUNT I

VIOLATION OF THE RHODE ISLAND UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT

(R.I. GEN. LAWS § 6-13.1, *et seq*.)

2693. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2694. This claim is brought only on behalf of Nationwide Class members who are Rhode Island residents (the "Rhode Island Class").

2695. Plaintiffs are persons who purchased or leased one or more Affected Vehicles primarily for personal, family, or household purposes within the meaning of R.I. GEN. LAWS § 6-13.1-5.2(a).

2696. Rhode Island's Unfair Trade Practices and Consumer Protection Act ("Rhode Island CPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce" including: "(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have"; "(vii) Representing that goods or services are of a particular standard, quality, or grade …, if they are of another"; "(ix) Advertising goods or services with intent not to sell them as advertised"; "(xii) Engaging in any other conduct that similarly creates a likelihood of confusion or of misunderstanding"; "(xiii) Engaging in any act or practice that is unfair or deceptive to the consumer"; and "(xiv) Using any other methods, acts or practices which mislead or deceive members of the public in a material respect." R.I. GEN. LAWS § 6-13.1-1(6).

2697. New GM engaged in unlawful trade practices, including: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2)

representing that the Affected Vehicles are of a particular standard and quality when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; and (4) otherwise engaging in conduct that is unfair or deceptive and likely to deceive.

2698. New GM's actions as set forth above occurred in the conduct of trade or commerce.

2699. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2700. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2701. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2702. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2703. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Rhode Island CPA.

2704. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2705. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2706. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Rhode Island Class.

2707. New GM knew or should have known that its conduct violated the Rhode Island CPA.

2708. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2709. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2710. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2711. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Rhode Island Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2712. Plaintiffs and the Rhode Island Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have

purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2713. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2714. As a direct and proximate result of New GM's violations of the Rhode Island CPA, Plaintiffs and the Rhode Island Class have suffered injury-in-fact and/or actual damage.

2715. Plaintiffs and the Rhode Island Class are entitled to recover the greater of actual damages or $200 pursuant to R.I. GEN. LAWS § 6-13.1-5.2(a). Plaintiffs also seek punitive damages in the discretion of the Court because of New GM's egregious disregard of consumer and public safety and its long-running concealment of the serious safety defects and their tragic consequences.

COUNT II

FRAUD BY CONCEALMENT

2716. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2717. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Rhode Island residents (the "Rhode Island Class").

2718. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2719. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2720. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2721. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2722. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Rhode Island Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Rhode Island Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2723. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Rhode Island Class.

2724. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Rhode Island Class and conceal material information regarding defects that exist in GM-branded vehicles.

2725. Plaintiffs and the Rhode Island Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Rhode Island Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Rhode Island Class.

2726. Because of the concealment and/or suppression of the facts, Plaintiffs and the Rhode Island Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2727. The value of all Rhode Island Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2728. Accordingly, New GM is liable to the Rhode Island Class for their damages in an amount to be proven at trial.

2729. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Rhode Island Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(R.I. GEN. LAWS § 6A-2-314)

2730. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2731. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Rhode Island residents who are members of the Ignition Switch Defect Subclass (the "Rhode Island Ignition Switch Defect Subclass").

2732. New GM was a merchant with respect to motor vehicles.

2733. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law when Plaintiffs and the Class purchased their Defective Ignition Switch Vehicles.

2734. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended stalling to occur during ordinary driving conditions; when the vehicles stall, the power brakes and power steering become inoperable and the vehicles' airbags will not deploy.

2735. New GM was provided notice of these issues by numerous complaints filed against it, by its own internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Rhode Island Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2736. As a direct and proximate result of New GM's breach of the warranties of merchantability, Plaintiffs and the Rhode Island Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

SOUTH CAROLINA

COUNT I

VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

(S.C. CODE ANN. § 39-5-10, *et seq.*)

2737. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2738. This claim is brought only on behalf of Nationwide Class members who are South Carolina residents (the "South Carolina Class").

2739. New GM is a "person" under S.C. CODE ANN. § 39-5-10.

2740. The South Carolina Unfair Trade Practices Act ("South Carolina UTPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce . . . ." S.C. CODE ANN. § 39-5-20(a). New GM engaged in unfair and deceptive acts or practices and violated the South Carolina UTPA by systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles.

2741. New GM's actions as set forth above occurred in the conduct of trade or commerce.

2742. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2743. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2744. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2745. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2746. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the South Carolina UTPA.

2747. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2748. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2749. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the South Carolina Class.

2750. New GM knew or should have known that its conduct violated the South Carolina UTPA.

2751. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2752. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier

regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiff; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles, while purposefully withholding material facts from Plaintiffs and the Class that contradicted these representations.

2753. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2754. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the South Carolina Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2755. Plaintiffs and the South Carolina Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2756. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2757. As a direct and proximate result of New GM's violations of the South Carolina UTPA, Plaintiffs and the South Carolina Class have suffered injury-in-fact and/or actual damage.

2758. Pursuant to S.C. CODE ANN. § 39-5-140(a), Plaintiffs seek monetary relief against New GM to recover for their economic losses. Because New GM's actions were willful and knowing, Plaintiffs' damages should be trebled. *Id.*

2759. Plaintiffs further allege that New GM's malicious and deliberate conduct warrants an assessment of punitive damages because New GM carried out despicable conduct with willful and conscious disregard of the rights and safety of others, subjecting Plaintiffs and the Class to cruel and unjust hardship as a result. New GM's intentionally and willfully misrepresented the safety and reliability of the Affected Vehicles, deceived Plaintiffs on life-or-death matters, and concealed material facts that only New GM knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in vehicles New GM repeatedly promised Plaintiffs was safe. New GM's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

2760. Plaintiffs further seek an order enjoining New GM's unfair or deceptive acts or practices.

COUNT II

VIOLATIONS OF THE SOUTH CAROLINA REGULATION OF MANUFACTURERS, DISTRIBUTORS, AND DEALERS ACT

(S.C. CODE ANN. § 56-15-10, *et seq.*)

2761. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2762. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are South Carolina residents (the "South Carolina Class").

2763. New GM was a "manufacturer" as set forth in S.C. CODE ANN. § 56-15-10, as it was engaged in the business of manufacturing or assembling new and unused motor vehicles.

2764. New GM committed unfair or deceptive acts or practices that violated the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act"), S.C. CODE ANN. § 56-15-30.

2765. New GM engaged in actions which were arbitrary, in bad faith, unconscionable, and which caused damage to Plaintiffs, the South Carolina Class, and to the public.

2766. New GM's bad faith and unconscionable actions include, but are not limited to: (1) representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Affected Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Affected Vehicles with the intent not to sell them as advertised, (4) representing that a transaction involving Affected Vehicles confers or involves rights, remedies, and obligations which it does not, and (5) representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not.

2767. New GM resorted to and used false and misleading advertisements in connection with its business. As alleged above, New GM made numerous material statements about the safety and reliability of the Affected Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of New GM's unlawful advertising and representations as a whole.

2768. Pursuant to S.C. CODE ANN. § 56-15-110(2), Plaintiffs bring this action on behalf of themselves and the South Carolina Class, as the action is one of common or general interest to many persons and the parties are too numerous to bring them all before the court.

2769. Plaintiffs and the South Carolina Class are entitled to double their actual damages, the cost of the suit, attorney's fees pursuant to S.C. CODE ANN. § 56-15-110. Plaintiffs also seek injunctive relief under S.C. CODE ANN. § 56-15-110. Plaintiffs also seek treble damages because New GM acted maliciously.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(S.C. CODE § 36-2-314)

2770. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2771. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of South Carolina residents who are members of the Ignition Switch Defect Subclass (the "South Carolina Ignition Switch Defect Subclass").

2772. New GM was a merchant with respect to motor vehicles under S.C. CODE § 36-2-314.

2773. Under S.C. CODE § 36-2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law when Plaintiffs and the Class purchased the vehicles.

2774. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended stalling to occur during ordinary driving conditions; when the vehicles stall, the power brakes and power steering become inoperable and the vehicles' airbags will not deploy.

2775. New GM was provided notice of these issues by numerous complaints filed against it, its own internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the South Carolina Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

2776. As a direct and proximate result of New GM's breach of the warranty of merchantability, Plaintiffs and the South Carolina Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

COUNT IV

FRAUD BY CONCEALMENT

2777. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2778. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are South Carolina residents (the "South Carolina Class").

2779. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2780. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2781. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2782. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2783. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the South Carolina Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the South Carolina Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2784. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the South Carolina Class.

2785. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the South Carolina Class and conceal material information regarding defects that exist in GM-branded vehicles.

2786. Plaintiffs and the South Carolina Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the South Carolina Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the South Carolina Class.

2787. Because of the concealment and/or suppression of the facts, Plaintiffs and the South Carolina Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2788. The value of all South Carolina Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2789. Accordingly, New GM is liable to the South Carolina Class for their damages in an amount to be proven at trial.

2790. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the South Carolina Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

SOUTH DAKOTA

COUNT I

VIOLATION OF THE SOUTH DAKOTA DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION LAW

(S.D. CODIFIED LAWS § 37-24-6)

2791. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2792. This claim is brought only on behalf of Nationwide Class members who are South Dakota residents (the "South Dakota Class").

2793. The South Dakota Deceptive Trade Practices and Consumer Protection Law ("South Dakota CPL") prohibits deceptive acts or practices, which are defined for relevant purposes to include "[k]nowingly and intentionally act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby [.]" S.D. CODIFIED LAWS § 37-24-6(1). The conduct of New GM as set forth herein constitutes deceptive acts or practices, fraud, false promises, misrepresentation, concealment, suppression and omission of material facts in violation of S.D. Codified Laws § 37-24-6 and 37-24-31, including, but not limited to, New GM's misrepresentations and omissions regarding the safety

and reliability of the Affected Vehicles, and New GM's misrepresentations concerning a host of other defects and safety issues.

2794. New GM's actions as set forth above occurred in the conduct of trade or commerce.

2795. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2796. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2797. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2798. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2799. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the South Dakota CPL.

2800. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2801. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2802. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the South Dakota Class.

2803. New GM knew or should have known that its conduct violated the South Dakota CPL.

2804. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2805. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2806. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2807. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the South Dakota Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2808. Plaintiffs and the South Dakota Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have

purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2809. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2810. As a direct and proximate result of New GM's violations of the South Dakota CPL, Plaintiffs and the South Dakota Class have suffered injury-in-fact and/or actual damage.

2811. Under S.D. CODIFIED LAWS § 37-24-31, Plaintiffs and the South Dakota Class are entitled to a recovery of their actual damages suffered as a result of New GM's acts and practices.

COUNT II

FRAUD BY CONCEALMENT

2812. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2813. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are South Dakota residents (the "South Dakota Class").

2814. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2815. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2816. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2817. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2818. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the South Dakota Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the South Dakota Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2819. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the South Dakota Class.

2820. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the South Dakota Class and conceal material information regarding defects that exist in GM-branded vehicles.

2821. Plaintiffs and the South Dakota Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed

facts. Plaintiffs' and the South Dakota Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the South Dakota Class.

2822. Because of the concealment and/or suppression of the facts, Plaintiffs and the South Dakota Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2823. The value of all South Dakota Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2824. Accordingly, New GM is liable to the South Dakota Class for their damages in an amount to be proven at trial.

2825. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the South Dakota Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(S.D. CODIFIED LAWS § 57A-2-314)

2826. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2827. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of South Dakota residents who are members of the Ignition Switch Defect Subclass (the "South Dakota Ignition Switch Defect Subclass").

2828.. New GM was a merchant with respect to motor vehicles.

2829. South Dakota law imposed a warranty that the Defective Ignition Switch Vehicles were merchantable when Plaintiffs and the South Dakota Ignition Switch Defect Subclass purchased their Defective Ignition Switch Vehicles.

2830. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2831. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the South Dakota Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

TENNESSEE

COUNT I

VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT

(TENN. CODE ANN. § 47-18-101, *et seq*.)

2832. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2833. This claim is brought only on behalf of Nationwide Class members who are Tennessee residents (the "Tennessee Class").

2834. Plaintiffs and the Tennessee Class are "natural persons" and "consumers" within the meaning of TENN. CODE ANN. § 47-18-103(2).

2835. New GM is a "person" within the meaning of TENN. CODE ANN. § 47-18-103(2) (the "Act").

2836. New GM's conduct complained of herein affected "trade," "commerce" or "consumer transactions" within the meaning of TENN. CODE ANN. § 47-18-103(19).

2837. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits "[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce," including but not limited to: "Representing that goods or services have … characteristics, [or] … benefits … that they do not have…;" "Representing that goods or services are of a particular standard, quality or grade… if they are of another;" and "Advertising goods or services with intent not to sell them as advertised." TENN. CODE ANN. § 47-18-104. New GM violated the Tennessee CPA by engaging in unfair or deceptive acts, including representing that Affected Vehicles have characteristics or benefits that they did not have; representing that Affected Vehicles are of a particular standard, quality, or grade when they are of another; and advertising Affected Vehicles with intent not to sell them as advertised.

2838. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2839. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2840. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2841. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2842. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself

as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Tennessee CPA.

2843. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2844. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2845. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Tennessee Class.

2846. New GM knew or should have known that its conduct violated the Tennessee CPA.

2847. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2848. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2849. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2850. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Tennessee Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2851. Plaintiffs and the Tennessee Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2852. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2853. As a direct and proximate result of New GM's violations of the Tennessee CPA, Plaintiffs and the Tennessee Class have suffered injury-in-fact and/or actual damage.

2854. Pursuant to TENN. CODE § 47-18-109(a), Plaintiffs and the Tennessee Class seek monetary relief against New GM measured as actual damages in an amount to be determined at trial, treble damages as a result of New GM's willful or knowing violations, and any other just and proper relief available under the Tennessee CPA.

COUNT II

FRAUD BY CONCEALMENT

2855. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2856. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Tennessee residents (the "Tennessee Class").

2857. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2858. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2859. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2860. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2861. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Tennessee Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Tennessee Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2862. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Tennessee Class.

2863. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Tennessee Class and conceal material information regarding defects that exist in GM-branded vehicles.

2864. Plaintiffs and the Tennessee Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Tennessee Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Tennessee Class.

2865. Because of the concealment and/or suppression of the facts, Plaintiffs and the Tennessee Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded

vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2866. The value of all Tennessee Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2867. Accordingly, New GM is liable to the Tennessee Class for their damages in an amount to be proven at trial.

2868. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Tennessee Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

TEXAS

COUNT I

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES – CONSUMER PROTECTION ACT

(TEX. BUS. & COM. CODE §§ 17.41, *et seq.*)

2869. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2870. This claim is brought only on behalf of Nationwide Class members who are Texas residents (the "Texas Class").

2871. Plaintiffs and the Texas Class are individuals, partnerships and corporations with assets of less than $25 million (or are controlled by corporations or entities with less than $25 million in assets). *See* TEX. BUS. & COM. CODE § 17.41.

2872. The Texas Deceptive Trade Practices-Consumer Protection Act ("Texas DTPA") prohibits "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce," TEX. BUS. & COM. CODE § 17.46(a), and an "unconscionable action or course of action," which means "an act or practice which, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree." TEX. BUS. & COM. CODE § 17.45(5); TEX. BUS. & COM. CODE § 17.50(a)(3). New GM has committed false, misleading, unconscionable, and deceptive acts or practices in the conduct of trade or commerce.

2873. New GM also violated the Texas DTPA by: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; and (4) failing to disclose information concerning the Affected Vehicles with the intent to induce consumers to purchase or lease the Affected Vehicles.

2874. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2875. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2876. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2877. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2878. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive and unconscionable business practices in violation of the Texas DTPA.

2879. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles

were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2880. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2881. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Texas Class.

2882. New GM knew or should have known that its conduct violated the Texas DTPA.

2883. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2884. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2885. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to

those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2886. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Texas Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2887. Plaintiffs and the Texas Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2888. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2889. As a direct and proximate result of New GM's violations of the Texas DTPA, Plaintiffs and the Texas Class have suffered injury-in-fact and/or actual damage.

2890. Pursuant to TEX. BUS. & COM. CODE § 17.50(a)(1) and (b), Plaintiffs and the Texas Class seek monetary relief against New GM measured as actual damages in an amount to be determined at trial, treble damages for New GM's knowing violations of the Texas DTPA, and any other just and proper relief available under the Texas DTPA.

2891. For those Class members who wish to rescind their purchases, they are entitled under TEX. BUS. & COM. CODE § 17.50(b)(4) to rescission and other relief necessary to restore any money or property that was acquired from them based on violations of the Texas DTPA.

2892. Plaintiffs and the Class also seek court costs and attorneys' fees under § 17.50(d) of the Texas DTPA.

2893. On October 8, 2014, certain Plaintiffs sent a letter complying with TEX. BUS. & COM. CODE § 17.505(a). Plaintiffs presently do not claim relief for damages under the Texas DTPA until and unless New GM fails to remedy its unlawful conduct within the requisite time period, after which Plaintiffs seek all damages and relief to which Plaintiffs and the Texas Class are entitled.

COUNT II

FRAUD BY CONCEALMENT

2894. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2895. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2896. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2897. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2898. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands

behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2899. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Texas Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Texas Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2900. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Texas Class.

2901. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Texas Class and conceal material information regarding defects that exist in GM-branded vehicles.

2902. Plaintiffs and the Texas Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Texas Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Texas Class.

2903. Because of the concealment and/or suppression of the facts, Plaintiffs and the Texas Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-

branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2904. The value of all Texas Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2905. Accordingly, New GM is liable to the Texas Class for their damages in an amount to be proven at trial.

2906. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Texas Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(TEX. BUS. & COM. CODE § 2.314)

2907. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2908. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only

on behalf of Texas residents who are members of the Ignition Switch Defect Subclass (the "Texas Ignition Switch Defect Subclass").

2909. New GM was a merchant with respect to motor vehicles under TEX. BUS. & COM. CODE § 2.104.

2910. Under TEX. BUS. & COM. CODE § 2.314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law in the transaction in which Plaintiffs and the Texas Ignition Switch Defect Subclass purchased their Defective Ignition Switch Vehicles.

2911. New GM impliedly warranted that the vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

2912. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2913. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Texas Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

UTAH

COUNT I

VIOLATION OF UTAH CONSUMER SALES PRACTICES ACT

(UTAH CODE ANN. § 13-11-1, *et seq.*)

2914. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2915. This claim is brought only on behalf of Nationwide Class members who are Utah residents (the "Utah Class").

2916. New GM is a "supplier" under the Utah Consumer Sales Practices Act ("Utah CSPA"), UTAH CODE ANN. § 13-11-3.

2917. Utah Class members are "persons" under UTAH CODE ANN. § 13-11-3.

2918. The sale of the Affected Vehicles to the Utah Class members was a "consumer transaction" within the meaning of UTAH CODE ANN. § 13-11-3.

2919. The Utah CSPA makes unlawful any "deceptive act or practice by a supplier in connection with a consumer transaction" under UTAH CODE ANN. § 13-11-4. Specifically, "a supplier commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not" or "(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not." UTAH CODE ANN. § 13-11-4. "An unconscionable act or practice by a supplier in connection with a consumer transaction" also violates the Utah CSPA. UTAH CODE ANN. § 13-11-5.

2920. New GM committed deceptive acts or practices in the conduct of trade or commerce, by, among other things, engaging in unconscionable acts, representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; and

representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not

2921. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2922. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2923. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2924. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2925. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Utah CSPA.

2926. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2927. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2928. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Utah Class.

2929. New GM knew or should have known that its conduct violated the Utah CSPA.

2930. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2931. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2932. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2933. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Utah Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2934. Plaintiffs and the Utah Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2935. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2936. As a direct and proximate result of New GM's violations of the Utah CSPA, Plaintiffs and the Utah Class have suffered injury-in-fact and/or actual damage.

2937. Pursuant to UTAH CODE ANN. § 13-11-4, Plaintiffs and the Utah Class seek monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $2,000 for each Plaintiff and each Utah Class member, reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA.

COUNT II

FRAUD BY CONCEALMENT

2938. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2939. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Utah residents (the "Utah Class").

2940. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2941. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2942. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2943. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands

behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2944. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Utah Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Utah Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2945. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Utah Class.

2946. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Utah Class and conceal material information regarding defects that exist in GM-branded vehicles.

2947. Plaintiffs and the Utah Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Utah Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Utah Class.

2948. Because of the concealment and/or suppression of the facts, Plaintiffs and the Utah Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-

branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2949. The value of all Utah Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2950. Accordingly, New GM is liable to the Utah Class members for their damages in an amount to be proven at trial.

2951. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Utah Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(UTAH CODE ANN. § 70A-2-314)

2952. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2953. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only

on behalf of Utah residents who are members of the Ignition Switch Defect Subclass (the "Utah Ignition Switch Defect Subclass").

2954. New GM was at all relevant times a merchant with respect to motor vehicles.

2955. New GM impliedly warranted that its vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

2956. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

2957. As a direct and proximate result of the New GM's breach of the implied warranty of merchantability, Plaintiffs and the Utah Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

VERMONT

COUNT I

VIOLATION OF VERMONT CONSUMER FRAUD ACT

(VT. STAT. ANN. TIT. 9, § 2451 *et seq.*)

2958. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2959. This claim is brought only on behalf of Nationwide Class members who are Vermont residents (the "Vermont Class").

2960. New GM is a seller within the meaning of VT. STAT. ANN. TIT. 9, § 2451(a)(c).

2961. The Vermont Consumer Fraud Act ("Vermont CFA") makes unlawful "[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.…" VT. STAT. ANN. TIT. 9, § 2453(a). New GM engaged in unfair and deceptive acts or practices in trade or commerce in violation of the Vermont CFA by systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles.

2962. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2963. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

2964. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

2965. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

2966. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Vermont CFA.

2967. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

2968. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

2969. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Vermont Class.

2970. New GM knew or should have known that its conduct violated the Vermont CFA.

2971. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

2972. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2973. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

2974. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Vermont Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

2975. Plaintiffs and the Vermont Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

2976. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

2977. As a direct and proximate result of New GM's violations of the Vermont CFA, Plaintiffs and the Vermont Class have suffered injury-in-fact and/or actual damage.

2978. Plaintiffs and the Vermont Class are entitled to recover "appropriate equitable relief" and "the amount of [their] damages, or the consideration or the value of the consideration given by [them], reasonable attorney's fees, and exemplary damages not exceeding three times the value of the consideration given by [them]" pursuant to VT. STAT. ANN. TIT. 9, § 2461(b).

COUNT II

FRAUD BY CONCEALMENT

2979. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2980. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Vermont residents (the "Vermont Class").

2981. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

2982. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

2983. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

2984. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

2985. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Vermont Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Vermont Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

2986. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Vermont Class.

2987. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Vermont Class and conceal material information regarding defects that exist in GM-branded vehicles.

2988. Plaintiffs and the Vermont Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Vermont Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Vermont Class.

2989. Because of the concealment and/or suppression of the facts, Plaintiffs and the Vermont Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

2990. The value of all Vermont Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2991. Accordingly, New GM is liable to the Vermont Class for their damages in an amount to be proven at trial.

2992. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Vermont Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

VIRGINIA

COUNT I

VIOLATION OF VIRGINIA CONSUMER PROTECTION ACT

(VA. CODE ANN. 15 §§ 59.1-196, *et seq.*)

2993. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2994. This claim is brought only on behalf of Nationwide Class members who are Virginia residents (the "Virginia Class").

2995. New GM is a "supplier" under VA. CODE ANN. § 59.1-198.

2996. The sale of the Affected Vehicles to the Class members was a "consumer transaction" within the meaning of VA. CODE ANN. § 59.1-198.

2997. The Virginia Consumer Protection Act ("Virginia CPA") lists prohibited "practices" which include: "5. Misrepresenting that good or services have certain characteristics;" "6. Misrepresenting that goods or services are of a particular standard, quality, grade style, or model;" "8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised;" "9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;" and "14. Using any other deception, fraud, or misrepresentation in connection with a consumer transaction." VA. CODE ANN. § 59.1-200. New GM violated the Virginia CPA by misrepresenting that Affected Vehicles had certain quantities, characteristics, ingredients, uses, or benefits; misrepresenting that Affected Vehicles were of a particular standard, quality, grade, style, or model when they were another; advertising Affected Vehicles with intent not to sell them as advertised; and otherwise "using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

2998. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

2999. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

3000. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

3001. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

3002. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself

as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Virginia CPA.

3003. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

3004. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

3005. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Virginia Class.

3006. New GM knew or should have known that its conduct violated the Virginia CPA.

3007. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

3008. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the

> ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

3009. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

3010. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Virginia Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

3011. Plaintiffs and the Virginia Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

3012. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

3013. As a direct and proximate result of New GM's violations of the Virginia CPA, Plaintiffs and the Virginia Class have suffered injury-in-fact and/or actual damage.

3014. Pursuant to VA. CODE ANN. § 59.1-204, Plaintiffs and the Virginia Class seek monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500 for each Plaintiff and each Virginia Class member. Because New GM's conduct was committed willfully and knowingly, Plaintiffs are entitled to recover, for each Plaintiff and each Virginia Class member, the greater of (a) three times actual damages or (b) $1,000.

3015. Plaintiffs also seek an order enjoining New GM's unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under General Business Law § 59.1-204, *et seq*.

COUNT II

FRAUD BY CONCEALMENT

3016. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3017. In the event the Court declines to certify a Nationwide Class under Michigan law, this claims is brought only on behalf of Nationwide Class members who are Virginia residents (the "Virginia Class").

3018. New GM concealed and suppressed material facts concerning the quality of its vehicles and the New GM brand.

3019. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

3020. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

3021. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

3022. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Virginia Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Virginia Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

3023. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Virginia Class.

3024. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Virginia Class and conceal material information regarding defects that exist in GM-branded vehicles.

3025. Plaintiffs and the Virginia Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Virginia Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Virginia Class.

3026. Because of the concealment and/or suppression of the facts, Plaintiffs and the Virginia Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

3027. The value of all Virginia Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

3028. Accordingly, New GM is liable to the Virginia Class for their damages in an amount to be proven at trial.

3029. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Virginia Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(VA. CODE ANN. § 8.2-314)

3030. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3031. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Virginia residents who are members of the Ignition Switch Defect Subclass (the "Virginia Ignition Switch Defect Subclass").

3032. New GM was at all relevant times a merchant with respect to motor vehicles.

3033. New GM impliedly warranted that its vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use—transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

3034. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

3035. As a direct and proximate result of the New GM's breach of the implied warranty of merchantability, Plaintiffs and the Virginia Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

WASHINGTON

COUNT I

VIOLATION OF THE CONSUMER PROTECTION ACT

(REV. CODE WASH. ANN. §§ 19.86.010, *et seq.*)

3036. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3037. This claim is brought only on behalf of Nationwide Class members who are Washington residents (the "Washington Class").

3038. New GM committed the acts complained of herein in the course of "trade" or "commerce" within the meaning of WASH. REV. CODE. WASH. ANN. § 19.96.010.

3039. The Washington Consumer Protection Act ("Washington CPA") broadly prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." WASH. REV. CODE. WASH. ANN. § 19.96.010. New GM engaged in unfair and deceptive acts and practices and violated the Washington CPA by systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles.

3040. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

3041. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports,

investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

3042. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

3043. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

3044. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the Washington CPA.

3045. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

3046. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-

branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

3047. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Washington Class.

3048. New GM knew or should have known that its conduct violated the Washington CPA.

3049. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

3050. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

3051. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

3052. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Washington Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

3053. Plaintiffs and the Washington Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

3054. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

3055. As a direct and proximate result of New GM's violations of the Washington Act, Plaintiffs and the Washington Class have suffered injury-in-fact and/or actual damage.

3056. New GM is liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages, as well as any other remedies the Court may deem appropriate under REV. CODE. WASH. ANN. § 19.86.090.

COUNT II

FRAUD BY CONCEALMENT

3057. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3058. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Washington residents (the "Washington Class").

3059. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

3060. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

3061. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

3062. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

3063. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Washington Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Washington Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

3064. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Washington Class.

3065. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Washington Class and conceal material information regarding defects that exist in GM-branded vehicles.

3066. Plaintiffs and the Washington Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Washington Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Washington Class.

3067. Because of the concealment and/or suppression of the facts, Plaintiffs and the Washington Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

3068. The value of all Washington Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the New GM brand and made any reasonable consumer reluctant to

purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

3069. Accordingly, New GM is liable to the Washington Class for their damages in an amount to be proven at trial.

3070. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Washington Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

WEST VIRGINIA

COUNT I

VIOLATIONS OF THE CONSUMER CREDIT AND PROTECTION ACT

(W. VA. CODE § 46A-1-101, *et seq.*)

3071. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3072. This claim is brought only on behalf of Nationwide Class members who are West Virginia residents (the "West Virginia Class").

3073. New GM is a "person" under W.VA. CODE § 46A-1-102(31).

3074. Plaintiff and the West Virginia Class are "consumers," as defined by W.VA. CODE §§ and 46A-1-102(12) and 46A-6-102(2), who purchased or leased one or more Affected Vehicles.

3075. New GM engaged in trade or commerce as defined by W. VA. CODE § 46A-6-102(6).

3076. The West Virginia Consumer Credit and Protection Act ("West Virginia CCPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce …." W. VA. CODE § 46A-6-104. Without limitation, "unfair or deceptive" acts or practices include:

> (I) Advertising goods or services with intent not to sell them as advertised;
>
> (K) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;
>
> (L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;
>
> (M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;
>
> (N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

W. VA. CODE § 46A-6-102(7).

3077. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in deceptive business practices prohibited by the West Virginia CCPA, including: (1) representing that the Affected Vehicles have characteristics, uses,

benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; (4) representing that a transaction involving the Affected Vehicles confers or involves rights, remedies, and obligations which it does not; and (5) representing that the subject of a transaction involving the Affected Vehicles has been supplied in accordance with a previous representation when it has not.

3078. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

3079. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

3080. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

3081. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

3082. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in unfair and deceptive business practices in violation of the West Virginia CCPA.

3083. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

3084. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

3085. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the West Virginia Class.

3086. New GM knew or should have known that its conduct violated the West Virginia Act.

3087. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

3088. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

3089. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

3090. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the West Virginia Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

3091. Plaintiffs and the West Virginia Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have

purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

3092. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

3093. As a direct and proximate result of New GM's violations of the West Virginia CCPA, Plaintiffs and the West Virginia Class have suffered injury-in-fact and/or actual damage.

3094. Pursuant to W. VA. CODE § 46A-1-106, Plaintiffs seek monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $200 per violation of the West Virginia CCPA for each Plaintiff and each member of the West Virginia Class they seek to represent.

3095. Plaintiffs also seek punitive damages against New GM because New GM carried out despicable conduct with willful and conscious disregard of the rights and safety of others, subjecting Plaintiffs to cruel and unjust hardship as a result. New GM intentionally and willfully misrepresented the safety and reliability of the Affected Vehicles, deceived Plaintiffs on life-or-death matters, and concealed material facts that only New GM knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the vehicles New GM repeatedly promised Plaintiffs were safe. New GM's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

3096. Plaintiffs further seek an order enjoining New GM's unfair or deceptive acts or practices, restitution, punitive damages, costs of Court, attorney's fees under W. VA. CODE § 46A-5-101, *et seq.*, and any other just and proper relief available under the West Virginia CCPA.

3097. On October 8, 2014, certain Plaintiffs sent a letter complying with W. VA. CODE § 46A-6-106(b). Plaintiffs presently do not claim relief under the West Virginia CCPA until and unless New GM fails to remedy its unlawful conduct within the requisite time period, after which Plaintiffs seek all damages and relief to which Plaintiffs and the West Virginia Class are entitled.

COUNT II

FRAUD BY CONCEALMENT

3098. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3099. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are West Virginia residents (the "West Virginia Class").

3100. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

3101. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

3102. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

3103. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

3104. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the West Virginia Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the West Virginia Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

3105. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the West Virginia Class.

3106. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the West Virginia Class and conceal material information regarding defects that exist in GM-branded vehicles.

3107. Plaintiffs and the West Virginia Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the West Virginia Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the West Virginia Class.

3108. Because of the concealment and/or suppression of the facts, Plaintiffs and the West Virginia Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded

vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

3109. The value of all West Virginia Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

3110. Accordingly, New GM is liable to the West Virginia Class for their damages in an amount to be proven at trial.

3111. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the West Virginia Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(W. VA. CODE § 46-2-314)

3112. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3113. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of West Virginia residents who are members of the Ignition Switch Defect Subclass (the "West Virginia Ignition Switch Defect Subclass").

3114. New GM was at all relevant times a seller of motor vehicles under W. VA. CODE § 46-2-314, and was also a "merchant" as the term is used in W. VA. CODE § 46A-6-107 and § 46-2-314.

3115. Under W. VA. CODE § 46-2-314, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law when Plaintiffs and the Class purchased their Defective Ignition Switch Vehicles.

3116. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

3117. New GM was provided notice of these issues by numerous complaints filed against it, its own internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the West Virginia Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

3118. As a direct and proximate result of New GM's breach of the warranty of merchantability, Plaintiffs and the West Virginia Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

WISCONSIN

COUNT I

VIOLATIONS OF THE WISCONSIN DECEPTIVE TRADE PRACTICES ACT

(WIS. STAT. § 110.18)

3119. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3120. This claim is brought only on behalf of Nationwide Class members who are Wisconsin residents (the "Wisconsin Class").

3121. New GM is a "person, firm, corporation or association" within the meaning of WIS. STAT. § 100.18(1).

3122. Plaintiffs and Wisconsin Class members are members of "the public" within the meaning of WIS. STAT. § 100.18(1). Plaintiffs and Wisconsin Class members purchased or leased one or more Affected Vehicles.

3123. The Wisconsin Deceptive Trade Practices Act ("Wisconsin DTPA") prohibits a "representation or statement of fact which is untrue, deceptive or misleading." WIS. STAT. § 100.18(1). By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles, New GM engaged in unfair and deceptive acts and practices and violated the Wisconsin DTPA.

3124. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or

concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

3125. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

3126. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

3127. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

3128. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Wisconsin DTPA.

3129. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles

were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

3130. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

3131. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Wisconsin Class.

3132. New GM knew or should have known that its conduct violated the Wisconsin DTPA.

3133. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

3134. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

3135. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed,

the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

3136. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Wisconsin Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

3137. Plaintiffs and the Wisconsin Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

3138. New GM' violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

3139. As a direct and proximate result of New GM's violations of the Wisconsin DTPA, Plaintiffs and the Wisconsin Class have suffered injury-in-fact and/or actual damage.

3140. Plaintiffs and the Wisconsin Class are entitled to damages and other relief provided for under WIS. STAT. § 110.18(11)(b)(2). Because New GM's conduct was committed knowingly and/or intentionally, Plaintiffs` and the Wisconsin Class are entitled to treble damages.

3141. Plaintiffs and the Wisconsin Class also seek court costs and attorneys' fees under WIS. STAT. § 110.18(11)(b)(2).

COUNT II

FRAUD BY CONCEALMENT

3142. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3143. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Nationwide Class members who are Wisconsin residents (the "Wisconsin Class").

3144. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

3145. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

3146. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

3147. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

3148. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and

access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Wisconsin Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Wisconsin Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

3149. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Wisconsin Class.

3150. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Wisconsin Class and conceal material information regarding defects that exist in GM-branded vehicles.

3151. Plaintiffs and the Wisconsin Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Wisconsin Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Wisconsin Class.

3152. Because of the concealment and/or suppression of the facts, Plaintiffs and the Wisconsin Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less

for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

3153. The value of all Wisconsin Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

3154. Accordingly, New GM is liable to the Wisconsin Class for their damages in an amount to be proven at trial.

3155. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Wisconsin Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

WYOMING

COUNT I

VIOLATION OF THE WYOMING CONSUMER PROTECTION ACT

(WYO. STAT. §§ 40-12-105 *et seq.*)

3156. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3157. This claim is brought only on behalf of Nationwide Class members who are Wyoming residents (the "Wyoming Class").

3158. Plaintiffs, Wyoming Class members, and New GM are "persons" within the meaning of WYO. STAT. § 40-12-102(a)(i).

3159. The sales of the Affected Vehicles to Plaintiffs and the Wyoming Class were "consumer transactions" within the meaning of WYO. STAT. § 40-12-105.

3160. Under the Wyoming Consumer Protection Act ("Wyoming CPA"), a person engages in a deceptive trade practice when, in the course of its business and in connection with a consumer transaction it knowingly: "(iii) Represents that merchandise is of a particular standard, grade, style or model, if it is not"; "(v) Represents that merchandise has been supplied in accordance with a previous representation, if it has not…"; "(viii) Represents that a consumer transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations if the representation is false"; "(x) Advertises merchandise with intent not to sell it as advertised"; or "(xv) Engages in unfair or deceptive acts or practices." WYO. STAT. § 45-12-105.

3161. By systematically devaluing safety and concealing a plethora of defects in GM-branded vehicles as described above, New GM violated the Wyoming CPA. New GM engaged in deceptive trade practices, including (among other things) representing that the Affected Vehicles are of a particular standard and grade, which they are not; advertising the Affected Vehicles with the intent not to sell them as advertised; and overall engaging in unfair and deceptive acts or practices.

3162. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Affected Vehicles.

3163. From the date of its inception on July 10, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the knowledge of Old GM personnel who remained at New GM and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

3164. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

3165. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and New GM should have recalled the vehicles years ago.

3166. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive business practices in violation of the Wyoming CPA.

3167. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

3168. New GM's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of safety at New GM, and the true value of the Affected Vehicles.

3169. New GM intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Wyoming Class.

3170. New GM knew or should have known that its conduct violated the Wyoming CPA.

3171. As alleged above, New GM made material statements about the safety and reliability of the Affected Vehicles that were either false or misleading.

3172. New GM owed Plaintiffs a duty to disclose the true safety and reliability of the Affected Vehicles and the devaluing of safety at New GM, because New GM:

a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety and reliability of the Affected Vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

3173. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to

those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

3174. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Plaintiffs and the Wyoming Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

3175. Plaintiffs and the Wyoming Class suffered ascertainable loss caused by New GM's misrepresentations and its failure to disclose material information. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's misconduct.

3176. New GM's violations present a continuing risk to Plaintiffs as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

3177. As a direct and proximate result of New GM's violations of the Wyoming CPA, Plaintiffs and the Wyoming Class have suffered injury-in-fact and/or actual damage.

3178. Pursuant to WYO. STAT. § 40-12-108(a), Plaintiffs and the Wyoming Class seek monetary relief against New GM measured as actual damages in an amount to be determined at trial, in addition to any other just and proper relief available under the Wyoming CPA.

3179. On October 8, 2014, certain Plaintiffs sent a letter complying with WYO. STAT. §§ 45-12-109. Plaintiffs presently do not claim relief under the Wyoming CPA until and unless

New GM fails to remedy its unlawful conduct within the requisite time period, after which Plaintiffs seek all damages and relief to which Plaintiffs and the Wyoming Class are entitled.

COUNT II

FRAUD BY CONCEALMENT

3180. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3181. In the event the Court declines to certify a Nationwide Class under Michigan law, this claim is brought only on behalf of Natiownwide Class members who are Wyoming residents (the "Wyoming Class").

3182. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

3183. New GM concealed and suppressed material facts concerning the culture of New GM—a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

3184. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

3185. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because they played a significant role in the value of the vehicles.

3186. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM who had superior knowledge and

access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Wyoming Class. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the Wyoming Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

3187. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the Wyoming Class.

3188. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the Wyoming Class and conceal material information regarding defects that exist in GM-branded vehicles.

3189. Plaintiffs and the Wyoming Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Wyoming Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Wyoming Class.

3190. Because of the concealment and/or suppression of the facts, Plaintiffs and the Wyoming Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs either would have paid less for their vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of New GM's fraudulent concealment.

3191. The value of all Wyoming Class members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which has greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

3192. Accordingly, New GM is liable to the Wyoming Class for their damages in an amount to be proven at trial.

3193. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Wyoming Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(WYO. STAT. §§ 34.1-2-314)

3194. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3195. In the event the Court declines to certify a Nationwide Ignition Switch Defect Subclass under the Magnuson-Moss Warranty Act or Michigan law, this claim is brought only on behalf of Wyoming residents who are members of the Ignition Switch Defect Subclass (the "Wyoming Ignition Switch Defect Subclass").

3196. New GM was at all relevant times a merchant with respect to motor vehicles.

3197. Under Wyoming law, a warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied when Class members purchased their Defective Ignition Switch Vehicles.

3198. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems that permit sudden unintended shutdown to occur, with the attendant shut down of power steering and power brakes and the nondeployment of airbags in the event of a collision.

3199. New GM was provided notice of these issues by numerous complaints filed against it, its own internal investigations, and by numerous individual letters and communications sent by Plaintiffs and the Wyoming Ignition Switch Defect Subclass before or within a reasonable amount of time after New GM issued the recall and the allegations of vehicle defects became public.

3200. As a direct and proximate result of New GM's breach of the warranty of merchantability, Plaintiffs and the Wyoming Ignition Switch Defect Subclass have been damaged in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated, respectfully request that this Court enter a judgment against New GM and in favor of Plaintiffs and the Classes and Subclasses, and grant the following relief:

A. Determine that this action may be maintained as a class action and certify it as such under Rule 23(b)(2) and/or 23(b)(3), or alternatively certify all issues and claims that are

appropriately certified; and designate and appoint Plaintiffs as Class Representatives and Plaintiffs' chosen counsel as Class Counsel;

B. Declare, adjudge, and decree the conduct of New GM as alleged herein to be unlawful, unfair, and/or deceptive and otherwise in violation of law, enjoin any such future conduct, and issue an injunction under which the Court will monitor New GM's response to problems with the recalls and efforts to improve its safety processes, and will establish by Court decree and administration under Court supervision a program funded by New GM under which claims can be made and paid for Ignition Switch Defect Subclass members' out-of-pocket expenses and costs;

C. Award Plaintiffs and Class members actual, compensatory damages or, in the alternative, statutory damages, as proven at trial;

D. Award Plaintiffs and the Class members exemplary damages in such amount as proven;

E. Award damages and other remedies, including but not limited to statutory penalties, as allowed by the consumer laws of the various states;

F. Award Plaintiffs and the Class members their reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest;

G. Award Plaintiffs and Class members restitution and/or disgorgement of New GM's ill-gotten gains relating to the conduct described in this Complaint; and

H. Award Plaintiffs and the Class members such other further and different relief as the case may require or as determined to be just, equitable, and proper by this Court.

IX. JURY TRIAL DEMAND

Plaintiffs request a trial by jury on the legal claims, as set forth herein.

DATED: October 14, 2014

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Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

This Document Relates to All Actions

14-MD-2543 (JMF)

DECLARATION OF MARC KOPPELMAN RE: VENUE

----------x

I, Marc Koppelman, hereby declare and state as follows:

1. I have personal knowledge of the facts stated herein and, if necessary, could competently testify thereto.

2. I am a Plaintiff in the above-entitled action.

3. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support of the Class Action Complaint and the claim therein for relief under Cal. Civ. Code § 1780(a).

4. This action for relief under Cal. Civ. Code § 1780(a) has been properly commenced in this Court pursuant to the Court's direction that new plaintiffs can file directly in the MDL without first filing in the district in which they reside; hence, I am filing this action as if it had been filed in the Central District of California, in a county that is a proper place for trial of this action because Defendant does business there and throughout the State of California.

5. The Complaint filed in this matter contains causes of action for violations of the Consumers Legal Remedies Act against General Motors, LLC ("GM"), a Delaware limited liability company doing business nationwide, including California.

6. I own a 2010 Chevy HHR which I purchased used at a Chevrolet dealership in Glen Burnie, Maryland on March 17, 2012.

7. I declare under penalty of perjury under the laws of the State of California that the foregoing Declaration is true and correct, and was executed by me in the city of Torrance, California, on October 14, 2014.

By _____
Marc Koppelman

Exhibit K

COUNSEL FOR THE PARTIES ARE LISTED IN THE SIGNATURE BLOCK

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**Case No.: 09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

AGREED AND DISPUTED STIPULATIONS OF FACT PURSUANT TO THE COURT'S SUPPLEMENTAL SCHEDULING ORDER, DATED JULY 11, 2014

Counsel for the Identified Parties[1] hereby provide, pursuant to the Supplemental Scheduling Order, their agreed-upon[2] and disputed Stipulations of Fact relating to the Four Threshold Issues,[3] as defined in the Supplemental Scheduling Order.

Upon consent of all of the Counsel for the Identified Parties, or upon approval by the Court after good cause shown, any party (a) may seek to amend or modify these agreed-upon factual stipulations, or (b) may use documents, testimony or other evidence that is not specifically referenced in these stipulations including documents produced after the date of these stipulations. It should also be noted that while Counsel for the Identified Parties agreed to the accuracy of the factual stipulations set forth below, in certain instances, they could not agree that such factual stipulations are relevant and/or are admissible evidence for the Court's

---

1 As defined in the *Supplemental Scheduling Order Regarding (I) Motion Of General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Court's July 5, 2009 Sale Order And Injunction, (II) Objection Filed By Certain Plaintiffs In Respect Thereto, And (III) Adversary Proceeding No. 14-01929*, which was entered by the Court on July 11, 2014 ("**Supplemental Scheduling Order**").

2 Each of the Counsel for the Identified Parties reserves the right to rely on any of the stipulations of fact agreed upon by Counsel for the Identified Parties in support of any of the Four Threshold Issues.

3 For the avoidance of doubt, the issue of whether a claim asserted in the Ignition Switch Actions is timely and/or meritorious against the Old GM bankruptcy estate (and/or the GUC Trust) is not a Threshold Issue.

determination of the Four Threshold Issues. The parties have reserved their relevance and/or other evidentiary objections (including hearsay, privilege or other types of admissibility objections) to such factual stipulations. After a party understands how such factual stipulations will be asserted by another party in its pleadings and/or briefs relating to the Four Threshold Issues, it may ask the Court for an evidentiary ruling as to its admissibility prior to the oral argument on the Four Threshold Issues. Any party's failure to object to the use of such factual stipulations with respect to the Court's determination of the Four Threshold Issues shall not be deemed a waiver on relevance and/or other evidentiary objections (including hearsay, privilege or other types of admissibility objections) with respect to the use of such factual stipulations (including without limitation the documents or testimony which support such factual stipulations) for any other purpose in any proceeding before the Bankruptcy Court, the Court in MDL 2543, any other court or tribunal, or otherwise.

Counsel for the Identified Parties agree that each may refer to the following categories of documents and/or pleadings in connection with the Court's determination of the Four Threshold Issues. All such documents speak for themselves.

a. All pleadings, briefs, declarations, affidavits, orders, decisions, evidence admitted by the Bankruptcy Court, reports filed by the GUC Trust, and deposition and hearing transcripts in adversary proceedings or contested matters arising under, in, or related to the Old GM bankruptcy case, including without limitation, appeals of any decisions emanating from the Bankruptcy Court.

b. All filings with the Securities and Exchange Commission by Old GM, New GM and the GUC Trust.

c. All press releases issued by Old GM, New GM and the GUC Trust.

d. The GUC Trust Agreement, and any amendments thereto.

e. The complaints (and any amendments thereof) filed in the Ignition Switch Actions, and any pleadings filed with the United States District Court for the

Southern District of New York, 14-MD-2543 (JMF); 14-MC-2543 ("**MDL Court**").

f. Information contained on Bloomberg Financial with respect to the share price and trading volume of the GUC Trust Units, New GM stock and warrants.

Counsel for the Identified Parties also agree on the following definitions[4] for each of their Stipulations of Fact:

a. "**Ignition Switch**" shall mean an ignition switch designed and/or sold by Old GM in the Subject Vehicles that may unintentionally move out of the "run" position, resulting in a partial loss of electrical power and turning off the engine. (Consent Order, In re TQ14-001, NHTSA Recall No. 14V-047 (Dep't of Transp., Nat'l Highway Safety Admin. Dated May 16, 2014 ("**Consent Order**") at 2, ¶¶5; Part 573 Defect Notice filed by New GM with the National Highway Traffic Safety Administration ("**NHTSA**"), dated February 7, 2014.).

b. "**Subject Vehicles**" are (1) 2005-2007 Chevrolet Cobalt and Pontiac G5, 2003-2007 Saturn Ion, 2006-2007 Chevrolet HHR, 2005-2006 Pontiac Pursuit (Canada), 2006-2007 Pontiac Solstice and 2007 Saturn Sky vehicles; and (2) 2008-2010 Pontiac Solstice and G5; 2008-2010 Saturn Sky; 2008-2010 Chevrolet Cobalt; and 2008-2011 Chevrolet HHR vehicles -- certain of the vehicles in this second category may have been repaired using a defective Ignition Switch that had been sold to dealers or aftermarket wholesalers. Statements about the Ignition Switch apply to the Subject Vehicles listed in the second category only to the extent that the Subject Vehicles were actually repaired using a defective Ignition Switch. (Part 573 Defect Notices filed by New GM with the NHTSA, dated February 7, 2014, February 24, 2014, and March 28, 2014, hereinafter "**Feb. 7 Notice**", "**Feb. 24 Notice**", and "**March 28 Notice**").

Attached to this document are (a) New GM's agreed-upon factual stipulations, and disputed factual stipulations (Exhibit "A"), (b) Designated Counsel/Groman Plaintiffs agreed-upon factual stipulations and Designated Counsel's disputed factual stipulations (Exhibit "B"), (C) Groman Plaintiffs' disputed factual stipulations (Exhibit "C"), and (D) the GUC Trust/Unitholders agreed-upon factual stipulations and disputed factual stipulations (Exhibit "D").

---

[4] The definitions in these stipulations of fact are agreed to for the sole purpose of the Four Threshold Issues identified by the Bankruptcy Court in its Supplemental Scheduling Order. Counsel for the Identified Parties do not stipulate to the definitions set forth in these stipulations for any other purpose in either the Bankruptcy Court, in MDL 2543, or otherwise.

Dated: New York, New York
August 8, 2014

Respectfully submitted,

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Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**Case No.: 09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

GENERAL MOTORS LLC'S AGREED-UPON STIPULATIONS OF FACT IN CONNECTION WITH THE FOUR THRESHOLD ISSUES IDENTIFIED IN THIS COURT'S JULY 11, 2014 SUPPLEMENTAL SCHEDULING ORDER[1]

Pursuant to this Court's *Supplemental Scheduling Order, Dated July 11, 2014, Regarding (i) the Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction, (ii) the Objection Filed by Certain Plaintiffs in Respect Thereto, and (iii) Adversary Proceeding No. 14-01929* (the "**Supplemental Scheduling Order**"), General Motors LLC ("**New GM**"), hereby submits the following agreed-upon stipulations of fact concerning the Four Threshold Issues.

In addition, annexed hereto as Exhibit "1" are New GM's proposed stipulation of fact that have not been agreed to by the other Counsel for the Identified Parties, and annexed hereto as Exhibit "2" are New GM's responses to proposed stipulation of fact identified by other Counsel for the Identified Parties that have not been agreed to by New GM.

[1] Unless otherwise indicated, capitalized terms not defined herein shall have the meanings ascribed to them in the Supplemental Scheduling Order (as defined herein).

AGREED-UPON STIPULATIONS OF FACT

1. In March 2009, the U.S. Government gave Old GM sixty days to submit a viable restructuring plan or, otherwise, Old GM would be forced to liquidate.

2. On June 1, 2009 ("**Petition Date**"), General Motors Corporation ("**Old GM**") and three of its direct and indirect subsidiaries, Saturn, LLC, n/k/a MLCS, LLC ("**MLCS**"), Saturn Distribution Corporation, n/k/a MLCS Distribution Corporation ("**MLCS Distribution**"), and Chevrolet-Saturn of Harlem Inc., n/k/a MLC of Harlem, Inc. ("**MLCS Harlem**" and collectively with Old GM, MLCS, and MLCS Distribution, the "**Debtors**") commenced cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**" or "**Court**").

3. Frederick Henderson, former CEO of Old GM, testified as follows: "The U.S. Treasury, in late December 2008, provided the necessary financing to temporarily sustain Old GM's operations. The U.S. Treasury, however, provided such financing on the express condition that Old GM develop a business plan that would fundamentally transform Old GM (operationally and financially) into a viable and profitable American OEM capable of meeting the competitive and environmental challenges of the 21st century. Thereafter, in March 2009, the U.S. Treasury indicated that, if Old GM was unable to complete an effective out-of-court restructuring, it should consider a new, more aggressive viability plan under an expedited Court-supervised process to avoid erosion of asset value. After exploring numerous options, including seeking potential sources of financing (both public and private) and strategic alliances, it became evident that, in light of the ongoing economic crisis, Old GM would not be able to achieve an effective out-of-court restructuring, and the only viable option was the 363 Transaction." *Affidavit of*

Frederick A. Henderson Pursuant to Local Bankruptcy Rule 1007-2 ("**Henderson Affidavit**") (Dkt. No. 21), ¶¶ 13-14.

4. This Court found in its Sale Decision, "[a]t the time that the U.S. Treasury first extended credit to GM, there was absolutely no other source of financing available. No party other than Treasury conveyed its willingness to loan funds to [Old] GM and thereby enable it to continue operating." *Decision on Debtors' Motion for Approval of (1) Sale of Assets to Vehicle Acquisition Holdings LLC; (2) Assumption and Assignment of Related Executory Contracts; and (3) Entry into UAW Retiree Settlement Agreement* ("**Sale Decision**") (Dkt. No. 2967) Sale Decision, p. 8.

5. In a prior proceeding related to Old GM's bankruptcy, the Court found that, "it was the intent and structure of the 363 Sale, as agreed on by the [U.S. Treasury] and Old GM, that the New GM would start business with as few legacy liabilities as possible, and that presumptively, liabilities would be left behind and not assumed." *See In re Motors Liquidation Co.*, 09-50026 REG, 2012 WL 1339496, at *3 (Bankr. S.D.N.Y. Apr. 17, 2012) *aff'd*, 500 B.R. 333 (S.D.N.Y. 2013) ("**Castillo Decision**").

6. This Court previously found in *Castillo* as follows:

> Auto Task Force member Harry Wilson . . ., under cross-examination by objectors to the 363 Sale, testified that "[o]ur thinking [as] a commercial buyer of the assets that will constitute [New GM] was to assess what *[l]iabilities were commercially necessary* for the success of [New GM]." He later said "we're focused on *which assets and which liabilities we needed for the success of New GM.*" And again: "We focused on which assets we wanted to buy and *which liabilities were necessary for the* commercial success of New GM. In short, by the end of the 363 Sale hearing it was clear not only to Old GM and Treasury, but also to the Court and to the public, that the goal of the 363 Sale was to pass on to Old GM's purchaser—what thereafter became New GM—only those liabilities that were commercially necessary to the success of New GM.

See Castillo Decision, at *4.

7. On the Petition Date, Old GM filed the Sale Motion with the Bankruptcy Court. *See* Sale Motion.[2]

8. Vehicle Acquisition Holdings LLC (n/k/a New GM), the purchaser under the Sale Agreement,[3] was not the movant under the Sale Motion. *Id.*

9. Vehicle Acquisition Holdings LLC was a United States Treasury-sponsored Delaware limited liability company formed on May 29, 2009. Sale Agreement, at 1.

10. At the time the Sale Motion was filed, Old GM was in possession of all of its books and records.

11. As of June 30, 2009, none of the Named Plaintiffs[4] in the Ignition Switch Actions had filed any court pleadings or otherwise commenced litigation (*i.e.*, asserting a claim or seeking a remedy based on economic loss, warranty, Lemon Law, *etc.*) against Old GM with respect to the defective Ignition Switch in a Subject Vehicle. Annexed hereto as Exhibit "3" is a list of all Named Plaintiffs known to New GM as of the date hereof.

12. As of June 30, 2009, none of the Named Plaintiffs in the Ignition Switch Actions had commenced litigation against Vehicle Acquisition Holdings LLC with respect to their Subject Vehicles.

13. AP Services, LLC ("**APS**") was retained by Old GM to provide interim management and restructuring services. *See Motion Of The Debtors Pursuant To 11 U.S.C. § 363*

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2 The full title of the Sale Motion is *Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m), and 35 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Other Relief; and (II) Schedule Sale Approval Hearing* ("**Sale Motion**") (Dkt. No. 92).

3 The full title of the Sale Agreement is *Amended and Restated Master Sale and Purchase Agreement By and Among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation and Chevrolet-Saturn of Harlem, Inc., as Sellers and NGMCO, Inc., as Purchaser* (as amended, "**Sale Agreement**") (Dkt. No. 2968-1).

4 "**Named Plaintiffs**" shall mean all of the plaintiffs named in the Ignition Switch Actions that are designated as a putative class representative or are listed as an individual plaintiff therein.

For An Order Authorizing The Debtors To Employ And Retain AP Services, LLC As Crisis Managers And To Designate Albert A. Koch As Chief Restructuring Officer, Nunc Pro Tunc To The Petition Date, dated June 12, 2009 ("**APS Application**") (Dkt. No. 952).

14. The tasks assigned to APS by Old GM included overseeing "the administration of the Debtors' bankruptcy case, including compliance with bankruptcy court reporting requirements and the discharge of obligations of the Debtors pursuant to the Bankruptcy Code." *Id.* at 6.

15. Albert Koch, vice chairman and managing director of AlixPartners LLP in June 2009, testified as follows: "Other members of the AlixPartners' team have been involved in assisting with preparations for the 363 sale, developing operating plans to acquire select U.S. locations of Delphi, contract review protocol, identifying dealers whose contracts would be transitioned to wind down agreements. assisting with the mechanics of preparing for a bankruptcy filing, working with the Treasurer's office to improve cash forecasting and other tasks that assisted Company employees to prepare for and execute the restructuring." *Declaration of Albert Koch* ("**Koch Declaration**") (Dkt. No. 435), at 4.

16. Old GM's bankruptcy counsel (Weil Gotshal & Manges ("**WGM**")), was retained to, among other things, (i) "prepare on behalf of the Debtors, as debtors in possession, all necessary motions, applications, answers, orders, reports, and other papers in connection with the administration of the Debtors' estates," (ii) "take all necessary action in connection with the" Sale Motion, and (iii) "perform all other necessary legal services in connection with the prosecution of these chapter 11 cases." *See Application of the Debtors Pursuant to 11 U.S.C. §§ 327(a) and 328 (a) and Fed. R. Bankr. P. 2014(a) for Authority to Employ Weil, Gotshal &*

Manges LLP as Attorneys for the Debtors, Nunc Pro Tunc to the Commencement Date, dated June 12, 2009 ("**WGM Retention Application**") (Dkt. No. 949), ¶ 8.

17. Vehicle Acquisition Holdings LLC did not decide which parties would receive direct mail notice of the Sale Motion or how notice would be provided.

18. In 2009, Old GM had a contract with R. L. Polk and Company that allowed it to obtain, for vehicle recall notification purposes, vehicle owner name and address information.

19. Old GM requested of the Bankruptcy Court that direct mail notice of the Sale Motion and the relief requested therein be served on the categories of individuals and entities listed on Exhibit "4" annexed hereto. *See* Sale Procedures Order, ¶ 9.[5]

20. No direct mail notice of the Sale Motion and the relief requested therein was sent (a) to the Ignition Switch Plaintiffs in their capacity as owners of Subject Vehicles, or (b) as a general matter, to a category of "owners of Old GM vehicles".

21. There are owners of Old GM vehicles that did receive direct mail notice of the Sale Motion because they were in another category of entities who did receive direct mail notice of the Sale Motion (*i.e.*, as an equity security holder, contract counterparty, vendor, *etc.*), or someone may have otherwise given them the direct mail notice of the Sale Motion.

22. Old GM requested of the Bankruptcy Court, and the Bankruptcy Court approved, that notice of the relief requested in the Sale Motion be published, by June 5, 2009, or as soon as practicable thereafter (i) once in (a) the global edition of *The Wall Street Journal*, (b) the national edition of *The New York Times*, (c) the global edition of *The Financial Times*, (d) the national edition of *USA Today*, (e) *Detroit Free Press/Detroit News*, (f) *Le Journal de Montreal*, (g)

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5 The full title of the Sale Procedures Order is *Order Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006 (I) Approving Procedures for Sale of Debtors' Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser; (II) Scheduling Bid Deadline and Sale Hearing Date; (III) Establishing Assumption and Assignment Procedures; and (IV) Fixing Notice Procedures and Approving Form of Notice* ("**Sale Procedures Order**") (Dkt. No. 274).

Montreal Gazette, (h) *The Globe and Mail*, and (i) *The National Post*, and (ii) on the website of the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com (the "**Publication Notice**"). *See* Sale Motion, at 25; Sale Procedures Order, at 8.

23. The Publication Notice did occur on or before June 11, 2009 in each newspaper identified in the preceding paragraph. The Garden City Group posted the notice of the Sale Motion on its public website as required by the Sale Procedures Order. *See Certificate of Publication*, filed by The Garden City Group ("**Cert. of Publication**") (Dkt. No. 2757); Sale Procedures Order, at 8.

24. The Sale Procedures Order was not appealed.

25. Neither the direct mail notice nor the Publication Notice sent in connection with the Sale Motion discussed the Ignition Switch or most liabilities or potential liabilities of Old GM.

26. Under the Sale Agreement, either Old GM or Vehicles Acquisition Holdings LLC, the purchaser sponsored by the U.S. Treasury, could terminate the Sale Agreement if certain deadlines were not met. Sale Agreement, § 8.1.

27. Under the Sale Agreement, either the sellers or purchaser could terminate the Sale Agreement if the Bankruptcy Court did not enter an order approving the sale by July 10, 2009. Sale Agreement, § 8.1.

28. No qualified party other than Vehicle Acquisition Holdings LLC sought to purchase the assets of Old GM. *See* Sale Decision, at 15, 39; Sale Order and Injunction, at 5.[6]

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[6] The full title of the Sale Order and Injunction is *Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (III) Granting Related Relief* ("**Sale Order and Injunction**") (Dkt. No. 2968).

29. The Court found in its Sale Decision and Sale Order and Injunction that, if the Sale Agreement was terminated and the 363 Sale to Vehicle Acquisition Holdings LLC had not taken place, Old GM would have liquidated its assets. *See* Sale Decision, at 23; Sale Order and Injunction, at 5.

30. The Court found in its Sale Decision and Sale Order and Injunction that, if the Sale Agreement was terminated and the 363 Sale to Vehicle Acquisition Holdings LLC had not taken place, Old GM would not have been able to continue in business. *See* Sale Order and Injunction, at 5.

31. Numerous objections and responses to the Sale Motion were filed with the Bankruptcy Court. *See* Omnibus Reply.[7]

32. Among the objections to the Sale Motion were objections filed by (i) The Personal Injury Claimants[8] and entities and/or groups (as described in paragraph 36 below); (ii) the Ad Hoc Committee of Consumer Victims; (iii) the States' Attorneys General; and (iv) the Official Committee of Unsecured Creditors ("**Creditors Committee**").

33. The Creditors Committee was comprised of 15 members, including workers, suppliers, dealers, tort creditors, and other unsecured creditors of Old GM. *See Appointment of Committee of Unsecured Creditors* ("**Appt. of Creditors Committee**") (Dkt. No. 356).

34. The Creditors Committee is statutorily charged with representing the interests of all unsecured creditors.

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[7] The full title of the Omnibus Reply is *Debtors to Objections to Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m) and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to Approve (A) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, A U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Other Relief* ("**Omnibus Reply**") (Dkt. No. 2645).

[8] The Personal Injury Claimants were Callan Campbell, Kevin Junso, *et al.*, Edwin Agosto, Kevin Chadwick, *et al.*, and Joseph Berlingieri.

35. Three of the Creditors Committee's members (Genoveva Bermudez, Mark Buttita, and Kevin Schoenl) were tort claimants or representatives of tort claimants. *See id.*; Creditors Committee, at 5.

36. The following entities and/or groups, among others, filed an objection to the Sale Motion, and described themselves in their objection as follows:

a. **The Center for Auto Safety** says that it is a non-profit consumer advocacy organization that, among other things, works for strong federal safety standards to protect drivers and passengers. The Center states that it was founded in 1970 to provide consumers a voice for auto safety and quality in Washington, DC, and to help "lemon" owners fight back across the country. The Center claims to advocate for auto safety before the Department of Transportation and in the courts.

b. **Consumer Action** says that it is a national non-profit education and advocacy organization serving more than 9,000 community-based organizations with training, educational modules, and multi-lingual consumer publications since 1971. Consumer Action claims to serve consumers nationwide by advancing consumer rights in the fields of credit, banking, housing, privacy, insurance, and utilities.

c. **Consumers for Auto Reliability and Safety ("CARS")** states that it is a national, award-winning non-profit auto safety and consumer advocacy organization dedicated to preventing motor vehicle-related fatalities, injuries, and economic losses. CARS claims to have worked to enact legislation to protect the public and successfully petitioned the National Highway Traffic Safety Administration for promulgation of regulations to improve protections for consumers.

d. **National Association of Consumer Advocates ("NACA")** is a non-profit association of attorneys and advocates who claims that its primary focus is the protection and representation of consumers. NACA's stated mission is to promote justice for all consumers by maintaining a forum for communication, networking, and information sharing among consumer advocates across the country, particularly regarding legal issues, and by serving as a voice for its members and consumers in the ongoing struggle to curb unfair or abusive business practices that affect consumers.

e. **Public Citizen**, a consumer advocacy organization, that claims to be nonpartisan. It is a non-profit group founded in 1971 with members

> nationwide. Public Citizen claims to advocate before Congress, administrative agencies, and the courts for strong and effective health and safety regulation, and also claims to have a long history of advocacy on matters related to auto safety. In addition, through litigation and lobbying, Public Citizen states that it works to preserve consumers' access to state-law remedies for injuries caused by consumer products, such as state product liability laws.

Objection to the Sale Motion filed by Personal Injury Claimants and Consumer Advocacy Groups (Dkt. No. 2041), at 4-5.

37. The Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizen claimed to be non-profit organizations that work to protect consumers, including consumers who would be affected by Old GM's bankruptcy case. *See id.* at 4.

38. The Ad Hoc Committee of Consumer Victims claimed to represent more than 300 members who each had product liability tort claims involving personal injuries against Old GM. *See* Objection to the Sale Motion filed by the Ad Hoc Committee of Consumer Victims (Dkt. No. 1997), at 2.

39. Counsel for the entities or groups identified in paragraph 36 above, the Ad Hoc Committee of Consumer Victims, the States' Attorneys General, and the Creditors Committee all appeared at and at least certain of them participated in the Sale Hearing. *See* Transcript of 363 Sale Hearing held on June 30, 2009; Transcript of 363 Sale Hearing held on July 1, 2009; Transcript of 363 Sale Hearing held on July 2, 2009.

40. Arguments were raised in connection with the Sale Motion by, among others, the consumer advocacy groups, the Ad Hoc Committee of Consumer Victims, the States' Attorneys General and/or the Creditors Committee. *See* Objection to the Sale Motion filed by the Ad Hoc Committee of Consumer Victims; Objections to the Sale Motion filed by the States Attorneys

General (Dkt. No. 1928 and 2043); Objection to the Sale Motion filed by Personal Injury Claimants and Consumer Advocacy Groups; Objection to the Sale Motion filed by the Official Committee of Unsecured Creditors (Dkt. No. 2362).

41. The States' Attorneys General raised arguments against the 363 Sale. *See* Objections to the Sale Motion filed by the States Attorneys General, at 10-14.

42. After the Petition Date, representatives of Old GM, the U.S. Treasury, the Creditors Committee, and the States Attorneys General negotiated various provisions of the Sale Agreement. As a result of these negotiations, Old GM and the U.S. Treasury agreed on certain modifications to the Sale Agreement. As stated by counsel for the Attorneys General: "We have worked very hard since the beginning of the case with debtors' counsel initially, with Treasury counsel, almost everybody in this room at some point or another, it feels like. And I think a great number of improvements have been made in this agreement over that time period. The first was the assumption of the future product liability claims. Obviously, we -- you know, in a perfect world, we would not be distinguishing between those two categories, but certainly that's better than none of them. And it certainly goes a ways to addressing issues that were raised by the state Attorney Generals." Sale Hearing Transcript, July 2, 2009, 194. Counsel for the Attorneys General stated further: "We also wanted to be sure that lemon laws were covered under the notion of warranty claims, but they did not specifically refer to state lemon laws, and that coverage is being picked up." *Id.* at 196. This Court also found as follows: "Significantly also, the AG concerns resulted in one change in the game plan—assumption of liabilities under Lemon Laws—but no others, and the Lemon Laws change was made *expressly*." *Castillo* Decision, at *13.

43. This Court further found that, around this same time, "[t]he AGs urged in argument before the Court that New GM take on liabilities broader than those that would be undertaken under the Sale Agreement as initially proposed—including implied warranties, additional express warranties, statutory warranties, and obligations under Lemon Laws." *Castillo* Decision, at *5. The U.S. Treasury and Old GM declined to amend the Sale Agreement to assume these types of liabilities (except for Lemon Laws, as defined the Sale Agreement). *See id.*

44. The Personal Injury Claimants and the consumer advocacy groups argued at the 363 Sale hearing, *inter alia*, that New GM should assume broader warranty-related claims and that New GM should not be shielded from successor liability claims. *See* Transcript of 363 Sale Hearing held on July 1, 2009, at 295-324.

45. The Ad Hoc Committee of Consumer Victims objected to the 363 Sale, arguing, among other things, that, "knowing that it is seeking an order which would eliminate tort claims, GM has continued to advertise and sell GM vehicles without advising unwitting consumers that it is seeking to bar future claims for injuries arising from defects in vehicles sold before the closing." *See* Objection to the Sale Motion filed by the Ad Hoc Committee of Consumer Victims, at ¶ 38.

46. In another objection, it was argued: "GM's attempt to enjoin successor liability claims against the Purchaser must be denied because it violates applicable law, notice, and due process requirements." Objection to the Sale Motion filed by Personal Injury Claimants and Consumer Advocacy Groups, ¶ 18; *see also id.* ("A sale of GM's assets 'free and clear' of future tort and product liability claims violates due process because people who have not yet suffered injury from defects in GM vehicles do not know that they will be injured in the future cannot be

given meaningful notice of that their rights are being adjudicated or a meaningful opportunity to be heard.").

47. Representatives from the U.S. Treasury declined to make further changes to the Sale Agreement with respect to Assumed Liabilities and Retained Liabilities (as such terms are defined in the Sale Agreement). *See Castillo Decision*, *5-7.

48. The hearing on the Sale Motion took place before the Bankruptcy Court on June 30, 2009, July 1, 2009 and July 2, 2009.

49. Old GM presented evidence to the Court in connection with the hearing on the Sale Motion.

50. According to the Court's Sale Decision, if Old GM liquidated its assets in 2009, unsecured creditors would have received nothing from the Old GM bankruptcy estate. *See* Sale Decision, at 3.

51. As of March 31, 2009, Old GM had consolidated reported global assets and liabilities of approximately $82,290,000,000 and $172,810,000,000, respectively. *See* Henderson Affidavit, ¶ 101; Sale Decision, at 5.

52. According to the Court's Sale Decision, as of the Petition Date, if Old GM liquidated its assets, its liquidation asset value would be less than 10% of $82 billion. Sale Decision, at 5.

53. According to the Court's Sale Decision, the consideration transferred by New GM to Old GM under the Sale Agreement as of the closing date of the 363 Sale was estimated to be worth not less than $45 billion, plus the value of equity interests in New GM. Sale Decision, at 18.

54. No specific contingent liabilities were identified in the Sale Motion or in any trial exhibits used during the Sale Hearing. *See generally* Sale Motion; Transcript of 363 Sale Hearing held on June 30, 2009; Transcript of 363 Sale Hearing held on July 1, 2009; Transcript of 363 Sale Hearing held on July 2, 2009.

55. Objectors to the 363 Sale presented evidence at the Sale Hearing that the book value of certain contingent liabilities was approximately $934 million. *See* Sale Decision, at 21; Transcript of Sale Hearing, June 30, 2009, at 157-159.

56. On July 10, 2009, each of the Debtors consummated a sale of substantially all of its assets in a transaction under Section 363 of the Bankruptcy Code (the "**363 Sale**") to an acquisition vehicle, NGMCO, Inc. (as successor in interest to Vehicle Acquisition Holdings LLC), pursuant to the Sale Agreement, and (ii) the Sale Order and Injunction. Following the 363 Sale, Old GM changed its name to Motors Liquidation Company ("**MLC**") and the acquisition vehicle later became New GM.

57. The New GM Common Stock and both series of New GM Warrants (collectively, the "New GM Securities") are currently listed on the New York Stock Exchange.

58. New GM and the Debtors further agreed that New GM would provide additional consideration if the aggregate amount of allowed general unsecured claims against the Debtors exceed $35 billion. (*See* Sale Agreement, § 3.2(c)). In that event, New GM will be required to issue additional shares of New GM Common Stock for the benefit of the GUC Trust's beneficiaries. (*See id.*). The number of additional shares of New GM Common Stock to be issued will be equal to the number of such shares, rounded up to the next whole share, calculated by multiplying (i) 30 million shares (adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization, merger, consolidation, reorganization or similar

transaction with respect to such New GM Common Stock from and after the closing of the 363 Sale and before issuance of additional shares) and (ii) a fraction, (A) the numerator of which is the amount by which allowed general unsecured claims exceed $35 billion (such excess amount being capped at $7 billion) and (B) the denominator of which is $7 billion."[9] (*See* Motors Liquidation Company GUC Trust Quarterly GUC Trust Reports as of September 30, 2013 at 6).

59. At the time the 363 Sale was approved, Old GM had not filed its schedules of assets and liabilities with the Court.

60. At the time the 363 Sale was approved, there was no deadline or bar date for general unsecured creditors to file proofs of claim.

61. The Plaintiffs in the Ignition Switch Actions are not parties under the Sale Agreement.

62. The Personal Injury Claimants objected to and appealed the Sale Order and Injunction. *See Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010) (Buchwald, J.).

63. The Sale Order and Injunction was upheld on appeal by two different District Court Judges. *See id.*; *Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65 (S.D.N.Y. 2010) (Sweet, J.).

64. While the appellants in *Campbell* originally sought to appeal the Sale Order and Injunction to the Court of Appeals for the Second Circuit, that appeal was subsequently withdrawn by the parties to the appeal pursuant to a stipulation so-ordered on September 23,

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9 *See* Second Amendment to Sale Agreement, Section 2(r) (amending Section 3.2(c) of the Sale Agreement) ("Sellers may, at any time, seek an Order of the Bankruptcy Court ... estimating the aggregate allowed general unsecured claims against Sellers' estates ... [and if] the Bankruptcy Court makes a finding that the estimated allowed general unsecured claims against Sellers' estates exceed $35,000,000,000, then Purchaser will ... issue additional shares of Common Stock ...."). While the Sale Agreement initially provided for the issuance of up to 10,000,000 additional shares, this number has subsequently been adjusted for the three-for-one split of New GM Common Stock. (*See* Disclosure Statement for Debtors' Amended Joint Chapter 11 Plan, at 16-17 n.2 (Dkt. No. 8023).

2010. In addition, while the appellant in *Parker* originally sought to appeal the Sale Order and Injunction to the Court of Appeals for the Second Circuit, that appeal was subsequently dismissed by the Court of Appeals for the Second Circuit on July 28, 2011 on equitable mootness grounds for appellant's failure to seek a stay of the Sale Order and Injunction. *See Parker v. Motors Liquidation Company*, Case No. 10-4882-bk (2d Cir. July 28, 2011). There were no further appeals of the Sale Order and Injunction.

65. On December 15, 2011 (the "Dissolution Date"), as required by the Plan, MLC filed its certificate of dissolution. (*See* Form 10-K Annual Report for Motors Liquidation Company GUC Trust for the Fiscal Year Ended March 31, 2014, filed May 22, 2014 ("GUC Trust 2014 Form 10-K") at 3). Pursuant to an *Assignment and Assumption Agreement (GUC Trust)*, dated that same day, Old GM assigned to the GUC Trust certain assets and agreements, and the GUC Trust assumed certain obligations of Old GM. *See* Assignment and Assumption Agreement (GUC Trust), § 1.

66. All of the Ignition Switch Actions include vehicles and/or parts designed and manufactured by Old GM.

67. None of the Ignition Switch Actions seek repairs of Old GM vehicles under the Glove Box Warranty.

68. None of the claims asserted in the Ignition Switch Actions constitute claims under Lemon Laws as defined by the Sale Agreement (as contrasted with state law definitions of lemon laws).

Exhibit 1

EXHIBIT "1"

NEW GM'S PROPOSED STIPULATIONS OF FACT NOT AGREED TO BY OTHER COUNSEL FOR THE IDENTIFIED PARTIES

1. On the Petition Date, Old GM's general ledger, and other corporate books and records listing Old GM's liabilities, did not list any Plaintiffs in the Ignition Switch Actions as having a claim or liability owed to them by Old GM relating to the defective Ignition Switches in the Subject Vehicles.

2. New GM did not sell a vehicle with a defective Ignition Switch, nor did it sell defective Ignition Switches to be used as repair parts.

3. After the expiration of the Bar Date established by the Bankruptcy Court for general unsecured creditors to file claims against the Debtors (*i.e.*, November 30, 2009), certain claimants filed late proofs of claim in the Debtors' bankruptcy case, and some of those claims became allowed claims against the Debtors.

4. As of June 30, 2009, none of the Named Plaintiffs in the Ignition Switch Actions had filed any court pleadings or otherwise commenced litigation (*i.e.*, asserting a claim or seeking a remedy based on economic loss, warranty, Lemon Law, *etc.*) against Old GM with respect to their Subject Vehicle.

5. In 2009, approximately 75 million Old GM vehicles were in use in the United States.

6. Old GM's noticing agent, the Garden City Group ("GCG"), provided direct mail notice of the 363 Sale to approximately 4 million persons and entities in June 2009. See Certificate of Service, filed by The Garden City Group ("Sale Motion Notice") (Dkt. No. 973).

Exhibit 2

EXHIBIT "2"

NEW GM'S RESPONSES TO PROPOSED STIPULATIONS OF FACT BY OTHER COUNSEL FOR THE IDENTIFIED PARTIES NOT AGREED TO BY NEW GM

A. New GM's Responses to Designated Counsel's Proposed Facts To Which New GM Does Not Stipulate

1. On November 19, 2004, Old GM personnel opened a Problem Resolution Tracking System report to address a complaint at a press event that a Subject Vehicle could be "keyed off with knee while driving. This was the first of six reports opened between 2004 and 2009 in connection with moving stalls in the Cobalt." (V.R. at 63). As part of the November 19, 2004 Problem Resolution Tracking System investigation, Old GM engineers suggested solutions to address the complaint that the ignition could be "keyed off with knee while driving," and presented them to the Current Production Improvement Team. (V.R. at 64-68).

NEW GM RESPONSE: The Stipulation is incomplete. The Valukas Report also says: "As a critical decision point, the problem described in the November 19, 2004 PRTS was assigned a severity level of 3 - on a scale of 1 (most severe) to 4 (least severe)." (V.R. at 63). The Valukas Report describes the severity levels as follows: "After identifying the issue, the originator of a PRTS selects a severity level for the problem. The severity level is a significant factor in the priority given to a PRTS report, with more severe issues addressed more urgently. The originator selects the severity level from a drop-down menu that includes brief descriptions of four options, which, during the relevant time period, were:

Code 1: Possibly Safety *I* Regulatory Issues *I* Walk Home *I* No Build
Code 2: Major Issues- an issue that would cause the customer to immediately return the vehicle to the dealership or cause excessive cost or labor impact at the assembly plant

Code 3: Moderate Issues - fix on the next trip to dealership or cause moderate cost or labor impact at the assembly plant

Code 4: Annoyance / Continuous Improvement" (V.R. at 41-42).

2. As Old GM's Program Engineering Manager for the Chevrolet Cobalt when it was launched, Gary Altman would have been present at Current Production Improvement Team and Vehicle and Process Integration Review meetings in which possible solutions were presented to address reports that drivers had inadvertently turned off the ignition switch in Cobalt vehicles by hitting their knees against the key or key fob. (V.R. at 63-67).

NEW GM RESPONSE: This is not a fact and is speculation. It is also not supported by the Valukas Report. The Report does not state that Gary Altman attended or possibly attended meetings.

3. A May 2007 case evaluation, by Old GM's outside counsel, of an accident in a 2004 Saturn Ion in which the airbag failed to deploy despite the fact that the vehicle went off the road, traveled through a brush line and struck a tree head on, resulting in one fatality and one severe injury, was deemed "unusual." "In discussing the technical issues in the case, outside counsel explained that, given the severity of the impact, the airbag non-deployment 'must be' attributable to power loss." (V.R. at 124-125).

NEW GM RESPONSE: The reference in the response which relates to what "outside counsel explained" should not have been cited because of the attorney client/work-product privileges.

4. A January 2008 second evaluation by Old GM outside counsel of a non-deployment case involving a Subject Vehicle hitting a tree concluded that "[t]he impact with the tree was clearly severe enough to warrant deployment of the vehicle's airbags. As a result, from a technical standpoint, there is a potential problem with the non-deployment, which was originally attributed to a pre-collision power loss." While outside counsel and Old GM Field Performance Assessment Engineer Manuel Peace thought the non-deployment event was not caused by a power loss, outside counsel concluded that "it was likely 'that a jury will find that the vehicle was defective' [and] GM eventually settled the case in 2008." (V.R. at 129-30).

NEW GM RESPONSE: The reference in the response which relates to what "outside counsel concluded" should not have been cited because of the attorney client/work-product privileges. The stipulation is also incomplete. The Valukas Report also states: "After further analysis of the accident sequence and information in the SDM download it appears that the non-deployment was not caused by a power loss but by some error in the SDM which caused it to misinterpret this significant crash as a non-deployment event." (V.R. at 129-30).

5. In March 2009, Old GM CEO Rick Wagoner had a "back-up" slide of a slide deck that included a reference to the Cobalt's inadvertent shut-off issue, that was presented at a meeting of the Vehicle Program Review team. That slide, in a 72-page slide presentation, described a proposed change in the Cobalt's key design from a slot to a hole. The slide deck was found in the data collected from Wagoner's computer from March 2009. (V.R. at 245).

NEW GM RESPONSE: The Stipulation is incomplete. The Valukas Report goes on to state as follows: "The back-up slide focused solely on warranty cost reduction and did not characterize the matter as a safety issue or mention airbag non-deployment, accidents or fatalities. Wagoner does not recollect reviewing any part of the slide deck." (V.R. at 245). After going through the background of the slide deck and investigating whether

Wagoner was informed of its contents, the Valukas Report states as follows: "There is no forensic evidence that Wagoner reviewed any specific slide within the presentation. As noted, Wagoner does not recollect viewing the presentation or the back-up slides; about three weeks later, on March 29, 2009, Wagoner agreed to resign as CEO at the request of the U.S. government's Auto Task Force. Contemporaneous e-mails he exchanged with the person who provided the summary notes of the meeting do not mention the Cobalt issue or any other specific topic." (V.R. at 247).

6. In furtherance of Old GM's admitted culture of avoiding responsibility, an Old GM 2008 Q1 Interior Technical Learning Symposium presentation provided examples of comments and phrases employees should avoid using in reports:

i. "This is a lawsuit waiting to happen . . ." ; "unbelievable engineering screw up . . . "; "this is a safety and security issue . . ."; "scary for the customer . . . "; "kids and wife panicking over the situation . . . "; "i believe the wheels are too soft and weak and could cause serious problems. . ."; "dangerous . . . Almost cause accident."

ii. The Old GM Symposium presentation also stated that documents used for reports and presentations should only concern engineering results, facts, and judgments. Some examples of words or phrases that are to be avoided are: ***always*** (emphasis in original), annihilate, apocalyptic, bad, Band- Aid, big time, brakes like an "X" car, cataclysmic, catastrophic, Challenger, chaotic, Cobain, condemns, Corvair-like, crippling, critical, dangerous, deathtrap, debilitating, decapitating, ***defect*** (emphasis in original), defective, detonate, disemboweling, enfeebling, evil, eviscerated, explode, failed, failure, flawed, genocide, ghastly, grenadelike, grisly, gruesome, Hindenburg, Hobbling, Horrific, impaling, inferno, Kevorkianesque, lacerating, life –threatening, maiming, malicious, mangling, maniacal, mutilating, ***never*** (emphasis in original), potentially-disfiguring, powder keg, problem, rolling sarcophagus (tomb or coffin), safety, safety related, serious, spontaneous combustion, startling, suffocating, suicidal, terrifying, Titanic, tomblike, unstable, widow-maker, words or phrases with biblical connotation, you're toast.

NEW GM RESPONSE: This is an exhibit to the NHTSA Consent Order. The Stipulation is incomplete. The presentation also states:

> "In a corporation the size of GM, writing is in many cases the only way to communicate globally because of time changes, number of people involved, etc.
>
> • Write "smart."
>
> -Be factual, not fantastic, in your writing.

• When identifying product risks, make sure they are addressed and closed out.

• Our writing must always be based only on fact, without judgmental adjectives and speculation.

• Understand that there really aren't any secrets in this company.

- For anything you say or do, ask yourself how you would react if it was reported in a major newspaper or on television.

• Don't be cute or clever.

-The words you choose could be taken out of context to

suggest you meant something much worse than what was intended.

-This may be especially easy to do in an e-mail, when there might be a temptation to use a casual tone to describe a potentially serious safety risk."

In addition, the lead in to the list set forth in (i) is: "Examples of comments that do not help identify and solve problems."

Also, the lead in to (ii) is as follows: "Documents used for reports and presentations should contain only engineering results, facts, and judgments. These documents should not contain speculations, opinions, vague non descriptive words, or words with emotional connotations. Some examples of words or phrases that are to be avoided are . . . ."

The Valukas Report also states: "Leadership at GM has tried to counter this culture with clear messages that employees should raise issues. 'Winning With Integrity' (the code of conduct) instructs employees to raise problems (although it does not explicitly reference vehicle safety) and ensure they receive proper attention, and to conduct themselves with the highest ethical standards." (V.R. at 255). The Valukas Report goes on to state that the author of the presentation used the phrases and words "as an attempt at humor," and that "[t]he employee who presented the training was later told by a lawyer who saw a version of this training to remove the slide listing words never to be used." (V.R. at 254 and n. 1156).

7. "In addition to being trained on how to write, a number of GM employees reported that they did not take notes at all critical safety meetings because they believed GM lawyers did not want such notes taken." (V.R. at 254).

NEW GM RESPONSE: The Stipulation is incomplete. The Valukas Report also states: "No witness was able to identify a lawyer who gave such an instruction, no lawyer

reported having given such an instruction, and we have found no documents ore-mails reflecting such an instruction."

B. New GM's Responses to Groman Plaintiffs' Proposed Facts To Which New GM Does Not Stipulate[10]

1. During his employment, William Kemp reported to the General Counsel of GM North America. (V.R. at 104).

NEW GM RESPONSE: This assertion is vague. The Valukas Report discusses this person's role at the time the Report was written, and not for the entire time during the person's career as the stipulation suggests.

2. During his employment, Larry Buonomo reported to the General Counsel of GM North America. (V.R. at 104).

NEW GM RESPONSE: This assertion is vague. The Valukas Report discusses this person's role at the time the Report was written, and not for the entire time during the person's career as the stipulation suggests.

3. When the ignition switch is turned to Accessory or Off, a Subject Vehicle would lose power brakes. (V.R. at 25).

NEW GM RESPONSE: The loss of power brakes under these circumstances would not happen immediately. This is a matter of engineering and has been confirmed by New GM engineers.

4. In 2003, Old GM became aware of Saturn customer complaints about intermittent engine stalls while driving. (V.R. at 54).

NEW GM RESPONSE: This assertion is incomplete. The Valukas Report goes on to state: "Witnesses recalled that the vast majority of claims concerning the Ion involved

[10] In the evening on Thursday, August 7, 2014 – the night before the agreed upon stipulations of fact were due to be delivered to the Court and hours after New GM received a list of proposed stipulations of fact not agreed to and which New GM herein responds, the Groman Plaintiffs sent the other Counsel for the Identified Parties (including New GM) an additional 87 proposed stipulations of fact that have not been agreed to. Until that time, New GM believed that all of the other Counsel for the Identified Parties (including the Groman Plaintiffs) had already delivered their disputed stipulations of fact. New GM has not had an appropriate opportunity to respond to the Groman Plaintiffs' new list of disputed stipulated facts.

complaints of 'no crank/no start' problems, which arose from electrical, rather than mechanical, problems with the Ignition Switch." (V.R. at 54).

5. In October 2003, a Field Performance Report, 3101/2003/US, lists 65 Ion stalls and states: "Customers comment of intermittent stall while driving. In most cases, there are no trouble codes associated with the stall. " This Field Performance Report lists a vehicle with 15 miles as the youngest vehicle affected. (V.R. at 54-55).

NEW GM RESPONSE: This assertion is incomplete. Some of the stalls were due to "heavy key chains." (V.R. at 54). In addition, the October 2003 Field Performance Report "was canceled in January 2004 for the purported reason that a different report already resolved the issue." (V.R. at 55)

6. Before 2008, a handful of Old GM engineers other than Raymond DeGiorgio also received information describing the change to the Ignition Switch for the model year 2008 Chevrolet Cobalt, including four engineers who received a June 30, 2006 email from Delphi to DeGiorgio stating that the detent plunger had been changed "to increase torque forces to be within specification." (V.R. 102).

NEW GM RESPONSE: This assertion is incomplete. The Valukas Report goes on to states that these engineers were "in other departments" and "were not involved in the investigations that ensued in the coming years, nor did they hold a position, like DeGiorgio's, with responsibility for the Ignition Switch." (V.R. at 102 n.417).

7. When first told of the Ignition Switch Defect in or about March 2005, Steven Oakley formed the view that the Ignition Switch Defect was a safety issue. (V.R. at 76).

NEW GM RESPONSE: This assertion is unsupported. The Valukas Report goes on to state that "Gary Altman, the PEM for the Cobalt program team, and other engineers told him [Oakley] it was not (safety issue), and he deferred to them. (V.R. at 76). This portion of the Valukas Report discusses Oakley's review of an event wherein the driver's knee contacted the key fob. The problem did not occur when the fob was removed from the key. Oakley assigned the incident with the lowest rating (4) "annoyance or continuous improvement." (V.R. at 76).

8. In or about November 15, 2004, one individual was killed and another was severely injured in a crash involving a 2004 Saturn Ion where the airbags did not deploy. (V.R. at 124). Manuel Peace, an Old GM engineer who assisted Old GM's legal department in evaluating cases, did a case evaluation for this incident. (V.R. 124). In his case evaluation, Peace stated he had never seen a situation like this where the airbags did not deploy, and that the best explanation for why the airbags did not deploy was that the vehicle lost power. (V.R. at 125)

NEW GM RESPONSE: This assertion is incomplete. The Valukas Report notes that neither individual was wearing their seatbelts at the time of the accident. In addition, the Report states that "Peace , however, had not determined precisely how the vehicle lost power.... Peace does not recall the case or what he did to investigate it." (V.R. at 125).

9. At some point between 2007 and the commencement of Old GM's bankruptcy case, John Sprague and the Field Performance Assessment team observed a pattern of airbag non-deployments in Cobalts and Ions. (V.R. at 9, 118-19, 134).

NEW GM RESPONSE: This assertion is unsupported. The Valukas Report does not say that John Sprague or anyone else noticed a "pattern of airbag non-deployments," but instead that the FPA team in 2009 " had not realized that the observed pattern of non-deployments could have been caused by a change in power mode signal that disabled airbag sensors." (V.R. at 134-135).

10. At the time John Sprague and Brian Everest met with Continental, Sprague and Everest knew that the rotation of the ignition switch from Run to Accessory or Off could cause the Sensing and Diagnostic Module to receive a power mode message of Accessory or Off. (V.R. at 135).

NEW GM RESPONSE: This assertion is unsupported. The Valukas Report does not state that Sprague and Everest knew. (V.R. at 135).

11. At or about the time of the meeting with Continental in May 2009, Brian Everest and John Sprague had spoken with members of Old GM's Product Investigations group about the non-deployment of airbags in Cobalts. (V.R. at 135).

NEW GM RESPONSE: This assertion is unsupported and incomplete. The Valukas Report states that: "Before receiving the Continental report, Everest and Sprague explained, the FPA team had not realized that the observed pattern of Cobalt non-deployments could have been caused by a change of power mode signal that disabled airbag sensors." It goes on to state that Sprague gathered further information, and the engineers first focused their attention on the vehicles electric system. It was in this context that Sprague and Everest spoke to the engineering team about the non-deployment issue.

12. Joseph Taylor, an Old GM Program Quality Manager who administered the Captured Test Fleet program for the Chevrolet Cobalt drove a 2005 Cobalt test vehicle and personally experienced moving stalls with the Cobalt. (V.R. at 58).

NEW GM RESPONSE: This assertion is incomplete. The Valukas Report goes on to state that Taylor did not recall any Capture Test Fleet ("CTF") "reports of Ignition Switch or stalling issues for the Cobalt, either during the initial 2004 CTF or in subsequent model years." (V.R. at 58.) It further states that Taylor did not report the stalling instances in his CTF Reports "because he did not regard them as significant." "Taylor, like many other GM engineers, did not regard stalling as a safety issue." (V.R. at 59).

Exhibit 3

IN RE NEW GM VIS LITIGATION
EXHIBIT 3 - 358 NAMED PLAINTIFFS KNOWN TO NEW GM

CASE	NUMBER	COURT	PLAINTIFF
Arnold et al. v. General Motors LLC et al.	1:14-cv-05325-JMF	USDC SDNY	Arnold, Phillip R.
Arnold et al. v. General Motors LLC et al.	1:14-cv-05325-JMF	USDC SDNY	Painter, Patrick C.
Ashbridge v. General Motors LLC et al.	1:14-cv-04781-JMF	USDC SDNY	Ashbridge, Amy
Ashworth et al. v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Booher, Lynda
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Ashworth, Dianne
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Moore, Karen
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Dean, David
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	De Atley, Sandra
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Glantz, Paul
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Roads, Cathy
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Serpa, Moraima
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Anderson, Steven
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Witmer, Matthew
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Willis, Joanna
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Weingarten, Marsha
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Webster, Aaron
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Wallace, Jamie
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Walker, Maple
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Vanevery, Julie
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Ulrich, Natahsa
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Tucker, Kristen
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Trickey, Debby
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Thompson, Amanda
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Switzer, Stephen
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Sussell, Kathy
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Suman, Joseph
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Stovall, AJ
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Stevens, Geraldine
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Stephans, Lori
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Snover, Ann
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Smith, Karla

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EXHIBIT 3 - 358 NAMED PLAINTIFFS KNOWN TO NEW GM

CASE	NUMBER	COURT	PLAINTIFF
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Skinner, Tracy
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Shorter, Karissa
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Scott, Ladena
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Schneider, Donna
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Rolling, Gregory
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Rice, Randall
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Quinn, Juanita
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Pope, Ledell
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Pinon, Jessica
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Pereira-Lopez, Migdalia
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Palsmeier, Lawrence
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Oswald, Frank
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Onyeador. Misty
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Morgan, Chris
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Moore, Robert
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Milton, Bonnie
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Miller, Brian
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Miles, Leslie
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	McMath. Dionne
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Matamoros, David
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Macon, Sharon
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Lynn, Kari
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Lein, Dina
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Lee, Theresa
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Lech, Donna
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Kidd, Amy
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Kennedy, Jamie
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Joseph, Jean
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Jones, Lakeisha
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Jackson, Gloria
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Jackson, Cheryl
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Ingram, Christine
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Humphries, Emily

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CASE	NUMBER	COURT	PLAINTIFF
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Howell, Simmion
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Honeywood, Cecilia
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Foster, Deloris
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Bryant, Virginia
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Frankhouser, Deena
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Fuller, Kara
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Averhart, Balisha
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Caratozzolo, James
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Gallo, Salvatore
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Gretch, Nicholas
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Collins, Sonja
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Gums, Elridge
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Hendrickson, Jamie
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Cooper, Robert
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Batchelor, Cheree
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Covert, Daniel
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Hernandez, Christina
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Higgins, Jillian
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Crosby, Christina
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Hite, Kenneth
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Battee, Percy
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Dean, Allicia
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Dodge, Scott
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Downing, David
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Beardsley, Everett
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Dutton, Brandi
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Feehley, William
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Bellomy, Karen
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Follmer, Janice
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Birney, Neddie
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Black, Ellis
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Black, Tahnea
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Bowman, Vanessa

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CASE	NUMBER	COURT	PLAINTIFF
Ashworth v. General Motors LLC	1:14-cv-04804-JMF	USDC SDNY	Bryant, Pamela
Balls et al v. General Motors LLC	1:14-cv-04691-JMF	USDC SDNY	Balls, Jeffery
Balls et al. v. General Motors LLC	1:14-cv-04691-JMF	USDC SDNY	Balls, Tammie
Bedford Auto Wholesale Inc. v. General Motors LLC	1:14-cv-05356-JMF	USDC SDNY	Bedford Auto Wholsale Inc
Bender v. General Motors LLC	1:14-cv-04768-JMF	USDC SDNY	Bender, Larry
Benton v. General Motors LLC	1:14-cv-04268-JMF	USDC SDNY	Benton, Sylvia
Biggs v. General Motors LLC et al.	1:14-cv-05358-JMF	USDC SDNY	Biggs, Lorie
Brandt v. General Motors LLC	1:14-cv-04340-JMF	USDC SDNY	Brandt, Daryl
Brandt v. General Motors LLC	1:14-cv-04340-JMF	USDC SDNY	Brandt, Maria
Brown v. General Motors LLC	1:14-cv-04715-JMF	USDC SDNY	Brown, Kimberly
Brown v. General Motors LLC	1:14-cv-04715-JMF	USDC SDNY	Shipley, Dan
Burton v. General Motors LLC et al.	1:14-cv-04771-JMF	USDC SDNY	Burton, Deneise
Camlan v. General Motors LLC	1:14-cv-04741-JMF	USDC SDNY	Camlan, Inc.
Camlan v. General Motors LLC	1:14-cv-04741-JMF	USDC SDNY	Marquez, Salvador R.
Camlan v. General Motors LLC	1:14-cv-04741-JMF	USDC SDNY	Pina, Randall
Camlan v. General Motors LLC	1:14-cv-04741-JMF	USDC SDNY	Books, Amalia
Childre v. General Motors LLC et al.	1:14-cv-05332-JMF	USDC SDNY	Childre, Brittany
Coleman v. General Motors LLC	1:14-cv-04731-JMF	USDC SDNY	Coleman, Jomaka
Corbett et al. v. General Motors LLC	1:14-cv-05754-JMF	USDC SDNY	Corbett, Diana
Corbett et al. v. General Motors LLC	1:14-cv-05754-JMF	USDC SDNY	Barnes, Gertrude
Corbett et al. v. General Motors LLC;	1:14-cv-05754-JMF	USDC SDNY	Barnes, Michael
Cox v. General Mottors LLC	1:14-cv-04701-JMF	USDC SDNY	Cox, Ronald
Darby v. General Motors LLC	1:14-cv-04692-JMF	USDC SDNY	Darby, Larry
Deighan v. General Motors LLC et al.	1:14-cv-04858-JMF	USDC SDNY	Deighan, Kathleen
Deluco v. General Motors LLC	1:14-cv-02713-JMF	USDC SDNY	Deluco, Robin
DePalma et al v. General Motors LLC et al.	1:14-cv-05501-JMF	USDC SDNY	McCann, Bob
DePalma et al v. General Motors LLC et al.	1:14-cv-05501-JMF	USDC SDNY	McCann, Dorothy
DePalma et al v. General Motors LLC et al.	1:14-cv-05501-JMF	USDC SDNY	Pollastro, Paul J.
DePalma et al. v. General Motors LLC et al.	1:14-cv-05501-JMF	USDC SDNY	DePalma, Austin
Desutter et al. v. General Motors LLC	1:14-cv-04685-JMF	USDC SDNY	Desutter, Michelle
Desutter et al. v. General Motors LLC	1:14-cv-04685-JMF	USDC SDNY	White, Robert
Desutter et al. v. General Motors LLC	1:14-cv-04685-JMF	USDC SDNY	Ferguson, Joie
Detton v. General Motors LLC et al.	1:14-cv-04784-JMF	USDC SDNY	Detton, Sarah

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CASE	NUMBER	COURT	PLAINTIFF
Detton v. General Motors LLC et al.	1:14-cv-04784-JMF	USDC SDNY	Detton, Jeff
Deushane v. General Motors LLC	1:14-cv-04732-JMF	USDC SDNY	Deushane, Taylor
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Dinco, Deanna
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Butler, David
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Blinsmon, Curtis
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Henderson, Aaron
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Belford, Grace
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Terry, Nathan
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Pesce, Michael
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Haskins, Rhonda
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Gearin, Jennifer
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Revak, Arlene
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Mathis, George
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Dias, Mary
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Amezquita, Michael
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	De Vargas, Lorraine
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Tefft, Dawn
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Taylor, Bonnie
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Gordon, Jerrile
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Hunter, Keisha
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Rouse, Les
Dinco et al. v. General Motors LLC	1:14-cv-04727-JMF	USDC SDNY	Anderson, Sheree
Duarte v. General Motors LLC et al.	1:14-cv-04667-JMF	USDC SDNY	Duarte, Ruth
Edwards_C et al. v. General Motors LLC et al.	1:14-cv-04684-JMF	USDC SDNY	Edwards, Cynthia
Edwards_C et al. v. General Motors LLC et al.	1:14-cv-04684-JMF	USDC SDNY	Thomas, Madeline
Edwards_C et al. v. General Motors LLC et al.	1:14-cv-04684-JMF	USDC SDNY	Prassel, Jay
Edwards_C et al. v. General Motors LLC et al.	1:14-cv-04684-JMF	USDC SDNY	Madewell, Hope
Edwards_C et al. v. General Motors LLC et al.	1:14-cv-04684-JMF	USDC SDNY	Ball, Jeanne Jones
Elliott_C v. General Motors LLC et al.	1:14-cv-05323-JMF	USDC SDNY	Elliott, Colin
Elliott_L et al. v. General Motors LLC	1:14-cv-00691-KBJ	USDC DC	Elliott, Lawrence M.
Elliott_L et al. v. General Motors LLC	1:14-cv-00691-KBJ	USDC DC	Elliot, Celestine V.
Elliott_L et al. v. General Motors LLC	1:14-cv-00691-KBJ	USDC DC	Summerville, Berenice
Emerson et al. v. General Motors LLC et al.	1:14-cv-04650-JMF	USDC SDNY	Emerson, Jonathan

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CASE	NUMBER	COURT	PLAINTIFF
Emerson et al. v. General Motors LLC et al.	1:14-cv-04650-JMF	USDC SDNY	Barbiaux, Melinda
Emerson et al. v. General Motors LLC et al.	1:14-cv-04650-JMF	USDC SDNY	Brown Davis, Carter
Emerson et al. v. General Motors LLC et al.	1:14-cv-04650-JMF	USDC SDNY	Garrett, Dawn
Emerson et al. v. General Motors LLC et al.	1:14-cv-04650-JMF	USDC SDNY	Hicks, Thomas
Emerson et al. v. General Motors LLC et al.	1:14-cv-04650-JMF	USDC SDNY	Lawson, Barb
Emerson et al. v. General Motors LLC et al.	1:14-cv-04650-JMF	USDC SDNY	Moore, Carlton
Emerson et al. v. General Motors LLC et al.	1:14-cv-04650-JMF	USDC SDNY	Perkins, Janet
Espineira v. General Motors LLC, et al.	1:14-cv-04637-JMF	USDC SDNY	Espineira, Reynaldo A.
Favro v. General Motors LLC, et al.	1:14-cv-04752-JMF	USDC SDNY	Favro, Hilarie
Forbes v. General Motors LLC	1:14-cv-04798-JMF	USDC SDNY	Forbes, Debra E.
Foster v. General Motors LLC et al.	1:14-cv-04775-JMF	USDC SDNY	Foster, Joyce
Frank v. General Motors LLC	1:14-cv-21652-MGC	USDC SD Fla	Frank, Nancy Hausmann
Fugate v. General Motors LLC	1:14-cv-04714-JMF	USDC SDNY	Fugate, Jolene
Gebremariam v. General Motors LLC	1:14-cv-05340-JMF	USDC SDNY	Gebremariam, Mesafint
Groman v General Motors LLC	1:14-cv-02458-JMF	USDC SDNY	Groman, Steven
Grumet et al v. General Motors LLC	1:14-cv-04690-JMF	USDC SDNY	Grumet, Elizabeth Y.
Grumet et al v. General Motors LLC	1:14-cv-04690-JMF	USDC SDNY	ABC Flooring INC
Grumet et al v. General Motors LLC	1:14-cv-04690-JMF	USDC SDNY	Sullivan, Marcus
Grumet et al v. General Motors LLC	1:14-cv-04690-JMF	USDC SDNY	Saxson, Katelyn
Grumet et al v. General Motors LLC	1:14-cv-04690-JMF	USDC SDNY	Clinton, Amy C.
Grumet et al v. General Motors LLC	1:14-cv-04690-JMF	USDC SDNY	Clinton, Allison C.
Harris et al. v. General Motors LLC et al.	1:14-cv-04672-JMF	USDC SDNY	Harris, Alicia
Harris et al. v. General Motors LLC et al.	1:14-cv-04672-JMF	USDC SDNY	Toth, Kristin
Henry et al. v. General Motors LLC et al.	1:14-cv-04811-JMF	USDC SDNY	Youngblood, Rebecca
Henry et al. v. General Motors LLC et al.	1:14-cv-04811-JMF	USDC SDNY	Gladson, Pam
Henry et al. v. General Motors LLC et al.	1:14-cv-04811-JMF	USDC SDNY	Henry, Shenyesa
Heuler v. General Motors LLC	1:14-cv-04345-JMF	USDC SDNY	Heuler, Nicole
Higginbotham v. General Motors LLC et al.	1:14-cv-04759-JMF	USDC SDNY	Higginbotham, Drew
Holliday, et al. v. General Motors LLC, et al.	1:14-cv-05506-JMF	USDC SDNY	Holliday, Kevin
Holliday, et al. v. General Motors LLC, et al.	1:14-cv-05506-JMF	USDC SDNY	Calvillo, Elvira
Hurst v. General Motors Company	1:14-cv-04707-JMF	USDC SDNY	Hurst, Kim
Ibanez v. General Motors LLC	1:14-cv-05880-JMF	USDC SDNY	Ibanez, Alondra
Ibanez v. General Motors LLC	1:14-cv-05880-JMF	USDC SDNY	Degado, Sylvia

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CASE	NUMBER	COURT	PLAINTIFF
Jawad v. General Motors LLC	1:14-cv-04348-JMF	USDC SDNY	Jawad, Adnan
Johnson v. General Motors LLC	1:14-cv-05347-JMF	USDC SDNY	Johnson, Elizabeth D.
Jones_P v. General Motors LLC	1:14-cv-04350-JMF	USDC SDNY	Jones, Peggy Sue
Kandziora v. General Motors LLC et. al.	2:14-cv-00801-AEG	USDC ED Wis	Kandziora, Erin E.
Kelley et al. v. General Motors Company et al.	1:14-cv-04272-JMF	USDC SDNY	Kelley, Devorah
Kelley et al. v. General Motors Company et al.	1:14-cv-04272-JMF	USDC SDNY	Whittington, Frederick
Kluessendorf v. General Motors LLC et al.	1:14-cv-05035-JMF	USDC SDNY;	Kluessendorf, Sandra
Knetzke v. General Motors LLC et al.	1:14-cv-04641-JMF	USDC SDNY	Knetzke, Jacob P.
Kosovec v. General Motors LLC et al.	3:14-cv-00354-RS-EMT	USDC ND Fla	Kosovec, Wendy
Lannon et al. v. General Motors LLC et al.	1:14-cv-04676-JMF	USDC SDNY	Lannon, Michelle
Lannon et al. v. General Motors LLC et al.	1:14-cv-04676-JMF	USDC SDNY	Little, Jeaninne
Lareine et al. v. General Motors LLC et al.	1:14-cv-04717-JMF	USDC SDNY	Lareine, Lianne
Lareine et al. v. General Motors LLC et al.	1:14-cv-04717-JMF	USDC SDNY	Chandler, Marguerite
Lareine et al. v. General Motors LLC et al.	1:14-cv-04717-JMF	USDC SDNY	Evans, James
Lareine et al. v. General Motors LLC et al.	1:14-cv-04717-JMF	USDC SDNY	LaGoe, Bonita
Lareine et al. v. General Motors LLC et al.	1:14-cv-04717-JMF	USDC SDNY	Jordanides, Lea
Lareine et al. v. General Motors LLC et al.	1:14-cv-04717-JMF	USDC SDNY	Rodriguez, Yvonne E.
Letterio v. General Motors LLC et al.	1:14-cv-04857-JMF	USDC SDNY	Letterio, Noel Joyce
Leval v. General Motors LLC	1:14-cv-04802-JMF	USDC SDNY	Leval, Vernon
Levine v. General Motors LLC	1:14-cv-04661-JMF	USDC SDNY	Levine, Michael
Lewis v. General Motors LLC et al.	1:14-cv-04720-JMF	USDC SDNY	Lewis, Tracy
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Maciel, Galdina
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Cortez, Daniel
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Wade, Cindy
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Dewitt, Zachary
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Cheraso, Roberta
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Smith, Demetrius
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Byrd, Jenee
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Leyva, Ashuhan
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Gresik, Jim
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Steele, Barbara Ellis
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Raygoza, Maria
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Gray, Barbara

IN RE NEW GM VIS LITIGATION
EXHIBIT 3 - 358 NAMED PLAINTIFFS KNOWN TO NEW GM

CASE	NUMBER	COURT	PLAINTIFF
Maciel et al. v. General Motors LLC	1:14-cv-04339-JMF	USDC SDNY	Bennett, Michele
Malaga et al. v. General Motors LLC	1:14-cv-04738-JMF	USDC SDNY	Malaga, Javier F.
Malaga et al. v. General Motors LLC	1:14-cv-04738-JMF	USDC SDNY	Estencion, Estella
Markle v. General Motors LLC et al.	1:14-cv-04662-JMF	USDC SDNY	Markle, Peyton
Mazzocchi v. General Motors LLC et al.	1:14-cv-02714-JMF	USDC SDNY	Mazzocchi, Marie
McCarthy v. General Motors et al.	1:14-cv-04758-JMF	USDC SDNY	McCarthy, Karen
McConnell v. General Motors	1:14-cv-04270-JMF	USDC SDNY	McConnell, Katie Michelle
Nava v. General Motors LLC, et al.	1:14-cv-04754-JMF	USDC SDNY	Nava, Sonia
Nettleton v. General Motors LLC et al.	1:14-cv-04760-JMF	USDC SDNY	Nettleton Auto Sales, INC.
Phaneuf et al. v. General Motors LLC	1:14-cv-03298-JMF	USDC SDNY	Phaneuf, Lisa
Phaneuf et al. v. General Motors LLC	1:14-cv-03298-JMF	USDC SDNY	Smith, Adam
Phaneuf et al. v. General Motors LLC	1:14-cv-03298-JMF	USDC SDNY	Garcia, Mike
Phaneuf et al. v. General Motors LLC	1:14-cv-03298-JMF	USDC SDNY	Delacruz, Javier
Phaneuf et al. v. General Motors LLC	1:14-cv-03298-JMF	USDC SDNY	Sileo, Steve
Phaneuf et al. v. General Motors LLC	1:14-cv-03298-JMF	USDC SDNY	Bucci, Steven
Phaneuf et al. v. General Motors LLC	1:14-cv-03298-JMF	USDC SDNY	Padilla, David
Phaneuf et al. v. General Motors LLC	1:14-cv-03298-JMF	USDC SDNY	Cabral, Catherine
Phaneuf et al. v. General Motors LLC	1:14-cv-03298-JMF	USDC SDNY	Cabral, Joseph
Phillip et al. v. General Motors LLC	1:14-cv-04630-JMF	USDC SDNY	Phillip, Kyle
Phillip et al. v. General Motors LLC	1:14-cv-04630-JMF	USDC SDNY	Torres, Evelyn
Phillip et al. v. General Motors LLC	1:14-cv-04630-JMF	USDC SDNY	Kirkpatrick, Kelly
Phillip et al. v. General Motors LLC	1:14-cv-04630-JMF	USDC SDNY	Berry, Steve
Phillip et al. v. General Motors LLC	1:14-cv-04630-JMF	USDC SDNY	Johnson, Eslie
Phillip et al. v. General Motors LLC	1:14-cv-04630-JMF	USDC SDNY	Berry, Diane
Ponce v. General Motors LLC	1:14-cv-04265-JMF	USDC SDNY	Ponce, Martin
Powell v. General Motors LLC	1:14-cv-04778-JMF	USDC SDNY	Powell, Amy
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Huff, Diana
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Wright, Linda
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Cave, Melissa
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Carden, Stephanie Renee
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Genovese, Kim
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Brooks, Penny
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Pickens, Judy

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CASE	NUMBER	COURT	PLAINTIFF
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Cnossen, Diana
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Wyman, Robert
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Murray, Judy
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Ramirez, Esperanza
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Mancieri, Garrett S.
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Dail, Robert
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Laverdiere, Antonia
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Bernick, William
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Zivnuska, Philip
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Valdez, Yolanda
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Smith, Kimberly
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Graciano, Michael
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Tomlinson, Blair
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Cole, Laura
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Nelson, Norma Lee
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Claggion, Yolanda
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Wright, Alphonso
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Stocchi, Demealla
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Hansen, Patrick
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Gutchewsky, Cathy
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	England, William Jr.
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Mortell, Jane
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Barnes, Betty
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Romero, Bernadette
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Lambert, Marguerite
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	West, Lisa
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Taylor, Erik
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Hobby, Sarah
Ramirez et al. v. General Motors LLC	1:14-cv-04267-JMF	USDC SDNY	Counts, April
Ratzlaff et al v. General Motors LLC	1:14-cv-04346-JMF	USDC SDNY	Barker, Patricia
Ratzlaff et al v. General Motors LLC	1:14-cv-04346-JMF	USDC SDNY	Ratzlaff, Daniel
Roach v. General Motors LLC et al.	1:14-cv-04810-JMF ;	USDC SDNY	Roach, Rex
Robinson v. General Motors LLC	1:14-cv-04699-JMF	USDC SDNY	Lewis, Richard

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CASE	NUMBER	COURT	PLAINTIFF
Robinson v. General Motors LLC	1:14-cv-04699-JMF	USDC SDNY	Robinson, Sara
Robinson v. General Motors LLC	1:14-cv-04699-JMF	USDC SDNY	Helcl, John
Robinson v. General Motors LLC	1:14-cv-04699-JMF	USDC SDNY	Petersen, Denise
Ross_J et al. v. General Motors LLC et al.	1:14-cv-04756-JMF	USDC SDNY	Bellin, Robert
Ross_J et al. v. General Motors LLC et al.	1:14-cv-04756-JMF	USDC SDNY	Ross, Janice
Ross_J et al. v. General Motors LLC et al.	1:14-cv-04756-JMF	USDC SDNY	Chambers, George
Roush et al. v. General Motors LLC	1:14-cv-04704-JMF	USDC SDNY	Roush, Jennifer
Roush et al. v. General Motors LLC	1:14-cv-04704-JMF	USDC SDNY	Roush, Randall
Ruff et al. v. General Motors et al.	1:14-cv-04764-JMF	USDC SDNY	Ruff, Lisa
Ruff et al. v. General Motors et al.	1:14-cv-04764-JMF	USDC SDNY	Marx, Sherri
Rukeyser v. General Motors LLC	1:14-cv-5715-UA	USDC SDNY	Rukeyser, William L.
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Saclo, Ken
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Cohen, Mel
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Malone, Tiffany
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Orona, Dawn
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Teicher, Lisa
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Nagle, Sue
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Young, Robert
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Luthander, Robbie
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Holleman, Heather
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Clinton, Jeremy
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Tyson, Tommy
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Talbot, Dawn
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Heath, Tara
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Sloan, Sarah
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Condon, Bonnie
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Wilson, Derek
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Kielman, Sherry
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Levine, Sandra
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Glasgow, Jennifer
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Owens, Michael
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Doucette, Shawn
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Miller, Geraldine

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CASE	NUMBER	COURT	PLAINTIFF
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Wessel, Christa
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Maas, Pamela
Saclo et al. v. General Motors LLC et al.	1:14-cv-04751-JMF	USDC SDNY	Stewart, Elizabeth
Salazar v. General Motors et al.	1:14-cv-04859-JMF	USDC SDNY	Salazar III, Jesse
Salerno v. General Motors LLC et al.	1:14-cv-04799-JMF	USDC SDNY	Salerno, Nicole
Santiago v. General Motors LLC	1:14-cv-04632-JMF	USDC SDNY	Santiago, Maria Elena
Satele et al. v. General Motors LLC	1:14-cv-04273-JMF	USDC SDNY	Onofre, Carlota
Satele et al. v. General Motors LLC	1:14-cv-04273-JMF	USDC SDNY	Satele, Telso
Sesay et al. v. General Motors LLC et al.	14-cv-6018	USDC SDNY	Sesay, Ishmail
Sesay et al. v. General Motors LLC et al.	14-cv-6018	USDC SDNY	Yearwood, Joanne
Shollenberger v. General Motors LLC	1:14-cv-04338-JMF	USDC SDNY	Shollenberger, Chris
Silvas et al. v. General Motors LLC	1:14-cv-04342-JMF	USDC SDNY	Silvas, Charles
Silvas et al. v. General Motors LLC	1:14-cv-04342-JMF	USDC SDNY	Silvas, Grace
Skillman v. General Motors LLC et al.	1:14-cv-03326-JMF	USDC SDNY	Skillman, Meaghan
Smith_V v. General Motors LLC et al.	1:14-cv-05338-JMF	USDC SDNY	Smith, Vickie
Spangler v. General Motors LLC	1:14-cv-04755-JMF	USDC SDNY	Spangler, Randi
Stafford Chapman v. General Motors et al.	1:14-cv-05345-JMF	USDC SDNY	Stafford-Chapman, Aletha
Stafford v. General Motors LLC	1:14-cv-04808-JMF	USDC SDNY	Stafford, Richard
Taylor v. General Motors Company	1:14-cv-04686-JMF	USDC SDNY	Taylor, John W.
The People of the State of California v. General Motors LLC	30-2014-00731038-CU-BT-CXC	Orange Co.	California
Thomas Stevenson v. General Motors LLC	1:14-cv-05137-JMF	USDC SDNY	Stevenson, Thomas
Turpyn et al. v. General Motors LLC et al.	1:14-cv-05328-JMF	USDC SDNY	Turpyn, Janet
Turpyn et al. v. General Motors LLC et al.	1:14-cv-05328-JMF	USDC SDNY	Turpyn, Richard
Villa et al. v. General Motors LLC et al.	1:14-cv-04801-JMF	USDC SDNY	Villa, AmberLynn I.
Villa et al. v. General Motors LLC et al.	1:14-cv-04801-JMF	USDC SDNY	Cohen, Jack
Villa et al. v. General Motors LLC et al.	1:14-cv-04801-JMF	USDC SDNY	Bell, Helen
Villa et al. v. General Motors LLC et al.	1:14-cv-04801-JMF	USDC SDNY	Armstrong, Caitlyn
Villa et al. v. General Motors LLC et al.	1:14-cv-04801-JMF	USDC SDNY	Keenan, Frank
Witherspoon v. General Motors LLC et al.	1:14-cv-04702-JMF	USDC SDNY	Witherspoon, Patrice
Woodward v. General Motors LLC et al.	1:14-cv-04226-JMF	USDC SDNY	Woodward, Rudy

Exhibit 4

EXHIBIT "4"

INDIVIDUALS AND ENTITIES WHO RECEIVED
DIRECT MAIL NOTICE OF THE 363 SALE

(i) the attorneys for the U.S. Treasury,
(ii) the attorneys for Export Development Canada,
(iii) the attorneys for the agent under the Debtors' pre-petition secured term loan agreement,
(iv) the attorneys for the agent under the Debtors' pre-petition amended and restated secured revolving credit agreement,
(v) the attorneys for the statutory committee of unsecured creditors appointed in the Debtors' chapter 11 cases (the "Creditors Committee") (if no statutory committee of unsecured creditors has been appointed, the holders of the fifty largest unsecured claims against the Debtors on a consolidated basis),
(vi) the attorneys for the UAW,
(vii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America,
(viii) the United States Department of Labor,
(ix) the attorneys for the National Automobile Dealers Association,
(x) the attorneys for the ad hoc bondholders committee,
(xi) any party who, in the past three years, expressed in writing to the Debtors an interest in the Purchased Assets and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated in the MPA,
(xii) non-Debtor parties to the Assumable Executory Contracts,
(xiii) all parties who are known to have asserted any lien, claim, encumbrance, or interest in or on the Purchased Assets,
(xiv) the Securities and Exchange Commission,
(xv) the Internal Revenue Service,
(xvi) all applicable state attorneys general, local environmental enforcement agencies, and local regulatory authorities,
(xvii) all applicable state and local taxing authorities,
(xviii) the Federal Trade Commission,
(xix) all applicable state attorneys general,
(xx) United States Attorney General/Antitrust Division of the Department of Justice,
(xxi) the U.S. Environmental Protection Agency and similar state agencies,
(xxii) the United States Attorney's Office,
(xxiii) all dealers with current agreements for the sale or leasing of GM brand vehicles,
(xxiv) the Office of the United States Trustee for the Southern District of New York,
(xxv) all entities that requested notice in these chapter 11 cases under Bankruptcy Rule 2002,
(xxvi) all other known creditors, and
(xxvii) all equity security holders of the Debtors of record as of May 27, 2009.

Exhibit B

COUNSEL FOR THE PARTIES ARE LISTED IN THE SIGNATURE BLOCK

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**Case No.: 09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

CERTAIN PLAINTIFFS, THROUGH DESIGNATED COUNSEL, AND THE *GROMAN* PLAINTIFFS' AGREED-UPON STIPULATIONS OF FACT IN CONNECTION WITH THE FOUR THRESHOLD ISSUES IDENTIFIED IN THIS COURT'S JULY 11, 2014 SUPPLEMENTAL SCHEDULING ORDER[1]

Pursuant to this Court's *Supplemental Scheduling Order, Dated July 11, 2014, Regarding (i) the Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction, (ii) the Objection Filed by Certain Plaintiffs in Respect Thereto, and (iii) Adversary Proceeding No. 14-01929* (the "**Supplemental Scheduling Order**"), Certain Plaintiffs, through Designated Counsel, and the *Groman* Plaintiffs (hereinafter "**Plaintiffs**") hereby submit the following agreed-upon stipulations of fact concerning the Four Threshold Issues.[2]

In addition, annexed hereto as Exhibit "A" are Certain Plaintiffs' proposed stipulations of fact that have not been agreed to by New GM.

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[1] Unless otherwise indicated, capitalized terms not defined herein shall have the meanings ascribed to them in the Supplemental Scheduling Order (as defined herein).

[2] Plaintiffs reserve the right to rely on any of the stipulations of fact agreed upon by Counsel for the Identified Parties.

AGREED-UPON STIPULATIONS OF FACT

1. When the Ignition Switch is turned to the "Accessory" or "Off" position in the Subject Vehicles, power to a part called the Sensing Diagnostic Module is lost. The Sensing Diagnostic Module determines when and whether airbags should deploy. When the Sensing Diagnostic Module is powered down, the airbags will not deploy. If the Sensing Diagnostic Module loses power during a crash, the Sensing Diagnostic Module's crash sensing protection would continue (and airbags could still deploy) for approximately 150 milliseconds after the power loss. But if the Sensing Diagnostic Module loses power prior to the crash, then the Sensing Diagnostic Module would power down and would not trigger airbag deployment. (V.R. at 28-29).[3]

2. According to New GM, the Subject Vehicles were recalled in 2014 (the "**Ignition Switch Recall**").

3. In connection with the Ignition Switch Recall, New GM stated that:

> There is a risk, under certain conditions, that your ignition switch may move out of the "run" position, resulting in a partial loss of electrical power and turning off the engine . . . If the ignition switch is not in the run position, the airbags may not deploy if the vehicle is involved in a crash, increasing the risk of injury or fatality.

(General Motors, Ignition Recall Safety Information Frequently Asked Questions (2014), *available at* http://gmignitionupdate.com/faq.html#L (last visited May 23, 2014)).

[3] "V.R." refers to Anton R. Valukas, Report to Board of Directors of General Motors Company Regarding Ignition Recalls, dated May 29, 2014, which can be found at http://www.nhtsa.gov/staticfiles/nvs/pdf/Valukas-report-on-gm-redacted.pdf.

4. In 2003, Thomas Gottschalk, Old GM's[4] former general counsel, stated to members of Old GM's legal department in a memorandum that "[i]f you as an attorney are aware of any threatened, on-going, or past violation of a federal, state or local law or regulation . . . it is your responsibility to respond appropriately." (V.R. at 109).

5. Gottschalk's memorandum also discussed what to do if one's superiors had concluded that appropriate action had been taken in response to a perceived problem, but the more junior lawyer disagreed. If they believed that the conclusion was wrong, the more junior lawyer should continue to seek an appropriate resolution. Gottschalk said it was the duty of the more junior lawyers to bring the situation to the attention of their supervisors or their supervisors' supervisors, as necessary. If the more junior lawyers believed that their supervisor had not addressed the issue appropriately or if the more junior lawyer felt that bringing it to the attention of their supervisors would be futile, the more junior lawyers were told to pursue it higher in the organization – if necessary, to the General Counsel. (V.R. at 109-110).

6. In a February 19, 2004 report concerning the model year 2004 Saturn Ion, Old GM employee Onassis Matthews stated: "The location of the ignition key was in the general location where my knee would rest (I am 6'3" tall, not many places to put my knee). On several occasions, I inadvertently turn [sic] the ignition key off with my knee while driving down the road. For a tall person, the location of the ignition key should be moved to a place that will not be inadvertently switched to the off position." (V.R. at 57).

7. In an April 15, 2004 report concerning the model year 2004 Saturn Ion, Old GM employee Raymond P. Smith reported experiencing a one-time inadvertent shut-off, and

[4] **"Old GM"** means Motors Liquidation Company, formerly known as General Motors Corporation.

that "I thought that my knee had inadvertently turned the key to the off position." (V.R. at 57).

8. In 2004, an engineer in Old GM's High Performance Vehicle Operations Group reported that the driver repeatedly experienced a moving stall during a track test of the Chevrolet Cobalt SS when the driver's knee slightly grazed the key fob.

9. An Old GM 2005 Problem Resolution Tracking System report states, in part: "Customer concern is that the vehicle ignition will turn off while driving." http://democrats.energycommerce.house.gov/sites/default/files/documents/GM-PRTS-Chevrolet-Cobalt-March-2005.pdf.

10. In December 2005, Old GM issued Service Bulletin 05-02-35-007 (the "**December 2005 Service Bulletin**") to its dealers, with the subject reference "Information on Inadvertent Turning Off of Key Cylinder, Loss of Electrical System and No DTCs ("**Diagnostic Trouble Codes**")" for the 2005-2006 Chevrolet Cobalt, 2006 Chevrolet HHR, 2003-2006 Saturn Ion, and 2006 Pontiac Solstice vehicles. (Apr. 1 Cong. Hr'g, Doc. 12).[5]

A. The December 2005 Service Bulletin stated that the concern about inadvertently turning off the ignition "is more likely to occur if the driver is short and has a large and/or heavy key chain" and that, when a customer brought his or her vehicle in for service, he or she "should be advised of this potential and should take steps to prevent it – such as removing unessential items from their key chain."

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[5] The hearing transcript can be found at *The GM Ignition Switch Recall: Why Did It Take So Long?: Hearing Before the Subcommittee on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 2014 WL 1317290 (2014). The hearing transcript and the documents released by Congress in connection with the hearing can be found at http://energycommerce.house.gov/hearing/%E2%80%pC-gm-ignition-switch-recall-why-did-it-take-so-long%E2%80%9D. (last visited July 24, 2014). Citation to "Doc. ___" refer to the documents produced by New GM to Congress in connection with the hearings regarding the Ignition Switch Recall before the House Energy and Commerce Committee on April 1, 2014.

B. The December 2005 Service Bulletin also stated that "there is potential for the driver to inadvertently turn off the ignition due to low ignition key cylinder torque/effort."

C. Old GM did not issue any public statements related to the December 2005 Service Bulletin. (Apr. 1 Cong. Hr'g at 35).

D. The December 2005 Service Bulletin did not describe the issue as involving a "stall." (V.R. at 93).

E. Prior to this time, Steven Oakley, [6] an Old GM brand quality manager, had written a service bulletin request form that used the term "stall." (V.R. at 92).

11. In October 2006, Old GM updated the December 2005 Service Bulletin (hereinafter referred to, with that update, as the "**October 2006 Service Bulletin**") to include additional vehicle models and model years – namely, the 2007 Saturn Ion, 2007 Saturn Sky, the 2007 Chevrolet HHR, the 2007 Pontiac Solstice, and the 2007 Pontiac G5. (Feb. 7 Notice; Feb. 24 Notice).

A. The October 2006 Service Bulletin stated:

> There is potential for the driver to inadvertently turn off the ignition due to low ignition key cylinder torque/effort. The concern is more likely to occur if the driver is short and has a large and/or heavy key chain. In these cases, this condition was documented and the driver's knee would contact the key chain while the vehicle was turning and the steering column was adjusted all the way down. This is more likely to happen to a person who is short, as they will have the seat positioned closer to the steering column. In cases that fit this profile, question the customer thoroughly to determine if this may [sic] the cause. The customer should be advised of this potential and should take steps to prevent it – such as removing unessential items from their key chain.

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[6] Oakley is discussed infra at ¶ 15,S.

B. The October 2006 Service Bulletin did not describe the issue as involving a "stall."

12. When Gary Altman, Old GM's Program Engineering Manager for the Chevrolet Cobalt, was asked at a deposition whether "it would be true that if it was a safety recall, the dealership and the consumers would be more aware of the issue than if it were a technical service bulletin," Altman replied: "I'm sure it is. It has to go through NHTSA. It goes through the public announcement, the record, and I'm pretty concerned—or pretty sure that every customer would be contacted." (Altman Dep. 54:3-11).

13. "In 2006, one Better Business Bureau arbitrator decision mandated that Old GM repurchase a Cobalt from a customer who complained of intermittent stalling." (V.R. 89, fn. 378).

14. Certain Old GM Personnel and New GM Personnel, as they relate to the Ignition Switch, are as follows:

A. Alan Adler was Old GM's manager for safety communications in the Fall of 2006. (V.R. at 57-58).

i. On October 24, 2006, a crash occurred in which a 2005 Cobalt left the road and struck a telephone box and two trees, leaving two passengers dead and the driver severely injured. The crash first came to Old GM's attention on November 15, 2006, through a TV reporter's inquiry. Adler e-mailed Dwayne Davidson, Senior Manager for TREAD Reporting at Old GM, and others, copying Old GM employees Gay Kent, Jaclyn Palmer, Brian Everest, and Douglas Wachtel, with the subject line "2005 Cobalt Air Bags – Fatal Crash; Alleged Non-Deployment," asking whether anyone knew about the accident and other airbag incidents involving the Cobalt (the "**November 2006 Adler E-mail**"). Certain recipients

responded to the e-mail and provided available data on Cobalt frontal airbag claims. (V.R. at 114).

ii. Adler was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (V.R. at 140).

B. Gary Altman was Old GM's Program Engineering Manager for the Chevrolet Cobalt when it was launched. (V.R. at 57-58). As of June 2013 he had worked at Old GM and then New GM for approximately 35 years. (Altman Dep. 6:12-15).

i. "Around the time of the Cobalt launch, two reports surfaced of moving stalls caused by a driver bumping the key fob or chain with his knee. First, at a summer or fall 2004 press event associated with the launch of the Cobalt in Santa Barbara, California, a journalist informed Doug Parks, the Cobalt Chief Engineer, that while adjusting his seat in the Cobalt he was driving, the journalist had turned off the car by hitting his knee against the key fob or chain. Parks asked Gary Altman, the Program Engineering Manager, to follow up on the complaint by trying to replicate the incident and to determine a fix." (V.R. at 59-60). "After the Cobalt press event, Altman and another GM engineer test drove a Cobalt at the Milford Proving Grounds and replicated the incident described by the journalist." (V.R. at 60).

ii. The entity within Old GM responsible for opening and reviewing the November 2004 Problem Resolution Tracking System was a Current Production Improvement Team. (V.R. at 63-64). The Current Production Improvement Team included a cross-section of business people and engineers, along with the Program Engineering Manager that was responsible for the vehicle. (V.R. at 64). It was chaired by the Vehicle Line Director, who was the business lead for the vehicle program and reported directly to the Vehicle Line Executive, who at the time was Lori Queen. (V.R. at 64).

iii. An Old GM November 19, 2004 Problem Resolution Tracking System was closed with no action on March 9, 2005. (V.R. at 60). There were multiple reasons given for closing the November 2004 Problem Resolution Tracking System investigation and, ultimately, certain Old GM personnel concluded that none of the solutions represents an acceptable business case. (*Id.*; Doc. 8, at GMHEC000001735; V.R. at 69). The phrase "none of the solutions represents an acceptable business case" was a standard phrase by certain Old GM personnel for closing a Problem Resolution Tracking System investigation without action. (V.R. at 69). Here, according to certain Old GM personnel, the proposed changes were not implemented because none of them were guaranteed to resolve the problem completely. (*Id.*).

iv. In May 2005, Steven Oakley opened a Field Performance Report to investigate a complaint by Jack Weber, an Old GM engineer who reported turning off a Chevrolet Cobalt SS with his knee while "heel-toe downshifting." (V.R. at 76).

v. Altman has testified, *inter alia*, that:

a) movement of the ignition key from the "Run" position to the "Accessory" position in the 2005 Chevrolet Cobalt can be dangerous in certain situations. (Altman Dep. 12:5-10, 23-25; 23:23-24:2).

b) when the ignition key moves from the "Run" position to the "Accessory" position in the 2005 Chevrolet Cobalt, the engine stalls and power steering stops working. (Altman Dep. 10:14-22).

vi. In February 2009, Old GM engineer Joseph Manson copied Altman on an e-mail which, among other things, stated that the issue with respect to the Cobalt key (keyed off with knee while driving) "has been around since man first lumbered out of [the] sea and stood on two feet." (V.R. at 132-33).

vii. Altman was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (*See, e.g.*, V.R. at 222).

C. Kathy Anderson was an Old GM Field Performance Assessment engineer who was assigned to gather information and assess technical issues in lawsuits and claims not in litigation. (V.R. at 105-106). Field Performance Assessment engineers conduct their own technical assessments, which might include reviewing police reports and medical records, interviewing witnesses, inspecting vehicles, and analyzing Sensing Diagnostic Module data. (V.R. at 106). Oftentimes, Field Performance Assessment engineers share their technical assessments with product litigation staff attorneys and outside counsel, assist in responding to plaintiffs' discovery requests, and may testify as experts or 30(b)(6) witnesses. "FPA engineers' technical assessments are the lawyers' primary source of technical information for the early case evaluations, and are a critical factor in the evaluation of settlement decisions." (V.R. at 106).

i. In 2006, Anderson investigated two fatal crashes: the July 4, 2004 fatal crash of a 2004 Saturn Ion (the "**July 2004 Fatal Crash**") and the July 29, 2005 fatal crash of a 2005 Chevrolet Cobalt (the "**July 2005 Fatal Crash**"). (V.R. at 110, 112). In the July 2004 Fatal Crash, a vehicle occupant died after her 2004 Saturn Ion left the road at high speed, went over a low curb, braked, and then struck a large utility pole head on. The airbag did not deploy. (V.R. at 112). In the July 2005 Fatal Crash, the airbags did not deploy. (V.R. at 110).

ii. "Settlements of between $100,000 and $1.5 million (a limit which was eventually increased to $2 million) required approval at a committee known as the "Roundtable." The Roundtable Committee met weekly, and was led by the Litigation Practice Area Manager, and all product litigation staff attorneys were invited to attend. Settlement offers between $2 and $5 million required approval of a group called the Settlement Review

Committee, which met monthly, and was chaired by the head of global litigation. Members of the Settlement Review Committee included both the GC of GM North America and Kemp. When a case was before the Roundtable or the Settlement Review Committee, the responsible product litigation staff attorney would present his/her case." (V.R. at 106-108).

iii. FPA engineers Manuel Peace, Kathy Anderson, and Douglas Brown of the Old GM Legal Staff were assigned to the July 2004 Fatal Crash and the July 2005 Fatal Crash. (V.R. at 110). Anderson and the other investigators identified the July 2004 Fatal Crash as one in which there should have been an airbag deployment, and that the deployment likely would have saved the occupant's life. (V.R. at 112-113).

iv. Anderson was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (*See, e.g.,* V.R. at 141).

D. Douglas Brown was in-house counsel at Old GM. (V.R. at 110). In late 2005 and 2006, Cobalt and Ion airbag non-deployment cases began to reach the Old GM Legal Staff, including Brown. (V.R. at 103 & n.419).

i. Brown was assigned to the July 2004 Fatal Crash and the July 2005 Fatal Crash. (*Id.*; V.R. at 124-126).

ii. On October 3, 2006, Brown presented the July 2004 Fatal Crash to a Roundtable meeting, and reported that despite extensive analysis, the engineers have no solid technical explanation. The engineers agree that 1) the airbags should have deployed; 2) the Sensing Diagnostic Module did not record the crash event, for unknown reasons; and 3) it is reasonably likely that deployment of the driver airbag would have prevented death in this accident. The Roundtable granted settlement authority and Old GM settled the case. (V.R. at 113).

iii. On November 15, 2006, Jaclyn Palmer forwarded to Brown an e-mail sent by Alan Adler that referred to the October 26, 2006 fatal crash of a 2005 Cobalt in which the airbag did not deploy. In the November 2006 Adler e-mail, Adler asked if anyone knew about the accident. (V.R. at 114).

iv. Brown was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

E. Eric Buddrius was an engineer in Old GM's Product Investigations unit. The Product Investigations unit at Old GM was the primary unit charged with investigating and resolving significant engineering problems, including both customer satisfaction and safety problems. (V.R. at 86). The Old GM Product Investigations group would present its findings at one or more weekly Information Status Review meetings attended by the Field Performance Evaluation Director, the Product Investigations Director, and representatives from the Legal Department, Customer Care and After Sales, Field Performance Evaluation, and Product Investigation. (V.R. at 290).

i. Witnesses have inconsistent recollections as to whether the Product Investigations group became involved in the Cobalt airbag non-deployment issues at this stage. One witness, Brian Everest, reported that in April 2007, the Field Performance Assessment group transitioned the Cobalt airbag matter to the Product Investigations unit, where it was assumed by Buddrius. Documents in Buddrius's files indicate that he was working on the issue, and a May 4, 2007 Investigation Status Review Presentation Planning Worksheet states that Buddrius was scheduled to present on an issue described as "Cobalt/Ion Airbag (NHTSA discussion item)." Buddrius has no recollection of involvement. (V.R. at 119-120).

ii. Continental manufactured the Sensing Diagnostic Module for the Chevrolet Cobalt. (V.R. at 29).

iii. According to Brian Everest, on May 15, 2009, Buddrius attended a meeting with Continental along with his colleagues John Sprague, Brian Everest, Lisa Stacey, James Churchwell, William Hohnstadt, John Dolan, and Legal Staff Attorney Jaclyn Palmer, to discuss Continental's findings regarding a Cobalt crash (hereinafter, the "**May 2009 Continental Meeting**"). Continental provided a report regarding a September 13, 2008 accident involving a 2006 Chevrolet Cobalt (the "**Continental Report**").

iv. The Continental Report stated that the Sensing Diagnostic Module did not deploy the airbag because the algorithms were disabled at the start of the event. The report identified two possible causes for the disabled algorithm: (a) the vehicle experienced "loss of battery" or (b) the Sensing Diagnostic Module received a power mode status of "Off" from the body control module (BCM). (V.R. at 134).

v. Buddrius was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (V.R. at 153 n.685).

F. William K. Chase worked for Old GM and then New GM from 1984 through 2009. (Chase Dep. 7:2-3, 6:24-7:3). In 2005, Chase worked as a warranty engineer in the warranty engineering department at Old GM, where he was responsible for trying to reduce warranty costs for vehicles produced in Lordstown, Ohio, where the Cobalt and the Pontiac G5 were produced. (Chase Dep. 7:16-8:2, 20:14-18). Old GM's warranty system contained reports of incidents that included dealer comments on incidents, if the dealer had chosen to enter a comment. (Chase Dep. 12:23-13:3). Those reports were organized by labor code, included the

VIN, dealer name, the amount charged against the claim, any comments, any customer codes, and any trouble codes the dealer might have entered. (Chase Dep. 8:3-8).

i. According to Chase, he first learned of a problem with the 2005 Cobalt in 2005 from Steve Oakley, the Cobalt brand quality manager at the time. (Chase Dep. 7:7-14). Oakley brought the issue to Chase's attention by submitting a Problem Resolution Tracking System report (PRTS No. N182276) on May 16, 2005 and asked Chase to estimate the warranty impact. (Chase Dep. 8:3-8).

ii. Pursuant to a PRTS initiated in February 2009, a design change was implemented to change the ignition key design for 2010 Chevrolet Cobalt vehicles from a slot to a hole. (Feb. 7 Notice; Feb. 24 Notice; Chase Dep. 31:20-32:11).

iii. Chase was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

G. James Churchwell was an Old GM engineer. (V.R. at 135, 150 n.666). According to Everest, Churchwell attended the May 2009 Continental Meeting. (V.R. at 134-135).

i. Churchwell was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (V.R. at 153).

H. Dwayne Davidson was Old GM's Senior Manager for TREAD Reporting. (V.R. at 113-114, 117). Davidson received the November 2006 Adler E-mail. (V.R. at 114). Davidson thereafter conducted a search of Old GM's TREAD database that yielded over 700 records of field reports and complaints, which he offered to summarize. (V.R. at 114 n.477).

i. In February 2007, Wisconsin State Patrol Trooper Keith Young wrote a Collision Analysis & Reconstruction Report about a fatal crash in October 2006 of a 2005

Chevrolet Cobalt (the "**Wisconsin Report**"). Davidson stated that, in 2007, he obtained a copy of the Wisconsin Report. The Wisconsin Report stated that it appears likely that the vehicle's key turned to Accessory as a result of the low key cylinder torque/effort and connected this to the failure of the airbags to deploy. Davidson stated he obtained the Wisconsin Report from someone at Old GM Legal in 2007 and that he provided the Wisconsin Report to NHTSA in 2007 in connection with GM's quarterly death and injury report. None of the GM lawyers and engineers interviewed in connection with the Valukas Report who were working on Cobalt matters recall being aware of the Wisconsin Report until 2014. (V.R. at 116-118).

ii. Davidson was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (*See, e.g.,* V.R. at 159).

I. Raymond DeGiorgio was an Old GM Design Release Engineer.[7] (V.R. at 37). A Design Release Engineer is responsible for a particular component or part in a vehicle. (V.R. at 37 n.114). He had worked at Old GM as a Design Release Engineer since 1991, focusing on vehicle switches. DeGiorgio was the project or lead design engineer for the Ignition Switch used in the 2003 Saturn Ion and 2005 Chevrolet Cobalt. (DeGiorgio Dep. 11:6-10; 13:7-10, 18-19). Additionally, he was the lead design engineer for an ignition switch that replaced the Ignition Switch. (DeGiorgio Dep. 11:11-15; 21:5-9). He took over responsibility as Design Release Engineeer for the Ignition Switch between October 1999 and March 2001. (V.R. at 6, 37, 212).

i. On March 22, 2001, DeGiorgio "finalized" the specification for the Ignition Switch, a designation that signaled to the supplier that additional changes to the switch

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[7] Old GM's Design Release Engineers had responsibility for working with Old GM's suppliers to develop specific vehicle components for use in particular Old GM vehicles - their "design" responsibilities - and to ensure that those components satisfied Old GM's requirements and specifications before ultimately approving the part for use in an Old GM vehicle – "releasing" the part.

were not anticipated and memorialized accepted agreements related to the specification at that point in time. (V.R. at 38). The supplier for the Ignition Switch was Delphi Mechatronics ("**Delphi**"). The initial specification for the Ignition Switch included a "TARGET" force displacement curve specifying 20 Newton-centimeters ("**N-cm**") as the torque needed to turn the ignition from "Run" to "Accessory." (V.R. at 36). By March 2001, based on DeGiorgio's finalization of the torque requirement, the torque necessary to move the Ignition Switch from Run to Accessory was, pursuant to the specification, required to fall somewhere between 15 N-cm and 25 N-cm. (V.R. at 39). In September 2001, DeGiorgio corresponded with representatives of Koyo Steering Systems North America ("**Koyo**"), the supplier of the Ion steering column into which Delphi's switch was installed. In his correspondence, DeGiorgio stated he recently learned that 10 of 12 prototype switches from Delphi failed to meet engineering requirements, and the failure is significant, adding that DeGiorgio himself must ensure this new design meets engineering requirements. (V.R. at 44). According to DeGiorgio, the "engineering requirements" and failures he referenced in this e-mail were electrical requirements and not failures related to the Ignition Switch torque. (V.R. at 44-45).

ii. At the same time that DeGiorgio was dealing with electrical problems with the Ignition Switch, Delphi was also conducting tests on the mechanical requirements, including the torque required to turn the Ignition Switch. (V.R. at 45). In February 2002, Delphi personnel informed DeGiorgio that the accessory detent was at 9.5 N-cm, which was below DeGiorgio's requested target based on TALC samples, and advised DeGiorgio that the torque could be increased, but there were risks that changes would trigger other issues. These risks included cracking of the rotors, premature wear-out of the detent, and impact on the electrical functions (particularly the printed circuit board). (V.R. at 46-47).

iii. DeGiorgio approved production of the Ignition Switch, although it did not meet the Specification. (V.R. at 38-40, 50, 52). The Ignition Switch was installed in Saturn Ion and Chevrolet Cobalt vehicles. (*See, e.g.*, V.R. at 53).

iv. Problems with the Ignition Switch were brought to DeGiorgio's attention in 2003, 2004, and 2005. (V.R. at 53). These included at least one complaint that the Ignition Switch in a customer's vehicle had insufficient torque and caused that vehicle to shut off while driving. (V.R. at 77). In 2005, DeGiorgio received torque test results from Old GM's review of the Ignition Switch turning from the "Run" to the "Accessory" position in certain Chevrolet Cobalt vehicles. (DeGiorgio Dep. 58:4-19). DeGiorgio discussed changes to the Ignition Switch used in the Chevrolet Cobalt with John Hendler and later proposed changes to the Cobalt VAPIR Team. (2014 House Panel Report, e-mail from Raymond DeGiorgio to Andrew C. Brenz, dated Nov. 22, 2004 (GMHEC000330211-14)).

v. In 2006, DeGiorgio approved a change in the Ignition Switch that increased the torque required to turn the key, but there was no change to the part number. (V.R. at 9-10, 39). NHTSA was not informed of the change to the Ignition Switch. (Apr. 1 Cong. Hr'g at 75).

vi. On or about August 14, 2007, Old GM entered into a Warranty Settlement Agreement with Delphi (as a debtor in bankruptcy) where the estimated warranty costs could exceed $1 million (the "**Delphi Settlement**"). The Delphi Settlement identified 49 issues that were resolved as part of the settlement, including something labelled "ignition switch failure" on the model year 2003-04 Saturn Ion and model year 2005-06 Chevrolet Cobalt.

vii. DeGiorgio was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (V.R. at 179).

J. John Dolan was an electrical engineer for Old GM and, according to Everest, attended the May 2009 Continental Meeting. (V.R. at 134, 165).

i. Dolan was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (V.R. at 174 n.793).

K. Brian Everest, an engineer, was an Old GM Field Performance Assessment Supervisor. (V.R. at 114, 118-119). John Sprague an Old GM Field Performance Assessment Engineer stated that he generally remembers sharing his Excel spreadsheet listing the various Cobalt accidents and non-deployments with Everest, but he does not remember sharing the spreadsheet at any formal meeting. (V.R. at 119). Everest attended the May 2009 Continental Meeting. (V.R. at 134). At some point after that time, Everest investigated how the Cobalt's Body Control Module, the part responsible for controlling the engine, could send a power mode status of "Off" to the Sensing Diagnostic Module. (V.R. at 135).

i. Everest was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (V.R. at 153).

L. Michael Gruskin was an attorney for Old GM and then for New GM. (V.R. at 110). At some point in time, he headed GM's product litigation team. (V.R. at 105, 110). In addition, Gruskin chaired the Settlement Review Committee and the Roundtable[8] from September 2007 to March 2012. (V.R. at 107). During the time Gruskin chaired the Roundtable (which generally met on a weekly basis), the Roundtable reviewed the following crashes. First, in September 2007, the Roundtable reviewed a crash involving a person who sustained severe injuries after his 2005 Saturn Ion ran into the rear of an illegally parked tractor trailer on June 26, 2005 (the "**June 2005 Non-Fatal Crash**"). The presentation made at the

[8] The Roundtable is discussed *supra* at ¶15,C, ii.

Roundtable indicated that the Sensing Diagnostic Module data was incomplete and inaccurate, as a probable result of power loss during the crash. Second, in July 2008 the Roundtable reviewed a December 29, 2006 crash of a 2005 Chevrolet Cobalt which caused serious injuries and in which neither Old GM nor outside counsel had an explanation for why the airbag did not deploy. According to the Sensing Diagnostic Module data, the ignition was in the Run position at the time of the accident.

i. Gruskin was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

M. Victor Hakim was an Old GM employee, who, as of June 11, 2013, had been with Old GM and then New GM for 43 years. (Hakim Dep. 6:23-7:1). Hakim testified at his deposition that there was a summary Excel spreadsheet from the Old GM Company Vehicle Evaluation Program, which contained comments from drivers of Ion vehicles. (Hakim Dep. 155:9-15). The Old GM Company Vehicle Evaluation Program spreadsheet included a January 9, 2004 statement from one driver of a Saturn Ion that the Ignition Switch was positioned too low on the steering column, that the keys hit his knee while driving, that the Ignition Switch should be raised on the steering column at least one inch, that this was a basic design flaw, and that it should be corrected if Old GM wanted repeat sales. (Hakim Dep. 155:23-24; 156:22-157:5).

i. Hakim was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (*See, e.g.,* V.R. at 145).

N. William Hohnstadt was an Old GM sensing performance engineer. (V.R. at 134). On July 16, 2007, Hohnstadt received Sensing Diagnostic Module data from Continental relating to a Cobalt crash in which the airbags did not deploy. The report concluded that the vehicle's Sensing Diagnostic Module had experienced loss of battery prior to the non-

deployment. (V.R. at 126, 127 n.543). According to one witness, Hohnstadt attended the May 2009 Continental Meeting. (V.R. at 134).

i. Hohnstadt was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

O. William J. Kemp was Old GM's Counsel for Engineering Organization, and was a member of Old GM's Settlement Review Committee. (V.R. at 104). He was an Old GM senior attorney who worked closely with the engineering groups and who had shared responsibility for safety issues in the legal department. (V.R. at 85). Kemp sat on the Settlement Review Committee, whose purpose was to determine whether and at what price to settle product liability lawsuits. "A reason for that assignment is to ensure that information from lawsuits finds its way into GM's safety function, that is, to the engineers who make safety decisions." (V.R. at 105, 108).

i. In the late spring of 2004, certain Old GM employees, including Gay Kent, discussed engine stalling with NHSTA. (V.R. at 72). On June 3, 2004, during the meeting with NHTSA, Old GM personnel presented their perspective on engine stalls—specifically, that those occurring on acceleration required more rigorous review. GM also represented to NHTSA that in assessing a given stall, it considered severity, incident rate, and warning to the driver. Kemp's notes related to this meeting indicate NHTSA told Old GM that, in a case where the number of failures was "inordinately high," the factors considered by Old GM to assess the problem should be considered but did not necessarily "immunize" a manufacturer from conducting a safety recall. (V.R. at 73-74).

ii. In or around June 2005, Kemp was informed of an article to be published in the Cleveland Plain Dealer that criticized Old GM's response to engine stall in the

Cobalt. Kemp suggested that Old GM should give the columnist a videotape demonstration showing the remoteness of this risk. Elizabeth Zatina, another Old GM attorney, responded that she was not optimistic we can come up with something compelling. Kemp replied that they can't stand hearing, after the article is published, that they didn't do enough to defend a brand new launch. (V.R. at 85-86).

iii. Kemp was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (V.R. at 151).

P. Gay Kent was Old GM's Director of Product Investigations. In or around 2005, Old GM Product Investigations Manager Douglas Wachtel assigned Old GM Product Investigations employee Elizabeth Kiihr to investigate the Cobalt Ignition Switch shut-off. (V.R. at 86). In addition, Wachtel and Gay Kent obtained a Cobalt and drove around Old GM's property in Warren, Michigan. Kent had a long and heavy key chain and was able to knock the Ignition Switch from "Run" to "Accessory" by moving her leg so that her jeans caused friction against the fob. Wachtel could reproduce the phenomenon more easily, but still only by contacting the key chain rather than hitting bumps in the road. (V.R. at 87).

i. On March 29, 2007, a group of Old GM engineers, including Gay Kent and Brian Everest, attended a Quarterly Review meeting at NHTSA headquarters. During that meeting, or during a break, NHTSA officials told the Old GM representatives that they had observed a number of airbag non-deployments in Cobalt and Ion vehicles. NHTSA made no formal request and did not ask Old GM to report back to it about the non-deployment issue.

ii. Kent was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

Q. Elizabeth Kiihr was an engineer in Old GM's Product Investigations unit.

i. Kiihr was assigned in or around 2005 to investigate the Cobalt Ignition Switch shut-off. (V.R. at 86).

ii. Kiihr created a file in 2005 that contained customer complaints and a copy of a February 2005 "Preliminary Information" on engine stalls in the Cobalt. (V.R. at 66, 156). The file contained, among other things: (a) several TREAD data reports regarding the Cobalt; (b) PowerPoint presentations, including presentations from an Investigation Status Review meeting in 2005 and a Vehicle and Progress Integration Review ("**VAPIR**")[9] meeting in 2005; (c) a cost estimate for changing the design of the key; and (d) a copy of a Product Investigation Bulletin titled "Engine Stalls, Loss of Electrical Systems, and No DTCs." (V.R. at 164).

iii. Kiihr was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

R. Alberto Manzor was an Old GM engineer.

i. Manzor became involved in the investigation of the Cobalt ignition switch in the spring of 2005. Manzor claims that he said, at the time, that the Cobalt ignition switch issue was incorrectly categorized as a moderate issue and should have been classified as a safety issue. (V.R. at 83). There was no documentary evidence of Manzor making such a statement. Manzor claims that he said that he discussed his safety concerns about the Cobalt, including the potential for airbag non-deployment, with Doug Parks, Gary Altman, and an Old GM safety engineer, Naveen Ramachandrarappa Nagapola, but these employees either do not recall or else deny the conversation took place. (V.R. at 83-84). On June 17, 2005, Manzor

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[9] VAPIR (Vehicle and Process Integration Review), by design, includes a cross-section of Vehicle System Engineers because they are supposed to be able to recognize whether an issue impacts other functions within the vehicle. (V.R. at 66).

conducted testing on the Cobalt Ignition Switch, and the proposed GMT 191 Ignition Switch, at Old GM's Milford Proving Ground, to evaluate how the Ignition Switches performed using a key with a slotted key head versus a key head with a hole. (V.R. at 81). According to Manzor, these experiments demonstrated that changing the key head design and replacing the Ignition Switch had the potential to address the torque problem. They also demonstrated that the rotational torque required to move the key out of "Run" was 10 N-cm. This was below the specification of 15 to 25 N-cm. (V.R. at 82). However, neither Parks nor Manzor compared the test results to the actual specification.

ii. Following the tests, Manzor took steps to expedite the key-head design change of the ignition key. Later, in June 2005, the Old GM Vehicle and Process Integration Review Committee approved a service fix for existing customers—a plug that could be inserted into keys when customers came to the dealer reporting problems – and a change to the key for production in the future (a change that was not implemented). On July 12, 2005, another Preliminary Information was issued, stating (only for the 2005 Cobalt and 2005 Pontiac Pursuit) that a fix was available (the key insert). Certain Old GM engineers still regarded the key head design change as only a temporary solution – or, as one engineer described it, a "band-aid." (V.R. at 82-83).

iii. Manzor was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

S. Steven Oakley was a brand quality manager for Old GM in 2005 and had been continuously employed by Old GM since 1990. (Oakley Dep. 7:1-6, 18-20).

i. In or around March 2005, Oakley first became aware of an issue with the Ignition Switch. (Oakley Dep. 12:8-14, 16-19, 22-23; 14:9-22; *see also* V.R. at 86, 92).

Around that time, Oakley drafted a service bulletin request form describing the engine-cut-off problems as a stall, but the Technical Service Bulletin issued in December 2005 did not use that language. (V.R. at 76). Oakley has stated, at times, that he was reluctant to push hard on safety issues because of his perception that his predecessor had been pushed out of his job for doing just that. In this particular event, Oakley stated that his initial concern that the Ignition Switch presented a safety issue was alleviated after discussions with the engineers. (V.R. at 93).

ii. Oakley received a customer demand that Old GM repurchase the customer's Cobalt in May 2005 because the Ignition Switch shut off during normal driving with no apparent contact between the driver's knee and the key chain or fob. (V.R. at 76). Oakley forwarded this information internally at Old GM, stating that the customer reported that the ignition switch goes to the off position too easily shutting the car off. (V.R. at 76 n.309). Oakley told Old GM employee Joseph Joshua, to whom he forwarded the customer demand, that

> the field rep will swap the parts if we want them to. He is concerned that this will not correct the condition, as he feels several stock cars at the dealership have about the same level of effort for the switch. They would like to have a column sent to them that we have some kind of confidence is better than what they are taking out. Again, if you just want a swap out we can do this, but without the ability to measure the effort, I have a hard time persuading them this will actually fix the car.

(V.R. at 77).

iii. One of the people the e-mail was forwarded to was DeGiorgio, who does not remember receiving this e-mail. (V.R. at 77).

iv. Oakley was a Transferred Employee (as such term defined is defined in the Sale Agreement), after the 363 Sale.

T. Jaclyn C. Palmer was an Old GM product liability attorney and attended Roundtable meetings. (V.R. at 108). Palmer, described as an "airbag lawyer," received the

November 2006 Adler E-mail and forwarded it to Doug Brown, another Old GM airbag lawyer, so that he could be prepared for any potential claims related to the 2005 crash involving a Cobalt in which the airbag failed to deploy. (V.R. at 114, n.477). Palmer attended the May 2009 Continental Meeting. (V.R. at 135).

i. Palmer was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (*See, e.g.,* V.R. at 140-141).

ii. Doug Parks was Old GM's Vehicle Chief Engineer for the Chevrolet Cobalt leading up to its launch. V.R. at 57-58). In late 2004, Parks asked Altman to follow up on a complaint that the driver had turned off a Cobalt by hitting his knee against the key fob (V.R. at 59-60). Altman was able to replicate the incident. (V.R. at 60). On May 4, 2005, Parks sent an e-mail to various Old GM personnel including Altman, regarding "GMX 001: Inadvertent Ign turn-off," writing, "for service, can we come up with a 'plug' to go into the key that centers the ring through the middle of the key and not the edge/slot? This appears to me to be the only real, quick solution." (Doc. 12).

iii. Parks was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

U. Manuel Peace was an Old GM Field Performance Assessment Engineer. He investigated at least three crashes in Saturn Ion or Chevrolet Cobalt vehicles, including the July 2004 Fatal Crash, the June 2005 Non-Fatal Crash, and the July 2005 Fatal Crash. (V.R. at 110, 112, 124, 126). Peace and Kathy Anderson were assigned to investigate the July 2004 Fatal Crash and the July 2005 Fatal Crash. Peace and the other Old GM investigators identified the July 2004 Fatal Crash as a crash in which there should have been an airbag deployment and that

it was reasonably likely that the deployment of the driver airbag would have prevented the occupant's death in this accident. (V.R. at 111-113).

i. In 2007, Old GM's Legal Staff was made aware of the June 2005 Non-Fatal Crash. (V.R. at 125-126). Manuel Peace and John Sprague were the Old GM Field Performance Assessment investigators and Doug Brown was the Old GM lawyer assigned to the June 2005 Non-Fatal Crash. (V.R. at 126). The investigation proceeded to a Roundtable presentation on September 18, 2007. (*Id.*).

ii. Peace was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

V. Craig St. Pierre worked for a company called Ortech, the supplier of the Chevrolet Cobalt ignition cylinder, as a supplier resident engineer for approximately five years. During this time, he maintained a desk at Old GM. (St. Pierre Dep. 7:10-13; 8:3-13; 10:1-18). During the launch of the Chevrolet Cobalt, St. Pierre learned that there was a problem with the ignition key turning from the "Run" to the "Accessory" position under normal operating conditions. He was made aware of this problem so that he could communicate back to Ortech. (St. Pierre Dep. 8:22-25; 10:1-8).

i. By September 13, 2005, St. Pierre and Trush determined that the detent effort in the Ignition Switch in the Cobalt was too low. (St. Pierre Dep. 14:11-15:3).

ii. In September 2005, regarding the Ignition Switch problem, St. Pierre stated in a Problem Resolution Tracking System Report that the detent efforts on Ignition Switch are too low allowing the key to be cycled to off position inadvertently. Changes to the key can be made to reduce the moment which can be applied to key by key ring/keys. This will assist in limiting the issue but will not completely eliminate it. Changes to the switch will not be

forthcoming from electrical group until model year 2007. (2005 PRTS, originated May 17, 2005, at GMHEC0000001748).

iii. David Kepczynski was an Old GM engineering group manager. In 2006, Kepczynski recommended closing the 2005 PRTS without action because the business case was not accepted by the program team. Kepczynski also stated that a service fix was already available and in the field. (2005 PRTS, originated May 17, 2005, at GMHEC000001750-1751).

W. Keith Schultz was Manager of Internal Investigations in Old GM's Product Investigations unit at or around March, 2007. (V.R. at 118).

i. After Old GM personnel returned from a March 29, 2007 meeting with NHTSA, in which NHTSA officials had told the Old GM representatives that they had observed airbag non-deployments in the Cobalt and Ion vehicles, Everest and John Sprague, an Old GM Field Performance Assessment airbag engineer, compiled information on Cobalt and Ion NISMs (as defined in paragraph 15, X) and lawsuits. Dwayne Davidson pulled the TREAD data for similar instances. (V.R. at 118). Sprague began compiling an Excel spreadsheet listing the various Cobalt accidents and non-deployments to look for trends, but he did not remember sharing the spreadsheet at any formal meeting. (V.R. at 118-119). Schultz sent an e-mail to Brian Everest and John Sprague on May 3, 2007, stating that they were planning to have a brief discussion on the Cobalt/Ion Air Bag non-deployment issue tomorrow as part of their bi-weekly Investigation Status Review and that they were both welcome to join for this discussion and that it may be helpful if at least one of them can. (V.R. at 119 n. 500).

ii. Schultz was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

X. John Sprague was an Old GM Field Performance Assessment Engineer. His job was to support Old GM's products liability defense team. (V.R. at 9). According to Everest, in 2007, Sprague was asked by Schultz to compile information on Cobalt and Ion not-in-suit matters and lawsuits. (V.R. at 118). Sprague investigated the June 2005 Non-Fatal Crash. (V.R. at 126). According to Everest, he also attended the May 2009 Continental Meeting. (V.R. at 134).

i. After the meeting with Continental in May 2009, Sprague collected information regarding power mode status, added it to his spreadsheet, and discovered that the power mode status was recorded as Off or Accessory in a number of accidents. (V.R. 135)

ii. Sprague was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale. (*See, e.g.,* V.R. at 141).

Y. Lisa Stacey was an Old GM Field Performance Assessment engineer. (V.R. at 132). In late 2008 or early 2009, Old GM Field Performance Assessment engineers learned about a September 13, 2008 Cobalt crash in Stevensville, Michigan, which resulted in two deaths (the "**September 2008 Fatal Crash**"). After the September 2008 Fatal Crash was reported to an ESIS[10] employee, Old GM opened a "rumor file." (V.R. at 132). "Rumor files" were an informal tracking system by which ESIS investigators or other Old GM legal staff would start files on cases that were not formally involved in litigation but potentially could lead to litigation. (V.R. at 122). Rumor files were noted by some as being hard to track, difficult to access, and not easily searchable. Stacey reviewed the publicly available information, examined the vehicle, and visited the crash scene. She thought that this was an incident where an airbag deployment would have been expected. Old GM acquired the vehicle involved in the September

[10] ESIS acted as a claims administrator for Old GM and conducts field investigations and processes NISM claims. They maintained offices at Old GM and worked with Old GM's Legal Staff.

2008 Fatal Crash and provided the vehicle's Sensing Diagnostic Module to its supplier, Continental, for further analysis. (V.R. at 132). Stacey also attended the May 2009 Continental Meeting.

i. Stacey was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

Z. David Trush was the Old GM design engineer for the ignition cylinder and key of the 2005 Chevrolet Cobalt. (Trush Dep. 11:1-3). In 2004, Trush first learned of a concern that the Saturn Ion's key could move from the "Run" position to the "Accessory" position after receiving a call from an Old GM employee. (Trush 20:11-16; 21:10-17). Trush did not recall the specifics of the conversation.

i. At some point, Trush became aware of an incident occurring in the Fall of 2004 involving a Chevrolet Cobalt in which, while driving the vehicle, the driver's knee bumped the key in such a manner as to turn off the ignition. (Trush Dep. 32:22-33:9).

ii. Trush testified that, as of February 2009, he had feedback from the Lordstown, Ohio, plant that assembled the Chevrolet Cobalt that, while installing the steering column in a vehicle, the workers at the plant were inadvertently hitting the ignition key and moving the key to different positions. (Trush Dep. 108:20-111-21).

iii. Trush was a Transferred Employee (as such term is defined in the Sale Agreement), after the 363 Sale.

AA. Douglas Wachtel was a manager in Old GM's Product Investigations unit.

i. Wachtel was copied on the November 2006 Adler E-mail. (V.R. at 114). In his e-mail response to Adler, Wachtel reviewed existing field actions involving the Cobalt and recommended that Old GM acquire Event Data Recorder data. (V.R. at 114 n.477).

Wachtel was sent an e-mail from an Old GM employee, Christopher Janik, that contained a summary of the two Cobalt frontal airbag non-deployment claims in the NHTSA database. (*Id.*).

ii. In March-April 2007, Old GM's technical bulletin group proposed publishing a revised version of the December 2005 Service Bulletin that would change the subject line to include the word "stalls." The proposed title was: "Information on Inadvertent Turning off of Key Cylinder, Loss of Electrical System, Hesitation, Stalls and No DTCs Set." (V.R. at 120).

iii. On April 24, 2007, Wachtel (then Old GM Senior Manager – Internal Investigation, Product Investigations) provided his approval to add the word "stall" to the symptoms section of the bulletin. Wachtel later forwarded this e-mail chain to Gay Kent.

iv. Old GM had no record of publication of the 2007 Technical Service Bulletin. (*See, e.g.,* V.R. at 145).

v. Kemp instructed Wachtel to open a 2011 Product Investigation into the ignition switch issue, and Wachtel assigned the investigation to Brian Stouffer. (V.R. at 145)

vi. During this investigation, Stouffer was given material regarding the 2005 Cobalt moving stall and quickly located the December 2005 Service Bulletin. (V.R. at 145).

vii. Wachtel was a Transferred Employee (as such term is defined on the Sale Agreement), after the 363 Sale. (*See, e.g.,* V.R. at 145).

BB. In February 2007, ESIS Claims Administrator Kristy Gibb received a copy of Wisconsin State Trooper Keith Young's "Collision Analysis & Reconstruction Report." (V.R. at 112).

CC. In September 2006, Dykema Gossett, LLP, an Old GM outside law firm, sent to Old GM's legal staff a case evaluation regarding the July 2004 Fatal Crash. (V.R. at 112).

DD. In May 2007, Hartline, Dacus, Berger & Dryer, LLP (**"Hartline Dacus"**) submitted to Old GM an evaluation of an airbag non-deployment crash involving the November 2004 Fatal Crash that said that Old GM's FPA engineer did not determine precisely how the vehicle lost power. (V.R. at 124-125). In January 2008, Hartline Dacus submitted its second evaluation of the November 2004 Fatal Crash to Old GM. (V.R. at 129-130).

EE. The Captured Test Fleet was a group of early production cars driven by Old GM employees who were charged with identifying problems before launch. (V.R. at 58).

FF. Captured Test Fleet reports were organized by the Old GM Quality Group and spreadsheets were sent to the chief engineer, the Program Engineering Manager, and the program team, and were discussed at weekly team meetings. (V.R. at 300).

15. Old GM collected data from unspecified vehicles equipped with the OnStar Advanced Automated Crash Notification during the time period of May 2005-2006. (*See A Study of US Crash Statistics From Automated Crash Notification Data* by M.K. Verma, R.C. Lange and D.C. McGarry, General Motors Corp., ESV paper number 07-0058-0, available at *http://www-nrd.nhtsa.dot.gov/pdf/esv/esv20/07-0058-O.pdf*). During that time period, there were 1,045 recorded frontal crashes with frontal airbag deployment in the unspecified Advance Automated Crash Notification equipped vehicles. In addition, there were 356 cases of 'non-deployment' in unspecified Advanced Automated Crash Notification equipped vehicles where the predetermined thresholds for Advanced Automated Crash Notification in frontal impact were

reached or exceeded. The study does not indicate whether data was collected from any of the Subject Vehicles. (*Id.*).

16. According to Bill Merrill (an Old GM Red X North America Manager whom Old GM Product Investigations engineer Brian Stouffer emailed to request assistance from the Red X team to examine changes on the Cobalt between 2007 and 2008 model years), at his March 18, 2014 interview – "if an [Old GM] employee tried to raise a safety issue five years ago, the employee would get pushback." (V.R. at 187, 252).

17. Old GM employee Andrew Brenz or Alberto Manzor described a GM phenomenon of avoiding responsibility, as the "'GM Salute,' a crossing of the arms and pointing outward towards others, indicating that the responsibility belongs to someone else, not me." (V.R. at 255).

18. New GM CEO Mary Barra "described a phenomenon known as the 'GM Nod.'" In one part of the Report, Barra described the nod as "when everyone nods in agreement to a proposed plan of action, but then leaves the room with no intention to follow through, and the nod is an empty gesture." (V.R. at 256). In another part of the Report, it is described as "when everyone nods in agreement to a proposed plan of action, but then leaves the room and does nothing." (V.R. at 2).

19. Barra stated that problems occurred during a prior vehicle launch as a result of engineers being unwilling to identify issues out of concern that it would delay the launch. (V.R. at 252).

20. Barra testified that a cost-benefit analysis on a safety issue or a safety defect is not acceptable. (Apr. 1 Cong. Hr'g, at 32).

21. New GM informed NHTSA in July 2014 that, in 2003, GM learned of a customer complaint of intermittent vehicle shut offs in a MY 2003 Grand Am from a Michigan dealership. Despite multiple attempts, the dealership could not duplicate the condition. GM's Brand Quality Manager for the Grand Am personally visited the dealership and requested that the customer demonstrate the problem. The customer had an excess key ring and mass (containing approximately 50 keys and a set of brass knuckles), and was able to recreate the shut off upon driving over a speed bump at approximately 30-35 mph.

22. On January 7, 2003, GM opened Problem Resolution Tracking System 0084/2003. On May 22, 2003, GM issued a voicemail to dealerships describing the condition and identifying the relevant population of vehicles as 1999 through 2003 MY Chevrolet Malibu, Oldsmobile Alero, and Pontiac Grand Am. The notice directed dealers to pay attention to the key size and mass of the customer's key ring in order to better diagnose the customer's complaint. On July 24, 2003, Engineering Work Order (EWO) 211722 was initiated to increase the detent plunger force on the ignition switch replacing P/N 22688239 with P/N 22737173. This was a running change made in 2004 to the Malibu, Grand Am and the Alero. The production and service stock disposition for P/N 22688239 was designated "use," so it is possible that P/N 22688239 was used to service vehicles. New GM informed NHTSA in July 2014 that, on March 17, 2004, EWO 317693 was initiated to increase the detent plunger force on the ignition switch on the Grand Prix in order to maintain commonality between the Grand Prix and the Malibu, Grand Am and the Alero. The old Grand Prix part number, P/N10310896, was not changed to a new part number when the detent plunger force was changed, rather P/N 10310896 remained the part number for the new ignition switch. The service stock disposition was designated "use," so it is possible that the old switch was used to service vehicles.

23. Chris Johnson was General Counsel of GM North America from October 15, 2001 until October 31, 2008.

24. On September 1, 2006, Robert Osborne succeeded Thomas Gottschalk as Old GM's General Counsel and maintained that position until July 2009.

25. Michael Robinson was General Counsel of GM North America from November 1, 2008 until September 30, 2009.

26. From 2001 through early July 2009, the General Counsel of GM North America for Old GM reported to Old GM's General Counsel.

27. Prior to the 363 Sale, Old GM initiated at least eight vehicle recalls in 2009 that were unrelated to the Ignition Switch Defect. *See* Recalls 09V036000; 09V073000; 09V080000; 09V116000; 09V153000; 09V154000; 09V155000; 09V172000.

Exhibit A

EXHIBIT A

CERTAIN PLAINTIFFS' PROPOSED STIPULATIONS OF FACT NOT AGREED TO BY NEW GM

1. On November 19, 2004, Old GM personnel opened a Problem Resolution Tracking System report to address a complaint at a press event that a Subject Vehicle could be "keyed off with knee while driving. This was the first of six reports opened between 2004 and 2009 in connection with moving stalls in the Cobalt." (V.R. at 63). As part of the November 19, 2004 Problem Resolution Tracking System investigation, Old GM engineers suggested solutions to address the complaint that the ignition could be "keyed off with knee while driving," and presented them to the Current Production Improvement Team. (V.R. at 64-68).

2. As Old GM's Program Engineering Manager for the Chevrolet Cobalt when it was launched, Gary Altman would have been present at Current Production Improvement Team and Vehicle and Process Integration Review meetings in which possible solutions were presented to address reports that drivers had inadvertently turned off the ignition switch in Cobalt vehicles by hitting their knees against the key or key fob. (V.R. at 63-67).

3. A May 2007 case evaluation, by Old GM's outside counsel, of an accident in a 2004 Saturn Ion in which the airbag failed to deploy despite the fact that the vehicle went off the road, traveled through a brush line and struck a tree head on, resulting in one fatality and one severe injury, was deemed "unusual." "In discussing the technical issues in the case, outside counsel explained that, given the severity of the impact, the airbag non-deployment 'must be' attributable to power loss." (V.R. at 124-125).

4. A January 2008 second evaluation by Old GM outside counsel of a non-deployment case involving a Subject Vehicle hitting a tree concluded that "[t]he impact with the

tree was clearly severe enough to warrant deployment of the vehicle's airbags. As a result, from a technical standpoint, there is a potential problem with the non-deployment, which was originally attributed to a pre-collision power loss." While outside counsel and Old GM Field Performance Assessment Engineer Manuel Peace thought the non-deployment event was not caused by a power loss, outside counsel concluded that "it was likely 'that a jury will find that the vehicle was defective' [and] GM eventually settled the case in 2008." (V.R. at 129-30).

5. In March 2009, Old GM CEO Rick Wagoner had a "back-up" slide of a slide deck that included a reference to the Cobalt's inadvertent shut-off issue, that was presented at a meeting of the Vehicle Program Review team. That slide, in a 72-page slide presentation, described a proposed change in the Cobalt's key design from a slot to a hole. The slide deck was found in the data collected from Wagoner's computer from March 2009. (V.R. at 245).

6. In furtherance of Old GM's admitted culture of avoiding responsibility, an Old GM 2008 Q1 Interior Technical Learning Symposium presentation provided examples of comments and phrases employees should avoid using in reports:

i. "This is a lawsuit waiting to happen . . ." ; "Unbelievable Engineering screw up . . . "; "This is a safety and security issue . . ."; "Scary for the customer . . . "; "Kids and wife panicking over the situation . . . "; "I believe the wheels are too soft and weak and could cause serious problems. . ."; "Dangerous . . . almost cause accident."

ii. The presentation also stated that documents used for reports and presentations should only concern engineering results, facts, and judgments. Some examples of words or phrases that are to be avoided are: ***always*** (emphasis in original), annihilate, apocalyptic, bad, Band-Aid, big time, brakes like an "X" car, cataclysmic, catastrophic, Challenger, chaotic, Cobain, condemns, Corvair-like, crippling, critical, dangerous, deathtrap,

debilitating, decapitating, ***defect*** (emphasis in original), defective, detonate, disemboweling, enfeebling, evil, eviscerated, explode, failed, failure, flawed, genocide, ghastly, grenadelike, grisly, gruesome, Hindenburg, Hobbling, Horrific, impaling, inferno, Kevorkianesque, lacerating, life-threatening, maiming, malicious, mangling, maniacal, mutilating, ***never*** (emphasis in original), potentially-disfiguring, powder keg, problem, rolling sarcophagus (tomb or coffin), safety, safety related, serious, spontaneous combustion, startling, suffocating, suicidal, terrifying, Titanic, tomblike, unstable, widow-maker, words or phrases with biblical connotation, you're toast.

7. "In addition to being trained on how to write, a number of GM employees reported that they did not take notes at all critical safety meetings because they believed GM lawyers did not want such notes taken." (V.R. at 254).

8. Between the years 2003 and 2012, consumers raised 133 warranty claims with GM dealers about 2003-2007 Ion vehicles, 2005-2007 Cobalt vehicles, 2006-2007 HHR vehicles, a 2006 Solstice, and two 2007 G5 vehicles, that unexpectedly stalled or turned off when going over bumps or when the key was struck. (Supplemental Memorandum, dated April 1, 2014, U.S. House of Representatives Committee on Energy and Commerce Democratic Staff, at 1-2, which can be found at:

http://democrats.energycommerce.house.gov/sites/default/files/documents/Supplemental-Memo-GM-Warranty-Claims-2014-4-1.pdf.

Exhibit C

Groman Plaintiffs' Disputed Stipulated Facts

1. From at least 2001 through early July 2009, the Old GM "lawyers in charge of safety issues … reported to the General Counsel of GM North America." (V.R. at 104).

2. From at least 2001 through early July 2009, the Old GM "lawyers in charge of product liability litigation reported to the General Counsel of GM North America." (V.R. at 104).

3. During his employment, William Kemp reported to the General Counsel of GM North America. (V.R. at 104).

4. During his employment, Larry Buonomo reported to the General Counsel of GM North America. (V.R. at 104).

5. As of the date of the filing of Old GM's bankruptcy case, Michael Robinson was aware of and possessed information that drivers of Subject Vehicles had experienced moving stalls while driving Subject Vehicles.

6. As of the date of the filing of Old GM's bankruptcy case, Michael Robinson was aware of and possessed information that some or all of the moving stalls were related to a defective Ignition Switch.

7. Before commencement of Old GM's bankruptcy case, William Kemp provided information about moving stalls experienced in Subject Vehicles to Chris Johnson.

8. Before commencement of Old GM's bankruptcy case, William Kemp provided information about moving stalls experienced in Subject Vehicles to Michael Robinson.

9. Before commencement of Old GM's bankruptcy case, William Kemp provided information about the defective Ignition Switches to Chris Johnson.

10. Before commencement of Old GM's bankruptcy case, William Kemp provided information about the defective Ignition Switches to Michael Robinson.

11. Before commencement of Old GM's bankruptcy case, Larry Buonomo was an Old GM lawyer in charge of product liability litigation.

12. Before commencement of Old GM's bankruptcy case, Larry Buonomo provided information about moving stalls experienced in Subject Vehicles to Chris Johnson.

13. Before commencement of Old GM's bankruptcy case, Larry Buonomo provided information about moving stalls experienced in Subject Vehicles to Michael Robinson.

14. Before commencement of Old GM's bankruptcy case, Larry Buonomo provided information about the defective Ignition Switches to Chris Johnson.

15. Before commencement of Old GM's bankruptcy case, Larry Buonomo provided information about the defective Ignition Switches to Michael Robinson.

16. Before commencement of Old GM's bankruptcy case, Chris Johnson provided information about moving stalls experienced in Subject Vehicles to Robert Osborne.

17. Before commencement of Old GM's bankruptcy case, Chris Johnson provided information about moving stalls experienced in Subject Vehicles to Thomas Gottschalk.

18. Before commencement of Old GM's bankruptcy case, Chris Johnson provided information about the defective Ignition Switches to Robert Osborne.

19. Before commencement of Old GM's bankruptcy case, Chris Johnson provided information about the defective Ignition Switches to Thomas Gottschalk.

20. Before commencement of Old GM's bankruptcy case, Michael Robinson provided information about moving stalls experienced in Subject Vehicles to Robert Osborne.

21. Before commencement of Old GM's bankruptcy case, Michael Robinson provided information about the defective Ignition Switches to Robert Osborne.

22. During the pendency of Old GM's bankruptcy case, Robert Osborne provided information about moving stalls experienced in Subject Vehicles to Michael Millikin.

23. During the pendency of Old GM's bankruptcy case, Robert Osborne provided information about the defective Ignition Switches to Michael Millikin.

24. The Delphi Settlement's reference to the phrase "ignition switch failure" is the defective Ignition Switch.

25. Larry Buonomo was involved in or participated in some manner in the Delphi Settlement.

26. Larry Buonomo received information that the phrase "ignition switch failure," which is mentioned on the chart attached to the Delphi Settlement, refers or relates to the defective Ignition Switch.

27. Larry Buonomo provided information regarding the "ignition switch failure" mentioned on the chart attached to the Delphi Settlement to Chris Johnson.

28. William Kemp was involved in or participated in some manner in the Delphi Settlement.

29. William Kemp received information that the phrase "ignition switch failure," which is mentioned on the chart attached to the Delphi Settlement, refers or relates to the defective Ignition Switch.

30. William Kemp provided information regarding the "ignition switch failure" mentioned on the chart attached to the Delphi Settlement to Chris Johnson.

31. Chris Johnson was involved in or participated in some manner in the Delphi Settlement.

32. Chris Johnson received information that the phrase "ignition switch failure," which is mentioned on the chart attached to the Delphi Settlement, refers or relates to the defective Ignition Switch.

33. Chris Johnson provided information regarding the "ignition switch failure" mentioned on the chart attached to the Delphi Settlement to Robert Osborne.

34. Robert Osborne was involved in or participated in some manner in the Delphi Settlement.

35. Robert Osborne received information that the "ignition switch failure" mentioned on the chart attached to the Delphi Settlement refers or relates to the defective Ignition Switch.

36. Robert Osborne provided information regarding the "ignition switch failure" mentioned on the chart attached to the Delphi Settlement to Frederick "Fritz" Henderson.

37. Frederick "Fritz" Henderson was involved in or participated in some manner in the Delphi Settlement.

38. Frederick "Fritz" Henderson received information that the phrase "ignition switch failure," which is mentioned on the chart attached to the Delphi Settlement, refers or relates to the defective Ignition Switch.

39. Before commencement of Old GM's bankruptcy case, the following Old GM officers, managers, or employees (among others named) were aware of the defective Ignition Switch:

    (a) Rick Wagoner;
    (b) Thomas G. Stephens;
    (c) John Calabrese;
    (d) Alicia Boler-Davis;
    (e) Jim Frederico;
    (f) Terry Woychowski;
    (g) Each GM employee fired by New GM in connection with the subject matter of the Valukas Report.

40. Before commencement of Old GM's bankruptcy case, the following Old GM officers, managers, or employees (among others named) were aware of the liabilities or potential legal exposure to Old GM arising from or related to the defective Ignition Switch:

    (a) Rick Wagoner;
    (b) Thomas G. Stephens;

(c) John Calabrese;
(d) Alicia Boler-Davis;
(e) Jim Frederico;
(f) Terry Woychowski;
(g) Each GM employee fired by New GM in connection with the subject matter of the Valukas Report.

41. Both Old GM and New GM implemented internal controls and compliance procedures designed to ensure compliance with the reporting and other legal requirements of the Safety Act and TREAD Act.

42. Senior compliance officers at Old GM had final authority to report safety issues to NHTSA.

43. Old GM's senior compliance officers were senior executives within various departments of Old GM, including the general counsel's office.

44. Before entry of the Sale Order, Old GM disclosed the defective Ignition Switch or related potential claims to the U.S. Government.

45. Before entry of the Sale Order, Old GM did not disclose the defective Ignition Switch or related potential claims to the U.S. Government.

46. Before entry of the Sale Order, Old GM and the U.S. Government had discussions or other communications concerning whether potential claims arising from the defective Ignition Switch should be retained liabilities of Old GM or assumed liabilities of New GM.

47. Before entry of the Sale Order, Old GM and the U.S. Government had no discussions or other communications concerning whether potential claims arising from the defective Ignition Switch should be retained liabilities of Old GM or assumed liabilities of New GM.

48. Before entry of the Sale Order, Old GM and the U.S. Government reached no agreement concerning whether potential claims arising from the defective Ignition Switch should be retained liabilities of Old GM.

49. Prior to the commencement of Old GM's bankruptcy case, Old GM employees who participated in a Company Vehicle Evaluation Program ("**CVEP**") with respect to the Subject Vehicles submitted incident reports to Old GM that reflected that the Old GM employees experienced moving stalls and/or accidents where the keys moved into the 'Accessory' or 'Off' position.

50. Prior to the commencement of Old GM's bankruptcy case, Old GM employees who participated in a CVEP with respect to the Subject Vehicles submitted incident reports to Old GM that reflected that the airbags did not deploy in frontal collisions.

51. Prior to the commencement of Old GM's bankruptcy case, Old GM received warranty reports from dealers concerning Subject Vehicles in the CVEP that that the driver experienced moving stalls and/or accidents where the keys moved into the 'Accessory' or 'Off' position.

52. Prior to the commencement of Old GM's bankruptcy case, Old GM received warranty reports from dealers concerning Subject Vehicles in the CVEP that that the driver experienced a frontal collision where the airbag did not deploy.

53. NHTSA sent nineteen "death inquiries" to GM regarding crashes of Subject Vehicles. Ruiz, Rebecca R. and Ivory, Danielle, *Documents Show General Motors Kept Silent on Fatal Crashes*, New York Times, July 15, 2014.

54. A "death inquiry" that an automaker receives from NHTSA requests further information regarding data reported by the automaker in an EWR. Ruiz, Rebecca R. and Ivory, Danielle, *Documents Show General Motors Kept Silent on Fatal Crashes*, New York Times, July 15, 2014.

55. NHTSA sent "death inquiries" to GM regarding the fatal crashes of Benjamin Hair and Amy Kosilla, who each were driving Subject Vehicles. Ruiz, Rebecca R. and Ivory, Danielle, *Documents Show General Motors Kept Silent on Fatal Crashes*, New York Times, July 15, 2014.

56. In response to these "death inquiries," GM did not explain to NHTSA the cause of the crashes. Ruiz, Rebecca R. and Ivory, Danielle, *Documents Show General Motors Kept Silent on Fatal Crashes*, New York Times, July 15, 2014.

57. At the time of those death inquiries, GM was aware that the accident at issue involved a moving stall and airbag non-deployment.

58. In connection with NHTSA's death inquiry for the 2006 Wisconsin Fatal Crash, GM told NHTSA that it did not have sufficient reliable information to accurately assess the cause of the incident. Ruiz, Rebecca R. and Ivory, Danielle, *Documents Show General Motors Kept Silent on Fatal Crashes*, New York Times, July 15, 2014.

59. At the time of the death inquiry for the 2006 Wisconsin Fatal Crash, GM was aware that the accident at issue involved a moving stall and airbag non-deployment.

60. In connection with NHTSA's death inquiry of a 2009 crash of an Subject Vehicle in Tennessee, GM told NHTSA that it had not looked into the circumstances of the crash. Ruiz, Rebecca R. and Ivory, Danielle, *Documents Show General Motors Kept Silent on Fatal Crashes*, New York Times, July 15, 2014.

61. At the time GM told NHTSA that it had not looked into the circumstances of the 2009 crash in Tennessee, GM had already in fact conducted a review of that crash. Ruiz,

Rebecca R. and Ivory, Danielle, *Documents Show General Motors Kept Silent on Fatal Crashes*, New York Times, July 15, 2014.

62. At the time of the death inquiry for the 2009 crash in Tennessee, GM was aware that the accident at issue involved a moving stall and airbag non-deployment.

63. In each of the six lawsuits involving non-deployment of airbags in Subject Vehicles prior to commencement of Old GM's bankruptcy case, Old GM's legal department was aware that accident related to a moving stall.

64. At all times between 2000 through commencement of Old GM's bankruptcy case, Old GM submitted Early Warning Reports ("**EWR**") to NHTSA pursuant to 49 CFR § 579.21(b)(1).

65. According to EWRs submitted to NHTSA before commencement of Old GM's bankruptcy case, Old GM had received information about at least 503 accidents in which it was alleged or proved that the death or injury reported in the EWR was caused by a possible defect in Subject Vehicles.

66. These accidents reported in Old GM's EWRs before commencement of Old GM's bankruptcy case include at least:

    a. 317 claims relating to a Chevrolet Cobalt;
    b. 98 claims relating to a Saturn Ion;
    c. 54 claims relating to a Chevrolet HHR;
    d. 19 claims relating to a Pontiac Solstice;
    e. 10 claims relating to a Pontiac G5; and
    f. 5 claims relating to a Saturn Sky.

67. Before commencement of Old GM's bankruptcy case, the EWR data was accessible by Old GM.

68. Old GM did not disclose to the Bankruptcy Court any of, or only a few of, the 503 or more accidents identified in the EWR data referenced in paragraph 66 hereof or any claims arising therefrom.

69. Subsequent to the 363 Sale, New GM submitted EWRs to NHTSA concerning Subject Vehicles.

70. Had Old GM conducted a recall of the Subject Vehicles before commencement of Old GM's bankruptcy case, the recall would have cost Old GM several hundred million dollars or more [or, alternatively, $_____. (NOTE: GM to suggest amount)].

71. At some point between 2007 and the commencement of Old GM's bankruptcy case, John Sprague hypothesized that the defective Ignition Switch caused the airbag non-deployments in some or all of the Subject Vehicles. (V.R. at 9)

72. Raymond DeGiorgio was granted authority under Old GM's chain of authority and/or policies and procedures to approve a change to the ignition switch. (V.R. at 101).

73. At all times between 2001 and 2008, under Old GM's chain of authority and/or policies and procedures, Raymond DeGiorgio was authorized to approve or disapprove the inclusion and use of an ignition switch in a new vehicle. (V.R. at 101).

74. When the ignition switch is turned to Accessory or Off, a Subject Vehicle would lose power brakes. (V.R. at 25).

75. In 2003, Old GM became aware of Saturn customer complaints about intermittent engine stalls while driving. (V.R. at 54).

76. In October 2003, a Field Performance Report, 3101/2003/US, lists 65 Ion stalls and states: "Customers comment of intermittent stall while driving. In most cases, there are no trouble codes associated with the stall." This Field Performance Report lists a vehicle with 15 miles as the youngest vehicle affected. (V.R. at 54-55).

77. Before 2008, a handful of Old GM engineers other than Raymond DeGiorgio also received information describing the change to the Ignition Switch for the model year 2008 Chevrolet Cobalt, including four engineers who received a June 30, 2006 email from Delphi to DeGiorgio stating that the detent plunger had been changed "to increase torque forces to be within specification." (V.R. at 102).

78. When first told of the defective Ignition Switch in or about March 2005, Steven Oakley formed the view that the defective Ignition Switch was a safety issue. (V.R. at 76).

79. In or about November 15, 2004, one individual was killed and another was severely injured in a crash involving a 2004 Saturn Ion where the airbags did not deploy. (V.R. at 124). Manuel Peace, an Old GM engineer who assisted Old GM's legal department in evaluating cases, did a case evaluation for this incident. (V.R. at 124). In his case evaluation, Peace stated he had never seen a situation like this where the airbags did not deploy, and that the best explanation for why the airbags did not deploy was that the vehicle lost power. (V.R. at 125)

80. At some point between 2007 and the commencement of Old GM's bankruptcy case, John Sprague and the Field Performance Assessment team observed a pattern of airbag non-deployments in Cobalts and Ions. (V.R. at 9, 118-19, 134).

81. At the time John Sprague and Brian Everest met with Continental, Sprague and Everest knew that the rotation of the ignition switch from Run to Accessory or Off could cause the Sensing and Diagnostic Module to receive a power mode message of Accessory or Off. (V.R. at 135).

82. At or about the time of the meeting with Continental in May 2009, Brian Everest and John Sprague had spoken with members of Old GM's Product Investigations group about the non-deployment of airbags in Cobalts. (V.R. at 135).

83. Joseph Taylor, an Old GM Program Quality Manager who administered the Captured Test Fleet program for the Chevrolet Cobalt drove a 2005 Cobalt test vehicle and personally experienced moving stalls with the Cobalt. (V.R. at 58).

Exhibit D

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: **MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*,** **Debtors.**	Chapter 11 Case No. 09-50026 (REG) (Jointly Administered)

AGREED UPON AND DISPUTED STIPULATIONS OF FACT REGARDING THE EQUITABLE MOOTNESS THRESHOLD ISSUE[1]

Pursuant to this Court's *Supplemental Scheduling Order, Dated July 11, 2014, Regarding (i) the Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction, (ii) the Objection Filed by Certain Plaintiffs in Respect Thereto, and (iii) Adversary Proceeding No. 14-01929* (the "July Scheduling Order"), Wilmington Trust Company, as trustee for and trust administrator of the Motors Liquidation Company GUC Trust (the "GUC Trust"), and certain unaffiliated holders of beneficial units of

[1] Unless otherwise indicated, capitalized terms not defined herein shall have the meanings ascribed to them in the July Scheduling Order (as defined herein).

the Motors Liquidation Company GUC Trust (each, a "Unitholder" and collectively, the "Unitholders") hereby submit the following agreed upon stipulations of fact concerning the Equitable Mootness Threshold Issue (the "Equitable Mootness Stipulations").

In addition, annexed hereto as Attachment 1 is the GUC Trust's and the Unitholders' proposed stipulations of fact that have not been agreed to by the other Counsel for the Identified Parties.

THE GENERAL MOTORS CORPORATION BANKRUPTCY

1. On June 1, 2009, General Motors Corporation ("Old GM") and three of its direct and indirect subsidiaries, Saturn, LLC, n/k/a MLCS, LLC ("MLCS"), Saturn Distribution Corporation, n/k/a MLCS Distribution Corporation ("MLCS Distribution"), and Chevrolet-Saturn of Harlem Inc., n/k/a MLC of Harlem, Inc. ("MLCS Harlem" and collectively with Old GM, MLCS, and MLCS Distribution, the "Debtors") commenced cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

2. On July 10, 2009, each of the Debtors consummated a sale of substantially all of its assets in a transaction under Section 363 of the Bankruptcy Code (the "363 Sale") to an acquisition vehicle, NGMCO, Inc., pursuant to (i) that certain Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009, among the Debtors and New GM (as amended, the "Sale Agreement"), and (ii) an order of the Bankruptcy Court, dated July 5, 2009 (the "Sale Order"). Following the 363 Sale, Old GM changed its name to Motors Liquidation Company ("MLC") and the acquisition vehicle later became General Motors LLC ("New GM").

3. The consideration provided by New GM to the Debtors under the Sale Agreement was set forth in the Sale Decision as follows:

"Old GM is to receive consideration estimated to be worth approximately $45 billion, plus the value of equity interests that it will receive in New GM. It will come in the following forms:

i. a credit bid by the U.S. Treasury and EDC, who will credit bid the majority of the indebtedness outstanding under their DIP facility and the Treasury Prepetition Loan;

ii. the assumption by New GM of approximately $6.7 billion of indebtedness under the DIP facilities, plus an additional $1.175 billion to be advanced by the U.S. Treasury under a new DIP facility (the 'Wind Down Facility') whose proceeds will be used by Old GM to wind down its affairs;

iii. the surrender of the warrant that had been issued by Old GM to Treasury in connection with the Treasury Prepetition Loan;

iv. 10% of the post-closing outstanding shares of New GM [(the "New GM Common Stock")], plus an additional 2% if the estimated amount of allowed prepetition general unsecured claims against Old GM exceeds $35 billion;

v. two warrants, each to purchase 7.5% of the post-closing outstanding shares of New GM, with an exercise price based on a $15 billion equity valuation and a $30 billion equity valuation, respectively [(the two series of warrants, the "New GM Warrants")]; and

vi. the assumption of liabilities, including those noted [in the Sale Decision]." Sale Decision, at 18-19.

4. The New GM Common Stock and both series of New GM Warrants (collectively, the "New GM Securities") are currently listed on the New York Stock Exchange.

5. New GM and the Debtors further agreed that New GM would provide additional consideration if the aggregate amount of allowed general unsecured claims against the Debtors exceed $35 billion. (*See* Sale Agreement, § 3.2(c)). In that event, New GM will be required to issue additional shares of New GM Common Stock for the benefit of the GUC Trust's beneficiaries. (*See id.*). The number of additional shares of New GM Common Stock to be issued will be equal to the number of such shares, rounded up to the next whole share, calculated by multiplying (i) 30 million shares (adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization, merger, consolidation, reorganization or similar transaction with respect to such New GM Common Stock from and after the closing of the 363 Sale and before issuance of additional shares) and (ii) a fraction, (A) the numerator of which is the amount by which allowed general unsecured claims exceed $35 billion (such excess amount being capped at $7 billion) and (B) the denominator of which is $7 billion."[2] (*See* Motors Liquidation Company GUC Trust Quarterly GUC Trust Reports as of September 30, 2013 at 6).

6. On September 16, 2009, the Bankruptcy Court entered its *Order Pursuant to Section 502(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) Establishing the Deadline for Filing Proofs of Claim (Including Claims Under Section 503(b)(9) of the Bankruptcy Code) and Procedures Relating Thereto and Approving the Form and Manner of Notice Thereof* (the "Bar Date Order"). (Dkt. No. 4079).

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[2] *See* Second Amendment to Sale Agreement, Section 2(r) (amending Section 3.2(c) of the Sale Agreement) ("Sellers may, at any time, seek an Order of the Bankruptcy Court ... estimating the aggregate allowed general unsecured claims against Sellers' estates ... [and if] the Bankruptcy Court makes a finding that the estimated allowed general unsecured claims against Sellers' estates exceed $35,000,000,000, then Purchaser will ... issue additional shares of Common Stock ...."). While the Sale Agreement initially provided for the issuance of up to 10,000,000 additional shares, this number has subsequently been adjusted for the three-for-one split of New GM Common Stock. (*See Disclosure Statement for Debtors' Amended Joint Chapter 11 Plan* at 17-18 n.2). (Dkt. No. 8023).

7. Pursuant to the Bar Date Order, the Bankruptcy Court established November 30, 2009 as the deadline for each person or entity to file a proof of claim against any of the Debtors (the "Bar Date"), and approved the form and manner of notice of the Bar Date. (Bar Date Order at 2 ¶(a)).

THE PLAN

8. On August 31, 2010, the Debtors filed the *Debtors' Joint Chapter 11 Plan* with the Bankruptcy Court. (Dkt. No. 6829). On March 18, 2011, the Debtors filed the *Debtors' Second Amended Joint Chapter 11 Plan* with the Bankruptcy Court (the "Plan"). (Dkt. No. 9836). The Plan is a plan of liquidation.

9. On December 8, 2010, the Debtors filed the *Disclosure Statement for Debtors' Amended Joint Chapter 11 Plan* with the Bankruptcy Court (the "Disclosure Statement"). (Dkt. No. 8023).

10. On December 8, 2010, the Bankruptcy Court entered an *Order Granting Motion (I) Approving Notice of Disclosure Statement Hearing; (II) Approving Disclosure Statement; (III) Establishing a Record Date; (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan; (V) Approving Notice Packages and Procedures for Distribution Thereof; (VI) Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (VII) Approving the Form of Notices to Non-Voting Classes Under the Plan.* (Dkt. No. 8043).

11. The Plan, as described in the Disclosure Statement designates six (6) distinct classes of claims or equity interests: Class 1 – secured claims; Class 2 – priority non-tax claims; Class 3 – general unsecured claims; Class 4 – property environmental claims; Class 5 – asbestos personal injury claims; and, Class 6 – equity interests in MLC. (Disclosure Statement at 4-8).

12. The aggregate amount of General Unsecured Claims filed against the Debtors on or before the Bar Date, as well as the General Unsecured Claims listed on the Debtors' schedules was approximately $270 billion. (Disclosure Statement at 57).

13. The Plan provides for the GUC Trust to be established on the Effective Date (as defined below) under the terms of the Plan and Confirmation Order (as defined below) and the Motors Liquidation Company GUC Trust Agreement dated as of March 30, 2011 (as amended, the "GUC Trust Agreement").

14. Under the terms of the Plan, for each $1,000 in amount of allowed general unsecured claims against the Debtors that existed as of the date the Plan became effective (together with the disputed general unsecured claims asserted against the Debtors that are subsequently allowed, the "Allowed General Unsecured Claims"), the holders of such claims were entitled to receive (upon delivery of any information required by the GUC Trust) approximately 3.80 shares of New GM Common Stock, and approximately 3.46 warrants of each series of New GM Warrants, exclusive of any securities received, or to be received, in respect of GUC Trust Units (as defined below). (*See* Plan § 6.2; GUC Trust Agreement at Ex. A-1). The holders of Allowed General Unsecured Claims were also entitled to receive one unit of beneficial interest in the GUC Trust (a "GUC Trust Unit") for each $1,000 in amount of Allowed General Unsecured Claims. (*Id.*). Under the terms of the Plan, holders of disputed general unsecured claims against the Debtors were entitled to receive subsequent distributions of New GM Securities and GUC Trust Units in respect of such claims only if and to the extent that their disputed general unsecured claims were subsequently allowed. (*See* Plan § 7.4).

15. On March 29, 2011, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the Bankruptcy Code*

and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors' Second Amended Joint Plan (the "Confirmation Order"). (Dkt. No. 9941).

16. The Plan became effective on March 31, 2011 (the "Effective Date"). (Dkt No. 10056).

17. The Plan provided that on the Effective Date, the Plan would be deemed to be substantially consummated. (Plan §12.2).

18. The Plan has been substantially consummated. *See In re Motors Liquidation Co.*, 462 B.R. 494, 501 n. 36 (Bankr. S.D.N.Y. 2012) ("[T]he Plan already has been substantially consummated").

19. On December 15, 2011 (the "Dissolution Date"), as required by the Plan, MLC was dissolved. (*See* Form 10-K Annual Report for Motors Liquidation Company GUC Trust for the Fiscal Year Ended March 31, 2014, filed May 22, 2014 ("GUC Trust 2014 Form 10-K") at 3).

20. Prior to the confirmation of the Plan by the Bankruptcy Court, certain general unsecured claims were traded.

21. As of the Effective Date, there were approximately: (a) $29.771 billion in Allowed General Unsecured Claims (the "Initial Allowed General Unsecured Claims") (*see* GUC Trust 2014 Form 10-K at 6); (b) $8.154 billion in disputed general unsecured claims, which did not include potential Term Loan Avoidance Action Claims (defined below) (*id.* at 7); and (c) potentially $1.5 billion in additional general unsecured claims (the "Term Loan Avoidance Action Claims," and together with the disputed general unsecured claims, the "Disputed General Unsecured Claims") as a result of an avoidance action styled *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A. et al.*, Adv. Pro. No 09-00504 (Bankr. S.D.N.Y. July 31, 2009) (the "JPM Action").

22. The plaintiff in the JPM Action seeks to recover approximately $1.5 billion in payments made by Old GM to JPMorgan Chase Bank, N.A., on behalf of a consortium of prepetition lenders (the "JPM Action Defendants").

23. On the Dissolution Date, the right to prosecute the JPM Action was transferred to a trust established under the Plan for the purpose of holding and prosecuting the JPM Action (the "Avoidance Action Trust"). The Avoidance Action Trust is separate from the GUC Trust. The JPM Action is now being prosecuted by the Avoidance Action Trust and is currently on appeal to the Second Circuit. Wilmington Trust Company acts as Trustee for each of the Avoidance Action Trust and the GUC Trust.

24. The Bankruptcy Court rendered a decision in the JPM Action. *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A. et al.*, 486 B.R. 596 (Bankr. S.D.N.Y. 2013).

25. The Second Circuit certified a question of law to the Delaware Supreme Court in the JPM Action. *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A. et al.*, Case No. 13-2187-bk (2d Cir. June 17, 2014).

26. If the plaintiff is successful in the JPM Action, and any subsequent ancillary proceedings, and any JPM Defendant(s) actually disgorges funds to the Avoidance Action Trust in connection therewith, any such JPM Action Defendant will be treated as an allowed general unsecured creditor of MLC with Term Loan Avoidance Action Claims equaling the amount that they actually disgorge to the Avoidance Action Trust (which, in the aggregate, could be up to $1.5 billion, exclusive of prejudgment interest). The beneficiaries of any amounts ultimately disgorged by the JPM Action Defendants is a matter of dispute, as both the lenders that provided MLC with debtor-in-possession financing (the "DIP Lenders"), and the Committee, on behalf of holders of Allowed General Unsecured Claims, are each claiming an exclusive right to such

proceeds. Although the Bankruptcy Court granted summary judgment in favor of the Committee, finding that the holders of Allowed General Unsecured Claims were the proper beneficiaries of the Avoidance Action Trust (and thus the proceeds of the JPM Action), the United States District Court for the Southern District of New York (the "District Court") vacated the Bankruptcy Court's decision and order for want of subject matter jurisdiction. The District Court specifically found that the issue regarding the identity of the proper beneficiaries of the Avoidance Action Trust was not and would not be ripe for adjudication unless and until the JPM Action were decided in favor of the Avoidance Action Trust. In the event that it is determined that the holders of Allowed General Unsecured Claims are entitled to the proceeds (if any) of the JPM Action, then such proceeds (if any) will be contributed to the Avoidance Action Trust, for distribution to the holders of Allowed General Unsecured Claims (following the reimbursement of certain fees and expenses to the DIP Lenders).

27. If the defendants are successful in the JPM Action (including with respect to any appeals), $1.5 billion of Disputed General Unsecured Claims will be eliminated from Old GM's bankruptcy estate, and certain of the New GM Securities that have been reserved will be available for distribution. As of the Effective Date, the total aggregate amount of general unsecured claims, both allowed and disputed, asserted against the Debtors, including potential Term Loan Avoidance Action Claims, was approximately $39.426 billion. (*See* April 21, 2011 Form 8-K of the Motors Liquidation GUC Trust at 4).

The GUC Trust

28. The GUC Trust was formed on March 30, 2011 as a statutory trust under the Delaware Statutory Trust Act. (*See* GUC Trust Agreement at 13, Article II, § 2.1). The GUC Trust is, among other things, responsible for implementing the Plan, including distributing New GM Securities and GUC Trust Units to holders of Allowed General Unsecured Claims in

satisfaction of their claims, resolving Disputed General Unsecured Claims that were outstanding as of the Effective Date, distributing New GM Securities and GUC Trust Units in satisfaction of such Disputed General Unsecured Claims that are subsequently allowed, and resolving remaining disputed administrative expense claims, priority tax claims, priority non-tax claims and secured claims against the Debtors. (*See id.* at 3, Background § G).

29. The "GUC Trust Beneficiaries" are as defined in the GUC Trust Agreement in Background § F.

30. As of the Effective Date, the corpus of the GUC Trust consisted of approximately $52.7 million in cash contributed by the Debtors to fund the administrative fees and expenses (including certain tax obligations) incurred by the GUC Trust in administering its duties pursuant to the Plan and the GUC Trust Agreement (the "Administrative Fund"). (*See* GUC Trust 2014 Form 10-K at 3). The cash comprising the Administrative Fund was obtained by MLC from the DIP Lenders and is subject to a lien held by the DIP Lenders, with any excess funds remaining in the Administrative Fund required to be returned to the DIP Lenders, according to the GUC Trust 2014 Form 10-K, after (i) the satisfaction in full of all Wind Down Costs and other liabilities of the GUC Trust (subject to the terms of the GUC Trust Agreement), and (ii) the winding up of the GUC Trust's affairs. (*Id.*). The Administrative Fund cannot be used to make distributions to holders of Allowed General Unsecured Claims. (*Id.*).

31. Pursuant to the Plan, on the Dissolution Date, MLC transferred to the GUC Trust (i) record ownership of all of its then remaining New GM Securities, which consisted of 30,967,561 shares of New GM Common Stock, 28,152,186 New GM Series A Warrants and 28,152,186 New GM Series B Warrants, (ii) approximately $2.0 million designated for certain public reporting costs, and (iii) approximately $1.4 million designated for reimbursing the indenture trustees and the fiscal and paying agents under the Debtors' prepetition debt issuances

for costs associated with, among other things, administering distributions to registered holders of the Debtors' prepetition debt issuances. (*See* GUC Trust 2014 Form 10-K at 4).

32. Under the terms of the GUC Trust Agreement, the GUC Trust Administrator is authorized to determine whether the GUC Trust may be entitled to receive a distribution of additional New GM Common Stock as a result of the aggregate amount of Allowed General Unsecured Claims exceeding $35 billion, and, if the GUC Trust is so entitled, to request the issuance of such additional shares by New GM to the GUC Trust. (*See* GUC Trust Agreement, § 2.3(d)).

33. Each GUC Trust Unit represents "the contingent right to receive, on a *pro rata* basis, the excess assets of the GUC Trust, including additional New GM Securities (if and to the extent such New GM Securities are not required for satisfaction of the Resolved Allowed Claims), Dividend Cash associated with such additional New GM Securities and Other Administrative Cash, if any, available for distribution in respect of the GUC Trust Units, either through a periodic distribution as provided for under the GUC Trust Agreement, or upon the dissolution of the GUC Trust, in each case subject to the terms and conditions of the GUC Trust Agreement and the Plan." (GUC Trust 2014 Form 10-K at 5-6).

GUC TRUST DISTRIBUTIONS

34. On April 21, 2011, and as supplemented by a distribution completed on or around May 26, 2011, an initial distribution (the "Initial Distribution") of more than 75% of the New GM Securities then held by the GUC Trust was made to the holders of Initial Allowed General Unsecured Claims. (*See* April 21, 2011 Form 8-K of the Motors Liquidation GUC Trust at 2).[3]

[3] Prior to December 15, 2011, the date on which all remaining New GM Securities held by MLC were transferred by MLC to the GUC Trust, the GUC Trust either requisitioned New GM Securities from MLC and itself made the

[Footnote continued on next page]

35. According to the GUC Trust 2014 Form 10-K, the New GM Securities that were not distributed in the Initial Distribution were the New GM Securities that would be necessary to pay the holders of Disputed General Unsecured Claims that become Allowed General Unsecured Claims (the "Resolved Allowed Claims"), New GM Securities associated with holders of Allowed General Unsecured Claims that had not provided sufficient information to the GUC Trust to permit distribution ("Information Deficient Claims"), and those New GM Securities that were otherwise set aside from distribution ("Set Aside Securities") for the purposes of funding then-current or projected liquidation and administrative costs and other liabilities of the GUC Trust (including income taxes). The distributable assets currently held by the GUC Trust are set forth in the GUC Trust 2014 Form 10-K.

36. The GUC Trust Agreement sets forth provisions relating to when distributions should be made.

37. According to the GUC Trust Agreement, "[a]s promptly as practicable following the beginning of each calendar quarter, beginning with the second calendar quarter, the GUC Trust Administrator, with the approval of the GUC Trust Monitor, shall deliver to each holder, if any, of a Disputed General Unsecured Claim or other Claim that has become a Resolved Allowed General Unsecured Claim during the prior calendar quarter (or, in the case of the second calendar quarter, since the Initial Distribution Record Date) a distribution consisting of . . . the pro rata amount of GUC Trust Distributable Assets that the holder of such Resolved Allowed General Unsecured Claim would have received had such Resolved Allowed General Unsecured Claim been an Initial Allowed General Unsecured Claim," and "a number of Units"

[Footnote continued from previous page]
distribution of the New GM Securities, or requested that MLC make the distributions to the accounts of allowed claim holders designated by the GUC Trust. After December 15, 2011, all distributions of New GM Securities were made directly by the GUC Trust.

as provided in the GUC Trust Agreement." (*See* GUC Trust Agreement, Article V, §5.3(a); *see also* GUC Trust 2014 Form 10-K at 6)).

38. The GUC Trust made quarterly distributions on July 28, 2011, October 28, 2011, January 13, 2012, April 27, 2012, August 3, 2012, November 5, 2012, February 8, 2013, May 10, 2013, August 9, 2013, October 31, 2013 and May 9, 2014, each in respect of Disputed General Unsecured Claims that were resolved in the immediately preceding fiscal quarter. (GUC Trust 2014 Form 10-K at 6).

39. On October 21, 2013, the Bankruptcy Court entered an order (the "Nova Scotia Order") approving a settlement agreement (the "Nova Scotia Settlement") relating to claims arising from the 8.375% guaranteed notes due December 7, 2015 and the 8.875% guaranteed notes due July 10, 2023, in each case issued in 2003 by General Motors Nova Scotia Finance Company (the "Nova Scotia Claims"). (GUC Trust 2014 Form 10-K at 12). Pursuant to the Settlement Agreement, the Nova Scotia Claims were reduced and allowed in an aggregate amount of $1.55 billion. As a result, on or about December 2, 2013, in accordance with the Nova Scotia Settlement and the Nova Scotia Order, the GUC Trust made a distribution solely to holders of the allowed Nova Scotia Claims, consisting of, in the aggregate, 6,174,015 shares of New GM Common Stock, 5,612,741 New GM Series A Warrants, 5,612,741 New GM Series B Warrants, and 1,550,000 GUC Trust Units. (*Id.*).

40. In addition, on or about December 23, 2013, in accordance with the Nova Scotia Settlement and the Nova Scotia Order, the GUC Trust made a special distribution of Excess GUC Trust Distributable Assets to all holders of GUC Trust Units, consisting of 6,735,070 shares of New GM Common Stock, 6,122,789 New GM Series A Warrants, and 6,122,789 New GM Series B Warrants. (*Id.*).

41. The following table details the New GM Securities that have been distributed to holders of Allowed General Unsecured Claims by the GUC Trust:

	Shares of New GM Common Stock	A Warrants	B Warrants
April 21, 2011 Distribution:	113,194,172	102,903,821	102,903,821
July 28, 2011 Distribution:	3,342,831	3,038,936	3,038,936
October 28, 2011 Distribution:	2,468,218	2,243,834	2,243,834
January 13, 2012 Distribution:	188,180	171,074	171,074
April 27, 2012 Distribution:	450,555	409,612	409,612
August 3, 2012 Distribution:	484,553	440,510	440,510
November 2, 2012 Distribution:	116,508	105,910	105,910
February 8, 2013 Distribution:	42,151	38,325	38,325
May 10, 2013 Distribution:	115,029	104,570	104,570
August 9, 2013 Distribution:	221,014	200,924	200,924
October 31, 2013 Distribution:	42,122	38,293	38,293
December 2, 2013 Nova Scotia Settlement Distribution:	6,174,015	5,612,741	5,612,741
May 9, 2014 Distribution:	43,310	39,371	39,371

Available at https://www.mlcguctrust.com/FAQDocuments.aspx.

42. As of March 31, 2014, the GUC Trust has distributed (or was obligated to distribute), in the aggregate, 134,106,321 shares of New GM Common Stock, 121,914,975 of each series of New GM Warrants and 31,853,702 GUC Trust Units in respect of Allowed General Unsecured Claims aggregating approximately $31.854 billion. (GUC Trust 2014 Form 10-K at 6).

CLAIMS AGAINST THE GUC TRUST AND GUC TRUST ASSETS

43. According to the GUC Trust, Allowed General Unsecured Claims, as of March 31, 2014, totaled approximately $31.854 billion.

44. As of March 31, 2014, the Maximum Amount (as such term is defined in and calculated in accordance with the GUC Trust Agreement) of Disputed General Unsecured Claims (inclusive of the potential Term Loan Avoidance Action Claims) totaled approximately $1.579 billion. (GUC Trust 2014 Form 10-K at 51). In the event such claims become Allowed General Unsecured Claims, the GUC Trust will distribute to the holders of such claims their pro rata distribution of New GM Securities.

45. According to the GUC Trust, the GUC Trust's aggregate holdings of New GM Securities (*i.e.*, New GM Common Stock and New GM Warrants), at fair value, as of March 31, 2014, was $1.1 billion. The $1.1 billion includes certain assets that have been reserved or set aside to fund the GUC Trust's potential costs of liquidation and potential tax liabilities. Specifically, New GM Securities aggregating $51.6 million (excluding related dividend cash) have been reserved, or set aside, for projected GUC Trust fees, costs and expenses to be incurred beyond 2014 (including $3.5 million for projected dividend taxes), and $536.3 million (excluding related dividend cash) of New GM Securities have been reserved, or set aside, for potential taxes on distribution. As a result, as of March 31, 2014, the number of New GM Securities included in the GUC Trust's aggregate holdings of New GM Securities, includes an aggregate of 8,072,042 shares of New GM Common Stock, 7,338,194 New GM Series A Warrants, and 7,338,194 New GM Series B Warrants, which have been so reserved or set aside.

46. According to the GUC Trust, with respect to distributable assets, as of March 31, 2014, the GUC Trust held remaining distributable assets (which, for the avoidance of doubt, excluded Set Aside Securities and New GM Securities associated with the Information Deficient

Claims) of 7,138,543 shares of New GM Common Stock, 6,489,475 of each series of New GM Warrants, and $2,141,564 of dividend cash, which have all been set aside in respect of current Disputed General Unsecured Claims (including the potential Term Loan Avoidance Action Claims), and will be distributed to the holders of such claims in the event that they become Resolved Allowed Claims. (*Id.* at 31).

TRADING OF GUC TRUST UNITS

47. Pursuant to a No Action Letter received from the United States Securities and Exchange Commission ("SEC") on May 23, 2012 (the "No Action Letter"), the GUC Trust Units are transferable in accordance with the procedures of the Depository Trust Company ("DTC") and its direct and indirect participants.

48. While the No Action Letter allows for the transferability of GUC Trust Units in accordance with DTC procedures, the GUC Trust may not encourage the transfer of the GUC Trust Units it has distributed pursuant to the GUC Trust Agreement, and may not take any actions to facilitate or promote a trading market in the GUC Trust Units.

49. Beginning April 28, 2011, and quarterly thereafter, the GUC Trust has made public securities filings that reflected the then-current amount of outstanding Disputed General Unsecured Claims. With each public filing, the GUC Trust adjusted the then-current amount of outstanding Allowed General Unsecured Claims and outstanding Disputed General Unsecured Claims to reflect the resolution of the Disputed General Unsecured Claims.

50. The GUC Trust has also filed quarterly reports (the "GUC Trust Reports") with the Bankruptcy Court which reflected the then-current amount of Allowed General Unsecured Claims and Disputed General Unsecured Claims.

51. As of June 14, 2012, the GUC Trust Units became freely tradable OTC, and are quoted on Bloomberg Finance, L.P.

52. Each of the GUC Trust Reports published by the GUC Trust set forth the then current aggregate amount of Allowed General Unsecured Claims and the Maximum Amount (as such term is defined in and calculated in accordance with the GUC Trust Agreement) of all Disputed General Unsecured Claims, adjusted to reflect the disposition of Disputed General Unsecured Claims to date. The Maximum Amount of Allowed General Unsecured Claims, as reflected in the quarterly GUC Trust Reports, has continually gone down over time.

53. The March 31, 2014 GUC Trust Report indicates that the total aggregate amount of claims (allowed and disputed) is $33,433,130. (March 31, 2014 GUC Trust Report, Ex. A).

54. Counsel for the Identified Parties may refer to reports by Bloomberg Finance, L.P. for information relating to trading volume of the GUC Trust Units and the daily prices of GUC Trust Units.

THE PLAN'S STATEMENTS REGARDING GUC TRUST BENEFICIARIES

55. Pursuant to the Plan, the GUC Trust Agreement provides in relevant part: "No provision of the Plan, the Confirmation Order or this Trust Agreement, and no mere enumeration herein of the rights or privileges of any GUC Trust Beneficiary, shall give rise to any liability of such GUC Trust Beneficiary solely in its capacity as such, whether such liability is asserted by any Debtor, by creditors or employees of any Debtor, or by any other Person. GUC Trust Beneficiaries are deemed to receive the GUC Trust Distributable Assets in accordance with the provisions of the Plan, the Confirmation Order and this Trust Agreement in exchange for their Allowed General Unsecured Claims or on account of their Units, as applicable, without further obligation or liability of any kind, subject to the provisions of this Trust Agreement." (GUC Trust Agreement, § 3.2).

NEW GM'S RECALLS

56. On February 7, 2014, New GM sent a letter (the "February 7 Letter") to the National Highway Traffic Safety Administration ("NHTSA") indicating that New GM, through its Executive Field Action Decision Committee, decided "to conduct a safety related recall for certain 2005-2007 model year Chevrolet Cobalt and 2007 model year Pontiac G5 vehicles." An attachment to the February 7 Letter indicates that 619,122 vehicles were potentially involved in the recall.

57. On February 25, 2014, New GM sent another letter to NHTSA (the "February 25 Letter"). The February 25 Letter indicates that on February 24, 2014, New GM, through its Executive Field Action Decision Committee, decided "to conduct a safety recall" for 2003-2007 model years Saturn Ion, 2006-2007 model years Chevrolet HHR, 2006-2007 model years Pontiac Solstice, and 2007 model year Saturn Sky vehicles (collectively with the recall described in the February 7 Letter, the "Ignition Switch Recall"). An attachment to the February 25 Letter reflects that 748,024 vehicles were potentially involved in this recall.

58. On February 25, 2014, New GM publicly announced that it was expanding the Ignition Switch Recall to include the 2003-2007 model years Saturn Ion, 2006-2007 model years Chevrolet HHR, 2006-2007 model years Pontiac Solstice, and 2007 model year Saturn Sky vehicles.

59. On March 28, 2014, New GM sent a letter to NHTSA indicating that on March 20, 2014, New GM, acting through its Executive Field Action Decision Committee, decided "to conduct a safety related recall" of "Ignition & Start Switches manufactured in Mexico by: Delphi Packard Electrical/Electronic Architecture" (the "March 28 Letter"). The March 28 Letter explains that

> [New GM] has decided that a defect which relates to motor vehicle safety exists in GM Parts and ACDelco Ignition & Start Switch service part number 10392423,

> and the following Ignition & Start Switch Housing Kits that contain or may contain part number 10392423: GM Parts and ACDelco service part numbers 10392737, 15857948, 15854953, 15896640, and 25846762. [New GM] records indicate these service parts may have been installed during repairs in some 2008-2010 MY Chevrolet Cobalt, 2008-2011 MY Chevrolet HHR, 2008-2010 MY Pontiac Solstice, 2008-2010 MY Pontiac G5, and 2008-2010 MY Saturn Sky vehicles.

60. The March 28 Letter also states that "[t]he ignition switch torque performance on vehicles repaired with GM Parts and ACDelco Ignition & Start Switch part number 10392423 or assemblies that contain part number 10392423 may not meet General Motors' specification."

61. The March 28 Letter further states that on March 27, 2014, New GM acting through its Executive Field Action Decision Committee, decided that "to provide a comprehensive remedy, GM will replace the ignition switch on all 2008-2010 MY Chevrolet Cobalt, 2008-2011 MY Chevrolet HHR, 2008-2010 MY Pontiac Solstice, 2008-2010 MY Pontiac G5, and 2008-2010 MY Saturn Sky vehicles in order to replace all potentially suspect service parts."

62. Through an attachment to the March 28 Letter, New GM reported that 823,788 vehicles were potentially involved in this recall.

63. On March 28, 2014, New GM issued a press release stating that it would "replace the ignition switch in all model years of its Chevrolet Cobalt, HHR, Pontiac G5, Solstice, and Saturn Ion and Sky" in the U.S. since faulty ignition switches may have been used to repair the vehicles (the "March 28 Announcement"). (*See* http://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2014/mar/0328-ignition-service.html).

64. In its March 28 Announcement, New GM explained that "[a]bout 95,000 faulty switches were sold to dealers and aftermarket wholesalers," of which "about 90,000 were used to repair older vehicles that were repaired before they were recalled in February," and that "[b]ecause it is not feasible to track down all the parts, the company is taking the extraordinary

step of recalling 824,000 more vehicles in the U.S. to ensure that every car has a current ignition switch."

65. On April 10, 2014, New GM filed a Form 8-K with the SEC. According to the press release attached thereto as Exhibit 99.1, New GM added "ignition lock cylinders to its safety recall of 2.2 million older model cars in the United States." The press release states that the cars covered by this recall were 2003-2007 model years Saturn Ion, 2005-2010 model years Chevrolet Cobalt, 2006-2010 model years Pontiac Solstice, 2007-2010 model years Pontiac G5, 2007-2010 model years Saturn Sky, and 2006-2011 model years Chevrolet HHR, and that "the cylinders can allow removal of the ignition key while the engine is running, leading to a possible rollaway, crash and occupant or pedestrian injuries."

66. On March 17, 2014, New GM filed a Form 8-K with the SEC regarding three safety recalls involving approximately 1.5 million vehicles (collectively, the "March 17 Recall"). The March 17, 2014 press release attached thereto as Exhibit 99.1 states that the three recalls cover:

(a) 303,000 2009-2014 model years Chevrolet Express and GMC Savana vehicles with gross vehicle weight under 10,000 pounds, which New GM stated "do not comply with a head impact requirement for unrestrained occupants, requiring a rework of the passenger instrument panel material;"

(b) 63,900 2013-2014 model years Cadillac XTS full-size sedans, in which pressure created by a brake booster pump can "lead to the dislodging of a plug in the brake booster pump relay, allowing corrosive elements to enter the connector and form a low-resistance short that could lead to overheating, melting of plastic components and a possible engine compartment fire;" and

(c) 1.18 million 2008-2013 model years Buick Enclave and GMC Acadia, 2009-2013 model years Chevrolet Traverse, and 2008-2010 model years Saturn Outlook vehicles to correct for "the non-deployment of the side impact restraints, which include driver and passenger seat-mounted side air bags, front center air bag (if equipped), and the seat belt pretensioners."

GM Redoubles Safety Efforts, Announces New Recalls, Mar. 17, 2014.[4]

67. On April 1, 2014, New GM filed a Form 8-K with the SEC regarding a safety recall of approximately 1.3 million vehicles "for the correction of electric power steering assist conditions" (the "Power Steering Assist Recall"). The March 31, 2014 press release attached thereto as Exhibit 99.1 describes a potential "sudden loss of electric power steering assist" occurring in the recalled vehicles, which include:

a. Chevrolet Malibu: All model year 2004 and 2005, and some model year 2006 and model year 2008 and 2009 vehicles;

b. Chevrolet Malibu Maxx: All model year 2004 and 2005, and some 2006 model year;

c. Chevrolet HHR (Non-Turbo): Some model year 2009 and 2010 vehicles;

d. Chevrolet Cobalt: Some model year 2010 vehicles;

e. Saturn Aura: Some model year 2008 and 2009 vehicles;

f. Saturn ION: All model year 2004 to 2007 vehicles;

g. Pontiac G6: All model year 2005, and some model year 2006 and model year 2008 and 2009 vehicles; and

h. Service parts installed into certain vehicles before May 31, 2010 under a previous safety recall.

GM Recalls Older Model Vehicles to Fix Power Steering, Mar. 31, 2014.

68. In its March 31, 2014 press release, New GM states that the 2004-2007 model years Saturn Ion, the 2009-2010 model years Chevrolet HHR, and the 2010 model year Chevrolet Cobalt "are included in previously announced recalls for ignition switches that may

[4] *Available at* http://media.gm.com/media/us/en/gm (last visited June 2, 2014).

not meet GM specification for torque performance" and that "[r]epairs for the ignition switch and power steering assist may require separate dealership visits depending on parts availability." (*Id.*).

69. On May 15, 2014, New GM filed a Form 8-K with the SEC concerning five additional safety recalls involving approximately 2.7 million vehicles (collectively, the "May 15 Recall"). According to New GM's May 15, 2014 press release attached thereto as Exhibit 99.1, the "largest recall" among the May 15 Recall involves 2,440,524 2004-2012 model years Chevrolet Malibu, 2004-2007 model years Chevrolet Malibu Maxx, 2005-2010 model years Pontiac G6 and 2007-2010 model years Saturn Aura vehicles in the U.S. to "modify the brake lamp wiring harness." The "[a]ffected vehicles could have a corrosion develop in the wiring harness for the body control module" and the "condition could result in brake lamps failing to illuminate when the brakes are applied," "brake lamps illuminating when the brakes are not engaged," and the disabling of "cruise control, traction control, electronic stability control, and panic braking assist operation." *GM Announces Five Safety Recalls*, May 15, 2014.[5]

70. The May 15 Recall also includes the recall of more than 111,889 2005-2007 model years Chevrolet Corvettes "for [a] potential loss of low-beam headlamp operation" that "could reduce the driver's visibility, increasing the risk of a crash." (*Id.*).

71. The remaining recalls announced through the May 15 Recall cover:

(a) 140,067 2014 model year Chevrolet Malibu vehicles due to the "disabling of hydraulic brake boost that can require greater pedal efforts;"

(b) 19,225 2013-2014 model years Cadillac CTS vehicles "for a condition in which the windshield wiper system may become inoperable after a vehicle jump start with wipers active and restricted, such as by ice and snow," causing a "[p]otential lack of visibility [that] could increase the risk of a crash;" and

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[5] *Available at* http://media.gm.com/media/us/en/gm (last visited June 2, 2014).

(c) 477 2014 model year Chevrolet Silverado and GMC Sierra vehicles and 2015 model year Chevrolet Tahoe vehicles, in which an "attachment to the steering gear rack . . . may not be tightened to specification," potentially leading a "crash [to] occur without warning."

(*Id.*).

72. On May 20, 2014, New GM filed a Form 8-K with the SEC concerning four new safety recalls involving approximately 2.42 million vehicles (the "May 20 Recall"). The May 20, 2014 press release attached thereto as Exhibit 99.1 indicates that the May 20 Recall covers:

(a) 1,339,355 2009-2014 model years Buick Enclave, Chevrolet Traverse, and GMC Acadia vehicles and 2009-2010 model years Saturn Outlook vehicles "because front safety lap belt cables can fatigue and separate over time" and during a crash, "a separated cable could increase the risk of injury to front seat passengers;"

(b) 1,075,102 "previous generation" 4-speed automatic transmission and 2004-2008 model years Chevrolet Malibu and 2005-2008 model years Pontiac G6 vehicles "because of a shift cable that could wear out over time," potentially preventing the driver from "select[ing] a different gear, remov[ing] the key from the ignition, or plac[ing] the transmission in park;"

(c) 1,402 2015 model year Cadillac Escalades and Escalade ESV vehicles "because an insufficiently heated plastic weld that attaches the passenger side air bag to the instrument panel assembly could result in a partial deployment of the air bag in the event of a crash," leading New GM to stop sale of all 2015 Escalade and Escalade ESV vehicles and to contact customers who had taken delivery of these vehicles to instruct them "to not let occupants sit in the front passenger seat until the vehicle has been serviced;" and

(d) 58 2015 model year Chevrolet Silverado HD and GMC Sierra HD vehicles "because retention clips attaching the generator fuse block to the vehicle body can become loose and lead to a potential fire."

GM Recalls 2.42 Million Vehicles in Four U.S. Recalls, May 16, 2014.[6]

73. On June 16, 2014, New GM filed a Form 8-K with the SEC "regarding safety recalls of certain models primarily to rework or replace the ignition keys on approximately 3.16

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[6] *Available at* http://media.gm.com/media/us/en/gm (last visited June 2, 2014).

million U.S. cars from the 2000 to 2014 model years" (collectively, the "June 16 Recall"). According to New GM's June 16, 2014 press release attached thereto as Exhibit 99.1, the June 16 Recall involves 2005-2009 model years Buick Lacrosse, 2006-2014 model years Chevrolet Impala, 2000-2005 model years Cadillac Deville, 2004-2011 model years Cadillac DTS, 2006-2011 model years Buick Lucerne, 2004-2005 model years Buick Regal LS & GS, and 2006-2008 model years Chevy Monte Carlo vehicles.

74. In an interview dated June 26, 2014 with Matt Lauer of the Today Show, Mary Barra, Chief Executive Officer of New GM, was asked whether New GM would be issuing additional recalls. Ms. Barra responded: "It's—it's possible."

75. On June 30, 2014, New GM filed a Form 8-K with the SEC concerning additional safety recalls covering approximately 7.6 million vehicles in the U.S. (collectively, the "June 30 Recall"). According to New GM's June 30, 2014 press release attached thereto as Exhibit 99.1, the June 30 Recall involves about 7.6 million vehicles from the 1997 to 2014 model years and relates to "inadvertent ignition key rotation." (*Id.*).

76. On July 23, 2014, New GM announced six additional safety recalls covering a total of 717,949 vehicles in the U.S. (collectively, the "July 23 Recall"). According to New GM's July 23, 2014 press release, the recalls cover vehicles from model years 2010 through 2015 and pertain to safety-related defects in those vehicles' front turn signals, front-turn signal bulbs, roof-rail air bags, electric power steering, power height adjustable seats, lower control arm bolts, and incomplete welds on seat hook bracket assemblies.

77. The Ignition Switch Recall, the March 17 Recall, the Power Steering Assist Recall, the May 15 Recall, the May 20 Recall, the June 16 Recall, the June 30 Recall, and the July 23 Recall are among the recalls that New GM has issued since January 1, 2014, but they are not the only recalls New GM has announced since that time. According to New GM, 25,484,746

vehicles in the U.S. from model years 1997-2015 have been recalled since January 13, 2014 to date. *See* GM Q1 and Q2 2014 North American Recalls Including Exports.[7]

[7] *Available at http://media.gm.com/content/dam/Media/images/US/Release_Images/2014/05-2014/recalls/Recalls-Running-Total.jpg* (last visited July 28, 2014).

Attachment 1

ATTACHMENT 1

THE GUC TRUST'S AND UNITHOLDERS' PROPOSED STIPULATIONS OF FACT NOT AGREED TO BY OTHER COUNSEL FOR THE IDENTIFIED PARTIES

1. As of August 8, 2014, New GM has not confirmed that there will not be additional recalls of vehicles relating to the Ignition Switch.

2. As of March 31, 2014, the sum of (i) Allowed General Unsecured Claims (approximately $31.854 billion, as reported in paragraph 45 of the Equitable Mootness Stipulations) and (ii) the Maximum Amount (as such term is defined in and calculated in accordance with the GUC Trust Agreement) of Disputed General Unsecured Claims that could become Resolved Allowed Claims (approximately $1.579 billion, as reported in paragraph 46 of the Equitable Mootness Stipulations) totaled approximately $33.433 billion.

3. Based on closing prices of New GM Securities, as reported by Bloomberg Finance, L.P., as of July 16, 2014, the total value of GUC Trust assets set aside for distribution in respect of current Disputed General Unsecured Claims (including the potential Term Loan Avoidance Action Claims) is approximately $576,905,901.

4. While certain late claims have been allowed in the Old GM bankruptcy case, less than 1% (0.093%) of total allowed claims as of the Bar Date were allowed subsequent to the Bar Date but before the Effective Date, and less than 1% (0.147%) of total allowed claims as of the Bar Date were allowed subsequent to the Bar Date and after the Effective Date.

5. As reported by Bloomberg Finance L.P., as of July 14, 2014, approximately 96 million GUC Trust Units have been bought and sold since June 14, 2012.

6. As reported by Bloomberg Finance L.P., as of July 14, 2014, the aggregate trading value of the GUC Trust Units that have traded since June 14, 2012 (based on daily closing prices) totals approximately $1.993 billion.

7. On August 8, 2014, New GM announced five new safety recalls of 269,001 model years 2002-2004, 2009-2010, and 2013-2015 vehicles (collectively, the "August 8 Recall"). *GM Announces Recalls*, Aug. 8, 2014.[8] Among the vehicles recalled through the August 8 Recall are 202,115 model years 2002-2004 Saturn VUEs "because the ignition key can possibly be removed when the vehicle is not in the off position." According to New GM, New GM has recalled 25,754,356 vehicles in the U.S. from model years 1997-2015 since January 13, 2014 to date. *See* GM 2014 Year-to-Date North American Recalls Including Exports.[9]

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[8] Available at *http://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2014/Aug/0808-recalls.html* (last visited Aug. 8, 2014).

[9] *Available at* http://media.gm.com/content/dam/Media/images/US/Release_Images/2014/05-2014/recalls/Recalls-Running-Total-pdf.pdf (last visited Aug. 8, 2014).

Exhibit L

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-_____ (___)**
Debtors.	:	**(Jointly Administered)**

DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b), (f), (k), AND (m), AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006, TO (I) APPROVE (A) THE SALE PURSUANT TO THE MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) OTHER RELIEF; AND (II) SCHEDULE SALE APPROVAL HEARING

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

General Motors Corporation ("GM") and certain of its subsidiaries, as debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors" or the "Company"), respectfully represent:

Overview

1. By this Motion, the Company seeks entry of two orders. First, the Company requests entry of an order (the "Sale Procedures Order"), pursuant to 11 U.S.C.

§§ 105(a) and 363 and Fed. R. Bankr. P. 2002 and 6004, (i) authorizing and approving certain proposed procedures to govern the sale process and provide for the submission of any competing bids for substantially all the Debtors' assets and the form and manner of notices of (a) the hearing to consider authorization and approval of the sale, (b) the assumption and assignment of executory contracts and unexpired leases of personal property and of nonresidential real property (collectively, the "Leases") pursuant to 11 U.S.C. § 365, and (c) the approval of the UAW Retiree Settlement Agreement,[1] and (ii) setting a hearing to consider the sale on June 30, 2009. Second, subject to the terms of the Sale Procedures Order and the entry of an order (the "Sale Order"), pursuant to 11 U.S.C. §§ 105, 363(b), (f), and (m), and 365 and Fed. R. Bankr. P. 6004 and 6006, authorizing and approving, among other things, (i) the sale of the Debtors' assets pursuant to the proposed Master Sale and Purchase Agreement and related agreements (the "MPA") among the Debtors (the "Sellers") and Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury"), free and clear of liens, claims, encumbrances, and other interests (the "363 Transaction"), (ii) the assumption and assignment of certain executory contracts and Leases, and (iii) the approval of UAW Retiree Settlement Agreement.

2. The instant Motion requests approval of a sale transaction that embodies the objective of the Debtors to implement the only available means to preserve and maximize the value, viability, and continuation of the Company's business and, by extension, preserve and provide jobs for the Company's employees and others and

[1] Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the MPA and/or the Affidavit of Frederick A. Henderson Pursuant to Local Bankruptcy Rule 1007-2, filed contemporaneously herewith.

enhance the interests of its economic stakeholders through a sale that is made possible only because it also is a critical element of the program adopted by the United States Government to preserve the domestic automotive industry. The result of the sale will be the continuation of the business represented by the assets to be sold that will make the Purchaser (sometimes referred to as "New GM") a lynchpin of the domestic automotive industry so this nation once again can assume its place as the domicile of one of the leading automotive manufacturers in the world. The proposed sale is the only viable alternative that will permit the realization of the going concern value of the assets to be sold and effect the transformation of the Purchased Assets to be the foundation for an efficient, productive, and economically viable business that will be competitive and a source of pride and employment for hundreds of thousands of workers. At the same time, it will avoid systemic failure in the automotive industry and other sectors of the economy as well as offer hope for thousands of other businesses and their employees that supply or otherwise are dependent upon the Company, together with the countless communities in which those businesses and their employees are located.

3. These chapter 11 cases are the result of the economic collapse and liquidity crisis that began to surface during the end of 2007 and exploded in 2008 that materially and adversely affected the Debtors' business. Prior to the commencement of these chapter 11 cases, the exigent economic circumstances compelled the Company to seek financial assistance from the federal government in order to sustain its operations and avoid a potentially fatal systemic failure, a failure that would have prejudiced not only the Company itself, but also other entities and hundreds of thousands of persons employed by them in the automotive industry.

4. As GM's largest secured creditor, the United States Government has dedicated substantial time and effort negotiating with the Company to preserve the going concern value of the GM enterprise to achieve the objectives noted above in the national interest. The transaction for which this Motion seeks approval is the result of those efforts.

5. The success of an automotive manufacturing company depends on the ultimate retail sale of the vehicles it manufactures. Consumers must have confidence in GM's products, i.e., that a new GM will exist in the future so that it can stand behind its products. It is in this context that the timing of the transformation of the assets, in connection with the approval of the sale, becomes critical.

6. To instill confidence on the part of consumers, employees, suppliers, and other stakeholders that a New GM – one that is viable and competitive – will quickly emerge from bankruptcy, the proposed sale of substantially all of the Company's assets to the Purchaser under 11 U.S.C. § 363 must be expeditiously pursued and approved. Implementation of the sale will best serve the interests of the Company's economic stakeholders, as the only other alternative will result in little or no recoveries from the Company's assets as well as severe economic consequences for the domestic automotive industry and the nation.

7. New GM, to be established under the 363 Transaction, will be a new, reshaped business that is not entangled by financial and operating distress or bankruptcy and that (a) will be competitive and profitable, both here and abroad, (b) will demonstrate to consumers the existence of a viable business that manufactures competitive and attractive products, (c) satisfies the goals of the U.S. Government, and

(d) has the full backing of the U.S. Treasury, the Government of Canada and the Government of Ontario, through Export Development Canada ("EDC"), Canada's export trading agency, and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"). Importantly, the 363 Transaction will restore confidence on the part of consumers that they can purchase a GM vehicle without concerns regarding residual value, replacement parts, warranty obligations, and maintenance. Employees, suppliers, dealers, and communities will be able to depend on New GM as an economically viable and competitive enterprise.

8. It is imperative that the 363 Transaction be expeditiously approved. Any delay in the consideration of this Motion will result in continuing and increasing revenue erosion and further loss of market share to other domestic and foreign manufacturers that are not suffering aggravated financial distress. Absent prompt confirmation that the sale has been approved and that the transfer of the assets will be implemented, it is highly probable that GM will have to liquidate. There are no realistic alternatives available. There are no merger partners, acquirers, or investors willing and able to acquire GM's business. Other than the U.S. Treasury and EDC, there are no lenders willing and able to finance the Company's continued operations. Similarly, there are no lenders willing and able to finance the Company in a prolonged chapter 11 case. Even if funding were available for an extended bankruptcy case, many consumers would not consider purchasing a vehicle from a manufacturer whose future is uncertain and that is entangled in the vagaries and vicissitudes of the bankruptcy process. Even a short delay would have a serious and immediate detrimental impact on the Company's supply

chain, dealers, hundreds of thousands of employees of such suppliers and dealers, as well as upon GM's competitors that purchase parts from such suppliers.

9. Uncertainty as to the Company's future must be eliminated now if the Company's failure and systemic consequences are to be avoided . A lengthy chapter 11 case for the Debtors is not an option. No debtor in possession financing is available in the absence of the 363 Transaction. No entity – other than the U.S. Treasury – has the wherewithal or the inclination to provide such financing. Moreover, even if such an entity should suddenly surface, it would be unable to provide the U.S. Treasury with adequate protection for the U.S. Treasury's currently outstanding approximate $19.7 billion secured claim.

10. The U.S. Treasury, now GM's largest secured creditor and the sponsor of the Purchaser under the 363 Transaction, became a secured creditor in order to serve the national interest in preserving the Company's business. The U.S. Government fully supports the 363 Transaction in order to assist in stabilizing the economy and preserving the basic domestic automotive industry and its jobs. The U.S. Treasury is willing and able to take the necessary steps to transform and maintain the viability of the Company's business via the proposed 363 Transaction. However, it is only willing to continue providing such financial assistance if the bankruptcy process serves the goal of preserving the going concern value of the assets by concluding the sale expeditiously. It is unwilling to make an open-ended commitment of billions of taxpayer dollars to support a traditional chapter 11 case – or to sponsor the purchase of what may be left of the Company at the end of such a case. The Debtors, in the exercise of sound business judgment, and the U.S. Treasury have concluded that the 363 Transaction is the only

means of preserving value and continuing the transformed business for the benefit of all economic stakeholders and in the national interest.

11. The 363 Transaction is consistent with President Obama's remarks on the American automotive industry in that it "is our best chance to make sure that the cars of the future are built where they've always been built – in Detroit and across the Midwest – to make America's auto industry in the 21st century what it was in the 20th century – unsurpassed around the world." Barack H. Obama, U.S. President, Remarks on the American Automotive Industry at 7 (Mar. 30, 2009) [hereinafter *Presidential Remarks*].

Historical Background

12. On the date hereof (the "Commencement Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11, United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory creditors' committee has been appointed in these chapter 11 cases.

13. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of the chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

14. The facts and circumstances that resulted in the commencement of these chapter 11 cases are set forth in the Affidavit of Frederick A. Henderson, the President and Chief Executive Officer of GM, pursuant to Local Bankruptcy Rule 1007-2

(the "First Day Affidavit" or "Henderson Affidavit"), filed contemporaneously with this Motion, and are incorporated herein as if fully and at length set forth.

The Master Sale and Purchase Agreement

15. Subject to approval and the submission of any higher or better offers, the Sellers have reached an agreement with the Purchaser (together with the Sellers, the "Parties")[2] as embodied in the proposed MPA. The MPA is the result of extensive, arm's-length negotiations among the parties. It is an essential part of the program adopted by the U.S. Treasury to revitalize the U.S. automotive industry.

16. The 363 Transaction, as embodied in the MPA, contemplates that substantially all of the Sellers' assets, including substantially all of the equity interests of their directly-held subsidiaries and joint ventures (other than certain excluded entities) (the "Purchased Assets"), will be sold and transferred to the Purchaser, and that certain liabilities of the Sellers (the "Assumed Liabilities") will be assumed by the Purchaser. Any assets excluded from the sale will be administered in the chapter 11 cases, and sufficient cash is to be made available to GM to fund the wind-down or other disposition of the Sellers' assets.

17. Pursuant to a Transition Services Agreement to be entered into at or prior to the Closing, from and after the Closing, the Purchaser or one or more of its subsidiaries will provide the Sellers and their respective subsidiaries with certain

[2] The proposed MPA, substantially in the form annexed hereto as Exhibit "A," is without schedules and exhibits. The Debtors will file with the Bankruptcy Court a copy of the MPA with all schedules and exhibits thereto (excluding certain commercially sensitive information) and make the same available for review, free of charge, on the website of the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., at http:/www.gmcourtdocs.com. Copies of the MPA with all schedules and exhibits thereto (excluding certain commercially sensitive information) may also be obtained from the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., by contacting them by (i) regular mail at 105 Maxess Road, Melville, New York 11747, or (ii) telephone for U.S. and international callers at 703-286-6401.

transition services and support functions, as reasonably required by the Sellers to (i) wind down and liquidate under the Bankruptcy Code and (ii) operate in chapter 11 prior to liquidation.

18. The purchase price for the Purchased Assets is equal to the sum of

- a section 363(k)[3] credit bid in an amount equal to (i) the amount of Indebtedness of Parent and its Subsidiaries owed to the Purchaser as of the Closing pursuant to the UST Credit Facilities and the DIP Facility, *less* (ii) approximately $7.7 billion of indebtedness under the DIP Facility;

- the UST Warrant;

- the issuance by the Purchaser to GM of 10% of the Common Stock of the Purchaser as of the Closing);

- Warrants to purchase up to 15% of the shares of common stock of the Purchaser, with the initial exercise prices for equal amounts of the warrants based on $15 billion and $30 billion equity values of the Purchaser. The warrants will be exercisable through the seventh and tenth anniversaries of issuance, respectively, and GM can elect partial and cashless exercises; and

- the assumption by the Purchaser of the Assumed Liabilities.

In addition, in the event the Bankruptcy Court determines that the estimated amount of allowed prepetition general unsecured claims against the Debtors exceeds $35 billion, then the Purchaser will issue an additional 2% of the outstanding common stock of the Purchaser as of the Closing.

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[3] Section 363(k) of the Bankruptcy Code provides:

> At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

11 U.S.C. § 363(k).

19. The MPA requires the Sellers to use their reasonable efforts to enter into Participation Agreements that would modify the Sellers' Continuing Brand Dealer Agreements with certain dealers associated with Continuing Brands. Each Continuing Brand Dealer Agreement, as modified by the Participation Agreement, would constitute an Assumable Executory Contract under the MPA. All dealers associated with Continuing Brands who are not offered the opportunity, or who are extended an opportunity but decline, to enter into a Participation Agreement, will be given the opportunity to enter into short-term deferred voluntary termination agreements (the "Deferred Termination Agreements").

20. The MPA requires the Sellers to use their reasonable best efforts to enter into Deferred Termination Agreements with (i) all dealers associated with Continuing Brands who were not offered the opportunity (or who were extended the opportunity and declined) to enter into a Participation Agreement and (ii) all dealers associated with Discontinued Brands. Each Deferred Termination Agreement will be an Assumable Executory Contract under the MPA. In the absence of a Deferred Termination Agreement with the applicable counterparty, the dealer agreements will constitute Rejectable Executory Contracts under the MPA.

21. After the Closing, the Purchaser would have responsibility for the administration, management, and payment of all liabilities arising under express written emission and limited warranties delivered in connection with the sale of new vehicles or parts manufactured or sold by the Sellers at or prior to the Closing or the Purchaser after the Closing.

22. Substantially all the executory contracts associated with direct suppliers are likely to be assumed by the Sellers and assigned to the Purchaser at or following the Closing.

23. Any payments that are made to the Debtors' creditors in connection with the 363 Transaction (other than payments of Cure Amounts in connection with the assumption and assignment of Assumable Executory Contracts) will be voluntarily made by New GM.

24. Effective as of the Closing Date, the Purchaser will make an offer of employment to all of the Sellers' non-unionized employees and unionized employees represented by the UAW (including those on an approved leave of absence).

25. The U.S. Treasury and EDC will provide a debtor in possession credit facility to the Sellers in order to fund operations pending the sale of the Purchased Assets. Notably, EDC has agreed to participate in the DIP financing to assure the long-term viability of GM's North American enterprise. The Debtors have filed a separate motion seeking approval of the DIP financing.

26. Finally, as part of the 363 Transaction, the Purchaser and the UAW have reached a resolution addressing the ongoing provision of certain employee and retiree benefits. Under the UAW Retiree Settlement Agreement, the Purchaser has agreed to provide, among other things: (i) shares of common stock of the Purchaser representing 17.5% of the Purchaser's total outstanding common stock, (ii) a note of the Purchaser in the principal amount of $2.5 billion, (iii) shares of cumulative perpetual preferred stock of the Purchaser in the amount of $6.5 billion, (iv) warrants to acquire 2.5% of the Purchaser's equity, and (v) the assets held in a voluntary employees'

beneficiary association trust sponsored by the Sellers and to be transferred to the Purchaser as part of the 363 Transaction, in each case to a new voluntary employees' beneficiary association sponsored by an employees beneficiary association (the "New VEBA"), which will have the obligation to fund certain retiree benefits for the Debtors' retirees and surviving spouses represented by the UAW (the "UAW-Represented Retirees").

27. In connection with the foregoing, the UAW has agreed to be the authorized representative for UAW-Represented Retirees for purposes of section 1114 of the Bankruptcy Code and will enter into the UAW Retiree Settlement Agreement effective upon the Closing of the 363 Transaction. The class representatives, on behalf of the class members, by and through class counsel in certain class actions previously filed against GM on behalf of UAW-Represented Retirees regarding health care benefits (the "Class Representatives") have acknowledged and confirmed the UAW Retiree Settlement Agreement. As part of the 363 Transaction, the Purchaser also will assume modified and duly ratified collective bargaining agreements entered into by and between the Debtors and the UAW (the "UAW CBA Assignment").

28. In addition, GM, the UAW, and the Class Representatives have entered into an agreement, dated May 29, 2009 (the "UAW Claims Agreement"), pursuant to which the UAW and the Class Representatives have agreed, subject to the consummation of the 363 Transaction and the UAW Retiree Settlement Agreement becoming effective following approval by the Court, to take further actions to release claims against GM and its subsidiaries, and their employees, officers, directors, and agents, relating to retiree medical benefits pursuant to the Settlement Agreement, dated

February 21, 2008, between the Company and the UAW, the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW ("MOU"), and the Agreement between the UAW and General Motors Corporation, dated September 26, 2007 (effective October 15, 2007); *provided* that such claims may be reinstated if the rights or benefits of the UAW-Represented Retirees under the UAW Retiree Settlement Agreement are adversely impacted by reason of any reversal or modification of the Court's approval of the 363 Transaction or the UAW Retiree Settlement Agreement. Accordingly, the Debtors seek approval of the UAW Retiree Settlement Agreement and the assumption by GM of the UAW Claims Agreement, in each case as an agreement with the UAW, as the authorized representative of the UAW-Represented Retirees.

29. The Debtors have proposed the UAW Special Retiree Notice (as defined below) for individual retirees covered by the UAW Retiree Settlement Agreement and, with respect to such retirees, seek approval of the UAW Retiree Settlement Agreement to afford them an opportunity to be heard.

The 363 Transaction Is the Only Option

30. There is no viable alternative to the 363 Transaction. In light of the substantial secured indebtedness of the Company totaling approximately $27 billion, the only entity that has the wherewithal and is qualified to acquire the Purchased Assets to assure the continued operation of the business is the U.S. Treasury-sponsored Purchaser.

31. Since the onset of the economic collapse that has engulfed the world economy, General Motors has struggled to overcome the deteriorating worldwide

economic conditions and the credit crunch that has negatively affected the Company. As described in the Henderson Affidavit, the Company has expended significant time and effort exploring numerous operational, financing, and other transactional options regarding how to best transform its obligations and, if necessary, its operations to create a more efficient, productive, and viable business that would be competitive in the industry.

32. The financial and operational distress confronting the Company has been well publicized. It has been, and continues to be, the subject of substantial media attention. The decline in the value of GM's shares of common stock from $93.62 per share as of April 28, 2000 to $1.09 per share as of May 15, 2009, and the dramatic decrease in market capitalization of approximately $59.5 billion, is illustrative of the public market's appreciation of GM's distress. The basic elements of the 363 Transaction likewise have been widely reported. Notwithstanding, there have been no credible proposals to purchase or invest in any of the Company's assets or to purchase the Company's total business.

33. The 363 Transaction is the only realistic alternative for the Company to avoid liquidation of its assets that would severely undermine the automotive industry. The 363 Transaction preserves the value of the Purchased Assets and the benefits that result from the ongoing business operations. The Purchaser is the only entity capable of purchasing the Purchased Assets and closing the 363 Transaction.

Time Is of the Essence

34. The Debtors, their employees and creditors, and others that rely upon the Company's continuing business will suffer immediate and irreparable harm if the 363 Transaction is not approved on an expedited basis. The immediate

consummation of the 363 Transaction is necessary and appropriate to maximize the value of the Debtors' assets, particularly given the wasting nature of the Purchased Assets and an automotive business tainted with an unresolved bankruptcy case. The 363 Transaction must be approved and consummated speedily.

35. Any delay in the transfer of the Debtors' business and assets will have a substantial negative impact on the Company's revenue and market share. Time is of the essence because the value of the Purchased Assets is fragile and subject to substantial deterioration as consumers move to other bankruptcy-free brands. Even a short delay in the consummation of the 363 Transaction would have a detrimental impact on the Company's dealer networks, its suppliers, and their respective employees, as well as the confidence of the Company's customers and its own employees. In particular, the failure of one or more of its suppliers would have a serious effect not only on the Debtors' business, but also upon competitors that rely on the same suppliers. Thus, the unique circumstances related to the Purchased Assets necessitate the expedited approval of the 363 Transaction to avoid the permanent damage that would ensue from any delay.

36. Consumer Confidence. The success of the Company's business is dependent on the sale of cars and trucks. To survive as a viable business, and to achieve success in selling cars and trucks, consumers must have confidence in the manufacturer of the car or truck so that they can have confidence that they will receive value, reliability, warranty protection, and future servicing through an integrated dealer system.

37. The purchase or lease of a new car or truck represents the second largest expenditure of the typical American household. Not surprisingly, then, information compiled by, or at the direction of, the Company confirms that the mere

threat of a bankruptcy filing has depressed GM's sales and that, in an extended period of a bankruptcy case, the sales reductions and customer defections can be expected to be even more significant. Indeed, in the days following the announcement of the U.S. Treasury Loan Agreement, GM immediately began to suffer a sharp reduction in market share, while at the same time there was a corresponding increase in sales of vehicles manufactured by some of the Company's competitors, notwithstanding the absence of favorable financial reports applicable to those competitors.

38. Consumers have little confidence in purchasing a vehicle from a bankrupt original equipment manufacture ("OEM"). It is self-evident, then, that the longer it takes for New GM to begin operations, the more likely it will be that consumers will decline to purchase a car or truck from that entity. That, in turn, will make the Company's assets even less valuable in a sale – and may even eliminate a going concern sale as a viable alternative. The only recourse would then be a forced liquidation, which would be disastrous for all the Debtors' economic stakeholders.

39. Restoring consumer confidence in the Company's products and stability is a prerequisite to a successful future for New GM. The U.S. Treasury's willingness to sponsor the purchase of the Purchased Assets to retain a major domestic industry is expressly conditioned on the recognition that crucial time is passing and that any delay in the consummation of the 363 Transaction, and the attendant creation of New GM, will prolong consumer resistance to the Company's products. Such delay may be fatal not only to the Company, but also to countless parts suppliers, with consequent implications for the entire U.S. automotive industry. The 363 Transaction represents a window of opportunity to sell the Purchased Assets and thereby maximize value.

Elimination of any uncertainty as to future viability of New GM is the *sine qua non* of implementing the U.S. Government's objective to sustain a basic domestic automotive industry.

40. Suppliers and Dealers. An expeditious approval of the 363 Transaction is also necessary in order to address the tenuous financial condition of the numerous independent businesses that make up the Company's supply chain. The deepening crisis in the national economy and the automobile industry has not only affected General Motors, but also thousands of suppliers and vendors that supply products and material to General Motors. In light of the credit crisis and the precipitous decline in automobile sales, many suppliers are unable to access credit and are facing growing uncertainty about the prospects for their businesses. Thus, immediately following the commencement of chapter 11 cases by Chrysler LLC, six major suppliers were placed on watch by Standard & Poor's. *See* Liam Denning, Surveying Chrysler as Wheels Fall Off, Wall St. J. (May 1, 2009).

41. Consistent with industry practice, General Motors operates on a "just-in-time" inventory delivery system. Components and parts from suppliers typically are assembled onto vehicles within a few hours of the delivery of the parts to GM assembly facilities. To achieve the economies of scale required to compete in the automotive industry, General Motors, as well as its competitors in the industry, generally use a single supplier for specific parts for each vehicle line. As the Company frequently purchases all of its requirements for a particular part from one supplier, a sole-source supplier's ability to survive and make scheduled shipments is of material importance to each of General Motors' vehicle production lines.

42. Many of these suppliers are entirely dependent, and countless others are substantially dependent, on the Company for their survival, and many of them already are in severe financial distress. As recently observed in the Report to Congressional Committees prepared by the United States Government Accountability Office:

> More than 500,000 workers are employed by companies in the United States that manufacture parts and components used by automakers – both domestic automakers and transplants. According to the Motor and Equipment Manufacturers Association, many suppliers are in severe financial distress, with a number having filed for bankruptcy in 2008. Some members of our panel said that because many of these suppliers have relatively high costs and depend on the business of the Detroit 3, some of them may not have enough revenue to survive if one of the automakers were to cease production. This, in turn, could affect the automakers' ability to obtain parts needed to manufacture vehicles. *This dynamic has the potential to affect all automakers with production facilities in the United States, regardless of home country.*

U.S. Govt. Accountability Office, Report to Congressional Comm.: Auto Industry: Summary of Government Efforts and Automakers' Restructuring to Date at 6 (Apr. 2009) [hereinafter *GAO Report*].

43. The domestic automobile industry is interdependent, with an estimated 80% overlap in supplier networks. *See* Ford Motor Company Business Plan Submitted to the Senate Banking Committee at 2 (Dec. 2, 2008) ("Our industry is an interdependent one. We have 80 percent overlap in supplier networks."). Therefore, the collapse of GM would affect the other OEMs because it could impact the ability of shared suppliers to continue operations. *See generally GAO Report* at 33 ("according to the automakers and some panelists, the collapse of one or more of the domestic

automakers would affect the remaining automakers because, among other things, such a collapse could impact the ability of shared suppliers to continue operations").

44. Manifestly, any delay in the approval of the 363 Transaction would have a disastrous impact on the supply chain, as well as the employees of such suppliers, dealers, and their employees, and the other OEMs that obtain parts and other components from such suppliers. The domino effect is patent: the financial condition of suppliers would further deteriorate; more suppliers would need to cease operations and/or commence bankruptcy cases; the employees of such suppliers would lose their jobs; dealers would no longer have a continuous supply of service parts to maintain and repair vehicles; the employees of the dealers would lose their jobs; and other OEMs with production facilities in the United States would suffer as they would no longer to be able to obtain the necessary parts and components to maintain their manufacturing lines.

45. An expedited approval of the 363 Transaction, however, will avoid the occurrence of such potential systemic failure. Under the 363 Transaction, most supplier agreements will be assumed and assigned to the Purchaser, who will cure any existing defaults. In addition, the 363 Transaction will enable New GM, as an economically viable enterprise, to assist the ability of suppliers to remain in business with the attendant benefits to their employees and other parties in interest.

Extraordinary Provisions Under the Guidelines

46. The MPA contains the following provisions which may be considered "Extraordinary Provisions" under the Guidelines for the Conduct of Asset Sales established by the Bankruptcy Court on September 5, 2006 pursuant to General Order M-331):

- Deadlines that Effectively Limit Notice. The timeline proposed for the Sale Procedures Hearing and the Sale Hearing (each as hereinafter defined) may limit the notice period that may otherwise be afforded parties in interest under the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules for the Southern District of New York. Nevertheless, given the exigent circumstances described herein and in the Henderson Affidavit, as well as the fact that it has been widely known that the Company's assets and businesses have been available for sale and that the Debtors' precarious financial and operational condition have been widely reported in the media on a daily basis for the past few months, due process is not hindered as a result of the proposed shortening of the applicable notice periods.

- No Good Faith Deposit. The Purchaser has not furnished the Sellers with a good faith deposit in connection with the MPA. Inasmuch as the Purchaser is sponsored by the U.S. Treasury, which is also the Debtors' largest secured creditor and the lender under the DIP financing, and given the extensive prepetition negotiations and the substantial investment of time and resources by the U.S. Treasury, there is no need for a good faith deposit.

- Record Retention. Pursuant to the MPA, all books, records, documents and other materials used or held for use in connection with the ownership or operation of the Purchased Assets or Assumed Liabilities, except for those relating exclusively to the Excluded Assets or Retained Liabilities, constitute Purchased Assets that are required to be delivered to the Purchaser at or prior to the Closing. However, the Parties are required to preserve all books and records that they own immediately after the Closing relating to the Purchased Assets, the Assumed Liabilities, and the Sellers' operation of the business relating thereto prior to the Closing for a period of six (6) years following the Closing Date or for such a longer period as may be required by applicable Law, unless disposed of in good faith pursuant to a document retention policy. During such period, the Sellers will have reasonable access to examine and copy such books and records (subject to certain exceptions relating to attorney-client privilege), thereby enabling them to administer these chapter 11 cases in an orderly and efficient manner

- Sale of Avoidance Actions. The MPA contemplates the sale to the Purchaser of potential avoidance Claims relating to or in connection with any payments by or to, or other transfers or assignments by or to, any Purchased Subsidiary.

- Requested Findings as to Successor Liability. The MPA and the Sale Order contemplate entry of certain findings by the Court as to successor liability. The MPA contemplates the transfer of the Purchased Assets free and clear of all liens, claims, encumbrances, and interests. As such, the findings set forth in the Sale Order comply with applicable principles of sales free and clear of liens, claims, encumbrances, and interests pursuant to section 363(f) of the Bankruptcy Code. The notice to be provided via the Publication Notice is reasonably calculated to provide all parties in interest (including parties with contingent claims) with the

necessary information concerning the 363 Transaction, the Sale Hearing, and the Sale Order, including the requested finding as to successor liability, because providing notice to these parties by mail is not practicable.

- Relief from Bankruptcy Rule 6004(h). For the reasons set forth herein, the Debtors request relief from the ten-day stay imposed by Bankruptcy Rule 6004(h). Given the likelihood that the Debtors' assets will rapidly diminish in value if the 363 Transaction is not immediately approved and promptly consummated, legitimate reasons exist to warrant this Court's approval of an order waiving the requirements of Bankruptcy Rule 6004(h).

Jurisdiction

47. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

48. The Debtors request entry of (i) the Sale Procedures Order, pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, authorizing and approving certain proposed procedures to govern the submission of competing bids for substantially all of the Sellers' assets and the form and manner of notices of (a) the date, time, and place of the hearing to consider the sale, (b) the assumption and assignment of executory contracts and Leases, and (c) the UAW Retiree Settlement Agreement; and (ii) the Sale Order, a copy of which is annexed hereto as Exhibit "B," pursuant to sections 105, 363(b), (f), (k), and (m), and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006, authorizing and approving, among other things, the (i) sale of the Purchased Assets pursuant to the MPA free and clear of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, (ii) assumption and assignment of certain

executory contracts and Leases, including the UAW CBA Assignment, and (iii) the UAW Retiree Settlement Agreement.

Proposed Sale Procedures and Notice

49. The sale of the Purchased Assets pursuant to the MPA is subject to higher or better offers. The MPA provides certain terms and procedures (collectively, the "Sale Procedures") to govern the submission of any competing offers based upon the MPA. The Sale Procedures are set forth in the MPA and in the proposed Sale Procedures Order, a copy of which is annexed hereto as Exhibit "C," and provide for the following:

- The hearing to consider the sale of the Purchased Assets (the "Sale Hearing") will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Courtroom __ of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, on June 30, 2009, at __:__ _.m. (Eastern Time), or as soon thereafter as counsel may be heard;

- In order to participate in the sale process, a person interested in acquiring the Purchased Assets (a "Potential Bidder") must first deliver to the Debtors by the Bid Deadline (as hereinafter defined) (with a copy to the Purchaser): (i) an executed confidentiality agreement that is reasonably satisfactory to the Debtors; and (ii) the most current audited and latest unaudited financial statements (collectively, the "Financials") of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of purchasing the Purchased Assets, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure acceptable to the Debtors, and (y) the written commitment acceptable to the Debtors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with purchasing the Purchased Assets;

- A "Qualified Bidder" is a Potential Bidder whose Financials (or the Financials of its equity holder(s), if applicable) demonstrate the financial capability to consummate the sale of the Purchased Assets and who the Debtors, in their discretion but after consulting with the UAW and any statutory committee of unsecured creditors appointed in these chapter 11 cases (the "Creditors Committee"), determine will be likely to consummate the sale of the Purchased Assets, if selected as the successful bidder, after taking into account all relevant legal, regulatory, and business considerations. Within two (2) days after the Debtors and the Purchaser timely receive from a Potential Bidder all the materials required in the preceding paragraph, the Debtors will determine, in consultation

with their advisors, the UAW, and the Creditors Committee, and will notify the Purchaser and the Potential Bidder in writing whether the Potential Bidder is a Qualified Bidder. The Purchaser is a Qualified Bidder and is not required to make a good faith deposit;

- If the Debtors, in their business judgment, determine that a Qualified Bidder that has submitted a written nonbinding expression of interest regarding the 363 Transaction is reasonably likely to make a bona fide offer that would result in greater value being received for the benefit of the Sellers' creditors than under the MPA, then the Debtors shall afford such Qualified Bidder reasonable due diligence, including the ability to access information from a confidential electronic data room concerning the Purchased Assets (the "Data Room");

- The deadline for submitting bids by a Qualified Bidder will be June 22, 2009, at 5:00 p.m. (Eastern Time) (the "Bid Deadline");

- Prior to the Bid Deadline, a Qualified Bidder that desires to make a bid will deliver (i) one written copy of its bid, and (ii) two copies of the MPA that has been marked to show amendments and modifications to the MPA, including price and terms, that are being proposed by the Qualified Bidder (a "Marked Agreement"), to: (a) the Debtors, (b) the attorneys for the Debtors, (c) the Purchaser, (d) the attorneys for the Purchaser, (e) EDC, (f) the UAW, (g) the attorneys for the UAW, and (h) the attorneys for the Creditors Committee;

- The Debtors and their advisors shall be entitled to due diligence from a Qualified Bidder, upon execution of a confidentiality agreement that is reasonably satisfactory to the Debtors. Each Qualified Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors. Failure by a Qualified Bidder to fully comply with requests for additional information and due diligence access will be a basis for the Debtors to determine that a bid made by the Qualified Bidder is not a Qualified Bid;

- A bid must be a written irrevocable offer from a Qualified Bidder (i) stating that the Qualified Bidder offers to consummate the sale of the Purchased Assets pursuant to the Marked Agreement; (ii) confirming that the offer will remain open until the closing of the sale of the Purchased Assets to the Successful Bidder (as defined below); (iii) enclosing a copy of the proposed Marked Agreement; (iv) accompanied with a certified or bank check, or wire transfer, in the amount of $500 million to be held in escrow as a good faith deposit (a "Good Faith Deposit");

- A bid must provide that the Qualified Bidder (i) agrees to the assumption by the Debtors and assignment to such Qualified Bidder of any collective bargaining agreements entered into by and between the Debtors and the UAW with the exception of (a) the agreement to provide certain retiree medical benefits

specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW, and (b) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW; and (ii) will enter into the UAW Retiree Settlement Agreement;

- In addition to the foregoing requirements, a bid or bids must: (a) be on terms that are not materially more burdensome or conditional than the terms of the MPA; (b) not be conditioned on obtaining financing or the outcome of unperformed due diligence by the bidder; (c) not request or entitle the bidder to any breakup fee, expense reimbursement, or similar type of payment; and (d) fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid and the complete terms of any such participation.

- A bid received from a Qualified Bidder and that meets the requirements set forth in the preceding two paragraphs will be considered a "Qualified Bid" if the Debtors, the UAW, and the Creditors Committee reasonably believe that such bid would be consummated if selected as the Successful Bid. For all purposes hereof, the Purchaser's offer to acquire the Purchased Assets pursuant to the MPA shall constitute a Qualified Bid.

- If the Sellers receive any Qualified Bids, the Sellers shall have the right to select, and seek final approval of the Bankruptcy Court for, the highest or otherwise best Qualified Bid(s) from the Qualified Bidders, which will be determined by considering, among other things, the (i) identity of the Qualified Bidder, (ii) number, type, and nature of any changes to the MPA requested by the Qualified Bidder, (iii) extent to which the identity of the Bidder or such modifications are likely to delay closing of the sale of the Purchased Assets and Assumed Liabilities to the Qualified Bidder and the cost to the Sellers of such modifications or delay, (iv) extent to which the Qualified Bid covers less than or more than all the Purchased Assets and Assumed Liabilities, and (v) financial strength of the Qualified Bidder and the availability of committed financing for the Qualified Bidder that would enable the Qualified Bidder to purchase the Purchased Assets and assume the Assumed Liabilities. All other considerations being equal, the Sellers shall strongly favor Qualified Bids for all the Purchased Assets. The Qualified Bidder making the highest or best Qualified Bid (the "Successful Bid") will be designated as the "Successful Bidder"; the next highest or otherwise best offer after the Successful Bid will be designated the "Next Highest Bid."

- If, however, no Qualified Bid (other than the Purchaser's) is received by the Bid Deadline, the MPA shall be the highest or best Qualified Bid, i.e., the Successful Bid, and the Purchaser shall be the Successful Bidder, and, at the Sale Hearing, the Debtors will seek approval of and authority to consummate the 363 Transaction contemplated by the MPA.

- The Debtors shall notify the Bankruptcy Court of the Successful Bid at the Sale Hearing, at which certain findings will be sought from the Bankruptcy Court, including that consummation of the 363 Transaction contemplated by the Successful Bid will provide the highest or otherwise best value for the Purchased Assets and is in the best interests of the Sellers and the Debtors' estates. In the event that, for any reason, the Successful Bidder fails to close the 363 Transaction contemplated by its Successful Bid, then, without notice to any other party or further Court order, the Debtors shall be authorized to close with the Qualified Bidder that submitted the Next Highest Bid.

- Except as otherwise provided in this paragraph with respect to the Successful Bidder and the Next Highest Bidder, the Good Faith Deposits of all Qualified Bidders required to submit such a deposit under the Sale Procedures shall be returned upon or within one (1) business day after entry of the Sale Order. The Good Faith Deposit of the Successful Bidder shall be held until the closing of the 363 Transaction and applied in accordance with the Successful Bid. The Good Faith Deposit of the Next Highest Bidder shall be retained in escrow until 48 hours after the closing of the 363 Transaction. Pending the closing of the 363 Transaction, the Good Faith Deposit of the Successful Bidder and the Next Highest Bidder shall be maintained in an interest-bearing escrow account. If the closing does not occur, the disposition of the Good Faith Deposits shall be as provided in the Successful Bid and Next Highest Bid, as applicable.

- The Sellers are required to reimburse the Purchaser for the Purchaser's reasonable out-of-pocket costs and expenses in connection with the 363 Transaction in the event that the MPA is terminated because the Court approves an Alternative Transaction, among other reasons.

50. Under Bankruptcy Rule 2002(a) and (c) and Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York, the Debtors are required to notify their creditors of the proposed sale of the Purchased Assets, including the terms and conditions of the Sale Procedures and the time set for filing objections. The Debtors request notice of this Motion and of the relief requested be deemed adequate and sufficient if:

- The Debtors (or their agent) serve, within three (3) days after entry of the Sale Procedures Order (the "Mailing Deadline"), by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a copy of the Sale Procedures Order upon: (i) the attorneys for the U.S. Treasury, (ii) the attorneys for Export Development Canada, (iii) the attorneys for the agent under the Debtors' prepetition secured term loan agreement, (iv) the attorneys for the agent

under the Debtors' prepetition amended and restated secured revolving credit agreement, (v) the attorneys for the Creditors Committee (if no statutory committee of unsecured creditors has been appointed, the holders of the fifty largest unsecured claims against the Debtors on a consolidated basis), (vi) the attorneys for the UAW, (vii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America, (viii) the United States Department of Labor, (ix) the attorneys for the National Automobile Dealers Association, (x) the attorneys for the ad hoc bondholders committee, (xi) any party who, in the past three years, expressed in writing to the Debtors an interest in the Purchased Assets and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated in the MPA, (xii) non-Debtor parties to the Assumable Executory Contracts, (xiii) all parties who are known to have asserted any lien, claim, encumbrance, or interest in or on the Purchased Assets, (xiv) the Securities and Exchange Commission, (xv) the Internal Revenue Service, (xvi) all applicable state attorneys general, local environmental enforcement agencies, and local regulatory authorities, (xvii) all applicable state and local taxing authorities, (xviii) the Federal Trade Commission, (ix) all applicable state attorneys general, (xx) United States Attorney General/Antitrust Division of the Department of Justice, (xxi) the U.S. Environmental Protection Agency and similar state agencies, (xxii) the United States Attorney's Office, (xxiii) all dealers with current agreements for the sale or leasing of GM brand vehicles, (xxiv) the Office of the United States Trustee for the Southern District of New York, and (xxv) all entities that requested notice in these chapter 11 cases under Bankruptcy Rule 2002; and

- On or before the Mailing Deadline, the Debtors (or their agent) serve by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a notice of the Sale Hearing (the "Sale Notice"), substantially in the form annexed hereto as Exhibit "D," upon (i) all other known creditors and (ii) all equity security holders of the Debtors of record as of May 27, 2009.

- On or before the Mailing Deadline, the Debtors (or their agent) serve by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a notice of the assumption and assignment of the Assumable Executory Contracts and the proposed cure amounts relating to the Assumable Executory Contracts (the "Assumption and Assignment Notice"), substantially in the form annexed hereto as Exhibit "E," upon the non-Debtor parties to the Assumable Executory Contracts.

- On or before the Mailing Deadline, the Debtors (or their agent) serve by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a notice of the 363 Transaction and the UAW Retiree Settlement, as well as a cover letter from the UAW describing the UAW Retiree Settlement Agreement and communicating the UAW's support of the 363 Transaction, including the UAW

Retiree Settlement Agreement (collectively, the "UAW Retiree Notice"), substantially in the form annexed hereto as Exhibit "F," upon (i) the UAW, (ii) the attorneys for the UAW, and (iii) all of the UAW-Represented Retirees. On the Mailing Deadline or as soon as practicable thereafter, the Debtors will cause the MPA, the Motion, the Sale Procedures Order, the UAW Retiree Notice, and the UAW Retiree Settlement Agreement, including all exhibits thereto (other than those containing commercially sensitive information), to be published on the website of the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., at http:/www.gmcourtdocs.com, in an area dedicated to retiree-related information (this website disclosure and the UAW Retiree Notice, collectively the "UAW Special Retiree Notice").

51. The Debtors also propose, pursuant to Bankruptcy Rule 2003(d) and 2002(*l*), that publication of the Sale Notice (the "Publication Notice"), substantially in the form annexed hereto as Exhibit "G," on the Mailing Deadline or as soon as practicable thereafter (i) once in (a) the global edition of *The Wall Street Journal*, (b) the national edition of *The New York Times*, (c) the global edition of *The Financial Times*, (d) the national edition of *USA Today*, (e) *Detroit Free Press/Detroit News*, (f) *Le Journal de Montreal*, (g) *Montreal Gazette*, (h) *The Globe and Mail*, and (i) *The National Post*, and (ii) on the website of the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com, be deemed proper notice to any other interested parties whose identities are unknown to the Debtors.

The Sale Procedures Should Be Approved

52. Good and sufficient cause exists to approve the Sale Procedures. The Sale Procedures are in the best interests of the Debtors and their economic stakeholders and other parties because they will enable the Company to realize the maximum value from the sale of the Purchased Assets. Additionally, the Sale Procedures include appropriate noticing procedures to ensure all parties in interest will receive adequate notice of all relevant information.

53. Expeditious Nature of Sale Procedures. The expeditious nature of the proposed Sale Procedures is reasonable and justified. As set forth above and in the Henderson Affidavit, GM's precarious financial and operational condition has been widely reported in all media on a daily basis for many months. Nevertheless, no significant offers for any of the Company's assets have been received other than that of the 363 Transaction. The Sale Procedures will provide an additional procedural safeguard and market check that will enable any potentially qualified interested parties with an opportunity to come forward and make a competitive bid.

54. Notice. The Debtors submit that the notice set forth in the Sale Procedures constitutes good and sufficient notice of the Sale Procedures, the Sale Hearing, the 363 Transaction, the UAW CBA Assignment, and the UAW Retiree Settlement Agreement, and that no other or further notice need be given.

55. The notice to be provided via the Publication Notice is reasonably calculated to provide all parties in interest (including parties with contingent claims) with the necessary information concerning the Sale Procedures (the "Sale Procedures Hearing"), the Sale Hearing, and the 363 Transaction. Providing notice to these parties by mail is not practicable. Accordingly, the proposed Publication Notice is appropriate and sufficient under the circumstances.

56. The UAW Special Retiree Notice is reasonably calculated to provide UAW-Represented Retirees with proper notice of the Sale Procedures, the Sale Hearing, and the 363 Transaction, including, but not limited to, the sale of the Purchased Assets free and clear of any lien, claim, encumbrance, or other interest the UAW or

UAW-Represented Retirees may have in the Purchased Assets, and of the UAW Retiree Settlement Agreement.

57. The Publication Notice, the Sale Notice, the Assumption and Assignment Notice, and the UAW Retiree Notice, and the UAW Special Retiree Notice, and the method of service described herein and provided in the Sale Procedures Order, fully comply with Bankruptcy Rule 2002 and constitute good and sufficient notice of the Sale Procedures, the Bid Deadline, the 363 Transaction, the assumption and assignment of executory contracts and Leases, the UAW Retiree Settlement Agreement, the relevant objection deadlines, the Sale Hearing, and all matters related thereto. Accordingly, the Company requests that the Court approve the form and manner of such notices substantially in the form of Exhibits "C" through "G," annexed hereto.

Sale of the Purchased Assets

58. In accordance with Bankruptcy Rule 6004(f)(1), sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtors have determined that a private sale of the Purchased Assets in accordance with the proposed Sale Procedures will enable them to obtain the highest or best offer for the Purchased Assets, thereby maximizing the value of their estates, and is in the best interests of the Debtors and their creditors and other stakeholders.

59. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, that the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). To obtain court approval to sell property under section 363(b), the Debtors must show a legitimate business justification for the proposed action. *See Comm. of Equity Sec. Holders v. Lionel Corp.* (*In re Lionel Corp.*), 722 F.2d 1063, 1071 (2d Cir. 1983). As this Court has

stated, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

60. As discussed more fully in the Debtors' Memorandum of Law in Support of the Motion (the "Memorandum of Law"), if a valid business justification exists, the applicable principle of law embeds the debtor's decision to sell property out of the ordinary course of business with a strong presumption that "'in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'" *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). A section 363 sale should be approved if the Court is satisfied that the debtor has exercised sound business judgment; provided adequate notice; the purchaser has proceeded in good faith; and the purchase price is fair. The 363 Transaction satisfies each condition. *See In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

61. It is well established that a chapter 11 debtor may sell all or substantially all its assets pursuant to section 363(b) prior to confirmation of a chapter 11 plan, provided the court finds an articulated business reason for the proposed sale, such as exists in the cases at bar. *See Consumer News & Bus. Channel P'ship v. Fin. News Network Inc. (In re Fin. News Network Inc.)*, 980 F.2d 165, 169 (2d Cir. 1992) (in

considering sale outside plan of reorganization, "'a bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the [Bankruptcy] Code'") (quoting *Lionel* at 1069); *see also Licensing By Paolo, Inc. v. Sinatra* (*In re Gucci*), 126 F.3d 380, 387 (2d Cir. 1997) ("A sale of a substantial part of a Chapter 11 estate . . . may be conducted if a good business reason exists to support it."); *Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp.* (*In re Chateaugay Corp.*), 973 F.2d 141, 144 (2d Cir. 1992) (approval of subsidiary's sale of its assets before confirmation of plan was not abuse of discretion).

62. The 363 Transaction is the best and only way for the Company's assets to retain going concern value, provide employment opportunities, and create a viable domestic OEM in the interests of all stakeholders. New GM, which will emerge from the 363 Transaction, will have the ability to successfully compete with other OEMs both in this nation and abroad.

63. As the Company's largest secured creditor, the U.S. Treasury, and recently together with EDC, engaged in arm's-length negotiations with the Debtors in the formulation of the 363 Transaction and its financing. As a secured creditor and a financer, the U.S. Treasury together with EDC have set out a series of actions and conditions that the Company had to undertake before they would provide further financing. As set forth in the Henderson Affidavit, the Company explored various options in its attempt to achieve long-term viability. The Company determined that it is in the best interests of all economic stakeholders to pursue the 363 Transaction as the only viable means to accomplish the survival of an operating, economically sound

business. The U.S. Treasury and EDC, as the source of necessary and required financing, and the U.S. Treasury as the largest secured creditor, have concurred in the Company's business judgment.

64. No financing is available for any other transaction, inside or outside of bankruptcy. No party other than the U.S. Treasury and EDC is willing to provide the necessary debtor in possession financing. GM's financial situation is dire. Its survival during the past five months has been completely dependent on the financing it received from the U.S. Treasury. Without that support, the Company would not have had the money to continue operations. Without continued government support, the Company will be constrained to liquidate its assets at forced sales. In that context, it is critical to note that the proposed DIP financing is only available *if* there is an expedited 363 Transaction.

65. The creation of New GM will result in a formidable, essentially new, efficient, competitive domestic manufacturer in the automotive industry. The transition services structure is designed to ensure a seamless continuity of operations for the benefit of employees, customers, suppliers, and employees of suppliers. Thus, approval of the 363 Transaction pursuant to the Sale Procedures and the MPA is in the best interests of the Company, its economic stakeholders, and the national interest, as expressed by President Obama.

The 363 Transaction Must Be Free and Clear of Liens, Claims, Encumbrances, and Interests, Including Rights or Claims Based on Successor or Transferee Liability

66. It is appropriate that the Purchased Assets be sold free and clear of liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability, pursuant to sections 105(a) and 363(f) of the Bankruptcy

Code, except those liabilities assumed by Purchaser or a successful bidder, with any such liens, claims, encumbrances, or interests to attach to the net sale proceeds of the Purchased Assets. Section 363(f) of the Bankruptcy Code provides:

> The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

67. To facilitate the sale of the Purchased Assets and the resultant viable New GM, it is necessary to authorize the sale of the Purchased Assets free and clear of any and all liens, claims, encumbrances, or interests, including rights or claims based on any successor or transferee liability (other than the liabilities assumed by Purchaser or any other successful bidder), with any such liens, claims, encumbrances, or interests to transfer to and attach to the net proceeds of the sale with the same rights and priorities therein.

68. The liens, claims, encumbrances, and interests held by creditors whose claims do not constitute Assumed Liabilities may be satisfied by at least one of the five conditions set forth in section 363(f), and any such liens, claims, encumbrances, and

interests will be adequately protected by transfer to and attachment to the net proceeds of the sale of the Purchased Assets, subject to any claims and defenses the Debtors may possess with respect thereto. Each of the parties holding liens on the Purchased Assets could be compelled to accept a monetary satisfaction of such interests, satisfying section 363(f)(5) of the Bankruptcy Code. In addition, certain holders of liens have consented, or may be deemed to have consented, to the sale of the Purchased Assets, thereby satisfying section 363(f)(2) of the Bankruptcy Code. Thus, the sale of the Purchased Assets free and clear of liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability, except for the liabilities assumed by the Purchaser or any other successful bidder, will satisfy the statutory prerequisites of sections 105(a) and 363(f) of the Bankruptcy Code. Accordingly, the Purchased Assets should be transferred to Purchaser free and clear of all liens, claims, encumbrances, and interests, except for Assumed Liabilities, with such liens, claims, encumbrances, and interests to be transferred to and attach to the net sale proceeds of the Purchased Assets.

Assumption and Assignment of Certain
Executory Contracts and Unexpired Leases

69. The MPA establishes procedures for assuming and assigning executory contracts or Leases to the Purchaser. Specifically, the Purchaser has the right to designate as an "Assumable Executory Contract," any Executory Contract or Lease that it may want to assume, subject to the following procedures and the continuing review process (the "Assumption and Assignment Procedures") set forth below.

Determination of Assumable Executory Contracts

- The Sellers shall maintain a schedule (the "Schedule") of Executory Contracts and Leases that the Purchaser has designated as Assumable Executory

Contracts.[4] From the date of the MPA until thirty (30) days after the Closing Date (or a later date if mutually agreed upon by the Sellers and the Purchaser) (the "Executory Contract Designation Deadline"), the Purchaser may (i) designate any additional Executory Contracts or Leases as Assumable Executory Contracts and add such Assumable Executory Contracts to the Schedule or (ii) remove any Assumable Executory Contract from the Schedule, in which case the Executory Contract or Lease shall cease to be an Assumable Executory Contract. The right of the Purchaser to add or remove Executory Contracts and Leases from the Schedule is subject to certain exceptions.[5]

- For each Assumable Executory Contract, the Purchaser must determine, prior to the Executory Contract Designation Deadline, the date on which it seeks to have the assumption and assignment become effective, which date may be the Closing Date or a later date (the "Proposed Assumption Effective Date").

- In addition to the Schedule, the Sellers shall maintain a secure website (the "Contract Website") that the non-Debtor counterparty to an Assumable Executory Contract can access to find current information about the status of its respective Executory Contract or Lease. The Contract Website contains, for each Assumable Executory Contract, (i) an identification of each Assumable Executory Contract that the Purchaser has designated for assumption and assignment and the status of assumption and (ii) the Cure Amounts that must be paid to cure any prepetition defaults under such respective Assumable Executory Contract as of the Commencement Date. The information on the Contract Website shall be made available to the non-Debtor counterparty to the Assumable Executory Contract (the "Non-Debtor Counterparty"), but shall not otherwise be publicly available.

Procedures for Providing Notice of Assumption and Assignment

- Following the designation of an Executory Contract or Lease as an Assumable Executory Contract, the Debtors shall provide notice (the "Assumption and Assignment Notice") to the Non-Debtor Counterparty to the Assumable Executory Contract, substantially in the form annexed hereto as Exhibit "D," setting forth (i) instructions for accessing the information on the Contract Website relating to such Non-Debtor Counterparty's Assumable Executory Contract and (ii) the procedures for objecting to the proposed assumption and assignment of the Assumable Executory Contract.

[4] There are currently approximately 400,000 Assumable Executory Contracts on the Schedule.

[5] For example, if an Assumable Executory Contract has already been assumed and assigned, it cannot be removed from the Schedule.

Procedures for Filing Objections to Assumption and Assignment and Cure Amounts

- Objections, if any, to the proposed assumption and assignment of the Assumable Executory Contracts (the "Contract Objections") must be made in writing, filed with the Court, and served on the Objection Deadline Parties (as defined below) so as to be received no later than ten (10) days after the date of the Assumption and Assignment Notice (the "Contract Objection Deadline") and must specifically identify in the objection the grounds therefor. The "Objection Deadline Parties" are (i) the Debtors, c/o General Motors Corporation, 300 Renaissance Center, Detroit, Michigan 48265 (Attn: Lawrence S. Buonomo, Esq.); (ii) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (iii) the U.S. Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (iv) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (v) the attorneys for the Creditors Committee; (vi) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); and (vii) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004.

- Unless a Contract Objection is filed and served before the Contract Objection Deadline, the Non-Debtor Counterparty shall be deemed to have consented to the assumption and assignment of its respective Assumable Executory Contract and the respective Cure Amount and shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts against the Sellers, their estates, or the Purchaser.

Procedures for Resolving Objections

- If a timely Contract Objection is filed solely as to the Cure Amount (a "Cure Objection"), then the Assumable Executory Contract shall nevertheless be assumed and assigned to the Purchaser on the Assumption Effective Date, the Purchaser shall pay the undisputed portion of the Cure Amount on or as soon as reasonably practicable after the Assumption Effective Date, and the disputed portion of the Cure Amount shall be determined as follows and paid as soon as reasonably practicable following resolution of such disputed Cure Amount: To resolve the Cure Objection, the Debtors, the Purchaser, and the objecting Non-Debtor Counterparty may meet and confer in good faith to attempt to resolve any such objection without Court intervention. A call center has been established by the Debtors for this purpose. If the Debtors determine that the Cure Objection cannot be resolved without judicial intervention, then the Cure Amount will be determined as follows: (a) with

respect to Assumable Executory Contracts pursuant to which the non-Debtor counterparty has agreed to an alternative dispute resolution procedure, then, according to such procedure; and (b) with respect to all other Assumable Executory Contracts, by the Court at the discretion of the Debtors either at the Sale Hearing or such other date as determined by the Court.

- If a timely Contract Objection is filed that objects to the assumption and assignment on a basis other than the Cure Amount, the Debtors, the Purchaser, and the objecting Non-Debtor Counterparty shall meet and confer in good faith to attempt to resolve any such objection without Court intervention. If the Debtors determine that the objection cannot be resolved without judicial intervention, then, at the discretion of the Sellers and the Purchaser, the objection shall be determined by the Court at the Sale Hearing or such other date as determined by the Court. If the Court determines at such hearing that the Assumable Executory Contract should not be assumed and assigned, then such Executory Contract or Lease shall no longer be considered an Assumable Executory Contract.

- If the Debtors, the Purchaser, and the non-Debtor Counterparty resolve any Contract Objection, they shall enter into a written stipulation (the "Assumption Resolution Stipulation"), which stipulation is not required to be filed with or approved by the Court.

Effective Date of Assumption

- All Assumable Executory Contracts will be assumed and assigned to the Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the Proposed Assumption Effective Date and (ii) the Assumption Resolution Date (as defined below). The "Assumption Resolution Date" shall be, (i) if no Contract Objection has been filed on or prior to the Contract Objection Deadline or the only Contract Objection that has been filed on or prior to the Contract Objection Deadline is a Cure Objection, the business day after the Contract Objection Deadline, or (ii) if a Contract Objection other than a Cure Objection has been filed on or prior to the Contract Objection Deadline, the date of the Assumption Resolution Stipulation or the date of a Court order authorizing the assumption and assignment to the Purchaser of the Assumable Executory Contract.

- Contingent upon the approval of the 363 Transaction and concurrently with the consummation of the 363 Transaction (without prejudice to the conditions set forth in the MPA), (i) the UAW Collective Bargaining Agreement shall be deemed to be an Assumable Executory Contract as to which the Assumption and Assignment Notice need not be sent and which will not be listed on the Schedule or the Contract Website (ii) the Debtors shall assume and assign the UAW Collective Bargaining Agreement to the Purchaser as of the Closing Date, and each non-Debtor party to the UAW Collective Bargaining

> Agreement shall be deemed to have consented to such assumption and assignment.

70. Section 365(a) of the Bankruptcy Code provides a debtor in possession "subject to the court's approval may assume or reject any executory contracts or unexpired leases of the debtor." 11 U.S.C. § 365(a). Upon finding that debtors have exercised their sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. *See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993).

71. Section 365(b) of the Bankruptcy Code requires that a debtor in possession meet certain additional requirements to assume a lease:

> If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b). This section does not apply to a default that is a breach of a provision relating to

> (A) the insolvency or financial condition of the debtor at any time before the closing of the case;

> (B) the commencement of a case under this title;
>
> (C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; or
>
> (D) the satisfaction of any penalty rate or provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

Id. § 365(b)(2).

72. Section 365(b)(1) of the Bankruptcy Code requires that the Debtors cure, or provide adequate assurance that it will promptly cure, any outstanding defaults under the Assumable Executory Contracts in connection with the assumption and assignment of these agreements to Purchaser.

73. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor in possession may assign an executory contract or Lease if

> (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
>
> (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

Id. § 365(f)(2).

74. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.),* 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent).

75. Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

76. The financial credibility, willingness, and ability of the U.S. Treasury-sponsored Purchaser to perform under the Assumable Executory Contracts cannot be credibly disputed. The Sale Hearing will provide the Court and other interested parties the opportunity to evaluate the ability of the Purchaser or, indeed, any other successful bidder to provide adequate assurance of future performance under the Assumable Executory Contracts, as required by section 365(b)(1)(C) of the Bankruptcy Code.

77. The Assumption and Assignment Procedures are reasonably calculated to provide all counterparties to the Assumable Executory Contracts with proper notice of the potential assumption and assignment of their executory contracts or Leases, any cure costs relating thereto, and the deadline to object to cure amounts.

Unenforceability of Anti-Assignment Provisions

78. To assist in the assumption, assignment, and sale of the Assumable Executory Contracts, the Sale Order should provide that certain anti-assignment provisions shall not restrict, limit, or prohibit, the assumption, assignment, and sale of the Assumable Executory Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

79. Section 365(f)(1) of the Bankruptcy Code permits a debtor to assign executory contracts and Leases free from such anti-assignment restrictions:

> [N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection.

11 U.S.C. § 365(f)(1).

80. Section 365(f) prohibits three distinct types of anti-assignment provisions that are not enforceable in the context of assignments effected under section 365 of the Bankruptcy Code: (i) provisions that "prohibit" the assignment of an executory contract or unexpired lease are unenforceable; (ii) provisions that seek to "restrict" the ability of a debtor to assume and assign an executory contract or unexpired lease are not given effect; and (iii) provisions that "condition" the ability of a debtor to assume and assign an executory contract or unexpired lease are unenforceable.

81. Section 365(f)(1), by operation of law, invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease. *See, e.g., Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.),* 127 F.3d 904, 910-11 (9th Cir. 1997) ("no principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases' terms, when to do so will effectuate the purposes of section 365").

82. Section 365(f)(3) goes beyond the scope of section 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. 11 U.S.C. § 365(f)(3). *See, e.g., In re Jamesway Corp.*, 201 BR 73 (Bankr. S.D.N.Y. 1996) (section 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because it is

being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court's scrutiny regarding anti-assignment effect).

83. Many courts have recognized that provisions that have the effect of restricting assignments cannot be enforced. *See In re Rickel Home Ctrs., Inc.*, 240 B.R. 826, 831 (D. Del. 1998) ("In interpreting Section 365(f), courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions."), *aff'd*, 209 F.3d 291 (3d Cir.), *cert. denied*, 531 U.S. 873 (2000).

84. Similarly, in *In re Mr. Grocer, Inc.*, the court noted that:

> [the] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in determining that lease provisions, which are not themselves *ipso facto* anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.

77 B.R. 349, 354 (Bankr. D.N.H. 1987). Consequently, any anti-assignment provisions should not restrict, limit, or prohibit the assumption, assignment, and sale of the Assumable Executory Contracts and should be deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

Good Faith Purchaser

85. The Purchaser has been and is acting in good faith and is entitled to the protections of a good faith purchaser *under* section 363(m) of the Bankruptcy Code.

86. Section 363(m) *of* the Bankruptcy Code provides:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

87. The terms and provisions of the MPA were negotiated by the Sellers and the Purchaser at arm's length, without *collusion*, and in good faith. The MPA represents substantial value to the Debtors and provides for fair consideration for the Purchased Assets. Moreover, the Purchaser does not hold any interests in the Debtors. The Purchaser's sponsor is the holder of secured claims and will provide DIP financing for the Debtors' chapter 11 cases as well as financing of New GM. In addition, it will be the majority holder of equity interests in New GM. The Purchaser and its sponsor are not affiliated with the Debtors, their officers, or directors.

88. Accordingly, the *Purchaser* should be found to be acting in good faith and entitled to the protections afforded under section 363(m).

The Appointment of a Consumer Privacy Ombudsman Is Necessary

89. Section 363(b)(1) of the Bankruptcy Code provides that if the Debtors "in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals [and] such policy is in effect on the date of the commencement of the case," then the Debtors "may not sell . . . personally identifiable information to any person unless" the sale is "consistent with such policy" or a "consumer privacy ombudsman" is appointed.

11 U.S.C. § 363(b)(1). The term "personally identifiable information," defined in section 101(41A) of the Bankruptcy Code, means private information about a debtor's customers that "if disclosed, will result in contacting or identifying [an] individual physically or electronically" (e.g., name, address, telephone number, social security number, credit card account number, birth date). *Id.* § 101(41A).

90. Section 332 of the Bankruptcy Code governs the appointment of a consumer privacy ombudsman and *provides* that the Court "shall order the United States trustee to appoint, not later than 5 days before the commencement of the [sale] hearing, 1 disinterested person . . . to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman." *Id.* § 332(a). The consumer privacy ombudsman "may appear and be heard at [the sale] hearing and shall provide to the [C]ourt information to assist the [C]ourt in its consideration of the facts, circumstances, and conditions of the proposed sale . . . of personally identifiable information." *Id.* § 332(b).

91. The Debtors currently maintain certain privacy policies that govern the use of personally identifiable information in conducting their business operations. The 363 Transaction may contemplate *the* transfer of certain personally identifiable information to a third party who is not an affiliate of the Debtors in a manner that may not be consistent with certain aspects of their existing privacy policies.

92. For example, the Debtors' current U.S. online consumer privacy statement provides, in *pertinent* part:

> The information you share with us may be used by GM, our affiliates, our licensees, and dealers. . . . It may also be shared in connection with the sale, transfer or financing of a significant part of a GM business. *We will not share your*

> *personal information with third parties other than these, or with any third party for their independent use without your permission. . . .*

http://www.gm.com/privacy/ (emphasis added).

93. Inasmuch as the italicized language quoted above was added to GM's privacy policy so as to be effective May 1, 2009, the argument could be made that it should not be applied *retroactively* to personal data collected before that date. Therefore, to avoid any delay in consummating the 363 Transaction, the Debtors request that the Court direct the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code.

Accompanying Memorandum of Law

94. The Debtors have contemporaneously filed the Memorandum of Law in support of the Motion, which sets forth in greater deal the ample authority that exists for the relief requested by this Motion and for the entry of the Sale Procedures Order and the Sale Order.

Request for Relief Under Bankruptcy Rules 6004(h) and 6006(d)

95. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). Any order approving the sale of the Purchased Assets in accordance with the Sale Procedures must be effective immediately upon entry of such order by providing that the ten-day stay shall not apply. As described above, as well as in the accompanying Memorandum of Law and the Henderson Affidavit, absent a prompt approval and consummation of the 363 Transaction, the Purchased Assets will rapidly decline in value as wasting assets. Therefore, it is imperative that the Sale Order be effective immediately

to permit the 363 Transaction to close without any delay. The ten-day stay under Bankruptcy Rule 6004(h) should be waived.

96. Bankruptcy Rule 6006(d) provides that an order authorizing the assignment of an executory contract or unexpired lease under section 365(f) is stayed until the expiration of ten days after entry of the order, unless the court orders otherwise. Fed. R. Bankr. P. 6006(d). Any order approving the sale of the Purchased Assets, which includes approving the assumption and assignment of the Assumable Executory Contracts to the Purchaser and approving the UAW Retiree Settlement Agreement, must be effective immediately upon entry of such order by providing that the ten-day stay shall not apply. The exigent circumstances necessitating the prompt consummation of the 363 Transaction mandates that the Sale Order, the assumption and assignment of the Assumable Executory Contracts to the Purchaser, and the UAW Retiree Settlement Agreement be effective immediately upon entry. It is essential that the Sale Order be effective without any delay by providing that the ten-day stay under Bankruptcy Rule 6006(d) is waived.

Notice

97. Notice of this Motion has been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the U.S. Treasury, (iii) the attorneys for EDC, (iv) the attorneys for the agent under GM's prepetition secured term loan agreement, (v) the attorneys for the agent under GM's prepetition amended and restated secured revolving credit agreement, (vi) the holders of the fifty largest unsecured claims against the Debtors (on a consolidated basis), (vii) the attorneys for the UAW, (viii) the attorneys for the International Union of Electronic,

Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America, (ix) the United States Department of Labor, (x) the attorneys for the National Automobile Dealers Association, and (xi) the attorneys for the ad hoc bondholders committee. In view of all the facts and circumstances, the proposed notice is sufficient and no other or further notice need be provided.

98. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York
June 1, 2009

/s/ Stephen Karotkin
Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors
and Debtors in Possession

EXHIBIT A

PROPOSED MASTER SALE AND PURCHASE AGREEMENT

Exhibit M

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ORDER PURSUANT TO 11 U.S.C. §§ 105, 363, AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006 (I) APPROVING PROCEDURES FOR SALE OF DEBTORS' ASSETS PURSUANT TO MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER; (II) SCHEDULING BID DEADLINE AND SALE HEARING DATE; (III) ESTABLISHING ASSUMPTION AND ASSIGNMENT PROCEDURES; AND (IV) FIXING NOTICE PROCEDURES AND APPROVING FORM OF NOTICE

Upon the motion, dated June 1, 2009 (the "Motion"),[1] of General Motors Corporation ("GM") and certain of its subsidiaries, as debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors" or the "Company"),[2] pursuant to sections 105, 363, and 365 of title 11, United States Code (the "Bankruptcy Code") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for, among other things, entry of an order, (A) approving the proposed sale procedures annexed hereto as Exhibit "A" (the "Sale Procedures"); (B) scheduling a bid deadline and sale hearing date; (C) establishing procedures for assuming and assigning the Assumable Executory Contracts; and (D) fixing notice procedures and approving forms of notice; and upon any

[1] Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, the Sale Procedures, or the MPA, as applicable.

[2] The Debtors and their respective Tax ID numbers are as follows: General Motors Corporation, Tax ID No. 38-0572515; Saturn, LLC, Tax ID No. 38-2577506; Saturn Distribution Corporation, Tax ID No. 38-2755764; and Chevrolet-Saturn of Harlem, Inc., Tax ID No. 20-1426707.

objections to the Motion (the "Objections"); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the United States Department of the Treasury (the "U.S. Treasury"), (iii) the attorneys for Export Development Canada ("EDC"), (iv) the attorneys for the agent under GM's prepetition secured term loan agreement, (v) the attorneys for the agent under GM's prepetition amended and restated secured revolving credit agreement, (vi) the holders of the fifty largest unsecured claims against the Debtors (on a consolidated basis), (vii) the attorneys for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), (viii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America, (ix) the United States Department of Labor, (x) the attorneys for the National Automobile Dealers Association, and (xi) the attorneys for the ad hoc bondholders committee, and it appearing that no other or further notice need be provided; and a hearing having been held on June 1, 2009, to consider the relief requested in the Motion (the "Sale Procedures Hearing"); and upon the Affidavit of Frederick A. Henderson Pursuant to Local Bankruptcy Rule 1007-2 (the "Henderson Affidavit"), the record of the Sale Procedures Hearing, and all of the proceedings had before the Court; and the Court having reviewed the Motion and any Objections and found and determined that the relief sought in the Motion as provided herein is necessary to avoid immediate and irreparable harm to the Debtors

and their estates, as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:[3]

A. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the sale process, including the Court's (i) approval of the Sale Procedures, (ii) approval of the Assumption and Assignment Procedures, (iii) approval of and authorization to serve the Sale Notice, the Assumption and Assignment Notice, and the Special UAW Retiree Notice (each as hereinafter defined), and (iv) approval of and authorization to publish the Publication Notice (the "Sale Procedures Relief").

B. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court scheduling a subsequent hearing (the "Sale Hearing") to consider whether to grant the remainder of the relief requested in the Motion, including the approval of the sale of substantially all the assets (the "Purchased Assets") of the Sellers in accordance with either the (i) proposed Master Sale and Purchase Agreement, dated as of June 1, 2009, substantially in the form annexed to the Motion as Exhibit "A" (together with all exhibits and agreements attached thereto, the "MPA"),[4] by and among GM and its Debtor subsidiaries (collectively, the "Sellers") and Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser sponsored by the U.S. Treasury, or (ii) such other Marked Agreement

[3] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

[4] Copies of the Motion and the MPA (without certain commercially sensitive attachments) may be obtained by accessing the website established by the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com.

that may constitute the Successful Bid (the "Replacement Agreement"), free and clear of all liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability (with the same to attach to the proceeds therefrom) pursuant to section 363 of the Bankruptcy Code (the "363 Transaction").

C. The Purchased Assets are "wasting assets" that will not retain going concern value over an extended period of time. As such, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis consistent with the provisions set forth herein and in the MPA.

D. The notice of the Sale Hearing (the "Sale Notice"), substantially in the form annexed hereto as Exhibit "B," is reasonably calculated to provide parties in interest with proper notice of the proposed sale of the Purchased Assets, the Sale Procedures, the 363 Transaction, and the Sale Hearing.

E. Publication of the Publication Notice, substantially in the form annexed hereto as Exhibit "C," as set forth herein is reasonably calculated to provide all unknown creditors and parties not otherwise required to be served with a copy of the Sale Notice pursuant to this Order with proper notice of the proposed sale of the Purchased Assets, the Sale Procedures, the 363 Transaction, and the Sale Hearing.

F. The Assumption and Assignment Notice, substantially in the form annexed hereto as Exhibit "D," is reasonably calculated to provide all counterparties to the Assumable Executory Contracts with proper notice of the potential assumption and assignment of their respective executory contracts or Leases, any Cure Amounts relating thereto, and the Assumption and Assignment Procedures.

G. The UAW Special Retiree Notice (as defined below) including the Cover Letter to UAW-Represented Retirees describing the 363 Transaction and the UAW Retiree

Settlement Agreement and the notice (together, the "UAW Retiree Notice") to the retirees of the Debtors and of certain retirees of Delphi Corporation ("Delphi"), a former unit of GM, including certain retirees of former Delphi units and former GM units, and their respective surviving spouses, who are eligible to receive, now or in the future, Retiree Medical Benefits (as defined in the UAW-Retiree Settlement Agreement) (collectively, the "UAW-Represented Retirees"), copies of which are annexed hereto as Exhibit "E," are reasonably calculated to provide the UAW-Represented Retirees with proper notice of the 363 Transaction, the Sale Procedures, the Sale Hearing, and the UAW Retiree Settlement Agreement.

H. The Motion and this Order comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and the Guidelines for the Conduct of Asset Sales established by the Bankruptcy Court on September 5, 2006 pursuant to General Order M-331.

I. The 363 Transaction includes the transfer of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code). As such, the transfer of personally identifiable information shall not be effective until a Consumer Privacy Ombudsman is appointed and issues its findings and the Court has an opportunity to review the findings and issue any rulings that are appropriate.

J. Due, sufficient, and adequate notice of the relief requested in the Motion and granted herein has been given to parties in interest.

K. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Sale Procedures Relief requested in the Motion is granted as provided herein.

2. The Objections are overruled except as otherwise set forth herein.

3. The Sale Procedures, which are incorporated herein by reference, are approved and shall govern all bids and sale procedures relating to the Purchased Assets. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Sale Procedures.

4. The deadline for submitting a Qualified Bid shall be June 22, 2009 (the "Bid Deadline"), as further described in the Sale Procedures.

5. The deadline for objecting to approval of the 363 Transaction, including the sale of the Purchased Assets free and clear of liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability (or for UAW-Represented Retirees to object to the UAW Retiree Settlement Agreement), shall be June 19, 2009, at 5:00 p.m. (Eastern Time) (the "Objection Deadline"), *provided, however*, that in the event the Sale Procedures result in a Successful Bidder other than the Purchaser, the deadline for objecting to the sale of the Purchased Assets to such Successful Bidder shall be at the Sale Hearing.

6. The Purchaser shall constitute a Qualified Bidder for all purposes and in all respects with respect to the Sale Procedures and is not required to make a Good Faith Deposit.

7. The Court shall conduct the Sale Hearing on June 30, 2009, at 9:45 a.m. (Eastern Time), at which time the Court will consider approval of the 363 Transaction to the Successful Bidder and approval of the UAW Retiree Settlement Agreement. In the event the Successful Bidder is not the Purchaser, non-Debtor parties to the Assumable Executory Contracts may raise objections to adequate assurance of future performance at the Sale Hearing.

8. The Debtors are authorized to conduct the 363 Transaction (or other similar transaction if the Successful Bidder is a party other than the Purchaser) without the necessity of complying with any state or local bulk transfer laws or requirements.

9. The notices described in subparagraphs (a)-(d) below are approved and shall be good and sufficient, and no other or further notice shall be required if given as follows:

(a) The Debtors (or their agent) serve, within three (3) days after entry of this Order (the "Mailing Deadline"), by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a copy of this Order upon: (i) the attorneys for the U.S. Treasury, (ii) the attorneys for Export Development Canada, (iii) the attorneys for the agent under the Debtors' prepetition secured term loan agreement, (iv) the attorneys for the agent under the Debtors' prepetition amended and restated secured revolving credit agreement (v) the attorneys for the statutory committee of unsecured creditors appointed in the Debtors' chapter 11 cases (the "Creditors Committee") (if no statutory committee of unsecured creditors has been appointed, the holders of the fifty largest unsecured claims against the Debtors on a consolidated basis), (vi) the attorneys for the UAW, (vii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America; (viii) the United States Department of Labor; (ix) the attorneys for the National Automobile Dealers Association, (x) the attorneys for the ad hoc bondholders committee; (xi) any party who, in the past three years, expressed in writing to the Debtors an interest in the Purchased Assets and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated in the MPA, (xii) non-Debtor parties to the Assumable Executory Contracts, (xiii) all parties who are known to have asserted any lien, claim, encumbrance, or interest in or on the Purchased Assets, (xiv) the Securities and Exchange Commission, (xv) the Internal Revenue Service, (xvi) all applicable state attorneys general, local environmental enforcement agencies, and local regulatory authorities, (xvii) all applicable state and local taxing authorities, (xviii) the Federal Trade Commission, (ixx) all applicable state attorneys general, (xx) United States Attorney General/Antitrust Division of the Department of Justice, (xxi) the U.S. Environmental Protection Agency and similar state agencies, (xxii) the United States Attorney's Office, (xxiii) all dealers with current agreements for the sale or leasing of GM brand vehicles, (xxiv) the Office of the United States Trustee for the Southern District of New York, and (xxv) all entities that requested notice in these chapter 11 cases under Bankruptcy Rule 2002; and

(b) On or before the Mailing Deadline, the Debtors (or their agent) serve by first-class mail, postage prepaid, or other method reasonably calculated to

provide notice, the Sale Notice, substantially in the form annexed hereto as Exhibit "B," upon (i) all other known creditors and (ii) all equity security holders of the Debtors of record as of May 27, 2009.

(c) On or before the Mailing Deadline, the Debtors (or their agent) serve by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a notice of the assumption and assignment of the Assumable Executory Contracts and the proposed cure amounts relating to the Assumable Executory Contracts (the "Assumption and Assignment Notice"), substantially in the form annexed hereto as Exhibit "C," upon the non-Debtor parties to the Assumable Executory Contracts.

(d) On or before the Mailing Deadline, the Debtors (or their agent) serve by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a notice of the 363 Transaction and the UAW Retiree Settlement, as well as a cover letter from the UAW describing the UAW Retiree Settlement Agreement and communicating the UAW's support of the 363 Transaction, including the UAW Retiree Settlement Agreement (collectively, the "UAW Retiree Notice"), substantially in the form annexed hereto as Exhibit "E," upon (i) the UAW, (ii) the attorneys for the UAW, and (iii) all of the UAW-Represented Retirees. On the Mailing Deadline or as soon as practicable thereafter, the Debtors will cause the MPA, the Motion, the Sale Procedures Order, the UAW Retiree Notice, and the UAW Retiree Settlement Agreement, including all exhibits thereto (other than those containing commercially sensitive information), to be published on the website of the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., at http:/www.gmcourtdocs.com, in an area dedicated to retiree-related information (this website disclosure and the UAW Retiree Notice, collectively the "UAW Special Retiree Notice").

(e) On the Mailing Deadline, or as soon as practicable thereafter, the Debtors shall cause the Publication Notice to be published (i) once in (a) the global edition of *The Wall Street Journal*, (b) the national edition of *The New York Times*, (c) the global edition of *The Financial Times*, (d) the national edition of *USA Today*, (e) *Detroit Free Press/Detroit News*, (f) *Le Journal de Montreal*, (g) *Montreal Gazette*, (h) *The Globe and Mail*, and (i) *The National Post*, and (ii) on the website of the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., at http::/www.gmcourtdocs.com.

10. The following procedures (the "Assumption and Assignment Procedures") shall govern the assumption and assignment of the Assumable Executory Contracts in connection with the sale of the Purchased Assets to the Purchaser:[5]

Determination of Assumable Executory Contracts

- The Sellers shall maintain a schedule (the "Schedule") of Executory Contracts and Leases that the Purchaser has designated as Assumable Executory Contracts. From the date of the MPA until thirty (30) days after the Closing Date (or a later date if mutually agreed upon by the Sellers and the Purchaser) (the "Executory Contract Designation Deadline"), the Purchaser may (i) designate any additional Executory Contracts or Leases as Assumable Executory Contracts and add such Assumable Executory Contracts to the Schedule or (ii) remove any Assumable Executory Contract from the Schedule, in which case the Executory Contract or Lease shall cease to be an Assumable Executory Contract. The right of the Purchaser to add or remove Executory Contracts and Leases from the Schedule is subject to certain exceptions.[6]

- For each Assumable Executory Contract, the Purchaser must determine, prior to the Executory Contract Designation Deadline, the date on which it seeks to have the assumption and assignment become effective, which date may be the Closing or a later date (the "Proposed Assumption Effective Date").

- In addition to the Schedule, the Sellers shall maintain a secure website (the "Contract Website") that the non-Debtor counterparty to an Assumable Executory Contract can access to find current information about the status of its respective Executory Contract or Lease. The Contract Website contains, for each Assumable Executory Contract, (i) an identification of each Assumable Executory Contract that the Purchaser has designated for assumption and assignment and (ii) the Cure Amounts that must be paid to cure any prepetition defaults under such respective Assumable Executory Contract as of the Commencement Date. The information on the Contract Website shall be made available to the non-Debtor counterparty to the Assumable Executory Contract (the "Non-Debtor Counterparty"), but shall not otherwise be publicly available.

[5] If a party other than the Purchaser is the Successful Bidder, or if a transaction other than the 363 Transaction is consummated, then these Assumption and Assignment Procedures may be modified by further order of this Court.

[6] For example, if an Assumable Executory Contract has already been assumed and assigned, it cannot be removed from the Schedule.

Procedures for Providing Notice of Assumption and Assignment

- Following the designation of an Executory Contract or Lease as an Assumable Executory Contract, the Debtors shall provide notice (the "Assumption and Assignment Notice") to the Non-Debtor Counterparty to the Assumable Executory Contract, substantially in the form annexed hereto as Exhibit "D," setting forth (i) instructions for accessing the information on the Contract Website relating to such Non-Debtor Counterparty's Assumable Executory Contract and (ii) the procedures for objecting to the proposed assumption and assignment of the Assumable Executory Contract.

Procedures for Filing Objections to Assumption and Assignment and Cure Amounts

- Objections, if any, to the proposed assumption and assignment of the Assumable Executory Contracts (the "Contract Objections") must be made in writing, filed with the Court, and served on the Objection Deadline Parties (as defined below) so as to be received no later than ten (10) days after the date of the Assumption and Assignment Notice (the "Contract Objection Deadline") and must specifically identify in the objection the grounds therefor. The "Objection Deadline Parties" are (i) the Debtors, c/o General Motors Corporation, 30009 Van Dyke Avenue, Warren, Michigan 48090-9025 (Attn: Warren Command Center, Mailcode 480-206-114); (ii) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (iii) the U.S. Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (iv) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (v) the attorneys for the Creditors Committee; (vi) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); and (vii) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004.

- Unless a Contract Objection is filed and served before the Contract Objection Deadline, the Non-Debtor Counterparty shall be deemed to have consented to the assumption and assignment of its respective Assumable Executory Contract and the respective Cure Amount and shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts against the Sellers, their estates, or the Purchaser.

Procedures for Resolving Objections

- If a timely Contract Objection is filed solely as to the Cure Amount (a "Cure Objection"), then the Assumable Executory Contract shall nevertheless be assumed and assigned to the Purchaser on the Assumption Effective Date, the Purchaser shall pay the undisputed portion of the Cure Amount on or as soon as reasonably practicable after the Assumption Effective Date, and the disputed portion of the Cure Amount shall be determined as follows and paid as soon as reasonably practicable

following resolution of such disputed Cure Amount: To resolve the Cure Objection, the Debtors, the Purchaser, and the objecting Non-Debtor Counterparty may meet and confer in good faith to attempt to resolve any such objection without Court intervention. A call center has been established by the Debtors for this purpose. If the Debtors determine that the Cure Objection cannot be resolved without judicial intervention, then the Cure Amount will be determined as follows: (a) with respect to Assumable Executory Contracts pursuant to which the non-Debtor counterparty has agreed to an alternative dispute resolution procedure, then, according to such procedure; and (b) with respect to all other Assumable Executory Contracts, by the Court at the discretion of the Debtors either at the Sale Hearing or such other date as determined by the Court.

- If a timely Contract Objection is filed that objects to the assumption and assignment on a basis other than the Cure Amount, the Debtors, the Purchaser, and the objecting Non-Debtor Counterparty shall meet and confer in good faith to attempt to resolve any such objection without Court intervention. If the Debtors determine that the objection cannot be resolved without judicial intervention, then, at the discretion of the Sellers and the Purchaser, the objection shall be determined by the Court at the Sale Hearing or such other date as determined by the Court. If the Court determines at such hearing that the Assumable Executory Contract should not be assumed and assigned, then such Executory Contract or Lease shall no longer be considered an Assumable Executory Contract.

- If the Debtors, the Purchaser, and the non-Debtor Counterparty resolve any Contract Objection, they shall enter into a written stipulation (the "Assumption Resolution Stipulation"), which stipulation is not required to be filed with or approved by the Court.

Effective Date of Assumption

- All Assumable Executory Contracts will be assumed and assigned to the Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the Proposed Assumption Effective Date and (ii) the Assumption Resolution Date (as defined below). The "Assumption Resolution Date" shall be, (i) if no Contract Objection has been filed on or prior to the Contract Objection Deadline or the only Contract Objection that has been filed on or prior to the Contract Objection Deadline is a Cure Objection, the business day after the Contract Objection Deadline, or (ii) if a Contract Objection other than a Cure Objection has been filed on or prior to the Contract Objection Deadline, the date of the Assumption Resolution Stipulation or the date of a Court order authorizing the assumption and assignment to the Purchaser of the Assumable Executory Contract.

- Contingent upon the approval of the 363 Transaction and concurrently with the consummation of the 363 Transaction (without prejudice to the conditions set forth in the MPA), (i) the UAW Collective Bargaining Agreement shall be deemed to be an Assumable Executory Contract as to which the Assumption and Assignment Notice need not be sent and which will not be listed on the Schedule or the Contract Website (ii) the Debtors shall assume and assign the UAW Collective Bargaining Agreement

to the Purchaser as of the Closing Date, and each non-Debtor party to the UAW Collective Bargaining Agreement shall be deemed to have consented to such assumption and assignment.

11. Except as otherwise provided in paragraph 10 hereof with respect to Assumable Executory Contracts, in order to be considered, an objection to the 363 Transaction (or for UAW-Represented Retirees, the UAW Retiree Settlement Agreement), must be filed with the Court and served upon the following so as to be received by the Objection Deadline: (i) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (ii) the Debtors, c/o General Motors Corporation, 300 Renaissance Center, Detroit, Michigan 48265 (Attn: Lawrence S. Buonomo, Esq.); (iii) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (iv) the U.S. Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (v) Vedder Price, P.C., attorneys for EDC, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); (vi) the attorneys for the Creditors Committee; (vii) the UAW, 8000 East Jefferson Avenue, Detroit, Michigan 48214 (Attn: Daniel W. Sherrick, Esq.); (viii) Cleary Gottlieb Steen & Hamilton LLP, attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromley, Esq.); (xi) Cohen, Weiss and Simon LLP, attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (xii) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004; and (xiii) the U.S. Attorney's Office, S.D.N.Y., 86 Chambers Street, Third Floor, New York, New York 10007 (Attn: David S. Jones, Esq. and Matthew L. Schwartz, Esq.). Contract

Objections and Cure Objections must be filed and served in accordance with the procedure set forth in paragraph 10 herein.

12. The failure of any objecting person or entity to timely file its objection shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, to the consummation and performance of the 363 Transaction contemplated by the MPA or a Participation Agreement, if any (including the transfer free and clear of all liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability, of each of the Purchased Assets transferred as part of the 363 Transaction), the approval of the UAW Retiree Settlement Agreement, or the assumption and assignment of any Executory Contract or Lease.

13. The U.S. Trustee is directed to appoint a Consumer Privacy Ombudsman pursuant to sections 332 and 363(b)(1) of the Bankruptcy Code as soon as practicable.

14. Notwithstanding any possible applicability of Bankruptcy Rules 6004 or 6006, or otherwise, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry.

15. The Court shall retain jurisdiction over any matter or dispute arising from or relating to this Order.

Dated: New York, York
June ***2,*** 2009

S/ Robert E. Gerber
United States Bankruptcy Judge

EXHIBIT A

SALE PROCEDURES

SALE PROCEDURES

By motion dated June 1, 2009 (the "Motion"), General Motors Corporation ("GM") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"), sought, among other things, approval of the process and procedures through which it will determine the highest or otherwise best price for the purchase of substantially all the assets (the "Purchased Assets") of the Debtors (the "Sellers"). On June 2, 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered an order (the "Sale Procedures Order"), which, among other things, authorized the Debtors to determine the highest or otherwise best price for the Purchased Assets through the process and procedures set forth below (the "Sale Procedures").

On June 30, 2009, as further described below, in the Motion, and in the Sale Procedures Order, the Bankruptcy Court shall conduct a hearing (the "Sale Hearing"), at which the Debtors shall seek entry of an order (the "Sale Order") authorizing and approving the sale of the Purchased Assets (the "363 Transaction") pursuant to either (i) that certain Master Sale and Purchase Agreement (the "MPA") between the Sellers and Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury"), substantially in the form annexed as Exhibit "A" to the Motion, or (ii) a different Successful Bid (as defined below).

Participation Requirements

In order to participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in purchasing the Purchased Assets (a "Potential Bidder") must first deliver the following materials to the Debtors (with a copy to the Purchaser):

(i) An executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors; and

(ii) The most current audited and latest unaudited financial statements (collectively, the "Financials") of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of the 363 Transaction, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors, and (y) a written commitment acceptable to the Debtors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the 363 Transaction.

A "Qualified Bidder" is a Potential Bidder whose Financials (or the Financials of its equity holder(s), if applicable) demonstrate the financial capability to consummate the 363 Transaction, whose bid meets all of the Bid Requirements described below *and* that the Debtors, in their discretion but after consulting with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), and the statutory committee of unsecured creditors appointed in these chapter 11 cases (the "Creditors Committee") determine is likely to consummate the 363 Transaction, if selected as the Successful Bidder, after taking into account all relevant legal, regulatory, and business considerations. The Purchaser is a Qualified Bidder and is not required to make a Good Faith Deposit (as defined below).

Within two (2) business days after the Debtors and the Purchaser receive from a Potential Bidder all the materials required by subparagraphs (i) and (ii) above, the Debtors shall determine, in consultation with their advisors, the UAW, and the Creditors Committee, and shall notify the Purchaser and the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder.

Obtaining Due Diligence Access

To obtain due diligence access or additional information regarding the Purchased Assets or the Sellers, a Qualified Bidder (other than the Purchaser) must first provide the Debtors with a written nonbinding expression of interest (the "Expression of Interest") regarding (i) the Qualified Bidder's proposed 363 Transaction, (ii) the purchase price range, (iii) the structure and financing of the 363 Transaction, (iv) any conditions to closing that it may wish to impose, and (v) the nature and extent of additional due diligence it may wish to conduct. If the Debtors, in their business judgment, determine that a Qualified Bidder that has submitted an Expression of Interest is reasonably likely to make a bona fide offer that would result in greater value being received for the benefit of the Sellers' estates than under the MPA (a "Qualifying Expression of Interest"), then the Debtors shall afford such Qualified Bidder reasonable due diligence, including the ability to access information from a confidential electronic data room concerning the Purchased Assets (the "Data Room").

Neither the Debtors nor any of their affiliates (or any of their respective representatives) are obligated to furnish any information relating to the Sellers, the Purchased Assets, and/or the 363 Transaction to any person except to the Purchaser or another Qualified Bidder who makes a Qualifying Expression of Interest. The Debtors shall give the Purchaser any confidential memoranda (the "Confidential Memoranda") containing information and financial data with respect to the Purchased Assets and access to all due diligence information provided to any other Qualified Bidder.

The Debtors shall coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders. If the Debtors determine that due diligence material requested by a Qualified Bidder is reasonable and appropriate under the circumstances, but such material has not previously been provided to any other Qualified Bidder, the Debtors shall post such materials in the Data Room and provide notification of such posting by electronic transmission to the Qualified Bidders and not previously provided to the Purchaser.

Unless the Debtors determine otherwise, the availability of additional due diligence to a Qualified Bidder will cease after the Bid Deadline (as defined below).

Bid Deadline

The deadline for submitting bids by a Qualified Bidder shall be June 22, 2009, at 5:00 p.m. (Eastern Time) (the "Bid Deadline")

Prior to the Bid Deadline, a Qualified Bidder that desires to make a bid shall deliver (i) one written copy of its bid and (ii) two copies of the MPA that has been marked to show amendments and modifications to the MPA, including price and terms, that are being

proposed by the Qualified Bidder (a "Marked Agreement"), to (a) the Debtors, c/o General Motors Corporation, 300 Renaissance Center, Detroit, Michigan 48265 (Attn: Lawrence S. Buonomo, Esq.), (b) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (c) the U.S. Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (d) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (e) the attorneys for the Creditors Committee; (f) the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), 8000 East Jefferson Avenue, Detroit, Michigan 48214 (Attn: Daniel W. Sherrick, Esq.); (g) Cleary Gottlieb Steen & Hamilton LLP, the attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromely, Esq.); (h) Cohen, Weiss and Simon LLP, the attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (i) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.)

Due Diligence from Bidders

The Debtors and their advisors shall be entitled to due diligence from a Qualified Bidder, upon execution of a confidentiality agreement that is reasonably satisfactory to the Debtors. Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors. Failure of a Qualified Bidder to fully comply with requests for additional information and due diligence access will be a basis for the Debtors to determine that a bid made by the Qualified Bidder is not a Qualified Bid.

Bid Requirements

A bid must be a written irrevocable offer from a Qualified Bidder (i) stating that the Qualified Bidder offers to consummate a 363 Transaction pursuant to the Marked Agreement, (ii) confirming that the offer shall remain open until the closing of a 363 Transaction to the Successful Bidder (as defined below), (iii) enclosing a copy of the Marked Agreement, and (iv) including a certified or bank check, or wire transfer, in the amount of $500 million to be held in escrow as a good-faith deposit (the "Good Faith Deposit").

In addition to the foregoing requirements, a bid or bids must:

(a) provide that the Qualified Bidder (i) agrees to the assumption by the Debtors and assignment to such Qualified Bidder of any collective bargaining agreements entered into by and between the Debtors and the UAW with the exception of (a) the agreement to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW; and (b) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW, and (ii) will enter into the UAW Retiree Settlement Agreement;

(b) be on terms that are not materially more burdensome or conditional than the terms of the MPA;

(c) not be conditioned on obtaining financing or the outcome of unperformed due diligence by the bidder;

(d) not request or entitle the bidder to any breakup fee, expense reimbursement, or similar type of payment; and

(e) fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid, and the complete terms of any such participation.

A timely bid received from a Qualified Bidder and that meets the requirements set forth above (the "Bid Requirements") will be considered a Qualified Bid if the Debtors, in consultation with their advisors, the UAW, and the Creditors Committee, reasonably believe that such bid would be consummated if selected as the Successful Bid (as defined below). For all purposes hereof, the Purchaser's offer to acquire the Purchased Assets pursuant to the MPA shall constitute a Qualified Bid.

Acceptance of Qualified Bids

The Debtors shall present to the Bankruptcy Court at the Sale Hearing the Qualified Bid that the Debtors, in their business judgment, determine, in consultation with their advisors, the UAW, and the Creditors Committee, would provide the highest or best offer for the Purchased Assets and is in the best interests of the Debtors and their estates in the Debtors' chapter 11 cases (the "Successful Bid," and the bidder with respect thereto, the "Successful Bidder"). At the Sale Hearing, certain findings will be sought from the Bankruptcy Court, including that (i) the Successful Bidder was selected in accordance with these Bidding Procedures, and (ii) consummation of the 363 Transaction as contemplated by the Successful Bid will provide the highest or otherwise best value for the Purchased Assets and is in the best interests of the Sellers and their estates in these chapter 11 cases.

In the event that, for any reason, the Successful Bidder fails to close the 363 Transaction contemplated by its Successful Bid, then, without notice to any other party or further Bankruptcy Court order, the Debtors shall be authorized to close with the Qualified Bidder that submitted the bid that the Debtors in their business judgment determined, in consultation with their advisors, the UAW, and the Creditors Committee, would provide the next highest or otherwise best value for the Purchased Assets and is otherwise in the best interests of the Debtors after the Successful Bid (the "Next Highest Bidder").

Return of Good Faith Deposit

Except as otherwise provided in this paragraph with respect to the Successful Bidder and the Next Highest Bidder, the Good Faith Deposits of all Qualified Bidders required to submit such a deposit under the Bidding Procedures shall be returned upon or within one (1) business day after entry of the Sale Order. The Good Faith Deposit of the Successful Bidder required to submit such a deposit under the Bidding Procedures shall be held until the closing of

the 363 Transaction and applied in accordance with the Successful Bid. The Good Faith Deposit of the Next Highest Bidder shall be retained in escrow until 48 hours after the closing of the 363 Transaction. Pending the closing of the 363 Transaction, the Good Faith Deposit of the Successful Bidder and the Next Highest Bidder shall be maintained in an interest-bearing escrow account. If the closing does not occur, the disposition of Good Faith Deposits shall be as provided in the Successful Bid and Next Highest Bid, as applicable.

EXHIBIT B

FORM OF SALE NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

NOTICE OF SALE HEARING TO SELL SUBSTANTIALLY ALL OF DEBTORS' ASSETS PURSUANT TO MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER

PLEASE TAKE NOTICE THAT upon the motion (the "Motion"), of General Motors Corporation ("GM") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"), dated June 1, 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an order dated June 2, 2009 (the "Sale Procedures Order"), among other things, (i) scheduling a hearing (the "Sale Hearing") to approve (a) the Master Sale and Purchase Agreement, dated as of June 1, 2009 (the "MPA"), by and among GM and its Debtor subsidiaries (collectively, the "Sellers") and Vehicle Acquisition Holdings LLC. (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury"), with respect to the sale of substantially all the Debtors' assets (the "Purchased Assets") free and clear of all liens, claims, encumbrances, and other interests, and subject to higher or better offers (the "363 Transaction"); (b) the assumption, assignment, and sale to the Purchaser pursuant to the MPA of certain executory contracts and unexpired leases of personal property and nonresidential real property (the "Assumable Executory Contracts"); and (c) the settlement agreement (the "UAW Retiree Settlement Agreement"), between the Purchaser and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"); (ii) approving certain procedures for the submission and acceptance of any competing bids (the "Sale Procedures"); (iii) approving a procedure for the assumption, assignment, and sale to the Purchaser pursuant to the MPA of the Assumable Executory Contracts; (iv) approving the form and manner of notice of the Motion and the relief requested therein and of the Sale Hearing; and (v) setting a deadline for the filing of objections, if any, to the relief requested in the Motion.

A. THE MASTER SALE AND PURCHASE AGREEMENT

The total consideration under the MPA for the sale of the Purchased Assets is equal to the sum of (i) a credit bid in the amount of the outstanding indebtedness owed to the Purchaser as of the closing pursuant to certain secured loans extended by the U.S. Treasury and Export Development Canada, less approximately $8 billion (estimated to be approximately $48.3 billion at July 31, 2009); (ii) the surrender of a warrant to purchase GM shares previously issued to the U.S. Treasury in connection with the secured loans extended by the U.S. Treasury; (iii) the

issuance to GM of shares of common stock of the Purchaser representing approximately 10% of the common stock of the Purchaser as of the closing of the sale; (iv) the issuance to GM of warrants to purchase up to 15% of the shares of common stock of the Purchaser on a fully diluted basis, with one half exercisable at any time prior to the seventh anniversary of issuance at an initial exercise price based on a $15 billion equity value of the Purchaser and the other half exercisable at any time prior to the tenth anniversary of issuance at an initial exercise price based on a $30 billion equity value of the Purchaser (GM can elect partial and cashless exercises of the warrants); and (v) the assumption by the Purchaser of certain assumed liabilities, all as set forth more fully in the MPA, a copy of which is annexed to the Motion as Exhibit "A." In addition, if the aggregate amount of allowed general unsecured claims against the Debtors exceeds $35 billion, as estimated by an order of the Bankruptcy Court (which the Debtors may seek at any time), GM will receive an additional 2% of the common stock of the Purchaser as of the closing of the sale.

B. THE SALE HEARING

The Sale Hearing will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Courtroom 621 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, on June 30, 2009, at 9:45 a.m. (Eastern Time). The Sale Hearing may be adjourned without notice by an announcement of the adjourned date at the Sale Hearing.

RESPONSES OR OBJECTIONS, IF ANY, TO THE RELIEF SOUGHT IN THE MOTION SHALL BE FILED with the Clerk of the Bankruptcy Court and served upon: (a) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (b) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (c) the attorneys for the Creditors Committee; (d) Cleary Gottlieb Steen & Hamilton LLP, the attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromley, Esq.); (e) Cohen, Weiss and Simon LLP, the attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (f) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); (g) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004; and (h) the U.S. Attorney's Office, S.D.N.Y., 86 Chambers Street, Third Floor, New York, New York 10007 (Attn: David S. Jones, Esq. and Matthew L. Schwartz, Esq.), **SO AS TO BE RECEIVED NO LATER THAN JUNE 19, 2009, AT 5:00 P.M. (EASTERN TIME) (the "Objection Deadline**").

The failure of any person or entity to file a response or objection on or before the Objection Deadline shall be deemed a consent to the 363 Transaction and the other relief requested in the Motion, and shall bar the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Procedures, the Motion, the 363 Transaction, the approval of the UAW Retiree Settlement Agreement, and the Debtors' consummation of the 363 Transaction.

C. COPIES OF THE MOTION AND SALE PROCEDURES ORDER

This Notice provides only a partial summary of the relief sought in the Motion and the terms of the Sale Procedures Order. Copies of the Motion, the MPA (excluding certain commercially sensitive information), and Sale Procedures Order are available for inspection (i) by accessing (a) the website of the Bankruptcy Court at http://www.nysb.uscourts.gov, or (b) the website of the Debtors' claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com or (ii) by visiting the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408. Copies also may be obtained by faxing a written request to the attorneys for the Debtors, Weil, Gotshal & Manges LLP (Attn: Russell Brooks, Esq.) at 212-310-8007.

Dated: New York, New York
June 2, 2009

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors
and Debtors in Possession

EXHIBIT C

FORM OF PUBLICATION NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

NOTICE OF SALE HEARING TO SELL SUBSTANTIALLY ALL OF DEBTORS' ASSETS PURSUANT TO MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER

PLEASE TAKE NOTICE THAT upon the motion (the "Motion"), of General Motors Corporation ("GM") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"), dated June 1, 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an order dated June 2, 2009 (the "Sale Procedures Order"), among other things, (i) scheduling a hearing (the "Sale Hearing") to approve (a) the Master Sale and Purchase Agreement, dated as of June 1, 2009 (the "MPA"), by and among GM and its Debtor subsidiaries (collectively, the "Sellers") and Vehicle Acquisition Holdings LLC. (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury"), with respect to the sale of substantially all the Debtors' assets (the "Purchased Assets") free and clear of all liens, claims, encumbrances, and other interests, and subject to higher or better offers (the "363 Transaction"); (b) the assumption, assignment, and sale to the Purchaser pursuant to the MPA of certain executory contracts and unexpired leases of personal property and nonresidential real property (the "Assumable Executory Contracts"); and (c) the settlement agreement (the "UAW Retiree Settlement Agreement"), between the Purchaser and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"); (ii) approving certain procedures for the submission and acceptance of any competing bids (the "Sale Procedures"); (iii) approving a procedure for the assumption, assignment, and sale to the Purchaser pursuant to the MPA of the Assumable Executory Contracts; (iv) approving the form and manner of notice of the Motion and the relief requested therein and of the Sale Hearing; and (v) setting a deadline for the filing of objections, if any, to the relief requested in the Motion.

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issuance to GM of shares of common stock of the Purchaser representing approximately 10% of the common stock of the Purchaser as of the closing of the sale; (iv) the issuance to GM of warrants to purchase up to 15% of the shares of common stock of the Purchaser on a fully diluted basis, with one half exercisable at any time prior to the seventh anniversary of issuance at an initial exercise price based on a $15 billion equity value of the Purchaser and the other half exercisable at any time prior to the tenth anniversary of issuance at an initial exercise price based on a $30 billion equity value of the Purchaser (GM can elect partial and cashless exercises of the warrants); and (v) the assumption by the Purchaser of certain assumed liabilities, all as set forth more fully in the MPA, a copy of which is annexed to the Motion as Exhibit "A." In addition, if the aggregate amount of allowed general unsecured claims against the Debtors exceeds $35 billion, as estimated by an order of the Bankruptcy Court (which the Debtors may seek at any time), GM will receive an additional 2% of the common stock of the Purchaser as of the closing of the sale.

B. THE SALE HEARING

The Sale Hearing will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Courtroom 621 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, on June 30, 2009, at 9:45 a.m. (Eastern Time). The Sale Hearing may be adjourned without notice by an announcement of the adjourned date at the Sale Hearing.

RESPONSES OR OBJECTIONS, IF ANY, TO THE RELIEF SOUGHT IN THE MOTION SHALL BE FILED with the Clerk of the Bankruptcy Court and served upon: (a) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (b) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (c) the attorneys for the Creditors Committee; (d) Cleary Gottlieb Steen & Hamilton LLP, the attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromley, Esq.); (e) Cohen, Weiss and Simon LLP, the attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (f) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); (g) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004; and (h) the U.S. Attorney's Office, S.D.N.Y., 86 Chambers Street, Third Floor, New York, New York 10007 (Attn: David S. Jones, Esq. and Matthew L. Schwartz, Esq.), **SO AS TO BE RECEIVED NO LATER THAN JUNE 19, 2009, AT 5:00 P.M. (EASTERN TIME) (the "Objection Deadline**").

The failure of any person or entity to file a response or objection on or before the Objection Deadline shall be deemed a consent to the 363 Transaction and the other relief requested in the Motion, and shall bar the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Procedures, the Motion, the 363 Transaction, the approval of the UAW Retiree Settlement Agreement, and the Debtors' consummation of the 363 Transaction.

C. COPIES OF THE MOTION AND SALE PROCEDURES ORDER

This Notice provides only a partial summary of the relief sought in the Motion and the terms of the Sale Procedures Order. Copies of the Motion, the MPA (excluding certain commercially sensitive information), and Sale Procedures Order are available for inspection (i) by accessing (a) the website of the Bankruptcy Court at http://www.nysb.uscourts.gov, or (b) the website of the Debtors' claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com or (ii) by visiting the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408. Copies also may be obtained by faxing a written request to the attorneys for the Debtors, Weil, Gotshal & Manges LLP (Attn: Russell Brooks, Esq.) at 212-310-8007.

BY ORDER OF THE COURT

Dated: New York, New York
June 2, 2009

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors
and Debtors in Possession

EXHIBIT D

FORM OF ASSUMPTION AND ASSIGNMENT NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

NOTICE OF (I) DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY, AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND (II) CURE AMOUNTS RELATED THERETO

PLEASE TAKE NOTICE THAT:

1. By motion dated June 1, 2009 (the "Motion"), General Motors Corporation ("GM") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"),[1] sought, among other things, authorization and approval of (a) the sale of substantially all the Debtors' assets pursuant to that certain Master Sale and Purchase Agreement and related agreements (the "MPA") among the Debtors (the "Sellers") and Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury") (the "363 Transaction"), free and clear of liens, claims, encumbrances, and interests, (b) certain proposed procedures to govern the sale process and provide for the submission of any competing bids for substantially all the Debtors' assets (the "Sale Procedures"), (c) the assumption and assignment of certain executory contracts (the "Contracts") and unexpired leases of personal property and of nonresidential real property (collectively, the "Leases") in connection with the 363 Transaction, (d) that certain settlement agreement between the Purchaser and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") to be executed at the closing of the 363 Transaction (the "UAW Retiree Settlement Agreement"), and (e) scheduling a final hearing for approval of the 363 Transaction (the "Sale Hearing").[2]

[1] The Debtors and their respective Tax ID numbers are as follows: General Motors Corporation, Tax ID No. 38-0572515; Saturn, LLC, Tax ID No. 38-2577506; Saturn Distribution Corporation, Tax ID No. 38-2755764; and Chevrolet-Saturn of Harlem, Inc., Tax ID No. 20-1426707.

[2] Copies of the Motion and the MPA (without certain commercially sensitive attachments) may be obtained by accessing the website established by the Debtors' claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com.

2. The MPA, which, together with certain ancillary agreements, contemplates a set of related transactions for the sale of substantially all the Debtors' assets, defined as the "Purchased Assets" in Section 2.2(a) of the MPA, including certain Contracts and Leases, subject to higher or better offers.

3. The MPA contemplates, and the proposed order approving the Motion (the "Sale Order"), if approved, shall authorize the assumption and assignment to the Purchaser of certain Contracts and Leases pursuant to section 365 of title 11, United States Code (the "Bankruptcy Code"). The Sellers maintain a schedule containing Contracts and Leases that the Debtors may assume and assign to the Purchaser (collectively, the "Assumable Executory Contracts"). You are receiving this Notice because you are a party to one or more of the Assumable Executory Contracts.

4. **THE SCHEDULE CONTAINS A LIST OF ASSUMABLE EXECUTORY CONTRACTS THAT MAY BE ASSUMED. THE PURCHASER RESERVES THE RIGHT UNDER THE MPA TO EXCLUDE ANY ASSUMABLE EXECUTORY CONTRACT FROM THE LIST OF ASSUMABLE EXECUTORY CONTRACTS TO BE ASSUMED AND ASSIGNED BY NO LATER THAN THE DESIGNATION DEADLINE DISCUSSED IN PARAGRAPH 10 BELOW.**

5. The Debtors maintain a secure website which contains information about your Assumable Executory Contracts, including amounts that the Debtors believe must be paid to cure all prepetition defaults under the respective contracts as of the Commencement Date in accordance with section 365(b) of the Bankruptcy Code (the "Cure Amounts"). In order to view the Cure Amount for the Assumable Executory Contract to which you are a party, you must log onto http://www.contractnotices.com (the "Contract Website"). To log on, please use the user name and password provided to you with this notice. The username and password will enable you to access the Cure Amount for the particular Assumable Executory Contract to which you are a party.

6. Please review the Cure Amount for your Assumable Executory Contract. In some instances, additional terms or conditions of assumption and assignment with respect to a particular Assumable Executory Contract is provided on the Contract Website.

7. Objections, if any, to the proposed assumption and assignment of the Assumable Executory Contracts (the "Contract Objections"), including objections to the Cure Amount, must be made in writing and filed with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") so as to be received **no later than ten (10) days after the date of this Notice** (the "Objection Deadline") by (i) the Debtors, c/o General Motors Corporation, Cadillac Building, 30009 Van Dyke Avenue, Warren, Michigan 48090-9025 (Attn: Warren Command Center, Mailcode 480-206-114); (ii) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (iii) the U.S. Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (iv) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (v) the attorneys for the Creditors Committee; (vi) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael

J. Edelman, Esq. and Michael L. Schein, Esq.); and (vii) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004.

8. If a timely Contract Objection is filed solely as to the Cure Amount (a "Cure Objection"), then the Assumable Executory Contract shall nevertheless be assumed and assigned to the Purchaser on the Assumption Effective Date (as hereinafter defined), the Purchaser shall pay the undisputed portion of the Cure Amount on or as soon as reasonably practicable after the Assumption Effective Date, and the disputed portion of the Cure Amount shall be determined as follows and paid as soon as reasonably practicable following resolution of such disputed Cure Amount: To resolve the Cure Objection, the Debtors, the Purchaser, and the objecting non-Debtor counterparty to the Assumable Executory Contract (the "Non-Debtor Counterparty") may meet and confer in good faith to attempt to resolve any such objection without Court intervention. The Call Center (as defined in paragraph 19) has been established by the Debtors for this purpose. If the Debtors determine that the Cure Objection cannot be resolved without judicial intervention, then the Cure Amount will be determined as follows: (a) with respect to Assumable Executory Contracts pursuant to which the non-Debtor counterparty has agreed to an alternative dispute resolution procedure, then, according to such procedure; and (b) with respect to all other Assumable Executory Contracts, by the Court at the discretion of the Debtors either at the Sale Hearing or such other date as determined by the Court.

9. If a timely Contract Objection is filed that objects to the assumption and assignment on a basis other than the Cure Amount, the Debtors, the Purchaser, and the objecting Non-Debtor Counterparty shall meet and confer in good faith to attempt to resolve any such objection without Court intervention. If the Debtors determine that the objection cannot be resolved without judicial intervention, then, at the discretion of the Sellers and the Purchaser, the objection shall be determined by the Court at the Sale Hearing or such other date as determined by the Court. If the Court determines at such hearing that the Assumable Executory Contract should not be assumed and assigned, then such Executory Contract or Lease shall no longer be considered an Assumable Executory Contract.

10. If the Debtors, the Purchaser, and the Non-Debtor Counterparty resolve any Contract Objection, they shall enter into a written stipulation (the "Assumption Resolution Stipulation"), which stipulation is not required to be filed with or approved by the Court.

11. If you agree with the respective Cure Amount(s) listed in the Contract Website with respect to your Assumable Executory Contract(s), and otherwise do not object to the Debtors' assumption and assignment of your Assumable Executory Contract, you are not required to take any further action.

12. Unless an Objection is filed and served before the Objection Deadline, you shall be deemed to have consented to the assumption and assignment of your Assumable Executory Contract and the Cure Amount(s) for your Assumable Executory Contract(s), and you shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts against the Debtors, their estates, or the Purchaser.

13. Up to the date that is thirty (30) days following the closing of the 363 Transaction, or if such date is not a Business Day (as defined in the MPA), the next Business

Day, or such other later date as mutually agreed upon by the Purchaser and the Debtors (the "Designation Deadline"), the Purchaser may, in its sole discretion, subject to certain limitations specified in the MPA (applicable only as between the parties thereto), exclude any of the Assumable Executory Contracts by providing notice on the Contract Website. Upon such designation, the Contract or Lease referenced therein shall no longer be considered a Assumable Executory Contract, shall not be deemed to be, or to have been, assumed or assigned, and shall remain subject to assumption, rejection, or assignment by the Debtors. Until the Designation Deadline, the Purchaser also may, subject to certain limitations specified in the MPA (applicable only as between the parties thereto) designate additional Contracts or Leases as Assumable Executory Contracts to be assumed and assigned by providing notice to the affected Non-Debtor Counterparties. The Contract Website shall be updated from time to time to reflect the then current status of your contract as well as the proposed effective date (the "Proposed Assumption Effective Date"), if any, of the assumption and assignment of particular contracts.
'

14. The Debtors' decision to assume and assign the Assumable Executory Contracts is subject to Bankruptcy Court approval and consummation of the 363 Transaction, and, absent such consummation, each of the Assumable Executory Contracts will not be assumed or assigned to the Purchaser and shall in all respects be subject to further administration under the Bankruptcy Code. All Assumable Executory Contracts will be assumed and assigned to the Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the Proposed Assumption Effective Date and (ii) the date following expiration of the Objection Deadline if no Contract Objection, other than to the Cure Amount, has been timely filed, or, if a Contract Objection, other than to the Cure Amount, has been filed the date of the Assumption Resolution Stipulation or the date of a Bankruptcy Court order authorizing the assumption and assignment to the Purchaser of the Assumable Executory Contract. Until the Assumption Effective Date, assumption and assignment thereof is subject to the Purchaser's rights to modify the designation of Assumable Executory Contracts as set forth in paragraph 13 above. Except as otherwise provided by the MPA, the Purchaser shall have no rights in and to a particular Assumable Executory Contract the Assumption Effective Date.

15. The inclusion of any document on the list of Assumable Executory Contracts shall not constitute or deemed to be a determination or admission by the Debtors or the Purchaser that such document is, in fact, an executory contract or Lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are expressly reserved.

16. Any Contract Objection shall not constitute an objection to the relief generally requested in the Motion (e.g., the sale of the Purchased Assets by the Debtors to the Purchaser free and clear of liens, claims, encumbrances, and interests), and parties wishing to object to the relief generally requested in the Motion must file and serve a separate objection in accordance with the procedures approved and set forth in the order of the Bankruptcy Court approving the Sale Procedures.

17. If a party other than the Purchaser is determined to be the highest and best bidder for the assets to be sold pursuant to the 363 Transaction, you will receive a separate notice providing additional information regarding the treatment of your contract(s) or Lease(s); *provided, however*, that if the applicable Cure Amount has been established pursuant to the procedures set forth in this Notice, it shall not be subject to further dispute if the new purchaser seeks to acquire such contract or Lease.

18. This Notice is subject to the full terms and conditions of the Motion, the order of the Bankruptcy Court approving the Sale Procedures, and the Assumption and Assignment Procedures set forth in the order approving the Sale Procedures, which shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

19. If you have questions about the Assumable Executory Contracts or proposed Cure Amounts, you may call 1-888-409-2329 (in the United States) or 1-586-947-3000 (outside the United States) (the "Call Center").

Dated: New York, New York
June 2, 2009

Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors
and Debtors in Possession

EXHIBIT E

FORM OF UAW RETIREE NOTICE

A Message to UAW GM Retirees

Dear Brothers and Sisters,

As we all know, GM is engulfed in a severe crisis. GM's staggering losses during 2008 and 2009 have forced the company to file for bankruptcy. The Company has also been forced to rely on loans from the federal government in order to maintain its operations. In this environment, we are fighting every day to preserve and protect to the greatest extent possible our hard-won gains, particularly for the retirees, and surviving spouses of retirees, who helped build this industry with your years of loyal service.

Last December, after a lengthy process that included congressional hearings and petitioning the White House, the federal government granted GM a short-term emergency operating loan in order to avoid an immediate liquidation of the company at that time. As part of that loan, GM was required to submit a restructuring plan to the Treasury Department by February 17, 2009. On March 30, President Obama announced that the company's February 17 plan didn't go far enough in reducing costs and laying the groundwork for sustainability. He said GM would have to identify additional cost savings and debt reductions if GM were to receive additional financial support. The Treasury Department's auto task force also required deeper concessions from UAW members, retirees and other company stakeholders.

On May 28, GM announced that the Treasury Department would provide additional financial support in connection with a court-supervised restructuring of GM, in accordance with the terms of a broad restructuring agreement worked out between Treasury, GM, the UAW and representatives of GM's bondholders.

The agreement under which the Treasury Department will extend this new financial support includes a new schedule of contributions to the trust fund that will provide retiree medical benefits beginning in 2010. It also includes modifications to the collective bargaining agreement for active employees. The UAW active workforce ratified that agreement May 29. Based on these agreements, the United States government will provide a total of over $50 billion in financial support to allow GM to complete its restructuring.

GM's recent bankruptcy filing is part of the agreement reached with the Treasury Department. The goal of the bankruptcy filing is to allow for swift court approval of the restructuring so that the company can move forward to implement the agreements between the parties.

Proposed Sale

To complete the restructuring, a new company will be formed which will purchase the operating assets of GM. If approved by the Bankruptcy Court, the new company will enter into the agreements with the UAW covering both active and retired workers. The initial ownership of the new corporation will be allocated as follows:

- 72.5% -- United States and Canadian Governments
- 17.5% -- UAW Retiree Benefits Trust Fund

- 10% -- Bondholders

As part of the approval of the proposed sale, the Bankruptcy Court will also be asked to approve the new UAW Retiree Settlement Agreement, summarized below. As described more fully in Paragraph 6 of the attached document, if the court approves both the sale and the UAW Retiree Settlement Agreement, responsibility for providing retiree benefits for the duration of 2009, and for making the contributions to the VEBA, will shift to the new company (which will then own GM's operating assets).

Attached to this letter is a formal notice from the Bankruptcy Court regarding the proposed sale. As described in that notice, the Bankruptcy Court will soon hold a hearing to consider the proposed sale and the UAW Retiree Settlement Agreement.

Pension Plan Continues Without Change

The restructuring agreements provide that the new company will take over responsibility for the GM UAW pension plan. That plan will continue operations and pension benefits will be continued at their current level.

Retiree Medical Benefits

Retiree medical benefits were one of the most significant issues addressed in 2007 bargaining. The 2007 National UAW-GM Agreement established a new Trust Fund (called a "Voluntary Employees' Beneficiary Association" or "VEBA"), which is responsible for retiree medical benefits starting on January 1, 2010. The 2007 Agreement established a series of cash contributions by the Company to the VEBA, beginning on January 1, 2010.

In order for GM to receive the necessary government support -- which will allow the company to complete its restructuring and continue operations into the future -- we were required to support a series of changes to the retiree medical and VEBA agreements.

In this difficult situation, we were able to preserve the core medical benefits for retirees. These were hard fought issues and the changes described below are certainly painful. But if we had not agreed to support these changes, the U.S. Treasury would not have provided the additional support to GM. Without this critical government support, GM's near term future would be in serious peril and GM would face almost certain liquidation.

The following summarizes the principal features of the proposed agreement.

Existing Internal VEBA Assets Transferred in January 2010. Along with the new payment structure described below, in January 2010 the VEBA will receive the assets of an internal trust fund maintained at GM (called the "Internal VEBA"). The value of the assets in that fund is currently approximately $10 billion. GM had sought to use these assets to cover the cost of benefits prior to the January 1, 2010 implementation, which would have depleted these assets and diminished the cash balance in the new VEBA. We successfully resisted these efforts and

the new VEBA will therefore receive the full value of these Internal VEBA assets on January 1, 2010 as outlined in the 2007 agreement.

The assets in the Internal VEBA have been invested by GM on the VEBA's behalf since January 1, 2008. The value of these assets has been negatively impacted by conditions in the investment market during 2008 and so far in 2009. These assets will continue to be invested during the balance of 2009 and will be transferred to the new VEBA on January 1, 2010.

New $2.5 Billion Note. Under the new funding structure, the VEBA will receive a new Note, payable in cash, with a principal amount of $2.5 billion. Cash payments under the new Note (including accrued interest) will be $1.384 billion payable in each of 2013, 2015 and 2017.

New $6.5 Billion in Preferred Stock. The VEBA will also receive Preferred Stock in the new company with a face value of $6.5 billion. This Preferred Stock includes a 9% cash dividend payment structure, under which $585 million is payable annually for as long as the VEBA holds this stock. This dividend payment must be made before the new company can pay any dividends to the holders of its common stock. If the company delays payment of the dividends on the Preferred Stock, it will not be allowed to pay dividends to its common shareholders until it becomes current on the VEBA's Preferred Stock dividend obligations. While this preference over the common shareholders makes it likely the new company will consistently pay the preferred dividend, there is a risk that market conditions or other factors beyond the control of the UAW may result in the company delaying these preferred dividends for some period of time.

VEBA to own Significant GM Common Stock. Another requirement of the Treasury Department loans was that a portion of the value received by the VEBA be in the form of common stock. To meet that requirement, the VEBA will receive an initial allocation of 17.5% of the stock in the new company. The United States and Canadian Governments will receive 72.5% of the initial stock, and bondholders will receive 10%.

The VEBA will also have the right to designate a member of GM's Board of Directors, with UAW consent. The VEBA will be required to vote its GM shares in the same proportion as the votes of other shareholders.

The overall restructuring of GM will eliminate a tremendous portion of GM's other debt obligations. With a greatly improved balance sheet, as well as significant restructuring of business operations, there is a realistic prospect that the stock in the new company will represent significant value in the future. If and when that occurs, a significant portion of that value will be captured by the VEBA through this stock ownership.

Warrants. In addition to the direct ownership of the Preferred and Common Stock described above, the new VEBA will also receive a Warrant, which represents the right to an additional 2.5% of the Common Stock of the new company, with a strike price determined by an aggregate $75 billion equity value for the new company. This will allow the VEBA to realize additional value if the total value of the stock of the new company exceeds that value at any point prior to expiration of the new Warrant.

The new VEBA agreement includes mechanisms for the VEBA to sell the Common and Preferred Stock, as well as the new Warrants, to other parties under certain conditions.

Pension Pass Through Eliminated. One funding mechanism under the 2007 Agreement was called the "Pension Pass Through." Under that arrangement, the new VEBA was scheduled to impose an additional monthly contribution requirement, and the GM pension benefits were to increase by a corresponding amount. This mechanism has been eliminated and its value is instead reflected in the new Note and other instruments described above.

Mitigation VEBA Assets Transferred. Under the existing agreements, an independent VEBA is currently providing dental benefits and certain "mitigation" payments (i.e. covering a significant portion of the co-pays, deductibles and contributions that retirees would otherwise be required to pay under the 2005 agreement). Under the 2007 Agreement and the proposed new agreement, the assets in this existing independent VEBA (called the "Mitigation VEBA") will be transferred into the new VEBA on January 1, 2010. It is expected that the assets in the Mitigation VEBA will be approximately $700 million on January 1, 2010 but the actual balance will depend on investment performance and other factors during the balance of 2009. As explained below, the dental benefits currently provided by the Mitigation VEBA will be eliminated in accordance with the proposed new agreement.

VEBA Committee can adjust benefits beginning in 2010. As under the 2007 Agreement, the VEBA will be governed by an 11-member Committee, including 5 members appointed by the UAW and 6 Independent Members. Under the 2007 Agreement, that Committee had the authority, starting on January 1, 2012, to adjust benefits so that benefit levels can be kept consistent with the assets in the Trust. Under the proposed agreement, the Committee will be allowed to make necessary benefit adjustments beginning when the VEBA assumes responsibility on January 1, 2010.

Immediate Changes in Benefit Levels Required

Under the 2007 Agreement, GM remained responsible for providing retiree medical benefits through the end of 2009, with the new VEBA taking over responsibility on January 1, 2010. In the discussions over the last several weeks, the company sought an "early implementation" of this transition. Had we agreed to that approach, the assets of the VEBA would have been depleted to pay benefits for the remainder of 2009.

We succeeded in avoiding this depletion of the VEBA's assets during 2009. The new company will therefore continue to provide retiree medical benefits for the balance of 2009 until the new VEBA takes over responsibility. In exchange, however, the Treasury Department insisted that the benefits be immediately reduced to reflect GM's difficult financial situation. In order to maintain the support of the Government, therefore, we were required to agree to the following changes in benefits. These changes will be effective on July 1, 2009 (or later if court approval is delayed beyond that date).

Prescription Drug Co-Pays	Retail (34 day supply) • $10 Generic • $25 Brand Mail Order (90 day supply)

	• $20 Generic • $50 Brand
Catastrophic Plan for retirees and surviving spouses who fail to pay required monthly contributions	No longer offered. Retirees and surviving spouses currently in Catastrophic Plan will be given opportunity to join regular plan.
Coverage for Erectile Dysfunction (ED) medications (e.g. Viagra, Cialis, Levitra)	No longer offered, except in prior authorized cases of Pulmonary Arterial Hypertension
Coverage for the Proton Pump Inhibitor drug class (e.g. omeprazole, Prilosec, Zegerid, Nexium, Achiphex, Prevacid, Protonix)	No longer offered, except in prior authorized cases of Barrett's Esophagitis and Zoellinger-Ellison Syndrome
Vision Program	No longer offered
Dental Program	No longer offered
Emergency Room Co-Pay	$100 (waived if admitted)
Medicare Part B Special Benefit ($76.20 per month for retirees enrolled in Medicare)	No longer offered by health plan. This modification is not applicable to approximately 24,800 retirees and surviving spouses who retired or began receiving surviving spouse benefits before October 1979, and whose benefit is provided through the pension trust. The payments will continue for these pre-1979 retirees and surviving spouses.
"Low Income Retirees" (less than $8,000 annual pension and monthly basic benefit rate of less than $33.33)	Monthly contribution requirement of $11 (flat rate regardless of family status) In all other respects, these retirees and surviving spouses will be included in same plan as other retirees and surviving spouses.
Monthly Contribution Requirements (General Retirees)	No Change (currently $11/single and $23/ family)
Deductible and Co-Pay Requirements (General Retirees)	No Change (currently $164 annual deductible and $273 annual (single) out-of-pocket maximum)
Sponsored Dependents and Principally Supported Children	Consistent with changes made to the active medical program, the retiree medical program will not allow the designation of new "sponsored dependents" or "principally supported children." The provisions allowing new dependents to be added as a result of adoption or legal guardianship will continue in effect.

The Future Outlook

In the early years of the VEBA's existence, it is unlikely that the VEBA will be able to sell the stock in the new company. The new VEBA will therefore be required to use the $10 billion in immediate contributions from the Internal VEBA at GM, along with the assets of the Mitigation VEBA and the $585 million annual cash dividend payment on the Preferred Stock, to provide retiree medical benefits during 2010 and 2011. Because of the uncertainty regarding the long-term value of the stock, the Committee will likely be required to make further adjustments in the benefit levels for 2010 and 2011. The extent of those future adjustments will depend on many factors, including investment returns in the Internal and Mitigation VEBA's during the remaining months of 2009, and whether the dividends on the new $6.5 billion in Preferred Stock are delayed.

If the stock can be sold in 2012 or thereafter for significant value, the Committee will be able to take that new value into account and restore some or all of the benefits that are being reduced under these arrangements. In other words, if the current restructuring efforts are successful and the company returns to viability, the UAW retirees stand to reap the benefit of that recovery through the VEBA's significant stock ownership.

We urge your support for these proposed agreements. In these difficult circumstances, we believe they provide the best possible protection for your retiree benefits.

In solidarity,

Ron Gettelfinger	Cal Rapson**,** *Vice President*	Bill Payne
UAW President	*and Director, UAW GM Department*	*Counsel to the Class*

Important Notes

For further information about the proposed agreement and the process for court review of the proposed agreements and the proposed sale, please refer to the enclosed legal notice. Full and complete copies of the proposed retiree health agreement can be found on the website referred to in that notice.

If you support the proposed agreement, you do not need to take any action at this time. Information about the modified medical plan will be sent to you following court approval. If you wish to object to the proposed agreements, you must file a written objection as described in the enclosed legal notice.

Counsel to the Class Representatives participated in negotiation of the 2007 retiree medical agreements which were approved by the District Court for the Eastern District of Michigan on July 31, 2008. Although the Class Representatives are not formal parties to the new agreements described above, Counsel to the Class Representatives has reviewed the proposed agreements and is in full support of the efforts to obtain Bankruptcy Court approval of the new agreements. Counsel for the Class has entered an appearance in the Bankruptcy case and will be supporting approval of the proposed agreements.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

NOTICE TO DEBTORS' RETIREES REPRESENTED BY THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA OF SALE OF DEBTORS' ASSETS AND APPROVAL OF UAW RETIREE SETTLEMENT AGREEMENT

PLEASE TAKE NOTICE THAT:

1. By motion dated June 1, 2009 (the "Motion"), General Motors Corporation ("GM") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"),[1] have sought, among other things, authorization and approval of (a) the sale of substantially all the Debtors' assets pursuant to that certain Master Sale and Purchase Agreement and related agreements (the "MPA") among the Debtors (the "Sellers") and Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury") (the "363 Transaction"), free and clear of liens, claims, encumbrances, and other interests, (b) certain proposed procedures to govern the sale process and provide for the submission of any competing bids for substantially all the Debtors' assets (the "Sale Procedures"), (c) the assumption and assignment of certain executory contracts and unexpired leases of personal property and of nonresidential real property (collectively, the "Leases") in connection with the 363 Transaction, (d) that certain settlement agreement between the Purchaser and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") consented to by representatives of members of the "Class" of the Debtors' retirees and surviving spouses represented by the UAW such representatives, the "Class Representatives") to be executed at the closing of the 363 Transaction (the "UAW Retiree Settlement Agreement"), and (e) scheduling a hearing for approval of the 363 Transaction and the UAW Retiree Settlement Agreement (the "Sale Hearing").[2]

[1] The Debtors and their respective Tax ID numbers are as follows: General Motors Corporation, Tax ID No. 38-0572515; Saturn, LLC, Tax ID No. 38-2577506; Saturn Distribution Corporation, Tax ID No. 38-2755764; and Chevrolet-Saturn of Harlem, Inc., Tax ID No. 20-1426707.

[2] Copies of the Motion and the MPA (without certain commercially sensitive attachments) may be obtained by accessing the website established by the Debtors' claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com.

2. The Sale Hearing is scheduled to be conducted on June 30, 2009 at 9:45 a.m. (Eastern Time) at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, Room 621, New York, New York 10004 (the "Bankruptcy Court"), before the Honorable Robert E. Gerber, United States Bankruptcy Judge, to consider the approval of the MPA or any higher or better offer by a Successful Bidder (as defined in the Sale Procedures) and approval of the UAW Retiree Settlement Agreement. If the Purchaser is the Successful Bidder, the Debtors anticipate seeking entry of an order approving the 363 Transaction substantially in the form of the order attached to the Motion as Exhibit "B" (the "Sale Order"). The Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing.

3. Coverage of Retiree Medical Benefits (as defined in the UAW Retiree Settlement Agreement) will continue to be provided to UAW-Represented Retirees (as defined in the Sale Procedures Order) and their eligible dependents without interruption by either GM or the Purchaser up until December 31, 2009, in accordance with the terms of agreements negotiated and agreed to by the UAW, which include certain benefit reductions to take effect on July 1, 2009 (or, if later, Bankruptcy Court approval, if needed).

4. Contingent upon the Bankruptcy Court's approval of the 363 Transaction, and concurrently with the sale of the Debtors' assets pursuant to the 363 Transaction, the Debtors will assume and assign to the Purchaser any collective bargaining agreements entered into by and between the Debtors and the UAW (the "UAW CBA Assignment"), with the exception of (a) the agreement to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW ("MOU"); and (b) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW (the "2008 Settlement Agreement"), which was approved by the United States District Court for the Eastern District of Michigan in the class action styled *Int'l Union, UAW, et al. v. General Motors Corporation*, Civil Action No. 07-14074 (E.D. Mich. filed Sept. 9, 2007) (final order entered July 31, 2008).

5. The Purchaser has agreed, among other things, to enter into the proposed UAW Retiree Settlement Agreement, pursuant to which the Purchaser will make contributions to a voluntary employee beneficiary association trust (the "New VEBA") in respect of non-pension retiree benefits to the UAW-Represented Retirees on terms that differ from the terms of the MOU and the 2008 Settlement Agreement. Among other things, the UAW Retiree Settlement Agreement provides for the funding of the New VEBA with a combination of (i) shares of the Purchaser's common stock representing 17.5% of the aggregate common equity interest in the Purchaser; (ii) a promissory note of the Purchaser in the principal amount of $2.5 billion, payable in three equal cash installments on July 15 of 2013, 2015, and 2017; (iii) shares of the Purchaser's cumulative perpetual preferred stock in the amount of $6.5 billion, with a 9% dividend per annum, payable quarterly in cash; (iv) warrants to acquire newly issued shares of the Purchaser representing 2.5% of the Purchaser's common equity outstanding at December 31, 2009, issuable at any time prior to December 31, 2015; and (v) the assets held in the existing voluntary employee beneficiary association trust sponsored by the Sellers and to be transferred to the Purchaser, which at March 31, 2009 had a value of approximately $9.4 billion.

6. In addition, GM, the UAW, and the Class Representatives have entered into an agreement, dated May 29, 2009 (the "UAW Claims Agreement"), pursuant to which the UAW and Class Representatives agreed, subject to the consummation of the 363 Transaction and the UAW Retiree Settlement Agreement becoming effective following approval of the Bankruptcy Court, to take further actions to release claims against GM and its subsidiaries, and their employees, officers, directors, and agents, relating to retiree medical benefits pursuant to the MOU, Settlement Agreement, and UAW collective bargaining agreements, *provided* that such claims may be reinstated if the rights or benefits of the UAW-Represented Retirees under the UAW Retiree Settlement Agreement are adversely impacted by reason of any reversal or modification of the Bankruptcy Court's approval of the 363 Transaction or UAW Retiree Settlement Agreement.

7. The UAW is the authorized representative of the UAW-Represented Retirees for purposes of approval of the UAW Retiree Settlement Agreement pursuant to section 1114 of the United States Bankruptcy Code. At the Sale Hearing, the Debtors will request approval by the Bankruptcy Court of the UAW Retiree Settlement Agreement as an agreement with the UAW, as the authorized representative of the UAW-Represented Retirees.

8. A copy of the MPA (without certain commercially sensitive attachments) and the Motion (including the proposed Sale Order), the Sale Procedures Order as entered by the Bankruptcy Court (with the Sale Procedures attached), the UAW Retiree Notice, and the UAW Retiree Settlement Agreement, including all exhibits thereto, may be obtained (i) by accessing (a) the website of the Bankruptcy Court at http://www.nysb.uscourts.gov, or (b) the website of the Debtors' claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com/ or (ii) by visiting the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408. Copies also may be obtained by faxing a written request to the attorneys for the Debtors, Weil, Gotshal & Manges LLP (Attn: Russell Brooks, Esq.) at 212-310-8007.

9. **Responses or objections, if any, to the relief sought in the Motion, including the approval of the UAW Retiree Settlement Agreement, must be made in writing and filed with the Clerk of the Bankruptcy Court (at the address shown in paragraph 2 above), and served upon (a) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (b) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (c) the attorneys for the Creditors Committee; (d) Cleary Gottlieb Steen & Hamilton LLP, the attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromley, Esq.); (e) Cohen, Weiss and Simon LLP, the attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (f) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); and (g) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004., so as to be received no later than June 19, 2009, at 5:00 p.m. (Eastern Time) (the "Objection Deadline").**

10. The failure of any person or entity to file a response or objection on or before the Objection Deadline shall be deemed a consent to the 363 Transaction and the other relief requested in the Motion, including approval of the UAW Retiree Settlement Agreement, and shall bar the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Procedures, the Motion, the 363 Transaction, and the UAW Retiree Settlement Agreement, and the Debtors' consummation of the 363 Transaction.

11. This Notice is subject to the full terms and conditions of the Motion, the Sale Procedures Order, the MPA, and the UAW Retiree Settlement Agreement, which shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

12. If you have questions about the 363 Transaction or the UAW Retiree Settlement Agreement, you may call 1-800-489-4646 (the "Call Center").

Dated: New York, New York
June 2, 2009

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and Debtors in Possession

Exhibit N

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-reg

- -x

In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

June 1, 2010

9:42 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Motion of General Motors, LLC for Entry of an Order Pursuant to 11 U.S.C. Section 105 Enforcing 363 Sale Order

Transcribed by: Dena Page

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ALSO PRESENT:
TERRIE SIZEMORE, Pro Se

P R O C E E D I N G S

THE COURT: We have GM on for 9:45 and it's a little bit early. Let me ask if people are ready to go on GM. Is everybody who would want to be heard on that -- I think I need to hear, in addition to the debtors, from Ms. Sizemore -- or, Dr. Sizemore. I hope you're on the phone. Are you on the phone, Dr. Sizemore?

COURTCALL OPERATOR: She has no appearance for that matter, Your Honor.

THE COURT: Okay, I heard you but not very loudly, so I'm going to ask you to speak up.

Mr. Rutledge?

COURTCALL OPERATOR: Your Honor? Your Honor?

THE COURT: Are you Dr. Sizemore? Oh, you came personally, after all. All right, very well.

MR. RUTLEDGE: Your Honor, I'm Roger Rutledge. I'm here from the Western District of Tennessee. I have a motion for appearance pro hac vice before the Court and would hope that the Court would grant that.

THE COURT: Of course. Welcome.

MR. RUTLEDGE: Thank you, Your Honor.

THE COURT: And on behalf of the -- is it Deutsch litigants?

MS. PENA: Yes, Your Honor. Melissa Pena from the law firm Norris, McLaughlin & Marcus. I serve as local counsel for

Sanford Deutsch. I have with me, today, Mr. Barry Novack. He's an attorney in good standing with the State Bar of California. We just filed his pro hac papers today; I'd like to just move for his admission.

THE COURT: Of course. Welcome.

MR. NOVACK: Thank you.

THE COURT: Granted.

Okay, you know what, Patrick, could you turn off the blower, please?

Okay, folks, let's come on up, please, for the GM motion to enforce the 363 order. And then after everybody makes their formal appearances, I'll want everybody to sit down. I have some preliminary comments.

MR. RUTLEDGE: Does Your Honor want all the parties at counsel table that are responding or objecting to the motion of GM?

THE COURT: Yes, except only for the fact that if you're local counsel isn't going to be saying anything, it's optional for them. But I would like all of the counsel for Mr. Robley and the -- is it Deutsch? Forgive me.

MR. NOVACK: Deutsch, Your Honor.

THE COURT: Yes, the Beverly Deutsch family and also Dr. Sizemore to be up where they can be heard, although when you speak, I'm going to ask each of you individually to come to the main lectern, if you would, please. Okay.

Actually, I don't know if I need to make you folks repeat yourself. I have Mr. Rutledge, Mr. Novack and Dr. Sizemore, and for the debtor -- I'll take a formal appearance.

MR. KAROTKIN: For General Motors, LLC, Your Honor, Stephen Karotkin, Weil, Gotshal & Manges.

THE COURT: Okay, Mr. Karotkin. And with you?

MR. KAROTKIN: Is Mr. Bonomo (ph.) from General Motors, LLC. He's in-house counsel. And my colleague, Pablo Falabella, from my firm.

THE COURT: All right, very well. Okay, have seats everybody.

Folks, I want you to make your presentations as you see fit, starting with Mr. Karotkin. But when you do so, I want you to emphasize and focus on the particular questions and concerns that I'm going to identify for you now.

First, Mr. Rutledge, your -- the way you handled the commencement of the lawsuit, given your need to preserve your position and to tee it up for judicial determination was a text book example of the right way to do it in terms of acting responsibly. But I have some questions and concerns concerning your underlying motion -- or, your underlying objection. I want you to focus, vis-a-vis your notice position, in particular, as I want Mr. Karotkin to do when it's his turn, on the decision by Judge Cyr who -- of the First Circuit who, as we know, was a former bankruptcy judge because I think I need

to assume, for the sake of discussion, that Western is correct, but it says quite explicitly that that was a case in which notice by publication wasn't given, and that strikes me as a huge distinction.

I also need help from you, Mr. Rutledge, in focusing on the extent to which I can now hear argument on this when I ruled on the matter of notice when I issued the 363 order on the Fourth of July weekend last year because, unless I'm mistaken, there is an express finding on the matter of notice. And while I think that the facts could at least arguably be different if your client had already been known to Old GM or New GM, there is no basis in the record upon which I can make such a conclusion that either of the two GMs intentionally did not give you notice.

On the second issue, Mr. Rutledge, the successor liability issue, it seems to me that subject to your right to be heard, that you've got a res judicata problem, and that while I'd be amenable, I suppose, to your keeping your actions stayed as contrasted to dismissed until all appeals opportunities have been exhausted, I don't see how I can revisit the underlying issues in the second half of your brief for as long as my decision from last year and the district court affirments say what they say they do and remain good law.

Dr. Sizemore, I need help in understanding the legal bases for your position, either the underlying contention or

the need for further discovery. It's not as fleshed out as the one that Mr. Rutledge filed in this court. And I have some material difficulties in seeing how your lawsuit can proceed given what the documents say.

Now, apropos what the documents say, that ties into the third of the objections to the motion, yours, Mr. Novack. As a preliminary matter, I need help from both sides because, Mr. Novack and Mr. Karotkin, it appears to me that neither side quoted what I understand to be the relevant language in 2.389 which appears not in the first amendment which each of you quoted to me, but in the ARMSPA as it was in next to the sale order which seems to have different language in it than either side quoted. And what I would be tentatively inclined to base my ruling on would be the language in the ARMSPA as in next to the sale order in 2.389 that says, "accidents, incidents, or other distinct and discrete occurrences", which seems to me to be the key words that I've got to work off, rather than the "accidents or incidents first occurring language" that appears in the first amended MPA that each side quoted in its brief. Now, if I'm mistaken in that regard, don't be diplomatic, folks. Tell me so. But it seems to me that on the very unique facts that you have, Mr. Novack, I have to construe the ARMSPA in light of whatever the proper contractual language is, which I think is the one I just read.

And then I ask -- I need you folks to concentrate on

how a judge would construe the words "accidents, incidents, or other discrete occurrences" because those words seem to talk about what caused everything thereafter, in contrast to when the cause of action legally arose.

As my hesitancy in my articulating that suggests, I think the third issue was the closest of the three that I have here, but I want help from both sides on that. The two things that I need help from you the most on is that First Circuit decision in Western Auto Supply Company v. Savage Industries and the proper construction of the agreement.

Mr. Karotkin, you want to take a second, and then I'll hear from you first.

MR. KAROTKIN: Good morning, Your Honor. Stephen Karotkin, General Motors, LLC, for the moving party.

Your Honor, we believe that our motion and our pleadings and our responses are pretty much self-explanatory. As you know, there are six lawsuits involved. And just by way of quick background, only three responses were filed, to which you already alluded. R. J. Burn already has agreed to dismiss its lawsuit, and the other two respondents did not file any responsive pleadings.

I think that you've certainly put your finger on the issues that are relevant today with respect to the first item in Judge Cyr's decision, as you noted, and as we noted in our pleadings, there is certainly a very, very significant

distinction in that case as compared to the incident case where notice by publication was given; it was wide-spread. As Your Honor indicated, you expressly found that notice by publication was sufficient. There is no indication on the record or otherwise that General Motors, which is now MLC, had any actual notice of this claim. The lawsuit was not filed, I don't believe, until November 23rd, 2009, as indicated in Mr. Robley's pleading. And under the applicable law and rules, notice by publication was sufficient.

Moreover, Your Honor, as you surely know, the proposed financial difficulties of General Motors Corporation, the Chapter 11 filing, the sale that was going to take place before this Court at the end of June about a year ago was notorious and widespread in the papers. In addition to your finding that publication was sufficient and under those circumstances, as I think you've already indicated, we believe notice was sufficient. We believe notice complied with due process. The suggestion that we should have given notice to every single consumer who bought a General Motors vehicle is not supported by any authority that I'm aware of. It would have been virtually impossible to do, certainly in the context of the time frame we were dealing with. And again, we think the notice was more than adequate to comply with Mullane in due process.

I would also point out, and I think you indicated that

as well, that notwithstanding the issue of notice, the issue that has been raised by Robley with respect to selling free and clear of product liability claims was fully litigated at length in the three-day sale hearing before this Court. Your Honor ruled on the issue. Judge Gonzalez, as you indicated yourself, ruled on the issue. It was sustained by the Second Circuit, and as, again, you mentioned at the outset, we believe that that issue is res judicata. In addition to which it's --

THE COURT: Pause, please, Mr. Karotkin. I assume that New GM isn't prejudiced in any material way if that lawsuit remains stayed as contrasted to me ordering that it be dismissed until the time for all appeals has been exhausted?

MR. KAROTKIN: That's correct, and they have absolutely no objection to that.

THE COURT: All right, continue, please.

MR. KAROTKIN: And I think that, Your Honor, that really disposes with the Robley objection. With respect to Deutsch, again, you referred to the language that refers to "accidents, incidents or other distinct and discrete occurrences" that happened on or after the closing date. This clearly happened prior to the closing -- well prior to the closing. And again, as we mentioned in our pleadings, Your Honor, the fact that the cause of action may have arisen under -- I believe it was California law upon the death of the plaintiff in that action really is of no relevance. And we

think that the pure words of the contract dictate the result that this action must be dismissed as well.

THE COURT: Pause, please, because I didn't understand Mr. Novack to be arguing that we could ignore the contract, but I think that he was trying to argue that although the accident undisputedly took place before the closing, that the death was an incident. And because both sides were arguing different contractual language, I don't think you focused on "other distinct and discrete occurrence". Do you want to comment on whether the death can be regarded appropriately as an incident in contrast to an accident?

MR. KAROTKIN: I think, Your Honor, that the death, if it was the result of the accident, certainly was a byproduct of that, but it was not an accident or incident that occurred prior to the closing. And I think that it's very clear that whatever happened in the incident which gave rise to the cause of action -- or, the accident which gave rise to the cause of action clearly happened prior to the closing, as well as any distinct or discrete occurrences. All of that was the result of the accident, or allegedly the result of the accident that happened well prior to the closing, and I think that's the only logical interpretation of the purchase agreement and what was intended.

THE COURT: Okay, continue please.

MR. KAROTKIN: With respect to the Sizemore objection,

I think -- I think what Dr. Sizemore is saying is that she is entitled to discovery and should not be compelled to dismiss her lawsuit until General Motors, LLC has complied with discovery. Again, as we indicated in our pleadings, Your Honor, it's not a condition to your order or a violation of your order that General Motors be compelled to comply with discovery prior to or, as the condition to being dismissed from the lawsuit. To the extent that third party discovery is appropriate from General Motors, LLC, under the rules, under whatever procedures are appropriate in the non-bankruptcy court action brought by Dr. Sizemore, General Motors is obligated to comply with appropriate third-party discovery and will do so. It's my understanding that they already have furnished discovery to Dr. Sizemore, and all we are suggesting is that General Motors be dismissed and, again, to the extent that Dr. Sizemore believes she is entitled to discovery, that can proceed under the applicable rules of that non-bankruptcy court forum.

THE COURT: Well, if her action were dismissed, what would her basis for getting discovery to be. I'm a little puzzled by that. Saying that she has a right to discovery doesn't seem to make a whole lot of sense to me in light of what I understand you're looking for and what I would be -- or the variant, which is what I'm thinking about, which is staying that litigation until the matter of the underlying free and

clear order I issued either gets up to the Circuit or all appeals are dismissed. But I don't see how she has a valid lawsuit upon which to bring discovery or to seek it if I give you what you're looking for. Now, I assume she has a proof of claim in this court, and she can get third-party discovery against New GM to the extent that she can't get what she wants from Old GM, but I thought I heard you saying something different.

MR. KAROTKIN: Number one, we're not aware of Dr. Sizemore having filed a proof of claim against Old GM. We've checked the records, and there's no record of a proof of claim on file. If we are mistaken, I'm sure that Dr. Sizemore can correct me, but we have checked the docket and we don't see it.

Secondly, her lawsuit also was against -- or, is against a supplier. And to the extent that discovery would be appropriate as against General Motors, again, third-party discovery can proceed.

THE COURT: I'm with you now. Okay, continue.

MR. KAROTKIN: And Your Honor, unless you have other questions --

THE COURT: No. I'll give you a chance to comply and I'll give your opponents a chance to surreply.

MR. KAROTKIN: Okay, thank you, sir.

THE COURT: But let me hear next -- let me hear from Dr. Sizemore next, please.

DR. SIZEMORE: Thank you. I apologize; I'm a little nervous and I appreciate your patience.

He was incorrect in saying that the lawsuit is against a supplier. That's not correct. I believe I said in my objection that I was injured a little over two years ago, in January of '08, in a car accident; my airbag did not deploy. I felt I met the criteria for the bag to deploy. The Old General Motors Company sent a field investigator named Mr. John Ball (ph.) to inspect the vehicle. He promised me the details of the engineers' conclusions of his data. He inspected every aspect of the airbag.

I have been in conflict with General Motors, the Old and the New, for the details of that report since about March of '08. I wrote several letters to General Motors; they refused to respond to me at all. They said that a company named ESIS handled their product liability issues; I was to contact them. They've refused to give me the information. I contacted the Ohio Attorney General's Office because they have a consumer protection department. In doing that, they petitioned the information from the Old General Motors. The Old General Motors has supplied about this many pages of documents, but I have read every page that General Motors has supplied, and the information that I requested is not in those pages. When I received -- I received a crash data report from Mr. John Ball, some of the data that he collected is included

in here, as far as the deceleration event, the speed of my vehicle, the fact that the airbags were enabled at the time of my accident. But there's this hexidecimal fraction of this report that is computer gibberish to me and not understandable. So I asked for clarification of that and have never received it.

Also given to the Ohio Attorney General's Office was a report from an engineer named Mr. John Sprague (ph.). I contend that that report is fraudulent and it is not based on the information that John Ball obtained during the inspection because I was present during the inspection. And John Ball told me part of the information he had received: the speed of my vehicle, the impact, the reason that the airbags did not deploy. There's a picture that I was sent by General Motors in a collection of pictures that stated there was a class 2 malfunction. The explanation of that is not present in the material that was sent to the Ohio Attorney General and to me. And I was frustrated, and I told the Ohio Attorney General that what was missing in the report, and so they petitioned General Motors again, and General Motors, again, refused to respond -- the Old General Motors.

Also, I contacted federal representative Bob Latta's office. I have a message on my cell phone from that office that states that they contacted the new company, General Motors Company after the commencement of the bankruptcy. They said

they did not mention any of the issues of the bankruptcy and the fact that my accident occurred prior to the commencement, so it would not be their responsibility. Bankruptcy issues were never discussed. So what General Motors Company advised Federal Representative Latta's office to do was to contact Aesis, which claims to be General Motor's central claims unit. After all these -- and that was in August of '09. So I have August 18th as General Motors Company responding but never really providing any information.

So through frustration and through not knowing exactly how to proceed, I did file a claim against General Motors Corporation in civil court. And I was sent a letter by Ms. --

THE COURT: By that, you mean in Ohio?

DR. SIZEMORE: Yes.

THE COURT: Um-hum.

DR. SIZEMORE: Yes, where I purchased the vehicle.

THE COURT: Um-hum.

DR. SIZEMORE: For product liability. I was sent a letter by Brianna Benfield, who I understand works for the same firm that is present today, and she said in her letter that all actions against General Motors Corporation were void and that my action violated, I think, 362(a). I do have a copy of her letter. In her letter, she never offers me a proof of claim form and she never directs me to bankruptcy court. She just says that all claims are void, and if I didn't withdraw them,

then I would be in contempt of court. And I am basically a law-abiding citizen; I don't do things incorrectly intentionally. So I did withdraw them. And when I had a phone conversation with her, she explained to me that there was a new company called General Motors Company that had assumed responsibility. Whether that was correct or whether I misunderstood, I'm not sure. But she also said that my claim against ESISwas valid.

When I proceeded in civil court in Medina, Ohio, I had written to the judge that I claim to have a good heart but empty head and I understood that I could have possibly made some mistakes, but that I had made every honest attempt to gather the necessary information to not make those mistakes. Judge Kimbler was confused; I have a transcript of the hearing during -- on December 1st in Medina County, and he petitioned Mr. Popson, who was representing ESIS at the time, but ESIS told me that General Motors Company was paying him to represent Aesis. But Mr. Popson stated to the Court that ESIS was not the proper defendant because they did not manufacture the vehicle and they did not sell the vehicle to me. So according to Civil Rule 12(b)(6), I was dismissed. But I held the understanding that even an insurance company can be joined to civil litigation if it's appropriate or necessary. But that was disregarded.

THE COURT: Doctor, I want to interrupt you for a

second because I think you may be concerned that I'm going to take action against you for having violated the earlier injunction or anything like that, and I want to take that off the table both for you and the other two litigants who are here. I see the legal issue not as whether anybody is guilty of contempt or should be sanctioned or punished in any way but rather the extent to which the litigation should continue in light of what the sale order said and what the purchase agreement said.

So I'd like to ask you to turn to that. And I telegraphed some of the concerns that I have when I was commenting on the two lawyers who are representing their clients. And if you have anything to help me on that before they speak, I'd like you to do that, please.

DR. SIZEMORE: Okay, well, I appreciate your not wanting to punish me because that was one of the reasons that I came up here, because I don't feel that if I made a mistake, it was entirely my fault.

THE COURT: Of course, I understand that.

DR. SIZEMORE: So in all of this confusion, I filed an action for discovery in civil court because I wanted the details. My first question in the action for discovery -- which I believe I met all of the requirements of the revised code required -- was that General Motors Company provide me with the details of the bankruptcy and if there's anything that

I needed to know to prevent being here in bankruptcy court in New York or violating any bankruptcy laws at all. And then there were several others; I have the list of questions with me. They were simple questions; I've asked the lawyers for General Motors if that action for discovery violated any bankruptcy laws or issues. They have not provided me with that. So I was under the gun for the statute of limitations in January of this year to file. So without the needed information, I filed against the company because I had read newspaper articles, talked to different people, had some, what I believed was misleading and false information from both the Old company and the New company as to where the liability was supposed to be. And so I did put the company as the defendant and then John Does were listed. There were no other defendants except for them.

Mr. Popson -- and I believe he did this in order to invalidate my action for discovery and get out of answering the questions properly -- filed an answer. And when he filed a motion to dismiss my action for discovery, he said that I had enough sufficient information to file a claim. But that statement, in my opinion, is false because I didn't have sufficient information and I apparently made a mistake by putting the company down as a defendant. But Mr. Popson made -- he did answer the complaint, and then he gave me verbal instruction to serve discovery request upon him according to

Civil Rules 33 and 34, which I said, if General Motors Company is not a legitimate defendant, I don't feel that I can serve discovery requests through 33 and 34, so I did not. I said if you are willing to answer discovery request, then please answer my action for discovery.

Well, he invalidated that action for discovery completely, but I still maintain that that was legally executed and did not violate bankruptcy laws, and so I'm in the ninth district because General Motors Company failed to comply with Civil Rule (a)(1) requiring them twenty-eight days --

THE COURT: Pause, please, Dr. Sizemore. I don't want to cut you off, especially since you traveled so far, but you're getting a little bit afield. I need you to concentrate on the bankruptcy issues that are before me and what the purchase agreement says. So when I -- when you continue, which will be in just a moment, I want you to focus on that, please.

Before you do, though, I would also like you to help me -- I had always assumed that a DVM is a veterinarian.

DR. SIZEMORE: Yes.

THE COURT: And an RN is a nurse. Do you have legal training? I saw your pleading. It looked like either you had at one time gone to law school or somebody with legal training had helped you.

DR. SIZEMORE: No, I've done research independently. I am medically trained. I have -- my background is completely

medical --

THE COURT: Okay.

DR. SIZEMORE: -- for over thirty years.

THE COURT: Fair enough. Then, you want to continue, please, with bankruptcy doctrine, cases, statutes, as to why you should win. For the purposes of the issues that are before me, I don't have the power to decide whether or not you were injured by a GM vehicle or whether GM did anything wrong.

DR. SIZEMORE: I understand that, and in all honesty, I guess my position is that I am very unsure of any of the bankruptcy issues. I feel that General Motors owed me, as a consumer -- and they did -- the attorney who was standing here, I believe I did receive some notification in the mail that really didn't make a lot of sense to me as far as the bankruptcy that happened because I had an '04 vehicle, and I now have an '07 vehicle. But my -- if I made a mistake, it was unintentional, and I don't know how to plead because if I -- I can't deny that I made a mistake because there's a possibility that I did. But I can't --

THE COURT: Well, you don't have to plead guilty or not guilty like you would if you were in a criminal court. I would suggest to you that you let the two lawyers speak because the two of them have more directly addressed the bankruptcy issues that I need to deal with.

DR. SIZEMORE: Okay.

THE COURT: Thank you.

Okay, may I hear next from Mr. Rutledge, please?

MR. RUTLEDGE: Thank you, Your Honor. I'm Roger Rutledge from Memphis, Tennessee, and I appreciate the opportunity to be before the Court this morning. I know that this case has been unbelievable; it took me a while before I found out that there was a single web site devoted solely to documents filed in this case. And it's just an amazing case. I know that the Court was faced with a tremendous responsibility in those forty days from the day that the petition was filed until the transaction that consummated the sale order and that, really, I want to acknowledge that the Court stepped up to the plate and did what needed to be done for the sake of the whole country, and especially in the face of a looming disaster. And I would submit, Your Honor, that this morning, the disaster has been averted, that we have an opportunity to go back and deal with some of the things that, at that time, would have been considered to be less significant, and to hopefully do the right thing, which is why I'm here.

I represent Shane J. Robley, a young man, twenty-seven years old --

THE COURT: Who I sense is a paraplegic, and I'm very sensitive to the personal circumstances of your client.

MR. RUTLEDGE: Thank you, Your Honor. He is, indeed,

a paraplegic, and after -- he was driving a GMC Jimmy which, along with a Chevrolet Blazer, has the worst rollover tendency ever recorded by the National Highway Traffic Safety Administration. This accident is one that definitely was tragic; that's all we can say about it. And after it happened, for probably the six months that ensued after -- it was November of 2009, the end of November, he was, for sixty days, in the intensive care unit of the hospital. And then, in the succeeding months, he was under treatment and learning how to live in a wheelchair.

And so, we come up to June the 1st, and the notice by publication. And I would not differ with counsel for GM, but under normal circumstances, notice by publication reaches most people in a bankruptcy case. It's commonly used, and I certainly don't take issue with the general acceptance of the certificate of publication that the Court made at the time of the entry of the order. But I would submit, Your Honor, that under the test of Mullane v. Central Hanover Bank and Trust Company and other authority, that the notice in this case was not reasonably calculated to reach Shane J. Robley or people like Shane J. Robley.

I took the liberty, Your Honor, of reproducing from the record at www.motorsliquidation.com the actual publication notices. It was published one time in these publications, four of which came out in Canada. And I would just submit to Your

Honor that the small type and the language of the notice was simply insufficient to give a person in Shane J. Robley's situation any kind of understanding that his rights were going to be just affected but potentially extinguished by the procedure that was taking place in June of 2009.

Your Honor, this is -- frankly, the Court, in June of 2009, was faced with a hard case. And this case has the potential to be a classic illustration of the old axiom that hard cases make bad law. But we have the possibility, also, to go back and look at what has happened and make some good law in the aftermath. Certainly, at the time, it was a necessity to -- and this was all articulated in the ruling of the Court -- the exigencies of that -- or, the circumstances that the Court faced were so dire that to avoid potential liquidation of this huge company and all of the harm that would flow from that, it was appropriate to use the expedited procedure to solve the problem.

Similarly, it's appropriate at this stage, looking back on it, to say if we used an expedited procedure, and there were good reasons for doing that -- but if a man named Shane J. Robley was left out and was out in the cold, and if we live in a country that is ruled by procedural due process and that there was a problem there, that we can fix it. Now, the Court --

THE COURT: Pause, please, Mr. Rutledge.

MR. RUTLEDGE: -- the Court --

THE COURT: Pause, please. If GM knew back then that your client had already been injured and chose to use the publication route rather than a way that would get to him more directly, that kind of factual circumstance would have troubled me. But at the time of the sale hearing, am I right in my understanding that GM didn't know anything more about your client other than the fact that at one time, he had bought a GM vehicle?

MR. RUTLEDGE: I believe that is correct, Your Honor. At the time, Mr. Robley was, as I say, under medical care and had really not come to a full understanding of his position with regard to what had happened.

But just coming to the issue that counsel for GM made regarding the notice, he stated in argument that under the applicable rules, notice by publication was sufficient. Now, bankruptcy law makes it the responsibility of the party in bankruptcy, basically, the debtor-in-possession or the trustee, to see to it that adequate notice is given. It's not handled by the Court, as it was before 1978. So in this respect, the Court was really depending upon GM to do the job. As we heard this morning in argument by GM's counsel, they were depending upon the news media to do their job. They did one notice by publication in the newspaper and assumed that that was going to be picked up and everybody would know -- a product liability

would know that this hearing was going to take place in which he could possibly lose all his rights. I submit, Your Honor, that there is an analogous situation in which automobile manufacturers routinely contact owners of their vehicles, and that is the -- either the recall or the National Highway Traffic and Safety Administration issues orders from time to time directing companies to contact owners about a defect or a problem. And they routinely do it. Now, I submit, Your Honor, that in the case of notice in a bankruptcy proceeding, except for the haste that was called upon because of the particular circumstances facing the Court at that time, there was no excessive burden upon GM either financially or in terms of its capability of accomplishing such a feat to issue notice by mail. Failing that, at the very least, they could use the same type of notice that goes out in class action lawsuits, notice -- I mean, direct advertisements on the media, television, and something that came right out and said if you were injured in a GM vehicle, your rights could be terminated by this proceeding.

Now, I found it interesting that Dr. Sizemore received a letter from Brianna Benfield because, as we say in our filing, a letter -- we received a letter also. And I found it very interesting, also, that that letter did not enclose a proof of claim form or anything to try to give notice of where Dr. Sizemore stood or where Mr. Robley stood with regard to

these proceedings.

THE COURT: Pause, please. Did I understand you to say that you had a similar communication with her?

MR. RUTLEDGE: That is correct, Your Honor.

THE COURT: And she didn't tell you about the claims filing process either?

MR. RUTLEDGE: She did not, Your Honor.

THE COURT: And either by other means or otherwise, have you ultimately filed a proof of claim against Old GM on behalf of your client?

MR. RUTLEDGE: What I have done, Your Honor, is I contacted Ms. Benfield and I asked her if we could file a late filed proof of claim by consent. And I just received response to that last Friday.

THE COURT: And what did she say?

MR. RUTLEDGE: And she said no; she said that GM would not consent. So basically, we are here on behalf of Mr. Robley because this is his sole route of recourse, it appears, other than we will file and submit to the Court and seek the Court's consideration of a motion to allow a late filed proof of claim. Other than that, we have to do what we're doing today.

And Your Honor, what I -- I want to go down the list of the concerns that the Court has because they are the right concerns, and I want to address them. First, regarding the notice, in its response, GM states that the suggestion that the

analogous method of noticing a party, as I say, in the same method that is used in class action suits or in motor vehicle recalls, GM refers to -- calls that absurd, an absurd suggestion. But Your Honor, what is more absurd is to presume that those notices in those publications that ran one time would have reached those whose rights were being affected by GM's actions. So we would simply submit that under Mullane v. Central Hanover Bank and Trust and its Progeny, notice means that notice that is reasonably calculated to reach the person whose rights are being affected and gives that person an opportunity to be heard. This notice was published on June 9th, even though the order went into effect on June 1st. And it referred to the deadline for filing objections. We articulate all this; I'm not going to repeat what we've said in our filing, Your Honor. But essentially, less than twenty-one days expired between the time that the notice was filed and the closing took place. The -- Mr. Robley, if he had happened to have read one of those publications and happened to read that small print in that notice, Mr. Robley would have had exactly nineteen days to get ready for the hearing, and fewer than ten days to even file anything. So is that reasonable notice for a young man who's living in Tipton County, Tennessee? We would simply submit, Your Honor, that it's not. And the consequences of a failure to give adequate notice are well understood under the law. And that's where the case the Court asked about, the

decision of Judge Cyr's in the Savage v. Western Auto case comes into play. Because as the Court said, or noted there, not only was there no publication notice, but there was no other form of notice because of the timing of events in that case. But the sale order and the sale agreement purported to do exactly what was done in this case, that is to say, cut off product liability claims.

And there are two very important distinctions that are to be made when you're dealing with a product liability claim. Distinction number one is that it's in a whole different stream of legal development that comes down from the Macpherson v. the Buick Motor Car case. It's a strict liability. The rights of consumers under this branch of the law cannot be waived even by them, and as we've quoted from the restatement of Torts Third in our filing, the law just simply does not uphold the termination of rights in a product liability case.

Similarly, Section 363 of the Bankruptcy Act (sic) states that a sale can be approved if it's not contrary to non-bankruptcy law. Well, Your Honor, non-bankruptcy law in the State of New York, this concept of the exceptions to the general rule that you can pass assets free and clear of liens is actually more developed in the law of the State of New York and the law of the State of Delaware than any other state in the union, but it's a very common --

THE COURT: Well, pause, please, Mr. Rutledge, because

the arguments you're making have an amazing resemblance to those that were made by Mr. Jakubowski and perhaps others before me in June of '09. And he's a pretty good lawyer, too, and he made those points. And I ruled on them, and at least so far, that's been affirmed on appeal. Assuming, for the sake of argument, that under either Tennessee law or New York law or whatever law might ultimately be determined to apply to the underlying tort claim that there might otherwise be successor liability, don't we have a res judicata issue here?

MR. RUTLEDGE: Your Honor, we would have a res judicata -- I don't want to give the impression to the Court that I'm asking the Court to go back and rewrite the order that was entered in this case. It's not necessary to do that. The MPSA, the underlying agreement itself states that these claims will be passed -- or, kept by the Old GM, the claims for accidents preceding July 10th of 2009. Those claims would be passed to Old GM, and assets would be taken free and clear of those, and this is a direct quote from the MSPA, the master agreement, "to the extent permitted by law." So I'm simply -- I'm here asking the Court to uphold what has been done. The law does not permit, under the facts presented in Mr. Robley's case -- I'm not arguing -- I don't know who Mr. Jakubowski is; I've seen his name in the pleadings -- and frankly, Your Honor, I took from the Court's ruling the -- what was res judicata and what was not. Now, there's no question, the Court, in its

decision, has closely analyzed, A, whether a product liability claimant is a person with an interest in the case, and that's an interesting issue of itself; B, the Court did textual analysis of the Bankruptcy Code to determine what is the nature of an interest and whether the provisions of Section 363 would give the Court the authority to approve the agreement as it was written. And we take no exception to that; the authority is there. The question is whether we're going to follow the law or not. And we humbly submit that the agreement itself says "to the extent permitted by law", these claims would not pass to the New GM.

We simply say the law does not permit that to occur under the facts presented in Robley's case for two reasons. Number one, he did not receive adequate notice. What we're dealing with is something akin to a knowing and intelligent waiver of rights. Before you can do that, you have to know that there's an issue and what can take place and have an opportunity to be heard.

And then secondly, there is this confluence of two streams of law: one, product liability law, the other, commercial contract law. Most of what the Bankruptcy Code and the bankruptcy court deals with are claims that are rooted in commercial law. But product liability law is a different animal, and there are -- the authorities that we cite in our filing make it clear that it is to be accorded a different

treatment. Now, and under the facts of this case, there is no doubt that we have a continuation of the existing entity in a new form, that it is a de facto merger or consolidation because the Old GM disappears, and in its place is New GM. And it's very -- I found it interesting in preparing for this proceeding to note that the president -- and I think the Court refers to this as well in the proceedings -- the president -- of course, you know, the United States government, the Treasury was very deeply involved in the process -- the president, in talking about what the government wanted to have happen, says, or said, "What I am not talking about is a process where a company is simply broken up, sold off, and no longer exists." In other words, the vision, from the beginning, the vision that was built into all the proceedings was that there would be continuity, that the value wouldn't be lost, that the trademarks, the trade names, the product lines, and so forth would continue. The business would be done -- all the UAW and nonunion workers were taken over into New GM. And under those clear rules of law relating to the exceptions to the general rule that assets can be taken free and clear of claims, in the face -- under the law, it's not permitted extinguish Robley's cause of action under the facts presented here. And similarly, it's not permitted because it's a products liability claim. Even Robley could not waive that claim under the law as it exists today. So it's not a commercial law claim, it's not

like a contract claim or those matters having to do with rents and leases and the equity in the company and all those things that are -- basic pension claims that are dealt with in this case, this is a particularly different category of claims, and under the facts presented here, we submit that the Court has to take into consideration these differences.

Your Honor, the issues of res judicata might be pertinent if we were asking the Court to rewrite the order or rewrite the master agreement. We're not doing that. We're just saying under the facts in this particular case, if you apply them according to their very terms, that Mr. Robley's claim can lawfully be brought against the New GM and that it should not be dismissed, or he shouldn't be ordered to dismiss it. And so I can only say that if another lawyer stood here and made similar arguments, I can only say that in the ruling of the Court, there is no analysis of the exceptions to the general rule; there is no real finding that in a products liability matter, that the facts presented in this case having to do with product line and continuation and what I've just covered that there's no finding that those exceptions don't apply; let me put it that way. The facts clearly comport with the decisions we've cited in our filing that apply those exceptions under the facts presented in this particular case. So I'm, again, I'm not arguing for anybody but Shane J. Robley, but he is in the position in which without the finding of the

Court on this motion and objection which we've filed that would enable him to go forward in this case, he's without recourse. And that is simply unjust. And we're here seeking justice for Mr. Robley.

The Court has indicated that the Court would be amenable to a stay pending appeal, and I was going to ask for that if the Court is inclined to rule against our objection because this Court and the Second Circuit have both noted that there is a conflict among the circuits as to this issue of successor liability and the extent to which it can be extinguished. And so it is a matter of vital importance to Mr. Robley, and so I would ask the Court to give us a chance to do that, if we have to.

But I would submit, Your Honor, that this Court has the power to interpret its own orders; this Court has the power to rule further on particular facts and circumstances presented in a matter of such as we're hearing today. I would submit, Your Honor, that the contentions of GM that this particular issue regarding res judicata or concerning successor liability in a case like Mr. Robley's is res judicata on the record does not appear. In other words, what the record shows is the Court found that it had the power to approve that provision and approve the agreement with those provisions in it. And certainly, the drafters of that agreement did all they could to cover the waterfront; there's no question about that. So the

Court found that it has the power under Section 363 to do that, but Section 363 is not a federal preemption statute. In fact, there are cases that say that if you have federal preemption, it has to be expressed by Congress. And in fact, Section 363 defers to state law under subsection (f). So we don't have a situation where federal law trumps state law or anything of that sort. What we have is res judicata on the ability of this Court to enter an order under the facts presented back there in June and July -- as the Court said, 4th of July -- the Court had the power to go ahead and approve the sale. But just having the power doesn't mean it's right to do something that works an injustice. And that's why we're here today. It's an opportunity, really, in the case of this individual who has no other way to protect himself or to have recourse in the law to be able to proceed with his case.

And so Your Honor, we respectfully submit that Mr. Robley should be allowed to proceed with this case. I would only close by saying I did a little bit of math -- I'm not really good with these large numbers, but I determined that in the last quarterly report of GM before -- and the Court refers to this in its ruling -- before the bankruptcy filing that I think the amount of contingent liability for product liability claims was 974 million dollars, which is 1/75,000th of the value of the New GM. So we're talking about, even though it's of enormous importance to an individual like Shane J. Robley,

we're talking about an amount that is miniscule to GM and New GM, either Motors Liquidation or to GM, but it's miniscule in this case; let me put it that way. I feel a little bit like a mosquito on the back of an elephant. But I'm here. And Your Honor, that's not to minimize the importance of everything that has happened, but it is to say that the Court has an opportunity here to do justice, and we just ask the Court to take that opportunity and to rule -- rule in denial of the motion made by General Motors.

THE COURT: Thank you. Mr. Novack.

MR. NOVACK: Good morning, Your Honor. Barry Novack, N-O-V-A-C-K, appearing pro hac vice on behalf of Sanford Deutsch, personal representative of the estate of Beverly Deutsch.

Your Honor, I appreciate the fact that you pointed out that language from Section 2.3(a)(ix) because that is the very language that we incorporated in paragraph 3 of our third amended complaint which brings us here today. I'm not going to talk about what the New GM did not accept in terms of liability. I'm going to talk about what they agreed to accept because I think that brings this case into focus.

As I stated in my letter of February 9, 2010, which is attached as an exhibit, I believe it's Exhibit M or N to the motion, the section in question says that the New GM will "accept all liabilities to third parties for death, personal

injury, or other injury to persons or damage to property caused by motor vehicles designed for operation on public roadways which arise directly out of accidents, incidents, or other distinct and discrete occurrences that happen on or after the closing date and which arise from such motor vehicle's operation or performance." Paragraph 3 of the third amended complaint brought in the wrongful death action says, "the events giving rise to this cause of action stem from an automobile accident that occurred at or near Beverly Boulevard and Formosa Avenue, Los Angeles, California, and arise directly from a distinct and discrete occurrence that happened on August 2nd, 2009, namely the death of Beverly Deutsch from injuries sustained in the accident." It appears from the language where they accept liability for accidents, incidents, or other distinct and discrete occurrences that happened after the creation of New GM is to exclude any claims that were ripe and could have been brought prior to the creation of the New GM, and that they will accept all claims that arise after the creation of the New GM. While it is true that the accident involving Beverly Deutsch happened two years earlier, she was in a coma for a long period of time, she died from complications of the injuries she received, and died on August 2nd, 2009. The language that forms the order using the words "other distinct and discrete occurrences", we contend, without any definition of those words in the agreement and order, that

the death of Beverly Deutsch arising from injuries that preceded the creation of New GM, that death was a distinct and discrete occurrence. Those words, we believe, uniquely allow the heirs of Beverly Deutsch to bring a wrongful death action, a new action, a statutory action that did not exist prior to the creation of the New GM. So we're talking about a unique set of circumstances, and all we have to look at is the very language that was agreed to by the New GM, namely, was this an accident that happened afterwards? No. Was this an incident that happened afterwards? Perhaps. However, was this a distinct and discrete occurrence that happened afterwards? Yes. And because there is no definition of what a distinct and discrete occurrence is, if within the four corners of the agreement, we can bring our case into the category of cases that they have agreed to accept, then the language should be construed against them and in favor of my client and allow the wrongful death action that did not exist prior to the creation of the New GM to proceed. And that is all I have to say on the subject, Your Honor. Unless the Court has any questions?

THE COURT: No, but before you reply, Mr. Karotkin, I want to take a couple notes.

Thank you.

MR. NOVACK: Thank you.

THE COURT: Mr. Karotkin.

MR. KAROTKIN: Thank you, Your Honor. Stephen

Karotkin for General Motors, LLC.

Let me address Mr. Novat (sic) -- I'm sorry, Novat? -- Novack first, and I think there's actually a very simple answer, when you look at the language that Your Honor referred to and that was referred to by counsel. When he refers to a distinct and discrete occurrence, simply put, it is not a distinct and discrete occurrence independent of the accident or incident which took place prior to the closing. It merely flows from that. And for this to make any sense, it has to be a distinct and discrete occurrence independent, totally independent from what happened prior to the closing, which was when the accident occurred, and I think that that, Your Honor, is the only explanation of that language that makes sense and is very clear from the provisions of the MSPA.

Now, going back to Dr. Sizemore --

THE COURT: Is it, Mr. Karotkin? Or should I or any other judge conclude that when the extra words "other distinct and discrete occurrences" were added, they were added for some reason?

MR. KAROTKIN: No, I don't think so. They were added to cover, perhaps, something other than an accident or incident that occurred prior to the closing, but they certainly weren't added to cover something which arose directly from the event which occurred prior to the closing, Your Honor. That would not make any sense at all. You can't divorce what happened to

Ms. Deutsch from what occurred prior to the closing. It arose directly from that. It's not an independent or discrete occurrence.

May I proceed?

THE COURT: Yes, you may.

MR. KAROTKIN: With respect to Dr. Sizemore, I don't believe that Dr. Sizemore has raised anything to support a continuation of the lawsuit against General Motors, LLC. Whether or not -- and I believe this would be true for Mr. Robley as well -- I think they try to sort of cloud whether or not they have a right to file a proof of claim at this point or not, whether there is an independent basis to file a late proof of claim, but that's not the issue here today, and that can be addressed at another time.

The issue here today is whether or not they can continue the action as against New GM, and I think that the facts clearly demonstrate that Dr. Sizemore cannot do that. As I said, to the extent that Dr. Sizemore believes she was mislead, to the extent she believes that she received inconsistent information from people from my firm, which, Your Honor, we hope is not the case and we expect is not the case, again, that can be addressed by Your Honor in the context of whether or not Dr. Sizemore wishes to file a claim. I think, and I'm not sure, but I think that she did indicate or certainly did suggest that she did receive notice of the bar

date. And notwithstanding that, our files do not reflect that she filed a proof of claim.

With respect to Mr. Robley and Mr. Rutledge's argument, he acknowledged -- he acknowledged on the record that General Motors or MLC did not know about his claim at the time that notice was given of the sale hearing, or for that matter, at the time of the sale hearing. So under those circumstances, publication notices, as you found, Your Honor, was appropriate. Moreover, and again, I think that Your Honor indicated this again, all of the issues -- all of the issues that he would have raised in this court had he been given notice were squarely addressed by Your Honor. His suggestion that Your Honor did not consider issues of successor liability clearly is not the case. As you indicated, Mr. Jakubowski and others raised that issue with you; in fact, Mr. Jakubowski took it up to Judge Buchwald in the district court. And again, all of the issues that were raised here, all of the issues as to allegedly that this claim is just a miniscule part of the assets of New GM, were raised and rejected by Judge Buchwald. And all of those issues were raised again before Your Honor.

The first we heard that Mr. Rutledge or Mr. Robley received some correspondence from my office was when he was standing up here today. None of that is reflected in the pleadings. And again, Your Honor, to the extent that Mr. Robley believes he is entitled to file a late proof of claim, I

find it a bit curious that they haven't done anything yet. I find it a bit curious that in January of this year, he was advised of the fact that the assets had been sold. Again, nothing happened; he didn't make any effort to file a proof of claim. And basically what Mr. Rutledge is asking Your Honor to do is to rewrite -- to rewrite your sale order solely with respect to Mr. Robley. And we suggest, Your Honor, that that is completely, completely inappropriate.

I'm not sure I understand his request for a stay pending appeal; that can be addressed at a later time. I think Your Honor did indicate that you would hold things in abeyance --

THE COURT: Well, I understood him to be asking for the kind of relief that I had asked you about in your opening remarks.

MR. KAROTKIN: And again, as to the pending appeal, and to the extent that those are not final, again, we have no objection to that. But to the extent that he's seeking an independent stay-pending appeal with respect to whatever ruling Your Honor may make today, that's a different issue which we would like to address, if that's the case. And unless you have any questions, that's all I have to say.

THE COURT: No, thank you. Wait -- you have a request to confer.

MR. KAROTKIN: And again, I'd just like to point out

one other thing. In Section 2.3(b)(ix) of the MSPA, which is liabilities retained by Old GM, it specifically says "all product liabilities arising in whole or in part from any accidents, incidents, or other occurrences that happened prior to the closing date". And I think that's consistent with what I said before in the appropriate interpretation of the section dealing with assumed liabilities.

THE COURT: All right, very good.

MR. KAROTKIN: Thank you, sir.

THE COURT: Thank you.

Any surreply limited to remarks that were made in reply? Mr. Novack?

MR. NOVACK: Yes, Your Honor. With response to -- in response to what counsel just read, on page 6 of the motion, quoting from section --

THE COURT: The underlying motion, Mr. Novack?

MR. NOVACK: Yes, Your Honor.

THE COURT: Give me a moment, please. All right.

MR. NOVACK: Page 6, paragraph 46, it says, "except for the assumed liabilities expressly set forth in the MSPA, none of the purchaser" et cetera, et cetera "shall have any liability for any claim that arose prior to the closing date, relates to production of vehicles prior to the closing date, or otherwise is assertable against the debtor or is related to the purchased assets prior to the closing date.

THE COURT: Give me a moment, please. I'm sorry, where were you reading?

MR. NOVACK: Page 6 of your motion.

THE COURT: Did you say paragraph 46?

MR. NOVACK: It's -- they're quoting from paragraph 46 of the sale order, I believe.

THE COURT: Okay, continue please, Mr. Novack.

MR. NOVACK: Thank you, Your Honor. That language has to be looked at in conjunction with Section 2.3(a)(ix) because paragraph 46 deals with claims that arose before the creation of the New GM. Our claim for wrongful death did not arise it, we did not have an assertable claim, there is no cause of action for anticipatory wrongful death. So if you look at paragraph 46 and then look at the language in 2.3(a)(ix), we have a situation where Beverly Deutsch's death does fall within the appropriate framework to be brought following the creation of the New GM.

The use of the word "or" is interesting. Counsel argues that there has --

THE COURT: "Or" in 46 or "or" in 2.3(b)(ix)?

MR. NOVACK: In 2.3(a)(ix). GM argues that the occurrence has to be independent. Well, the language is "accident, incident, or". They're distinct and unique. And the word "occurrence". Occurrence is something which happens. We have an occurrence, something which happened after the New

GM was created. So in order to give meaning to this language, and I note that GM's counsel did not give the Court an example of what would constitute a distinct and discrete occurrence that happened afterwards. I'm giving the Court an example. Beverly Deutsch is an example of a discrete -- distinct and discrete occurrence that happened afterwards. Doesn't violate the language. In fact, it's in conformance with the language, and it's consistent with the intent of what types of claims should be covered by the New GM when you look in terms of what claims are not going to be covered. Claims that preexisted do not continue on. We have a totally new, independent claim that did not exist at law or in fact until after the New GM was created. That claim falls within the distinct and discrete occurrence section.

Had they merely said "accident", we would not have an accident, a new accident that occurred. They could have said "accident that happened afterwards", and that would cover somebody who was injured before and died afterwards. But they didn't do that. They expanded what they will accept. They will accept accidents that happened afterwards; we don't have that. They will accept incidents that happened afterwards; questionable, incident is not defined. And they will accept distinct and discrete occurrences that happened afterwards. We have such a situation. We don't have to twist words. We don't have to modify agreements, we don't have to look for

exceptions. We merely have to apply the very language upon which they have accepted liability, and Beverly Deutsch's case falls within the four corners of that language. Thank you, Your Honor.

THE COURT: All right, very good. Dr. Sizemore?

DR. SIZEMORE: I just want to impose one more time, and I thank you for your patience. I -- the only thing I've come to ask for is time. And I understand if there were any irregularities, I am completely agreeable to amend those irregularities. But I would ask for the time to be able to do that. I take responsibility for all of my own actions, but the only reason I elaborated on the activities that had happened during my proceedings was to persuade you that I don't think I'm the only one to blame for the irregularity that happened. So extending me the time is only because I just don't think it was all my fault.

But -- and the proof of claim form was mentioned to me on or about December 16th by -- during a phone conversation with Ms. Benfield which I have documented in my cell phone. When she mentioned the proof of claim form, she mentioned that the deadline for me to file that was November 29th. And she had had conversation with me prior to November 29th, some time in October -- I'd have to check my records -- and never mentioned the proof of claim form. So if that were still available, I would have done that.

And the other thing I wanted to ask the Court -- if it's improper, I apologize -- but I wanted to know if the bankruptcy laws prohibited action against the Old or New GM regarding laws pertaining to negligence or fraud or any accusation in those departments. Do the same bankruptcy laws apply to tort actions in those areas, so that I can avoid having to come back if I were to consider filing an action.

THE COURT: Well, forgive me, Dr. Sizemore. I can't give you legal advice. I can rule on issues that are before me. And that's what I'm going to do.

DR. SIZEMORE: Okay.

THE COURT: Thank you. Okay, Mr. Rutledge, did you have any final surreply? Again, limited to anything that Mr. Karotkin said the second time around.

MR. RUTLEDGE: Your Honor, with respect to the argument put forth by GM's counsel, I first want to take exception to the statement that Dr. Sizemore or Mr. Robley cloud the issue with respect to filing a proof of claim or any conclusions -- excuse me -- that might be drawn in reference to what we're discussing today regarding the timing of filing a proof of claim, but only to say that if that were a route that were available, it would -- it would appear, Your Honor, that it would be working counter to the arguments that we're putting forth with the Court today, but certainly we leave open --

THE COURT: Well, lawyers do that to each other all

the time, I think, don't they, Mr. Rutledge?

MR. RUTLEDGE: Pretty much, Your Honor, I would agree. But secondly, more importantly, the contention that the Robley issues were decided by Judge Buchwald in the matter that was taken to the district court on appeal, I did read the decision of Judge Buchwald and find that, as a matter of fact, she deliberately did not rule on the substantive issues of that appeal. She deliberately found that Section 363(m) of the Bankruptcy Code controlled and that the fact that the appellants had not come before this Court and asked for -- or, obtained a stay foreclosed that appeal. Whether that -- I believe the decision on that was April 13th of this year. And whether that, in turn, will be appealed, I think is still an open issues. But I would simply say that on the record of the decisions rendered either in this court or by Judge Buchwald in the district court, there is no specific finding or ruling on the issue of the exceptions to the general rule when the assets can pass free and clear of liens and encumbrances. And there is no ruling with respect to our contentions specifically related to the product liability character of our cause of action. So I think it would be a misunderstanding to say that that was the case.

And finally, with respect to comments of counsel pertaining to notice, certainly there was a certificate of notice filed by counsel for GM. Certainly, there was notice by

publication. But the facts here are really identical to the facts that were in the Savage Arms case. It doesn't really matter why the person in Robley's situation didn't get notice. What is of most importance was that there was a failure to meet the requirements of procedural due process set forth in Mullane v. Central Hanover Bank and Trust. And procedural due process or finding that it fails to meet that standard does not require that we prove that GM intentionally left Mr. Robley out in the cold. It simply calls for an analysis whether the notice that was given was reasonably calculated to reach him and give him an opportunity to appear and respond. And we simply say that, in his case, it does not meet the procedural due process requirement.

The other issues that Mr. Karotkin raised on his rebuttal, Your Honor, we submit are -- to say that we're trying to go back and rewrite the agreement or trying to ask the Court to modify its order would be a misstatement. What we're asking, Your Honor, is Section 7.1 of the agreement says that the liabilities of persons like Robley would be barred to the extent permitted by law. So the agreement is all we need from the point of view of stating his position. And if you read the provisions of the order, the order itself says, "except as expressly permitted or otherwise provided by the MSPA or this order", and then it goes on to state the general proposition that claims are barred. So that exception, Your Honor, is

relevant in Mr. Robley's case. The fact that there is a failure to meet the minimum requirements of procedural due process, I think it's difficult for counsel to accept that, but that fact exempts Mr. Robley from the constraints that GM -- New GM tried to build into the sale agreement. And the consequences of a failure to meet substantive -- or, procedural due process in a bankruptcy case are well stated in the Savage Arms case and the same results that pertain there should pertain in the case of Mr. Robley.

THE COURT: All right, thank you.

All right, folks, I want you to take an early lunch, a long lunch, and to be back here at 1 o'clock p.m. at which time I will issue a ruling, or as soon as practical thereafter.

We're in recess.

(Recess from 11:13 a.m. until 1:32 p.m.)

THE COURT: I apologize for keeping you all waiting.

In these jointly administered cases under Chapter 11 of the Bankruptcy Code, General Motors, LLC, or New GM as we commonly call it, moves for an order of this Court, A, enforcing a previous order of this Court, B, enjoining certain plaintiffs from prosecuting or otherwise pursuing certain claims asserted against New GM, and C, directing those plaintiffs to promptly dismiss New GM from pending litigation with prejudice.

The motion is granted in substance, subject to the

refinement discussed below, to the extent it would affect those who did not object, Dr. Terrie Sizemore, Shane J. Robley, and Sanford Deutsch, to the extent Mr. Deutsch asserts claims other than his wrongful death claim. The motion is continued for a subsequent clarification of the record, and if necessary, an evidentiary hearing, concerning the claims asserted by Mr. Deutsch for his wife's wrongful death after the closing, and in particular, to ascertain the exact language in the final form of the ARMSPA and the reasons for any changes. The following are the bases for this determination.

After sufficient notice -- and I'll come back to the matter of notice -- and upon an evidentiary record, an extensive one, on July 5th, 2009, I entered an order authorizing the sale of substantially all of the debtors' assets to the predecessor of New GM pursuant to an amended and restated master sale and purchase agreement. We commonly call that document the ARMSPA. Pursuant to the ARMSPA and the related sale order, New GM agreed to assume certain liabilities of the debtors. The ARMSPA enumerated with substantial but not total clarity which liabilities would be assumed by New GM, and it made clear that all other liabilities would be retained by the debtors. With respect to product liability claims, the form of the ARMSPA dated "as of June 26th, 2009" provided in Section 2.3(a)(ix), "The assumed liabilities shall consist only of the following liabilities of sellers." And I'm omitting.

"(ix) All liabilities to third parties for death, personal injury, other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such vehicles and in each case manufactured, sold, or delivered by sellers (collectively "Product Liabilities"), which arise directly out of" and I'm emphasizing, "accidents, incidents, or other distinct or discrete occurrences that happened on or after the closing date and arise from such motor vehicle's operation or performance." It's the end of the lengthy quote. By contrast, a first amendment to amended and restated master sale and purchase agreement had a different language for Section 2.3(a)(ix) stating, with respect to the language I just emphasized, "accidents or incidents" that happen on or after the closing date.

Now, in oral argument on this motion, I asked whether the language that had been used in the briefs by each of the parties, which was the latter language, was the wrong language, in terms of describing what the parties, Old GM and New GM, had agreed to, and either out of good manners or confusion, nobody corrected me, or perhaps I was corrected, but in a way so subtle that I missed it. But when I looked back at that language over the lunch hour, I now wonder whether you all got it right and that the second language I just read trumps the first. But I have no evidence in the record of the exact order

of these seemingly different contractual provisions or especially the reasons for the difference. And I think that the difference could possible change the result.

However, for litigants other than the Deutsch family where Ms. Deutsch's injury was before the sale and her death came after, and in all other respects, the facts are much clearer and require neither supplementation nor discovery. The sale order makes clear that New GM was purchasing the assets free and clear of all liens, claims, encumbrances, and other interests including any rights or claims based on any theory of successor transferee, derivative or vicarious liability, or de facto merger or continuity of any kind or character. These provisions in the sale order were not slipped into the order with stealth but were hotly contested before me. One lawyer, in particular, Steve Jakubowski, litigated them vigorously and at length both before me and on appeal. I dealt with the successor liability issue extensively in my written decision, and the appeal by Mr. Jakubowski from that decision was dismissed by the district court where my decision was also affirmed.

Moreover, the sale order contained broad provisions prohibiting and enjoining any action or proceeding by any individual or entity to enforce or collect any claim against New GM on account of any claim against the debtors other than with respect to the assumed liabilities.

Since the debtors and New GM closed, pursuant to the ARMSPA on July 10, 2009, a date that I'll refer to as the closing date, six lawsuits have been filed against New GM asserting product liability claims based on accidents or incidents that occurred prior to the closing date. New GM has informed these plaintiffs of its position that the provisions in the ARMSPA and the sale order preclude them from pursuing their claims, but those plaintiffs have failed to dismiss their lawsuits against New GM. As a result of the plaintiffs' refusal or failure, New GM brought this motion before me seeking to enforce the sale order.

Of the six plaintiffs named in New GM's motion, three have filed formal objections, those objectors being Shane Robley, Terrie Sizemore, and Sanford Deutsch. Each objection presents somewhat different arguments, and I'll address them in order of increasing difficulty.

Turning first to dr. Sizemore's objection, she argues that New GM must remain a defendant in litigation that she commenced on a wholly prepetition accident until she is able to complete discovery on certain matters that have been fleshed out only in part. But her argument is, of course, contrary to the broad language in the sale order that enjoins any action or other proceeding in any judicial proceeding taken against New GM on account of any claim against the debtors other than that -- than assumed liabilities as that term is defined in the

sale order. So we must look to the ARMSPA, rather than the issues relating to the underlying claims, to ascertain the extent, if any, to which the ARMSPA covers her claims as an assumed liability.

That's a matter as to which she made no substantive arguments. I find no fault with her having acted as she did, especially in light of the fact that she's a pro se litigant, and certainly I wouldn't think of imposing sanctions on her, and I do not do so now. But the issue before me is, nevertheless, whether her lawsuit must be brought to a halt, or putting it differently, whether she can't bring it -- continue it anymore, and the answer is that she can't continue it anymore. That's especially so since the discovery she seeks relates to the merits of her claims as contrasted to the content or intent of the ARMSPA whose terms defined the extent to which she could or could not properly proceed.

Without dispute, Dr. Sizemore was injured in a prepetition accident. As relevant here, the ARMSPA unequivocally provides that for claims to have been assumed by New GM when they are based on an accident taking place at some point in time, those accidents to be allowed to be assumed by New GM must have taken place on or after the closing date. Dr. Sizemore simply doesn't qualify under that language.

Since Dr. Sizemore's claims result from an accident prior to the closing date, she might have a prepetition claim

against Old GM, an issue that I haven't been asked to decide today and which I'm not currently deciding. But her claim, if any, is certainly not an assumed liability. Therefore, Dr. Sizemore will be stayed from taking any action against New GM on account of or arising from her preclosing date accident, including for the avoidance of doubt, continuing litigation against New GM for the purpose of conducting discovery on any issue.

Turning next to the objection filed by Shane Robley, Mr. Robley argues that New GM's motion should be denied because, one, Mr. Robley was deprived of procedural due process because he didn't receive actual notice of the sale motion that led to the sale order; two, the sale to New GM did not convey those assets free and clear of his product liability claim; and three, that selecting July 10, 2009 as the closing date was arbitrary, capricious, and unjust, or, putting it somewhat differently, that I should force New GM to assume his and perhaps other liabilities by reason of my notions of equity.

New GM disputes each of those contentions, and on the facts and law here, I must agree with New GM. It's agreed by all concerned that Mr. Robley didn't get mailed a personal notice of the 363 hearing that resulted in the sale order, very possibly because as of that time, Mr. Robley had not sued either Old GM or New GM yet. It's also agreed that Old GM and New GM did not give personal notice of the 363 hearing to all

of the individuals who had ever purchased a GM vehicle, and instead, supplemented its personal notice to a much smaller universe of people by notice by publication. It's also undisputed that I expressly approved the notice that had been given in advance of the 363 hearing including the notice by publication, which I found to be reasonable under the circumstances.

Mr. Robley relies on the First Circuit's decision in Western Auto Supply Company v. Savage Arms, Inc., 43 F.3d 714 (1st Cir, 1994), in which the First Circuit Court of Appeals, speaking through Judge Conrad Cyr, a highly respected former bankruptcy judge, agreed with the district judge that the bankruptcy court had erred when the bankruptcy court enjoined prosecution of product line liability actions brought against the purchaser of the debtor's business for lack of notice. But the critically important distinction between this case and the Savage Arms case is that here, and not there, notice was also given by publication. We all agree that due process requires the best notice practical, but we look to the best notice that's available under the circumstances. Here, under the facts presented in June of 2009, GM didn't have the luxury of waiting to send out notice by mail to hundreds of thousands of GM car owners, and instead gave notice by publication, which I approved. In Savage Arms, the debtor "conceitedly made no attempt to provide notice by publication" (43 F.3d at 721) and

the notice that was given was never determined, "appropriate in the particular circumstances" (Id. at 722). In other words, the First Circuit found it significant that the debtors in Savage Arms didn't do the very thing that was done here.

As I've indicated, I've already determined that notice was appropriate in the particular circumstances, and provided for that in an order that entered on July 5th, 2009 that remains valid today. Moreover, it's obvious that the notice was, indeed, appropriate and did what it was supposed to do because it permitted Mr. Jakubowski, in particular, to make effectively and well the very arguments that Mr. Robley's counsel would, himself, have to make either now or back then and which I then considered and rejected.

I've already ruled on the arguments dealing with the underlying propriety of a free and clear order cutting off product liabilities claims as set forth in my opinion published at 407 B.R. 463. Until or unless some higher court reverses my determination -- and neither of the district courts who've ruled on that determination have yet done so (see 2010 W.L. 1524763 and 2010 W.L. 1730802) -- they're res judicata, or at least res judicata subject to any limitations on the res judicata doctrine requiring a final order. And of course, they're stare decisis. I found these arguments to be unpersuasive last summer, and considering the great deal with which my previous opinion dealt with those exact issues, I am

not of a mind, nor do I think I could or should, come to a different view on those identical issues today.

Lastly, of course, I sympathize with Mr. Robley's circumstances, just as I've sympathized with each of the tort victims who have been limited to the assertion of prepetition claims against Old GM. But I'm constrained to act in accordance with the law, and can't substitute my own notions of fairness, equity, or sympathy for what the law requires me to do. That's especially so since choosing a closing date required some date to be chosen and there's no evidence in the record to lead me to believe that the closing date was done in any way to particularly target Mr. Robley.

Finally, turning to Mr. Deutsch, Mr. Deutsch, understandably, doesn't argue that the personal injury claims he might otherwise be able to assert are prepetition claims. But he argues that because Ms. Deutsch died after the closing, her resulting wrongful death claim didn't come into being until that time. And he further argues that the death of Ms. Deutsch constituted an incident separate and apart from an event upon which the cause of action accrued. Thus, he argues, that while the wrongful death claim wasn't assumed because of an "accident" taking place after the closing, it was an "incident" or especially a "distinct and discrete occurrence" as appearing in some of the versions of the ARMSPA. However, the problem I have is that the record is now confused as to which version of

the ARMSPA I should be looking at, and especially, where there are differences, what are the reasons for those differences?

If the language with "other distinct and discrete occurrences" was added, it would broaden the universe of claims that were assumed. Conversely, if it were deleted, it would narrow them. I thought, during the course of oral argument, that the language was added, but now I'm not so sure, and I especially don't know the reasons for the changes. And, so far as I can tell, I received no evidence with respect to the changes, or especially the reasons for them.

In any event, "incidents" remains undefined, and it obviously must mean something different from "accidents", which is what we almost always think of as causing product liability claims. Also, a death is at least seemingly an incident by many common uses of that term. It's obviously quite different than an accident, and I have to assume that "incidents" was included to say something more than use of the word "accidents" would say. There's a principle of law under the State of New York whose laws apply to the ARMSPA that contracts are construed, when possible, as to give effect and meaning to every word and expression contained in an agreement. See, for example, Atwater & Company v. Panama Railroad Company, 246 NY 519, Benvenuto v. Rodriguez, 279 A.D. 162. So I think I or any other Court would be reluctant to disregard whatever was in the agreement besides the word "accident", and we'd all have to

focus on whatever supplementary words there were in any analysis going forward.

We all agree, or should agree, that when the cause of action came into being under California law is irrelevant. What does matter is what the ARMSPA says it covers, but at this point, I don't have that answer with sufficient certainty to decide an issue that's obviously of very great importance to the Deutsch family, and I can't decide this aspect of the motion on the existing record. Accordingly, the portion of the motion that deals with Mr. Deutsch's wrongful death claim will be severed for supplementation of the record. The remainder of the motion will be granted. However, though I, of course, think I got it right when I issued the successor liability portion of my early rulings, I'm going to stay, rather than require dismissal of, the litigation brought by the three objectors insofar as I've ruled on their actions so that the objectors won't be prejudiced if my earlier rulings, which now are good law, are modified in any respect material to their claims. If, after a final order emanating out of the appellate courts, my earlier rulings remain good law, and prepetition claims then still can't be brought against New GM, New GM will be free, if it wishes, to come back to me with a request that they be dismissed, which, as I understand is the third prong of GM's motion before me today.

With all of that said, I think it would be helpful if

Old GM reconsider whether it will consent to any of the objectors filing a late proof of claim, and that it likewise consider doing the same for any others who were the subject of this motion and who may also have been told that they shouldn't be proceeding with their lawsuits without also being told of the need to file proofs of claim. If Old GM is unwilling to consent to that, persons who had those conversations may, of course, file their own motions for leave to file late claims, or they may file them and then defend any motions to dismiss or expunge those claims if based on tardiness grounds.

Mr. Karotkin and Mr. Novack, you're to agree with each other on a timetable for supplementing the record and for teeing up the remaining issue. Mr. Karotkin, I would like you, if you would, to settle an order in accordance with this ruling for the elements of the motion that were granted.

MR. KAROTKIN: Can I ask a question, sir?

THE COURT: Yes, sir.

MR. KAROTKIN: Just so I'm clear about your staying of dismissal, does that mean, Your Honor, that the plaintiffs can actually proceed with the litigation, or is the status quo to be maintained? I'm not exactly sure what you had in mind. Or perhaps --

THE COURT: When I say stay -- forgive me for interrupting you, Mr. Karotkin.

MR. KAROTKIN: Sorry.

THE COURT: When I say stay, I mean that each litigation against New GM that was a subject of your motion must come to a full stop. They don't have to file a notice of dismissal, but those litigations can't go anywhere, just as if they were in automatic stay.

MR. KAROTKIN: Okay.

THE COURT: If my earlier decision ultimately is affirmed -- or, actually, the converse is a better way of saying it. If it isn't altered on appeal after all appeals have been exhausted, if New GM wants to come back to me for a supplemental order that those actions that are then stayed be dismissed, my ruling's without prejudice to New GM making any such motion. But those motions are to go nowhere until or unless my earlier ruling is modified in some way as it affects the successor liability issue.

MR. KAROTKIN: You mean those actions, not the motions.

THE COURT: I'm wondering if I misspoke.

MR. KAROTKIN: I think you said, if I may, Your Honor, "those motions should not go forward". I think you meant those actions --

THE COURT: Yes.

MR. KAROTKIN: -- or those lawsuits.

THE COURT: Correct. That's what I meant.

MR. KAROTKIN: All right, thank you, sir.

THE COURT: Okay, anything else anybody? Yes, Doctor.

DR. SIZEMORE: I apologize. I understand that you want me to stop the product liability action. Does that -- there are two actions in Medina County. One is the product liability --

THE COURT: Everything must come to a stop.

DR. SIZEMORE: Even the action for discovery?

THE COURT: Yes.

DR. SIZEMORE: Okay.

THE COURT: There are no sanctions for anything that's happened before, but everything must come to a full stop.

DR. SIZEMORE: By when?

THE COURT: I can give you a reasonable time to comply. How much time do you need to bring them to a stop?

DR. SIZEMORE: Eight days.

THE COURT: I don't think eight days will be a problem. Mr. Karotkin?

MR. KAROTKIN: No, sir, that's fine.

THE COURT: That's fine.

Yes, sir?

MR. NOVACK: If I heard Your Honor correctly, you said was granted as to Sanford Deutsch as an individual. Sanford Deutsch as an individual in the third cause of action -- excuse me, in the third amended complaint has not brought claims against the New GM. His individual claim was for loss of

consortium which was asserted against all defendants except the New GM, so I do not believe in that regard there is any need for dismissal with respect to Mr. Deutsch as an individual. His sole capacity vis-a-vis the New General Motors is as the personal representative of the estate on behalf of the wrongful death claims.

THE COURT: Fair enough, and I think what it might be helpful for you to do is to put your noodle together with Mr. Karotkin so that the facts as you've described them and the spirit of my order are reconciled. The underlying concept was, first, although I didn't speak to it, I had assumed that you can go against anybody other than Old GM and New GM, and that the issue that you had raised that I thought was one of difficulty was for the wrongful death claim that arose when Ms. Deutsch died, but that any other claims you had that you could have asserted earlier would have to be stayed at least until the appellate courts act differently -- that you had asserted against New GM would have to be stayed. And you're nodding. Are we -- I gather we're on the same page?

MR. NOVACK: Yes, we have not asserted any claims against New GM except wrongful death claims.

THE COURT: Oh, okay. And that one is what I need further help from you folks on. I would like -- I won't order it without an opportunity for each side to be heard, but I would like you to put that on hold until we can get this sorted

out before me.

MR. NOVACK: I'm sorry? To put --

THE COURT: I would like the issue that I couldn't decide today to be put on a temporary hold until I can rule on the remaining issue. But I will hear argument from you and Mr. Karotkin on that if you think that would prejudice you in some material way. In other words, on the one issue that I haven't ruled on yet.

MR. NOVACK: I apologize for not following the Court. I thought that the only issue that relates to Mr. Deutsch is whether or not he is able, on behalf of the estate, to bring a wrongful death claim for the death that arose after the creation of the New GM, which would depend upon the interpretation of whatever would be the relevant language, which is still subject to some uncertainty that we are going to clarify. I thought that was the --

THE COURT: Exactly.

MR. NOVACK: Okay.

THE COURT: And what I'm saying is until I can rule on that remaining issue, my tentative, California-style, is that I would like your action in California on that issue to remain in a holding pattern until the open issues can be determined.

MR. NOVACK: Okay, so that would mean, as far as California is concerned, that there would be no discovery either to or from the New GM in that wrongful death action

until this matter is resolved.

THE COURT: Yes.

MR. NOVACK: Yes.

THE COURT: If you want to be heard on that -- if there's some material prejudice to you, I'll hear that, but that's what I would prefer to do.

MR. NOVACK: Let me just briefly address the issue. There is outstanding discovery as to GM on that issue with respect to certain protocols and testing. Some of that discovery can be had from codefendants such as Autoliv and Takata, and I have agreed to a protective order as to them which may reveal the same documentation that GM would have given us. There may be some documentation that those two defendants do not have that only GM has, and I would have no way of getting that except against GM. If GM is no longer going to be a party, New GM, I would have to do third-party discovery as against the New GM for that material. If they are a party, then obviously, the manner by which I can obtain that information is relieved.

I would anticipate, or hope at least, that the remaining issue for Your Honor to consider would be resolved before the need or the dire need for any discovery against GM -- the New GM that I could not get against the other defendants, so I have no problem, currently, with staying -- having a mutual stay agreement or an order for mutual stay as

to discovery between plaintiff and the New GM until Your Honor issues a definitive ruling concerning the remaining issue on the contract.

THE COURT: Um-hum. Mr. Karotkin, do you want to weigh in on this?

MR. KAROTKIN: Do you want me to approach?

THE COURT: It's always as helpful for a guy as tall as you.

MR. KAROTKIN: I think what counsel said is that he's okay with a mutual stay remaining in effect pending your determination. Hopefully that will be done rather expeditiously, and I guess if it becomes an issue in terms of the discovery he needs, if this takes longer than we expect, then either we can work it out with counsel or we can come back to Your Honor.

THE COURT: You know what I think I'd like to have you guys do on this, see if you can come up with a stip or consent order papering any deal that you guys have.

MR. KAROTKIN: Okay.

THE COURT: If, and I suspect that it's unlikely, you agree to disagree, then you can set it up via conference call that I can deal with it on, but somehow, I have a sense that the two of you folks are going to resolve it satisfactorily without me needing to get involved.

MR. KAROTKIN: I certainly expect we will be able to

do that.

THE COURT: Okay.

MR. KAROTKIN: Thank you, sir.

THE COURT: Fair enough. And Mr. Novack, except for evidentiary hearings, I will give you permission, if you want to avail yourself of it, to appear by telephone -- actually, that's for everybody who is not here in New York City. I'll give you permission to appear by telephone and without having to bring local counsel into the courtroom with you unless you want to.

MR. NOVACK: Thank you. I appreciate that, Your Honor. And just one point of clarification, if I may.

THE COURT: Yes.

MR. NOVACK: What time frame would Your Honor -- in terms of Your Honor's schedule, what time frame would Your Honor like for us to work out a briefing schedule with respect to the remaining issue on the Deutsch case.

THE COURT: I'd like you to agree with Mr. Karotkin on that, and again, paper it by a stip or consent order. If it's reasonable, I'm going to approve it. Whatever you guys agree upon, as long as it's not pushing this issue way back, will be fine with me.

MR. NOVACK: Thank you, Your Honor.

THE COURT: Very well. Okay.

Yes, sir, Mr. Rutledge.

MR. RUTLEDGE: Yes, Your Honor, I just want to make sure that I understand my part of this. We will take no further action in the case in the Western District of Tennessee but the Court is holding the requested relief in the motion in abeyance pending the opportunity to appeal the matters that we have brought before the Court today. Do I have that correct?

THE COURT: I think you did, but I'd rather say it my way. If it weren't for the fact that the appeal that Mr. Jakubowski brought is, to my understanding, not yet to a final end, and that he may have the right to go to the circuit, or maybe he's already at the circuit -- and one of my problems is that I don't always know what happens to stuff that I issue after it has gone up -- your action is stayed but not dismissed until Mr. Jakubowski's action comes to an end.

There is a separate right of appeal which could be of relevance, which is you have the right to appeal my decision which, unfortunately, is against you. Your time to appeal that order is, of course, a different time to appeal, and that will run from the time of entry of the order that I told Mr. Karotkin to prepare, and not from the time of this dictated decision. Not from today.

MR. RUTLEDGE: That's my question, Your Honor. So we will take no further in the case against New GM, but we do have the opportunity to pursue an appeal from the decision today, and also to await the course of appeal that is ahead of us and

that Mr. Jakubowski possibly is pursuing -- I think that's in the Campbell claim, as I recall.

THE COURT: I think you're right. You have the right to appeal -- and I think it's an appeal; it may be a motion for leave to appeal; I'm not focusing on that; that's a district court issue, not my issue -- from my order to the District Court of the Southern District of New York, and I can't give you legal advice, but I think you have fourteen days to do that from the time of entry of the order that Mr. Karotkin's going to prepare and which you have the right to comment on, if you choose to. Assuming that my order is entered and remains in place, I'm going to expect the -- is it in the Western District of Tennessee?

MR. RUTLEDGE: That is correct, Your Honor.

THE COURT: In Memphis, or --

MR. RUTLEDGE: In Memphis, yeah.

THE COURT: I expect that until and unless my order is reversed, my order will be complied with, and if the Campbell action appeal turns out to be successful, if you can't get agreement from Mr. Karotkin as to what to do, you can come back to me from relief in that regard. I would expect you, though, Mr. Rutledge, that even before Mr. Karotkin's order is entered, that you not do anything that if that order had been entered, would prohibit.

MR. RUTLEDGE: Your Honor, we have not taken any

action. There's only been a scheduling order that was issued by the Court, and I will take no further action. But I did want to be clear about what appeals the Court was talking about with regard to the holding a dismissal in abeyance pending appeal. And I think I understand it, now, Your Honor.

THE COURT: Yeah, because it's been subject to a double entendre, I certainly understand the questions.

MR. RUTLEDGE: Thank you, Your Honor.

THE COURT: Okay. Anything else? Anybody? Okay, thank you very much, folks. Have a good day.

MR. KAROTKIN: Thank you, Your Honor.

(Proceedings concluded at 2:14 PM)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

LIMITED OBJECTION OF CALLAN CAMPBELL, KEVIN JUNSO, *ET AL.*, EDWIN AGOSTO, KEVIN CHADWICK, *ET. AL.*, JOSEPH BERLINGIERI, AND THE CENTER FOR AUTO SAFETY, *ET AL.*, TO THE DEBTORS' 363 MOTION FOR THE SALE OF THE "PURCHASED ASSETS" FREE AND CLEAR OF POTENTIAL SUCCESSOR LIABILITY CLAIMS

Dated: June 19, 2009
(as amended technically on June 22, 2009)

Callan Campbell ("Campbell"), Kevin Junso, *et al.* ("Junso"), Edwin Agosto ("Agosto"), Kevin Chadwick, *et al.* ("Chadwick"), and Joseph Berlingieri ("Berlingieri," together with Campbell, Junso, Agosto, and Chadwick, the "Products Liability Claimants"), and the Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizen (collectively, the "Consumer Organizations," and together with the Product Liability Claimants, the "Products Liability Claimant Advocates"), by and through their respective attorneys, submit this limited objection to the motion (the "363 Motion") of General Motors and certain of its subsidiaries (collectively, "GM" or "Debtors") for an order authorizing the sale of certain assets, including its Continuing Brands, to Vehicle Acquisition Holdings LLC, a U.S. Treasury-sponsored purchaser (the "Purchaser").[1]

Introduction

1. GM states in the 363 Motion that the sale "must be free and clear" of "rights or claims based on any successor or transferee liability." 363 Motion at 32-33. No business justification has been articulated, however, as to why the Purchaser is entitled to such relief, particularly when the "New GM" will look and operate much like the "Old GM" in the Continuing Brand businesses, and thus potentially satisfy the "mere continuation," "continuity of enterprise," or "product line exception" tests for successor liability under the laws of various states.

2. While shedding potential successor liability claims provides expediency, it is not permitted under Bankruptcy Code section 363(f), which authorizes the sale of property free and clear only of "interests in" property to be sold, not *in personam* choses in action against the Purchaser under theories of successor liability. And while the *Chrysler* court authorized such

[1] Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Product Liability Claimant Advocates' limited objection, the Debtors' 363 Motion, or the Master Purchase Agreement ("MPA") attached to the 363 Motion.

relief in the sale of Chrysler's assets in the transaction with Fiat, for the reasons set forth below and in the supporting Memorandum of Law submitted herewith, if the Court undertakes its own independent analysis of *Chrysler's* reasoning, it should conclude, as we do, that *Chrysler* was wrongly decided.

The Sale Motion and Proposed Order

3. On June 1, 2009, General Motors and certain of its subsidiaries (collectively, "GM") filed petitions for bankruptcy under Chapter 11 of the Bankruptcy Code. That same day, GM filed a motion for an order authorizing the sale under 11 U.S.C. § 363(f) of substantially all of its assets to Vehicle Acquisition Holdings LLC, a U.S. Treasury-sponsored purchaser ("Purchaser").

4. The Sale Motion seeks approval of the sale "free and clear of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability," and requests findings that the Purchaser is not a successor or transferee and that no liabilities may be placed on it based on such a status. Sale Motion at 20-21. The Proposed Sale Order accompanying the Sale Motion indicates that GM contemplates selling its assets free and clear of both existing and future successor liability claims, stating that "the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any Claims, including, but not limited to, under any theory of successor or transferee liability, . . . whether known or unknown as of the Closing, now existing, or hereafter arising . . . ." Proposed Sale Order at 23-24; *see also id.* at 11 (requesting a finding that the Purchaser "would not consummate the 363 Transaction if the sale of the Purchased Assets was not free and clear of all liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability other than Assumed Liabilities, or if the

Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability . . . .").

Parties to the Objection

5. The Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizen are non-profit organizations that work to protect consumers, including consumers who will be affected by this bankruptcy proceeding. The organizations are particularly interested in ensuring that the rights of consumers who will suffer injury or loss in the future due to defects in GM vehicles delivered prior to the Closing are protected in this proceeding, because those consumers, who do not know that they will be injured, have no meaningful opportunity to enter this proceeding to seek to preserve their own rights. The objectives of each of these organizations are as follows:

a. **The Center for Auto Safety** is a non-profit consumer advocacy organization that, among other things, works for strong federal safety standards to protect drivers and passengers. The Center was founded in 1970 to provide consumers a voice for auto safety and quality in Washington, DC, and to help "lemon" owners fight back across the country. The Center advocates for auto safety before the Department of Transportation and in the courts.

b. **Consumer Action** is a national non-profit education and advocacy organization serving more than 9,000 community based organizations with training, educational modules, and multi-lingual consumer publications since 1971. Consumer Action serves consumers nationwide by advancing consumer rights in the fields of credit, banking, housing, privacy, insurance, and utilities.

c. **Consumers for Auto Reliability and Safety ("CARS")** is a national, award-winning non-profit auto safety and consumer advocacy organization dedicated to preventing motor vehicle-related fatalities, injuries, and economic losses. CARS has worked to enact legislation to protect the public and successfully petitioned the National Highway Traffic Safety Administration for promulgation of regulations to improve protections for consumers.

d. **National Association of Consumer Advocates ("NACA")** is a non-profit association of attorneys and advocates whose primary focus is the protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for communication, networking, and information sharing among consumer advocates across the country, particularly

regarding legal issues, and by serving as a voice for its members and consumers in the ongoing struggle to curb unfair or abusive business practices that affect consumers.

e. **Public Citizen**, a consumer advocacy organization, is a nonpartisan, non-profit group founded in 1971 with members nationwide. Public Citizen advocates before Congress, administrative agencies, and the courts for strong and effective health and safety regulation, and has a long history of advocacy on matters related to auto safety. In addition, through litigation and lobbying, Public Citizen works to preserve consumers' access to state-law remedies for injuries caused by consumer products, such as state product liability laws.

6. Callan Campbell is a GM tort victim. On August 17, 2004—a week before she was to start college—18 year old Callan was a front-seat passenger in a 1996 GMC Jimmy when the driver of the vehicle lost control while attempting to make a left turn. The vehicle entered a driver-side leading roll and rolled 1.5 times before ending on its roof. The roof collapsed over Callan's seat, partially paralyzing her. The strength to weight ratio of the GMC Jimmy roof is about 1.9, which is among the lowest of all GM vehicles. GM's own tests revealed that roof strengths in rollovers should be 3W to 4W. Callan's paralysis could have been avoided at a mere fifty dollar cost to GM.

7. Callan's medical bills total $200,000 for the life-saving treatment she received immediately after the crash. Additionally, Callan's parents have spent $160,000 renovating their home to accommodate Callan's physical and medical needs as a C6 incomplete quadriplegic. A life care planner has estimated Callan's current and future needs for extra doctor visits, medicine, durable equipment and home modifications at $4,518,831.00. An economist has predicted her work loss based on total disability at $4,120,538. Callan is also entitled to significant compensation for pain and suffering including loss of life's pleasures, loss of dignity and independence, loss of the use of her limbs, and disfigurement.

8. Kevin and Nikki Junso are the parents of Tyler, Matt, and Cole Junso. On April 25, 2006, Tyler and Kevin Junso were involved a single car rollover accident while driving a

2003 GMC Envoy. During the rollover, the windshield and side windows were knocked out, reducing the strength of the roof structure. The Envoy sustained catastrophic damage to the roof structure, which buckled violently inwardly toward Tyler and Kevin. Despite being belted, both occupants were partially ejected from the vehicle during the roll over. Seventeen year old Tyler, the driver, sustained massive skull and neck injuries and died at the scene of the accident. The evidence showed that Tyler's head was partially outside the vehicle during the roll over sequence, due to the broken window and lateral displacement of the roof structure, and made contact with both the ground and the roof during the accident. The paramedics found Kevin, the passenger, with his left leg out the windshield and his right leg out the passenger side window. Kevin sustained serious injuries to his arms and legs, which eventually led to the amputation of his right leg below the knee.

9. GM has been aware of the significant risks of "occupant excursion" if the safety mechanisms in its vehicles fail. Despite this knowledge, GM failed to introduce cost effective safety measures into its designs, which could have included side window plastics or laminates or seat belts resistant to excessive spool out. Not only has the Junso family lost a son as a result of GM's failure to correct the strength instabilities in its SUVs, but Kevin has also lost his right leg. To date, Kevin has incurred medical bills totaling $555,204.19, and his future medical expenses are predicted to exceed $800,000.

10. Joseph Berlingieri was parked in a driveway on September 21, 2006 when the driver side impact airbag in his 1998 Cadillac DeVille malfunctioned and deployed. The air bag struck Joseph in his left ear, arm, and shoulder causing trauma injuries including hearing loss, tinnitus, and other serious injuries. The vehicle had previously been recalled for faulty side airbags, and after its repair was warranted to Joseph as being free from defect and suitable for

purchase. However, the vehicle was not suitable for use, and was sold to Joseph despite the defective airbag mechanism.

11. Edwin Agosto was driving his 2000 Chevrolet Blazer on September 22, 2008, when he lost control of his vehicle causing him to cross the center line and strike a tree. After striking the tree, the car once again crossed the center line and collided with a guardrail where it finally came to rest. Edwin's airbags failed to deploy throughout the course of the entire accident. Because of that failure, Edwin suffered injuries including multiple spinous process fractures, a heavily comminuted fracture of the left scapula extending into his scapular spine and glenoid, multiple rib fractures, a humerus fracture, a subclavian vein injury, and a post traumatic subdural hygroma upon striking his head on the windshield. Due to these injuries, Edwin spent the next two and a half months of his life in a coma.

12. On July 4, 1994, Kevin Chadwick was driving his 1988 Chevrolet Beretta when a pick up truck ran a stop sign, and the vehicles crashed. The truck driver was killed and Kevin was paralyzed from the neck down. The injury was caused by a defective seat belt and a defectively designed hood latch and hood hinge system which allowed the hood to invade the passenger compartment and strike Kevin in the head causing the brain injury.

13. Callan Campbell, the Junso family, Joseph Berlingieri, Edwin Agosto and Chadwick Family all share one common bond—they have all been injured by a product defect in a GM vehicle. As a result of such injuries, each claimant has sustained damages and as such each claimant deserves their day in court to seek retribution for those damages. A sale of GM's assets free and clear of all claims of successor liability would deprive these individuals and tens of thousands more like them of the chance to seek justice for the wrongs that have been committed against them.

14. The foregoing parties are just a few of the many people who would be adversely affected by a sale free and clear of successor liability claims against the Purchaser. More than 69 million GM passenger vehicles are on American roads today. In 2007, according to the National Highway Traffic Safety Administration's Fatal Analysis Reporting System, 9,985 occupants of GM vehicles were killed in fatal accidents; and a total of 14,828 people were killed that year as a result of motor vehicle crashes involving GM vehicles. Many thousands more are injured each year in GM vehicles. Many of these vehicles contain certain defects that have and will continue to be the subject of product liability lawsuits, including due to injuries and deaths from crushed roofs, exploding "side saddle" gas tanks, and collapsing seat backs.[2]

Relief Requested

15. Through this objection, the Objectors ask the Court to respect the jurisdictional boundaries of the Court and the statutory directives of Congress and deny the Debtors' request to bar present and future product liability claimants from pursing claims against the Purchaser post-closing under applicable state law theories of successor liability.

16. GM claims in its Sale Motion that the "363 Transaction is the only realistic alternative for the Company to avoid liquidation of its assets," the "Purchaser is the only entity capable of purchasing the Purchased Assets and closing the 363 Transaction," and that, "in the exercise of sound business judgment . . . the 363 Transaction is the only means of preserving value and continuing the transformed business for the benefit of all economic stakeholders and in the national interest." Sale Motion at pp 6-7, 14. The Objectors do not deny that the 363 sale itself is necessary or proper; their objection is limited to the requested findings and orders

[2] Extensive background information on the nature of, and litigation associated with, design defects on these particular design defects can be found at http://www.autosafety.org/general-motors-roof-crush-lawsuits (crushed roof cases), http://www.autosafety.org/general-motors-ck-fuel-fed-fire-litigation ("side saddle" gas tank cases), and http://www.autosafety.org/general-motors-seat-back-collapse-litigation-0 (seat back collapse cases).

intended to bar present and future product liability claims against the successor Purchaser under state law theories of successor liability.

17. For the reasons set forth below, and in our supporting Memorandum of Law, the Objectors request that the Court strike or modify as appropriate the following provisions affecting the product liability claimants' rights to pursue successor liability claims against the Purchaser under state law:

a. Provisions providing that the sale is "free and clear" of successor liability claims or that the Purchaser shall not be liable for successor liability claims. Sale Order ¶¶ T, 7-9, and 29; MPA Section 9.19 ("neither Purchaser nor any of its Affiliates or stockholders shall be liable for any Claims against Sellers or any of their predecessors or Affiliates, and neither Purchaser nor any of its Affiliates or stockholders shall have any successor, transferee or vicarious Liability of any kind or character whether known or unknown as of the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to Sellers' business or any obligations of Sellers arising prior to the Closing.");

b. Provisions enjoining successor liability actions against the Purchaser. Sale Order ¶¶ 13 and 28;

c. Provisions containing factual findings related to successor liability. Sale Order ¶¶ V, 27 and 38; MPA Section 9.19 ("neither Purchaser nor any of its Affiliates or stockholders shall be deemed to (a) be the successor of Sellers; (b) have, de facto, or otherwise, merged with or into Sellers; (c) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (d) other than as set forth in this Agreement, be liable for any acts or omissions of Sellers in the conduct of Sellers' business or arising under or related to the Purchased Assets."); and

d. Any other provision attempting to extinguish the Purchaser's successor liability, enjoin successor liability actions, or make binding findings of fact with regard to elements of state law successor liability claims.

18. GM's attempt to enjoin successor liability claims against the Purchaser must be denied because it violates applicable law, notice, and due process requirements. The legal basis for such a denial is summarized briefly below and set forth in detail in the supporting Memorandum of Law, filed contemporaneously herewith.

a. § 363 does not extend to successor liability choses in action. The plain language of § 363(f), which describes what is released as part of a "free and clear" sale under that section, only applies to "interests in property." This phrase is used throughout the Code, and thus should have the same meaning throughout;

b. The Court should decline to follow the *Chrysler* court's opinion authorizing a sale "free and clear" of successor liability choses in action because the court in *Chrysler* misapplied the case law and adopted inconsistent policies.

c. The Court lacks subject matter jurisdiction under 28 U.S.C. § 1334 to enjoin post-closing disputes between personal injury claimants and the Purchaser. The Court cannot exercise "related to" jurisdiction because such an exercise of jurisdiction is inappropriate where the action the court seeks to enjoin is unrelated to the *res* of the bankruptcy estate. Here, the outcomes of any actions brought by the personal injury claimants against the Purchaser would leave the *res* of the Debtors' estates wholly untouched;

d. The Court does not have authority to make non-core factual findings regarding elements of state law successor liability claims. GM's sale motion seeks factual findings regarding the status of the Purchaser post-sale without providing any factual basis for the findings. In any case, the Court does not have authority to make non-core, advisory rulings on facts that are not yet in existence;

e. The Purchased Assets cannot be sold "free and clear" of successor liability for future tort and product liability claims because—even if this Court were to conclude that *current* claims could be categorized as "interests in property" under § 363—the Court cannot draw the same conclusion regarding *future* interests in property. People who have not yet suffered an injury or a loss cannot have an interest in GM's property because the injuries that would lead them to have such an interest have not yet occurred; and

f. A sale of GM's assets "free and clear" of future tort and product liability claims violates due process because people who have not yet suffered injury from defects in GM vehicles do not know that they will be injured in the future cannot be given meaningful notice that their rights are being adjudicated or a meaningful opportunity to be heard.

WHEREFORE, for the foregoing reasons, and for those stated in the Objectors' accompanying Memorandum of Law in Support, the Objectors respectfully request that this Court deny the Debtors' motion to sell its assets free and clear of all successor liability claims and enter such other and further relief as this Court deems just and proper.

Dated: June 19, 2009

Respectfully submitted,

CALLAN CAMPBELL, KEVIN JUNSO, ET AL., EDWIN AGOSTO, KEVIN CHADWICK, ET AL., AND JOSEPH BERLINGIERI

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11 Case No.
GENERAL MOTORS CORP., *et al.*,	:	09-50026 (REG)
Debtors.	:	(Jointly Administered)

MEMORANDUM OF LAW IN SUPPORT OF THE LIMITED OBJECTION OF CALLAN CAMPBELL, KEVIN JUNSO, *ET AL.*, EDWIN AGOSTO, KEVIN CHADWICK, *ET. AL.*, JOSEPH BERLINGIERI, AND THE CENTER FOR AUTO SAFETY, *ET AL.*, TO THE DEBTORS' 363 MOTION FOR THE SALE OF THE "PURCHASED ASSETS" FREE AND CLEAR OF POTENTIAL SUCCESSOR LIABILITY CLAIMS

Dated: June 19, 2009
(as amended technically on June 22, 2009)

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Callan Campbell ("Campbell"), Kevin Junso, *et al.* ("Junso"), Edwin Agosto ("Agosto"), Kevin Chadwick, *et al.* ("Chadwick"), and Joseph Berlingieri ("Berlingieri," together with Campbell, Junso, Agosto, and Chadwick, the "Products Liability Claimants"), and the Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizen (collectively, the "Consumer Organizations," and together with the Product Liability Claimants, the "Products Liability Claimant Advocates"), by and through their respective attorneys, submit this Memorandum of Law in support of their limited objection to the motion (the "363 Motion") of General Motors and certain of its subsidiaries (collectively, "GM" or "Debtors") for an order authorizing the sale of certain assets, including its Continuing Brands, to Vehicle Acquisition Holdings LLC, a U.S. Treasury-sponsored purchaser (the "Purchaser").[1]

PRELIMINARY STATEMENT

More than 69 million GM passenger vehicles are on American roads today. In 2007, according to the National Highway Traffic Safety Administration's Fatal Analysis Reporting System, 9,985 occupants of GM vehicles were killed in fatal accidents; and a total of 14,828 people were killed that year as a result of motor vehicle crashes involving GM vehicles. Many thousands more are injured each year in GM vehicles. Many of these vehicles contain certain defects that have and will continue to be the subject of product liability lawsuits, including due to injuries and deaths from crushed roofs, exploding "side saddle" gas tanks, and collapsing seat backs.[2]

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[1] Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Product Liability Claimant Advocates' limited objection, the Debtors' 363 Motion, or the Master Purchase Agreement ("MPA") attached to the 363 Motion.

[2] Extensive background information on the nature of, and litigation associated with, design defects on these particular design defects can be found at http://www.autosafety.org/general-motors-roof-crush-

GM states in the 363 Motion that the sale "must be free and clear" of "rights or claims based on any successor or transferee liability." (363 Motion at 32-33). No business justification has been articulated, however, as to why the Purchaser is entitled to such relief, particularly when the "New GM" will look and operate much like the "Old GM" in the Continuing Brand businesses, and thus potentially satisfy the "mere continuation," "continuity of enterprise," or "product line exception" tests for successor liability under the laws of various states.

Although shedding potential successor liability claims provides expediency, it's not permitted under Bankruptcy Code section 363(f), which authorizes the sale of property free and clear only of "interests in" property to be sold, not *in personam* claims against the Purchaser under theories of successor liability. And while the *Chrysler* court authorized such relief in the sale of Chrysler's assets in the transaction with Fiat, if the Court undertakes its own independent analysis of *Chrysler's* reasoning, it will conclude that *Chrysler* was wrongly decided on this point of law and that the cases it relied upon were flawed.

The Court should not approve the sale free and clear of successor liability claims for two additional reasons. First, this Court lacks jurisdiction to enjoin actions between non-debtor product liability claimants and the Purchaser post-closing since resolution of these claims will not affect the Debtors' estates. Second, due process does not permit debtors and purchasers to use a Section 363 sale to extinguish future claims that have not yet accrued because the injuries on which they will be based have not yet occurred. People who will one day have such claims cannot have received meaningful notice that the bankruptcy proceeding was resolving their rights or a meaningful opportunity to protect those rights, which otherwise might allow a state law cause of action for their injuries.

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lawsuits (crushed roof cases), http://www.autosafety.org/general-motors-ck-fuel-fed-fire-litigation ("side saddle" gas tank cases), and http://www.autosafety.org/general-motors-seat-back-collapse-litigation-0 (seat back collapse cases).

Foreclosing the ability to hold the successor Purchaser liable under state successor liability laws will harm thousands of people who have been or will be injured in vehicles represented by the Continuing Brands. Victims of vehicle accidents attributable to defects are injured in often life-changing ways. They may have incurred staggering medical bills because of the physical injuries they have suffered, lost income because of the time they could not work, and/or suffered the loss of family members in devastating accidents. They should not be deprived of the opportunity, because of expediency, to have their day in court as to whether the Purchaser, under the laws of the several states, remains liable for the injuries, pain, and suffering they endure.

STATEMENT OF FACTS

The Product Liability Claimant Advocates refer the Court to, and incorporate herein, the background facts set forth in their limited objection to the 363 Motion, filed contemporaneously herewith.

ARGUMENT

I. Neither the language of § 363(f) nor the policy underlying it authorize a sale "free and clear" of a product liability claimant's potential successor liability claims.

A. § 363(f)'s plain meaning does not extend to successor liability choses in action.

Code section 363(f) provides, in relevant part, that "the trustee may sell property ... free and clear of any interests in such property." Analyzing whether § 363(f) authorizes a sale "free and clear" of a products liability claimant's state law successor liability claims "begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enters., Inc.,* 489 U.S. 235, 241 (1989).

The issue here turns on the phrase "*interests in such property*," the statutory language that describes what is released as part of a "free and clear" sale under § 363(f). In considering

the meaning of this phrase, the Court should presume that "equivalent words have equivalent meaning when repeated in the same statute." *Cohen v. de la Cruz*, 523 U.S. 213, 220 (1998) (*citing Ratzlaff v. United States*, 510 U.S. 135, 143 (1994) ("A term appearing in several places in a statutory text is generally read the same way each time it appears.")). As set forth in the attached **Exhibit A**, the phrase "interest(s) in property" appears 40 times in the Code. Notably, not once can the phrase "interest in property" be substituted with the word "claim" and make any sense. In this regard, the Seventh Circuit's opinion in *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC (In re Qualitech Steel Corp.)*, 327 F.3d 537 (7th Cir. 2003), is instructive. There, after citing to other times the phrase "interest in property" is used in the Code, the Court held that a leasehold was an "interest in property" because it was "not simply a right that is connected to or arising from the property, … but a (limited) right to the property itself." *Id.* at 545-46 (7th Cir. 2003) (disagreeing with the 3rd Circuit's holding in *In re TWA*, 322 F.3d 283 (3d Cir. 2003)).

Notably, § 363(f) does not mention the word "claim." In contrast, § 1141(c) of the Bankruptcy Code provides that "property dealt with by the plan is free and clear of all *claims and interests* ... *in* the debtor." (Emphasis added). Section 363 and 1141(c) are two mechanisms for transfer of estate property (one through a sale, the other through a plan). The difference between the words chosen by Congress in these two closely related sections shows that Congress did not intend a sale under § 363(f) to be free and clear of "*claims*," but only of "*interests in* such property" because "'it is generally presumed that Congress acts intentionally and purposely' when it 'includes particular language in one section of a statute but omits it in another.'" *City of Chicago v. Environmental Defense Fund,* 511 U.S. 328, 338 (1994) (*quoting Keene Corp. v. United States,* 508 U.S. 200, 208 (1993)); *see also N.L.R.B. v. Bildisco & Bildisco,* 465 U.S. 513, 523 (1984) (where language in one provision shows that Congress knows how to draft to effect a

particular outcome, its failure to use that language elsewhere indicates that Congress intended not to effect that outcome); *Greene v. United States*, 79 F.3d 1348, 1355 (2d Cir. 1996) ("The ancient maxim *expression unius est exclusio alterius* (mention of one impliedly excludes others) cautions us against engrafting an additional exception to what is an already complex [statutory scheme]."). Moreover, interpreting the term "interest" to include "claim" would render the term "claim" in § 1141(c) superfluous. "'It is a cardinal principle of statutory construction,' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void or insignificant.'" *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

In addition, Congress had the opportunity to change the Code in considering the National Bankruptcy Review Commission's 1997 recommendation that the differences between § 363(f) and § 1141(c) be reconciled by expanding the "free and clear" language of § 363(f) to mirror the language of § 1141(c).[3] Yet, Congress chose not to do so. Notably, in making this recommendation, the Commission explained that "the difference in language between [the] two sections raises a concern that the scope of protection regarding transfers pursuant to asset sales is narrower than the protection afforded to transfers pursuant to a plan of reorganization."[4] Yet in 2005, when Congress enacted massive revisions to the Code, both technical and substantive, it did not amend § 363 to expand the "free and clear" language to encompass "claims" generally

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[3] *See* ABSTRACT OF SUBMISSIONS MADE TO NATIONAL BANKRUPTCY REVIEW COMM., National Bankruptcy Review Commission (Jan. 12, 1998), *at* http://www.abiworld.org/AM/Template.cfm?Section=Submission_Abstract&Template=/CM/ContentDisplay.cfm&ContentID=36636 (last visited, June 17, 2009).

[4] *Id.* (*see* ID NRBC-0189, recommendation of Marcia L. Goldstein on behalf of the NYC Bar Ass'n, Comm. on Bankr. and Corp. Reorg., *identifying* the "PROBLEM REFERENCED" ("Sections 1141(c) and 363(f) contain incompatible language with regard to asset sales.... The difference in language between [363(f) and 1141(c)] raises a concern that the scope of protection regarding transfers pursuant to asset sales is narrower than the protection afforded to transfers pursuant to a plan of reorganization.") *and* the "PROPOSED SOLUTION" ("Section 363(f) should be amended to provide that property can be sold under this section 'free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.'").

that might have some connection with the property sold. *See Conn. Nat'l Bank v. Germain,* 503 U.S. 249, 253-54 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

The Court also should look to pre-Code practice for guidance in interpreting § 363(f)'s reference only to "interests in property" and not to "claims" generally. *Dewsnup v. Timm,* 502 U.S. 410, 419 (1992) ("When Congress amends the bankruptcy laws, it does not write 'on a clean slate.'"). As noted by the late Chief Judge Brozman in *Shearson Lehman Hutton, Inc. v. Schulman (In re Schulman),* 196 B.R. 688 (Bankr. S.D.N.Y. 1996):

> The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific. *Midlantic Nat'l Bank v. New Jersey Dep't of Environ. Protection,* 474 U.S. 494, 501 (1986). This rule is followed with particular care in construing the Bankruptcy Code [which] should not be read to abandon past bankruptcy practice absent a clear indication that Congress intended to do so. *Pennsylvania Public Welfare Dep't v. Davenport,* 495 U.S. 552, 563 (1990). Thus, where the text of the Code does not unambiguously abrogate the pre-Code practice, court should presume Congress intended it to continue unless the legislative history dictates a contrary result. *Dewsnup v. Timm,* 502 U.S. 410, 418-20.

Schulman, 196 B.R at 697 n.10.

In *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville)*, 837 F.2d 89 (2d Cir. 1988), the Second Circuit expounded on the pre-Code authority of a bankruptcy court "to approve settlements and to channel claims arising under the [insurance] policies to the proceeds of the settlement." *Id.* at 93. Notably, in each of the four examples given, the property was transferred free of true interests or encumbrances, but not of *in personam* claims. *Id.* Moreover, in the only case cited in which assets were sold free and clear of simple claims (civil rights claims, in particular), the Second Circuit affirmed the lower court's ruling *not* on the basis that a bankruptcy trustee has authority to sell assets free and clear of claims, but rather because there

was in fact "no basis for plaintiff's claim" to hold the successor employer liable under the "substantial continuity of identity" test for successor liability. *Forde v. Kee-Lox Mfg. Co., Inc.*, 584 F.2d 4, 5-6 (2d Cir. 1978). In sum, therefore, nothing in pre-Code practice establishes the notion that bankruptcy sales can be effectuated free and clear of claims against the purchaser based on theories of successor liability.

The legislative history to § 363(f) is also instructive in two ways. First, it establishes, consistent with the judicial presumptions and pre-Code practice described above, that the new proposed Code section on "sales free of interests of third persons" "codifies case law insofar as it recognizes the right of the trustee to sell property of the estate free and clear of liens and other interests that can be reduced to dollars." H.R. Doc. No. 93-137, 93rd Cong., 1st Sess., § 5-203 (Sale of Property of the Estate), note 2 (*available at* Appx. Vol. B, COLLIER ON BANKRUPTCY, at App. Pt. 4-764 (15th ed. rev. 2008)). The legislative history makes no reference to such sales being washed free of *in personam* claims for successor liability. Second, the legislative history cannot sensibly be read to include the notion that a bankruptcy sale can be ordered free and clear of *in personam* claims. Both the final House and Senate Reports on Section 363 provide:

> At a sale free and clear of other interests, any holder of any interest in the property being sold will be permitted to bid. If that holder is the high bidder, he will be permitted to offset the value of his interest against the purchase price of the property.

H.R. 8200, 9th Cong., 1st Sess., § 363 (1977) (*available at* Appx. Vol. C, COLLIER ON BANKRUPTCY, at App. Pt. 4-1478 (15th ed. rev. 2008)); S. 2266, 95th Cong., 1st Sess., § 363 (1977) (*available at* Appx. Vol. D, COLLIER ON BANKRUPTCY, at App. Pt. 4-1996 (15th ed. rev. 2008)). One cannot substitute "claims against" for "interest in" and make any sense of the rights of such holder; it would be absurd to argue that a holder of a general unsecured claim has a right

to credit bid its claims in an auction and "offset the value of his [claims] against the purchase price of the property."

Further support that § 363(f)'s use of the term "interests in property" does not include *in personam* claims for successor liability is found in *Butner v. United* States, 440 U.S. 48 (1979), which is best known for the proposition that—except where Congress has specifically chosen to exercise its power to fashion applicable rules of bankruptcy law—"Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law." *Butner* states:

> Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding. Uniform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving "a windfall merely by reason of the happenstance of bankruptcy."

Id. at 55 (citation omitted).

Barnhill v. Johnson, 503 U.S. 393 (1992), took *Butner* one step further. In holding that the "transfer" of an "interest in property" had occurred at the time the debtor's check was honored, not at the time the check was delivered, *Barnhill* establishes that a "nebulous right to bring suit" is not an "interest in property":

> There is thus some force in petitioner's claim that he did, in fact, gain something when he received the check. But at most, what petitioner gained was a chose in action against the debtor. Such a right, however, cannot fairly be characterized as a conditional right to "property ... or an interest in property," where the property in this case is the account maintained with the drawee bank. For as noted above, until the moment of honor the debtor retains full control over disposition of the account and the account remains subject to a variety of actions by third parties. **To treat petitioner's nebulous right to bring suit as a "conditional transfer" of the property would accomplish a near-limitless expansion of the term "conditional." In the absence of any right against the bank or the account, we think the fairer description is that petitioner had received no interest in debtor's property, not that his interest was "conditional."**

Id. at 400-401 (emphasis added). Also instructive is *United Savings Assn. of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988), which held that "the 'interest in property' protected by § 362(d)(1) does not include a secured party's right to immediate foreclosure." *Id.* at 371.

Reading "interest in property" as broadly as the Debtors request in their Motion, however, would contravene the holdings of *Barnhill* and *Timbers* each of those cases involved the same kind of "nebulous right" or "chose in action" that the Debtors here are seeking to enjoin through its proposed "free and clear" sale, yet in neither of those cases were those rights considered "interests in property."

B. The Court should decline to follow the *Chrysler* court's opinion authorizing a sale "free and clear" of successor liability choses in action.

In the recent decision in *In re Chrysler,* 405 B.R. 84 (Bankr. S.D.N.Y. May 31, 2009), the court held that tort claims are "interests in such property" under § 363(f). As explained below, that decision was incorrect for several reasons. First, a narrower reading that would exclude *in personam* choses in action from the coverage of "interests in property" under § 363(f) is amply supported by a long line of cases, including *In re White Motor Credit Corp.,* 75 B.R. 944 (Bankr. N.D. Ohio 1987), and *Rubinstein v. Alaska Pacific Consortium (In re New England Fish Co.),* 19 B.R. 323 (Bankr. W.D. Wash. 1982). The *Chrysler* decision cited these cases as authority for extending § 363(f)'s coverage to *in personam* choses in action, but in fact, these cases support the *opposite* conclusion. *See White Motor,* 75 B.R. 948 ("General unsecured claimants, including tort claimants, have no specific interest in a debtor's property. Therefore, section 363 is inapplicable for sales free and clear of such claims."); *Rubinstein*, 19 B.R. at 326 (Title VII claimants are general unsecured creditors who lack "an interest in the specific property of the estate being sold" under § 363(f)).

American Living Sys. v. Bonapfel (In re All Am. Of Ashburn, Inc.), 56 B.R. 186 (Bankr. N.D. Ga. 1986), upon which the *Chrysler* court also relied, did not conclude that *in personam* claims are "interests in property" for purposes of § 363(f). Rather, like *White Motor* and *Rubinstein*, that case was decided without a single reference to the section's "interest in property" language. *Id.* at 190.

In fact, almost every case that has closely examined the language, history, and policies of § 363(f) has concluded that the section does not authorize sales "free and clear" of *in personam* choses in action for successor liability.[5] *In re TWA*, 322 F.3d 283 (3d Cir. 2003), on which the *Chrysler* court relied, is one of the few exceptions. *See also United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal)*, 99 F.3d 573 (4th Cir. 1996) (upon which *TWA* relies).

For example, in the Seventh Circuit case of *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC (In re Qualitech Steel Corp.)*, 327 F.3d 537 (7th Cir. 2003), Judge Posner, writing for a unanimous panel, held that § 363(f)'s reference to "any interest" was "sufficiently broad to

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[5] Federal cases include *Michigan Empl. Sec. Comm. v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n. 23 (6th Cir. 1991) (relying upon *White Motor* to "reject Wolverine's argument that general unsecured interests fall within the scope of those interests that can be discharged pursuant to section 363(f)"); *Kattula v. Republic Bank (In re LWD, Inc.)*, No. 5:08-CV-121-R, 2009 WL 367738 at *4 (W.D. Ky. Feb. 12, 2009) (free and clear language of § 363 sale order enjoining successor liability claims "applies only to estate property … and does not contemplate protection against personal liability claims"); *Miller v. Level 3 Comms., LLC,* No. 03-4451, 2005 WL 1529419 at *9 (D.N.J. June 29, 2005) ("the Bankruptcy Court [free and clear sale] Order may not defeat application of the eight factors set forth by the Secretary of Labor [for evaluating whether an employer qualifies as a successor in interest for purposes of the Act"); In *re Eveleth Mines, LLC*, 312 B.R. 634 , 654 (Bankr. D. Minn. 2004) ("In the last instance, the reasoning of the [*TWA* and *Leckie*] opinions fails on an alternate basis: they do not take the inquiry back to where it belongs, the governance of state law in the defining of "interest."); *Fairchild Aircraft Corp. v. Cambell (In re Fairchild Aircraft Corp.)*, 184 B.R. 910, 918 (Bankr. W.D. Tex. 1995), *vacated as moot on equitable grounds,* 220 B.R. 909 (W.D. Tex. 1998) ("Were we to allow 'any interests' to sweep up *in personam* claims … we would render the words 'in such property' a nullity. No one can seriously argue that *in personam* claims have, of themselves, an *interest in property.*").

State cases include: *Kattula v. Republic Bank*, 2008 WL 4606076 (Mich. App. Oct. 7, 2008) ("Section 363(f) is not intended to extinguish *in personam* liabilities."); *Lefever v. K.P. Hovnanian Enters., Inc.* 160 N.J. 307, 320 (N.J. 1999) (products liability claimant had no "interest" in the sense of a lien or encumbrance on the property); *Gross v. Trustees of Columbia Univ.,* 816 N.Y.S. 2d 695 (N.Y. Sup. Ct. 2006) (follows *Lefever* in case applying NJ law).

include Precision's possessory interest as lessee." In rejecting *TWA*'s more expansive definition of "any interest" as meaning "a right that is connected to or arising from the property," he stated:

> The Bankruptcy Code does not define "any interest," and in the course of applying section 363(f) to a wide variety of rights and obligations related to estate property, courts have been unable to formulate a precise definition. *Folger Adam Security, Inc. v. DeMatteis/MacGregor, JV,* 209 F.3d 252, 258 (3d Cir. 2000).... [We] conclude that the term "any interest" as used in section 363(f) is sufficiently broad to include Precision's possessory interest as a lessee. BLACK'S defines "interest" to mean "[a] legal share in something; all or part of a legal or equitable claim to or right in property." BLACK'S LAW DICTIONARY, 816 (7th ed. 1999). The right that a leasehold confers upon the lessee is one to possess property for the term of the lease. **It is, therefore, not simply a right that is connected to or arising from the property**, *see In re Trans World Airlines, Inc.,* 322 F.3d 283, 289-90 (3d Cir.2003), **but a (limited) right to the property itself**. That right readily may be understood as an "interest" in the property. This inclusive interpretation of the phrase "any interest" is consistent with the expansive use of that same phrase in other provisions of the Code. *See, e.g.,* 11. U.S.C. § 541(a)(3), (4), (5), and (7) (identifying various interests comprising property of the estate).

Qualitech Steel., 327 F.3d at 545-46 (emphasis added); *see also Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 163 (7th Cir. 1994) (in holding that bankruptcy court had no jurisdiction over post-confirmation products liability claim, stating: "It is true that [the debtor's] assets were sold to [the purchaser] free from all liens and other encumbrances. And such a cleansing of the assets in the bankruptcy sale is a valid power of a bankruptcy court, 11 U.S.C. §§ 363(f), 1141(c). But the [claimants] are not attempting to enforce a lien.").

Thus, the *Chrysler* court erred in following *TWA* and authorizing the sale of Chrysler's assets free and clear of potential *in personam* or successor liability claims against New Chrysler. In *TWA*, the Third Circuit affirmed a bankruptcy court's order that a 363 sale to American Airlines of TWA's operating assets would be "free and clear" of both pending employment discrimination claims and rights under a travel voucher program established in settlement of a sex discrimination action initiated by TWA's flight attendants. However, not only did *TWA*

misinterpret the phrase "interests in property" in § 363, but it —and *Leckie Smokeless Coal*,[6] the case upon which it primarily relies—failed to articulate coherent policy grounds authorizing such sales "free and clear" of all such claims.

As explained in *In Eveleth Mines, LLC*, 312 B.R. 634 (Bankr. D. Minn. 2004), the problem with both *TWA* and *Leckie* is that they "are built on an amorphously inclusive rationalization [that] posits a loose sort of 'but-for' causality that is thrown up to identify the straw-built 'interest' that then is vanquished." *Id.* at 654.

TWA and *Leckie* adopt tortured reasoning to shoehorn the claim at issue into an "interest in property" that can be wiped out in a "free and clear" sale under § 363(f). They both reason that the successor liability claims at issue were an "interest in" the property transferred because had the debtor not deployed the assets sold in the particular manner that subjected it to the particular claim at issue, then the claimants would have had no claim upon which the successor could be liable. *See TWA,* 322 F.3d at 290 ("Had TWA not invested in airline assets, which required the employment of the EEOC claimants, those successor liability claims would not have arisen. Further, TWA's investment in commercial aviation is inextricably linked to its employment of the … claimants … and its ability to distribute travel vouchers as part of the settlement agreement."); *Leckie Smokeless Coal*, 99 F.3d 573, 582 ("[I]f Appellees had never elected to put their assets to use in the coal-mining industry, and had taken up business in an altogether different area, the Plan and Fund would have no right to seek premium payments from them.").

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[6] *United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal)*, 99 F.3d 573 (4th Cir. 1996) (debtor's assets could be sold "free and clear" of obligations under the Coal Industry Retiree Health Benefit Act of 1992, which imposed joint and several liability on any "successor in interest" to a covered coal producer).

This interpretation of "interest in such property," however, would render the phrase meaningless as it would be all-encompassing. After all, hardly any claim arises other than as a result of the debtor's particular use of the assets. And as Justice Scalia warned in writing for the majority in *BFP v. Resolution Trust Corp.*, 511 U.S. 531 (1994), a court should not "torture [the text] into meaning" for "such word-gaming would deprive the criterion of all meaning." *Id.* at 538 n.4.

Moreover, the *Eveleth Mines* court rightly stated, the reasoning of *TWA* and *Leckie Smokeless Coal* fails because "they do not take the inquiry back to where it belongs, the governance of state law in the defining of 'interest'." *Eveleth Mines*, 312 B.R. at 654. "As recognized in *Butner*," the *Eveleth Mines* court concluded, "this is a matter of federalism." *Id.* (*citing Butner*, 440 U.S. at 52-56).

Equally flawed are the policy considerations relied upon by *TWA* and *Chrysler* in permitting sales free and clear of successor liability claims against the purchaser. According to *TWA*, "allowing the claimants to seek a recovery from the successor entity while creditors which were accorded higher priority by the Bankruptcy Code obtained their recovery from the limited assets of the bankruptcy estate would 'subvert the specific priorities which define Congressional policy for bankruptcy distribution to creditors.'" *TWA*, 322 F.3d at 292 (*quoting New England Fish Co.*, 19 B.R. at 329). Such a *per se* rule, however, was rejected by the Seventh Circuit in *Chicago Truck Drivers, Helpers and Warehouse Workers Union Pension Fund v. Tasemkim,* 59 F.3d 48 (7th Cir. 1995), which stated:

> What imposition of successor liability would accomplish, and what the district court objected to, would be a second opportunity for a creditor to recover on liabilities after coming away from the bankruptcy proceeding empty-handed. But a second chance is precisely the point of successor liability, and it is not clear why an intervening bankruptcy proceeding, in particular, should have a *per se* preclusive effect on the creditor's chances.... Instead of being dispositive, however, the availability of relief

> from the predecessor is a factor to be considered along with other facts in a particular case. Here, those facts include the apparent nature of the acquisition of Old Tasemkin by New Tasemkin-which clearly had the effect, intended or not, of frustrating unsecured creditors while resurrecting virtually the identical enterprise.

Id. at 51. *Cf. Anderson v. J.A. Interior Applications, Inc.*, No. 97-4552, 1998 WL 708851 (N.D. Ill. 1998) (rejecting concerns that successor claimants will elevate their priority rights by noting that "[c]reditors ahead of plaintiffs in the bankruptcy proceedings are thus entitled to the same distribution of assets regardless of whether plaintiffs recover anything from [the debtor's] successor").

TWA and *Chrysler* also rely on the notion that "the policy underlying section 363(f) is to allow a purchaser to assume only the liabilities that promote its commercial interests." *Chrysler,* 405 B.R. at 111 (citing *New England Fish Co.* and *White Motor Credit*); *TWA,* 322 F.3d at 292-93 ("Absent entry of the Bankruptcy Court's order providing for a sale of TWA's assets free and clear of the successor liability claims at issue, American may have offered a discounted bid."). But here, the proposed sale is being effected primarily through a credit bid by GM's senior secured lender of its debt, and no less consideration would flow to the estate if product liability claims were allowed to go forward in states that allow such actions to be pursued against successor purchasers of the assets. Regardless, it is inappropriate to release claims against a non-debtor just because of its contributions to the debtor's estate. *See Johns-Manville Corp. v. Chubb Indem. Ins. Co. (In re Johns-Manville Corp.)*, 517 F.3d 52, 65 (2d Cir. 2008) (*citing In re Karta Corp.,* 342 B.R. 45, 55 (S.D.N.Y. 2006) ("[C]onditioning of financial participation by non-debtors on releases ... is subject to ... abuse.")), *rev'd on other grounds, Travelers Indemnity Co. v. Bailey*, No. 08–295, 2009 WL 1685625 (June 18, 2009).[7] *cf., Tasemkim,* 59

[7] On June 18, 2009, the Supreme Court reversed the Second Circuit's 2008 decision in *Johns-Manville*, but only based on the "narrow" grounds that once the bankruptcy court's orders of 1986 became final on direct review, they became *res judicata* as to the parties. *Bailey*, 2009 WL 1685675, at *11. The narrowness of the holding, coupled

F.3d at 50-51 ("[T]he potential for chilling does not vary as a function of a company's precise degree of distress, and there is no reason to accord the purchasers of formally bankrupt entities some special measure of insulation from liability that is unavailable to ailing but not yet defunct entities."); *Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 163 (7th Cir. 1992) (extinguishing state law rights in order to increase the value of the debtors' property "would not only [] harm [] third parties..., but [would provide an] incentive to enter bankruptcy for reasons that have nothing to do with bankruptcy").

In sum, the Code's plain meaning does not support the result sought by GM here. Although the proposed sale is presented as a needed step to preserve a company important to the U.S. economy, "it was and is for the legislature to pass on [these] policy choice[s] ... [for] the job of the courts is limited to ascertaining what policy choice Congress *did* make, not what policy choice Congress *should have* made."[8] *Fairchild Aircraft*, 184 B.R. at 919 (emphasis in original); *see also Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 24-25 (2000) ("Bankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditors' entitlements, but are limited to what the Bankruptcy Code itself provides.").

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with the absence of any disagreement by the majority with the categorical statement in Justice Stevens' dissent that "the bankruptcy court has no authority ... to adjudicate, settle, or enjoin claims against nondebtors that do not affect the debtor's estate," strongly suggests that were the issue on the bankruptcy court's authority to enjoin actions between—and release claims against—non-debtors again presented to the Second Circuit, its holding and rationale on this issue would not change. *See Bailey,* 2009 WL 1685675, at *14 (Stevens, J., *dissenting*).

[8] As noted by the *Ad Hoc* Committee of Tort Claimants, however, "New GM's viability is not dependent on New GM avoiding its liability for tort claims. If it was, GM and the U.S. Treasury would not have consented to an out-of-court reorganization under which tort claims would have survived." (Docket No. 1997, ¶ 35). The Debtors agree, noting that these cases are not "asbestos-driven" (or, presumably, "tort claim-driven") cases. (Docket No. 1915, ¶ 27).

II. The Court lacks subject matter jurisdiction over post-closing disputes between products liability claimants and the successor Purchaser.

Bankruptcy courts are courts of limited jurisdiction. Under § 1334(b), district courts have original jurisdiction over civil proceedings "arising under" title 11 or "arising in" or "related to" a case under title 11. The district courts may in turn refer such cases to the bankruptcy judges for that district. 28 U.S.C. § 157(a).

GM is asking the Court to exercise jurisdiction to enjoin product liability claimants from bringing successor liability claims against the Purchaser after the § 363 sale closes. This Court, however, does not have the subject-matter jurisdiction under 28 U.S.C. § 1334 to enjoin such suits because the outcomes of such actions are unrelated to this bankruptcy proceeding. "Related to" jurisdiction exists when:

> [T]he *outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy* . . . . An action is related to the bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts the handling and administration of the bankrupt estate.

Celotex Corp. v. Edwards, 514 U.S. 300, 308 n.6 (1995) (emphasis in original) (*quoting Pacor v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). Although "any effect" may appear to sanction a broad grant of authority, the *Celotex* Court warned that "a bankruptcy court's 'related to' jurisdiction cannot be limitless." *Id.* at 308.

Generally, courts find "related to" jurisdiction exists over a third-party action when "the subject of the third-party dispute is property of the estate" or "the dispute over the asset would have an effect on the estate." *Johns-Manville,* 517 F.3d at 65 (*quoting Feld v. Zale Corp.* (*In re Zale Corp.*), 62 F.3d 746, 753-54 (5th Cir. 1995)), *rev'd on other grounds, Bailey*, *supra,* note 7. Conversely, courts will not find "related to" jurisdiction exists over third-party actions "when the asset in question is not property of the estate and the dispute has no effect on the estate." *Johns-*

Manville Corp., 517 F.3d at 65. Additionally, that an action between non-debtor third-parties shares facts or other similarities with the debtor-creditor relationship is insufficient to establish "related to" jurisdiction over the third-party action. *Id.*

Here, the product liability claimants' successor liability claims—to the extent they exist under applicable state law—will be asserted solely against the non-debtor Purchaser and thus will not diminish the Debtors' estates. *See Zerand-Bernal Group*, 23 F.3d at 162 (in holding that product liability claim brought under state law theory of successor was not "related to" and did not "arise under" the Bankruptcy Code, explaining that the claimants' action was "neither by nor against the Debtor"). Further, such suits will not affect the Purchaser's offered acquisition price because the Purchaser is obtaining the assets largely through a credit bid. Therefore, the Court does not have "related to" jurisdiction over such claims, and cannot enjoin them.

Moreover, "[s]ubject matter jurisdiction cannot be 'conferred by consent' of the parties." *Binder v. Price Waterhouse & Co., LLP* (*In re Resorts Int'l, Inc.*), 372 F.3d 154, 161 (3d Cir. 2004) (*quoting Coffin v. Malvern Fed. Sav. Bank*, 90 F.3d 851, 854 (3d Cir. 1996)); *Cable Television Ass'n of New York v. Finneran*, 954 F.2d 91, 94 (2d Cir. 1992) ("[T]he parties may not confer subject matter jurisdiction on the court by consent.") (*citing Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982)). As such, the fact that the 363 sale is contingent upon entry of an order that enjoins successor liability claims is insufficient to establish "related to" jurisdiction, for "a debtor [cannot] create subject matter jurisdiction over any non-debtor third party by structuring a plan in such a way that it depend[s] upon thirty-party contributions." *In re Combustion Engineering, Inc.*, 391 F.3d 190, 228-29 (3d Cir. 2004); *cf., Johns-Manville*, 517 F.3d at 66 (it is "inappropriate for the bankruptcy court to enjoin claims brought against a third-party non-debtor solely on the basis of that third-party's financial

contribution to a debtor's estate."), *rev'd on other grounds, Bailey, supra*, note 7. The Debtors' desire to facilitate a 363 sale "may not be used as a jurisdictional bootstrap when no jurisdiction otherwise exists." *Id.* at 68.

Even the outside chance that allowing these claims to proceed after the sale might, if successful, give rise to a claim by the Purchaser against the Debtors for breach of the MPA is not in itself sufficient to establish "related to" jurisdiction. *Cf.*, *Pacor*, 743 F.2d at 995 (holding that a potential indemnity claim against the debtor did not give rise to "related to" jurisdiction over a third-party action because "[t]he fact remains that any judgment received by the [non-debtor plaintiff] could not itself result in even a contingent claim against [the debtor], since [the third-party defendant] would still be obligated to bring an entirely separate proceeding to receive indemnification.").

Finally, the Court lacks jurisdiction to enter the proposed Sale Order because a bankruptcy court does not have stand-alone powers to make determinations on common or state law questions. *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 84 (1982). After *Marathon*, Congress amended the law in 28 U.S.C. § 157(c)(1) to provide that bankruptcy judges may hear a non-core proceeding grounded in state law that is "*related to*" the bankruptcy case. The determination of whether the Purchaser is a successor (*e.g.*, under theories of "mere continuation," "continuity of enterprise," or "product line exception") is a question of state law. *See generally* Michael H. Reed, *Successor Liability and Bankruptcy Sales Revisited—A New Paradigm*, 61 BUS. LAW. 179, 184 (2005) ("The rights of common law successor liability claimants … usually are 'created and defined' by state law and clearly appear to be substantive rights"). Such traditional state law questions qualify under any measure as "non-core" matters as to which this Court may only submit proposed findings of fact and conclusions of law to the

district court (*see* 28 U.S.C. § 157(c)(1)), assuming it can even hear the matter at all (*see* 28 U.S.C. § 157(b)(5) ("personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claims arose"). *See Marshall v. Marshall*, 547 U.S. 293, 303 (2006) ("A bankruptcy court may exercise plenary power only over core proceedings. In noncore matters, a bankruptcy court may not enter final judgment; it has authority to issue only proposed findings of fact and conclusions of law, which are reviewed *de novo* by the district court").

Regardless, consideration of such issues is premature and not ripe for adjudication since the facts needed to establish the purchaser's post-sale order conduct cannot possibly be considered before the sale has even been consummated.. *See e.g., Bes Enterprises, Inc. v. Natanzon*, No. 06-870, 2006 WL 3498419, at *5 (D. Md. Dec. 4. 2006) (motion to dismiss denied because more facts were needed to establish the purchaser's post-sale order conduct).

III. The Purchased Assets cannot be sold "free and clear" of successor liability for future tort and product liability claims.

The Master Purchase Agreement and Proposed Sale Order contain language that purports to release the purchaser from successor liability for future product liability and tort claims. *See, e.g.*, MPA at 94 (stating that Purchaser will not have any successor liability "whether now existing or hereafter arising"). For two reasons, GM cannot be sold free and clear of claims that have not yet arisen. First, such future claims are not within the statutory language of § 363(f). Second, due process principles do not allow GM to eliminate rights of future claimants, who have not and could not have received meaningful notice that their rights in a future suit are being lost, and thus have had no opportunity to seek to preserve those rights.

To begin with, as discussed above, product liability claims in general are not "*interests in such property*" within the meaning of § 363(f). But even if such claims could be considered

"interests in such property" under that section, future claims cannot. People who have not yet suffered injury or loss because of GM's behavior cannot have an "interest in" GM's property because the injuries that would lead them to have such an interest have not yet even occurred.

Moreover, even if § 363(f) applied to "claims" (as opposed to just "interests in such property"), the future causes of actions of people who have not yet suffered a loss or injury due to the defect in their vehicles would not be covered. "The term 'claim' means . . . right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). A person who has not yet suffered a loss or injury has no right to payment of any kind from the debtor. As the Seventh Circuit stated in *Fogel v. Zell*, 221 F.3d 955 (7th Cir. 2000), addressing a hypothetical remarkably similar to the case at hand:

> Suppose a manufacturer goes bankrupt . . . . And suppose that ten million people own automobiles manufactured by it that may have the same defect that gave rise to [product liability] suits but, so far, only a thousand have had an accident caused by the defect. Would it make any sense to hold that all ten million are tort creditors of the manufacturer and are therefore required, on pain of having their claims subordinated to early filer, to file a claim in the bankruptcy proceeding? Does a pedestrian have a contingent claim against the driver of every automobile that might hit him? We are not alone in thinking that the answer to these questions is "no."

Id. at 960. *See also Epstein v. Official Comm. Of Unsecured Creditors of Estate of Piper Aircraft Corp. (In re Piper Aircraft Corp.)*, 58 F.3d 1573 (11th Cir. 1995) (holding that prepetition manufacture, design, sale, and distribution of airplanes was insufficient to establish a "claim" for future victims in the bankruptcy proceeding because "there [was] no preconfirmation exposure to a specific identifiable defective product or any other preconfirmation relationship between [the manufacturer] and the broadly defined class of Future Claimants"); *Lemelle v. Universal Mfg. Corp.*, 18 F.3d 1268, 1274 (5th Cir. 1994) (refusing to extend term "claimants" to

include people "whom the record indicates were completely unknown and unidentified at the time [the company] filed its petition and whose rights depended entirely on the fortuity of future occurrences"); *In re Chateaugay Corp.*, 944 F.2d at 1003-04 ("Accepting as claimants those future tort victims whose injuries are caused by pre-petition conduct but do not become manifest until after confirmation, arguably puts considerable strain not only on the Code's definition of 'claim,' but also on the definition of 'creditor.'"); *cf., Schweitzer v. Consolidated Rail Corp.*, 758 F.2d 936, 944 (3d Cir. 1985) (claims for personal injuries that developed after a bankruptcy not dischargeable "claims" or "interests" under prior version of Bankruptcy Act).

Furthermore, even if future claims were "interests in property" under § 363(f), GM's assets cannot be sold free and clear of them unless one of the five conditions set forth in § 363(f) is met. Here, GM is relying on § 363(f)(5), which allows sale free and clear of claims that can be "compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." Future claims—causes of action that have not yet even accrued—do not and cannot be made to fit within this section. People with no current claim do not have an interest that can be reduced to a monetary value; they have not yet been injured, so they cannot know the nature or extent of an injury yet to occur. It would be impossible for GM to bring a proceeding against any future claimant to compel him or her to accept money in exchange for a claim that has not yet arisen. The plain meaning of the statute thus forecloses GM's effort to make the sale free and clear of these future claims.

The sale of GM "free and clear" of tort and product liability claims that have yet to arise also violates due process. Because people who will, but have not yet, suffered injury from defects in GM vehicles do not know that they will be injured in the future, they cannot be given either meaningful notice that their rights are being adjudicated or a meaningful opportunity to be

heard. As the Third Circuit stated in *Schweitzer*, it would be "absurd" to expect a "person who had no inkling" that he would be injured by the debtor's product years in the future to file a claim in the debtor's bankruptcy proceedings to preserve his rights. *Schweitzer,* 758 F.2d at 943; *see also In re Pettibone Corp.*, 151 B.R. 166, 172 (Bankr. N.D. Ill. 1993) ("[T]he argument implies that *uninjured* persons who wish to protect themselves in event of future injuries have the burden of monitoring national financial papers . . . to read notices about businesses they have no claims against because they are on notice of claim bar dates affecting any future injuries caused by such companies. Franz Kafka would have been able to accept such a legal principle in one of his stories; the Bankruptcy Code and the Fifth Amendment to the United States Constitution cannot.") (emphasis in original).

In its motion to approve the sale, GM requests that publication notice be deemed sufficient notice to those whose identities are unknown to the debtor. But the problem here is not just that GM has been unable to provide individualized notice to people with future claims; the problem is that people with future claims do not *themselves* know that they will be injured by defects in GM's products. Even if they saw a notice in a newspaper, people who have not yet been injured—some of whom may not even own a GM vehicle—would not know that the sale would affect them. These individuals have neither claims against nor knowledge that they will ever have a cause of action against GM. *See Schwinn Cycling & Fitness, Inc. v. Benonis (In re Schwinn Bicycle Co.)*, 210 B.R. 747, 760 (Bankr. N.D. Ill. 1997), *aff'd,* 217 B.R. 790 (N.D. Ill. 1997) (holding that it would violate due process to bind future victims to terms of sale order because "without knowing today who will be injured tomorrow, notice to particular individuals who may be injured in the future cannot be given" and "it is "doubtful that any general warning would have motivated future victims to participate actively in the bankruptcy proceeding");

Kewanee Boiler Corp. v. Smith (In re Kewanee Boiler Corp.), 198 B.R. 519, 538 ("Identifying persons who might come in close proximity to any of Kewanee's boilers that were manufactured imperfectly would have been impossible … [and] [w]hile a list could have been compiled of those who had purchased all the boilers, it is doubtful that notice to such parties and their employees could have reached all future victims of malfunctioning boilers or that anyone would have known what to do with notice of a bankruptcy as to which they then had no claim of injury.). And although some courts have sought to address the inability of people with future claims to be heard in court on those claims by providing for those people in the bankruptcy proceeding, GM has not done so here. *Cf., Stephenson v. Dow Chem. Co.*, 273 F.3d 249 (2d Cir. 2001) (holding that post-1994 asbestos claimants were not bound by settlement that purported to settle future claims but did not provide for recovery for injuries discovered after 1994).

Many courts have recognized the constitutional problem caused by attempting to discharge or foreclose future claims in a bankruptcy proceeding. *See In re Chateaugay*, 944 F.2d 997, 1003 (2d Cir. 1991) (recognizing the "enormous practical and perhaps constitutional problems" that would arise from considering future claims to be "claims" under the Bankruptcy Code); *Schweitzer*, 758 F.2d at 944 ("[A]n interpretation of 'interests' that included plaintiffs' future tort actions would raise constitutional questions."); *Mooney Aircraft Corp. v. Foster (In re Mooney Aircraft, Inc.)*, 730 F.2d 367, 375 (5th Cir. 1984) ("[L]ack of notice might well require us to find that the bankruptcy court's prior judgment was ineffective as to the [future claimants'] claims."); *In re UNR Indus., Inc.*, 725 F.2d 1111, 1119 (7th Cir. 1984) (stating that the difficulties of giving constitutionally adequate notice to the thousands of people exposed to asbestos sold by UNR but who had not yet developed asbestosis were "possibly insurmountable"). This Court should avoid the difficult constitutional questions that would arise from clearing the Purchaser of

liability for claims that do not yet exist, and make clear that the sale does not release the claims of consumers who will be injured or suffer losses in the future as a result of defects in GM vehicles.

CONCLUSION

The limits of the Bankruptcy Court's power will be on display in this case as never before. Through this objection, the Product Liability Claimant Advocates ask the Court to respect the jurisdictional boundaries of the Court, the statutory directives of Congress, and the due process requirements of the Constitution and deny the Debtors' request to bar present and future product liability claimants from pursing claims against the Purchaser post-closing under applicable state law theories of successor liability.

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technically on June 22, 2009)

Respectfully submitted,

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EXHIBIT A

"Interests in Property" as it Appears in the Bankruptcy Code

Section 101

(37) The term "lien" means charge against or **interest in property** to secure payment of a debt or performance of an obligation.

(54) The term "transfer" means--
(A) the creation of a lien;
(B) the retention of title as a security interest;
(C) the foreclosure of a debtor's equity of redemption; or
(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with--
(i) property; or
(ii) **an interest in property.**

Section 110

2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

(B) The legal advice referred to in subparagraph (A) includes advising the debtor--

(vi) concerning how to characterize the nature of the debtor's **interests in property** or the debtor's debts; or

Section 362

When adequate protection is required under section 362, 363, or 364 of this title of **an interest of an entity in property**, such adequate protection may be provided by--

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's **interest in such property**;
(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's **interest in such property**; or
(3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's **interest in such property**.

Section 362

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an **interest in property** to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an **interest in property** of such party in interest;

Section 363

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an **interest in property** used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 362).

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any **interest in such property** of an entity other than the estate, only if--

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
(2) such entity consents;
(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
(4) such interest is in bona fide dispute; or
(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the **interest of any co-owner in property** in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if--

(1) partition in kind of such property among the estate and such co-owners is impracticable;
(2) sale of the estate's undivided **interest in such property** would realize significantly less for the estate than sale of such property free of the interests of such co-owners;
(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and
(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(*l*) Subject to the provisions of section 365, the trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11, 12, or 13 of this title may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's **interest in such property**.

(p) In any hearing under this section--

(1) the trustee has the burden of proof on the issue of adequate protection; and
(2) the entity asserting an **interest in property** has the burden of proof on the issue of the validity, priority, or extent of such interest.

Section 506

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's **interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

Section 522

(B) any **interest in property** in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law; and

(d) The following property may be exempted under subsection (b)(2) of this section:
(5) The debtor's aggregate **interest in any property**, not to exceed in value $1,075 plus up to $10,125 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of--

(i) the lien;
(ii) all other liens on the property; and
(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's **interest in the property** would have in the absence of any

liens.

(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an **interest in property** described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $136,875 if--

(2) Paragraph (1) shall not apply to the extent the amount of an **interest in property** described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

Section 541

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(3) Any **interest in property** that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.
(4) Any **interest in property** preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.
(5) Any **interest in property** that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date--
(A) by bequest, devise, or inheritance;
(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or
(C) as a beneficiary of a life insurance policy or of a death benefit plan.
(7) Any **interest in property** that the estate acquires after the commencement of the case.

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's **interest in property**.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable **interest in such property** that the debtor does not hold.

Section 546

(b)(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that--

(A) permits perfection of an **interest in property** to be effective against an entity that acquires rights in such property before the date of perfection; or
(B) provides for the maintenance or continuation of perfection of an **interest in property** to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

(2) If--

(A) a law described in paragraph (1) requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an **interest in property**; and
(B) such property has not been seized or such an action has not been commenced before the date of the filing of the petition;

such **interest in such property** shall be perfected, or perfection of such interest shall be maintained or continued, by giving notice within the time fixed by such law for such seizure or such commencement.

Section 547

(d) The trustee may avoid a transfer of an **interest in property** of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

Section 548

(d)(1) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an **interest in the property** transferred that is superior to the **interest in such property** of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

Section 1123

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall--
(5) provide adequate means for the plan's implementation, such as--
(A) retention by the debtor of all or any part of the property of the estate;
(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;
(C) merger or consolidation of the debtor with one or more persons;
(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an **interest in such property** of the estate;

Section 1205

b) In a case under this chapter, when adequate protection is required under section 362, 363, or 364 of this title of an **interest of an entity in property**, such adequate protection may be provided by--

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of property securing a claim or of an entity's ownership **interest in property**;
(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of property securing a claim or of an entity's ownership **interest in property**;
(3) paying to such entity for the use of farmland the reasonable rent customary in the community where the property is located, based upon the rental value, net income, and earning capacity of the property; or
(4) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will adequately protect the value of property securing a claim or of such entity's ownership **interest in property**.

Section 1222

(b) Subject to subsections (a) and (c) of this section, the plan may--
(8) provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an **interest in such property**;

Exhibit Q

Hearing Date and Time: June 25, 2009 at 9:45 a.m.
Objections Due: June 19, 2009 at 4:00 p.m.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
GENERAL MOTORS CORP., *et al.*,	:	Case No. 09-50026 (REG)
Debtors.	:	(Jointly Administered)

OBJECTION OF AD HOC COMMITTEE OF CONSUMER VICTIMS OF GENERAL MOTORS TO THE DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§105, 363(b), (f), (k), and (m), AND 365 AND FED R. BANKR. P. 2002, 6004, AND 6006, TO (I) APPROVE (A) THE SALE PURSUANT TO THE MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) OTHER RELIEF; AND (II) SCHEDULE SALE APPROVAL HEARING

The Ad Hoc Committee of Consumer Victims of General Motors (the "Ad Hoc Consumer Committee"), by and through its undersigned counsel, hereby objects to the Debtors' Motion Pursuant to 11 U.S.C. §§105, 363(b), (f), (k), and (m), and 365 and Fed R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Pursuant to the Master Sale and Purchase

Agreement With Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear Of Liens, Claims, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Other Relief; and (II) Schedule Sale Approval Hearing (the "Sale Motion"). In support thereof, the Ad Hoc Consumer Committee respectfully represents as follows:

BACKGROUND

1. On June 1, 2009 (the "Petition Date"), General Motors Corp. and certain of its affiliates ("GM" or the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

2. GM is one of the "Big Three" U.S. automakers. Each year it sells millions of vehicles to American consumers, some of whom unfortunately suffer injuries, sometimes catastrophic, as a result of manufacturing defects and other legally culpable conduct on the part of the Debtors.

3. The Ad Hoc Consumer Committee was formed to advance the mutual interests of its members and others similarly situated with regard to the financial reorganization of GM.

4. The Ad Hoc Consumer Committee has more than 300 members who each have product liability tort claims involving personal injuries (including derivative claims and wrongful death actions) against GM. The members of the Ad Hoc Consumer Committee are individuals who reside throughout the country, many of whom who have suffered devastating injuries as a result of flaws in GM vehicles.

5. Upon information and belief, GM is self-insured against personal injury claims based upon products liability up to $35 million per occurrence. As a result, it is unlikely that insurance proceeds will be available to satisfy almost any of the tort claims.

6. The Debtors are seeking approval of a Master Sale and Purchase Agreement (the "Purchase Agreement") between GM and certain of its affiliates and a U.S. Treasury-sponsored entity, Vehicle Acquisition Holdings LLC ("New GM"). The Purchase Agreement contemplates the sale of substantially all of GM's core operating assets to New GM.

7. The majority owner of New GM will be the U.S. Treasury.

8. Under the Purchase Agreement, New GM has agreed to assume certain liabilities, including liabilities for warranties provided for vehicles sold before the closing. (Purchase Agreement § 2.3(a)(vii)).

9. However, New GM has not agreed to assume the obligation for "Products Liabilities arising out of products delivered to a consumer, lessee or other purchaser of products prior to the Closing." (Purchase Agreement § 2.3(b)(ix)).

10. The proposed sale order provides that "the Purchased Assets shall be transferred to the Purchaser…free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability." (Proposed Sale Order ¶ 7).

11. The proposed order further provides that all persons and entities "are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities liens, claims, encumbrances, and other interests, including rights or claims based upon successor or transferee liability." (Proposed Sale Order ¶ 8).

12. Thus, if the sale is approved and the proposed sale order is entered, all successor liability claims against New GM, which will continue to sell the same vehicles that have been sold by the Debtors, are intended to be wiped out.

13. On April 27, 2009, in an effort to avoid bankruptcy, GM launched a public exchange offer for approximately $27 Billion of its unsecured bonds (the "Exchange Offer"). (Frederick A. Henderson Declaration (Doc. 21) ("Henderson Decl.") ¶ 71). The U.S. Treasury's consent to the Exchange Offer was conditioned upon, among other things, the conversion to equity of at least 50% of GM's obligations to the U.S. Treasury. (Henderson Decl. ¶ 72). The Exchange Offer expired on May 26, 2009 without achieving the threshold of acceptances required by the U.S. Treasury. (Henderson Decl. ¶ 73). If the Exchange Offer acceptable to the U.S. Treasury had been successful and GM had not filed bankruptcy, the tort claims would not have been extinguished.

OBJECTION

A. The "Sale" is an Illegal *Sub Rosa* Plan.

14. "It is well established that section 363(b) is not to be utilized as a means of avoiding Chapter 11's plan confirmation procedures." *In re Westport Stevens, Inc.*, 333 B.R. 30, 59 (Bankr. S.D. N.Y. 2005).

15. Section 363 "does not authorize a debtor and the bankruptcy court to 'short circuit the requirements of a reorganization plan by establishing the terms of the plan *sub rosa* in connection' with a proposed transaction." *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986), *quoting In re Braniff Airways, Inc.*, 700 F.2d 935, 940 (5th Cir. 1983).

16. The provisions of § 363 "do not allow a debtor to gut the bankruptcy estate before reorganization or to change the fundamental nature of the estate's assets in such a way that limits a future reorganization plan." *In re Babcock & Wilcox Co.*, 250 F.3d 955, 960 (5th Cir. 2001). A transaction should not be approved under § 363 if it "improperly and indirectly lock[s] the estate into any particular plan mode prematurely, and without the protection afforded by the procedures

surrounding a disclosure statement and confirmation hearing, in a plan of reorganization." *In re Public Service Co.*, 90 B.R. 575, 581 (Bankr. D. N.H. 1988).

17. The proposed transaction is not really a sale of assets. It is the reorganization of GM through a debt-for-equity exchange. There is no independent "buyer." The U.S. Treasury is obtaining its controlling equity interest in New GM by way of a credit bid.

18. There will be little difference between GM and New GM, except that the company will now be owned by its creditors. The New GM will be led by GM's current management and will continue to manufacture and sell Chevrolet, Cadillac, Buick and GMC brand vehicles. New GM will use the same offices, manufacturing facilities, suppliers and many of the same dealers to build and sell its products as GM has used and the workforce will remain unchanged.

19. GM's and the U.S. Treasury's decision to circumvent seeking approval of GM's reorganization through a confirmed plan will deprive tort claimants of critical procedural and substantive safeguards that are not available to them under § 363(f). *See In re Golf, L.L.C.*, 322 B.R. 874, 877 (Bankr. D. Neb. 2004) (noting that "§ 363(b) and (f) control asset sales prior to plan approval and require less notice and opportunity for hearing than § 1123(a)(5)(D) and § 1141(c), which govern sales made pursuant to a plan").

20. Among the rights being denied tort claimants by GM's and the U.S. Treasury's attempted evasion of the plan process mandated by Congress are those afforded under § 1122 (classification of claims), § 1125 (disclosure and solicitation), §§ 1126 and 1129(a)(7) (voting and acceptance) and § 1129(b)(2) (a plan may not be confirmed over objection of dissenting class unless the proponent establishes that it is "fair and equitable" and "does not discriminate unfairly").

21. In the recent case of *In re Gulf Coast Oil Corp.*, 2009 Bankr. LEXIS 313 (Bankr. S.D. Tex. 2009), the debtors sought approval of a sale of substantially all of their assets to their sole secured lender free and clear of successor liability claims by way of a credit bid. The court denied the debtors' motion for reasons that are equally applicable here:

> In this case, the essence of the proposed transaction is a foreclosure supplemented materially by a release, by assignment of executory contracts (but only contracts chosen by the secured lender), by a federal court order eliminating any successor liability, and by preservation of the going concern. Congress provided a process by which these benefits could be obtained. That scheme requires bargaining, voting, and a determination by the Court that Bankruptcy Code § 1129 requirements are met. The Court sees no authority to provide the benefits of the Congressional scheme in this case without compliance with Congressional requirements.

Id. at * 51.

22. The U.S. Treasury is misusing the § 363 sale process to, among other things, attempt to effectuate a cram down of unsecured creditors for which it could not obtain approval in a plan of reorganization under § 1129.

23. The United Auto Workers Union ("UAW") is identified by the Debtors on their Consolidated List of 50 Largest Unsecured Claims as an unsecured creditor, with a claim of $20.56 Billion. The claim represents the estimated net present value of GM's obligation to make contributions to the UAW Voluntary Employee Beneficiary Association ("VEBA") Trust. (Henderson Decl. ¶31 and n.3).

24. Under the proposed "sale" transaction, the UAW VEBA Trust will exchange its unsecured claim for 17% of the common equity in new GM, a note from New GM in the amount of $2.5 Billion, cumulative preferred stock of New GM in the amount of $6.5 Billion and warrants to purchase 2.5% of GM's equity. (Sale Motion ¶26). This is disparate and far better treatment than is being afforded to GM's other unsecured creditors.

25. In order to confirm a plan of reorganization over a class of unsecured creditors that has rejected the plan, the proponent must establish that the plan does not discriminate unfairly. 11 U.S.C. § 1129(b)(1).

26. "In general, the Bankruptcy Code is premised on the rule of equality of treatment. Creditors with claims of equal rank are entitled to equal distribution." *In re Sentry Operating Co. of Texas, Inc.*, 264 B.R. 850, 863 (Bankr. S.D. Tex 2001); *See also In re Granada Wines, Inc.*, 748 F.2d 42, 47 (1st Cir. 1984) (finding insufficient basis for distinguishing a pension fund claim from other general unsecured claims); *In re Arn Ltd. Ltd. Partnership*, 140 B.R. 5, 14 (Bankr. D.C. 1992) ("both trade claims and tort claims enjoy equal standing against the debtor's assets").

27. The preferential treatment of the UAW VEBA Trust violates the basic principle of equality that underlies the Bankruptcy Code and would not be allowed under a plan of reorganization.

28. The U.S. Treasury should not be permitted to manipulate the Bankruptcy Code to use § 363 to deprive tort claimants of their rights by making an end run around the plan of reorganization process protections.

B. New GM's Refusal to Assume Responsibility for Tort Claims is Not in Good Faith.

29. "When a bankruptcy court authorizes a sale of assets pursuant to §363(b)(1), it is required to make a finding with respect to the 'good faith' of the purchaser." *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986). Indeed, a finding of good faith is a "crucial element" of a sale motion. *In re Summit Global Logistics, Inc.*, 2008 Bankr. LEXIS 896 at * 34 (Bankr. D. N.J. 2008).

30. The requirement of a finding of good faith "ensures that section 363(b)(1) will not be employed to circumvent the creditor protections of Chapter 11, and, as such, it mirrors the requirement of section 1129 that the bankruptcy court independently scrutinize the debtor's reorganization plan and make a finding that it 'has been proposed in good faith and not by means forbidden by law.''' *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d at 150.

31. Courts apply "traditional equitable principles to define the term 'good faith." *In re Condere Corp.*, 228 B.R. 615, 631 (Bankr. S.D. Miss. 1998); *See also In re Exaeris, Inc.*, 380 B.R. 741 (Bankr. D. Del. 2008) (denying motion to approve sale where purchaser was an insider of the debtor, provided the debtor with post-petition financing, sought a release and insisted upon an expedited sale process).

32. "When a pre-confirmation §363(b) sale is of all, or substantially all, of the Debtor's property, and is proposed during the beginning stages of the case, the sale transaction should be 'closely scrutinized, and the proponent bears a heightened burden of proving the elements necessary for authorization.'" *In re Medical Software Solutions*, 286 B.R. 431, 444 (Bankr. D. Utah 2002), *quoting In re Channel One Communications, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990).

33. Under the circumstances of this case, New GM's refusal to assume successor liability for pre-closing products liability claims, or to otherwise provide for them by, e.g. purchasing post-occurrence insurance covering such claims, is not in good faith.

34. Until at least May 27, the U.S. Treasury was prepared to proceed with the restructuring of GM outside of bankruptcy. Under the out-of-court restructuring, at least 50% of GM's indebtedness to the U.S. Treasury and the UAW VEBA Trust would have been converted to equity. However, there would have been no Bankruptcy Court order approving a § 363 sale

transaction free and clear of products liability claims. Consumers grievously injured by defects in GM vehicles would have been permitted to maintain claims against the restructured GM entity owned by the U.S. Treasury and the UAW VEBA Trust.

35. New GM's viability is not dependent on New GM avoiding its liability for tort claims. If it was, GM and the U.S. Treasury would not have consented to an out-of-court reorganization under which tort claims would have survived.

36. It is clear that having determined that a bankruptcy was necessary to deal with bondholders who did not consent to the Exchange Offer, the U.S. Treasury seized on the opportunity to try to sweeten the deal for itself and the New GM by attempting to extinguish tort claims of taxpayers through a § 363 sale transaction.

37. New GM has agreed to assume the warranty obligations for vehicles sold pre-closing, but has refused to assume products liability claims arising from vehicles delivered to consumers before the closing. Thus, a consumer purchasing a GM vehicle before the closing will be able to have a defect in his vehicle repaired, but if the same flaw causes the consumer grievous personal injury, he will not be permitted to look to New GM for his medical expenses and other compensation. This is incongruous and unfair to tort claimants.

38. To make matters worse, knowing that it is seeking an order which would eliminate tort claims, GM has continued to advertise and sell GM vehicles without advising unwitting consumers that it is seeking to bar future claims for injuries arising from defects in vehicles sold before the closing. Such conduct is unconscionable, if not illegal.

39. New GM's failure to take on responsibility for tort claims will also harm others who are also already suffering from GM's financial collapse. If the sale is approved, GM's

dealers and component part suppliers will likely be exposed to such products liability and personal injury claims in greater numbers.

40. Further, as soon as consumers comprehend that New GM has avoided responsibility for tort claims, their confidence will be shaken and the value of used GM vehicles will drop perhaps dramatically, damaging millions of consumers.

41. The proposed sale would leave consumers injured by GM products – including quadriplegics, paraplegics, burn victims, the families of those killed and others, including those who have not yet suffered injuries – with little recompense. This condition of the sale has been dictated by the U.S. Treasury using the clout of its taxpayer dollars – the same dollars that the victims themselves have paid in taxes to a government that is supposed to protect them. Moreover, as demonstrated above, stripping of tort claim liabilities is unnecessary and would have no effect on the future viability of the New GM. As such, there is no legitimate reason to deprive thousands of injured consumers of their ability to obtain redress. The contemplated transaction on these terms is nothing less than shameful.

42. Since the purchaser has not acted in good faith, the "sale" should not be approved.

C. The Debtors Are Not Permitted to Transfer Their Assets to New GM Free and Clear of Tort Claims.

43. Section 363(f) of the Bankruptcy Code authorizes the debtor-in-possession, under certain specific circumstances, to sell property "free and clear of any interest in such property."

44. The term "any interest in such property" in Section 363(f) does not include *in personam* claims:

> Section 363(f) does not authorize sales free and clear of *any interest*, but rather of *any interest in such property*. These three additional words define the real breadth of *any interests*. The sorts of interests impacted by a sale "free and clear" are *in rem* interests which have attached to the property. Section 363(f) is not intended

> to extinguish *in personam* liabilities. Were we to allow "any interests" to sweep up *in personam* claims as well, we would render the words "in such property" a nullity. No one can seriously argue that that *in personam* claims have, of themselves, an *interest in such property*.

In re Fairchild Aircraft Corp., 184 B.R. 910, 917-18 (Bankr. W.D. Tex. 1995), *vacated on other grounds*, 220 B.R. 909 (Bankr. W.D. Tex. 1998).

45. As the court in *Fairchild Aircraft* explained, unsecured creditors do not have an interest in any specific property of the debtor:

> The closest analogy outside bankruptcy to the position of unsecured creditors in bankruptcy is that of the judgment creditor who has yet to abstract or execute its judgment. Such a creditor has an enforceable judgment that will support remedies such as levies, garnishment, or attachment, but until such steps are actually taken, the judgment creditor has no actual interest in any particular property of its debtor. If the judgment creditor never takes the additional steps necessary to convert its claims from one against the debtor personally, *in personam,* to one against the debtor's property, *in rem*, the creditor cannot be said to have any interest in the debtor's property. Bankruptcy gives an unsecured creditor, via the proof of claim process, the functional equivalent of a judgment against the debtor's estate - - but does not give the creditor an interest in any particular property of the debtor.

Id. at 919, n.6.

46. Section 363(f) does not permit sales free and clear of including tort claims because such claimants have no specific interest in any particular property of the debtor. *See In re Wolverine Radio Co.*, 930 F.2d 1132, 1147, n.23 (6th Cir. 1991); *Kattula v. Republic Bank (In re LWD, Inc.)*, 2009 U.S.Dist. LEXIS 17852 (W.D. Ky. 2009)

47. As a result, Section 363(f) "in no way protects the buyer from current or future product liability; it only protects the purchased assets from lien claims against those assets." *In re Schwinn Bicycle Co.,* 210 B.R. 747, 761 (Bankr. N.D. Ill. 1997), *aff'd* 217 B.R. 790 (N.D. Ill. 1997).

48. In *In re Trans World Airlines, Inc.*, 322 F.3d 283 (3d. Cir. 2003) (*"TWA"*), the Third Circuit determined that assets of a bankrupt airline could be transferred free and clear of employment discrimination claims under Section 363(f). The bankruptcy court followed *TWA* in entering an order allowing a sale to Fiat free and clear of tort claims in *In re Chrysler LLC*, 2009 Bankr. LEXIS 1323 at *73-74 (Bankr. S.D. N.Y. 2009), which order was affirmed by the Second Circuit.

49. This Court should decline to follow *TWA* because its holding expands the term "interest" as used in Section 363(f) far beyond its plain meaning.

50. While the Code does not define the term "interest," § 101(5) of the Code defines "claim" as "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." Tort claims fall squarely and indisputably within this definition of "claim."

51. Section 1141(c) permits property "dealt with" by a plan of reorganization to vest "free and clear of all claims and interests."

52. The term "claim" is *excluded* from § 363(f) and *included* in § 1141(c).

53. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 24 (1983) (internal quotation marks and alteration omitted). In accordance with this rule, the Second Circuit has held that the use of the word "practicable" in one section of a statute and its omission in another part is "significant." *Riverkeeper, Inc. v. U.S. Envtl. Prot. Agency*, 475 F.3d 83, 102 (2d Cir. 2007); *see also Sompo Japan Ins. Co. of Am. v. Union Pac. R.R. Co.*,

456 F.3d 54, 71 (2d Cir. 2006) ("Therefore, that Congress, in enacting § 1307, omitted language similar to the language in § 1312 is persuasive evidence that Congress did not wish for period of responsibility clauses to have the force of statute with the capability to supersede federal law."); *cf. In re Beker Indus. Corp.*, 63 B.R. 474, 475 (Bankr. S.D. N.Y. 1986) (interpreting "value" as set forth in § 363(f)(3) of the Code *in pari materia* with "value" as used in § 506(a) of the Code).

54. This well-established canon of statutory construction shows that Congress's omission of "claim" in § 363(f) was intentional and that § 363(f) therefore applies only to "interests" -- not claims.

55. Moreover, this interpretation of the relevant statutory provisions makes perfect sense. Congress drafted § 1141(c) to be more expansive than § 363(f) because the former provides unsecured creditors with procedural and substantive safeguards that are not available to them under § 363(f).

56. The reasoning of the *TWA* court is flawed because it ignores the distinction between § 363(f) and § 1141(c). The court provided no grounds for ignoring this basic tenet of statutory construction, nor did it provide a compelling policy rationale for its interpretation of § 363(f).

57. Other courts that have reached decisions similar to that of *TWA* rely on two policy reasons to explain why claims should be extinguished by bankruptcy. These reasons are summarized by *Forde v. Kee-Lox Manufacturing Co., Inc.*, 437 F. Supp. 631, 633-34 (W.D. N.Y. 1977): (1) it is necessary to transfer title free and clear of claims to ensure that purchasers will "pay a fair price for the property"; and (2) it would frustrate the scheme of the Bankruptcy Code to permit claimants to "assert their claims against purchasers of the bankrupt's assets, while relegating lienholders to the proceeds of the sale."

58. However, those policy rationales -- which, in any event, should not be permitted to supersede the plain language of the statute -- have been discredited. The first argument pertains equally to all financially troubled companies, and "there is no reason to accord the purchasers of formally bankrupt entities some special measure of insulation that is unavailable to ailing but not yet defunct entities." *Chicago Truck Drivers v. Tasemkin, Inc.*, 59 F.3d 48, 50 (7th Cir. 1995). Further, as the Seventh Circuit explained, this issue should be of no concern to courts: "purchasers can demand a lower price to account for pending liabilities of which they are aware, and under federal successorship principles they will not be held responsible for liabilities of which they had no notice." *Id.* at 50-51; *see also R.C.M. Executive Gallery Corp.*, 901 F. Supp. 630, 637-38 (S.D. N.Y. 1995) (adopting reasoning from *Chicago Truck Drivers*).

59. The second rationale is no more compelling. A lawsuit that proceeds after a bankruptcy is completed "'cannot possibly affect the amount of property available for distribution to [the] creditors; all of [the debtor's] property has already been distributed." *Chicago Truck Drivers*, 59 F.3d at 51 (quoting *Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 162 (7th Cir. 1994)). Thus, permitting a tort claimant to proceed against a successor will not disrupt the scheme provided by the Bankruptcy Code.

60. Accordingly, the Court should decline to follow *TWA* and should instead adhere to the plain language of § 363(f), which applies only to "interests" and does not extinguish "claims" such as the ones that the members of the Ad Hoc Consumer Committee possess here.[1]

---

[1] Even if Section 363(f) authorized a sale of assets free and clear of existing unsecured tort claims, a sale free and clear may not include future claims. *See Ninth Ave. Remedial Group v. Allis-Chalmers*, 195 B.R. 716, 732-33 (N.D. Ind. 1996). Thus, to the extent that the Court considers granting the Debtors' request that the sale be approved free and clear

...*Continued*

61. The Ad Hoc Consumer Committee reserves the right to join in any other objection filed to the Sale Motion and to supplement this objection at the hearing on the Sale Motion.

RESERVATION OF RIGHTS

62. By filing this limited objection, the members of the Ad Hoc Consumer Committee do not waive, and specifically reserve, their rights to proceed against New GM under applicable state law. *See e.g. Lefever v. K.P. Hovnanian Enterprises, Inc.,* 160 N.J. 307 (1999) (bankruptcy sale order did not preclude application of product-line successor liability); *Gross v. Trustees of Columbia Univ.*, 816 N.Y.S. 2d 695 (2006) (successor liability imposed against purchaser of assets free and clear of claims in bankruptcy proceeding); *Simmons v. Mark Lift Industries, Inc.*, 366 S.C. 308, 313 (2005) ("a plaintiff may maintain a state-based product liability claim under a successor liability theory against a successor corporation which purchased the predecessor's assets in a voluntary sale approved by the federal bankruptcy court").

CONCLUSION

WHEREFORE, the Ad Hoc Consumer Committee respectfully requests that the Court enter an Order denying the Sale Motion to the extent that the proposed sale order authorizes the transfer of assets to New GM free and clear of tort claims and granting such further relief as the Court deems just and equitable.

Continued from previous page

of tort claims (which it should not), the sale order should be modified to clarify that future claims are not precluded.

MEMORANDUM OF LAW

The Ad Hoc Consumer Committee submits that the points and authorities set forth above satisfy the requirements of Local Bankruptcy Rule for the Southern District of New York 9013-1(b).

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Dated: June 19, 2009

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Attorneys for the Ad Hoc Committee of Consumer Victims of General Motors

Exhibit R

Sale Approval Hearing Date: June 30, 2009 at 9:45 a.m.
Sale Motion Objection Deadline: June 19, 2009 5:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**CHAPTER 11**
	:	
GENERAL MOTORS CORP., *et al.*,	:	**Case No. 09-50026 (REG)**
	:	
	:	**(Jointly Administered)**
Debtors.	:	

JOINDER AND LIMITED OBJECTION OF THE STATES OF CONNECTICUT, KENTUCKY, MARYLAND, MINNESOTA, MISSOURI, NEBRASKA, NORTH DAKOTA AND VERMONT

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

THE STATES OF CONNECTICUT, KENTUCKY, MARYLAND, MINNESOTA, MISSOURI, NEBRASKA, NORTH DAKOTA, AND VERMONT (hereinafter the "States"), file this Joinder and Limited Objection (the "Limited Objection") to Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (a) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings

LLC, a. U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (b) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (c) Other Relief; and (II) Schedule Sale Approval Hearing (the "Motion") [doc. no. 92] and in support hereof show:

I. INTRODUCTION[1]

The States file this limited objection in addition to, and not in lieu of, any other objection in which the States join or have joined. The States respectfully submit that certain provisions of the Motion seek relief that is beyond the authority of this Court to order. Specifically, the Motion seeks to have the proposed Order enter and thus conclusively determine that a purchaser, Vehicle Acquisition Holdings LLC, a new entity created solely for the purpose of acquiring Debtors' assets (referred to herein as "Newco") pursuant to the Motion is not a successor or transferee and that no liabilities may be placed on it based on such a status. To this end, the Master Purchase Agreement ("MPA") expressly provides:

> *No Successor or Transferee Liability.* Except where expressly prohibited under applicable Law or otherwise expressly ordered by the Bankruptcy Court, upon the Closing, neither Purchaser nor any of its Affiliates or stockholders shall be deemed to ***(a) be the successor of Sellers; (b) have, de facto, or otherwise, merged with or into Sellers; (c) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers;*** or (d) other than as set forth in this Agreement, be liable for any

[1] In the interest of brevity, the States assume the Court's familiarity with the facts of this matter and do not restate them herein.

> acts or omissions of Sellers in the conduct of Sellers' business or arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, ***neither Purchaser nor any of its Affiliates or stockholders shall be liable for any Claims against Sellers or any of their predecessors or Affiliates, and neither Purchaser nor any of its Affiliates or stockholders shall have any successor, transferee or vicarious Liability of any kind or character whether known or unknown as of the Closing, whether now existing or hereafter arising, or whether fixed or contingent,*** with respect to Sellers' business or any obligations of Sellers arising prior to the Closing, except as provided in this Agreement, including Liabilities on account of any Taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of Sellers' business prior to the Closing.

(Emphasis added.) MPA, Section 9.19. The Debtors thus seek a judicial determination, before any such claim is ever made, that it is not, among other things, a successor or transferee, or even the "mere continuation," of the Debtors.

In addition to this broad and unfounded declaration that the purchaser will never be a successor or transferee, and will purchase the assets with a judicial order stating just that, the MPA explicitly excludes from assumed liabilities, and defines as a "Retained Liability," several classes of liabilities including, but not limited to, the following:

a) "all Product Liabilities arising out of products delivered to a consumer, lessee or other purchaser of products prior to the Closing." MPA, Section 2.3(b)(ix);

b) "all Liabilities to third parties for Claims based upon Contract, tort or any other basis." MPA, Section 2.3(b)(xi); and

c) "all Liabilities arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to Sellers." MPA, Section 2.3(b)(xvi).

All of these offensive provisions, taken as a whole, divest consumers of substantial legal rights, without any regard for state laws that may, when a claim is eventually made, be read to hold otherwise.

The States submit that this Court should not enter any order depriving purchasers of GM vehicles of legal rights to be compensated for death or serious injuries caused by defects in GM products. Any such order would be unfair, in violation of due process, and inconsistent with the public assertions by the President of the United States and the Debtor that consumers who buy General Motors products have no cause for concern. Specifically, President Obama stated:

> But just in case there's still nagging doubts, let me say it as plainly as I can: If you buy a car from Chrysler or General Motors, you will be able to get your car serviced and repaired, just like always. Your warranty will be safe. In fact, it will be safer than it's ever been, because starting today, the United States government will stand behind your warranty.

Remarks by the President on the American Automotive Industry, March 30, 2009.[2]

While the States recognize that the sale, in general, may be a worthwhile endeavor, the

States cannot countenance the Debtors' attempts to establish an unconscionable burden for injured consumers -- litigating whether this Court has the authority to approve the sale free and clear of product liability claims. Moreover, the States object to any provision of the MPA or the proposed Order that would simply dictate that result without completing a specific analysis of the facts and law applicable to successor status.

Thus, the States submit this limited objection and request that this Court order that any sale cannot be approved without the deletion or significant alteration of these specific "Retained Liabilities."

II. LEGAL ARGUMENT

A. Joinder

The States join in the arguments raised by the Ad Hoc Committee of Consumer Victims of General Motors in its Objection to the Motion and incorporate those arguments as if fully set forth herein.

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[2] Available at: http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-the-American-Automotive-Industry-3/30/09/.

B. State Successor Liability Law May Not be Extinguished by this Court in Approving the § 363 Sale.

The Motion seeks to have this Court permanently deprive presently unknown and unknowable future claimants of their rights to bring a future products liability claim against New GM premised on a theory of successor liability. This deprivation of rights is contrary to state laws concerning successor liability, and the bankruptcy court was not authorized to eviscerate such rights.

As the Second Circuit has recognized:

> [t]he traditional common law rule states that a corporation acquiring the assets of another corporation only takes on its liabilities if any of the following apply: the successor expressly or impliedly agrees to assume them; the transaction may be viewed as a de facto merger or consolidation; the successor is a "mere continuation" of the predecessor; or the transaction is fraudulent.

B.F. Goodrich v. Betkoski, 99 F.3d 505, 519 (2d Cir. 1996). Some states recognize a fifth exception known as the product-line exception. *See, e.g., Ray v. Alad Corp.*, 19 Cal.3d 22, 560 P.2d 3, 136 Cal.Rptr. 574 (1977); *Lefever v. K.P. Hovnanian Enters.*, 160 N.J. 307, 734 A.2d 290 (1999); *Martin v. Abbott Labs.*, 102 Wn.2d 581, 615, 689 P.2d 368 (Wash. 1984).

The product line exception holds that:

> where one corporation acquires all or substantially all the manufacturing assets of another corporation, even if exclusively for cash, and undertakes essentially the same manufacturing operation as the selling corporation, . . . the purchasing corporation [may] be held strictly liable for injuries

> caused by defects in units of the same product line, even if previously manufactured and distributed by the selling corporation.

In re Mooney Aircraft, Inc., 730 F.2d 367, 371 (5th Cir. 1984); *see also Ramirez v. Amsted Industries, Inc.*, 86 N.J. 332, 353 (N.J. 1981).

Some federal cases have, rightly, questioned the bankruptcy courts' authority to override the application of the successor liability doctrines developed by state courts. *See* 3-363 Collier on Bankruptcy-15th Edition Rev. P 363.06 (and the cases cited therein). For example, the First Circuit held that when claimants did not receive adequate notice about the pendency of a bankruptcy proceeding, the bankruptcy court could be prohibited from granting injunctive relief barring future claims. *See In re Savage Industries, Inc.*, 43 F.3d 714 (1st Cir. 1994).

More germane to the issue in the instant matter is the Seventh Circuit's holding in *Zerand-Bernal Group v. Cox*, 23 F.3d 159, 162 (7th Cir. 1994). There, the Seventh Circuit addressed the standard argument raised by parties attempting to sell or buy assets "free and clear" of future claims premised on the theory of successor liability. In essence, this argument posits that the price for which a purchaser is willing to purchase the debtor's assets will be depressed if the purchaser remains open to successor liability claims.

In rejecting this argument, Judge Posner explained:

> [a]ll this is true, but proves too much. It implies, what no one believes, that by virtue of the arising-under jurisdiction a bankruptcy court enjoys a blanket power to enjoin all future lawsuits against a buyer at a bankruptcy sale in order

> to maximize the sale price: more, that the court could in effect immunize such buyers from all state and federal laws that might reduce the value of the assets bought from the bankrupt; in effect, that it could discharge the debts of nondebtors . . . as well as of debtors even if the creditors did not consent; that it could allow the parties to bankruptcy sales to extinguish the rights of third parties . . . without notice to them or (as notice might well be infeasible) any consideration of their interests. If the [bankruptcy] court could do all these nice things the result would indeed be to make the property of bankrupts more valuable than other property--more valuable to the creditors, of course, but also to the debtor's shareholders and managers to the extent that the strategic position of the debtor in possession in a reorganization enables the debtor's owners and managers to benefit from bankruptcy. ***But the result would not only be harm to third parties . . . but also a further incentive to enter bankruptcy for reasons that have nothing to do with the purposes of bankruptcy law.***

(Emphasis added; internal citation omitted.) *Zerand-Bernal Group* 23 F.3d at 162.

In Connecticut, as is surely the case elsewhere, the "issue of whether a purchaser is a mere continuation of the selling corporation is a question of fact." *Chamlink Corp. v. Merritt Extruder Corp.*, 96 Conn.App. 183, 187, 899 A.2d 90 (2006). Here, the MPA specifically provides that Newco shall not be deemed to "be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers." MPA, Section 9.19. Thus, the Debtors are asking this Court to decide a question of fact that may be raised in the future by a consumer injured by a defective GM vehicle. This is emphatically the province of the state court hearing that future claim, and this Court should not prospectively rule on that question, and foreclose the future claimants' ability to seek redress under state law.

Recently, the Supreme Court has recognized that bankruptcy courts do not enjoy an all encompassing power to supplant state laws. *See, e.g., Travelers v. PG & E*, 549 U.S. 443, 450-51 (2007) (the "'basic federal rule' in bankruptcy is that state law governs the substance of claims, Congress having 'generally left the determination of property rights in the assets of a bankrupt's estate to state law."); *Raleigh v. Illinois Dep't of Revenue*, 530 US 15, 25 (2000) ("Bankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditors' entitlements, but are limited to what the Bankruptcy Code itself provides.") In accordance with the reasoning of the foregoing cases, this Court lacks the authority to discharge future claims premised on the state law theory of successor liability.

To allow Newco to purchase substantially all of the Debtors' assets, continue in the manufacture and sale of GM vehicles, enjoy the good will that comes along with the purchase of the GM name and brand, and still avoid any claims brought against it on the theory of successor liability contrary to state law is an unconscionable and wholly insupportable result that will harm innocent consumers. Victims of future accidents who would otherwise be able to bring claims against Newco under the product-line successor liability theory would be, if this Court enters the proposed order, forever barred from seeking redress.

A victim of a future accident who purchases a vehicle a week after the sale closing, and suffers the same injury, from the same product defect, on the same date, as a future victim who bought pre-closing, will retain the right to seek redress from Newco, but the person who bought the vehicle the day before the sale closing will not. This result is indefensible when a successor company, as is the case here, is maintaining the same product line.

This Court should not countenance such an attempt to supplant state successor liability law in favor of irrational and unjust results.

C. Public Policy Requires Allowing Future Claimants to Bring Product Liability Claims Premised on Nonbankruptcy Successor Liability Law.

As a matter of public policy and consumer safety, future product liability claims should not be treated as claims subject to discharge in bankruptcy. Under the Bankruptcy Act, "the term 'claim' means . . . right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101. A person who has not yet suffered a loss or injury, however, has no right to payment from the Debtors, and cannot fall within the definition of a holder of a claim.

In *Lemelle v. Universal Mfg. Corp.*, 18 F.3d 1268 (5th Cir. 1994), the plaintiff was injured in a fire caused by a defective mobile home manufactured by a company which had been

discharged in bankruptcy two years prior and sued the defendant, which had by then acquired the debtor-manufacturer. The court there held that "the absence of evidence [that would have permitted the debtor to identify, during the course of the bankruptcy proceedings, potential victims and thereby permit notice to those victims] precludes a finding that the claims now asserted by victim-plaintiff were discharged in the bankruptcy proceedings." *Id.* at 1277.

The *Lemelle* court also stated that the definition of a "claim" cannot be construed to include those of victims "whom the record indicates were completely unknown and unidentified" at the time the debtor/manufacturer filed the bankruptcy petition "and whose rights depended entirely on the fortuity of future occurrences." *Id.*; *see also, Fairchild Aircraft Inc. v. Campbell*, 184 B.R. 910 (Bankr. W.D. Tex. 1995) (holding that executors of persons killed in an airplane crash held future claims, not bankruptcy claims, and therefore were not precluded from seeking successor liability against the purchaser of the aircraft's debtor/manufacturer.); *Gross v. Trustees of Columbia Univ. in City of N.Y.*, 2006 NY Slip Op 50516U, 6 (N.Y. Sup. Ct. 2006) (where state trial found that the "product liability claim stemming from Plaintiffs' injury was not a bankruptcy "claim" within the meaning of Bankruptcy Code § 101(5), but rather a 'future claim,' because the claim came into existence on the day the product liability claim was actually filed.")

Thus, courts have recognized situations where successor liability claims against purchasers are permitted, and the rights of future GM accident victims are exactly the type of

claims in which *Zerand* and *Lemelle* held that a bankruptcy court cannot extinguish future successor liability.

Moreover, some courts and commentators have properly recognized that public policy requires that successor liability be available as redress for future claimants, notwithstanding a § 363 sale order purporting to hold otherwise. As stated in Collier, "[s]uccessor liability is a nonbankruptcy state law issue, and bankruptcy should not change the result that would otherwise obtain under nonbankruptcy law." 3-363 COLLIER ON BANKRUPTCY-15TH EDITION REV. § 363.06.

As the Supreme Court of New Jersey has held regarding the product line exception, "[p]ublic policy requires that having received the substantial benefits of the continuing manufacturing enterprise, the successor corporation should also be made to bear the burden of the operating costs that other established business operations must ordinarily bear." *Ramirez v. Amsted Industries, Inc.*, 86 N.J. 332, 353 (N.J. 1981). Thus, by "acquiring all of the Johnson assets and continuing the established business of manufacturing and selling Johnson presses, Amsted became an integral part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products." *Id*.

Here, Newco, just like the purchaser in *Ramirez,* is acquiring substantially all of the operating assets of the Debtors and will continue the "established business of manufacturing and

selling" GM vehicles. Newco no doubt expects to profit from the continuation of the GM enterprise and the goodwill that enterprise has accumulated. To allow Newco to enjoy all the good that comes with operating the GM enterprise, and to shift the burden of accident costs to consumers, and ultimately the States, would be an unconscionable act.

In sum, as the *Ramirez* court stated, "because the manufacturer transfers to its successor corporation 'the resources that had previously been available to [the manufacturer] for meeting its responsibilities to persons injured by defects in [products] it had produced,' the successor rather than the user of the product is in the better position to bear accident-avoidance costs." *Ramirez v. Amsted Industries, Inc.*, 86 N.J. at 352 (*quoting Ray v. Alad Corp.*, 19 Cal.3d 22, 33, 560 P.2d 3, 136 Cal.Rptr. 574 (1977)).

Moreover, in the bankruptcy context generally, these important public policy protections require that future tort product liabilities should not be treated as claims subject to discharge. Because their claims have not yet arisen, and thus, they cannot know of them, future accident victims have not received and cannot receive meaningful notice that their rights in a future suit are being lost, and thus they have no opportunity to seek to preserve those rights, in violation of both sound policy and due process of law. *See*, e.g., *In re Mooney Aircraft, Inc.*, 730 F.2d 367-375 (5th Cir.1984) ("[L]ack of notice might well require us to find that the bankruptcy court's prior judgment was ineffective as to the [future claimants'] claims.")

Furthermore, public safety is significantly impacted by the discharge of product liability claims. The public safety risk is that unknowing citizens, perhaps not even owners of GM vehicles, could find themselves gravely injured by a defective GM vehicle. In this situation, the injured consumer could bear the entire, potentially overwhelming costs of medical care and associated expenses—an entirely unfair burden.

Newco's purchase of substantially all of the operating assets of the Debtors should not include an impenetrable shield which insulates Newco from all future product liability claims. To the contrary, public policy dictates that innocent and not yet injured consumers cannot and should not be compelled to bear the cost of future injuries caused by defective GM vehicles.

III. CONCLUSION

Wherefore, for the reasons stated above, the States respectfully object to the approval of the Motion or entry of the proposed Order in their current form and request that the Court grant relief only to the extent consistent with the positions taken herein.

Respectfully submitted,

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Exhibit S

Sale Approval Hearing Date: June 30, 2009 at 9:45 a.m.
Sale Motion Objection Deadline: June 19, 2009 5:00 p.m.

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ATTORNEYS FOR THE STATES OF ARKANSAS, ARIZONA, CALIFORNIA, CONNECTICUT, COLORADO, DELAWARE, GEORGIA, IDAHO, IOWA, ILLINOIS, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MASSACHUSETTS, MARYLAND, MAINE, MICHIGAN, MINNESOTA, MISSOURI, MISSISSIPPI, MONTANA, NEBRASKA, NORTH CAROLINA, NORTH DAKOTA, NEW JERSEY, NEW MEXICO, NEVADA, OHIO, OKLAHOMA, PENNSYLVANIA, RHODE ISLAND, UTAH, VIRGINIA, VERMONT, WASHINGTON, and WEST VIRGINIA

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**CHAPTER 11**
GENERAL MOTORS CORP., *et al.*,	:	**Case No. 09-50026 (REG)**
	:	**(Jointly Administered)**
Debtors.	:	

LIMITED OBJECTION OF THE STATES OF ARKANSAS, ARIZONA, CALIFORNIA, CONNECTICUT, COLORADO, DELAWARE, GEORGIA, IDAHO, IOWA, ILLINOIS, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MASSACHUSETTS, MARYLAND, MAINE, MICHIGAN, MINNESOTA, MISSOURI, MISSISSIPPI, MONTANA, NEBRASKA, NORTH CAROLINA, NORTH DAKOTA, NEW JERSEY, NEW MEXICO, NEVADA, OHIO, OKLAHOMA, PENNSYLVANIA, RHODE ISLAND, UTAH, VIRGINIA, VERMONT, WASHINGTON, and WEST VIRGINIA

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

THE STATES OF Arkansas, Arizona, California, Connecticut, Colorado, Delaware, Georgia, Idaho,

Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, North Carolina, North Dakota, New Jersey, New Mexico, Nevada, Ohio, Oklahoma, Pennsylvania, Rhode Island, Utah, Virginia, Vermont, Washington, and West Virginia (collectively the "States"), file this Omnibus Objection to Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (a) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (b) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (c) Other Relief; and (II) Schedule Sale Approval Hearing (the "Motion") (Dkt. No. 92) and in support thereof show:

I. Preliminary Statement

The States do not oppose this sale, in general, or many of the provisions of the Motion, in particular. They do have numerous questions regarding the import of provisions of the Master Purchase Agreement ("MPA") as to which they have either not yet been able to obtain clarification from the Debtors or had those clarifications incorporated into a revised document. As such, the first portion of this Objection is included for protective purposes, to ensure that the States can continue to monitor these issues until a modified MPA is filed.

The other aspects of the Objection, though, are more substantive. Initially, the States object to the provisions of the Section 363 [1] sales order. In the guise of setting the terms for the purchase of assets, the MPA and the proposed Order greatly overreach, not only in violation of

[1] Unless otherwise stated, all statutory references herein are to section of the Bankruptcy Code, 11 U.S.C. ¶ 101 *et. seq.*

the Code but of state law, in disregard of the provisions of 28 U.S.C. § 959(b). The Order proposes to eliminate the effect of *all* laws that might be applicable to this transaction, a concept breathtakingly overbroad, not supported by anything in the Code and, ultimately, nonsensical.[2] The proposed Order would further have the Court "find" *ipse dixit*, that a purchaser thereunder is not a successor or transferee and that it cannot incur any unwanted liabilities *because* it is not a successor. The proposed Order contains at least 4 "findings" that a purchaser is not a successor or transferee, and 10 "so ordered" paragraphs denying such status to the purchaser and reciting the consequences of a lack of successor liability. What does not exist, though, anywhere in the Motion nor the accompanying Memorandum, is any indication by the Debtors as to what law (federal common law, or state law, and if so, the law of which state(s)) should be analyzed to decide whether, in fact, the new entity actually *is* a successor to GM. Nor do they describe the factual nature of the transaction and apply it against those criteria.

Rather, by virtue of their silence on the issues, they apparently are simply asserting that, as a matter of law, for *all* types of liability and for *any* jurisdiction, the purchaser automatically has no successor or transferee liability, simply because the purchaser does not *want* such liability. However, if successor liability only attaches to those who voluntarily assume it, instances of such liability would be few and far between. The law of successorship liability, though, does not turn solely on the parties' intent, but rather on the actual facts of the nature of the transfer between the parties. That is not to say that such liability automatically attaches here

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[2] *See* Order, Par. 39 – "No law of any State or other jurisdiction . . . shall apply in any way to the transactions contemplated by the Section 363 Transaction, the MPA, the Motion, and this Order." Read literally, if no laws "of any jurisdiction" apply, then laws of the *United States* such as the Bankruptcy Code, equally do not apply to these issues. Thus, if the Court actually entered the order with that language, it would destroy its own jurisdictional basis to act!

– there are clearly certain limits applied through Section 363(f) and applicable nonbankruptcy law may or may not impose successor liability under the facts here[3] – but that determination, and the resultant order, must be far more refined than the shotgun approach taken here.

Here, for instance, although Newco has voluntarily accepted the employees' collective bargaining representatives, it undoubtedly would, under *Fall River,* have been treated as a successor for purposes of recognizing and bargaining with the Union, even if it had refused to do so. In short, there is much existing law on successorship obligations and, as the Seventh Circuit noted in *Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund, et al., v. Tasemkin, Inc.*, 59 F.3d 48, 50-51 (7th Cir. 1995), that law does not lose all force simply because a bankruptcy is involved. That is particularly true where nonbankruptcy law provides rights to those doing business with the debtor and its successor (i.e. the dealers here), and the bankruptcy law does not preempt those State laws.

The States will discuss the issues in more detail below in order to indicate the limits that must be imposed on the attempts by the Debtor and the purchaser to write themselves

[3] Indeed, it may be that successor liability applies in some circumstances, and not in others. The courts have typically used a broad approach in considering claims relating to employees and collective bargaining rights, while using a more stringent standard for purely contractual issues. *See, e.g., Fall River Dyeing & Finishing Corp. v. NLRB* 482 U.S. 27, 41, 43 (1987) ("substantial continuity" test applied, without regard for changed ownership) *Shares, Inc. v. NLRB,* 433 F.3d 939 (7th Cir. 2006) *(*same); *Erica, Inc. v. NLRB,* 200 Fed.Appx. 344 (5th Cir. (2006) (bankruptcy sales order did not insulate successor from bargaining obligations. On the other hand, successor liability may not attach for purposes of ordinary claims if there is not a continuity of ownership in addition to continuity of operations. *See, e.g*., *Mickowski v. Visi-Trak Worldwide, LLC*, 415 F.3d 501, 510-13 (6th Cir. 2005) (holding that, for purposes of patent litigation, Ohio law applied to issue of whether purchaser of assets out of bankruptcy case was a successor to debtor; under that law, more was required than "substantial continuity," "mere continuation" must be shown). Issues such as environmental law and personal injury claims may fall along a spectrum where relevant nonbankruptcy law may impose specific duties on purchasers of contaminated property.

exemptions from applicable law. In doing so, as noted above, they do not seek to derail this sale – nor do they believe the changes they argue for would do so. In particular, the Master Purchase Agreement ("MPA") itself provides substantial leeway for the sale to proceed without any adjustment to the price even if there may be limits on which assets can be purchased and which contracts assumed or rejected based on nonbankruptcy law considerations.[4] Moreover, while the MPA provides in Section 9.19 that the purchaser shall not be deemed to be the successor of GM, nowhere does it state that such a status is a condition of the sale or that the purchaser will withdraw from the sale if that status is denied. Thus, the language of the proposed Order is far more apocalyptic than the MPA itself. In any event, no matter how worthy this transaction, it cannot justify wholesale disregard of all limits imposed by the Code and nonbankruptcy law.

II. Factual Background

In this case, the Debtors plan to sell several of their product lines to a new entity created solely for the purpose of acquiring those assets (referred to herein as "Newco").[5] Although a few

[4] *See*, e.g., Section 6.6(f) which, following language that allows the Purchaser to add or remove executory contracts for assumption or rejection provides that "No designation of any Executory Contract for assumption and assignment or rejection in accordance with this **Section 6.6** shall give rise to any right to any adjustment to the Purchase Price." Similarly, Section 2.4 recognizes that some assets that the purchaser seeks to acquire may not be transferable due to licensing issues. The paragraph merely requires the Debtors to use their best efforts to complete the transfer and Section 2.4(d) states "For the avoidance of doubt, the inability of any Contract, Transferred Equity Interest (or any other interest therein), Permit or other asset, which by the terms of this Agreement is intended to be included in the Purchased Assets to be assigned or transferred to Purchaser at the Closing shall not (i) give rise to a basis for termination of this Agreement pursuant to **ARTICLE VIII** or (ii) give rise to any right to any adjustment to the Purchase Price." In short, rather than a fragile document whose terms cannot be altered in any way without a collapse of the deal, the MPA has considerable flexibility in its final results.

[5] The Debtors are planning to separately sell their other brand lines to separate, preexisting, independent entities. Those sales are not at issue here. However, the fact that they still exist and remain part of the Debtors' operations after this sale closes may have some factual effect on the resolution of the successorship issues.

facilities will be closed, the vast bulk of their operations for those product lines will be transferred as a whole, with the employees, their supervisors, their managers, and the physical facilities continued intact. Some changes were negotiated with the employees' collective bargaining representatives; otherwise, their working conditions remain unaltered. Indeed, the Motion (Par. 65) states that the "transition services structure is designed to ensure a seamless continuity of operations for the benefit of employees, customers, suppliers, and employees of suppliers."[6] Prior to filing bankruptcy, the Debtors had reached agreement with many of their lenders on amounts that they would accept from the sale, had promised to continue warranty coverage for consumers, and, as noted, agreed with the collective bargaining representative of their employees on working conditions for the active employees and treatment of benefits for the retirees. Moreover, according to paragraph 22 of the Motion, "Substantially all the executory contracts associated with direct suppliers are likely to be assumed by the Sellers and assigned to the Purchaser at or following the Closing." In short, while, to be sure, Newco will have a new board and will attempt to execute a new business model (presumably one that will result in greater success as is the goal of all Chapter 11 debtors), the overall aspect presented by Newco when it commences operations (at least as to the facilities acquired) will be virtually indistinguishable from the old GM it replaces.

Thus, of all the constituencies that might be affected by this bankruptcy, there are only three that have largely been left out of the consensual process resulting in Newco and the assumption of their liabilities – governmental claims and obligations for matters such as tax and environmental liabilities; personal injury and related claims of consumers (including claims

[6] Note, though, that that agreement (Appendix T) has not yet been filed so it is not possible to determine exactly how that transition process will work.

under implied warranties of merchantability which Newco refuses to assume); and the rights that the Debtors' dealers seek to assert under their contracts and state laws governing the treatment of those contracts. Some of these liabilities, determined unilaterally by GM and Newco, are proposed to be assumed by Newco; others, those parties insist, need not be assumed, based on the mere assertion that Newco is not a successor. The States will deal with the legal arguments relating to these various issues below, including whether they are claims at all. Before turning to those arguments, though, added factual background on the States' laws dealing with the relationships between dealers and manufacturers (the "Dealer Laws") and the Debtor's actions in regard to those contracts will help set the context for the States' objections herein.

A. Statutory Treatment of Dealer Contracts

Issues regarding the disparity in treatment between auto manufacturers and dealers have been common for more than 80 years. As early as the 1920s, Ford was using its superior power to force dealers to take cars that they did not want and could not sell, particularly when the Great Depression hit. *See* Stewart Macaulay, *Law And The Balance Of Power: The Automobile Manufacturers And Their Dealers*, 13 (Russell Sage Foundation 1966) ("Macauley"). Contracts of adhesion that gave the manufacturers vast rights but imposed virtually no obligations on them were the norm – contracts that did not even require the manufacturer to supply cars to the dealers, for instance, were not uncommon. Indeed, ironically, the very lack of mutual obligations were treated as a reason to find that these really were not enforceable "contracts" at all and that, accordingly, no duty of "good faith" to the dealers existed. Macauley, *supra*, at 24. As a result of these long-standing issues, Congress passed the Automobile Dealer's Day In Court Act ("ADDICA").in 1956 (codified at 15 U.S.C. 1221-1225). In doing so, it noted that the "vast disparity in economic power and bargaining strength" between car dealers and car manufacturers

"has enabled the factory to determine arbitrarily the rules by which the two parties conduct their business affairs" and makes "the dealer an easy prey for domination by the factory." S.Rep. No. 2073, 84th Cong., 2d Sess., 2 (1956). The statute did not prove overly useful, though, in that, while it imposed general duties of good faith in operating under or terminating the agreement, it had no specific examples of what that required, and court decisions tended to take very narrow views of that duty, providing little relief to affected dealers.[7] Macauley, *supra*, 106-112.

Accordingly, states also took steps, before and after the passage of the ADDICA, to provide their own, more defined protections for dealers, and every state now governs that relationship to a greater or lesser degree. These Dealer Laws, while not identical, typically include requirements such as the need for both manufacturers and dealers to obtain operating licenses, limits on dealers being coerced to take unwanted vehicles, regulation of the right of a manufacturer to terminate its relationship with a dealer and the transition process and remedies for the dealer if the termination was allowed. That transition process might require a minimum shutdown period (typically in the range of 60-90 days); some assistance from the manufacturer to ensure disposition of vehicles, parts, and/or tools, including buy-back assistance; and, in some cases, assistance with lease payments on dealer premises. Many laws also provide protection against encroachment into the dealer's vicinity by other dealers, a regulation that has been

[7] The operative provision at 15 U.S.C. 1522 states: "An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court . . . without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after August 8, 1956, to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: Provided, that in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

upheld by the Supreme Court, *New Motor Vehicle Board v. Orrin W. Fox Co.*, 439 U.S. 96 (1978).

Most critically, virtually all such laws bar manufacturers from coercing dealers to sign agreements that waive the provisions of the state law and make any contract that includes such waivers unenforceable. The states recognized that, absent such protections, the manufacturers would simply demand that dealers sign such waivers as a condition to retaining their dealership agreements and their laws' requirements would quickly become a dead letter. At no time, in the 53 years since the ADDICA was passed, has Congress limited or preempted the added protections provided by the state laws to those provided in the federal law. To the contrary, 15 U.S.C. § 1525 explicitly states that "This chapter shall not invalidate any provision of the laws of any State except insofar as there is a direct conflict between an express provision of this chapter and an express provision of State law which cannot be reconciled." Nor, has Congress sought to amend or revoke ADDICA, or indicated that it views the concerns that led to its passage as any less relevant now. Indeed, the repeated hearings by various Congressional committees to review the actions of Chrysler and GM with respect to their dealers underscore that this is a continuing matter of concern for the federal government as well as the States.

B. Treatment of Dealer Contracts in the Motion

Concurrent with its filing of the Motion (which, in addition to the sales language, contains additional provisions for assumption of contracts), the Debtors sent one of two letters to each of their dealers. Each letter informed the dealer that it had been tentatively chosen to either be a retained dealer or a terminated dealer. Each such letter informed the dealer that it had until June 12 to sign the letter without any changes and that the signed letters would amend the existing dealership agreements. If they signed the respective letters, the Debtors indicated, they

would move to assume the now-amended dealership agreements. If they did not, the tentatively retained dealers who received a "Participation Letter," ("PL") (Appendix A) were informed that they would be transferred to the ranks of the terminated dealers and treated accordingly. The terminated dealers were offered a "Wind-up Letter" ("WL") (Appendix B) that offered some limited financial assistance, but that required them to forfeit all other rights they had under state law. If those dealers did not sign the WL, the Debtors stated that it would reject their contracts and offer no assistance or otherwise comply with state laws regarding the rights of terminated dealers. The Debtors, after discussions with the National Auto Dealers Association, provided a second letter that modified the terms of the PL (also included in Appendix A). While that letter somewhat ameliorated the harsh – and unlawful – demands of the original letter, many problematic areas remain.[8] Both the PL and the WL initially required the signatories to waive their rights under State law (PL, pars. 6 and 8, WL, pars. 5 and 7). While the amended PL letter retreated from that provision somewhat, the WLs remain unaltered and provide that, upon signing the agreement, the dealer agrees that it can be enjoined from any assertions about the illegality of the agreement under state law (WL, par. 5(c)). Both agreements require the dealers to agree that the signing was purely voluntary and without any coercion – despite the fact that they were presented as non-negotiable, take it or leave it deals that required dealers to waive all violations of state law – including the provisions that made requests for such waivers unlawful. (See PL, par. 9(f), WL, par. 10).

[8] These are discussed in more detail below and in Appendices A and B, following copies of the relevant agreements, with citations to relevant statutes of various States. In order to not unduly increase the length of this objection, only a limited number of citations are used, but similar information can be supplied for all States if desired.

The retained dealers were initially told that they must order cars sufficient to meet sales quotas that were to be set unilaterally by Newco and that failure to do so would violate the agreement – in violation of laws of the States that prohibit dealers from being coerced to order unneeded inventory. (PL, Par. 2 and 3). The PL also provided (Par. 4) that the retained dealers must eliminate all non-GM brands from their premises by December 31, 2009 – again in violation of the laws of numerous States that bar dealers from being required to limit the brands that they must sell. The revised PL purports to soften the sales quota and inventory requirements as well as the exclusivity provisions, but stated that it reserved the right of Newco to demand exclusivity in at least some markets. (Other portions of the letter, though, stated that decisions on exclusivity would be made by mutual consent – but, in light of the coercive approach used here, it is debatable how consensual such a discussion may actually be.) Moreover, some States report that dealers who have signed the agreement have already complained to them that they have been pressured to take on unwanted inventory.

Under the WL (par. 3), dealers are offered a specified amount of assistance (varying by dealer) – with 25% to be paid immediately and the balance at the end of the dealer operations, although there are a variety of potential hold-back provisions. That amount is in lieu of any other rights the dealer would have under state law, which might provide a greater or lesser remedy. While the WL purports to allow the dealers to continue under their contracts until October 31, 2010, in reality, they can be terminated by as early as January 31, 2010. Further, dealers are no longer allowed to order any new vehicles after the agreement is signed and, after December 31, 2009, the contracts may be cancelled at any time on 30 days notice. (See WL, pars. 2(a) and 6(a)). As a result, these dealers, while operating under a purportedly "assumed" dealer agreement, are forced to accept a modification of the agreement that strangles their

operations early in the term of that agreement by denying them any new stock to sell (in violation of laws of the States that require manufacturers to supply inventory as needed). Moreover, the WL also requires those dealers to immediately turn over all of their customer information so that it can go to retained dealers, and they are barred from protesting any action by a retained dealer to move into their area and solicit their customers, even while their dealer agreements purportedly remain in place. (WL, pars. 2(b) and 7).

There are other problems with both letters (as set forth in the Appendices) but two provisions stand out. One requires dealers to keep all of its terms confidential, thereby attempting to impede the States from even learning of the existence of these efforts or the need to enforce their laws in respect thereto. (PL, par. 9(h) (as amended), WL, par. 9). The second purports to give the bankruptcy court *exclusive* jurisdiction to determine any issues related to these agreements, apparently in perpetuity (PL par. 9(g) (as amended), WL par. 13). During the case, that language potentially contradicts Section 362(b)(4) and 28 U.S.C. § 1452(a), which except police and regulatory actions of government agencies from the automatic stay and bar their removal from the state courts. Moreover, to the extent that the agreements regulate the relationship between the dealer and Newco – two non-debtor parties – in ways that will not affect the estate,[9] it is doubtful this court has any jurisdiction under 28 U.S.C. § 1334, much less exclusive jurisdiction over those issues. That is particularly true after the case is closed, yet this provision gives this Court that exclusive jurisdiction in perpetuity – in violation of the laws of

[9] Section 365(k) removes GM – the actual debtor – and its estate from any continuing liability for breaches of the agreement after they are assumed. The proposed Order provides those protections to GM (par. 24).

most States, which place jurisdiction for issues under their Dealer Law exclusively in their motor vehicle commissions or similar agencies.

The efforts to modify the agreements contractually (in ways that violate state law) are compounded by the terms of the proposed sale order, which, as noted above, purports to remove this transaction from the reach of *any* law whatsoever (see par. 39), thereby denying the dealers any rights under the Dealer Laws, whether or not they "voluntarily" signed these agreements. Moreover, the order purports, in paragraph 27(f) to bar any governmental entity from any "proceeding against the Purchaser, its successors and assigns, or the Purchased Assets, with respect to any (i) Claim other than Assumed Liabilities . . . including, without limitation, the following actions . . . (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets." "Claim" is a defined term in the MPA that goes far beyond a Section 101(5) bankruptcy claim;[10] by barring governments from any proceedings relating to an MPA "Claim" against the Purchaser or the Purchased Assets, this provision would serve to essentially remove that party and those assets from the regulatory purview of the States – "*forever*." Such a prohibition greatly exceeds any limits that might be imposed by Section 525 – both as to the scope of the protection and its apparently infinite duration. By seeking entry of these provisions,

[10] The MPA defines "Claims" as meaning "all rights, claims (including any cross-claim or counterclaim), investigations, causes of action, choices in action, charges, suits, defenses, demands, damages, defaults, assessments, rights of recovery, rights of set-off, rights of recoupment, litigation, third party actions, arbitral proceedings or proceedings by or before any Governmental Authority or any other Person, of any kind or nature, whether known or unknown, accrued, fixed, absolute, contingent or matured, liquidated or unliquidated, due or to become due, and all rights and remedies with respect thereto." That includes numerous matters that are not "rights to payment," including most obviously "defenses" and "rights of recoupment," but also includes injunctive matters that do not fall under Section 101(5)(B) and matters that are too inchoate or unknown to constitute a present claim.

the Debtors seek to permanently insulate their efforts to force dealers to sign unlawful agreements from review or action by the States. Those terms, moreover, would give Newco rights vis-a-vis dealers into the future that are denied all other manufacturers. In short, dealers have been presented with a "take it or leave it" ultimatum – either waive your rights under state law so you can remain a dealer or at least receive some assistance on termination – or exercise your rights under that law and have the Debtors and Newco seek to deny you any rights and benefits altogether. While the dealers signed an agreement containing a (non-negotiable) statement that "its decisions and actions are entirely voluntary and free from any duress," the facts plainly indicate otherwise. Even with the changes made by GM to the PL, both that agreement and the WL still have provisions that violate the States' laws. As such, the Dealer Laws provide that such "agreements" are not enforceable against the Dealers on a going forward basis to the extent of such unlawful provisions.

III. Argument and Specific Objections

A. Section 363(f) Does Not Authorize the Relief Sought by the Motion

1. Section 363(f)(5) does not provide for sales "free and clear" of "claims"

The States discuss below various objections to specific provisions of the MPA and its treatment of particular types of claims, but, more broadly, they object to the reliance on Section 363(f) as purported authority to impose the wide-ranging restrictions contained in the proposed Order and to distinguish between assumed and rejected liabilities as set out in the MPA.

Section 363(f) provides the authority by which a debtor may seek to sell assets "free and clear" of "interests" of third parties in the debtor's property and have those rights attach to the proceeds of the sale. Everywhere else in the Code, the term "interest" is used to refer to some form of *in rem* lien or ownership interest in a particular asset. That usage is fully consistent with

the Section 363(f) reference to an entity's "interest in [the debtor's] property." By contrast, referring to a "claim in someone's property" is quite an odd usage of the English language. *In personam* claims, by definition, are free floating obligations that do not attach to any piece of property but can be satisfied from any unencumbered asset of the debtor party.

On the other hand, Section 1141(c) provides that, upon confirmation of the plan, the property dealt with thereunder is "free and clear of all *claims and interests* of creditors, equity security holders, and of general partners in the debtor." (Emphasis added). By contrasting that language with the more limited provision in Section 363(f), it is clear that, under a plain meaning reading of the Code, a sale under Section 363(f), unlike plan confirmation under Section 1141(c), cannot provide for a sale free and clear of "claims." *See, e.g., Russello v. United States,* 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."

The States are, to be sure, well aware of the fact that, as discussed in the Debtor's memorandum, many courts have concluded that, notwithstanding that patent difference in wording, Section 363(f) *does* authorize sales free and clear of claims. The reasoning in those cases, though, is tortured, i.e., a claim is really an "interest in property" simply because it somehow arises out of the fact that the debtor owned the property. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 289-90 (3rd Cir. 2003) (holding that any claims that are "connected to, or arise from" the property in question are "interests." Under that reasoning, though, there would be few, if any, claims against a business that would not also be an interest[11] – in which

[11] Since businesses do not have an independent existence apart from their assets and operations, it is difficult to imagine a claim that is not in some sense "connected to" the business

case, it is very difficult to imagine why the Code goes to pains to distinguish interests and claims everywhere else in the Code but conflates them here. *See, e.g.,* Sections 1122, 1123, 1124, 1125, 1126, 1127, 1129, and 1141, all of which refer to holders of "claims" as distinguished from holders of "interests." Put another way, had the Code not included all of those other sections which distinguished claims and interests, one might perhaps more reasonably be able to argue that claims were a subset of the term "interests," and could be included therein. Where, however, Congress has taken such great care in the Code to make clear that claims are different from interests, it defies the canon of construction cited above to assume that, in Section 363(f) – and only in that subsection – it changed its mind and intended to make those two terms coterminous.[12]

The States submit that the assumption that allowing sales free of successorship liability will result in higher payment offers has resulted in a skewed analysis of these provisions. They further submit that such a view cannot be allowed to override the plain meaning of the statute. First, any issue regarding purchase offers is amenable to bargaining by parties that takes into account the possibility of successorship liability. That possibility does not necessarily change the amount paid; at most, it merely revises who may receive the payments. But, that does not

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operations or arising therefrom. A person might engage in a tort separate from any property he or she owns (liability for a punch in the nose is not dependent on being a landowner), but how would a business create a claim not "connected to" the assets with which it operates?

[12] In *TWA*, *supra,* 322 F.3d at 290, the Third Circuit argued that claims are included in the term "interest," because an interest must be more than a "lien," noting that Section 363(f)(3) refers to "liens" as only one form of interest. That argument is a red herring, though – of course, liens are not the only form of "interest" – ownership rights are the most obvious other form, but there may be other forms of "interests," such as attachments, *lis pendens* notices, and the like that might or might not fall strictly under the definition of a "lien." Such other forms of interests are plain enough to fully explain the drafting of Section 363(f) without any need to ignore the well-established distinction in the Code between "claims" and "interests."

violate the Code anymore than it violates the Code if purchasers *voluntarily* choose which liabilities they prefer by means of their assumption agreements. According to the cases cited in the Debtor's memorandum of law, such decisions are merely a consequence of the purchase, not a violation of the Code's priority provisions. *See In re Trans World Airlines, Inc.*, 2001 WL 1820326, at *11 (Bankr. D. Del. 2001) ("the disparate treatment of creditors occurs as a consequence of the sale transaction itself [i.e., the buyer's decision as to what price to offer and what liabilities to assume] and is not an attempt by the debtor to circumvent the distribution scheme of the Code." They do not become any more improper if the preferences are imposed involuntarily under successorship liability rather than by the buyer's personal predilections. As those courts have indicated, a sale under Section 363 is not the same as a Chapter 7 distribution or a Chapter 11 plan; if so, there is no reason why such a sale should be allowed to ignore all applicable law that deals with the consequences of such transfers. The Seventh Circuit, in *Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 164 (7th Cir. 1994) provides a succinct description of why it is improper to allow debtors and purchasers to seek to use Section 363 transfers to immunize the buyer from all of the consequences of the transfer.

Accordingly, the States object to the provisions of the Order that purport to find that "claims" (as defined by Section 101(5)) are covered by Section 363(f)(5) and that, for that reason, the assets may be sold free and clear of those rights.

2. If the Parties to the MPA seek a declaration as to whether the purchaser is a successor to the Debtor, they must actually litigate that issue before this Court

If Section 363(f)(5) does not, of its own weight, provide for sales "free and clear" of claims and the elimination of all successorship rights, that does not, conversely mean that the sale automatically *does* confer such rights on all parties and for all types of claims. As indicated

in the *Mickowski* case, in some areas, there is an overwhelming federal interest and a consequent federal common law analysis of whether a transfer creates a successor. Labor and other employment issues is the most common area where such law is applied – but, here, the debtors have already resolved those issues, at least with respect to their collective bargaining units.[13] Other areas, such as environmental and tax claims, or personal injury liabilities, may turn on different considerations. As to the dealer liability issues, in view of the special concern for such rights and obligations shown by both the federal and state laws, the States respectfully submit that the same federal common law, "substantial continuity" test should be used for these issues as for employment issues.

Under that test, it is patently clear that Newco qualifies as the successor to the Debtors since everything about this transaction is intended to ensure a "seamless" transition for the operating facilities where the only difference will be who owns Newco. Employees, supervisors, facilities, and products will be unchanged and working conditions largely so, subject only to changes negotiated by the employees' representative.[14] That result plainly qualifies under *Fall River* for GM's own operations.[15] And, where laws in many States require acquirers to take on dealerships and impose procedural requirements for how changes may be made to the contractual

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[13] Even then, the analysis is not all or nothing; depending on the way a transaction and hiring decisions are structured, a successor purchaser may be required to recognize a union, but not necessarily to abide by the terms of its contract. *Fall River*, *supra*, 482 U.S. at 40-41.

[14] To be sure, as time goes on, Newco will develop new products, run different ad campaigns, negotiate for new working conditions and the like. Successorship is gauged at the time of transfer; it does not require that the buyer's operations remain frozen in amber forever.

[15] In *Fall River*, the Court noted that the issue was to be analyzed from the employees' perspective as to whether their jobs had changed and it was irrelevant that the new owner bought the assets on the open market after a seven-month hiatus in operations, unlike here where there will be no break in operations.

agreements with those parties, the Debtors and Newco can avoid a finding of substantial continuity as to the dealers, only by violating their obligations under those laws.[16] As discussed below, there is no basis under the Code to allow such violations of those dealer laws. In short, under the facts before the Court, there is much to indicate that Newco *is* a successor and little, other than its own desires, to indicate that it is not. Certainly, the evidence does not warrant the sweeping pronouncements on successorship status that are contained in the Order, without any support in the Motion.

The States believe that, in the normal course, there is no need for those issues to be decided now, in the context of a Section 363 sales motion that merely needs to authorize a transfer of property. If, though, the Court *chooses* to reach out at this time to determine those issues, it can only do so based on a full evidentiary record that allows it to actually analyze the factual and legal issues that go into a successorship determination. There is no basis for simply signing off an order that proposes that the Court should "find" that such rights do not exist without any appropriate analysis of the issues. If, upon analysis, it finds that successorship rights do *not* exist in some or all of the situations for which the Order seeks "free and clear" language as to claims, then it can find that the liabilities do not attach to Newco and include language to that effect in the Order. The numerous Order provisions, however, that broadly eliminate all rights based on "successor or transferee liability" should be stricken unless and until that determination is made. Moreover, any that do appear in the Order should be closely tailored to the applicable law on successorship.

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[16] The result would be much the same as if a purchaser bought a unionized facility and avoided a successorship finding by deliberately refusing to hire the unionized employees in order to avoid having to recognize the union.

Further, as a procedural matter, the States object to the way in which the Order is drafted. At present, the language dealing with these issues is so lengthy, convoluted, repetitive, and redundant that it becomes almost impossible to sort out what is actually being barred and what remains. Those provisions can and should also be substantially shortened; it is surely possible to state the rights and immunities provided to Newco in a paragraph or two, not in 14 separate ones. When one does try to sort through the provisions, it is clear, as discussed next, that major aspects of the Order would be improper, even assuming that the Court could authorize a sale "free and clear of claims."

B. Provisions of the Order are Overly Broad, Even if a Sale Could be Made "Free and Clear" of Claims

1. The Order sweeps too broadly in determining as to which claims the Sale can transfer "free and clear"

Even assuming Section 363(f)(5) could be read so broadly as to include "claims" in the "free and clear" sales process, the proposed Order sweeps in far more than what the Code defines as a claim. Moreover, the Order is highly confusing on the subject because it frequently mixes the term "claim" – an undefined term, which may or may not be meant to be the same as the Code's definition of "claim" in Section 101(5) – with the defined term "Claim" as used in the Motion. As noted above, the Motion defines "Claims" in terms that are vastly broader than a 101(5) bankruptcy claim, including items such as "defenses," rights or recoupment and setoff, and *any* form of action against the debtor, including purely injunctive relief.

Bankruptcy claims, though, while broad, are limited to "rights to payment" and exclude at least some equitable relief. *In re Chateauguay Corp.*, 944 F.2d 997, 1008 (2nd Cir. 1991) *In the Matter of Udell*, 18 F.3d 403, 408 (7th Cir. 1994) (right to equitable enforcement of contractual no-compete clause was not a "claim"). Including such matters in the term "Claim,"

and using that term in the Order, when they are *not* bankruptcy claims, creates unwarranted confusion. Similarly, "defenses" are not rights to payment as they merely deny the debtor's rights. Accordingly, defenses are not claims, and neither are rights of recoupment, since recoupment is also a defense and *not* a claim under Section 101(5). *See, e.g.*, *Westinghouse Credit Corp. v. D'Urso*, 278 F.3d 138, 146 (2nd Cir. 2002); *In re Malinowski*, 156 F.3d 131, 133 (2nd Cir. 1998). Statutory obligations that look to future enforcement rights, rather than seeking prior payments, generally are not claims either, but could easily fall under the "Claim" definition used in the MPA and, arguably could no longer bind Newco after the closing. Finally, certain rights are too inchoate or unknown to rise to the level of a claim at the time of the bankruptcy case and courts have not allowed such claims to be discharged by debtors in a plan. *Chateauguay* 944 F.2d at 1003-1005 (discussing example of persons who might be injured post-confirmation if a bridge on which they were passing collapsed), *In the Matter of Crystal Oil Co.*, 158 F.3d 291, 296 (5th Cir. 1998) (environmental claim does not arise until agency can tie debtor to known release of hazardous substance)*; Fogel v. Zell*,221 F.3d 955, 960 (7th Cir. 2000) (discussing fact that tort claim generally deemed not to exist until injury occurs); *In re Kewanee Boiler Corp.*, 198 B.R. 519, 527-28 (Bankr. N.D. Ill, 1996) (tort victim did not have even contingent claim until after injury occurred one year after confirmation).

Thus, even where the Code allows debtors to discharge clams by means of a plan, post-confirmation injuries cannot be swept under its terms (absent, perhaps, some form of trust fund set aside for "future claimants" as in the case of asbestos victims). Here, though, where Section 363 says nothing about selling free and clear of "claims," the Debtors and the Purchaser seek to sweep all such matters into its own self-defined definition of a "Claim," and then use that definition interchangeably with an undefined form of "claim" throughout the Order. The

provisions of the order, in turn, go every bit as far, if not farther than the rights granted to a reorganizing debtor upon confirmation.

Parties may certainly choose to use a defined term in any way that they wish in their own agreements such as the MPA, but the Court should not use such confusing terms in its order, to avoid ambiguity. Within Paragraph T alone, for instance, the proposed order includes references to "claims" (undefined), "claims (as that term in defined in the Bankruptcy Code)", and "Claims" (as defined in the MPA) – and, for good measure, throws in references to "debts" as well as a plethora of other terms, (such as "obligations," "demands," "options," and "restriction"). Some of those terms are already included in the definition of "Claims," and some are not, which further leads to confusion as terms become circular and self-referential.

The problem in determining what liabilities Newco seeks to avoid assuming is compounded by the fact, as previously noted, that the Order deals with that topic in 14 separate paragraphs, which are substantially – but not absolutely – redundant of each other. Again, to avoid confusion and to allow parties to have reasonable certainty as to their obligations, the Court should require that the Order only use terms defined therein, use them in a consistent manner, not allow the use of terms that are already defined in the Code in ways that are inconsistent with those definitions, and describe the relief granted in a succinct, clear, and nonrepetitive fashion, that parties can readily analyze.

And, in deciding what relief to grant, the Court must avoid allowing expansion of the already questionable concept of selling free and clear of bankruptcy claims so as to encompass obligations and rights that most assuredly are not bankruptcy claims at all. While one can, at least, fit the right to payment of a bankruptcy claim into the Section 363(f)(5) paradigm – i.e., a right for which there can be a monetary satisfaction, that does not apply, by definition, to rights

that are not bankruptcy claims, i.e. "rights to payment." As the Second Circuit noted in *Chateauguay*, an environmental agency cannot be forced to accept money and allow a polluter to contaminate the environment anew. By definition, then, a governmental right to bar pollution cannot fall under Section 363(f)(5) because it does not involve a right to payment, is not a "claim," and, is not a matter as to which the party can be required (indeed, even allowed) to accept a monetary satisfaction.

Nor can a purchaser somehow magically insulate itself not only from the claims of other parties, but also from their right to *defend* themselves against actions by the purchasers, merely by including defenses, recoupment, and setoff in the definition of a Claim. Those items may not properly be eliminated through a Section 363 order. See *Folger Adam Security, Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 260-61 (3rd Cir. 2000) (setoff and recoupment are not interests, defenses are not claims, "Thus, we agree with the Bankruptcy Court in *In re Lawrence United Corp*. and hold that a right of recoupment is a defense and not an interest and therefore is not extinguished by a § 363(f) sale."). Setoff, in particular, is protected by Section 553, which provides for the continued recognition of setoff rights under the Code.[17]

In short, to avoid having the Order infringe even further on the rights of parties holding claims against the debtors whose assets are being transferred to a third party, the Order should, at most, only extend that protection to "claims" under Section 101(5) and should avoid usage of the MPA term "Claim." If Section 363(f)(5) does allow sales free and clear of bankruptcy "claims" as well as "interests," (a point with which the States disagree), then that is all that need be said –

[17] The reference to Section 363 in Section 553 refers to the need to protect the *creditor's* right to adequate protection of its setoff rights; it is not authorization for the debtor and the purchaser to destroy those very rights in the course of a sale. *See* 5 Collier on Bankruptcy (15th ed. rev.) ¶ 553.01; ¶ 553.06[5] and cases cited therein.

and all that the Code can possibly be read to allow. Disallowing every right that a party may have against a purchaser vastly exceeds the scope of what Section 363 or any other provision of the Code offers to purchasers.

2. The proposed order improperly attempts to limit governmental police and regulatory powers

In Paragraph 15, the Order provides that "to the extent provided by Section 525 of the Bankruptcy Code," governments may not deny, revoke, suspend or refuse to renew licenses, permits, grants, and the like relating to the assets sold to Newco on account of the filing of the cases or the consummation of the sale. In one sense, the paragraph is innocuous – if all it does is state that Section 525 applies if Section 525 applies, it adds nothing to the fact that, yes, Section 525 applies here as in any other case to the extent that the facts so warrant. On the other hand, to the extent that the section purports to dictate any conclusion about whether Section 525 does apply to this situation, it should be revised or eliminated. First, there is no evidence whatsoever, that any governmental entity has sought to take action against the Debtors (or Newco) based on the commencement of the cases. Second, it is unclear to whom the paragraph is meant to apply – the Debtors or Newco – and Section 525 applies to actions against the Debtors.[18] Third, if it purports to find that Section 525 applies automatically to the sale transaction, that goes beyond

[18] It also refers to actions against parties "associated with the debtor." That has not generally been taken to refer to parties buying assets from a debtor, as opposed to, for instance, the spouse of a debtor. *In re Draughon Training Institute, Inc.*, 119 B.R. 927, 933 (Bankr. W.D. La. 1990) ("protection more properly extends to one who has been a co-owner, co-obligor, co-debtor, joint venturer, partner, agent, representative, or spouse of the debtor, rather than a transferee of the debtor."). (Compare *In re Betty Owen Schools, Inc.*, 195 B.R. 23, 29 (Bankr. S.D. N.Y. 1996) (Section 525 implicated where government directly tied its decision on purchaser's application to predecessor's actions). There is no showing of such a linkage here by any governmental entity and Newco, of course, asserts that it has no connection with the predecessor. As such, it is contradictory for it then to claim that it should be protected as being "associated with" that entity.

the limited terms of Section 525(a). It only applies to actions based *solely* on the filing of a case or the nonpayment of a dischargeable debt – neither of which applies to a sale transaction in and of itself.

While that paragraph is ambiguous, Paragraph 28 is not. It provides:

> [A]ll persons and entities are *forever* prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, its successors and assigns, or the Purchased Assets with respect to any (i) Claim other than Assumed Liabilities, or (ii) successor or transferee liability of the Purchaser for any of the Debtors, including, without limitation, the following actions: . . . revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets. (Emphasis added).

That provision is plainly improper. On its face, this provision states that governmental entities are *forever* barred from taking any adverse action with respect to licenses relating to the Purchased Assets with respect to any Claim that is not an Assumed Liability. Recalling that a Claim includes "investigations," "demands," "proceedings" by governmental entities and much more, it is clear that this would easily include enforcement of any governmental obligation that is not an assumed liability. As such, the provision is nonsensical. Section 525 provides the scope of the limitation on governmental permitting actions; this provision goes far beyond its terms even if it were limited only to actions taken at the time of sale. A provision, though, that *forever* bars the government from denying licenses and permits with respect to certain assets for *any reason whatsoever* is not authorized by anything in the Code or the case law. That aspect of the Order must be stricken.

Similarly, as noted above, paragraph 37 purports to eliminate the effect of *any* law on the transaction (including, if read literally, the Bankruptcy Code, itself). Again, nothing in the Code or the case law authorizes such a prohibition, and the provision should be stricken.

3. Other Objectionable Provisions

Paragraph 21 should have the words "Except as provided in Section 365(c)" added at the beginning. As currently written, it eliminates the rights non-debtor parties have under that subsection, although the Code clearly makes Section 365(c) rights controlling over any rights given to the Debtors under Section 365(f).

Paragraph 22 appears to make the Debtor's database of purported cure amounts determinative of those issues, even if the other party does not agree. It should be made clear what the dispute process is for those amounts and that the disputed amounts may still be asserted. If that process is set out in another order, it should be cross-referenced here. Further, in paragraph 23, the reference to barring "any counterclaim, defense, or setoff or other Claim" is improper and should be limited to only providing that those parties may not seek to pursue claims for cure payments to the extent they have been resolved by the Court.

References throughout the order (such as in Paragraph 24) to parties being "estopped" from taking certain actions should be stricken. There is no basis under the proceedings herein to find that any party is "estopped" from taking any action. At most, a party may be barred from acting by the terms of the Order or the provisions of the Code, but "estoppel" has a meaning of its own and consequences; it should not be used where it does not apply.

Paragraph 28 should also be stricken – much of it is completely redundant of numerous prior paragraphs that purport to relieve Newco of any unwanted liabilities. Its sole new feature is a statement that, in view of the consideration provided by Newco, the holders of all liens, claims,

encumbrances, and other interests shall be *deemed* to have given their consent to a release of Newco. Consent, however, is something that a party must freely give, upon notice and with an option to withhold it. That is the sort of release that could be sought as part of a consensual plan process, but the Debtors have chosen to forego that approach. They cannot simply invent a consent that does not exist (and that likely would not be given by parties whose liabilities are not being assumed by Newco). This paragraph should be stricken.

Paragraph 32(a) should be stricken as an incorrect description of the effect of a sale "free and clear." Those rights are not discharged, released, or terminated, they are "transferred" to the purchase price. And, to the extent the purchase price is insufficient, the Debtors obviously remain liable for those obligations, except to the extent that they are purely *in rem* obligations. If the Debtors are allowed to sell "free and clear" of all claims, and receive certain funds therefrom, they certainly cannot limit claimants to only seeking to be paid from those purchase amounts (as opposed to the other funds in the estate). Plans discharge claims, not sales agreements.

Paragraph 37 is meant to relieve some of the concerns arising from the ambiguous language in the MPA with respect to the treatment of environmental claims. However, it is still not fully neutral on the subject; thus while it provides that it does not create any rights for the government, it should also provide that the Order and the MPA do not, by their terms, serve to eliminate "any rights against the Purchaser that would otherwise arise under applicable nonbankruptcy law."

Paragraph 42 should be stricken. This is a hugely important case with substantial new and untested issues. Denying parties any opportunity to appeal is plainly improper. The

appellate courts have shown that they are capable of reviewing these issues in short order and that right should not be limited. here.[19]

B. Section 363 and 365 Do Not Allow Dealer Laws to be Overridden

Unlike Chrysler, which used separate procedings, the Debtors here have chosen to combine their sale motion with their assumption motion for many contracts, including notably, the dealer contracts. In reviewing that request, it should be noted initially what was *not* being done in the Motion. The Debtors had not yet made any final decision on whether to reject or assume these contracts when it filed the Motion; rather, coincident with that filing, it began to use heavy-handed tactics to dictate to the dealers changes that they *must* accept in their agreements with GM. Only if they agreed to do so would the Debtors then make a final decision to assume the agreements. During that process, though, the Debtors' actions remain fully subject to the exercise of the States' police and regulatory powers under their Dealer Laws. Those laws, in turn, make it specifically unlawful to coerce dealers to revise their agreements or waive their rights under those laws of the States. Much of what was done in securing dealers' agreement to those revised agreements likely violates the law in many States and they reserve their right to utilize their police and regulatory powers to bring complaints dealing with those actions as they deem appropriate.

Second, the Debtors are not moving to reject these agreements and cannot rely on any purported rights that they may or may not gain from court approval to breach their agreement as was argued in Chrysler.[20] Rather, they are seeking to assume and assign agreements, a

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[19] It is far from clear that GM will suffer any harm during such a process. Even while bankruptcy was looming, its sales in May increased 11% from the prior month.

[20] The final order, there, it should be recalled, did not decide those issues or find any

proposition with wholly different language and applicable rights.[21] In doing so, though, they do not seek to assume the existing agreements that they have with the dealers; rather, they forced the dealers to enter into new agreements (on a non-negotiated basis) which *new* agreements they then propose to assume.

That proposed course of action is itself at substantial odds with the well-settled principle under Section 365 that one must assume a contract *cum onere*; i.e., one cannot pick and choose the portions one likes and only assume those, while leaving the unwanted portions behind. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531-32 (1984) ("Should the debtor-in-possession elect to assume the executory contract, however, it assumes the contract *cum onere*, and the expenses and liabilities incurred may be treated as administrative expenses). "It is well-settled that a debtor cannot assume part of an unexpired lease while rejecting another part; the debtor must assume the lease *in toto* with both the benefits and burdens intact." *In re S.E. Nichols, Inc*., 120 B.R. 745 (Bankr. S.D.N.Y. 1990). A contract is assumed "in the same shape as it existed prior to bankruptcy, with all of its benefits and burdens. An executory contract cannot be rejected in part and assumed in part. That is, the debtor or trustee is not free to retain the favorable features of a contract and reject the unfavorable ones." *Matter of Village Rathskeller, Inc.*, 147 B.R. 665, 671 (Bankr. S.D.N.Y. 1992). Yet, that is exactly the net effect of what the Debtors propose here – demand major changes to the agreements and only then agree to assume

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preemption. Rather, it merely stated the truism that *if* the Code and applicable case law gave rights to the Debtors, those rights could control over state law by virtue of the Supremacy Clause. The order reserved rights to the dealers, though, to test that issue, even after rejection. (See Order entered June 9, 2009, Docket No. 3802, Case No. 09-50002.)

[21] In that regard, as noted above, the proposed Order (see Par. 21) improperly seeks to deny parties their rights under Section 365(c)(1) to preclude assumption of their agreements based on certain types of anti-assignment provisions. That provision must be corrected.

the revised version. Such a process leaves little meaning to the proposition that contracts must be accepted *in toto*.

Even if one assumes that such a process is not necessarily unlawful as to contracts generally, the situation is markedly different where the Debtors seek to obtain substantively unlawful agreements by means that are procedurally unlawful.[22] The Debtors (and Newco) seek to use bankruptcy as a way to write themselves a permanent exemption from the regulatory scheme for the business in which they seek to operate and under which all other competing dealers must proceed. There is nothing in Section 363 or 365 that purports to preempt those laws or to allow them to be ignored by the Debtors.

1. Preemption is Not Generally Favored

There are three forms of preemption: express, field, and conflict preemption. Express preemption applies only by its explicit terms (i.e., where a section states that it applies, "notwithstanding applicable nonbankruptcy law"). In Section 363, only subsection (l), a provision not applicable here, has any express preemptive effect. *Integrated Solutions, Inc. v. Service Support Specialties, Inc.*, 124 F.3d 487, 493 (3rd Cir. 1987) ("neither § 363(b)(1) nor § 704(1) expressly authorizes the trustee to sell property in violation of state law transfer restrictions . . . 363(b)(1) and 704 are general enabling provisions that do not expand or change a debtor's interest in property merely because it files a bankruptcy petition").

In Section 365, while there are certain provisions that do apply "notwithstanding nonbankruptcy law," they apply only in certain situations not at issue here and there is no general statement that all nonbankruptcy laws are automatically swept aside with respect to the

[22] While the States do not enforce the ADDICA, the actions of the Debtors and Newco here might well violate the "good faith" obligations under that statute as well.

assumption process. Section 365(c), for instance, allows certain nonbankruptcy laws to apply to bar the assumption and assignment of contracts. Section 365(f), on the other hand allows *assignment* of contracts despite nonbankruptcy laws precluding such assignments, but only if the contract can be *assumed* – a right which remains subject to the nonbankruptcy law limits imposed by Section 365(c). Those limits on the extent of express preemption, thus, make clear that field preemption – the broadest form of preemption – is not applicable. That limitation is further underscored by the applicability of 28 U.S.C. § 959(b) to all aspects of a debtor's operations while in bankruptcy. That section *requires* debtor to obey the valid laws of the state in which it is operating during the case and has no exclusions that qualify its broad sweep. Thus, there plainly can be no argument that any portion of the Bankruptcy Code broadly preempts all applicable state law with respect to a given issue. Rather, at most, express preemption, supplemented perhaps by conflict preemption if actually proven as to a particular statute, is the appropriate standard; i.e., can the provisions of Sections 363 and 365, be applied while, at the same time, the debtor also complies with applicable state law. If there is an inherent conflict between the two, then, to be sure, the Supremacy Clause dictates that state law must yield, but that longstanding rules of construction emphasize that conflict preemption should not be assumed lightly. That is particularly true when one is applying those laws to operating non-debtor entities, such as Newco, not to debtors in liquidation.

The mere fact that both federal and state law may apply in a particular situation does not inherently create a conflict or lead to the automatic conclusion that the state law is preempted. *See Pacific Gas and Elec. Co. v. California ex rel. California Dept of Toxic Substances Control*, 350 F.3d 932, 943 (9th Cir. 2003), quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996):

> First, we presume that Congress does not undertake lightly to preempt state law, particularly in areas of traditional state regulation.
>
> [B]ecause the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action. In all pre-emption cases, and particularly in those in which Congress has 'legislated ... in a field which the States have traditionally occupied," we 'start with the assumption that the historic police powers of the States were not to be superceded by the Federal Act unless that was the clear and manifest purpose of Congress.'(internal citation omitted).

See also Integrated Solutions, supra, 124 F.3d at 492 ("Because we are reluctant to assume federal preemption, we noted that any analysis should begin with 'the basic assumption that Congress did not intend to displace state law.'", quoting *In re Roach*, 824 F.2d 1370, 1373-74 (3rd Cir. 1987).). *See also Coyne & Delany Co. v. Selman*, 98 F.3d 1457, 1467 (4th Cir. 1996) where the Fourth Circuit stated that "courts never 'assume[] lightly that Congress has derogated state regulation.' *Travelers*, [514 U.S. 645, 653 (1995)]. Instead, courts 'address claims of preemption with the starting presumption that Congress does not intend to supplant state law.'". Thus, it noted, that while Congress imposed broad preemption provisions in relation to ERISA plans, it did not preempt malpractice claims since there was no demonstrated intent to preempt "traditional state laws of general applicability" that did not implicate the relationships between the traditional plan entities.

Indeed, while not directly applicable to the judiciary, it is worthy of note that President Obama issued a directive to all executive departments and agencies on May 20, 2009, reminding them of the value of state law activities and directing them to review regulations issued over the last several years to ensure that they do not unduly infringe on prerogatives of the States. (See attachment A). The directive states *inter alia*:

> The Federal Government's role in promoting the general welfare and guarding individual liberties is critical, but State law and national law often operate concurrently to provide independent safeguards for the public. Throughout our history, State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is appropriate for them to apply to themselves rules and principles that reflect these circumstances and values.

Those principles are no less applicable in considering whether preemption should be applied in judicial settings.

2. Preemption of the States' Dealer Laws is Not Appropriate

GM has conditioned its assumption and assignment of the dealer agreements upon the dealers' waiver of various rights they enjoy under the States' laws. But, as noted, those laws continue to be applicable in bankruptcy, pursuant to 28 U.S.C. 959(b), absent some clear indication that they have been preempted. "[T]he mandate of section 959(b) ... prohibits the use of bankruptcy as a ruse to circumvent applicable state consumer protection laws by those who continue to operate in the marketplace." *In re White Crane Trading Co., Inc.*, 170 B.R. 694, 698 (Bankr. E.D. Cal. 1994). And, as the Third Circuit noted, "Implicit in Section 959(b) is the notion that the goals of the federal bankruptcy laws, including rehabilitation of the debtor, do not authorize transgression of state laws setting requirements for the operation of the business . . . ." *In re Quanta Resources Corp.*, 739 F.2d 912, 919 (3d Cir.1984), *aff'd sub nom., Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Prot.*, 474 U.S. 494 (1986).

In *Midlantic,* in affirming the Third Circuit, the Supreme Court found that state laws could apply even in the face of a section that provided that the trustee could "abandon *any* property of the estate that is burdensome to the estate or that is of inconsequential value."

Despite the absence of *any* explicit limitations on those powers, the Court found state law to be applicable, citing Section 959(b), and stating that "Congress did not intend for the Bankruptcy Code to pre-empt all state laws that otherwise constrain the exercise of a trustee's powers." *Midlantic Nat'l Bank*, 474 U.S. at 505. The Court also looked to the actions of Congress in enacting environmental laws generally as showing a concern that those regulatory concerns be preserved even in bankruptcy. By the same token, the presence of the ADDICA shows that Congress has a long-established concern with the treatment of these dealer-manufacturer issues.

The structure of the bankruptcy laws – with its exception from the automatic stay for police and regulatory actions, and the provisions in title 28 that require debtors to obey state laws and prohibit removal of police and regulatory actions – make clear that the default position is that debtors must obey nonbankruptcy laws and that bankruptcy is not a free pass to ignore those obligations. As the court in *White Crane* further noted:

> The purpose of bankruptcy is not to permit debtors or nondebtors to wrest competitive advantage by exempting themselves from the myriad of laws that regulate business. Bankruptcy does not grant the debtor a license to eliminate the marginal cost generated by compliance with valid state laws that constrain nonbankrupt competitors. The Congress has thus required that every debtor in possession and bankruptcy trustee manage and operate the debtor's property and business in compliance with state laws-good, bad, and indifferent-that apply outside of bankruptcy.

White Crane, 170 B.R. at 702. In sum, Section 959(b) simply stands "for the uncontroversial proposition that a trustee must carry out his duties in conformity with state law." *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 593 (9th Cir. 1993).

Indeed, that is true, even in situations equally as financially stressed (*albeit* on a smaller scale) as the case here. *See, e.g.,, Gillis v. California*, 293 U.S. 62 (1934) (receiver barred from operating without state-required bond, even if he was unable to obtain such a bond; " ultimate

inquiry is whether Congress can withhold from District Courts the power to authorize receivers in conservation proceedings to transact local business, contrary to state statutes obligatory upon all others. That Congress has such power we think is clear, and the language of section 65 leaves no doubt of its exercise;" Section 65 is predecessor to current Section 959(b) with virtually identical language"); *In re 1820-1838 Amsterdam Equities, Inc.*, 191 B.R. 18, 21-22 (S.D.N.Y. 1996) (bankruptcy judge did not have power to temporarily enjoin civil and criminal sanctions actions by city against debtor even though debtor was arranging to correct violations); *In re Vel Rey Properties, Inc.*, 174 B.R. 859, 863-64 (Bankr. D. D.C. 1994) (Section 959(b) means that court has no power to authorize trustee to operate debtor in violation of state law, despite financial hardships and potential loss of value to estate).[23] Similarly, in the context of plan confirmation, the courts have noted that bankruptcy is not meant to provide a guarantee of profitable operations to debtors. Rather as the Ninth Circuit noted in *In re Baker & Drake, Inc.* , 35 F.3d 1348, 1354 (9th Cir. 1994)

> Simply making a reorganization more difficult for a particular debtor,[] however, does not rise to the level of "stand[ing] as an obstacle to the accomplishment of the full purposes and objectives of Congress." . . . Congress's purpose in enacting the Bankruptcy Code was not to mandate that every company be reorganized at all costs, but rather to establish a preference for reorganizations, where they are legally feasible and economically practical. Thus, if compliance with NAC 706.371 were to render Baker financially unable to reorganize, neither Baker nor Nevada would thereby be violating any provision of the Bankruptcy Code. (Citations omitted).

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[23] *Cf. Saravia v. 1736 18th St., N.W., LP*, 844 F.2d 823, 826 (D.C. Cir. 1988) (rejection of leases by bankruptcy court did not authorize trustee to ignore local laws requiring provision of utility services to tenants and correction of housing code violations).

That is particularly true when a debtor's proposed actions would allow it to receive favorable treatment under the law far into the future. The Debtors here seek a "head start," not merely the "fresh start" the Code allows.

The state law provisions at issue here are not in conflict with the Code and there is nothing in the Code that allows the Debtors or Newco to ignore them in proceeding with the sales transaction and the assumption motion. The Participation Letters (even as amended) seek to have going-forward dealers be forced to operate without the legal protections that apply to every other dealer in the United States, including potentially being forced to accept unneeded inventory, operating under unrealistic sales quotas, accepting competing dealers within protected limits set by state law (and upheld by the Supreme Court), and being required to negotiate over their right to keep selling other brands when the Dealer Laws plainly guarantee them the right to do so. Those exemptions to the law would apparently be expected to operate on a permanent basis, long after the Debtors have exited the bankruptcy courts, giving a permanent operating advantage to Newco. The Debtors and Newco point to nothing in the Code that purport to authorize such actions even by the debtor, much less *by a non-debtor party after the closing of the Debtor's case.*

They presumably will argue that they may implement these provisions because the dealers "voluntarily" signed these agreements and "voluntarily" agreed to waive rights and protections. Those rights and protections, though, are not subject to waiver under the States' laws – for exactly the reasons seen here, i.e., that the dealers could easily be coerced into giving them up. The very request for such waivers is unlawful under most States' laws and the Court should not countenance it here. If the Debtors and Newco believe these are the dealers they want to maintain, they should assume their agreements as is – or at least not seek changes that

substantively and procedurally violate the States' Dealer Laws. Moreover to the extent that the agreement requires that they also waive any rights they may have to file other claims in the Debtor's bankruptcy – a waiver for which they receive no consideration, that provision violates the Bankruptcy Code as well.

As to the dealers that are not being retained, the Debtors again purport to be assuming an agreement with them, but one which requires that they waive numerous protections under the States' Dealer Laws and accept relief that is far different from what they would be entitled to there. However, to the extent that those dealers have monetary rights under the Dealer Laws, a straightforward rejection of those contracts with the same sort of effective date provisions as offered in the Wind-Up Letters would make any such damages prepetition general unsecured claims that would share *pro rata* in whatever dollars are available. Thus, even if those rights had been greater in dollar terms than the amount being offered, they would not necessarily cost the Debtors more in real dollars. Further, to the extent that the Dealer Laws would give those dealers injunctive rights as against either the Debtors or Newco (and many would afford the dealers at least some rights against Newco), the Debtors have offered no basis on which they can ignore such laws.

Rather, as with the retained dealers, the Debtors and Newco merely seek to abrogate those laws by means of "voluntary" agreements by dealers to waive those rights. If it truly believed those wind-down provisions were attractive to dealers (and, for some, it is possible they might be), they could have offered dealers the option of rejection and application of the Dealer Laws (subject to the effect of Section 365 on the priority of monetary claims) or accepting revised dealer terms. Such an agreement might have been voluntary – the one proffered here plainly is not. Again, the States respectfully submit that, while the Court may approve

assumption of such agreements, the approval must not be conditioned on preemption of State Dealer Laws that would invalidate at least some of the provisions in those agreements, or on giving this Court exclusive jurisdiction in perpetuity to oversee their enforcement. Instead, it should simply carry out the process provided for in Section 365 and leave the continuing review of such agreements and their enforceability to the State law tribunals that exercise such authority for every other manufacturer-dealer arrangement in this country.

C. The MPA is Ambiguous in Many Areas; As a Result, It is Impossible to Determine Whether Its Provisions Are Objectionable; The States Object Preliminarily and Reserve Their Rights as to Those Provisions Upon Their Clarification

Finally, there are at least five areas in which the terms of the MPA are ambiguous, contradictory, or simply do not address relevant issues. As such, the States have been unable to determine whether, in the end, an objection is actually necessary. They have attempted to obtain clarification of these issues from the Debtors on several occasions, beginning on June 2 and continuing until the evening of June 18, and to have assurances that corrections will be made to the MPA to the extent that it is agreed that changes are needed. While some verbal clarifications and assurances have been received with respect to certain points, nothing has yet been provided in writing. Accordingly, the States have no alternative but to file this protective objection to ensure that such issues will be corrected before a final order enters. The issues will only be described briefly; the States reserve the right to supplement these objections should they not be fully resolved prior to the sales hearing.

1. Lemon Law Claims/Warranty Issues

Par. 2.3(a)(vii) of the MPA provides for Newco to assume all rights arising under written warranties relating to vehicles, parts and equipment manufactured or sold by the Debtors prior to

the closing, while Par. 2.3(b)(xvi) provides that Newco does not intend to assume liabilities arising under implied warranties or statements made by the Sellers. The States sought to clarify how those provisions applied in several respects. First, most or all have "lemon laws," which are generally viewed as an extension of the warranty obligations of the manufacturer, but they provide remedies that extend beyond merely making repair attempts, which is the usual warranty obligation. Debtors' counsel indicated on June 15 that such obligations were likely covered, but did not clearly commit to amending the MPA to make that clear.

In light of the relationship between the Debtors and Newco (see further discussion below), as well as the statements by the United States government promising that all warranty obligations would be honored, the States accordingly object to any sale order that does not require assumption of such obligations and the MPA should be clarified to directly address that issue. Finally, in view of the nature of the relationship with Newco, the public statements made promising to protect "warranties" generally, and the fact that, under most States' laws, implied warranties may not be disclaimed, the States object to any refusal to transfer liabilities arising under implied warranties (and explicit statement by the Debtors' personnel) as well. Lemon laws frequently define "warranty" rights in terms of not only written manufacturer warranties, but also such implied warranties and dealer statements. Other state laws may define the scope of a warranty as including these factors as well. Thus, it is neither possible nor appropriate to attempt to dissect out this limited group of warranty obligations and disclaim them in violation of statements by public officials that "warranty" obligations would be broadly protected.

2. Sale of Personally Identifiable Information

The Debtors propose to transfer, as part of the sale, all consumer personally identifiable information ("PII") that they maintain – without specifying in any way what the information may

entail. The Debtors also maintain at least one privacy policy under which at least some of that information was gathered. In view of the absence of any details on what is being transferred in the MPA, the States unsuccessfully attempted to obtain information from the Debtors on June 15 and the Consumer Privacy Ombudsman (CPO) thereafter. The Debtors' representatives did not have the information and the CPO refused to meet with or discuss any issues with the States prior to the filing deadline. Accordingly the States have no alternative but to file this precautionary objection.

They note the following: first, it appears that the Debtors' privacy policy generally contemplated that data could be transferred as part of the sale of the business, at least until immediately prior to the bankruptcy filing. If so, that tends to alleviate concerns as to whether the sale would violate the States' "unfair and deceptive acts and practices'" (UDAP) statutes. Under those statutes, the States take the position that a sale of PII, in the face of a policy that promises *not* to sell PII, is a UDAP violation. They have concluded, though, that, if (and only if) consumers are given option rights with respect to the data,[24] then the transfer will *not* be deceptive or unfair. In that regard, they take a more stringent position from that adopted by the Federal Trade Commission in the *Toysmart* case in 2000.[25]

In the *Toysmart* case, an Internet debtor sought to sell a wide variety of extremely sensitive information, including data provided by children using its website, all in violation of a

[24] The issue of whether the right should be "opt in" or "opt out" depends to some degree on the language of the policy and the sensitivity of the information.

[25] As discussed below, there was no published decision in that case resolving these issues, or allowing the sale, and there have been few if any written opinions in a contested proceeding since then. *Toysmart* is discussed in most of these matters simply because it was the first major dispute in this area and one in which there were substantial filings and argument. Moreover, it was the impetus for the inclusion of the privacy sections at issue here.

policy promising *not* to sell such data to any third party. The States and the FTC initially agreed that such conduct violated the law. The FTC, though, later tried to settle with the debtor by creating the concept of a "qualified buyer," (a respectable entity in the same business that promised that *it* would keep the data secure) and providing that a sale to such a buyer would not violate the consumers' privacy rights under its statute. The States, on the other hand, strenuously objected, holding that "no sale of data" means "no sale," not a sale to a party that the *FTC* found qualified. The States' position was vindicated when Toysmart withdrew the sales motion and the data was destroyed.

Notwithstanding that result, the CPO in Chrysler (the same person appointed here) issued a report that repeatedly described the FTC's position in *Toysmart* as "governing law." The States were not able to respond to that report since, again, the CPO refused to meet or discuss the issues with them, and his report was not filed until the day of the sales hearing. Presuming that the CPO will take a similar approach here, the States object, in advance, to any provision in this CPO report that takes the view that the FTC position in *Toysmart* represents any form of law, much less "governing" law.

While new privacy provisions were included in the 2005 amendments because of *Toysmart*, nothing in those amendments remotely suggests that they were adopting the FTC's contested position, as opposed to the States' position. Further, assuming the FTC still adheres to its *Toysmart* position, the States further object to any statement in the CPO's report that says their laws are satisfied if the FTC position is adopted. To the extent that the privacy policy here may not actually prohibit the transfer or that the CPO insists on an acceptable option provision (which was *not* part of the *Toysmart* settlement), the States' concerns may be obviated here, but,

in the absence of any information from the CPO, they file this objection now to ensure that their concerns are taken into account by the CPO and their laws correctly read.

The States further note that, if drivers' license numbers, social security numbers, financial information, or account passwords are transferred as PII, those pieces of data may trigger their "data breach" statutes. While those statutes are primarily intended to deal with "hackers" and "identity thieves," they are not necessarily so limited. At a minimum, they object unless and until the CPO has fully investigated and reported on 1) what is being transferred, and 2) how such transfers interact with the States' laws, as construed by the States. Absent such information, the States object to any finding being entered that a "violation of [applicable] law has not been shown."

In addition, the States note that a corollary concern that arose after *Toysmart* was whether upon receiving transferred PII, the new entity would qualify as one that could contact consumers who have placed their name on the "Do Not Call" registry. In general, at a minimum, a new entity would have to be considered a successor to the old entity in order to enjoy that prior entity's exemption from the registry for specified numbers. Where, as here, the proposed Order disclaims that status for Newco on some 14 occasions, Newco should be required to accept the consequences and the CPO should find that it is required to refrain from calling consumers who are on the registry.

3. Workers' Compensation Claims

On its face, the MPA (Section 2.3(a)(x) and Exhibit G) appears to include claims from all but four states in "Assumed Liabilities." The States understand there are no current employees in those four states and may not have been for some time. In light of typical bonding requirements, it may well be that there are no issues in those four states with respect to whether

there are adequate funds to cover any residual liabilities. All other states assumed, based on the language in Section 2.3(a)(x), that liabilities under their statutes were being assumed and thus they had no basis to object to the Motion with regards to this issue. On June 15, however, it became clear in the conversations with Debtors' counsel that the issue was *not* settled with respect to other states, *albeit* the Debtors did not want to talk to the States collectively on the issue. Upon further review, it was determined that Section 6.5(b) – 35 pages later in the document and under a heading that made no reference to workers' compensation – would allow the Debtors and Newco to make decisions on assuming workers' compensation claims up until two business days before the hearing, i.e., *nine days* after the deadline for objecting herein. Accordingly, the States file this precautionary objection to any refusal to treat workers' compensation claims (beyond those in the four states) as assumed liabilities, and reserve their right to file a supplementary objection after the deadline for the Debtors to amend the MPA, if Newco does seek to avoid assuming those obligations.

The States further object to the extent that any part of the determining factor on such assumption is based on whether the States will agree to treat Newco as a successor for purposes of determining its experience rating and/or its right to self insure. The States strongly believe that, if Newco seeks to disavow successor status where beneficial for its purposes, it should be bound by that claim for all purposes, including where it would impose added costs on Newco.[26] Allowing it to reject liability for those made sick, injured, or killed while in GM's service unless the States allow it to espouse contradictory legal positions about its status is plainly improper.

[26] Self-insured status is typically dramatically cheaper than any insurance option available to an employer and experience ratings (and premium rates) often are higher for new entities.

4. Tax Claims

The States adopt the issues raised by the State of Texas and join in its June 15 objection. (docket no. 1052). They note specifically that the terms of the MPA are confusing and contradictory and that, moreover, their terms may contradict those of the Order (such as the language in Paragraph T(ii)). After three conversations on the topic, the States believe that the Debtors and Newco now agree that any taxes that they were authorized to pay under the Debtors' first day motion and order (Docket Nos. 55 and 174), i.e., "Property Taxes, Sales Taxes, Use Taxes, Excise Taxes, Gross Receipts Taxes, Franchise Taxes, Business License Fees, Annual Report Taxes, and Other Governmental Assessments" are Assumed Liabilities. That position is acceptable to the States but needs to be more clearly documented in the MPA or the Order (including removing the contradictory language in Paragraph T(ii)).

Similarly, the MPA provides for "Permitted Encumbrances" that may remain in place on transferred assets for, *inter alia*, certain taxes, but only if "adequate reserves" had been established for those taxes. Debtors' counsel, however, could give no assurances that reserves were being established or in what amount. The States, therefore, have no way of knowing if their liens will be recognized as Permitted Encumbrances by Newco or not, even if the underlying obligations have been accepted as Assumed Liabilities. Accordingly, that issue still needs to be resolved. The States also continue to object on the other issues raised in the Texas tax objection, such as the attempt to eliminate setoff rights with respect to taxes and, as discussed above, more broadly as to creditors' rights in general.

5. Environmental Claims

Once again, the MPA is written so confusingly, it is impossible to tell what is intended to be transferred and what retained. In that regard, the MPA uses defined terms "Liabilities" and

"Claims" that go far beyond bankruptcy claims in terms of the types of obligations covered (i.e., including matters that do not involve "rights to payment"). Moreover, the definitions include unknown liabilities that would not be bankruptcy Section 101(5) "claims." *See, e.g., In re Chateauguay Corp.,* 944 F.2d at 1003-1005 (discussing example of persons who might be injured post-confirmation if a bridge on which they were passing collapsed), *In the Matter of Crystal Oil Co.,* 158 F.3d 291, 296 (5th Cir. 1998) (environmental claim does not arise until agency can tie debtor to known release of hazardous substance). Section 2.3(a)(viii) provides for the assumption of liabilities resulting from Newco's ownership or operation of the properties that it acquires, which, under *In re CMC Heartland Partners,* 966 F.2d 1143 (7th Cir. 1992), includes the obligation to clean up pre-existing contamination. Section 2.3(b)(iv)(A), on the other hand, *excludes* all Liabilities arising out of prepetition violations of environmental law by the Debtors, including remedial obligations arising therefrom. So, on the one hand, Newco is assuming the obligation to clean up prepetition contamination and, on the other hand, it is disclaiming the obligation to remedy prepetition violations that could cause exactly that same contamination. It is, accordingly, impossible to tell from this what Newco intends to do with respect to these obligations. The States attempted unsuccessfully on June 18th to obtain a determination from the Debtors and Newco as to what was intended here. The States, accordingly, object to any order being entered approving the MPA until these contradictions are resolved.

Further, there is a great deal of statutory and case law that deals with the extent of a buyer's obligation for environmental obligations of the seller. Those obligations turn, in large part, on whether the buyer is a successor within the meaning of those statutes and case law – a determination that turns on the facts of the transaction, not the desires of the purchaser as to whether or not it *wants* to be a successor. Accordingly, as discussed further above, this Court is

not in a position to determine any issues regarding the successor liability of Newco or allowing it to escape liability for the clean-up obligations of the Debtors, without first undertaking a full evidentiary determination of whether Newco is, indeed, a successor to GM. The States object to any provision of the MPA or the proposed Order that would simply dictate that result without completing a specific analysis of the facts and law applicable to successor status.[27]

CONCLUSION

Wherefore, for the reasons stated above, the States respectfully object to the approval of the Motion or entry of the Order in their current form and request that the Court grant relief only to the extent consistent with the positions taken herein.

Signed:

STATE OF NEBRASKA

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[27] The States do not necessarily advocate that such an analysis is needed here. The court's power under Section 363(f), as discussed above, deals with selling assets free and clear of other interests in that asset and attaching those interests to the proceeds of the sale. Claims are not covered by Section 363(f) and, accordingly, determination of how to proceed on a particular claim can, appropriately be deferred to a later date when that claim is actually at issue.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June, 2009, a true and correct copy of the foregoing was served on all those parties receiving notice via the Court's Electronic Case Filing System (through ECF) and the parties below via U. S. Mail First Class, postage prepaid on the following parties:

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APPENDIX A

Specific Violations of Law in Participation Letter ("PL") (as amended)

1. GM's Efforts to Amend These Agreements are Procedurally Flawed (Par. 6)

The laws of many States prohibit adverse modifications of dealer agreements without adequate notice and an opportunity to protest the modification. [Ark. Code Ann. § 23-112-101(a)(2)(P) (prohibiting vehicle manufacturers from failing "to continue in full force and operation a motor vehicle franchise agreement, notwithstanding a change, in whole or in part, of an established plan or system of distribution or ownership of the manufacturer of the motor vehicles…."); Md. Code Ann., Transp. II § 15-209(a); RCW 46.96.030 (notice requirement to terminate), RCW 46.96.040 (good cause required)] If such a change is shown, the manufacturer may seek to show that it had "good cause" for the proposed changes. Here, the PL plainly imposes such substantial adverse modifications – but, by their terms, they threaten the dealer with the loss of its business if it seeks to obtain the States' review of the terms of the PL or to protest the changes.

2. GM Violates the States Law on Inventory Purchases (Par. 2 and 3)

In light of the long history of manufacturers forcing dealers to purchase excess inventory, the laws of many States bar manufacturers from attempting to require a dealer to order anything unless the debtor "voluntarily" chooses to request the item. [NRS §60-1430.02, 60-1436; Ark. Code Ann. § 23-112-403(a)(1)(A); KRS 190.070(1)(a), KRS 190.040(1)(m); M.G.L. c 93B Section 4. (a) (b) It shall be a violation of subsection (a) of section 3 for a manufacturer, distributor or franchisor representative, to coerce, any motor vehicle dealer: (1) to accept or buy any motor vehicle, appliance, equipment, part or accessory, or any other commodity or service which has not been ordered or requested by the motor vehicle dealer; or to require a motor

vehicle dealer to accept, buy, order or purchase a motor vehicle, appliance, equipment, optional part or accessory, or any commodity or service or anything of value whether supplied or rendered by the manufacturer, distributor or franchisor representative in order to obtain any motor vehicle or any other commodity which has been ordered or requested by the motor vehicle dealer; Md. Code Ann., Transp. II § 15-207(c).

The original PL (par. 3) provided for Newco to unilaterally set sales quota and then demanded that the dealer must "order and accept from the 363 Acquirer additional new Motor Vehicles of the Existing Model Lines to meet or exceed the sales guidelines provided by the 363 Acquirer relating to Dealer's increased sales expectations . . . ." That mandatory requirement was scaled back in the amendments to a statement that GM expected its dealer would be able to sell more cars, that there would be a collaborative process to set sales goals in early 2010 and that the expectation was merely that dealers would order sufficient inventory to meet the sales goals. While such language is probably not violative, one State has already received calls indicating that the original, more rigid language is being enforced. The States reserve their rights to enforce their laws against either GM or Newco to the extent that they assert such pressure.

3. GM/Newco May Violate Dealers Right To Market Other Brands. (Par. 4)

Many states prohibit a manufacturer from unilaterally barring a dealer from carrying more than one manufacturer's product. [Ark. Code Ann. §§ 23-112-403(a)(2)(N), 23-112-403(a)(2)(O); KRS 190.070(1)(g)(j); Md. Code Ann., Transp. II § 15-207(d)(1); RCW 46.96.185(1) (j) and (i) (unfair practice under RCW 19.86 for a manufacturer to terminate or coerce a dealership into agreeing that it will not sell another make or line of new motor vehicles), RCW 49.96.185(4) (unfair practice related to franchise agreement violates Consumer Protection Act)]. The original paragraph 4 in the PL flatly required dealers to eliminate any other brand

names from their premises by December 31, 2009. After considerable discussion with objecting parties, the Debtor revised that language to insist only that dealers maintain an exclusive "showroom" for GM brands. That provision might have been appropriate, but it was coupled with a statement that "GM reserves the right to require in certain markets that dealer provide completely exclusive GM facilities on the dealership premises going forward." Thus, at most, a totally unlawful demand has been scaled back to an indeterminate status under which Newco still may demand that dealers forego their rights under state law to sell non-GM brands and limit themselves solely to the Debtors (and Newco's brands). Again, this agreement by its very nature is intended to apply after closure of the sale and well into the future – allowing Newco to demand concessions and rights that other manufacturers are barred from exercising.

4. Dealer Location Provisions (par. 5).

The PL amendment suggests that a 6-mile ratio for new dealership locations is already provided for by the dealer's contracts; the laws of various States require larger zones and the dealer's proposal would force existing dealers to accept additional locations within those zones for up to the next four years, thus again violating the laws. [KRS 190.047(6) (existing line dealers may protest competing new or relocated locations within ten (10) miles of their existing location); RCW 46.96.190 (prohibits a manufacturer from coercing or requiring a dealer to waive the dealer's right to protest the location of a new dealership within the current dealer's territory), RCW 46.96.150 (territory limits depending on population and other standards; allows the dealers to either arbitrate a dispute or file an administrative appeal with the state)].

5. L**imitations of Rights to File Claims (par. 6).**

Contrary to the Codes' provisions that require a full "cure" of all amounts owed in order

to assume a contract, the PL provides for certain limited categories of expenses to be paid (i.e., SFE Bonuses for the second quarter of 2009; warranty claims for work in the last 90 days, incentives and amounts owed under the dealers' "Open Account," and indemnity amounts). In order for the dealer to have its contract assumed, it must then agree to simply forfeit any other claims or causes of action – whether accrued, pending, current or future, known or unknown – with no compensation whatsoever and no cure. The dealer agrees that it will not file any protest of the terms of the PL and that it can be enjoined from doing so. Moreover, the dealer must pay GM's attorneys fees for any litigation arising out of *any* breach of the PL – including presumably failure to make adequate sales, remove other brands, and the like. These provisions violate not only the Code's provisions on "cure," which bar the contract from being assigned if outstanding damages thereunder are not paid, but also violate States' laws that require warranty claims to be promptly paid by the manufacturer. [Ark. Code Ann. § 23-112-313(b)(3); RCW 46.96.080 (requires compensation for inventory and equipment upon termination of a franchise); RCW 46.96.090 (requires compensation for facilities upon termination); RCW 46.96.105 (payment of warranty work required)].

The provision also violates the provisions in the laws of the States that provide that agreements to waive the protections of those laws (including their protest procedures) are void and unenforceable. [Ark. Code Ann. § 23-112-403(b)(1) (prohibiting vehicle manufacturers from requiring, as a condition of the grant or renewal of a franchise agreement, a waiver of any remedies or defenses conferred by the statute); KRS 190.070(1)(i) (as to future claims); Md. Code Ann., Transp. II § 15-207(f) (as to attorneys' fees only); M.G.L. c. 93B, section 4(2)(c) (It shall be deemed a violation of subsection (a) of section 3 for a manufacturer, distributor or franchisor representative; (11) to coerce a motor vehicle dealer to assent to a release, assignment,

novation, waiver or estoppel which would prospectively relieve any person from liability imposed by this chapter.)]

6. Modification of Other Agreements (par. 7).

This paragraph requires dealers to comply with the modifications made by the PA to their Dealer Agreements and to allow the Debtors and/or Newco to make changes to supplementary agreements with the Dealers ("Channel Agreements") which potentially violates provisions in States' laws that provide for how terms of a franchise may be modified. [Ark. Code Ann. § 23-112-403(a)(2)(P) requires manufacturers to "continue[] in full force and operation a motor vehicle dealer franchise agreement," notwithstanding a change in the distribution system or ownership of the manufacturer; KRS 190.070(1)(e) as "franchise" is broadly defined to cover all agreements concerning the purchase and sale of the product; Md. Code Ann., Transp. II § 15-207(e)(2)(i)] The statute, arguably, means that manufacturers must continue the EXISTING agreement, unaltered. That is particularly true in that there appear to be no limits to the modifications that can be imposed. The bar in subparagraph 7(b) on the dealer's right to sue with respect to the rejection of certain existing/outstanding agreements again may violate laws that deal with modifying agreements and protesting changes thereto. [Ark. Code Ann. § 23-112-403(b)(1) (prohibiting vehicle manufacturers from requiring, as a condition of the grant or renewal of a franchise agreement, a waiver of any remedies or defenses conferred by the statute)]. Finally, paragraph 7(c)'s requirements for increased floor plan capability and increased sales and inventory expectations again my violate bars on dealers being forced to order unneeded items or to meet unreasonable sales and service standards. [Ark. Code Ann. § 23-114-403(a)(1)(A); RCW 46.96.185 (e) makes it an unfair practice to require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles].

7. Jurisdiction Provisions (Par. 9(g) as amended).

The PL provides for the bankruptcy court to have "exclusive" jurisdiction to "interpret, enforce, and adjudicate" issues arising under the PL. That likely violates 28 U.S.C. 1334(b) to the extent that the disputes arise between the dealer and Newco (both non-debtor parties) about issues that will not affect the debtor's estate. *See Concerto Software, Inc. v. Vitaquest Int'l, Inc.*, 290 B.R. 448, 454 (D. Me. 2003) (finding that the court lacked jurisdiction over dispute regarding contract assigned in bankruptcy because "case law provides that an assumption and assignment of an executory contract under section 365 substitutes the assignee for the debtor" and "[p]ursuant to section 365(k), the debtor is then 'relieved from any liability for any breach of contract occurring after such assignment.'") (citations omitted). Moreover, "it is a fundamental proposition that parties cannot confer subject matter jurisdiction by agreement." *H & L Developers, Inc. v. Arvida/JMB Partners (In re H & L Developers, Inc.),* 178 B.R. 71, 75 n.6 (Bankr. E.D. Pa. 1994). If the Debtors wish to obtain the benefits of assigning these agreements and relieving themselves of liability thereunder, they cannot simultaneously retain jurisdictional provisions that derive from their bankruptcy proceedings.

Most States provide that their Department of Motor Vehicles or similar agency has jurisdiction to regulate these matters. [NRS §60-1433; Ark. Code Ann. § 23-112-104(authorizes the Arkansas Motor Vehicle Commission to seek injunctive relief in the Circuit Court for Pulaski County.); RCW 46.96.030 *et. seq.* (administrative jurisdiction upon dealer request); Ark. Code Ann. § 23-112-105 (private causes of action in "any court of competent jurisdiction" are authorized); KRS 190.070(1)(i); KRS 190.020 (KMVC has supervision over the licensees . . . in respect to all the provisions of KRS 190.010 to 190.080); Md. Code Ann., Transp. II § 15-209(e)]. Thus, this is yet another attempt to override that state law and place these issues in the

bankruptcy court. While that court may have jurisdiction over disputes between the debtor and the dealer, that jurisdiction is not exclusive where the States may exercise police and regulatory power. And, by the same token, if there are actions involving the dealers that may be subject to the automatic stay, that stay will not apply if the action is solely between two non-debtor parties (Newco and the dealer).

APPENDIX B

Specific Violations of Law in Wind-Up Letter ("WL")

1. **Termination Date (par. 1)** – While the agreement purports to allow dealers to continue until October 31, 2010, Par. 2(a) actually allows termination by Newco on thirty days notice, starting after December 31, 2009. Thus, a dealer expecting to continue for several more months can be forced to cease operations with only 30 days notice. That period is less than the transition period allowed in most States' laws and the procedure is also not what is to be used. In particular, for instance, while this process is plainly being driven by the Debtors, the WL forces the *dealer* to purportedly act to terminate the dealership, apparently to make it appear that this is a voluntary act by the dealer. [NRS §60-1420, 60-1433; Ark. Code Ann. § 23-112-403(a)(2)(B) (requiring manufacturers to notify dealers at least 60 days prior to the effective date of a termination); KRS 190.045; Md. Code Ann., Transp. II § 15-209(a), (d); RCW 46.96.070(90 days notice before effective date of termination required)].

2. **Turnover of Data (par. 2(b))** – The Dealer must immediately give Purchaser access to all of its customer records to allow it and retained dealers to communicate with and solicit business from those customers. The States' laws would not require/permit this sort of appropriation of property rights or encroachment on the terminating dealers' business during the transition period. [Md. Code Ann., State Gov't 10-616(p)(4); RCW 46.96.185 makes it an unfair practice to use confidential information, including customer lists, to unfairly compete with the dealer. If the terminated dealer continues to operate as an unused dealership without a franchise, coercive turnover of the customer lists may be considered "unfair competition." A violation of RCW 46.96.185 is a violation of the Consumer Protection Act (RCW 46.96.185(4))].

3. **Assistance Offered (pars. 3 and 4)** – This provides that, in consideration of the

termination, the transfer of the right to use lists, and the releases, dealers will get a specified sum of money. 25% will be paid up front, and the remainder if Dealer has sold all inventory by termination effective date, provided assurances of payments to all taxing authorities, and satisfied numerous other conditions. Even so, Par. 3(c) allows payment to be withheld if there are any "competing claims" until those claims have all been resolved. These provisions are in lieu of all right allowed under the States' laws and dealers are given no option to insist upon their rights under those States' laws. Specifically, Par. 4 provides that this payment is in lieu of all other rights under those statues including obligations to repurchase cars, tools, parts, etc. or to provide other assistance. The attempt to coerce agreement to waive those rights is a further, separate violation.

[Ark. Code Ann. § 23-112-403(a)(2)(K) (requiring dealers to buy back vehicle inventories, special tools, and so forth); KRS 190.045 if less than the statutory amounts; Md. Code Ann., Transp. II § 15-207(b); RCW 46.96.080, 46.96.090].

4. **Waiver of Rights – (par. 5(a))** – The Dealer agrees that it waives *any* other rights against GM or acquirer arising out of dealer agreements, dealer operations, any payments or bonuses, except those owed for second quarter of 2009, warranty work within last 90 days, any amounts currently owed in Open Account, amounts owed under Par. 17.4 (indemnity provisions), all of which are subject to setoff by GM/acquirer. GM or the acquirer may charge back false, fraudulent, unsubstantiated warranty claims for up to 2 years. This violates provisions of the States' law requiring payment for warranty work [Ark. Code Ann. § 23-112-403(a)(2)(B) (requiring manufacturers to notify dealers at least 60 days prior to the effective date of a termination); M.G.L. c. 93B section 4(c) It shall be deemed a violation of subsection (a) of

section 3 for a manufacturer, distributor or franchisor representative: (11) to coerce a motor vehicle dealer to assent to a release, assignment, notation, waiver or estoppel which would prospectively relieve any person from liability imposed by this chapter; Md. Code Ann., Transp. II § 15-207(b)], as well as violating the rights of the dealers to file claims under the Code. This would also require dealers to waive their rights under various State laws to require an acquirer to accept their contract [Ark. Code Ann. § 23-112-403(a)(2)(P)] and use the normal State law procedures should it seek to terminate the agreement [Ark. Code Ann. § 23-112-403(a)(2)(C) (prohibiting terminations without good cause and establishing procedures for good-cause termination proceedings); KRS 190.045, KRS 190.070(1)(i).] . The attempt to coerce agreement to waive that provision is an additional violation. [Ark. Code Ann. § 23-112-403(b)(1)].

5. **Violation of Protest Rights - (par. 5(c))** – This requires dealers to agree not to protest, file anything in any court, claim any of these provisions are unenforceable or void before a state law tribunal and so forth. GM can enjoin dealers from taking any such actions, demand a right of specific performance of the waiver and, under Par. 5(d), the dealers must indemnify GM for its costs to enforce these provisions. Again, the forced waiver of statutory rights itself violates the statute. [NRS §60-1436; Ark. Code Ann. § 23-112-403(b)(1); KRS 190.045; Md. Code Ann., Transp. II § 15-206.1].

6. **No Right to Purchase Additional Vehicles – (par. 6)** – After signing, the dealer has no right to order any more cars. It can buy parts, but may not return any. This violates laws of the States that require manufacturers to supply the reasonable needs of the dealership while the agreement is in effect. [Ark. Code Ann. § 23-112-403(a)(2)(A); KRS 190.070(2)(a) and subsection 3; Md. Code Ann., Transp. II § 15-207(d); RCW 46.96.185(1)(e)(unfair practice

under consumer protection act to give preferential treatment to some dealers)].

This also means that dealers will effectively be squeezed out of business long before the purported October 31, 2010, end date of the agreements.

7. **Waiver of Rights to Protest Competing Dealers – (par. 7(a))** – This provides that GM and/or Newco can immediately move in a competing dealer and the dealer may not protest in any way. Not only must it waive any suit of its own, but under Par. 7(b), it also may not "assist in the prosecution of any action, arbitration, mediation, suit, etc." to "challenge, protest, prevent, impede or delay, directly or indirectly, any establishment of relocation whatsoever of motor vehicle dealerships. Par. 7(b)(c) releases any claim that the dealer may have under state law regarding such violative actions and Par. 7(d) allows GM or Newco to enjoin any violations of these provisions by the dealer. [Ark. Code Ann. § 23-112-311 (establishing dealers' rights to protest the addition or relocation of new motor vehicle dealers); Ark. Code Ann. § 23-112-403(b)(1) (prohibiting manufacturers from obtaining coerced waivers)]. These forced waivers of rights under the States' laws violate those laws [KRS 190.047(existing line dealers may protest competing new or relocated locations within ten (10) miles of their existing location); Md. Code Ann., Transp. II § 15-208(e); RCW 46.96.140; 46.96.150 (dealer right to protest new dealership in market area)] particularly when they would apparently extend so far as to even bar a dealer from cooperating in any action brought by the States to enforce their laws.

8. **Confidentiality – (par. 9)** – The dealer is not allowed to reveal the terms or conditions of the WL, thereby again interfering with the States ability to monitor these agreements and determine if they violate the States' laws. [Md. Code Ann., Transp. II § 15-203(b)].

9. **Forced Statement of Voluntary Action (par. 10)** – The dealer is required to agree that its actions are "entirely voluntary and free from any duress," despite the fact that a failure to sign

the agreement will result in a threatened immediate loss of its business (in violation of the laws of the States) and the fact that the dealer could not discuss or negotiate the terms of the WL in any way. [Md. Code Ann., Transp. II §15-207(b)].

10. **Jurisdiction (par. 9)** – As with the PL, the WL attempts to give the bankruptcy court full, complete, and exclusive jurisdiction to interpret, enforce, and adjudicate disputes concerning the terms of this agreement *and any other matter related thereto.* Thus, this provision not only suffers from the same infirmities under federal law and the laws of the States but it goes even further by attempting to extend exclusive jurisdiction to any "matter related to" the WL, whatever that may entail. [Ark. Code Ann. § 23-112-104 (authorizes the Arkansas Motor Vehicle Commission to seek injunctive relief in the Circuit Court for Pulaski County), Private causes of action in "any court of competent jurisdiction" are also authorized under Ark. Code Ann. § 23-112-105; KRS 190.070(1)(i), KRS 190.020 to the extent it seeks to deny the KMVC the ability to "have supervision over the licensees . . . in respect to all the provisions of KRS 190.010 to 190.080; Md. Code Ann., Transp. II § 15-209(e)].

11. **Additional Agreements (par. 14) –** Despite the termination of its primary agreement, the dealer must continue to abide by "Channel Agreements" which include obligations to "construct or renovate facilities," to meet sales standards as a condition of receiving payments (although the dealers are being denied any new inventory), and similar obligations. The dealer must also agree not to protest if GM rejects those agreements. As well as being wholly one-sided, this provision again violates the provisions of the laws of the States dealing with how agreements with dealers may be modified, as well as the bars on coercing dealers to modify such agreements. [Ark. Code Ann. § 403(b)(2)(P) (prohibiting manufacturers from not continuing "in full force and operation a motor vehicle franchise agreement, notwithstanding a change, in whole

or in part, of an established plan or system of distribution or ownership of the manufacturer of the motor vehicles offered for sale under the franchise agreement"); KRS 190.070(1)(e) as "franchise" is broadly defined to cover all agreements concerning the purchase and sale of the product; Md. Code Ann., Transp. II § 15-207(b)].

General Motors Corporation

June 1, 2009

On behalf of the entire GM team, as GM embarks on an exciting new future, I am extremely pleased that has been identified by GM as one of its key dealers for the Buick, GMC Truck brands. As a result, subject to the execution of the enclosed letter agreement, GM intends to seek bankruptcy court approval to assume your existing Dealer Agreements for the Buick, GMC Truck brands and assign such Dealer Agreements to the purchaser of certain of GM's assets in the bankruptcy (the "363 Acquirer"). While recent times in the industry have been challenging to all of us, we believe that this new structure presents an exciting new opportunity for all involved.

Part of GM's restructuring efforts include plans for a dealer network consisting of fewer, stronger and more properly located dealers which we hope will allow for higher through-put and enhanced business potential. Your selection as a dealer for the Buick, GMC Truck brands shows the confidence we have in your dealership being part of the new GM. As part of these efforts, it is critically important that key dealers, like you, are fully committed to, and fully supportive of, GM's restructuring efforts. In order for your Dealer Agreements to be assigned to the 363 Acquirer, you must execute the enclosed letter agreement.

The letter agreement addresses several key areas of dealership performance going forward. These key areas are addressed in detail in the enclosed letter agreement, which you should carefully read, but highlights include:

- Introduction of the new concept of essential brand elements
- Increased sales performance
- Increased inventory responsibilities
- Exclusive facilities for GM operations
- A release of claims against GM, the 363 Acquirer and their related parties
- Agreement to fulfill certain dealer networking actions

A critical part of our dealer network plan is proper channel alignment and dealer focus on the correct brands at the right location. As a result, some retained dealers may receive additional brands. Also, some retained dealers will continue with fewer brands than they currently operate. If your dealership is continuing with fewer brands, enclosed is a separate cover letter and a wind-down agreement, designed to assist you in the orderly winding down of that brand's operations. Please understand that, going forward, GM strongly believes it needs your dealership, as a top performer, in the Buick, GMC Truck dealer network.

Due to extremely short court deadlines in the bankruptcy process, the enclosed letter agreement must be signed by you and received by GM no later than June 12, 2009. We have enclosed a return Federal Express envelope, addressed to GM, for your convenience. If you have any questions, please direct them to our Dealer Call Center at 877.868.8071.

In closing, please know that GM has great respect for, and appreciation of, your past efforts as a GM dealer. We are enthusiastic about the prospects of our mutual success under this new structure.

Sincerely,

GENERAL MOTORS CORPORATION

Letter &
Letter Agreement

General Motors Corporation

June 1, 2009

Via Federal Express

Re: *GM Dealer Sales and Service Agreements/Participation Agreement*

("Dealer") and General Motors Corporation ("GM") are parties to Dealer Sales and Service Agreements (the "Dealer Agreements") for Buick, GMC Truck motor vehicles (the "Existing Model Lines"). Capitalized terms not otherwise defined in this letter agreement will have the definitions set forth for such terms in the Dealer Agreements.

GM is the debtor and debtor-in-possession in a bankruptcy case (the "Bankruptcy Case") pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), having filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). No trustee has been appointed and GM is operating its business as debtor-in-possession.

GM intends to sell, convey, assign and otherwise transfer certain of its assets (the "363 Assets"), to a purchaser (the "363 Acquirer") pursuant to Section 363 of the Bankruptcy Code (the "363 Sale"), subject to approval by and order of the Bankruptcy Court. GM's restructuring in the Bankruptcy Case involves, among other things, the restructuring of its current dealer network. Part of that restructuring includes focus on and retention of those dealers who, based on a number of factors, GM believes have an opportunity to be successful dealers selling and servicing GM's products.

Dealer recognizes that as part of GM's restructuring efforts, a significant number of dealers of the same line make as Dealer will be consolidated. Because this consolidation will result in fewer dealers representing the Existing Model Lines, the retained dealers, including Dealer, will have the opportunity to increase sales significantly. It is therefore vital to Dealer and GM that Dealer agree to implement additional sales and inventory requirements necessary for Dealer to be retained in the 363 Acquirer's dealer network and for Dealer's performance to be in line with such increased opportunity.

In consideration for Dealer's execution and delivery of, and performance under, this letter agreement and subject to Bankruptcy Court approval, GM (i) shall not move to reject the Dealer Agreements in the Bankruptcy Case, and (ii) shall assign the Dealer Agreements to the 363 Acquirer as part of the 363 Sale, provided such sale closes.

10 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR

As a condition of its participation in the 363 Acquirer's dealer network and in consideration of GM's agreements set forth herein, Dealer shall execute and deliver this letter agreement to GM. This letter agreement contains terms that supplement the Dealer Agreements and incorporates requirements that GM believes will enhance Dealer's and the 363 Acquirer's opportunities for success. In addition, GM expects that GM or the 363 Acquirer will from time to time, subject to modification in its sole discretion, publish essential brand element guidelines for dealership operations, including Dealer's operations. The essential brand elements are GM's and the 363 Acquirer's minimum standards for dealership operations and include, among other things, facility image requirements and/or relocation requirements, dedicated sales and service requirements for the Existing Model Lines, and participation in customer information programs.

This letter agreement will become effective upon the date of Dealer's due execution and delivery of this letter agreement to GM (the "Effective Date"). If Dealer executes and delivers this letter agreement to GM on or before **June 12, 2009**, subject to Bankruptcy Court approval, the 363 Assets will include, without limitation, the Dealer Agreements, as supplemented by this letter agreement. If Dealer does not sign and deliver to GM this letter agreement on or before **June 12, 2009**, GM may, in its sole discretion, move to reject the Dealer Agreements in the Bankruptcy Case. If the 363 Sale does not occur on or before August 31, 2009 (or such later date as GM or the 363 Acquirer may select in their sole discretion), GM or the 363 Acquirer may, at their sole option and at any time thereafter, terminate this letter agreement by written notice to Dealer.

SUPPLEMENTAL TERMS

1. Defined Terms. All initially capitalized terms used and not otherwise expressly defined herein shall have the meanings set forth for such terms in the Dealer Agreements.

2. Sales Performance. Dealer recognizes that, as a result of the consolidation of GM dealers undertaken by GM to strengthen the dealer network and increase dealer through-put, Dealer has substantially more sales opportunities and Dealer must substantially increase its sales of new Motor Vehicles. The 363 Acquirer will provide to Dealer an annual number of new Motor Vehicles that Dealer must sell to meet the 363 Acquirer's increased sales expectations and will update such annual sales number on a periodic basis throughout each year. Dealer's requirements to meet the 363 Acquirer's sales targets are in addition to the sales effectiveness requirements of the current Dealer Agreements. Dealer acknowledges and agrees that compliance with the sales effectiveness requirements of the Dealer Agreements alone will not be sufficient to meet the requirements of this Section 2 and Dealer must meet the sales effectiveness requirements of the Dealer Agreements, as supplemented by this letter agreement.

3. New Vehicle Inventory. Dealer recognizes that, due to the consolidation of GM dealers representing the Existing Model Lines and the expected sales increases contemplated in Section 2 above, Dealer will need to stock additional Motor Vehicles. Dealer shall use its best efforts to stock sufficient additional new Motor Vehicles to meet the increased sales expectations. To facilitate its expected increased sales, Dealer shall, upon the written request from the 363 Acquirer, order and accept from the 363 Acquirer additional new Motor Vehicles of the Existing Model Lines to meet or exceed the sales guidelines provided by the 363 Acquirer relating to Dealer's increased sales expectations contemplated in Section 2 above. In addition, upon Dealer's written request, the 363 Acquirer shall coordinate with, and provide to, GMAC (or such other floor plan provider designated by Dealer), updated sales expectations and other information necessary for GMAC (or such other floor plan provider designated by Dealer) to act upon Dealer's request for additional floor plan funding.

4. Exclusivity. During the remaining term of the Dealer Agreements (the "Exclusivity Period"), Dealer shall actively and continuously conduct Dealership Operations only for the Existing Model Lines

at the premises authorized for the conduct of Dealership Operations under the Dealer Agreements (the "Dealership Premises"). During the Exclusivity Period, the Dealership Premises may not be used for any purpose other than Dealership Operations for the Existing Model Lines (including, but not limited to, the sale, display, storage and/or service of vehicles not approved by the Dealer Agreements, other than as specifically contemplated by the term "Dealership Operations") without the express prior written consent of GM or the 363 Acquirer, which consent may be granted or withheld in GM's or the 363 Acquirer's sole discretion. In the event that Dealer currently operates any non-GM dealership on the Dealership Premises, Dealer shall cease all non-GM Dealership Operations at the Dealership Premises on or before December 31, 2009. Notwithstanding anything to the contrary in the Dealer Agreements, state law or otherwise, if Dealer fails to cure any default under this Section 4 within thirty (30) days after written notice of default from GM or the 363 Acquirer, GM or the 363 Acquirer shall be entitled to all of their remedies as set forth in Section 8 below, including without limitation, the right to terminate the Dealer Agreements.

5. No Protest. In connection with GM's restructuring plan and consolidation of the dealer network, GM intends that GM and the 363 Acquirer have a dealer network consisting of fewer, stronger and more properly located dealers allowing for higher through-put and enhanced business potential.

(a) GM or the 363 Acquirer may desire to relocate or establish representation for the sale and service of motor vehicles for the Existing Model Lines at a site located in the vicinity of the Dealership Premises (the "Proposed Site"). In consideration of GM's and the 363 Acquirer's covenants and obligations herein, and provided that (i) GM or the 363 Acquirer notifies Dealer of any such relocation or establishment within two (2) years after the later of (x) the date of the 363 Sale or (y) the Effective Date (the "No Protest Commencement Date"), (ii) such relocation or establishment is substantially completed on or before the date which is four (4) years after the No Protest Commencement Date, and (iii) the Proposed Site is, measured by straight line distance, at least six (6) miles from the then current location of the Dealership Premises, Dealer covenants and agrees that it will not commence, maintain, or prosecute, or cause, encourage, or advise to be commenced, maintained, or prosecuted, or assist in the prosecution of any action, arbitration, mediation, suit, proceeding, or claim of any kind, before any court, administrative agency, or tribunal or in any dispute resolution process, whether federal, state, or otherwise, to challenge, protest, prevent, impede, or delay, directly or indirectly, establishment or relocation of a motor vehicle dealership for any of the Existing Model Lines at or in the vicinity of the Proposed Site.

(b) Dealer, for itself, its Affiliates (as defined below) and any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors, and assigns (collectively, the "Dealer Parties"), hereby releases and forever discharges GM, the 363 Acquirer, their Affiliates and their respective members, partners, venturers, stockholders, directors, officers, employees, agents, spouses, legal representatives, successors and assigns (collectively, the "GM Parties"), from any and all past, present, and future claims, demands, rights, causes of action, judgments, executions, damages, liabilities, costs, or expenses (including attorneys' fees) which they or any of them have or might have or acquire, whether known or unknown, actual or contingent, which arise from, are related to, or are associated in any way with, directly or indirectly, the establishment or relocation of any of the Existing Model Lines described in Section 5(a) above.

(c) Dealer recognizes that it may have some claim, demand, or cause of action of which it is unaware and unsuspecting which it is giving up pursuant to this Section 5. Dealer further recognizes that it may have some loss or damage now known that could have consequences or results not now known or suspected, which it is giving up pursuant to this Section 5. Dealer expressly intends that it shall be forever deprived of any such claim, demand,

cause of action, loss, or damage and understands that it shall be prevented and precluded from asserting any such claim, demand, cause of action, loss, or damage.

(d) Dealer acknowledges that, upon a breach of this Section 5 by Dealer, the determination of the exact amount of damages would be difficult or impossible and would not restore GM or the 363 Acquirer to the same position they would occupy in the absence of breach. As a result of the foregoing, any such breach shall absolutely entitle GM and the 363 Acquirer to an immediate and permanent injunction to be issued by any court of competent jurisdiction, precluding Dealer from contesting GM's or the 363 Acquirer's application for injunctive relief and prohibiting any further act by Dealer in violation of this Section 5. In addition, GM and the 363 Acquirer shall have all other equitable rights in connection with a breach of this Section 5 by Dealer, including, without limitation, the right to specific performance.

6. Release; Covenant Not to Sue; Indemnity. In consideration for GM's covenants and agreements set forth herein, including, without limitation, the assignment of the Dealer Agreements in the 363 Sale:

(a) Dealer, for itself, the other Dealer Parties, hereby releases, settles, cancels, discharges, and acknowledges to be fully satisfied any and all claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, actions, and causes of action of every kind and nature whatsoever (specifically including any claims which are pending in any court, administrative agency or board or under the mediation process of the Dealer Agreements), whether known or unknown, foreseen or unforeseen, suspected or unsuspected ("Claims"), which Dealer or anyone claiming through or under Dealer may have as of the date of the execution of this letter agreement against the GM Parties, arising out of or relating to (i) the Dealer Agreements or this letter agreement, (ii) any predecessor agreement(s), (iii) the operation of the dealership for the Existing Model Lines, (iv) any facilities agreements, including without limitation, any claims related to or arising out of dealership facilities, locations or requirements, Standards for Excellence ("SFE") related payments or bonuses (except that GM or the 363 Acquirer shall pay any SFE funds due the Dealer for the second (2nd) quarter of 2009), and any representations regarding motor vehicle sales or profits associated with Dealership Operations under the Dealer Agreements, or (v) any other events, transactions, claims, discussions or circumstances of any kind arising in whole or in part prior to the effective date of this letter agreement, provided, however, that the foregoing release shall not extend to (x) reimbursement to Dealer of unpaid warranty claims if the transactions giving rise to such claims occurred within ninety (90) days prior to the date of this letter agreement, (y) the payment to Dealer of any incentives currently owing to Dealer or any amounts currently owing to Dealer in its Open Account, or (z) any claims of Dealer pursuant to Article 17.4 of the Dealer Agreements, all of which amounts described in (x) - (z) above of this sentence shall be subject to setoff by GM or the 363 Acquirer of any amounts due or to become due to either or any of their Affiliates.

(b) As set forth above, GM reaffirms the indemnification provisions of Article 17.4 of the Dealer Agreements and specifically agrees that such provisions apply to all new Motor Vehicles sold by Dealer.

(c) Dealer, for itself, and the other Dealer Parties, hereby agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert (i) any Claim that is covered by the release provision in subparagraph (a) above, or (ii) any Claim that is based upon, related to, arising from, or otherwise connected with the assignment of the Dealer Agreements by GM to the 363 Acquirer in the 363 Sale or an allegation that such assignment is void, voidable, otherwise unenforceable, violates any

applicable law or contravenes any agreement. Any breach of the foregoing shall absolutely entitle GM and the 363 Acquirer to an immediate and permanent injunction to be issued by any court of competent jurisdiction, precluding Dealer from contesting GM's or the 363 Acquirer's application for injunctive relief and prohibiting any further act by Dealer in violation of this Section 6. In addition, GM and the 363 Acquirer shall have all other equitable rights in connection with a breach of this Section 6 by Dealer, including, without limitation, the right to specific performance.

(d) Dealer shall indemnify, defend and hold the GM Parties harmless, from and against any and all claims, demands, fines, penalties, suits, causes of action, liabilities, losses, damages, and expenses (including, without limitation, reasonable attorneys' fees and costs) which may be imposed upon or incurred by the GM Parties, or any of them, arising from, relating to, or caused by Dealer's (or any other Dealer Parties') breach of this letter agreement or Dealer's execution or delivery of or performance under this letter agreement. "Affiliate" means, with respect to any Person (as defined below), any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents, employees and spouses. "Person" means an individual, partnership, limited liability company, association, corporation or other entity. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise.

(e) The terms of this Section 6 shall survive the termination of this letter agreement.

7. Compliance. In consideration for GM's covenants and agreements set forth herein, including, without limitation, the assignment of the Dealer Agreements in the 363 Sale, from and after the Effective Date:

(a) Dealer shall continue to comply with all of its obligations under the Dealer Agreements, as supplemented by the terms of this letter agreement. In the event of any conflict between the Dealer Agreements and this letter agreement, the terms and conditions of this letter agreement shall control, unless otherwise set forth herein.

(b) Dealer shall continue to comply with all of its obligations under Channel Agreements (as defined below) between GM and Dealer, provided that GM or the 363 Acquirer and Dealer shall enter into any amendment or modification to the Channel Agreements required as a result of GM's restructuring plan, in a form reasonably satisfactory to GM or the 363 Acquirer. In the event of any conflict between the terms of the Channel Agreements and this letter agreement, the terms and conditions of this letter agreement shall control. The term "Channel Agreements" shall mean agreements (other than the Dealer Agreements) between GM and Dealer imposing on Dealer obligations with respect to its Dealership Operations under the Dealer Agreements, including, without limitation, obligations to relocate Dealership Operations, to construct or renovate facilities, not to protest establishment or relocation of other GM dealerships, to conduct exclusive Dealership Operations under the Dealer Agreements, or to meet certain sales performance standards (as a condition of receiving or retaining payments from GM or otherwise). Channel Agreements may be entitled, without limitation, "Summary Agreements," "Agreements and Business Plan," "Exclusive Use Agreements," "Performance Agreements," "No-Protest Agreements," or "Declaration of Use Restriction, Right of First Refusal, and Option to Purchase." Notwithstanding the foregoing, the term "Channel Agreement" shall not mean or refer to (i) any termination agreement of any kind with respect to the Dealer Agreement between Dealer and GM (each a "Termination Agreement"), (ii) any performance agreement of any kind between Dealer

and GM (each a "Performance Agreement"), or (iii) any agreement between Dealer (or any Affiliate of Dealer) and Argonaut Holdings, Inc., a Delaware corporation and wholly-owned subsidiary of GM ("AHI"), including, without limitation, any agreement entitled "Master Lease Agreement," "Prime Lease," or "Dealership Sublease" (and Dealer shall comply with all of the terms of such agreements with AHI). Dealer acknowledges that GM shall be entitled, at its option, to move to reject any currently outstanding Termination Agreements or Performance Agreements in the Bankruptcy Case. By executing this letter agreement, Dealer agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert any objection or protest of any kind with respect to GM's rejection of such Termination Agreements or Performance Agreements.

(c) Dealer shall (i) comply with the essential brand elements set forth in any subsequently published guidelines from GM or the 363 Acquirer, and (ii) increase its floor plan capability to accommodate the increased sales and inventory expectations contemplated in Sections 2 and 3 above.

8. Breach and Remedies. In return for the consideration provided by GM herein, in the event of Dealer's breach of the Dealer Agreements, as supplemented by this letter agreement, GM and the 363 Acquirer shall have all of its rights and remedies under the Dealer Agreements, as supplemented by this letter agreement, and in addition, (i) GM or the 363 Acquirer may terminate the Dealer Agreements, as supplemented by this letter agreement, upon written notice to Dealer of not less than thirty (30) days, and/or (ii) the 363 Acquirer shall not be obligated to offer Dealer a replacement dealer sales and service agreement upon the termination by its terms of the Dealer Agreements, as supplemented by this letter agreement. In the event that either Dealer or the 363 Acquirer terminates the Dealer Agreements, as supplemented by this letter agreement, after the 363 Sale or the 363 Acquirer does not offer Dealer a replacement dealer sales and service agreement as set forth above, then (x) GM or the 363 Acquirer shall provide Dealer with termination assistance solely as set forth in Section 15.2 of the Dealer Agreements (excluding any facility assistance pursuant to Section 15.3 of the Dealer Agreements), and (y) Dealer waives all other rights under the Dealer Agreements, as supplemented by this letter agreement, and any applicable state laws, rules or regulations regarding termination notice, termination rights, termination assistance, facility assistance or other termination rights.

9. Miscellaneous.

(a) Dealer and the individual(s) executing this letter agreement on behalf of Dealer hereby jointly and severally represent and warrant to GM that this letter agreement has been duly authorized by Dealer and that all necessary corporate action has been taken and all necessary corporate approvals have been obtained in connection with the execution and delivery of and performance under this letter agreement.

(b) This letter agreement shall supplement the Dealer Agreements as of the Effective Date and shall be effective through the remainder of the term of the Dealer Agreements, which shall expire no later than October 31, 2010.

(c) Except as supplemented by this letter agreement (including all exhibits, schedules and addendums to this letter agreement), the Dealer Agreements shall remain in full force and effect as written. Additionally, the Dealer Agreements, as referenced in any other document that the parties have executed, shall mean the Dealer Agreements as supplemented by this letter agreement.

10 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR

(d) This letter agreement may be executed in counterparts, each of which when signed by all of the parties hereto shall be deemed an original, but all of which when taken together shall constitute one agreement.

(e) The Dealer Agreements, as supplemented by this letter agreement, shall benefit and be binding upon (i) to the extent permitted by this letter agreement, any replacement or successor dealer as referred to in the Dealer Agreements, as supplemented by this letter agreement, and any successors or assigns, and (ii) any of GM's or the 363 Acquirer's successors or assigns. Without limiting the generality of the foregoing, after the 363 Sale occurs, this letter agreement shall benefit and bind the 363 Acquirer.

(f) The parties to this letter agreement have been represented, or have had the opportunity to be represented, by counsel and have been advised, or have had the opportunity to be advised, by counsel as to their rights, duties and relinquishments hereunder and under applicable law. In executing this letter agreement, Dealer acknowledges that its decisions and actions are entirely voluntary and free from any duress.

(g) The Dealer Agreement, as supplemented hereby, shall be governed by and construed in accordance with the laws of the state of Michigan.

(h) By executing this letter agreement, Dealer herby consents and agrees that the Bankruptcy Court shall retain full, complete and exclusive jurisdiction to interpret, enforce, and adjudicate disputes concerning the terms of this letter agreement and any other matter related thereto. The terms of this Section 9(h) shall survive the termination of this letter agreement.

(i) Dealer hereby agrees that, without the prior written consent of GM or the 363 Acquirer, it shall not, except as required by law, disclose to any person (other than its agents or employees having a need to know such information in the conduct of their duties for Dealer, which agents or employees shall be bound by a similar undertaking of confidentiality) the terms or conditions of this letter agreement or any facts relating hereto or to the underlying transactions.

(j) If any part, term or provision of this letter agreement is invalid, unenforceable, or illegal, such part, term or provision shall be considered severable from the rest of this letter agreement and the remaining portions of this letter agreement shall be enforceable as if the letter agreement did not contain such part, term or provision.

(k) This letter agreement shall constitute an agreement, executed by authorized representatives of the parties, supplementing the Dealer Agreements as contemplated by Section 17.11 thereof. This letter agreement shall be deemed withdrawn and shall be null and void and of no further force or effect unless this letter agreement is executed fully and properly by Dealer and is received by GM on or before June 12, 2009.

[Signature Page Follows]

10 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RETURNED

Please indicate your approval of, and agreement with respect to, the matters set forth in this letter agreement by signing where provided below and returning it to GM for execution in the enclosed, self-addressed Federal Express envelope.

GENERAL MOTORS CORPORATION

By _____

Authorized Representative

APPROVED AND AGREED TO THIS
___ DAY OF JUNE, 2009

By: _____

Name: _____
Title: _____

THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009, OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN.

10 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON

Amendment

General Motors Corporation
June __, 2009

VIA Federal Express

[DEALER ENTITY CORPORATE NAME]
[DEALER ADDRESS]

To All GM Dealers in the US Who Received a Participation Agreement:

First and foremost, thank you for your continued support and efforts on GM's behalf in these unprecedented and challenging times. As we indicated when we sent you the June 1, 2009 letter agreement (the "Participation Agreement"), GM wants your dealership to be part of GM's future and our whole focus is to try to improve, together, the GM dealer network. We are gratified that, through Monday, June 8, we have already received over half or 2,200 signed Participation Agreements back from dealers, indicating broad dealer support of our objectives for the dealer network.

We have, however, received thoughtful and insightful questions and comments from individual dealers, the NADA and the National Dealer Council (the "NDC") regarding the Participation Agreement. In response, we have had discussions with the NADA and the NDC. As a result of those discussions, we are writing to provide clarity on several points addressed in the Participation Agreement, as well as to amend certain terms and conditions of the Participation Agreement. Again, our whole focus here is to work with GM dealers to insure that both GM and the dealer body are best positioned to compete in this challenging environment and more importantly in the future.

1. Before we address specific portions of the Participation Agreement affected by this letter, it is important that our dealer body fully understands our reasoning for the Participation Agreement. Given the overall consolidation of GM's dealer network, improved and award winning product offerings by GM, and an anticipated improving US vehicle market over the next few years, dealers will have significant opportunities to increase sales. These sales increases are necessary to GM and the dealer networks' viability over the long term. Our intent is to assist dealers as much as possible to sell high quality vehicles and provide the best customer service in the industry. Our expectation for GM dealers is that they will perform to GM's sales and customer satisfaction requirements and, over time, improve their sales performance in line with increased market opportunities. In order to meet and exceed GM's expectations with respect to sales and customer satisfaction, dealers must have up-to-date, competitive facilities that are properly imaged. Further, dealers must align their facilities by GM's channel strategy to the fullest extent possible and eliminate non-GM line makes from their showrooms to place the proper customer focus on the Chevy, BG or Cadillac channels.

2. Dealers, the NADA and the NDC have raised understandable questions about exactly how the sales expectations would be determined. We explained that we were unable to provide specific answers for individual dealerships now given that we don't yet know how many dealers will sign Participation Agreements and be part of our GM dealer network and footprint in the future. However, the process GM intends to use is to work with individual GM dealers to develop specific market plans, sales objectives and plans to meet or exceed those sales objectives over time. By working with our dealers on this critical issue, we expect that our dealers will not only maintain

current sales levels, but will increase sales beyond those levels necessary for the viability of GM's dealer network. In terms of our process, at some point in the first quarter of 2010, we will hold a GM Reinvention business plan meeting with each dealer executing a Participation Agreement. At this meeting GM's channel representatives and the dealer will agree upon appropriate sales targets given the new dealer footprint in the market and other factors, including, but not limited to, dealer's competitive position in the market, dealer's historical market share, and dealer's market opportunity. We anticipate that this process will be substantially the same as the methods used by GM and dealers to set sales targets in the past. It is expected that the increased sales expectations will be implemented for the second half of the 2010 or 2011 calendar year. In addition, if the overall US vehicle market is operating well below forecast at that time, such information will be factored into the calculations for the dealer's sales expectations.

3. In addition to the questions regarding sales expectations, GM received questions regarding inventory expectations. Simply put, GM needs dealers to order adequate inventory to meet or exceed expected sales performance requirements determined by GM and dealer at the GM Reinvention business plan meeting. If the dealer is meeting sales expectations, there will be no reason for GM to question the dealer's ordering practices or inventory levels. If the dealer is not meeting or exceeding sales expectations, and ordering practices or inventory levels are contributing to this problem, GM needs the dealer's commitment to work diligently to address the situation. This issue is addressed in the Participation Agreement. On the other hand, if product availability is an issue, GM will work with the dealer to try to address that issue as well.

4. On the issue of exclusivity, it is assumed that the dealer will remove non-GM brands from the GM showroom by December 31, 2009 as provided in the Participation Agreement and will operate a showroom exclusive to GM products going forward. GM reserves the right to require in certain markets that dealer provide completely exclusive GM facilities on the dealership premises going forward. Of course, you have our commitment to work with you reasonably (1) to determine whether your dealership premises will be exclusive GM and (2) if you cannot reasonably meet the agreed date or dates for exclusivity. It is not our intent to be unreasonable or onerous with respect to exclusivity requirements, but to clearly provide an excellent customer experience for our mutual customers and to help increase sales of GM brands. While most continuing GM dealers operate out of excellent, imaged facilities, there are those that continue to operate out of dated, non-competitive facilities that do not properly represent GM's brands. This is not good for the dealer, GM or the other dealers in the same market. If a dealer's facility is not compliant, GM's channel representative and the dealer will meet and agree on the appropriate action to be taken by GM and the dealer. GM is fully aware of the current difficult conditions in the market, and any request by GM for dealers to invest in their facilities will take into account the realities of the market. To address the foregoing, we are hereby amending Section 4 of the Participation Agreement to delete the existing third sentence and insert the following in its place:

> "In the event that Dealer currently operates any non-GM dealership on the Dealership Premises, Dealer shall cease all non-GM Dealership Operations in the GM showroom at the Dealership Premises, on or before December 31, 2009, and Dealer and GM will meet as soon as practical but in all events by the end of 2009, to reasonably determine and mutually agree whether or not and the extent to which non-GM Dealership Operations may continue on the Dealership Premises other than the GM showroom."

In addition we are hereby amending Section 4 of the Participation Agreement to delete the existing fourth sentence and insert the following in its place:

"If Dealer fails to comply with its commitments under this Section 4, GM or 363 requires shall be entitled to all of their remedies pursuant to Article 13.2 of the Dealer Agreement.

5. In terms of waiving the right to protest in certain limited circumstances, we have frankly received a good deal of comment on this provision. First, we are well aware of the provisions of state franchise laws and a dealer's right to protest certain network actions. Accordingly, we drafted this provision to only apply within a limited time frame and outside the six mile provision set forth in the Dealer Agreement. The intent was to provide GM and our dealers the flexibility to move quickly during this period given the dramatically different dealer footprint. It is essential for GM and the dealer body that this flexibility is built into the Participation Agreement in order to secure a strong, vibrant dealer network now and in the future without the need to resort to the time consuming and costly protest procedures within the state process. However, GM does not intend to use this provision to increase the number of same line make dealers in a particular market over the number that exist today. This was a major concern of dealers, the NADA, and the NDC. To address this issue, we are hereby amending Section 5 of the Participation Agreement by adding the following sentence at the end of Section 5(a) thereof:

"Notwithstanding the foregoing, Dealer is not waiving any protest rights whatsoever in the event that GM seeks to increase the number of dealerships for the Existing Model Line(s) in Dealer's contractual area of responsibility from the number that are located in that area as of the date of this letter agreement."

Again, while it is important that GM retain flexibility in this area, GM believes such activity will be limited.

6. A number of concerns have been raised regarding the breach provision of the Participation Agreement. While it is appropriate that GM have remedies in the event of a breach by dealers of the Dealer Agreement, GM is not looking to terminate any Dealer Agreements for those dealers executing a Participation Agreement. Quite the opposite. We have spent considerable time, energy and money trying to retain your dealership in the network. However, to address certain concerns of the dealers, the NADA, and the NDC that the breach provision of the Participation Agreement would override state law protections for dealers, GM has agreed to delete that provision from the Participation Agreement and rely on the terms of the Dealer Agreement and state law in connection with any breach of the Dealer Agreement, as supplemented by the Participation Agreement, by dealer. Accordingly, Section 8 of the Participation Agreement is hereby deleted in its entirety and all other terms of the Participation Agreement, as modified by this letter agreement, including the numbering of all sections, shall remain in full force and effect.

7. Finally, a number of concerns have been raised about the choice of law provisions in Paragraph 9(g) of the Participation Agreement. Accordingly, the choice of law provisions of Paragraph 9(g) are hereby deleted and such provisions are replaced by the choice of law provision contained in Article 17.12 of the Dealer Agreement, the terms of which are specifically incorporated by reference and agreement into the Participation Agreement. In addition, Paragraph 9(h) is hereby modified such that all terms of Paragraph 9(h) after the words "Letter Agreement" are stricken and removed from the Participation Agreement.

8. If you have already executed and returned to GM your Participation Agreement, please execute this letter and return it to GM on or before **June 15, 2009**, and the terms of this letter shall be incorporated into the Participation Agreement. If you have not executed and returned your Participation Agreement to GM, please note the deadline for doing so remains **June 12, 2009**. Please execute the Participation Agreement and return it to GM on or before **June 12, 2009,** and also sign and

return this letter by **June 15, 2009**. We have enclosed a return Federal Express envelope, addressed to GM, for your convenience.

I would like to personally congratulate you on being selected to move forward with the new GM. With our innovative and award winning product line for Chevrolet, Buick, Cadillac and GMC, and the strongest dealers in the GM network, we have an extraordinary opportunity to win in the market and create both great brand and franchise value, as well as a business that will make America proud. I am honored to be working with you in this mission.

Sincerely,

Mark LaNeve, GMNA Vice President of Vehicle, Sales, Service and Marketing

ACKNOWELDGED AND AGREED TO BY:

[DEALER ENTITY CORPORATE NAME]

By: _____

Name: _____

Title: _____

Wind-Up Letter

General Motors Corporation

June 1, 2009

VIA Federal Express

This letter is to advise you that the Pontiac, Cadillac Dealer Agreements between GM and your dealer company will not be continued by GM on a long-term basis. This is a difficult step, but one that is part of GM's court supervised restructuring efforts. Subject to bankruptcy court approval, we are willing to assist you in winding down your Pontiac, Cadillac dealership operations to allow for the sale of new vehicle and other inventories in an orderly fashion. In order for us to provide you with this assistance, you must execute, and GM must receive, the enclosed agreement on or before June 12, 2009.

In summary and subject to bankruptcy court approval, the enclosed agreement, which you should carefully read, provides:

- For the termination of the Dealer Agreements no earlier than January 1, 2010 and no later than October 31, 2010
- For the assignment and assumption of the Dealer Agreements, as supplemented by the enclosed agreement, by a purchaser of certain assets of GM in the bankruptcy (the "363 Acquirer")
- For the payment of financial assistance in installments in connection with the orderly winding down of your Pontiac, Cadillac operations
- For the waiver of any other termination assistance of any kind
- For a release of claims against GM, the 363 Acquirer and their related parties
- For dealership operations to continue pursuant to the Dealer Agreements, as supplemented by the enclosed agreement, through the effective date of termination of the Dealer Agreements, except that you shall not be entitled to order any new vehicles from GM or the 363 Acquirer

Given that the enclosed agreement provides your dealership with the ability to wind-down the Pontiac, Cadillac dealership operations on an orderly basis, we recommend you carefully consider executing the agreement. We have enclosed a return Federal Express envelope, addressed to GM, for your convenience. Due to extremely short court deadlines in the bankruptcy process, we must receive the enclosed agreement on or before June 12, 2009. If we receive the executed agreement by that date, we will not move to reject your Dealer Agreements in the bankruptcy and plan to assign your Dealer Agreements (as supplemented by the enclosed agreement) to the 363 Acquirer as part of the court supervised restructuring of our dealer network. If we do not receive the enclosed agreement executed by you on or before June 12, 2009, GM will apply to the bankruptcy court to reject your Dealer Agreements. If we reject the Dealer Agreements, we cannot offer any wind-down or termination assistance in connection with such Dealer Agreements.

While these are challenging and unprecedented economic circumstances in the industry, we are pleased that we are able to offer you the enclosed agreement to allow you to wind down your Pontiac, Cadillac dealership business and to sell your Pontiac, Cadillac new Motor Vehicle inventory in an orderly fashion.

If you have any questions, please direct them to the Dealer Call Center at 877.868.8071.

Sincerely,

GENERAL MOTORS CORPORATION

WIND-DOWN AGREEMENT

THIS WIND-DOWN AGREEMENT (this "Agreement") is made and entered into as of the 1st day of June, 2009, by and between ("Dealer"), and GENERAL MOTORS CORPORATION ("GM").

RECITALS

A. Dealer and GM are the parties to Dealer Sales and Service Agreements (the "Dealer Agreements") for Pontiac, Cadillac motor vehicles (the "Existing Model Lines"). Capitalized terms not otherwise defined in this Agreement shall have the definitions set forth for such terms in the Dealer Agreements.

B. GM is the debtor and debtor-in-possession in a bankruptcy case (the "Bankruptcy Case") pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), having filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). No trustee has been appointed and GM is operating its business as debtor-in-possession.

C. GM intends to sell, convey, assign and otherwise transfer certain of its assets (the "363 Assets") to a purchaser (the "363 Acquirer") pursuant to Section 363 of the Bankruptcy Code (the "363 Sale"), subject to approval by and order of the Bankruptcy Court.

D. GM has considered moving and may, at its option, move to reject the Dealer Agreements in the Bankruptcy Case, as permitted under the Bankruptcy Code, unless Dealer executes and delivers this Agreement to GM on or before June 12, 2009.

E. In return for the payments set forth herein and GM's willingness not to pursue the immediate rejection of the Dealer Agreement in the Bankruptcy Case, Dealer desires to enter into this Agreement (i) to allow Dealer, among other things, to wind down its Dealership Operations in an orderly fashion (specifically including the sale of all of Dealer's new Motor Vehicles), (ii) to provide for Dealer's voluntary termination of the Dealer Agreements, GM's payment of certain monetary consideration to Dealer, and Dealer's covenants regarding its continuing Dealership Operations under the Dealer Agreements, as supplemented by the terms of this Agreement (the "Subject Dealership Operations"), and (iii) to provide for Dealer's release of GM, the 363 Acquirer and their related parties from any and all liability arising out of or connected with the Dealer Agreements, any predecessor agreement(s) thereto, and the relationship between GM and Dealer relating to the Dealer Agreements, and any predecessor agreement(s) thereto, all on the terms and conditions set forth herein.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing recitals and the premises and covenants contained herein, Dealer and GM hereby agree (subject to any required Bankruptcy Court approvals) as follows:

1. Assignment-363 Sale. Dealer acknowledges and agrees that GM has the right, but not the obligation, to seek to assign the Dealer Agreements and this Agreement in the Bankruptcy Case to the 363 Acquirer. As part of the 363 Sale, provided such sale closes, GM may, in its sole discretion, assign the Dealer Agreements and this Agreement to the 363 Acquirer. If GM elects to exercise its option to assign the Dealer Agreements and this Agreement, Dealer specifically agrees to such assignment and agrees not to object to or protest any such assignment.

 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RETURNED

2. Termination of Dealer Agreement. Subject to the terms of Section 1 above:

(a) Dealer hereby covenants and agrees to conduct the Subject Dealership Operations until the effective date of termination of the Dealer Agreements, which shall not occur earlier than January 1, 2010 or later than October 31, 2010, under and in accordance with the terms of the Dealer Agreements, as supplemented by the terms of this Agreement. Accordingly, Dealer hereby terminates the Dealer Agreements by written agreement in accordance with Section 14.2 thereof, such termination to be effective on October 31, 2010. Notwithstanding the foregoing, either party may, at its option, elect to cause the effective date of termination of the Dealer Agreements to occur (if not terminated earlier as provided herein) on any date after December 31, 2009, and prior to October 31, 2010, upon thirty (30) days written notice to the other party. In addition, and notwithstanding the foregoing, if Dealer has sold of all of its new Motor Vehicle inventory on or before December 31, 2009 and wishes to terminate the Dealer Agreements prior to January 1, 2010, Dealer may request that GM or the 363 Acquirer, as applicable, approve such termination and, absent other limiting circumstances, GM or the 363 Acquirer, as applicable, shall not unreasonably withhold its consent to such termination request, subject to the terms of this Agreement.

(b) Concurrently with its termination of the Dealer Agreements, Dealer hereby conveys to GM or the 363 Acquirer, as applicable, a non-exclusive right to use Dealer's customer lists and service records for the Subject Dealership Operations, and within ten (10) days following GM's or the 363 Acquirer's, as applicable, written request, Dealer shall deliver to GM or the 363 Acquirer, as applicable, digital computer files containing copies of such lists and records. Such right of use shall include without limitation the right to communicate with and solicit business and information from customers identified in such lists and records and to assign such non-exclusive right to third parties without thereby relinquishing its own right of use.

3. Payment to Dealer.

(a) Subject to Sections 1 and 2 above, in consideration of (i) Dealer's execution and delivery to GM of this Agreement, (ii) Dealer's agreement to sell its new Motor Vehicle inventory as set forth below, and (iii) the termination of the Dealer Agreements by written agreement in accordance with Section 14.2 thereof (as set forth in Section 2 of this Agreement), GM or the 363 Acquirer, as applicable, shall pay, or cause to be paid, to Dealer the sum of $70,000 (the "Wind-Down Payment Amount"), subject to the terms herein. This payment is consideration solely for Dealer's covenants, releases and waivers set forth herein, and Dealer's transfer to GM or the 363 Acquirer, as applicable, of a non-exclusive right to use the customer lists and service records.

(b) GM shall pay twenty-five percent (25%) of the Wind-Down Payment Amount (the "Initial Payment Amount") to Dealer by crediting Dealer's open account maintained by GM on the GM Dealer Payment System (the "Open Account"), in accordance with GM's standard practices, within ten (10) business days following the later of (i) GM's receipt of any required Bankruptcy Court approvals, or (ii) full execution and delivery of this Agreement. GM or the 363 Acquirer, as applicable, shall pay the balance of the Wind-Down Payment Amount (the "Final Payment Amount") to Dealer, subject to the terms of this Agreement, by crediting Dealer's Open Account in accordance with its standard practices, within ten (10) business days after all of the following have occurred: (i) Dealer has sold all of its new Motor Vehicle inventory for the Existing Model Lines prior to the termination of the Dealer Agreements, (ii) Dealer's compliance with all applicable bulk transfer, sales tax transfer or similar laws and the expiration of all time periods provided therein, (iii) Dealer's delivery to GM or the 363 Acquirer, as applicable, of

certificates of applicable taxing authorities that Dealer has paid all sales, use, and other taxes or evidence reasonably satisfactory to GM or the 363 Acquirer, as applicable, that GM or the 363 Acquirer, as applicable, will have no liability or obligation to pay any such taxes that may remain unpaid, (iv) the effective date of termination of the Dealer Agreements in accordance with Section 2(a) above, (v) Dealer's compliance with the terms of Section 4(c) below, (vi) GM's or the 363 Acquirer's, as applicable, receipt of the fully executed Supplemental Wind-Down Agreement in substantially the form attached hereto as Exhibit A (subject to inclusion of information specific to Dealer's Dealership Operations), and (vii) GM's or the 363 Acquirer's, as applicable, receipt of any required Bankruptcy Court approvals. GM or the 363 Acquirer, as applicable, may, in its sole discretion, waive in writing any of the conditions for payment set forth in the preceding sentence.

(c) In addition to any other setoff rights under the Dealer Agreements, payment of all or any part of the Wind-Down Payment Amount may, in GM's or the 363 Acquirer's, as applicable, reasonable discretion, be (i) reduced by any amount owed by Dealer to GM or the 363 Acquirer, as applicable, or their Affiliates (as defined below), and/or (ii) delayed in the event GM or the 363 Acquirer, as applicable, has a reasonable basis to believe that any party has or claims any interest in the assets or properties of Dealer relating to the Subject Dealership Operations including, but not limited to, all or any part of the Wind-Down Payment Amount (each, a "Competing Claim"), in which event GM or the 363 Acquirer, as applicable, may delay payment of all or any part of the Wind-Down Payment Amount until GM or the 363 Acquirer, as applicable, has received evidence in form and substance reasonably acceptable to it that all Competing Claims have been fully and finally resolved.

4. Complete Waiver of All Termination Assistance Rights. In consideration of the agreements by GM hereunder, upon the termination of the Dealer Agreements, as provided in this Agreement, and cessation of the Subject Dealership Operations, the following terms shall apply in lieu of Dealer's rights to receive termination assistance, whether under the Dealer Agreements or applicable laws, all of which rights Dealer hereby waives:

(a) Neither GM nor the 363 Acquirer, as applicable, shall have any obligation to repurchase from Dealer any Motor Vehicles whatsoever.

(b) Neither GM nor the 363 Acquirer, as applicable, shall have any obligation to repurchase from Dealer any Parts or Accessories or Special Tools whatsoever.

(c) Dealer shall eliminate or remove from the Dealership Premises all Dealer-owned signs (freestanding or not) for the Subject Dealership Operations within thirty (30) days following the effective date of termination at no cost to either GM or the 363 Acquirer, as applicable. Dealer understands and agrees that neither GM nor the 363 Acquirer, as applicable, will purchase any Dealer-owned signs used in connection with the Subject Dealership Operations. Dealer hereby waives any rights it may have to require either GM or the 363 Acquirer, as applicable, to purchase any signs used or useful in connection with the Subject Dealership Operations. Dealer shall provide, or shall cause the owner of the Dealership Premises to provide, GMDI access to the Dealership Premises in order for GMDI to remove all GM signs leased to Dealer by GMDI. Dealer understands and agrees that the Wind-Down Payment Amount was determined by GM in part based on Dealer's agreement that it will timely remove all signs for the Subject Dealership Operations and will not require or attempt to require GM or the 363 Acquirer, as applicable, to purchase any or all of such signs pursuant to the provisions of the Dealer Agreements or any applicable statutes, regulations, or other laws.

(d) Dealer expressly agrees that the provisions of Article 15 of the Dealer Agreements do not, by their terms, apply to this termination.

(e) Dealer expressly agrees that all termination rights of Dealer are set forth herein and expressly agrees that any termination assistance otherwise available to Dealer as set forth in the Dealer Agreements or any state statute or regulation shall not apply to Dealer's termination of the Dealer Agreements.

(f) The terms of this Section 4 shall survive the termination of this Agreement.

5. Release; Covenant Not to Sue; Indemnity.

(a) Dealer, for itself, its Affiliates and any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors, and assigns (collectively, the "Dealer Parties"), hereby releases, settles, cancels, discharges, and acknowledges to be fully satisfied any and all claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, actions, and causes of action of every kind and nature whatsoever (specifically including any claims which are pending in any court, administrative agency or board or under the mediation process of the Dealer Agreements), whether known or unknown, foreseen or unforeseen, suspected or unsuspected ("Claims"), which Dealer or anyone claiming through or under Dealer may have as of the date of the execution of this Agreement against GM, the 363 Acquirer, their Affiliates or any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors or assigns (collectively, the "GM Parties"), arising out of or relating to (i) the Dealer Agreements or this Agreement, (ii) any predecessor agreement(s), (iii) the operation of the dealership for the Existing Model Lines, (iv) any facilities agreements, including without limitation, any claims related to or arising out of dealership facilities, locations or requirements, Standards for Excellence ("SFE") related payments or bonuses (except that GM shall pay any SFE payments due Dealer for the second (2nd) quarter of 2009 and neither GM nor the 363 Acquirer, as applicable, shall collect any further SFE related payments from Dealer for the third (3rd) quarter of 2009 or thereafter), and any representations regarding motor vehicle sales or profits associated with Dealership Operations under the Dealer Agreements, or (v) any other events, transactions, claims, discussions or circumstances of any kind arising in whole or in part prior to the effective date of this Agreement, provided, however, that the foregoing release shall not extend to (x) reimbursement to Dealer of unpaid warranty claims if the transactions giving rise to such claims occurred within ninety (90) days prior the date of this Agreement, (y) the payment to Dealer of any incentives currently owing to Dealer or any amounts currently owing to Dealer in its Open Account, or (z) any claims of Dealer pursuant to Section 17.4 of the Dealer Agreements, all of which amounts described in (x) - (z) above of this sentence shall be subject to setoff by GM or the 363 Acquirer, as applicable, of any amounts due or to become due to either or any of its Affiliates. GM or the 363 Acquirer, as applicable, shall not charge back to Dealer any warranty claims approved and paid by GM or the 363 Acquirer, as applicable, prior to the effective date of termination, as described in Section 2 above, after the later to occur of (A) the date six (6) months following payment, or (B) the effective date of termination, except that GM or the 363 Acquirer, as applicable, may make charge-backs for false, fraudulent or unsubstantiated claims within two (2) years of payment.

(b) As set forth above, GM reaffirms the indemnification provisions of Section 17.4 of the Dealer Agreements and specifically agrees that such provisions apply to all new Motor Vehicles sold by Dealer.

(c) Dealer, for itself, and the other Dealer Parties, hereby agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert (i) any Claim that is covered by the release provision in subparagraph (a) above or (ii) any claim that is based upon, related to, arising from, or otherwise connected with the assignment of the Dealer Agreement or this Agreement by GM to the 363 Acquirer in the 363 Sale, if any, or an allegation that such assignment is void, voidable, otherwise unenforceable, violates any applicable law or contravenes any agreement. As a result of the foregoing, any such breach shall absolutely entitle GM or the 363 Acquirer, as applicable, to an immediate and permanent injunction to be issued by any court of competent jurisdiction, precluding Dealer from contesting GM's or the 363 Acquirer's, as applicable, application for injunctive relief and prohibiting any further act by Dealer in violation of this Section 7. In addition, GM or the 363 Acquirer, as applicable, shall have all other equitable rights in connection with a breach of this Section 7 by Dealer, including, without limitation, the right to specific performance.

(d) Dealer shall indemnify, defend and hold the GM Parties harmless, from and against any and all claims, demands, fines, penalties, suits, causes of action, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees and costs) which may be imposed upon or incurred by the GM Parties, or any of them, arising from, relating to, or caused by Dealer's (or any other Dealer Party's) breach of this Agreement or Dealer's execution or delivery of or performance under this Agreement. "Affiliate" means, with respect to any Person (as defined below), any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents, employees and spouses. "Person" means an individual, partnership, limited liability company, association, corporation or other entity. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise.

(e) The terms of this Section 5 shall survive the termination of this Agreement.

6. Subject Dealership Operations. From the effective date of this Agreement until the effective date of termination of the Dealer Agreements (which shall not occur prior to January 1, 2010, subject to Section 2(a) above):

(a) Dealer shall not, and shall have no right to, purchase Motor Vehicles from GM or the 363 Acquirer, as applicable, which rights Dealer hereby waives.

(b) Dealer shall have the right to purchase service parts from GM or the 363 Acquirer, as applicable, to perform warranty service and other normal service operations at the Dealership Premises during the term of this Agreement. Dealer shall have no obligation, however, to follow the recommendations of GM's service parts operations' retail inventory management ("RIM") process, which recommendations are provided for guidance purposes only. Dealer's future orders of service parts of any kind (as well as service parts currently on hand and those acquired in the future from a source other than GM or the 363 Acquirer, as applicable), including but not limited to RIM-recommended orders, shall not be eligible for return.

(c) Dealer shall not, and shall have no right to, propose to GM or the 363 Acquirer, as applicable (under Section 12.2 of the Dealer Agreements or otherwise) or consummate a change in Dealer Operator, a change in ownership, or, subject to GM's or the 363 Acquirer's, as applicable, option, a transfer of the dealership business or its principal assets to any Person; provided, however, that GM or the 363 Acquirer, as applicable, shall honor the terms of Section

12.1 of the Dealer Agreements upon the death or incapacity of the Dealer Operator, except that the term of any new Dealer Agreements under Subsection 12.1.5 shall expire on October 31, 2010, subject to the terms of this Agreement. Accordingly, neither GM nor the 363 Acquirer, as applicable, shall have any obligation (under Section 12.2 of the Dealer Agreements or otherwise) to review, process, respond to, or approve any application or proposal to accomplish any such change, except as expressly otherwise provided in the preceding sentence.

(d) In addition to all other matters set forth herein, the following portions of the Dealer Agreements shall not apply; Sections 6.1 and 6.3.1 (concerning ordering of new Motor Vehicles), Article 8 (Training), Article 9 (Review of Dealer's Performance), Sections 12.2 and 12.3 (Changes in Management and Ownership), Article 15 (Termination Assistance), and Article 16 (Dispute Resolution).

(e) Except as expressly otherwise set forth herein, the terms of the Dealer Agreements, shall remain unmodified and in full force and effect.

7. No Protest.

(a) GM or the 363 Acquirer, as applicable, may desire to relocate or establish representation for the sale and service of the Existing Model Lines in the vicinity of Dealer's Dealership Premises identified in the Dealer Agreements. In consideration of GM's and the 363 Acquirer's, as applicable, covenants and obligations herein, Dealer covenants and agrees that it will not commence, maintain, or prosecute, or cause, encourage, or advise to be commenced, maintained, or prosecuted, or assist in the prosecution of any action, arbitration, mediation, suit, proceeding, or claim of any kind, before any court, administrative agency, or other tribunal or dispute resolution process, whether federal, state, or otherwise, to challenge, protest, prevent, impede, or delay, directly or indirectly, any establishment or relocation whatsoever of motor vehicle dealerships for any of the Existing Model Lines.

(b) Dealer, for itself and for each and all of the other Dealer Parties, hereby releases and forever discharges the GM Parties, from any and all past, present, and future claims, demands, rights, causes of action, judgments, executions, damages, liabilities, costs, or expenses (including, without limitation, attorneys' fees) which they or any of them have or might have or acquire, whether known or unknown, actual or contingent, which arise from, are related to, or are associated in any way with, directly or indirectly, the establishment or relocation of any of such Existing Model Lines.

(c) Dealer recognizes that it may have some claim, demand, or cause of action of which it is unaware and unsuspecting which it is giving up pursuant to this Section 7. Dealer further recognizes that it may have some loss or damage now known that could have consequences or results not now known or suspected, which it is giving up pursuant to this Section 7. Dealer expressly intends that it shall be forever deprived of any such claim, demand, cause of action, loss, or damage and understands that it shall be prevented and precluded from asserting any such claim, demand, cause of action, loss, or damage.

(d) Dealer acknowledges that, upon a breach of this Section 7 by Dealer, the determination of the exact amount of damages would be difficult or impossible and would not restore GM or the 363 Acquirer, as applicable, to the same position it would occupy in the absence of breach. As a result of the foregoing, any such breach shall absolutely entitle GM or the 363 Acquirer, as applicable, to an immediate and permanent injunction to be issued by any court of competent jurisdiction, precluding Dealer from contesting GM's or the 363 Acquirer's, as applicable, application for injunctive relief and prohibiting any further act by Dealer in

violation of this Section 7. In addition, GM or the 363 Acquirer, as applicable, shall have all other equitable rights in connection with a breach of this Section 7 by Dealer, including, without limitation, the right to specific performance.

8. Due Authority. Dealer and the individual(s) executing this Agreement on behalf of Dealer hereby jointly and severally represent and warrant to GM that this Agreement has been duly authorized by Dealer and that all necessary corporate action has been taken and all necessary corporate approvals have been obtained in connection with the execution and delivery of and performance under this Agreement.

9. Confidentiality. Dealer hereby agrees that, without the prior written consent of GM or the 363 Acquirer, as applicable, it shall not, except as required by law, disclose to any person (other than its agents or employees having a need to know such information in the conduct of their duties for Dealer, which agents or employees shall be bound by a similar undertaking of confidentiality) the terms or conditions of this Agreement or any facts relating hereto or to the underlying transactions.

10. Informed and Voluntary Acts. Dealer has reviewed this Agreement with its legal, tax, or other advisors, and is fully aware of all of its rights and alternatives. In executing this Agreement, Dealer acknowledges that its decisions and actions are entirely voluntary and free from any duress.

11. Binding Effect. This Agreement shall benefit and be binding upon the parties hereto and their respective successors or assigns. Without limiting the generality of the foregoing, after the 363 Sale occurs and provided that GM assigns the Dealer Agreements and this Agreement to the 363 Acquirer, this Agreement shall benefit and bind the 363 Acquirer.

12. Effectiveness. This Agreement shall be deemed withdrawn and shall be null and void and of no further force or effect unless this Agreement is executed fully and properly by Dealer and is received by GM on or before **June 12, 2009**.

13. Continuing Jurisdiction. By executing this Agreement, Dealer hereby consents and agrees that the Bankruptcy Court shall retain full, complete and exclusive jurisdiction to interpret, enforce, and adjudicate disputes concerning the terms of this Agreement and any other matter related thereto. The terms of this Section 13 shall survive the termination of this Agreement.

14. Other Agreements.

(a) Dealer shall continue to comply with all of its obligations under Channel Agreements (as defined below) between GM and Dealer, provided that GM or the 363 Acquirer, as applicable, and Dealer shall enter into any amendment or modification to the Channel Agreements required as a result of GM's restructuring plan, in a form reasonably satisfactory to GM or the 363 Acquirer, as applicable. In the event of any conflict between the terms of the Channel Agreements and this Agreement, the terms and conditions of this Agreement shall control.

(b) The term "Channel Agreements" shall mean any agreement (other than the Dealer Agreements) between GM and Dealer imposing on Dealer obligations with respect to its Dealership Operations under the Dealer Agreements, including, without limitation, obligations to relocate Dealership Operations, to construct or renovate facilities, not to protest establishment or relocation of other dealerships, to conduct exclusive Dealership Operations under the Dealer Agreements, or to meet certain sales performance standards (as a condition of receiving or retaining payments from GM or the 363 Acquirer, as applicable, or otherwise). Channel Agreements may be entitled, without limitation, "Summary Agreement," "Agreement and Business Plan," "Exclusive Use Agreement," "Performance Agreement," "No-Protest Agreement," or "Declaration of Use Restriction, Right of First Refusal, and Option to Purchase."

Notwithstanding the foregoing, the term "Channel Agreement" shall not mean or refer to (i) any termination agreement of any kind with respect to the Dealer Agreement between Dealer and GM (each a "Termination Agreement"), (ii) any performance agreement of any kind between Dealer and GM (each a "Performance Agreement"), or (iii) any agreement between Dealer (or any Affiliate of Dealer) and Argonaut Holdings, Inc., a Delaware corporation and wholly-owned subsidiary of GM ("AHI"), including, without limitation, any agreement entitled "Master Lease Agreement," "Prime Lease," or "Dealership Sublease" (and Dealer shall comply with all of the terms of such agreements with AHI). Dealer acknowledges that GM shall be entitled, at its option, to move to reject any currently outstanding Termination Agreements or Performance Agreements in the Bankruptcy Case. By executing this letter agreement, Dealer agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert any objection or protest of any kind with respect to GM's rejection of such Termination Agreements or Performance Agreements.

(c) All of the Channel Agreements shall automatically terminate and be of no further force or effect on the effective date of termination of the Dealer Agreements, except that those provisions that, by their terms, expressly survive termination of the Channel Agreements shall survive the termination contemplated under this Agreement. Following the effective date of termination of the Dealer Agreements, Dealer and GM shall execute and deliver documents in recordable form reasonably satisfactory to GM or the 363 Acquirer, as applicable, confirming the termination of any Channel Agreements affecting title to real property owned or leased by Dealer or Dealer's Affiliates.

15. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Michigan.

16. Counterparts. This Agreement may be executed in counterparts, each of which when signed by all of the parties hereto shall be deemed an original, but all of which when taken together shall constitute one agreement.

17. Breach. In the event of a breach of this Agreement by Dealer, GM and the 363 Acquirer shall each have all of its remedies at law and in equity, including, without limitation, the right to specific performance.

18. Complete Agreement of the Parties. This Agreement, the Dealer Agreements, and the schedules, exhibits, and attachments to such agreements (i) contain the entire understanding of the parties relating to the subject matter of this Agreement, and (ii) supersede all prior statements, representations and agreements relating to the subject matter of this Agreement. The parties represent and agree that, in entering into this Agreement, they have not relied upon any oral or written agreements, representations, statements, or promises, express or implied, not specifically set forth in this Agreement. No waiver, modification, amendment or addition to this Agreement is effective unless evidenced by a written instrument signed by an authorized representative of the parties, and each party acknowledges that no individual will be authorized to orally waive, modify, amend or expand this Agreement. The parties expressly waive application of any law, statute, or judicial decision allowing oral modifications, amendments, or additions to this Agreement notwithstanding this express provision requiring a writing signed by the parties.

[Signature Page Follows]

IN WITNESS WHEREOF, Dealer and GM have executed this Agreement as of the day and year first above written.

By: _____

Name: _____
Title: _____

GENERAL MOTORS CORPORATION

By _____

Authorized Representative

THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009, OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN.

EXHIBIT A

SAMPLE SUPPLEMENTAL WIND-DOWN AGREEMENT

THIS SUPPLEMENTAL WIND-DOWN AGREEMENT (this "Agreement") is made and entered into as of the _____ day of _____, 20__, by _____, a _____ ("Dealer"), for the use and benefit of _____, a _____ ("GM") and _____, a _____ corporation ("363 Acquirer").

RECITALS

A. Dealer and GM are parties to Dealer Sales and Service Agreements for _____ motor vehicles (the "Dealer Agreements").

B. Dealer and GM are parties to that certain Wind-Down Agreement dated June __, 2009 (the "Original Wind-Down Agreement"). All initially capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Original Wind-Down Agreement.

C. **[IF DEALER AGREEMENTS ASSIGNED TO THE 363 ACQUIRER][GM assigned all of its right, title and interest in the Dealer Agreements and the Original Wind-Down Agreement to the 363 Acquirer.]**

D. Pursuant to the Original Wind-Down Agreement, Dealer agreed to terminate and cancel the Dealer Agreements and all rights and continuing interests therein by written agreement and to release GM and its related parties from any and all liability arising out of or connected with the Dealer Agreements, any predecessor agreement(s) thereto, and the relationship between **[GM or the 363 Acquirer]** and Dealer relating to the Dealer Agreements, and any predecessor agreement(s) thereto, on the terms and conditions set forth herein, intending to be bound by the terms and conditions of this Agreement.

E. Dealer executes this Agreement in accordance with Section 3 of the Original Wind-Down Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing recitals and the premises and covenants contained herein, Dealer hereby agrees as follows:

1. Termination of Dealer Agreements.

(a) Dealer hereby terminates the Dealer Agreements by written agreement in accordance with Section 14.2 thereof. The effective date of such termination shall be _____, 20__.

(b) Dealer shall timely pay all sales taxes, other taxes and any other amounts due to creditors, arising out of the operations of Dealer.

(c) Dealer shall be entitled to receive the Final Payment Amount in accordance with the terms of the Original Wind-Down Agreement.

14 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009 OR IF DEALER CHANGES ANY TERM OR PROVISION HEREOF.

2. Release; Covenant Not to Sue; Indemnity.

(a) Dealer, for itself, its Affiliates and any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors, and assigns (collectively, the "Dealer Parties"), hereby releases, settles, cancels, discharges, and acknowledges to be fully satisfied any and all claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, actions, and causes of action of every kind and nature whatsoever (specifically including any claims which are pending in any court, administrative agency or board or under the mediation process of the Dealer Agreements), whether known or unknown, foreseen or unforeseen, suspected or unsuspected ("Claims"), which Dealer or anyone claiming through or under Dealer may have as of the date of the execution of this Agreement against GM, the 363 Acquirer, their Affiliates or any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors or assigns (collectively, the "GM Parties"), arising out of or relating to (i) the Dealer Agreements or this Agreement, (ii) any predecessor agreement(s), (iii) the operation of the dealership for the Existing Model Lines, (iv) any facilities agreements, including without limitation, any claims related to or arising out of dealership facilities, locations or requirements, Standards for Excellence ("SFE") related payments or bonuses (except that the 363 Acquirer shall pay any SFE payments due Dealer for the second (2nd) quarter of 2009 and the 363 Acquirer shall not collect any further SFE related payments from Dealer for the third (3rd) quarter of 2009 or thereafter), and any representations regarding motor vehicle sales or profits associated with Dealership Operations under the Dealer Agreements, or (v) any other events, transactions, claims, discussions or circumstances of any kind arising in whole or in part prior to the effective date of this Agreement, provided, however, that the foregoing release shall not extend to (x) reimbursement to Dealer of unpaid warranty claims if the transactions giving rise to such claims occurred within ninety (90) days prior the date of this Agreement, (y) the payment to Dealer of any incentives currently owing to Dealer or any amounts currently owing to Dealer in its Open Account, or (z) any claims of Dealer pursuant to Section 17.4 of the Dealer Agreements, all of which amounts described in (x) - (z) above of this sentence shall be subject to setoff by GM of any amounts due or to become due to GM or any of its Affiliates. GM shall not charge back to Dealer any warranty claims approved and paid by GM prior to the effective date of termination, as described in Section 1 above, after the later to occur of (A) the date six (6) months following payment, or (B) the effective date of termination, except that GM may make charge-backs for false, fraudulent or unsubstantiated claims within two (2) years of payment.

(b) Dealer, for itself, and the other Dealer Parties, hereby agrees not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert [(i)] any Claim that is covered by the release provision in subparagraph (a) above **[IF DEALER AGREEMENTS ASSIGNED TO THE 363 ACQUIRER]| [or (ii) any claim that is based upon, related to, arising from, or otherwise connected with the assignment of the Dealer Agreements or the Original Wind-Down Agreement by GM to the 363 Acquirer in the 363 Sale, if any, or an allegation that such assignment is void, voidable, otherwise unenforceable, violates any applicable law or contravenes any agreement.]** Notwithstanding anything to the contrary, Dealer acknowledges and agrees that GM will suffer irreparable harm from the breach by any Dealer Party of this covenant not to sue and therefore agrees that GM shall be entitled to any equitable remedies available to them, including, without limitation, injunctive relief, upon the breach of such covenant not to sue by any Dealer Party.

(c) Dealer shall indemnify, defend and hold the GM Parties harmless, from and against any and all claims, demands, fines, penalties, suits, causes of action, liabilities, losses, damages, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees and

costs) which may be imposed upon or incurred by the GM Parties, or any of them, arising from, relating to, or caused by Dealer's (or any other Dealer Parties') breach of this Agreement or Dealer's execution or delivery of or performance under this Agreement. "Affiliate" means, with respect to any Person (as defined below), any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents, employees and spouses. "Person" means an individual, partnership, limited liability company, association, corporation or other entity. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise.

3. Due Authority. Dealer and the individual(s) executing this Agreement on behalf of Dealer hereby jointly and severally represent and warrant to GM that this Agreement has been duly authorized by Dealer and that all necessary corporate action has been taken and all necessary corporate approvals have been obtained in connection with the execution and delivery of and performance under this Agreement.

4. Confidentiality. Dealer hereby agrees that, without the prior written consent of GM, it shall not, except as required by law, disclose to any person (other than its agents or employees having a need to know such information in the conduct of their duties for Dealer, which agents or employees shall be bound by a similar undertaking of confidentiality) the terms or conditions of this Agreement or any facts relating hereto or to the underlying transactions.

5. Informed and Voluntary Acts. Dealer has reviewed this Agreement with its legal, tax, or other advisors, and is fully aware of all of its rights and alternatives. In executing this Agreement, Dealer acknowledges that its decisions and actions are entirely voluntary and free from any duress.

6. Binding Effect. This Agreement shall be binding upon any replacement or successor dealer as referred to in the Dealer Agreements and any successors or assigns. This Agreement shall be binding upon any replacement or successor dealer as referred to in the Dealer Agreements and any successors or assigns, and shall benefit any of GM's successors or assigns.

7. Continuing Jurisdiction. By executing this Agreement, Dealer hereby consents and agrees that the Bankruptcy Court shall retain full, complete and exclusive jurisdiction to interpret, enforce, and adjudicate disputes concerning the terms of this Agreement and any other matter related thereto. The terms of this Section 7 shall survive the termination of this Agreement.

8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Michigan.

9. No Reliance. The parties represent and agree that, in entering into this Agreement, they have not relied upon any oral or written agreements, representations, statements, or promises, express or implied, not specifically set forth in this Agreement. No waiver, modification, amendment or addition to this Agreement is effective unless evidenced by a written instrument signed by an authorized representative of the parties, and each party acknowledges that no individual will be authorized to orally waive, modify, amend or expand this Agreement. The parties hereto expressly waive application of any law, statute, or judicial decision allowing oral modifications, amendments, or additions to this Agreement notwithstanding this express provision requiring a writing signed by the parties.

[Signature Page Follows]

IN WITNESS WHEREOF, Dealer has executed this Agreement through its duly authorized officer as of the day and year first above written.

_____

By:_____
Name:_____
Title:_____

14 THIS DOCUMENT SHALL BE NULL AND VOID IF NOT EXECUTED BY DEALER AND RECEIVED BY GM ON OR BEFORE JUNE 12, 2009 OR IF DEALER CHANGES ANY TERM OR PROVISION HEREIN

Exhibit T

Objection deadline (extended): June 24, 2009 at 12 p.m.
Hearing date: June 30, 2009 at 9:45 a.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
GENERAL MOTORS CORP., et al.,	:	Case No. 09-50026 (REG)
Debtors.	:	Jointly Administered

LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b), (f), (k), AND (m), AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006, TO (I) APPROVE (A) THE SALE PURSUANT TO THE MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) OTHER RELIEF; AND (II) SCHEDULE SALE APPROVAL HEARING

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
GENERAL MOTORS CORP., et al.,	:	Case No. 09-50026 (REG)
Debtors.	:	Jointly Administered

LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b), (f), (k), AND (m), AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006, TO (I) APPROVE (A) THE SALE PURSUANT TO THE MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) OTHER RELIEF; AND (II) SCHEDULE SALE APPROVAL HEARING

The Official Committee of Unsecured Creditors (the "**Committee**") of the above-captioned debtors and debtors-in-possession (the "**Debtors**"), by and through its undersigned counsel, hereby submits this limited objection (the "**Objection**") to the Debtors' motion seeking, among other forms of relief, authority to sell substantially all of their assets free and clear of liens, claims, encumbrances, and other interests. In support of the Objection, the Committee represents as follows:

PRELIMINARY STATEMENT

1. The Committee, in its capacity as a fiduciary for a broad cross-section of General Motors Corp. ("**GM**") creditors, including workers, suppliers, dealers, tort creditors, and other unsecured creditors of the Debtors' estates, generally supports the proposed asset sale and objects only on limited, but important, grounds as described below. The Committee believes that the proposed sale order can and should be amended to address its concerns and permit the sale to go forward on the schedule currently contemplated by the Debtors.

2. The Committee recognizes that the proposed sale transaction is not perfect. Indeed, it will leave impaired numerous parties within the Committee's constituency. However, the Committee is satisfied that no viable alternative exists to prevent the far worse harm that would flow from the liquidation of GM.

3. The simple fact is that there are no other viable bids – indeed no serious expressions of interest – to purchase GM's assets and no other feasible way for GM to restructure its business to remain viable. The current transaction is the only option on the table. The Court is thus faced with a clear choice: to approve the proposed sale transaction, preserve the going-concern value of the Debtors' businesses, and maximize substantial value for stakeholders (despite the pain that this course will inflict on numerous innocent parties), or reject the transaction and precipitate the dismantling and liquidation of GM to the detriment of all involved. Preventing this harm serves the core purposes of the Bankruptcy Code and constitutes a strong business justification under Section 363 of the Code to sell the debtors' assets outside of a plan process.

4. Nevertheless, the Committee is compelled to object to the proposed sale in its current form on two specific grounds:

5. First, the Committee objects because the proposed order approving the sale purports to cut off all state law successor liability for the new entity purchasing GM's assets. Current and future claimants alleging claims based on injuries caused by product defects, breach of implied warranties, asbestos exposure, and, in certain cases, denial of post employment benefits would thus be limited to recourse against the limited assets being left behind in the old company.

6. The Committee believes that the attempt to cut off liability represents, at minimum, a poor business and policy judgment, because it undercuts the otherwise clear message that the new company is assuming the mantel of the old GM for purposes of customer service and will otherwise stand behind GM products. But the purported liability cut-off is also *illegal* for two reasons: (1) Section 363(f) of the Bankruptcy Code authorizes the sale of assets free and clear of *interests* in a debtor's property, not *claims* arising out of existing or potential causes of action that remain unliquidated and not reduced to liens; and (2) in any event, the attempt to cut off liability for *future* claims is ineffective and a violation of due process that would likely not even be honored by state courts. The terms of the sale should therefore be revised to leave creditors holding successor liability claims to their state law rights against the new company, and such liabilities should be expressly assumed by the new company.

7. Second, the sale transaction cannot be approved unless the Debtors make an adequate showing at the upcoming sale hearing that the assets left behind in the old company will be sufficient to pay all administrative expenses of and priority claims against the estates. The proposed transaction provides for the distribution of stock in the new company to the Debtors' unsecured creditors. Such a distribution can take place only under a confirmed chapter 11 plan, which, in turn, requires that all priority and administrative claims be paid in full. The

Debtors' unsecured creditors should not bear the costs associated with the wind down of the Debtors' bankruptcy cases. The purchaser of GM's assets is receiving substantial benefits under the Bankruptcy Code to effectuate the sale and support the viability of the continuing enterprise. It may not reap those benefits without assuring this Court and constituents of the old company that sufficient assets have been left behind to cover the costs of that bankruptcy process. Thus, it is incumbent upon the Debtors and the government to ensure that the "wind down budget" is sufficient to allow a plan to be confirmed and implemented without impairing the limited recovery promised to unsecured creditors.[1]

BACKGROUND

A. General Background

8. On June 1, 2009 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. On June 3, 2009, the U.S. Trustee appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code. The Committee is comprised of 15 members who represent the interests of all unsecured creditors. The Committee members include: two indenture trustees – Wilmington Trust Company and Law Debenture

[1] In addition to these objections, the Committee objects to any attempt by the Debtors to transfer collateral of secured lenders to the new company without the new company either assuming the liability associated with such collateral or paying the claims of such lenders.

The Committee understands that prior to the filing of this Objection, certain modifications were agreed upon or made to the sale transaction documents that resolve a number of the Committee's concerns and will be incorporated into the final sale transaction documents. Accordingly, Exhibit A to this Objection outlines the issues and objections for which no modifications have yet been made, or for which no agreements have been reached at this time. Notwithstanding the foregoing, the Committee reserves the right to raise additional issues and objections should the final sale documents or sale order fail to incorporate such agreements or modifications.

Trust Company of New York; two suppliers – Denso International America, Inc. and Inteva Products, LLC; one trade service creditor – Interpublic Group; three automotive dealers – Serra Chevrolet of Birmingham, Inc., Paddock Chevrolet and Saturn of Hempstead, Inc.; three collective bargaining representatives – the Industrial Division of Communications Workers of America, AFL-CIO, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("**UAW**"), and the United Steelworkers; three tort claimants – Kevin Schoenl, Genoveva Bermudez, and Mark Buttita; and the Pension Benefit Guaranty Corporation.

B. The Proposed Sale

10. On the Petition Date, the Debtors filed a motion (the "**Sale Motion**") to approve the sale (the "**Sale**") of substantially all of their assets to Vehicle Acquisition Holdings LLC ("**New GM**" or "**Purchaser**"), an entity established for the purpose of acquiring such assets. The terms of the Sale are set forth in the Master Sale and Purchase Agreement (the "**MPA**"), dated as of June 1, 2009, by and among GM Corporation ("**Old GM**"), Saturn LLC, Saturn Distribution Corporation and Chevrolet-Saturn of Harlem, Inc., as sellers, and New GM, as purchaser.[2]

1. Purchased and Retained Assets

11. Pursuant to the Sale, New GM is to acquire all properties, assets, and rights of Old GM, with the exception of certain excluded assets (respectively, the "**Purchased Assets**" and the "**Excluded Assets**").

12. The Purchased Assets include, without limitation: (i) all of Old GM's cash, receivables, intercompany obligations, real property, machinery, equipment, inventory,

[2] A copy of the MPA is attached as Exhibit A to the Sale Motion. [Dkt. No. 92, Ex. A.]

intellectual property, permits, rights to tax refunds, claims, books and records, goodwill and intangible property other than the Excluded Assets, *see generally* MPA § 2.2(a); (ii) the equity and corporate documents of all entities in which Old GM has an equity interest, with the exception of certain excluded entities, *id.* § 2.2(a)(v); and (iii) benefit plans, including certain plans relating to non-union employees and all employee benefit plans covered by the collective bargaining agreement with the UAW, *id.* §§ 2.2(a)(xvi), 6.17(e).[3]

13. The Excluded Assets chiefly consist of: (i) $950 million in cash or cash equivalents, (ii) equity interests in certain Saturn and other entities, (iii) certain real and personal property, (iv) bankruptcy avoidance actions, (v) certain employee benefit plans, and (vi) restricted cash and receivables that exclusively relate to an Excluded Asset or Retained Liability. *See generally* MPA § 2.2(b).

2. Assumed and Retained Liabilities

14. Old GM will retain all liabilities except those defined in the MPA as "**Assumed Liabilities**." *See generally* MPA § 2.3(b); *see also id.* § 2.3(b)(xi).

15. The Assumed Liabilities include: (i) product liability claims arising out of products delivered at or after the Sale transaction closes (the "**Closing**"), MPA § 2.3(a)(ix); (ii) the warranty and recall obligations of both Old GM and New GM, *id.* §§ 2.3(a)(vii), 6.15(a), (b); and (iii) all employment-related obligations and liabilities under any assumed employee benefit plan relating to employees that are or were covered by the UAW collective bargaining agreement, *id.* § 2.3(a)(xiii).

16. The liabilities being retained by Old GM include: (i) product liability claims arising out of products delivered prior to the Closing, MPA § 2.3(b)(ix); (ii) all liabilities

[3] While the MPA itemizes these various types of assets being sold, the Purchased Assets broadly include *any* asset that is not an Excluded Asset. MPA § 2.2(a).

for claims arising out of exposure to asbestos, *id.* § 2.3(b)(x); (iii) all liabilities to third parties for claims based upon "[c]ontract, tort or any other basis," *id.* § 2.3(b)(xi); (iv) all liabilities related to any implied warranty or other implied obligation arising under statutory or common law, *id.* § 2.3(b)(xvi); and (v) all employment-related obligations not otherwise assumed, including, among other obligations, those arising out of the employment, potential employment, or termination of any individual (other than an employee covered by the UAW collective bargaining agreement) prior to or at the Closing, *id.* § 2.3(b)(vii).

3. Consideration

17. Old GM is to receive consideration estimated to be worth approximately $45 billion, plus the value of certain equity interests in New GM.

18. The bulk of the consideration will come in the form of a credit bid by the United States Treasury ("**Treasury**") and Export Development Canada ("**EDC**"). Treasury and EDC will credit bid the majority of the indebtedness outstanding under certain prepetition credit facilities and the DIP facilities.

19. In addition to the consideration provided in the credit bid, New GM is also assuming approximately $6.7 billion of indebtedness under the DIP facilities, plus an additional $950 million to be loaned by Treasury under a new DIP facility (the "**Wind Down Facility**").

20. The consideration will also consist of: (i) the surrender of a warrant issued by Old GM to Treasury in connection with the prepetition credit facilities; (ii) 10% of the post-closing outstanding shares of New GM, plus an additional 2% if the estimated amount of allowed prepetition general unsecured claims against Old GM exceeds $35 billion; (iii) two warrants, each to purchase 7.5% of the post-closing outstanding shares of New GM, with an exercise price based on a $15 billion equity valuation and a $30 billion equity valuation, respectively; and (iv) the assumption of certain liabilities.

4. Ownership of New GM

21. Under the terms of the Sale, New GM will be owned by four entities.

22. Treasury will own 60.8% of New GM's common stock on an undiluted basis. It also will own $2.1 billion of New GM Series A preferred stock.

23. EDC will own 11.7% of New GM's common stock on an undiluted basis. It also will own $400 million of New GM Series A Preferred Stock.

24. The New Employees' Beneficiary Association Trust ("**New VEBA**") will own 17.5% of New GM's common stock on an undiluted basis. It also will own $6.5 billion of New GM's Series A Preferred Stock, and a 6-year warrant to acquire 2.5% of New GM's common stock, with an exercise price based on $75 billion total equity value.

25. Finally, if a chapter 11 plan is implemented as contemplated under the structure of the Sale transaction, Old GM will own 10.0% of New GM's common stock on an undiluted basis. In addition, as stated above, if the allowed prepetition general unsecured claims against Old GM exceed $35 billion, Old GM will be issued an additional 10 million shares amounting to approximately 2.0% of New GM's common stock. Old GM will also own the two warrants mentioned above.

C. The Proposed Sale Order

26. In their memorandum of law in support of the Sale Motion (the "**Memorandum in Support**")[4], the Debtors request that the Court authorize the Sale free and clear of all "liens, claims, encumbrances and other interests," including, specifically, "all successor liability claims." Memorandum in Support at 21-22.

[4] Dkt. No. 105.

27. To effectuate this result, the Debtors have submitted a proposed order to the Court (the "**Proposed Sale Order**")[5] that contains several provisions directed at cutting off successor liability.

28. First, the Proposed Sale Order contains an explicit finding – and an order to similar effect – that the Debtors "may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied." Proposed Sale Order ¶¶ V, 7.

29. In addition the Proposed Sale Order would enjoin all persons (including "litigation claimants") holding "liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability" from asserting such liens, claims, encumbrances and other interests against New GM or the Purchased Assets. Proposed Sale Order ¶ 8.

30. Finally, the Proposed Sale Order provides that New GM:

> shall not be deemed . . . to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchase Agreements from and after the Closing); (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors.

Proposed Sale Order ¶ 27

D. Old GM's Tort Liability

31. In the absence of discovery, the Committee is not in a position to make representations concerning the nature and scope of Old GM's historical and future tort liability.

[5] Dkt. No. 92, Ex. B.

32. Old GM's most recent quarterly report notes present valued contingent liabilities of $934 million for product liability, $627 million for asbestos liability, $307 million for other litigation liability, and $294 million for environmental liability. *See* Form 10-Q for Period Ended March 31, 2009, at 30-32.

ARGUMENT

33. The Committee believes that the Sale Order should be approved within the time frame proposed by the Debtors, but only after being amended to address the issues discussed below, as well as other concerns described in Exhibit A to the Objection.[6]

I.

Section 363(f) Does Not Authorize the Sale of Assets Free and Clear of Successor Liability Claims

34. Pursuant to section 363(f) of the Bankruptcy Code, a debtor is authorized to sell property "free and clear of any *interest* in such property of an entity other than the estate" if any one of five conditions is met. 11 U.S.C. § 363(f) (emphasis added).[7]

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[6] Among the concerns detailed in Exhibit A is the creditworthiness of the proposed tenant under the Master Lease Agreement that covers 10 facilities being leased by Old GM. As contemplated, the proposed tenant under the lease will be a newly formed special purpose entity with assets consisting only of its leasehold interest under the Master Lease and certain personal property and fixtures located at the properties covered by the lease. Even with these nominal assets, the tenant is not required to post any security deposit or otherwise satisfy any financial criteria. Not only is Old GM relying on the tenant to pay rent and carrying costs with respect to these 10 facilities, the tenant has the right to self-insure casualty and other risks in lieu of obtaining an insurance policy as is customarily required under real estate leases.

[7] Specifically, a "free and clear" sale is authorized if:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

35. The term "interest" is not defined in the Bankruptcy Code. Courts are divided as to whether the term, as used in section 363(f), encompasses unliquidated claims subject to successor liability. However, the better view – which is supported by both the text and policies of the Bankruptcy Code – is that unsecured claims arising out of existing or potential causes of action are not "interests" for purposes of section 363(f). Numerous courts have so held. *See, e.g., R.C.M. Executive Gallery Corp. v. Rols Capital Co.*, 901 F. Supp. 630, 637 (S.D.N.Y. 1995); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re The White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Oh. 1987); *see also, e.g., Yadkin Valley Bank & Trust Co. v. McGee (In re Hutchinson)*, 5 F.3d 750, 756 n.4 (4th Cir. 1993); *Michigan Employment Sec. Comm. v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.23 (6th Cir. 1991); *Kattula v. Republic Bank (In re LWD, Inc.)*, No. 5:08-cv-121, 2009 US Dist. LEXIS 17852, at *12 (W.D. Ky. Feb. 12, 2009); *Schwinn Cycling & Fitness Inc. v. Benonis (In re Schwinn Bicycle Co.)*, 210 B.R. 747, 761 (Bankr. N.D. Ill. 1997), *aff'd*, 217 B.R. 790 (N.D Ill. 1997); *Fairchild Aircraft Corp. v. Cambell (In re Fairchild Aircraft Corp.)*, 184 B.R. 910, 917-18 (Bankr. W.D. Tex. 1995), *vacated on other grounds*, 220 B.R. 909 (Bankr. W.D. Tex. 1998).

36. As an initial matter, section 363(f) does not refer to just any "interest." Rather, it refers to an "interest *in . . . property*." It could perhaps be said that a litigation claimant holds an "interest" in property of the estate in the colloquial sense of the term. But, having not yet reduced its claim to judgment and obtained a lien, it cannot be said to have an interest *in property*.

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(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

37. Thus, while section 363(f) may be used to extinguish *in rem* liabilities, there is no basis in the text of the statute for extinguishing *in personam* liabilities:

> Section 363(f) does not authorize sales free and clear of *any interest*, but rather of *any interest in such property*. These three additional words define the real breadth of *any interests*. The sorts of interests impacted by a sale "free and clear" are *in rem* interests which have attached to the property. Section 363(f) is not intended to extinguish *in personam* liabilities. Were we to allow "any interests" to sweep up *in personam* claims as well, we would render the words "in such property" a nullity. No one can seriously argue that *in personam* claims have, of themselves, an *interest in such property*.

Fairchild Aircraft, 184 B.R. at 917-18.

38. The use of the term "interest" in other sections of the Bankruptcy Code also supports a narrow reading of the term.

39. For example, Section 1141(c) provides that property "dealt with" by a plan of reorganization – *e.g.*, property sold pursuant to a plan – "is free and clear of all *claims and interests* of creditors, equity security holders, and of general partners in the debtor." 11 U.S.C. § 1141(c) (emphasis added). The presence of the word "claims" in section 1141(c) indicates that "claims" and "interests" are not synonymous. Thus, under recognized canons of statutory construction, the absence of the word "claims" from section 363(f) suggests that Congress did not intend for that section to be used to extinguish unliquidated claims.[8] Instead, such claims are to be dealt with only through the more rigorous (and protective) processes governing plans of

[8] *See, e.g., Russello v. United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute, but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

reorganization. *See* George W. Kuney, *Misinterpreting Bankruptcy Code Section 363(f) and Undermining the Chapter 11 Process*, 76 Am. Bankr. L.J. 235, 238-42 (2002).[9]

40. The use of the phrase "interest in property" in section 363(e) of the Bankruptcy Code also strongly suggests that "interest in . . . property" as used in section 363(f) cannot be so broad as to encompass general unsecured claims arising out of existing or potential causes of action.

41. Under section 363(e), the bankruptcy court may condition the use, sale, or lease of property in which an entity has an "interest" on the provision of adequate protection of such interest. But surely this does not mean that holders of unliquidated claims are entitled to adequate protection. Such a reading would "render[] the distinctions drawn in the Code [between secured and unsecured creditors] a nullity." *Fairchild Aircraft*, 184 B.R. at 918. It is well recognized that "identical words and phrases within the same statute should normally be given the same meaning." *Powerex Corp. v. Reliant Energy Servs., Inc.*, 127 S. Ct. 2411, 2417 (2007). Thus, if the "interest in property" referred to in section 363(e) cannot be read to include unliquidated claims, the same must then be true of the "interest in . . . property" referred to in section 363(f).

42. Notwithstanding the language of the statute, some courts have held that section 363(f) does permit the sale of assets free and clear of unliquidated claims. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003); *In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y. May 31, 2009); *Myers v. United States*, 297 B.R. 774, 781-82 (S.D.

[9] It has been argued that the term "claims" in section 1141(c) corresponds to that section's reference to "creditors" and "interests" corresponds to the section's reference to "equity security holders" and "general partners." This, it is said, explains the use of two terms in section 1141(c), where one sufficed in section 363(f). But this argument works equally well in reverse. If the point is to show that "interests" in section 363(f) is broad and all-encompassing, then it follows that it was unnecessary to use the term "claims" in section 1141(c).

Cal. 2003); *P.K.R. Convalescent Ctrs., Inc. v. Virginia Dept. of Med. Assistance Serv. (In re P.K.R. Convalescent Ctrs., Inc.),* 189 B.R. 90, 94 (Bankr. E.D. Va. 1995); *In re All-American of Ashburn, Inc.,* 56 B.R. 186, 190 (Bankr. N.D. Ga.), *aff'd,* 805 F.2d 1515 (11th Cir. 1986). These courts tend to rely on one or more of three rationales, none of which is persuasive.

43. First, some courts hold that to the extent "it was the assets of the debtor which gave rise to the claims," the claims are interests in property. *Trans World Airlines,* 322 F.3d at 289-90. However, as discussed above, such a broad reading of interests in property is not supported by the text of the Bankruptcy Code. Section 363(e), in particular, requires that the interest truly be anchored in the property.

44. Second, these courts reason that "interest" must mean something more than "lien" because section 363(f) contains a specific subsection – section 363(f)(3) – dealing with liens. *See, e.g., Trans World Airlines,* 322 F.3d at 290.

45. This argument, too, is flawed. That "interest" is something more than "lien" does not mean that it is something as much as "unliquidated claim." The Fourth Circuit has recognized this very point. In *UMWA 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.),* 99 F.3d 573 (4th Cir. 1996), the court rejected the argument that Congress intended to limit the scope of section 363(f) to *in rem* interests only. *Id.* at 582. Nonetheless, the court endorsed its earlier observation that "courts have recognized that general, unsecured claims do not constitute 'interests' within the meaning of § 363(f)." *Id.* at 581-82 (citing *Yadkin Valley Bank & Trust,* 5 F.3d at 756 n.4). The Fourth Circuit further held that the lower court had "applied an unduly broad interpretation of [section 363(f)] when it stated that one has an interest in a debtor's property simply when one has a right to demand money from the debtor." *Id.* at 581.

46. Finally, some courts have held that a broad reading of "interest" is necessary to further the policies of the Bankruptcy Code. The pre-Bankruptcy Code case of *Forde v. Kee-Lox Manufacturing Co.*, 437 F. Supp. 631, 633-34 (W.D.N.Y. 1977), *aff'd on different grounds*, 584 F.2d 4 (2d Cir. 1978), is typically cited for this proposition. There, the court argued that: (i) it would frustrate the priority scheme of the Bankruptcy Code to permit successor liability claimants "to assert their claims against purchasers of the bankrupt's assets, while relegating lienholders to the proceeds of the sale"; and (ii) to hold that sales could not be free and clear of successor liability claims would chill sales and impair a debtor's ability to realize value for its assets. *Id.* at 633-34.

47. These policy arguments are tenuous and have been rejected by several courts. Collateral litigation in a non-bankruptcy forum against non-debtors (where such non-debtors have no third-party rights against the debtor) has no impact on the bankruptcy estate or priorities of distribution. *See, e.g., Chicago Truck Drivers, Helpers & Warehouse Workers Union (Independent) Pension Fund v. Tasemkin, Inc.*, 59 F.3d 48, 51 (7th Cir. 1995) ("[O]nce a bankruptcy proceeding is completed and its books closed, the bankrupt has ceased to exist and the priorities by which its creditors have been ordered lose their force."); *accord R.C.M. Executive Gallery*, 901 F. Supp. at 637-38 ; *Ninth Ave Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 731 (N.D. Ind. 1996).

48. Moreover, the prospect of successor liability would not "chill" a bankruptcy sale or impair a debtor's ability to realize value for its assets. Under a rule of "no sales free and clear of successor liability," section 363 sales would still go forward. (And, indeed, they do.) Such sales could be expected to realize the true value of the sold assets: that is, their value in light of the risk of successor liability. *Cf. Zerand-Bernal Group, Inc. v. Cox*, 23

F.3d 159, 163 (7th Cir. 1994) (rejecting argument that bankruptcy court can enjoin successor liability claims to maximize sale price).

49. Finally, to the extent that purchasers of a bankrupt's assets are the intended beneficiaries of "free and clear" orders, "there is no reason to accord the purchasers of formally bankrupt entities some special measure of insulation from liability that is unavailable to ailing but not yet defunct entities." *Chicago Truck,* 59 F.3d at 50; *accord R.C.M. Executive,* 901 F. Supp. at 637; *Ninth Ave. Remedial,* 195 B.R. at 731.

II.

Section 105(a) Does Not Authorize the Sale of Assets Free and Clear of Successor Liability Claims

50. Section 105(a) cannot be used to "bridge the gap" between section 363(f) and 1141(c) and authorize the sale of assets free and clear of successor liability claims outside of a plan of reorganization. One older case held that section 105(a) provided authority for such a sale. *See White Motor Credit*, 75 B.R. at 948-49. However, more recent authority regarding the scope of bankruptcy court jurisdiction suggests that *White Motor Credit* was wrongly decided.

51. A debtor that has sold its assets at a section 363 sale is indifferent to the outcome of a subsequent successor liability suit brought against the purchaser. The debtor's estate stands neither to be augmented nor diminished. As a result, the bankruptcy court lacks jurisdiction to enjoin such a suit. *See Johns-Manville Corp. v. Chubb Indemnity Insurance Co. (In re Johns-Manville Corp.),* 517 F.3d 52, 66 (2d Cir. 2008) (holding that "a bankruptcy court only has jurisdiction to enjoin third-party non-debtor claims that directly affect the *res* of the bankruptcy estate"), *reversed on other grounds*, —S.Ct.—, 2009 WL 1685625 (June 18, 2009); *Feld v. Zale Corp. (In re Zale Corp.),* 62 F.3d 746, 753 (5th Cir. 1995) (observing that "courts

have held that a third-party action does not create 'related to' jurisdiction when the asset in question is not property of the estate and the dispute has no effect on the estate").

52. The Seventh Circuit's opinion in *Zerand-Bernal* is on point. In *Zerand-Bernal*, the plaintiff had purchased the assets of a chapter 11 debtor in bankruptcy. The sale order approved the sale "free and clear of any liens, claims or encumbrances" and reserved in the bankruptcy court the jurisdiction "to enjoin . . . any products liabilities claims arising prior to the Closing or relating to sales made by Debtor prior to the Closing." 23 F.3d at 161. Several years after the sale, the defendant commenced a product liability suit against the purchaser on a successor liability theory, alleging injury from a product manufactured by the debtor. The purchaser then brought an adversary proceeding in the bankruptcy court seeking to reopen the bankruptcy case and enjoin the product liability suit. The bankruptcy court dismissed the adversary proceeding for lack of jurisdiction. *Id.* at 161.

53. On appeal, the Seventh Circuit affirmed the dismissal. The Seventh Circuit held that the bankruptcy court lacked "related to" jurisdiction under 28 U.S.C. § 1334(b) because "the suit cannot possibly affect the amount of property available for distribution to [the debtor's] creditors; all of [the debtor's] property has already been distributed to them." *Id.* at 162. Similarly, the court held that there was no "arising under" jurisdiction because the bankruptcy was "over and done with" and "[t]he main dispute is one between a purchaser at the bankruptcy sale and a person who had nothing to do with the bankruptcy over a point of state law." *Id.*

54. Of significance, the Seventh Circuit was not swayed by the policy argument that its decision might ultimately lead to depressed sale prices in bankruptcy. The court acknowledged the validity of the assertion, but rejected it as a justification for enjoining

successor liability claims. *See id.* at 163 ("All this is true, but proves too much. It implies, what no one believes, that by virtue of the arising-under jurisdiction a bankruptcy court enjoys a blanket power to enjoin all future lawsuits against a buyer at a bankruptcy sale in order to maximize the sale price."); *see also Johns-Manville*, 517 F.3d at 66 ("It was inappropriate for the bankruptcy court to enjoin claims brought against a third-party non-debtor solely on the basis of that third-party's financial contribution to a debtor's estate.").

55. Even if a bankruptcy court had jurisdiction to enjoin successor liability claims, it would be improper to do so. The Bankruptcy Code contemplates that certain ends can be achieved only through a plan of reorganization, not through a section 363 sale. Supreme Court precedent counsels that the distinctions between the two should not be ignored. In *Florida Department of Revenue v. Piccadilly Cafeterias, Inc.*, 128 S. Ct. 2326 (2008), the Supreme Court held that sales pursuant to section 363 were subject to state stamp taxes notwithstanding that identical sales pursuant to a plan of reorganization were exempt under section 1146(a) of the Bankruptcy Code. *Id.* at 2339.

56. The debtor in *Piccadilly* argued that Congress could not have "intended the anomaly that a transfer essential to a plan that occurs two minutes before confirmation may be taxed, but the same transfer occurring two seconds after may not." *Id.* at 2338. Additionally, the debtor argued that "interpreting § 1146(a) to apply solely to postconfirmation transfers would undermine Chapter 11's twin objectives of 'preserving going concerns and maximizing property available to satisfy creditors.'" *Id.* (citation omitted). The Court was unimpressed by these arguments, noting that "it is not for us to substitute our view of . . . policy for the legislation which has been passed by Congress." *Id.* at 2339 (citation omitted).

57. The same is true in the case of section 363(f). Congress could have drafted that section to permit sales free and clear of "claims and interests." But instead, Congress drafted the section more narrowly, and reserved the broader language for section 1141(c). The court should not use its equitable powers under section 105(a) to override this distinction.

III.

Even if Assets Could be Sold Free and Clear of *Existing* Claims They Cannot be Sold Free and Clear of *Future* Claims

58. As relevant to this Objection, successor liability claims falls into two broad categories. The first are claims for which a right to payment, contingent or otherwise, already exists ("existing claims"). The second are "claims" for which a right to payment has yet to arise because no liability-generating conduct or incident has yet occurred ("future claims").

59. As discussed above (at ¶ 42), several courts have concluded – mistakenly, in the Committee's view – that bankruptcy courts can authorize sales free and clear of existing successor liability claims.[10] The same cannot be said of future claims. Courts have overwhelmingly rejected the idea that assets can be sold free and clear of future claims. *See, e.g. Zerand-Bernal,* 23 F.3d at 163; *Mooney Aircraft Corp. v. Foster (In re Mooney Aircraft, Inc.),* 730 F.2d 367, 375 (5th Cir. 1984); *Car-Tec, Inc. v. Venture Indus., Inc. (In re Autostyle Plastics, Inc.),* 227 B.R. 797, 800 (Bankr. W.D. Mich. 1998); *Schwinn Bicycle,* 210 B.R. at 760-61; *Ninth*

[10] *See, e.g., Trans World Airlines,* 322 F.3d at 286 (addressing sale order that extinguished existing claims based on Travel Voucher Program and discrimination charges already pending before EEOC); *Myers,* 297 B.R. at 777 (addressing lawsuit arising out of pre-petition exposure); *P.K.R. Convalescent Centers,* 189 B.R. at 92 (addressing existing contingent claim); *All American of Ashburn,* 56 B.R. at 189 (distinguishing between existing claims and claims arising after sale, and addressing product liability claim that arose prior to sale).

Avenue Remedial, 195 B.R. at 731-32; *Fairchild Aircraft*, 184 B.R. at 921; *White Motor Credit*, 75 B.R. at 948-49. [11]

60. The reasoning of these cases is compelling. First, to the extent that a bankruptcy court must rely on its equitable power to cleanse assets of successor liability claims, this power does not extend to claims arising post-bankruptcy, because such claims are not "claims" for purposes of bankruptcy. *See, e.g., White Motor Credit*, 75 B.R. at 948-49 (bankruptcy court's "equitable power to sell free and clear must be interpreted consistent with its power to discharge claims under a plan of reorganization"); *Ninth Avenue Remedial*, 195 B.R. at 731-32 (noting that if claim could have been a claim in bankruptcy, "the bankruptcy court had the equitable power to discharge the claim against the assets purchaser," but "[i]f the claim arose after the consummation of the bankruptcy proceedings, the bankruptcy court did not have the

[11] This trend extends to state courts. State courts generally accord no deference to bankruptcy court free and clear orders where the successor liability claim at issue in the collateral state court proceeding arises out of an accident occurring subsequent to the bankruptcy sale. *See, e.g., Simmons v. Mark Lift Indus., Inc.*, 622 S.E. 2d 213, 215 (S.C. 2005) (where accident occurred years after sale, court held that "a plaintiff may maintain a state law-based product liability claim under a successor liability theory against a successor corporation which purchased the predecessor's assets in a voluntary sale approved by the federal bankruptcy court provided one of the [usual exceptions to the rule against successor liability] applies"); *Renkiewicz v. Allied Prods. Corp.*, 492 N.W. 2d 820, 821 (Mich. Ct. App. 1992) (free and clear sale did not extinguish product liability claim against purchaser that arose out of accident that occurred subsequent to sale); *Wilkerson v. C.O. Porter Machinery Co.*, 567 A.2d 598, 599-601 (N.J. Super. Ct. 1989) (where injury occurred subsequent to sale, court held that "[t]he mere fact that the bankruptcy order approves a sale purporting to transfer assets free and clear of various claims, even including contingent products liability claims, should not be determinative."); *cf. Gross v. Trustees of Columbia University*, 816 N.Y.S.2d 695, 2006 WL 825040, at *4-5 (Sup. Ct. Kings Co. Mar. 30, 2006) (although accident occurred prior to sale, product liability claim was not bankruptcy "claim" because it had not yet been filed; accordingly, it was "future claim" that was not barred by free and clear sale); *Lefever v. K.P. Hovnanian Enters. Inc.*, 734 A.2d 290, 298 (N.J. Sup. Ct. 1999) (although accident occurred prior to sale, successor liability claim was not barred because the bankruptcy proceedings had not "dealt with" the claim, that is, the plaintiff "was not a creditor of the bankrupt" and had filed no claim in the bankruptcy proceedings); *see also Ross v. DESA Holdings Corp.*, No. 05C-05-013, 2008 WL 4899226 (Del. Super. Ct. Sept. 30, 2008) (rejecting imposition of successor liability for post-sale accident, but doing so not because of the bankruptcy court "free and clear" order but rather because none of the recognized exceptions to the rule against successor liability applied); *DiGuilio v. Goss Int'l Corp.*, No. 1-07-1584, 2009 WL 1175089, at *6-8 (Ill. App. Ct. Apr. 30, 2009) (same); *Rivera v. Anderson United Co.*, 727 N.Y.S. 2d 447, 448-49 (N.Y. App. Div. 2001) (same).

power to discharge that claim"); *Fairchild Aircraft*, 184 B.R. at 921 ("[I]t is only if the claims . . . can properly be said to have been the subject of the bankruptcy process that we can maintain that the bankruptcy court had any authority to issue orders affecting their rights."); *Mooney Aircraft*, 730 F.2d at 375 ("no claim to be divested" because the claims "did not arise until more than five years after the sale and more than a year after the bankruptcy estate was closed").

61. Second, due process prevents the sale of assets free and clear of future claims. As the District Court for the Southern District of New York noted in *R.C.M. Executive Gallery*, "the case for successor liability is . . . strong[]" where plaintiffs "allege that they had no notice of the prior bankruptcy proceedings and therefore never pursued a claim in bankruptcy." 901 F. Supp. at 638; *accord Schwinn Bicycle*, 210 B.R. at 760-61 ("Allowing provisions of the Sale Order to bind these [future claimants], even if that Order was intended to do so, would violate the Fifth Amendment because of fairness and due process concerns and would also violate bankruptcy notice requirements."); *Zerand-Bernal*, 23 F.3d at 163 (rejecting notion that bankruptcy court "could allow the parties to bankruptcy sales to extinguish the rights of third parties, here future tort claimants, without notice to them or (as notice might well be infeasible) any consideration of their interests"); *see also, e.g.*, *Mooney Aircraft*, 730 F.2d at 375 ("We recognize that a sale free and clear is ineffective to divest the claim of a creditor who did not receive notice, and that, were it necessary to reach this question, this lack of notice might well require us to find that the bankruptcy court's prior judgment was ineffective as to the [future claims at issue]") (internal citations omitted); *Western Auto Supply Co. v. Savage Arms, Inc. (In re Savage Industries, Inc.)*, 43 F.3d 714, 722 (1st Cir. 1994) ("[I]t cannot seriously be questioned that the central 'notice and hearing' requirement prescribed by the Bankruptcy Code would be eviscerated were we to presume, as [defendant] belatedly suggests, that an entire class of future

products liability claimants was beyond the purview of 'such notice . . . and such opportunity for a hearing as [was] appropriate in the particular circumstances.'") (citing 11 U.S.C. § 102(1)(A)).

62. There are additional considerations that make it particularly inappropriate to attempt to use a Section 363 sale to cut off liability for future asbestos claims. Asbestos claims are unique in that the Bankruptcy Code contains a provision governing the terms under which such future claims – or "demands," as they are referred to in the Bankruptcy Code – may be discharged. *See* 11 U.S.C. § 524(g). The existence of the provision implies that it should be the exclusive means of discharging future asbestos claims, and courts have so held. *See, e.g., In re Combustion Engineering, Inc.*, 391 F.3d 190, 237 n.50 (3d Cir. 2004) ("§ 105(a) cannot be used to achieve a result not contemplated by the more specific provisions of § 524(g), which is the means Congress prescribed for channeling the asbestos liability of a non-debtor").

63. A free and clear sale such as that contemplated in these cases does not constitute a "discharge." Yet, in purporting to bar future asbestos claims against New GM, the sale would achieve a similar result. Thus, to the extent that bankruptcy courts have the equitable power to authorize sales free and clear of future claims – and the Committee believes that they do not – this power is impliedly circumscribed by the existence of section 524(g).

IV.

The Debtors Must Demonstrate That the Proposed Sale Makes Adequate Provision for the Payment of Costs of Administering the Estate

64. The proposed transaction is termed a "sale," but it more closely resembles a foreclosure. By virtue of the Credit Bid, the Government Entities, as secured creditors, are taking title to property in lieu of being repaid. A similar result could have been achieved by the initiation of foreclosure proceedings under state law – with one critical distinction. Under state

law, the Government Entities would have been unable to avail themselves of the numerous benefits of the Bankruptcy Code.

65. Chief among the benefits of bankruptcy are the ability to assume and reject executory contracts and to purchase assets free and clear of certain interests. The Government Entities propose to take full advantage of both of these benefits, and more. Having chosen to use the bankruptcy forum to obtain title to Old GM's assets, the Government Entities should be required to "pay the freight," that is, make provision for the payment of the costs of administering the bankruptcy cases.

66. A recent case, *In re Gulf Coast Oil Corp.*, 404 B.R. 407 (Bankr. S.D. Tex. 2009), illustrates the principle. In *Gulf Coast*, the debtor proposed to sell substantially all of its assets to its secured lender in partial satisfaction of its claim (i.e., a credit bid). The debtors' financial advisors objected to the sale on the ground that the proposed transaction would not pay all administrative expenses of the estate. *Id.* at 414.

67. The bankruptcy court sustained the objection. The court emphasized that "bankruptcy is, at its essence, a collective remedy intended to benefit all creditors, not just the secured lender." *Id.* at 426. In the court's view, the essence of the transaction was "a foreclosure supplemented materially by a release, by assignment of executory contracts (but only the contracts chosen by the secured lender), by a federal court order eliminating any successor liability, and by preservation of the going concern." *Id.* at 428. In short, "[t]he only effect of the bankruptcy process would be to transfer the debtors' assets to its secured creditor with benefits that the creditor could not achieve through foreclosure." *Id.* The court was unwilling to countenance this result, particularly where the expenses of the bankruptcy proceeding would not be paid. *See id.* at 427 (noting that "it would be especially difficult to understand why the

purchaser should get the benefit of extraordinary bankruptcy powers and remedies for which it did not pay").

68. The principle that a secured creditor must pay for the benefits it realizes in bankruptcy is not a novel one. Indeed, section 506(c) of the Bankruptcy Code expressly contemplates this result. That section provides that "[t]he trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim." 11 U.S.C. § 506(c). Thus, for example, in *In re Pudgie's Dev. of N.Y.*, 223 B.R. 421 (Bankr. S.D.N.Y. 1998), the court awarded fees to the debtors' counsel notwithstanding that the payment of such fees would reduce the amount of the sale proceeds available to pay the claims of the secured DIP lenders. *Id.* at 424-25. The court found that the fees were justified under section 506(c) on the grounds that without the efforts of counsel, "it appears likely that the sale would not have occurred, the Debtors' business operations would have ceased, the case would have been converted to Chapter 7 and the paltry physical assets would have been sold for nominal values undoubtedly equating to a small fraction of the [sale proceeds]." *Id.* at 424.

69. Unlike in *Gulf Coast,* the Committee does not suggest that the court should disallow the Sale. However, prior to approving the Sale, the court should require the Debtors to present evidence that the Sale will not leave the Debtors' estates administratively insolvent. The distribution of stock to unsecured creditors of Old GM that is contemplated by the Sale transaction is to be accomplished under a future chapter 11 plan. A plan cannot be confirmed absent the payment of priority and administrative claims. *See* 11 U.S.C. § 1129(a)(9)(A). Accordingly, in order to ensure that unsecured creditors will receive the limited recovery promised to them under the terms of the Sale, the Debtors should be required to

demonstrate (1) that Treasury will forego enforcement of Old GM's liability for the $950 million in DIP proceeds constituting the Wind Down Facility to the extent necessary to fund the expenses of the Estates, and (2) that the Wind Down Facility will, in turn, be sufficient to pay all anticipated administrative and priority claims, such that other assets left with Old GM, including stock of New GM, will be available for distribution to other unsecured creditors.

CONCLUSION

70. For the foregoing reasons, the Committee respectfully requests that the Court approve the Sale Order only if it is amended to eliminate the purported cut-off of successor liability and provide for the assumption of such claims by New GM, and only upon an adequate demonstration that the proposed sale makes provision for the payment of all administrative and priority claims.

Dated: June 24, 2009
New York, New York

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Proposed Counsel for the Official Committee of Unsecured Creditors

Exhibit A

Exhibit A

ISSUE	OBJECTION
Master Sale and Purchase Agreement ("MPA") Issues:	
Assumption of Dealer Agreements by New GM should be absolute	Section 6.6(a) permits New GM to request that Old GM consent to the removal of the Deferred Termination Agreement and Participation Agreement from the list of Assumable Executory Contracts. Under the terms of the MPA, Old GM cannot unreasonably withhold its consent to any such request. The language permitting New GM to make these requests should be removed and the requirement that New GM assume all Deferred Termination Agreements and Participation Agreements should be absolute. Old GM's counsel has agreed to remove any language that creates ambiguity with respect to the assignment to New GM of Dealer Agreements. This agreement needs to be reflected in a revised MPA.
The Sale Order should not provide for preemption of state law	Paragraph 39 of the proposed Sale Order provides that no law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the 363 Transaction, the MPA, the Motion, and the Sale Order. The Sale Order should not provide that state laws are preempted generally and any such statements must be limited to "legal truisms" (e.g., section 365 controls the assignment of Assumable Executory Contracts) but not otherwise seek to characterize the effects of any such assignment under non-bankruptcy law.
There should be greater transparency with respect to the assumption and rejection of Assumable Executory Contracts	Section 6.6 provides New GM with the right to add or remove any Executory Contract from the definition of Purchased Contracts until 30 days after the Closing Date. Consequently, it will not be possible to determine the universe of rejected Executory Contracts until at least 30 days after the Closing Date. New GM has agreed to publicly disclose, as soon as is practicable, those Executory Contracts with respect to which it has made the pre-Closing determination to assume or not to assume. This covenant should be reflected in the MPA.
It should be clear that Old GM does not bear any liability for tax liabilities of Subsidiaries that are sold to New GM	There is language in a number of sections in the MPA that creates ambiguity as to whether Old GM would have liability for tax liabilities of Subsidiaries that are sold to New GM. It has been indicated that it was not intended that Old GM should bear such liability (though this intent needs to be confirmed). The MPA needs to be revised to reflect this position.
Old GM should have greater rights with respect to tax matters relating to taxes for which Old GM is liable	Section 6.16 provides New GM with significant control over tax issues affecting Old GM. Old GM should have greater rights with respect to tax matters (including tax returns and audits or other proceedings) that could materially affect taxes payable by Old GM, including control over any election under IRC Section 108(b)(5) (which relates to order of attribute reduction resulting from cancellation of indebtedness).
New GM should assume Product Liabilities with respect to claims arising post-Closing	Section 2.3(a)(ix) provides that New GM will assume Product Liabilities arising out of products delivered after the Closing.

ISSUE	OBJECTION
	New GM has agreed to assume all Product Liabilities for claims arising after the Closing, regardless of whether the products were delivered prior to or after the Closing. This agreement should be reflected in the MPA. The MPA needs to clarify the treatment of product liability claims arising post-petition and pre-Closing.
New GM should assume implied warranties	Section 2.3(a)(vii) provides that New GM will assume express warranties with respect to vehicles and parts. New GM has additionally agreed to assume all implied warranties with respect to vehicles and parts. This agreement should be reflected in the MPA.
Old GM should retain Product Liability insurance policies	Pursuant to Section 2.2(a)(xvii), New GM will acquire insurance policies of Old GM which relate to product liability claims, while Old GM will retain certain product liabilities under Section 2.3(b)(ix). Old GM should retain the insurance policies which provide coverage for these claims.
No Representations or Warranties should survive Closing	Section 9.1(b) provides that a number of the representations and warranties survive until the third anniversary of the Closing. New GM has agreed that no representations or warranties should survive the Closing. This agreement needs to be reflected in a revised MPA.
Adjustment Shares should be excluded from collateral securing the Wind Down Facility	Section 6.9(b) does not exclude the Adjustment Shares from the assets of Old GM which will secure the Wind Down Facility. New GM has agreed that the Adjustment Shares will be so excluded. This agreement needs to be reflected in a revised MPA.
Definition of "UST Credit Facilities" should be clarified	The definition of "UST Credit Facilities" should capture any amendments thereto. This is an important issue since New GM is credit bidding the debt under the UST Credit Facilities as defined in the MPA. Old GM's counsel has agreed to make this clarification. This clarification needs to be reflected in a revised MPA.
It should be clarified that New GM is assuming all liabilities with respect to Assumed Plans that constitute Purchased Assets	Section 2.2(a)(xvi) provides for the acquisition by New GM of all Assumed Plans to the extent described in Section 6.17(e). Section 2.3(a)(xiii), however, provides only for the assumption of Liabilities under the Assumed Plans to the extent that such Liabilities relate to an Employee covered by the UAW Collective Bargaining Agreement. The assumption of liabilities under Assumed Plans should be consistent with the acquisition of the Assumed Plans and with Section 6.17(e).
Form of Registration Rights Agreement ("RRA") Issues:	
Share and Warrant Consideration should be registered under the Securities Exchange Act of 1934 (the "1934 Act"), and be listed on a national exchange, prior to specific dates	The RRA does not require that New GM become a reporting company under the 1934 Act or that New GM's shares of common stock and warrants be listed for trading on the NYSE or Nasdaq prior to specific dates. New GM is considering dates by which such commitments may be made. Once the date is determined it should be reflected in a revised RRA.

ISSUE	OBJECTION
Old GM should be granted "most favored nation" status, along with the other stockholders of New GM	Section 2.12(b) provides that if New GM grants to any party registration rights which are more favorable than those provided in the RRA, New GM will grant those same rights to UST Holdco, Canada and the VEBA. Old GM should also receive the benefits of this provision. New GM agreed that this provision would be changed to be uniform for UST Holdco, Canada, the VEBA and Old GM. This agreement needs to be reflected in a revised RRA.
Old GM should not be required to indemnify New GM to a greater degree than New GM's other stockholders	Section 2.9.2 requires Old GM to indemnify New GM for Losses arising out of material misstatements or omissions made in a registration statement or prospectus in reliance on information provided by Old GM. No other stockholder which is a party to the RRA is required to provide such indemnification. New GM has agreed to exempt Old GM from the indemnification obligation on the same basis as the other holders of Registrable Securities. This agreement needs to be reflected in a revised RRA.
Form of Transition Services Agreement ("TSA") Issues:	
The $15MM cap on liability and limited remedies unduly restrict Old GM's recourse if New GM breaches [§§ 5.3, 5.4 & 6.1]	The amount of the cap should be increased, and its application limited by carving out gross negligence and intentional breach. Otherwise, the cap may enable New GM to shed all of its obligations under the TSA (thereby depriving Old GM of services essential to the liquidation) by paying $15MM. In addition, each party should have the express remedy of specific performance.
New GM's ability to terminate the TSA in its entirety needs to be very limited [§ 4.3]	Continued provision of New GM's services are critical to Old GM's ability to move forward towards liquidation. Accordingly, and given the adequacy of other remedies, New GM's ability to call a default and terminate the TSA in its entirety should be extremely narrow -- limited only to an Old GM payment default that continues for 30 days after notice. New GM should pursue specific performance and damages for other breaches.
Old GM needs to assure the sufficiency and quality of services received [§§ 2.5, 2.8, 2.10, & Sch. A, A-2 & B]	If Old GM reasonably requires, within a year of Closing, additional services which New GM has historically provided or is reasonably able to provide, New GM should be obligated to provide them, on a commercially reasonable ("fully loaded" cost plus 5%) basis, regardless of whether the parties are able to agree on price and specifications. New GM should also provide (i) legal services of the type previously provided in house (subject to conflict of interest or ethical bars) and (ii) all facility idling services. In addition, New GM should, consistent with its own business, expressly seek to afford Old GM with the benefits of qualified personnel and institutional knowledge.
A traditional overall objective performance standard should apply to all services [§ 2.1]	All services, including those performed by New GM for its own account, should be subject to a performance standard specifying reasonable and ordinary care, skill and diligence, in a manner consistent with historic practice, including with respect to nature, quality and timeliness.
Old GM should not be required to perform additional services [§ 2.5]	Old GM will have no post-Closing employees. New GM should not have any ability to require Old GM to perform services not specified in the TSA.

ISSUE	OBJECTION
New GM needs to be responsible for the performance of its third party providers [§ 2.4]	If consent from a third party provider cannot be obtained, New GM should provide a substantially equivalent service. In addition, New GM should be responsible for its third party providers' adherence to the performance standard and any other breaches, and obtain Old GM's reasonable approval of new providers.
New GM needs to be responsible for environmental conditions it causes [Sch. B]	New GM should be liable for the cost of remediating any contamination caused by it, and any resulting consequences. In addition, Old GM should not be obligated to provide or guarantee financial assurance required under any environmental laws.
New GM needs to be responsible for the absence of landlord consents [Sch. C]	No landlord consents have been obtained for New GM's use and occupancy of the leased properties covered by the TSA. New GM should be responsible for any resulting liability.
Old GM needs traditional arms-length real estate protections [Sch. C]	The TSA should provide Old GM with traditional real estate protections including (i) the right to recover possession following a New GM default; (ii) at least six months' prior notice before vacating; (iii) the ability to directly enforce overleases; and (iv) the acknowledgement by New GM that it is taking facilities "as is" (with no implied obligation of Old GM to make repairs or provide services) and is liable for all related taxes and the repair of damages caused by it.
Old GM must be assured access to appropriate New GM personnel and information [§ 7.18]	The parties should expressly agree to reasonably cooperate with each other, including by providing the other access to books and records, and employees.
Coordination/dispute resolution should be enhanced [§ 2.14]	Each party should appoint a liaison to coordinate activities and facilitate prompt dispute resolution.
The terms of the TSA applicable to SPO Jacksonville and SPO Boston must be clarified [Schedule C]	The TSA is unclear regarding New GM's use and occupancy of certain properties (including SPO Jacksonville and SPO Boston), including whether the leases will be assumed or rejected.
Form of Master Lease Agreement ("MLA") Issues:	
Old GM is entitled to a creditworthy Tenant under the MLA [cover page]	The Tenant under the MLA is a new shell entity, with no obligation to post any security deposit or maintain third party insurance. Instead, New GM should itself be the Tenant, or provide a full guaranty.
Old GM is entitled to traditional arms-length real estate provisions [§§ 6, 8, 9 & 13.2]	Tenant should be obligated for all customary "triple net lease" responsibilities, including all taxes imposed on the real estate, fixtures and personal property, and repairs other than major structural repairs, as well as obtaining waivers of subrogation, and observing customary subletting and assignment restrictions.
Short notice periods unduly disadvantage Old GM [§§ 3 & 23]	Tenant may at any time, on 45 days' notice (30 in certain cases), remove one or more facilities from the MLA. Such short notice periods will disadvantage Old GM in selling or re-letting the facilities. Six months' notice should be

ISSUE	OBJECTION
	required.
Old GM is entitled to true holdover rent [§ 16]	Tenant should be required to pay holdover rent at a customary premium to market rent, and operating costs during any holdover period.
Tenant needs to be responsible for environmental conditions it causes [§ 18]	While Old GM generally retains environmental liabilities, Tenant should be responsible for (and not released from) the cost of remediating any contamination caused by it, and any resulting consequences.
Michigan law should not govern out-of-state properties [§ 21.8]	Michigan law governs the MLA, even where facilities are in other states. This unusual provision may operate to limit Old GM's rights and remedies. Governing law should be the law of the state in which a property is located.

Exhibit U

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- -x

In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 1, 2009

7:59 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Debtors Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (i)Approve (a)the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (b)the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (c)Other Relief; and (ii)Schedule Sale Approval Hearing

HEARING re Notice of Settlement of an Order Denying Motion of the Unofficial Committee of Family & Dissident GM Bondholders for an Order Directing the United States Trustee to Appoint an Official Committee of Family & Dissident Bondholders

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P R O C E E D I N G S

THE COURT: Good morning. Have seats, everybody. All right. We're here on GM, the motion of Manufactures and Traders for relief from the stay. I have no objection to it from the debtors. Folks, why are we here? I have never seen such a slam dunk entitlement to relief from the stay in a commercial case and I have no objection from the debtors. Mr. Smolinsky, are you appearing for the debtors on this?

MR. SMOLINSKY: Yes, Your Honor. I think the reason why we're here is simply because we received a draft stipulation a day or so before the hearing. And it just took time to allow the unsecured creditors' committee to review it and for us to review it. So we apologize for the Court's inconvenience. We had tried to move it to a time that was consistent with our other hearings in the case. But we're prepared to stipulate we reviewed the stipulation. We had a call last night and finalized the verbiage of the stipulation.

THE COURT: Well, I'm here anyway. But this situation required a lawyer to come up from Philly for such a plain entitlement? Let me tell you what else is bothering me, Mr. Smolinsky. After some bad experiences in the Lyondell Chemical case, I built into my case management order a provision that before people move for emergency relief from the stay, they'd have to contact the debtor to see if the debtor would consensually agree to give them whatever relief from the

stay or adequate protection they were asking for. And even to require a certification that they had tried to work it out with the debtor to avoid the expense of dealing with the matter of this character.

So I looked very hard for the certification because I couldn't believe that a creditor had to make a motion of this character if they had picked up the phone and discussed it with the debtor. And the certification that I have here says that on June 16th, counsel for the movant called your firm's office where they were directed to the number of the debtors' noticing and claims agent. And that they subsequently spoke to a representative of the claims agent and left a detailed message that presumably wasn't responded to. And then on that same day, they made additional efforts to reach debtors' counsel telephonically and left a message with the attorney purportedly assigned to the debtors' case. And according to the certification, in three days they never got a response? That exactly frustrates the purpose of the certification mechanism and required counsel to appear on a motion which if there were an eight second phone call with a second year associate, one who'd have been admitted to the bar for a week, we could have avoided this.

MR. SMOLINSKY: Your Honor, let me -- if I can explain? First of all, in terms of counsel being here, we accommodated them to the utmost. We told them that they didn't

need to appear. If the committee needed more time to review the stipulation -- as I said, we had the stipulation for less than a day while all the sale hearing activities were going forward. We told counsel that they didn't need to appear, that we would simply tell the Court that there was a resolution and that we would submit a stipulation.

In terms of the calls, I can only say, and I'm not saying this for any excuse, but we've been receiving, as you can imagine, tens of thousand of calls. We put a process in place, as well as General Motors put a process in place, where an attorney would return every phone call. And if it was a creditors' call, it would be referred to the supplier hotline call center that you've heard about. There was no physical way for myself to return all of the calls --

THE COURT: Well, I wouldn't expect a partner to respond to a call of this character but you've got to have a first year associate -- or, if you think that it requires practicing law, a second year associate -- return a call from another lawyer.

MR. SMOLINSKY: Your Honor, we did have an attorney return all the calls. Why it wasn't taken as a call that could be -- that could result in an immediate settlement, I don't know. It was referred to the call center. I think the call center has been getting back to people but they may not have been -- they may not understand how to deal with a motion to

lift stay. We're been working with counsel. They sent us the perfection documents. We looked at them quickly and there's been no impediment to getting a stipulation done other than the short period of time that we had to review it.

THE COURT: All right. I can understand why you can't make a deal without consulting the creditors' committee. But what I do expect is that when a lawyer for a creditor in the case calls, at least one who's saying that he needs emergency relief and wants relief from the stay, that some lawyer at your firm, at debtors' counsel or your co-counsel, will answer the guy's call, will return the guy's call. And if you can't make a deal, say I've got to call the creditors' committee, I'll get back to you as soon as you can. I'll pay or I'll authorize payment from the estate but you need to put an extra general associate on the matter to return calls of this character. But I won't pay or authorize payment for the need to respond to motions of this character.

The motion's granted and we're adjourned until 9:00.

MR. SMOLINSKY: Thank you, Your Honor.

(Recess from 8:05 a.m. until 9:21 a.m.)

THE COURT: I want to apologize to any of you who may have been waiting for us to begin. We had some business we had to take care of before now. Mr. Miller?

MR. MILLER: Good morning, Your Honor. Harvey Miller on behalf of the debtors. Your Honor, just one housekeeping

detail.

THE COURT: Yes?

MR. MILLER: We referred yesterday to the amended MSPA and I neglected to move it into evidence, Your Honor. So I would ask that it be marked in evidence as Debtors' Exhibit 6A so that it will come right after the original that was filed on June 1st.

THE COURT: Okay. That's the amended one?

MR. MILLER: Yes.

THE COURT: Any objection? Hearing none, it's admitted.

MR. MILLER: Thank you, Your Honor.

(Debtors' Exhibit 6A, amended MSPA, was hereby received into evidence as of this date.)

THE COURT: Are we up to the cross-examination of Mr. Wilson?

MR. MILLER: I think Mr. Repko was first, Your Honor.

THE COURT: I'm sorry?

MR. MILLER: Mr. Repko.

THE COURT: Oh, Mr. Repko first. Okay. You want to remain standing to be sworn? Karen?

(Witness duly sworn)

THE COURT: Have a seat, Mr. Repko.

CROSS-EXAMINATION

BY MR. RICHMAN:

Q. Good morning, Mr. Repko.

A. Good morning, sir.

Q. I'm Michael Richman from Patton Boggs representing dissident bondholders' committee. I think between you and Mr. Koch and Mr. Miller, we have a veritable hall of fame of bankruptcy professionals. Would you talk to us generally about your background in the industry, not just with Evercore but prior to that in your experience with bankruptcy cases?

A. Yes. I was with JPMorgan predecessor institutions for thirty-two years; various responsibilities from the pure workout function acting for the bank's own interests to an advisory business internationally; and then for the last fifteen or so years, as head of the restructuring group which was designed to deliver capital to troubled companies both in court and out of court.

Q. Could you comment on your experience generally in creating and/or valuing bankruptcy spinoffs under Chapter 11 plans? Creation of new companies from the best assets of the old debtors?

A. Well, as part of the capital delivery problem, the credit decision, at least the way I practice it, not only involved the process of financing the company that was in trouble but also identifying the process by which the company would get out of trouble and reorganize because in order to satisfy yourself as a DIP lender, you need to understand how the company will exit

and how it will finance itself.

Q. So you have extensive experience with valuing reorganized debtors?

A. I think so, yes.

Q. Now, in connection with your assignment for the debtors in this case, were you the main spokesperson for Evercore with the board of directors of GM?

A. I was -- I was one of them. There were four senior people involved for Evercore, the first and foremost being our chairman and then chief executive officer, Roger Altman; another senior managing director, William Hiltz; myself and Stephen Worth. And there were others.

Q. Were you present during board meetings when the fairness opinion that Evercore prepared was presented to the board?

A. Yes.

Q. Were you also part of the chain of communications in GM's board giving the assignment to do the fairness opinion?

A. I'm sorry?

Q. Who asked you to prepare the fairness opinion?

MR. MILLER: Excuse me. As Mr. Repko or Evercore?

Q. Who asked Evercore to prepare the fairness opinion?

A. General Motors did.

Q. And what were the parameters in those -- were you privy to that discussion?

A. I don't believe I was present for that discussion.

Q. Who was the discussion with?

A. I believe that discussion was with Mr. Worth, primarily, and Mr. Hiltz.

Q. At any time, to your knowledge, did GM's board ask Evercore to value New GM if New GM were created under a Chapter 11 plan rather than a 363 sale?

A. I don't believe so.

Q. Were you instructed not to do that?

A. We had specific instructions on how to perform the valuation which are contained in Mr. Worth's declaration, I believe.

Q. So there was no -- to your knowledge, no valuation whatsoever was performed with respect to the creation of a new GM under a plan as distinct from a 363 sale?

A. Not to my recollection.

Q. If you assume with me that financing would be available for New GM in comparable numbers to what is now being proposed or promised, could a new GM be created under a Chapter 11 plan with the same or comparable values to the new GM which is being created under the 363 sale?

MR. MILLER: Your Honor, I think there has to be a foundation laid as to the assumptions.

THE COURT: Well, I think that it's debatable whether the assumption is there. And if he's an expert, if you create the assumptions and you want to get his assumption on some

alternate theory, you can, although, Mr. Richman, you're going to have to address whether that opinion would have any relevance if that financing weren't available. Objection overruled.

MR. RICHMAN: Thank you, Your Honor. And I'm just --

THE COURT: And that's on the premise that he's an expert. I'm assuming that you concede that he's an expert, Mr. Richman.

MR. RICHMAN: Absolutely, Your Honor. I do and I'm asking to assume that the financing is available for New GM under a plan.

A. Would you repeat the question?

Q. So assuming financing is available for New GM but created through a plan of reorganization rather than a 363 sale, would you expect the value of New GM to be comparable to the value in the fairness opinion?

A. I haven't done that analysis and that's, I think, the -- given the assumption, without the analysis, they would go behind -- beyond that opinion.

Q. Well, what analysis would you do differently than what is already in the fairness opinion?

A. Well, in the first instance would be the amount of time taken to achieve a plan of reorganization versus the transactions that's before the Court. And I don't -- I have -- I don't have a particular view on how long that might take but

I suspect it would be longer. And that has certain aspects of the business' performance, in my view, probably negative. And then there's a real question about whether the financing would be available and that -- that is assumption is a large one.

Q. Well, assume with me that the financing is available. And assume with me that a Chapter 11 plan is filed on the petition date on an accelerated schedule so that you're still within the same sixty to ninety days that GM told the public it hoped to emerge from bankruptcy. With those assumptions, would you expect New GM to have the same or comparable value that it has under the fairness opinion?

MR. MILLER: Your Honor, please, same objection. What is meant by "accelerated"?

MR. RICHMAN: I said within sixty to ninety days emergence.

THE COURT: Overruled. Mr. Repko, answer the question but as you see fit.

THE WITNESS: Yes, Your Honor.

A. Given the assumptions that you've made, it could be.

Q. Are you familiar with how the fairness opinion valued the collective bargaining agreement, UAW settlement?

A. Broadly.

Q. Does the fairness opinion include the value of the consideration being paid to the VEBA?

MR. MILLER: Your Honor, please, is this in the

nature of cross or is Mr. Richman calling Mr. Repko as his witness because this is way beyond Mr. Repko's declaration.

MR. RICHMAN: It is both adverse direct and cross, Your Honor. It's related directly to the fairness opinion and the valuations.

MR. MILLER: Mr. Repko was not proffered, Your Honor, as a valuation witness. He was proffered in connection with getting debtor-in-possession financing.

MR. RICHMAN: Actually, the exhibit list indicates that his -- I believe, if I read it correctly, that he was being proffered both for the 363 sale as well as the DIP financing.

MR. MILLER: In respect of financing and not as the valuation.

MR. RICHMAN: Well, so --

THE COURT: All right. I've had enough. If that's deemed to be an objection, it is overruled. The fact that this fellow wasn't on the point on the valuation is obviously irrelevant to whether I should consider it as undercutting the persuasiveness of any evidence or testimony that might be inconsistent with the valuation. But I can understand the difference. And I can understand how many of the questions are inconsistent -- use assumptions that are inconsistent with the record. The objection is overruled. Mr. Repko can answer the questions as he sees fit. And both sides can point out to me

why they think the testimony should be regarded as relevant more or less in light of the entirety of the record. Go ahead, Mr. Richman.

BY MR. RICHMAN:

Q. Mr. Repko, do you remember the question? No? Do you know whether the consideration being paid by New GM into the VEBA was part of the fairness opinion?

A. Without looking at it again and thinking about it, I don't really recall.

Q. Okay.

MR. RICHMAN: One second, Your Honor.

THE COURT: Sure.

MR. RICHMAN: Nothing further at this time.

THE COURT: Very well. Other objectors who wish to question Mr. Repko? All right. None? Any redirect, Mr. Miller?

MR. MILLER: No, Your Honor.

THE COURT: All right. Mr. Repko, you're excused --

THE WITNESS: Thank you, Your Honor.

THE COURT: -- from the court. Okay. Can we go right to the material on material on Wilson?

MR. SALZBERG: Yes, Your Honor.

THE COURT: Mr. Salzberg, come on up.

MR. SALZBERG: Your Honor, in connection with Mr. Wilson's testimony, it might be useful at this point to

introduce the four exhibits proffered by the government. That's Mr. Wilson's declaration and three what I'll refer to as the intercreditor agreements.

THE COURT: Okay. Is there any objection? Hearing none, the exhibits are in evidence.

(Government Exhibits 1-4, Declaration of Mr. Wilson and three intercreditor agreements, were hereby received into evidence as of this date.)

THE COURT: And --

MR. SALZBERG: If you'd like, I have a --

THE COURT: Yeah. That would be handy. Thank you. Mr. Wilson?

THE WITNESS: Yes.

THE COURT: Come up, please. Mr. Wilson, I've got to impose the same rules on you as I've imposed on everybody else in the courtroom. Leave the soda there and give him some water. Remain standing here. Karen?

(Witness duly sworn)

THE COURT: Have a seat, please, Mr. Wilson.

CROSS-EXAMINATION

BY MR. SALZBERG:

Q. Good morning, sir.

A. Good morning.

Q. For the record, Mark Salzberg, Patton Boggs, on behalf of the unofficial committee of family and dissident bondholders.

Since your declaration has now been entered into evidence, I'm going to dispense with the preliminary background information. But suffice it to say that you are a member of the auto task force?

A. Yes.

Q. And when did you join the auto task force?

A. In the first week of March 2009.

Q. And as a member of the auto task force, you have primary responsibility with regards to the U.S. Treasury's interactions with GM, is that correct?

A. Among other things, yes.

Q. Okay. And even though you joined the auto task force in mid-2009, or the first quarter of 2009, you're familiar with the activities of the auto task force prior to that time with regards to GM, is that right?

A. Some of them.

Q. Now, the Treasury entered into a loan and security agreement on December 31, 2008, is that correct?

A. Yes.

Q. And in your declaration -- and I'm referring to page 4, paragraph 10 -- you state in a parenthetical that many of the terms and covenants of that agreement were more lenient or favorable than "market terms".

MR. SCHWARTZ: Does Mr. Salzberg have a copy for the witness?

MR. SALZBERG: I'm sorry. I thought that you had presented that.

THE COURT: All right. Just give him a second to follow along in his declaration. One or another, provide him with a copy.

MR. SALZBERG: I apologize, Your Honor.

(Pause)

MR. KENNEDY: A copy is in the IUE exhibit book as Wilson 1. That's the large volume of --

MR. SALZBERG: Thank you. Yeah. Your Honor, if I may approach the witness?

THE COURT: Sure.

THE WITNESS: Thank you.

Q. And again, I'm referring to page 4, paragraph 10. Do you see the paragraph I referred to?

A. Yes.

Q. And what were the terms and covenants which were more lenient or favorable than market terms?

A. Well, as a general matter, I think the interest rate associated with the loan was probably below what a purely commercial lender would charge at that point in time given the financial distress evident at General Motors.

Q. Any other terms and conditions which were more favorable to market terms?

A. It's not clear to me that a lender wouldn't -- another

purely commercial lender would not have imposed restrictions on cash flows beyond what we imposed.

Q. Okay. How far below market rate was the interest rate under the LSA? And by LSA, that's the term that you use in your declaration to refer to loan and security agreement.

A. I've never performed any analysis on that front.

Q. Okay. Were there any other sources for financing for GM at that time? And by "that time", I'm referring to December 31, '08.

A. As you know --

MR. MILLER: Excuse me, Your Honor. Mr. Wilson was not at the Treasury in December of 2008.

THE COURT: I'm going to sustain but you can lay a foundation as to his knowledge. And then if a satisfactory foundation is laid, we can take it from there, Mr. Salzberg.

MR. SALZBERG: Thank you, Your Honor.

Q. You joined the auto task force in March of 2009, is that correct?

A. Yes.

Q. Okay. And even though you joined in March 2009, you became familiar with the activities of the auto task force that were done prior to that time, is that correct?

A. I believe, as I testified earlier, some of them.

Q. And in your -- did you review the activities of the auto task force that occurred prior to the time that you joined?

A. Some of them.

Q. Okay. And is one of the things that --

MR. MILLER: Objection Your Honor. Objection Your Honor. There was no auto task force in December 2008.

THE COURT: Wait. I couldn't hear you, Mr. Miller.

MR. MILLER: There was no automobile task force in 2008 or in the first three months of 2009.

MR. SALZBERG: Your Honor, I can clarify.

THE COURT: Okay. By the way, does anybody know what's causing that noise?

MR. SALZBERG: Is it me?

THE COURT: It's obviously something near some mic.

MR. SALZBERG: It might me. Sorry.

MR. MILLER: It could be two, Your Honor.

UNIDENTIFIED SPEAKER: It sounds like somebody on the phone --

MR. SALZBERG: Okay.

THE COURT: Go ahead, Mr. Salzberg.

MR. SALZBERG: I'll try not to breathe as much. Just every minute or two. Okay.

Q. In paragraph 1 of your declaration, you refer to the auto team, is that right?

A. Yes.

Q. Okay. And so I misspoke when I say auto task force. I'm referring to the auto team as you defined that in your

declaration, okay?

A. Okay.

Q. Okay. As part of your efforts to become familiar with the activities of the auto team that occurred prior to your joining, did you review the loan and security agreement?

A. Yes.

Q. Did you review the other sources of financing, if any, that were available to GM in December of 2008?

A. No, I did not.

Q. Okay. The total amount -- what was the total amount extended or loaned to GM pre-petition by the U.S. Treasury?

A. 19.4 billion dollars.

Q. And how much was extended -- of that loan, how much was extended in December of 2008?

A. I believe on December 31st, the first day of the LSA, it was 4.0 billion dollars.

Q. Now when this 4.0 billion dollars was lent to GM, do you know if GM had any other sources of financing?

A. I don't know.

Q. Was GM at that time solvent?

A. As I testified in my deposition, Mr. Salzberg, under the same question from you, I indicated at that point that we did not perform that analysis.

Q. Okay. Subsequent amounts were lent by the government to GM prior to the petition date, correct?

A. That's correct.
Q. And those amounts were lent in January, February, March, April and in May, is that correct?
A. January, February, April and May, I believe.
Q. Okay. So not in March. And do you know at any of those times when those monies were lent by the Treasury to GM, was GM solvent?
A. We did not perform a solvency analysis at that point in time. Our focus was primarily upon do we believe that the loan had a reasonable likelihood of being repaid 'cause I think most lenders would use that test.
Q. How did the government anticipate that this loan would be repaid?
A. Well, as you'll recall, the company was operating under a Viability Plan 2 at that point in time that was prior -- for much of that time not all of that time. And under the auspices of Viability Plan 2, we believed that the transaction that was proposed, which was the financing that we advanced combined with the equitization of two-thirds of the bonds and half the obligation of VEBA allowed for a reasonable probability of repayment.
Q. Just so I understand, was the repayment to the Treasury dependent upon a reorganization of GM's business?
A. No. It was dependent upon a restructuring of certain obligations as evidenced in the LSA.

Q. And the government's anticipated repayment was based upon a viability plan? I think you said Viability Plan 2, is that correct?

A. It was around a certain set of assumptions, at that point, best embodied in Viability Plan 2.

Q. Okay. And Viability 2 was not accepted by the government -- by the auto team, was it?

A. We believe that Viability Plan 2 did not provide a substantial enough restructuring of the operation of General Motors and rejected it as a result of that.

Q. Okay. Just to be clear, it was rejected by the government.

A. That's what I said. It was rejected because of that, yes.

Q. Okay. Would you say that as --

MR. SALZBERG: Well, strike that.

Q. Was the Treasury the lender of last resort for GM after December of 2008?

A. Most likely, that's yes. I mean, we encouraged General Motors on a number of occasions to try and identify private alternatives. We said a number of times we would prefer a private alternative to our involvement. And as a result of the fact, there did not seem to be any private alternatives either at that point or at this point, for that matter. I think it's reasonable to conclude we were effectively the lender of last resort.

Q. Would you say that as the lender of last resort, the United States government had leverage over General Motors?

A. I think that's fair to say.

Q. Would it be fair to say -- or to call that leverage extraordinary leverage?

A. I think that was a comment that was introduced in the question at my deposition but I don't think it's a word that I used. I think it would certainly be significant.

MR. SALZBERG: May I have a moment, Your Honor?

THE COURT: Of course.

MR. SALZBERG: Your Honor, may I approach the witness? I have a copy of the deposition transcript that was taken of Mr. Wilson.

THE COURT: Yes, you may.

MR. SALZBERG: Okay. And, Your Honor, I have a copy for you.

THE COURT: Thank you.

Q. Sir, if you could turn to page 155 and 156.

A. Who is the question in this case, Mr. Salzberg? Is it you?

Q. These were questions that I posed to you, Mr. Wilson.

A. Okay.

Q. And just for the record, this is a transcript of the deposition that was taken of you on Monday of this week. Do you recall that deposition?

A. Yes.

Q. And I would point you to page 155, line 13.

MR. SALZBERG: And, Your Honor, if I may read the question and answer.

Q. My question was: "You had said in response to prior questioning that the Treasury had leverage. I think you used the term 'extraordinary leverage' with regard to GM in the negotiations. Do you recall that testimony?" Your answer was: "Yes. I think that was in the context of my saying. There were no other lenders. We were the lenders of last resort in this instance."

"Q. You used the term 'extraordinary leverage', is that right?

"A. I think in a situation where a company needs cash and doesn't have any other access to cash, I think that's a reasonable way to characterize it."

MR. SCHWARTZ: Objection. If he wants --

THE COURT: Before you -- okay, wait. Before you answer, Mr. Wilson, wait for this to play out. Mr. Salzberg, you haven't asked a question yet. Mr. Schwartz has risen to object. Let's get the full question out and then I'll rule on it before there's an answer.

Q. I asked you before, sir, if the government's leverage was extraordinary and my recollection of your answer was not -- was no, you did not characterize it as extraordinary although in your deposition earlier this week, you did call it

extraordinary.

THE COURT: All right. Now I'll hear Mr. Schwartz. The implication is that he's given an inconsistent statement?

MR. SALZBERG: Yes, Your Honor.

THE COURT: All right. Mr. Schwartz?

MR. SCHWARTZ: If Mr. Salzberg is trying to impeach Mr. Wilson on the word "extraordinary", he should go to the part of the deposition where Mr. Wilson actually uses the word "extraordinary" if there is such a word. The passage that he just quoted began with his question: I think you used the word "extraordinary". And I heard Mr. Wilson testify in his answers today earlier that it was a word all along that Mr. Salzberg had introduced in his question.

THE COURT: All right.

THE WITNESS: I'd like to answer, Your Honor.

THE COURT: Beg your pardon?

THE WITNESS: Can I answer, Your Honor?

THE COURT: You certainly can if you and your counsel, which, I guess, is Mr. Schwartz here, want to waive his rights under Rule 32 and have Mr. Salzberg read more. Mr. Schwartz, are you happy with the witness just answering?

MR. SCHWARTZ: I'm always happy with the witness answering. But I do think I made my point here and he doesn't have to answer.

THE COURT: Okay. Look, folks, the reason that Rule

32 allows and requires more to be said is to protect the witnesses. It sounds to me like the witness is capable of answering himself. And under those circumstances, Mr. Schwartz, are you okay with withdrawing your objection or your requirement that there be a Rule 32 designation?

MR. SCHWARTZ: That's fine.

THE COURT: Okay. Go ahead, Mr. Wilson.

THE WITNESS: Thank you, Your Honor.

A. Mr. Salzberg, as you can see in the passage you read, I did not use the word extraordinary. You used the word extraordinary. I went back later to my deposition once it was filed to determine if I had used the word extraordinary and did not. You used the word extraordinary. I was agreeing to a general concept not to every single word you spoke. And I think it's a mischaracterization of my statement throughout the deposition as well as today to contend otherwise.

Q. Just so I'm clear, has your counsel filed an errata sheet to your deposition yet?

A. I don't know.

Q. Okay. All right.

THE COURT: Mr. Salzberg, as I took down the testimony and the notes, Mr. Wilson said in words or in substance it's fair to say that the government had leverage. You want to make an issue of the word "extraordinary" that you would put into that question?

MR. SALZBERG: No, Your Honor. I think we'll move on.

THE COURT: Okay.

MR. SALZBERG: Okay.

Q. Did the government have the ability to call the loans, to make the loans due and payable if a viability plan submitted by GM was deemed by the auto team to be insufficient?

A. I believe that's correct.

Q. And those loans would be due and payable within sixty days after that determination was made, is that correct?

A. Yes.

Q. At the time that the loans were extended by the government starting December 2008, was GM able to pay its debts as they became due as a result of the loans?

A. Yes.

Q. But not before the loans had been extended, is that correct?

A. That is what necessitated the loans.

Q. Now, with the leverage that the Treasury had, the Treasury was able to exert influence over GM, is that correct?

A. Well, we certainly engaged in an active dialogue with the company around the terms of their operating restructuring. But we never once said to the company we intend to call the loans.

Q. All right.

THE COURT: Mr. Salzberg, before you go on --

MR. SALZBERG: I'm sorry.

THE COURT: -- and I know I'm going to sound inconsistent here, and, Mr. Wilson, you're allowed to breathe and we may hear your breathing. But I am going to ask that you keep the microphone closer to you.

THE WITNESS: Closer to me?

THE COURT: Yes, please.

THE WITNESS: Okay.

THE COURT: Go ahead, Mr. Salzberg.

MR. SALZBERG: Okay. Thank you, Your Honor.

Q. The CEO presently of GM is Mr. Henderson, correct?

A. Yes.

Q. And his predecessor was Mr. Wagoner, is that correct?

A. Yes.

Q. And the auto team informed Mr. Wagoner in March of 2009 that the auto team did not have confidence in his leadership, is that correct?

A. Yes.

Q. And shortly thereafter --

MR. SALZBERG: Well, strike that.

Q. That was conveyed to Mr. Wagoner by, I believe, Mr. Rattner --

A. That's correct.

Q. -- who was the head of the auto team, is that right?

A. That's correct.

Q. Okay. And shortly after Mr. Rattner informed Mr. Wagoner of the lack of confidence, Mr. Wagoner resigned as CEO, is that right?

A. That's correct.

Q. The Treasury required that the assets that are the subject of the sale motion today require that those assets be sold through a 363 process as opposed to being disposed of through a plan of reorganization, is that correct?

A. Yes.

MR. SALZBERG: Your Honor, if I may, yesterday we introduced for limited purposes Bondholder Exhibit number 2. And I'd like to show the witness Bondholder Exhibit number 2 but I don't have the original.

THE COURT: You can certainly show it to the witness.

MR. SALZBERG: Do you have the original?

THE COURT: Do I have the original?

MR. SALZBERG: No, no. I was talking to the clerk. I'm sorry.

THE COURT: I don't know if the clerk does. I think that as people were marking exhibits, they kind of gave me working copies. And I don't know if they were official copies or not.

MR. SALZBERG: Your Honor, may I approach the witness?

THE COURT: Yes, you may. Give me a second to get my

copies. Mr. Salzberg, it says on the front "Use of Section 363 to Expedite Restructuring of Distressed OEMs"?

MR. SALZBERG: Yes, Your Honor.

THE COURT: Okay. I'm with you. Go ahead.

MR. SALZBERG: Okay. And for the record, this is Bondholder Exhibit number 2 which bears Bates stamps GMPR92336 through 92360.

Q. You see the first page of Bondholder Exhibit 2 referenced to Cadwalader Wickersham & Taft?

A. Yes.

Q. And they were the government's outside counsel in this transaction, is that correct?

A. They were the counsel to the U.S. Treasury, yes.

Q. Okay. Do you recognize Bondholder Exhibit number 2?

A. I know we went through this several times in the course of my deposition on Monday.

Q. I'm asking you if you recognize this document.

A. Yes.

Q. Okay. Did you see this document as part of your responsibilities as a member of the auto team?

A. I, at this time, no longer recall what I saw prior to Monday on this document. I'm sure at my deposition I explained to you whether I had seen it prior to Monday or not. I just can't recall at this point after having gone through it several times.

Q. Do you have any reason to doubt -- well, do you remember if this document was provided to you by the Treasury's outside counsel?

A. I'm not sure what you're asking, sir. And I'm answering the same way. I believe that I saw this several times on Monday. At the beginning of my deposition on Monday, I testified as to whether or not I had seen it before. At this point, I can no longer recall 'cause I went through it so many times on Monday.

Q. Okay. All right. If I can ask you to turn to page 3 of this document? Before I point you to specific parts of page 3, did Cadwalader provide advice to the U.S. Treasury regarding potential processes for accomplishing the disposition of the assets being sold under the sale motion?

A. Yes.

Q. Okay. So, in other words -- that was kind of a convoluted question. Your counsel told you of the different ways in which the assets can be disposed of.

A. That's correct.

Q. Okay. And one of the ways that was highlighted by your counsel was under Section 363 of the Bankruptcy Code.

A. That's correct.

Q. And the other way was through a plan of reorganization, is that right?

A. There were other alternatives. The plan was one of them.

Q. Okay. So two of the alternatives that were discussed are referenced on this page 3. Do you see that?

Q. And would it be fair to say that your counsel identified strategic benefits of a 363 sale as compared to a plan?

A. I think this page, sir, describes the tradeoff associated with either of the 363 sale or the plan.

Q. Without reference to page 3 of the document, I'm just asking did your attorneys advise you of the strategic benefits available under Section 363 as opposed to under a plan confirmation process.

MR. SCHWARTZ: Objection. I think we're getting dangerously close to privileged information.

THE COURT: All right. Well, the substance of privileged advice is privileged. The subject matter of privileged advice -- or of legal advice is not privileged. You can ask subject matter, Mr. Salzberg, but not substance. Or, of course, if you lay a foundation that somebody was present in a nonprivileged communication or in a communication that might have otherwise been privileged. And if the privilege was broken, you can do that.

MR. SALZBERG: Your Honor, I'll restrict my questions right now to the actual document that's in front of the witness which, I believe, would take care of the privilege issues.

THE COURT: Thank you.

Q. If you look at page 3 under the Section 363 column, there

are a number of bullet points. Do you see that?

A. Yes.

Q. And is it fair to say that your attorneys, in this document, advised you that one of the benefits, strategic benefits, of a 363 sale is that the consent of creditors and shareholders were not required?

A. That is what this bullet point says, yes.

Q. Okay. Fair to say that your counsel advised you that one of the strategic benefits available under Section 363 is that the standards are lower than under a plan confirmation process.

MR. SCHWARTZ: Objection. Same objection. What his counsel advised him is not appropriate.

THE COURT: If you're going beyond what the document says, as I sense you are, Mr. Salzberg, the objection is sustained.

MR. SCHWARTZ: We also don't have on this record that Mr. Wilson has seen this document and been through this document with anyone.

MR. SALZBERG: I believe, Your Honor, what the --

THE COURT: Well, what we have on the record is that he saw it on Monday and he doesn't remember whether or not he saw it before.

MR. SCHWARTZ: Right.

THE COURT: I will not permit him to construe the document upon the state of the record. If you think something

useful is to be served by reading him a section of the document as a predicate for a further question, I'll permit that, namely, to get whatever you ask him in the question.

MR. SALZBERG: Okay.

Q. Do you recall --

MR. SALZBERG: Well, strike that.

Q. I'll point you to the fourth bullet point on page 3 under the left-hand column. Would it be fair to say that you -- a strategic benefit under Section 363 was that dissenting parties had significantly less ability to hold up a sale than under a plan.

MR. MILLER: Objection, Your Honor. Is he asking for Mr. Wilson's conclusion or is that this exhibit says that? Mr. Wilson is not an attorney and that is calling for a legal conclusion.

THE COURT: I'm going to sustain that objection and I'll hear the next question. What you've got to do, Mr. Salzberg, is find out whether he formed either an independent view that that statement was true or that he got that advice in some means out of a privileged communication. I don't know whether that's so or not but those are the areas where you can appropriately inquire. But I won't ask him to construe a document that he was neither the author of nor if he remembers whether he saw it before his deposition was taken. And those are the general parameters. I'll rule on specific objections

if and when they're made.

Q. Prior to the petition date, did you, as a member of the auto team, form an opinion as to whether Section 363 provided a strategic benefit as opposed to a plan confirmation process?

A. Yes.

Q. What was the strategic benefit that you determined was available?

A. I believe there were a number of benefits to the 363 process three of which we discussed on Monday which were speed, certainty and ability to be behind liabilities, did not have a commercial necessity for the new enterprise.

Q. Was one of the benefits that you determined to exist --

MR. SALZBERG: Strike that.

Q. What about bargain -- the need to bargain with debt holders? Was that a benefit that you determined would be gained by the 363 process?

A. I think it depends on the context of your question, sir. As evidenced by the process, we did bargain with parties in interest. We bargained actively with the representatives of the bondholders who consented to this transaction as structured. So I don't think either the evidence or the history suggest that we would not have to talk to individuals.

Q. You're breathing into that microphone again.

A. Sorry. I can't do both. I can't speak louder and not breathe. Sorry.

THE COURT: On balance, I'd rather hear your testimony than do without your breathing. If you think it's possible for you to come up with the answer and then back off.

THE WITNESS: I'll do my best, sir.

THE COURT: I think maybe the best way will be something upon which everybody in the room would have a consensus. But do the best you can and everybody's going to understand.

THE WITNESS: Yes, sir.

Q. Was document Bondholder Exhibit number 2 -- was this produced to you by your attorneys in the ordinary course of the auto team's business?

MR. SCHWARTZ: Objection. Foundation.

THE COURT: I'm going to overrule that. If they gave it to you and you can remember it, you can answer. If you don't remember, you can say so or if your answer is no, you can say so. That doesn't go to either foundation or legal inference. Did you get it or not? That's what I understand the question as.

MR. SALZBERG: That's fair.

A. I think I testified earlier today that I don't recall whether I saw this prior to Monday.

MR. SALZBERG: Excuse me one second, Your Honor.

Q. When was the decision made by the U.S. Treasury that a 363 sale process would be employed?

A. There was a constant dialogue in thinking through our options. As you know, the bond exchange was pending up until the last week of May. And we began to narrow our options over the course of April and May as we approached the June 1 bond maturity.

Q. Okay. So when was the ultimate decision made to employ 363 as opposed to a plan?

A. I think sometime in the month of May we included that if the bond exchange was unsuccessful. And GM was not able to restructure in an out of court basis as had been their preference. The 363 was the only viable path forward for the company.

Q. And who made that decision on behalf of the U.S. Treasury?

A. That was a product of discussions amongst a group of us.

Q. By "us", you're including yourself, Mr. Rattner and outside counsel among others?

A. Among others, that's correct.

Q. Okay. And as you sit here today, can you tell me specifically why, in your mind, 363 provided a strategic benefit as opposed to the plan process?

A. Well, I think the answer, sir, is much broader than the question. Just what provided a strategic benefit? There are a whole host of considerations that went into our calculus.

Q. Okay. What were the whole host of considerations?

A. The fundamental question, sir, was can General Motors

survive anything approaching a traditional Chapter 11 process. We talked to dozens of experts, industry consultants, people who had observed General Motors for decades, obviously the management team and a number of folks who are well-versed in the bankruptcy process. And we could not find any reasonable measure of -- in fact, I can't recall anyone off the top of my head who felt that General Motors could survive a traditional Chapter 11 process. One of the leading commentators on GM who wrote the most recent book on General Motors, wrote it as recently as May 26th, that we were making a tragic mistake in pursuing the filing of General Motors. And so, it became clear to us that a traditional Chapter 11 process would be so injurious to this company as to not allow for its viability going forward.

Q. What do you mean by a traditional bankruptcy process?

A. The Chapter 11 process.

Q. You talking about actually filing a bankruptcy case and then proposing a plan and providing a disclosure statement?

A. That would be -- those would be the elements of it, yes.

Q. Okay. The time frame, in your opinion -- the auto team's mind --

MR. SALZBERG: Well, strike that. Let me rephrase that.

Q. When the auto team was considering the traditional bankruptcy process, what was the time frame that the auto team

was thinking of in terms of how long the bankruptcy would take?
A. We thought that the earliest it could be when you run through the various notice periods, it could be three months, an extraordinarily quick process and that if any roadblocks developed in the process or if the process spun out of control, as many bankruptcies have, it could take many years.
Q. Okay. So you were thinking that the best case scenario was ninety days, is that right?
A. I think that was a reasonable best estimate of what the plan process would take.
Q. Okay. The government is providing DIP financing in this case?
A. That's correct.
Q. Approximately, combined with the Canadian contribution, of thirty-three billion dollars, is that right?
A. 33.3 billion, yes.
Q. 33.3. And the DIP fund --
A. Yeah. Back up.
Q. The DIP funding period goes through when?
A. I know that the sale order expires on July 10 -- or, sorry, our funding expires and comes due on July 10th if the sale order is not approved.
Q. Well, under the DIP budget that's been approved by the Court last week, is it not true that it's a nine-week DIP funding budget?

A. I think that's correct. I think that the last draw is scheduled to be sometime in July.

Q. I have a copy of the DIP order with me and it provides an Annex 1 to the budget, DIP financing, week ending August 2nd. Does that -- I would ask the Court to take judicial notice of the DIP order. But does that sound reasonable to you?

A. That sounds approximately right.

Q. Okay. All right. So ninety days out from a June 1 filing would bring you to August 31, is that right?

A. I think it's technically August 29th or something, but yes.

Q. Okay. All right. So it's a few weeks beyond the end of the DIP funding period as approved by this final DIP order, is that right?

A. Yes. If everything went perfectly smoothly and ninety days was achieved, that is twenty-eight days beyond August 2nd.

Q. All right. Now you mentioned the July 10th deadline. What is that deadline?

A. That is, I believe, the deadline for the approval of the sale motion.

Q. And what happens if that deadline is not met?

A. Then our DIP would terminate.

Q. Is it your testimony that if the sale order is not entered by July 10th that on July 11th the DIP funding will terminate?

A. As I testified several times when you asked me that

question, sir, we have no intention to further fund this company if the sale motion is entered by July 10th.

Q. Okay. I understand that we had a deposition a few days ago but we need to talk about the testimony today. Is it the government's position that if the sale order is not entered on July 10th that on July 11th the government will terminate the DIP funding.

A. That's been our position, yes.

Q. Has that position been conveyed to General Motors?

A. I believe General Motors is well aware of our timeline and our expectations that this process needs to be expeditious.

Q. So if there were public pronouncements by General Motors representatives that it is unlikely that the government would cease funding if the sale order was not entered on July 10th, those public pronouncements would be incorrect?

MR. SCHWARTZ: Objection. If there are such public pronouncements, we should see them.

THE COURT: I'll overrule that. You can answer it as you see fit.

A. Sir, I'm not aware of any announcements that say that the government is expected to fund for sixty to ninety days. I'm aware of announcements that I believe that Mr. Henderson made in one instance that I'm aware of that he expected the process to extend sixty to ninety days but that was to accommodate perceived antitrust filings.

Q. No. I understand, sir. But my question is that if public pronouncements were made by General Motors that it is unlikely that the government would cease funding on July 11th if the sale order is not entered on July 10th, would those public pronouncements be incorrect.

MR. MILLER: Is that a hypothetical question, Your Honor? I object. Is there such a statement?

THE COURT: I'm going to sustain that objection. If there is a particular statement that you want to point him to, you can premise it on that. This fellow, unlike Repko, for whom I authorized the hypothetical, is not an expert. That's a distinction that is meaningful and that as a matter of evidentiary law, I believe he's not here to testify as an expert unless I'm missing something.

MR. SALZBERG: Your Honor, just by way of explanation, on the way over, there were reports that I read on my BlackBerry, news reports, where those public pronouncements were made. If I may reserve my right, we're getting copies of those articles as we speak.

THE COURT: Well, certainly, if you want to withdraw the pending question and let me rule on that later, that's, of course, acceptable.

MR. SALZBERG: Yes, Your Honor. If we would have the right to recall Mr. Wilson for that --

THE COURT: Oh. You're talking about bringing him

back again?

MR. SALZBERG: Well, I would that --

THE COURT: Let's see where we are when this examination is completed.

MR. SALZBERG: Okay. We're waiting for those articles, Your Honor.

BY MR. SALZBERG:

Q. I would ask you to turn to page -- I'm sorry -- page 6 of your declaration, paragraph 13. I'm going to ask you about the end of that paragraph but please read the entire paragraph or as much before and after as you need to. Okay. Do you see that?

A. Yes.

Q. Okay. You state in your declaration that it's the Treasury's belief that only a rapid and certain emergence from bankruptcy can provide consumers with confidence, if necessary, to make a major purchase like an automobile. What was the Treasury's definition of the word "rapid"?

A. We were trying to do it in thirty, forty days, sir.

Q. Sorry?

A. We were trying to do it in thirty to forty days.

Q. You heard testimony -- were you in court yesterday?

A. Yes.

Q. Okay. And you heard testimony from Mr. Henderson regarding pronouncements that GM would exit bankruptcy within

sixty to ninety days?
A. That is what he said publicly, yes.
Q. Okay. So is the sixty to ninety day emergence from bankruptcy at odds with the Treasury's belief as to what is needed for a rapid emergence?
A. You asked me the question of what we thought would be a rapid emergence and what we expected. And I testified that it was thirty to forty days.
Q. And I'm asking you the follow-up question whether or not that differs from GM's pronouncement that it would likely exit bankruptcy between sixty to ninety days.
A. I can't speak to Mr. Henderson's thinking, sir. I can only suspect that he was trying to build some cushion in the minds of the consumer which, obviously, is of paramount concern.
Q. Okay. In the next sentence, you use the word "languish", that "The Treasury cannot make an open-ended commitment to GM. The Treasury will continue to fund GM's operations if GM's critical assets languish in the bankruptcy process." What did you mean by that?
A. I think "languish" means if they are residing in the bankruptcy process for longer than is absolutely necessary.
Q. Okay. Was there a time period that the government had in mind as to what would constitute languishing in the bankruptcy process?

A. Beyond thirty to forty days.
Q. Okay. All right. Would it be fair to say that the Treasury made a strategic decision that 363 allowed the sale of good assets with providing a minimal opportunity for objections?
A. No. I think I testified earlier that certainty and speed were two primary considerations. But it wasn't without taking note of considerations of the process. Obviously, if we believed that there wasn't any impediment to a quick process, we wouldn't have provided any consideration for OldCo, as an example, which, as you know, the consideration is substantially in excess of that which -- that would be taking OldCo through a liquidation process.
Q. Okay. If you can turn back to Bondholder Exhibit 2 -- I apologize for moving you back and forth between exhibits but again, page 3 on Bondholder Exhibit 2. And under the Section 363 column, the fourth bullet point, did you come to a conclusion prior to the filing of the bankruptcy that 363 would provide significantly less ability of dissenting parties to hold up the approval process?
A. I think that it's clear that in a 363, you don't have the traditional voting requirements of a plan which is what allows for the speed of a 363 process. So that was -- at least as I understood that bullet and as we applied it to our own thinking, how we thought about it.

Q. But it was the Treasury's thought that 363 -- the 363 process would provide less of an opportunity for objections to the actual sale of the assets, is that right?

A. Sir, I think we've had -- you know, we spoke with every party in interest who approached us before June 1st. We took dozens of meetings of various constituencies ranging from dealers to splinter unions to a whole host of different inter parties in interest. We heard all their concerns and we spoke with them throughout the process. And as part of this process, I think all those parties in interest had the opportunity to object which is obviously part of the process we're engaged in right now.

Q. Right. But, respectfully, sir, I don't think you answered my question. My question is was it the Treasury's position that this 363 process that we're involved in right now would provide less of an opportunity to object than a standard plan confirmation process.

A. We believe the ability -- the time associated with it is less. But on the core issues of valuation, for example, it is my understanding, although I'm not an attorney, that the ability to pursue questions of valuation are as meaningful in the context of a 363 sale for the assets involved as they would be in a plan of reorganization.

Q. And would I be correct in stating that the U.S. Treasury saw a strategic benefit in using the 363 process because the

standards for the sale are lower than as in the plan confirmation process?

MR. SCHWARTZ: Objection. Asked and answered.

THE COURT: Sustained.

MR. SALZBERG: Respectfully -- sorry.

Q. We talked about ceasing funding of the DIP on July 11th if the sale order is not entered. Do you recall that?

A. Yes.

Q. Okay. On July 11th, what will the total amount of pre and post-petition lending be by the government?

A. I'm not certain what it will be on July 11th. I know as of roughly today, it's approximately ten or eleven billion dollars post-petition. And 19.4 billion pre-petition.

Q. I'm sorry. You said --

THE COURT: Could you repeat those numbers, please, Mr. Wilson?

THE WITNESS: Yes, sir. That as of, I believe, today, or plus or minus twenty-four hours, that the amount of post-petition financing is in the range of ten to eleven billion dollars. Not all of that is from the U.S. Treasury. Some of that is from our various Canadian partners. And that the U.S. pre-petition financing was 19.4 billion dollars.

Q. Out of the ten to eleven billion dollars post-petition financing, how much is that from the Canadian government?

A. I'm not sure off the top of my head, sir.

Q. Is it more than twenty-five percent of that amount?
A. If I had to guess, which is what you're asking me to do, I would say it's between fifteen to twenty percent.
Q. Okay. So assuming twenty percent, we're talking about post-petition financing from the U.S. Treasury of approximately eight billion dollars, is that a fair estimate?
A. I think in that zip code, yes.
Q. Okay. So that would render the entire financing or the entire loan amount both pre and post as of now around twenty-seven billion dollars from the U.S. government, correct?
A. Assuming eight billion of post-petition, yes.
Q. Okay. If the DIP terminated on July 11th and assuming, again, that we're talking about the same amount outstanding that we just discussed, around twenty-seven billion dollars, what is the U.S. Treasury's anticip -- what is the result that the Treasury anticipates? What would happen?
A. What would happen in what regard, sir?
Q. Let me rephrase that. That was a horrible question. The U.S. Treasury ceases its DIP funding on July 11th. What does the Treasury anticipate would happen in this case?
A. In this bankruptcy case or in the case of General Motors or in what?
Q. In this bankruptcy case.
A. I think it would be up to Judge Gerber to decide what would happen in this bankruptcy case.

Q. Okay. If the case liquidates, if the company liquidates on July 11th, what is the U.S. Treasury's expected recovery on its approximate twenty-seven billion dollars of lending?

A. We have not performed a separate liquidation analysis. But I don't have any reason to doubt the analysis performed by Mr. Koch described yesterday.

Q. Okay. And based upon Mr. Koch's liquidation analysis, what do you believe would be the U.S. Treasury's recovery on it twenty-seven billion dollars of lending?

MR. SCHWARTZ: Objection. I just want to clarify that Mr. Wilson testified that he doesn't know what the amount of lending will be as of July 10th or 11th. The twenty-six billion dollars was as of today.

THE COURT: I'm going to sustain that. When it gets to be argument time, Mr. Salzberg, you can pull out that liquidation analysis that Mr. Koch prepared and remind me of the figure and to remind me that Mr. Wilson said that he had no reason to doubt what Koch said. But I don't think this should be a memory test of whether Mr. Wilson remembers what Mr. Koch said.

MR. SALZBERG: Okay. Thank you, Your Honor.

Q. The unsecured claim in this case, do you know the total approximate amount, what's projected at this time?

A. I do not know the projected amount.

Q. Is it true that the unsecured claim class is primarily

consisting of the bondholders' claims?

A. Under the terms of this transaction, that's correct.

Q. Okay. And what will the bondholders' recovery be from this bankruptcy as a percent of the dollar amount of their claim?

A. I think it depends, sir, on the equity performance of NewCo since the primary asset of OldCo will be the equity and warrants of NewCo.

Q. Okay. Now, there is a UAW retiree settlement that is part of the sale motion, correct?

A. That's correct.

Q. And the debtor has scheduled the UAW retiree claim and one of the largest unsecured claims in this case, is that correct?

A. I believe so.

Q. Okay. So the bondholders' claims are of the same priority level as the retirees' claims, is that correct?

MR. SCHWARTZ: Objection. It calls for a legal conclusion.

MR. SALZBERG: I'll withdraw, Your Honor.

Q. What will the retirees' recovery be from this bankruptcy?

A. Can you be specific? Which retiree, sir?

Q. UAW retirees.

A. As I believe we've discussed, we do not think about it in the terms of a recovery in the sense that we negotiated a commercial transaction to acquire the assets that will

constitute NewCo. As part of that commercial transaction, we needed a skilled workforce to build cars since that would be the primary business of NewCo. And as part of that negotiation with the UAW as the only representative of that skilled workforce, we structured a transaction as evidenced in the sale motion filed on June 1st.

Q. Okay. There is reference in the sale motion that the --

MR. SALZBERG: Well, let me rephrase that.

Q. The collective bargaining agreement between Old GM and the UAW was amended just recently, is that correct?

A. Yes.

Q. And the amended CBA was ratified by the union members sometime in late May of 2009, is that correct?

A. Yes.

Q. And that amended CBA is now in force and effect, is that right?

A. I do not know. I do not know if it's conditioned upon the sale motion or not.

Q. Okay. Do you know of any provision in the amended collective bargaining agreement with the UAW that makes its enforcement or enforceability contingent upon the approval of the UAW retiree settlement agreement?

A. I don't know.

Q. Okay.

MR. SALZBERG: Your Honor, if I may approach and show

the witness what is marked as Bondholders' Exhibit 3. And for the record, this is my copy but there are no notations on the relevant page.

THE COURT: Okay.

MR. MILLER: Can I have a copy?

MR. SALZBERG: It was introduced yesterday, Bondholder Exhibit 3. It's the May 18th UAW -- page 12.

MR. MILLER: What page?

MR. SALZBERG: 12.

Q. First of all, do you recognize this document?

A. Yes, I do.

Q. Okay. And what is this document?

A. This is a document we also discussed on Monday that has -- I believe it was produced by GM in the context of the negotiations with the UAW.

Q. Was it produced to the Treasury during the run-up to the bankruptcy?

A. I don't know if this whole document was. I certainly recall this page.

Q. I'm sorry.

A. I don't know if this whole document was. I certainly recall this page.

Q. You saw that page prior to the bankruptcy?

A. I believe so.

Q. Okay. And that's page 12.

A. That's correct.
Q. Okay. And we were talking a minute ago regarding recovery of the retirees from the bankruptcy process. Do you recall that?
A. Yes.
Q. Okay. And that document, page 12, shows line item recoveries of certain interest holders in the debtor, is that correct?
A. It appears to, yes.
Q. Okay. And one of the line items, I believe the second line item, refers to the retirees, is that correct?
A. Refers to the new VEBA.
Q. The new VEBA which is a trust fund to pay the medical benefits of the UAW retirees, correct?
A. That's correct.
Q. Okay. And the last column, if you go to the right side, has a recovery. It's entitled "Recovery", correct?
A. It's entitled "Percent Recovery", yes.
Q. Okay. And that actual percentage recovery was calculated based upon an earlier proposal to the new VEBA, is that correct?
A. I believe so, yes.
Q. And I believe, at that point, it was approximately a fifteen percent share in the common stock of New GM, correct?
A. Among other things, yes.

Q. Yes. And I'm talking simply about the common stock. And that later, the deal that was agreed to by the new VEBA that's included within the UAW retirees' settlement agreement is actually more advantageous to the new VEBA than the agreement that's reflected on page 12, correct?

A. As is the bondholder deal. We were unsuccessful in achieving the transaction we hoped to achieve.

Q. I'm asking specifically, sir, for the new VEBA line item. The deal that's in the settlement agreement that's at issue now is more advantageous to the new VEBA than the deal that's reflected on page 12, correct?

A. They succeeded in having a higher percentage of the equity, yes.

Q. I'm just looking for a yes or no.

A. I don't know what you mean by more advantageous, sir. Higher --

Q. Better?

A. It's a higher percentage, sir.

THE COURT: There are lots of questions he asks which are incapable of being answered yes or no. But I think the last one is capable of being answered yes or no.

A. Yes.

Q. Okay. And that document that was in front of you was prepared by whom?

A. I believe it was prepared by GM.

Q. Okay. And so GM, at least, was calculating recovery to the new VEBA, correct?

A. In this page, yes.

MR. SALZBERG: May I have a moment, Your Honor?

THE COURT: Yes.

MR. SALZBERG: Your Honor, simply subject to my request to ask Mr. Wilson some additional questions once we get the news report in, I have no further questions.

THE COURT: All right. Who's next?

MR. BRESSLER: Your Honor, by agreement with the committee and the unions, we'll examine next and Mr. Barkasy would conduct it.

THE COURT: Sure. Come on up, please.

MR. BARKASY: Thank you, Your Honor.

THE COURT: Mr. Bressler, I didn't get your colleague's name so that when he comes up to the microphone, I'm going to ask him to repeat it.

MR. BARKASY: Your Honor, Richard Barkasy from Schnader Harrison Segal & Lewis representing the ad hoc committee of consumer victims of General Motors.

THE COURT: Okay. Go ahead, Mr. Barkasy.

CROSS-EXAMINATION

BY MR. BARKASY:

Q. Mr. Wilson, GM made significant efforts to restructure out of court, is that correct?

A. Yes.
Q. And it was Treasury's preference that GM restructure out of court, correct?
A. If it could be done so under the proper terms and establish a viable GM, yes.
Q. In an effort to restructure out of court, GM extended a bond exchange offer on or about April 27, 2009, correct?
A. Yes.
Q. The bond exchange offer was conditioned on, among other things, the conversion to equity of at least fifty percent of GM's U.S. Treasury debt as of June 1, 2009, correct?
A. The way it was structured, sir, was that that was what General Motors had indicated in the exchange offer but it also indicated that the Treasury not commit to that at this point.
Q. But that was what was included in the exchange officer (sic) of the conversion of at least fifty percent of GM's U.S. Treasury debt to equity?
A. Yes, I believe so.
Q. All right. And it was contemplated by Treasury that there would be an exchange of Treasury debt to equity in some amount, in some form, under the bond exchange offer, correct?
A. There had been discussions of it but at that point we had not concluded that we were willing to do that --
Q. All right.
A. -- which is why it was structured the way it was.

Q. If GM's efforts to restructure out of court had been successful, it would not have avoided liability for any products liability claims, correct?

MR. SCHWARTZ: Objection. Calls for a legal conclusion.

THE COURT: Sustained but if you want to get his businessman's understanding, which trumps by any conclusions that a lawyer might draw or that I might make, if you want to amend your question that way, I'll permit it.

Q. Mr. Wilson, it is your understanding that if GM's efforts to restructure out of court had been successful, it would not have avoided liability for any products liability claims, correct?

A. I believe that's correct, sir.

Q. Leading up to the bankruptcy filing, Treasury had discussion with a number of stakeholders, including unsecured bondholders, is that correct?

A. Yes.

Q. And as we saw from Exhibit Bondholder 3 that you testified about a few minutes ago, those discussions had an impact on the structure of the sale transaction that was ultimately proposed, correct?

A. Yes.

Q. Products liability claims were identified by GM to Treasury as being potentially politically sensitive, is that

correct?
A. If I could provide some context, sir. We had a planning meeting on May 1st with the June 1 bond maturity staring at us and developed a host of work streams. In the context of that I asked the General Motors team to develop a list of viabilities that we considered politically sensitive that we would consider in the context of a 363 sale. And I explicitly asked them to use an expansive use of that term.
Q. Products liability claims, given an expansive use of the term, were identified by GM to the treasury as being potentially politically sensitive, correct?
A. Yes.
Q. Treasury did not have any discussions before the bankruptcy with any tort claimants or groups representing products liability claimants, did it?
A. To the best of my knowledge, sir, we were never approached by any groups representing them. We took, literally, dozens if not over 100 meetings from various parties-in-interest. And our general approach we said publicly and talked amongst ourselves was to take basically any meeting. So I don't recall and I'm not aware of any approaches that were received, nor of any meetings that took place.
Q. Did you follow the Chrysler bankruptcy?
A. Yes, I did.
Q. And did you -- were you aware that there were groups

representing tort claimants who objected to the sale transaction in Chrysler?

A. I was not aware of that.

Q. Did you review any of the Supreme Court filings made by groups representing tort claimants?

A. I did not.

Q. Are you aware of any groups representing tort claimants contacted GM and requested to have discussions regarding a restructuring before the bankruptcy was filed?

A. I am not aware of any such contacts.

Q. Did Treasury do anything to determine who tort claimants might be?

A. No, we did not.

Q. Did Treasury review any pleadings, or other documents reflecting the larger tort claims that were pending against GM while the negotiation of the sale transaction were ongoing?

A. Not that I'm aware of.

Q. The principal negotiators for GM -- let me ask one more question. Did Treasury ask GM to identify for it any groups that might represent tort claimants so that it could engage in discussions with tort claimants?

A. No.

(Pause)

MR. BARKASY: May I approach, Your Honor, with a binder of documents?

THE COURT: Yes, you may.

MR. BARKASY: Thank you.

Q. Mr. Wilson, this is a binder of ad hoc committee of consumer victims of General Motors exhibits. Some of them have already been utilized in the hearing. If you could turn to Exhibit number 1, marked Exhibit AHCCV-01 on the bottom right-hand corner, under tab 1. Did GM --

MR. BARKASY: And this is a letter from my partner, Barry Bressler, to Mr. Miller dated April 7, 2009.

Q. Did GM make Treasury aware of Mr. Bressler's letter?

A. Not that I'm aware of.

Q. Did GM make Treasury aware of the existence of the Committee of Consumer Victims of General Motors?

A. Not that I'm aware of.

Q. Please turn to Exhibit 2 in the binder, tab 2, marked AHCCV-02 in the bottom right-hand corner.

MR. BARKASY: This is an April 9, 2009 letter from Mr. Miller to Mr. Bressler.

Q. Did GM make Treasury aware of Mr. Miller's response to Mr. Bressler's letter regarding the Committee of Consumer Victims of General Motors?

A. Not that I'm aware of.

Q. Mr. Wilson, the principal negotiators for GM -- let me start again. Who were the principal negotiators for Old GM?

A. In our conversation of Old as part of the transaction, the

principal negotiators was Mr. Henderson; Ray Young, the chief financial officer; Walter Borst, the corporate treasurer; and Mr. Bob Osborne, general counsel; as well as their advisors.

Q. And who were the principal negotiators for New GM?

A. As the purchaser it was representatives of the Treasury Department and their advisors, including myself.

Q. At the time of the negotiations you anticipated that Mr. Henderson, Mr. Young, and Mr. Borst would in all likelihood be joining New GM, correct?

A. That is correct.

Q. Mr. Henderson would be the CEO of New GM if the sale transaction is approved, correct?

A. That is correct.

Q. Mr. Wilson, do you still have in front of you Exhibit Bondholder 3, which is the last document Mr. Salzberg -- I think you have your hand on it right there.

A. Is this it?

Q. Yes, the May 18 --

(Pause)

Q. Please turn to page 12, this is what Mr. Salzberg was questioning you about. Did Treasury perform a recovery analysis similar to the recovery analysis contained on page 12 of this GM document?

MR. SCHWARTZ: Objection, asked and answered.

THE COURT: If that was asked and answered, I don't

recall it.

MR. SCHWARTZ: Mr. Wilson testified that Treasury had never conceived of anything in terms of recoveries to stakeholders and had to prepare its own -- hadn't thought of things that way. In addition, if we get into the sort of materials that Treasury prepared for its own internal deliberations we run up against a governmental privilege regarding internal government deliberative processes.

THE COURT: Well, that would be for the next question that was asked by Mr. Schwartz.

MR. SCHWARTZ: Correct.

THE COURT: I'm going to overrule the objection. I'm trying pretty hard to pay attention, and my inability to remember that question and answer is going to be the basis for my ruling.

A. Could you repeat the question?

Q. Sure. Did Treasury perform a recovery analysis similar to the recovery analysis contained on page 12 of Exhibit Bondholder 3?

A. Not similar to this. As we testified earlier, in the context of the VEBA, it was really a discussion around what they needed to do in order to ratify the agreement and become a workforce of New GM. Is your question around the new VEBA or is it around the bondholders/unsecured claims?

Q. I'm just asking did Treasury perform a recovery analysis

regarding U.S. Treasury, new VEBA, bondholders, existing shareholders similar to the one that's contained on page 12 of Exhibit Bondholder 3?

A. Not similar to this, sir, but we did think about the recoveries to the OldCo creditors as part of the transaction.

Q. And the VEBA was a creditor of -- let me start that again. The VEBA is a creditor of Old GM, correct?

A. Well, I believe the existing VEBA would be a creditor of Old GM under the terms of our sale motion, but the new VEBA would be, obviously, a new entity.

Q. The current UAW-VEBA is a creditor of Old GM, is that what I take it?

A. Yes.

Q. It is not the United Autoworkers Union that is a creditor of Old GM, correct?

A. I'm not certain of the exact legal relationship between the VEBA and the UAW. I know as part of our discussions they were intertwined throughout our discussions.

Q. You understand the claim held by the UAW VEBA against Old GM to be a contractual claim, is that correct?

A. Yes, I believe so.

Q. And you understand the claim held by the UAW-VEBA against Old GM to be an unsecured claim, correct?

A. I believe so, yes.

Q. Under the proposed sale transaction, if approved, it is

the VEBA trust that is going to be issued the common stock in New GM, not the UAW, correct?

A. Yes.

Q. The UAW-VEBA is administered by a board of trustees, correct?

A. I believe so.

Q. It is your understanding that the trustees of the UAW-VEBA will ultimately decide what will happen to the stock to be issued to the UAW-VEBA pursuant to the sale transaction, not the union, correct?

MR. SCHWARTZ: Your Honor, please, I object to this line of questioning on the grounds of relevance.

THE COURT: I'm going to overrule on relevance, but sustain on lack of foundation. You have to establish whether or not he has an understanding.

Q. Do you have an understanding as to who will decide what will happen to the stock to be issued to the UAW-VEBA pursuant to the sale transaction, if approved?

A. Not very much.

Q. Mr. Wilson, do you have a copy of your deposition transcript still in front of you? If not, I'll give you another copy.

A. Yes, I do.

Q. Please turn to page 108.

A. Sir, I must have different pagination.

Q. I will cure that to make sure --
A. Thank you.
(Pause)
A. Oh, I'm sorry, I was looking at my declaration, it was my mistake.
(Pause)
Q. Mr. Wilson, if you could turn to page 108 at line 18, where you're asked this question and did you give this answer? "Q. Is it your understanding that the trustees of the UAW-VEBA will ultimately decide what will happen to the stock issued to the UAW-VEBA, not the United Autoworkers Union?
"A. Yes, that is my understanding."
Were you asked that question and did you give that answer?
A. Yes.
Q. You understand that the UAW-VEBA's pre-petition unsecured claim against GM is about approximately twenty billion dollars, correct?
A. I understood it to be slightly higher than that, but in that zip code.
Q. In excess of twenty billion dollars?
A. Yes.
Q. If the sale is approved the UAW-VEBA will no longer have a twenty billion dollar claim against GM, correct?
A. I believe they agreed to release their claim as part of the sale.

Q. And if the sale is approved the UAW-VEBA will receive 17.5 percent of the common equity in New GM plus other consideration, correct?

A. Yes.

Q. You understand that the unsecured claims, including those of bondholders against GM exceed thirty billion dollars, correct?

A. I'm not sure what the ultimate resolution will be, but I recognize that the bonds are twenty-seven to twenty-eight billions and there are other claims.

Q. How much of the common equity do unsecured creditors receive under the sale transaction?

A. The creditors of OldCo as part of the sale transaction will receive ten percent of NewCo plus warrants in two tranches. The first tranche is for seven and a half percent of NewCo at a strike price of fifteen billion dollars, and with a seven year maturity. And a second tranche, another seven and a half percent of NewCo ten-year maturity at a thirty billion dollar strike price.

Q. Is it your understanding that the retirees cover under the UAW-VEBA will be the same retirees covered under the new VEBA that will be established pursuant to the sale transaction, if approved?

A. Other than new retirees and unfortunate deaths, I believe so, yes.

Q. The purchase agreement has been modified such that New GM will now be assuming responsibility for future products liability claims, correct?

MR. SCHWARTZ: Objection. Could we get a definition for what Mr. Barkasy means by future products liability?

THE COURT: Yes, especially in light of all the areas where I asked a slice and dice distinction.

MR. BARKASY: Just trying to speed things up a bid.

THE COURT: No, I understand that. Different kinds of combinations are not insignificant in this case.

MR. BARKASY: I understand, Your Honor.

Q. Mr. Wilson, the purchase agreement has been modified in regards to the products liability claims to be assumed by New GM, correct?

A. Yes.

Q. What is your understanding of the modification?

A. My understanding is that as of the documents filed on June 1st, NewCo would not assume responsibility for the product liability lawsuits as a result of cars sold prior to the closing, but with accidents incurred post-closing. And that the modification we made was that NewCo would, in the revised documentation, would assume responsibility for those lawsuits.

Q. Did New GM agree to the modification because of concerns that it had regarding consumer confidence?

A. That was part of it. As a general matter, sir, we

approached all the liabilities we agreed to assume what was commercially necessary for the success of NewCo. And as we considered the various options prior to June 1st, we actually had an active debate with our team about the product liability associated with cars purchased before June 1st, but with accidents and claims occurring post-closing. And, obviously, for each one conclusion in the days leading up to June 1st and then upon further consideration, I've reached a different conclusion.

Q. Would consumer confidence be enhanced if New GM also assumed responsibility for products liability claims arising from accidents that occurred pre-bankruptcy filing?

MR. MILLER: Objection, Your Honor. Mr. Wilson is not an expert on consumer --

THE COURT: Sustained.

Q. Did the Treasury conduct any market research to determine whether consumer confidence would be enhanced if New GM also assumed responsibility for products liability claims arising out of accidents that occurred before the bankruptcy?

A. No, we make a decision based on our business judgment.

Q. Did Treasury seek out the advice of any experts to determine whether consumer confidence would be enhanced if New GM would also assume responsibility for products liability claims arising pre-bankruptcy?

A. We had sensitive discussions with the management team who

were the closest things to experts that we had in that regard.

Q. And that's the management team that's going to be moved over to New GM if the sale's approved, correct?

A. Most of them, yes.

Q. You would agree that New GM would remain viable if it assumed responsibility for tort claims arising before the bankruptcy was filed, wouldn't you?

A. As we discussed the other day, we did not see it as our obligation to take on claims to the point at which New GM was no longer viable. It wasn't a determination, or frankly, a consideration in our thinking. Our thinking is a commercial buyer of the assets that will constitute NewCo was to assess what viabilities were commercially necessary for the success of NewCo. And any other liabilities from our perspective were -- should not be part of the transaction.

Q. You would not quarrel with Mr. Henderson's business judgment as to whether New GM would be viable if it assume responsibility for products liability claims arising before the bankruptcy was filed, would you?

A. Well, I'd quarrel with the approach, because the test cannot be any one liability, if it were assumed would be the difference between viability and lack of viability. Of course, on that basis, there are a number of things that could easily fall within the bucket of not tipping the balance between viability and not viable. Our job is to create the most

attractive NewCo we possibly can. And any one liability, whether it's one of dollar -- 100 million dollars, even a billion dollars, may of may not tip the balance, but that's not the exercise we ever engaged in.

Q. So you never sought to determine -- well, let me ask this question. If New GM assumed an additional 950 million dollars in obligations, would it still be viable?

MR. MILLER: Objection again, Your Honor. Mr. Wilson is not an expert as to viability.

THE COURT: I'm going to sustain it.

Q. As part of its consideration of the sale transaction did the Treasury seek to determine how much debt New GM could carry and still remain viable?

A. We had some discussion around the proper capital structure for New GM.

Q. And you were part of that, correct?

A. Yes.

Q. And you, yourself, performed analyses of the appropriate capital structure and how much debt New GM could carry and remain viable, correct?

A. I supervised and discussed analyses, but did not perform them myself.

Q. Did during the course of -- in supervising and discussing analyses did the Treasury consider whether New GM would have remained viable if it assumed responsibility of tort claims

arising before the bankruptcy was filed?

MR. SCHWARTZ: Objection, Your Honor. This really does now begin to invade the government's deliberative process privilege. He's asking how the Treasury came about reaching its decision.

THE COURT: Unless you show me some more to the contrary, we'll deal with it the same way we deal with attorney-client privilege area. I would rule that he can't be required to discuss the substance of those communications, but he can answer whether the subject matter was discussed.

A. Can you repeat the question?

Q. I'll try. In the course of your supervision of and discussion of analyses of the capital structure of New GM, did you seek to determine whether New GM would be viable if it assumed responsibility for products liability claims arising before the bankruptcy was filed?

A. No, we never tried to apply that standard.

(Pause)

Q. Is it fair to say that from Treasury's perspective, as the purchaser of assets of Old GM Treasury was not concerned with the relative priority of liabilities under the Bankruptcy Code?

A. I think that's fair to say, we're focused on which assets and which liabilities we needed for the success of New GM.

Q. And you did not believe under a 363 sale the relative priority of liabilities was relevant, correct?

A. That was my understanding, yes.

Q. What is the standard that Treasury applied in determining which liabilities to assume and which liabilities that it would not assume?

MR. MILLER: Your Honor, please, Mr. Wilson has answered that question in four different versions.

MR. BARKASY: I have one more question, it's a predicate for the next question. I don't want to face a foundation argument.

THE COURT: I'm going to sustain the objection with the corollary that is I won't give you too much heat on the predicate -- or on the foundation assuming the next question's otherwise fair.

Q. Treasury is not a run of the mill commercial asset purchaser, is it?

A. I'm not sure that run of the mill commercial asset purchaser would like that comparison. But I think, no, it's probably not the right way to describe us.

Q. And it's not an average commercial lender, is it?

A. I don't think so.

Q. And there were considerations in Treasury's decision to invest in GM beyond those that would normally apply to a commercial asset purchaser or commercial lender, is that correct?

A. Sir, I think that the way we approach this entire

transaction, particularly once our team was developed, which was not, as you know, at the very beginning of Treasury's involvement at General Motors. Because our team was developed to approach the entire transaction on a commercial basis.

Q. Mr. Wilson, I don't have any further questions, thank you.

MR. BARKASY: Your Honor, absent objection, I would move Exhibits 1 and 2, the letters from Mr. Bressler to Mr. Miller and Mr. Miller's response, into evidence.

THE COURT: Any objection.

MR. MILLER: No objection.

THE COURT: They're admitted.

(AHCCV's Exhibit 1, letter from Mr. Bressler to Mr. Miller, was hereby received into evidence as of this date.)

(AHCCV's Exhibit 2, response of Mr. Miller to Mr. Bressler was hereby received into evidence as of this date.)

THE COURT: All right. Let's try to keep moving forward. We've been going almost two hours.

How long do you think you're going to be, Mr. Jakubowski?

MR. JAKUBOWSKI: Very short, no more than ten minutes, I would think.

THE COURT: All right. Then let's continue and then we'll take a short break.

MR. JAKUBOWSKI: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JAKUBOWSKI:

Q. Good morning, Mr. Wilson.

A. Good morning.

Q. I'd like to mark as PLCA Exhibit 2 a document that is an e-mail and attachment from Mr. Worth to you, Mr. Wilson, that attaches a -- that was the subject matter warrant strike price calculation.

MR. JAKUBOWSKI: May I approach the witness, Your Honor?

THE COURT: You may.

THE WITNESS: Thank you.

Q. Do you recall seeing this document before at your deposition, Mr. Wilson?

A. Yes.

Q. And Mr. Worth is with Evercore, correct?

A. Yes.

Q. And he's the same gentleman who testified yesterday, correct?

A. Yes.

Q. And page 2 of this is a spreadsheet that identifies the shares that are expected to be issued under the proposed transaction, correct?

A. Yes.

Q. Along with the warrants, correct?

A. Yes.

Q. And would you say this is a fair representation to the best of your knowledge of the shares and warrants that are going to be issued under the proposed transaction as it exists today?

A. Yes, I believe so.

Q. And the bottom line is that the U.S. Government on a fully diluted basis will always remain in control of the purchaser, correct?

A. Well, on this basis, yes. But there is the opportunity for share sales by the company or share sales by us.

Q. Understood. But certainly with respect to the closing date, on a fully diluted basis, Treasury is in control of the purchaser?

A. Yes.

Q. And as a result of that, it would have the opportunity, I take it, to select members to the board of directors?

A. That's correct.

Q. Okay. And to ultimately determine who management is, correct?

A. The board will not have the exact mechanics -- but certainly the board will ultimately be able to determine that and we would expect them to have that authority.

Q. Okay. Thank you. Now, I take it that it is Treasury's believe that the value of GM as it exists today whether on a liquidation or going concerns basis is less than the value of

Treasury's debt?

A. Yes.

Q. And as a result of that it believes that in a 363 sale it really is entitled to everything of GM, correct?

A. Yes.

Q. Except for the senior secured debt?

A. That's correct.

Q. And so I take it that from Treasury's perspective, everything that it gives away in cash with a proposed transaction is virtually in the nature of a gift?

A. I wouldn't use exactly those terms because, from our perspective, there was a transaction that we needed to get done and we did what we thought was commercially necessary to facilitate that transaction, including, as you know, our negotiations with the UAW.

Q. So it's fair to say then that you basically gave away the least amount that you needed to give away in order to get a deal done, correct?

A. That was our intention, yes.

Q. And to that extent the relative priorities of the various creditor classes in Old GM were irrelevant to the purchaser, correct?

A. That's correct. We focused on which assets we wanted to buy and which liabilities were necessary for the commercial success of New GM.

Q. So I would like to direct your attention to yesterday's binder, which has Mr. Henderson's transcript in there.

Let me try to help you.

A. Thank you.

(Pause)

MR. JAKUBOWSKI: Your Honor, I believe it's in a binder that says "Exhibits 9 through 12, Deposition Transcripts".

THE COURT: Yes.

MR. JAKUBOWSKI: And in there is Exhibit 10.

THE COURT: Right.

MR. JAKUBOWSKI: And from there if you go to Tab 6, which is the contingency planning of the 363 analysis.

THE COURT: Okay.

Q. And what I'd like to do, Mr. Wilson, is please direct your attention to PowerPoint pages 10 and 11.

(Pause)

Q. Now, this exhibit contains -- these pages contain an identification of the liabilities on the balance sheet of General Motors at 12/31/08, do you see that?

A. Yes, I do.

Q. And you see that there is also in the far-right column a description of what's going to happen to those liabilities in a 363 scenario, correct?

A. I think these were scenarios that General Motors had run

to illustrate that at the early stages of planning, yes.
Q. But it's at least a good reference to the kind of categories that Treasury and GM were considering while they were negotiating over the kinds of the relative priorities of treatment of various creditor classes, correct?
A. I think this is a -- I'm not sure I heard your entire question. I think this is a full catalogue of all the liabilities in the company's balance sheet.
Q. And the question that was posed to Treasury and GM was which liabilities is Treasury going to assume and which liabilities is Treasury not going to assume?
A. If we were to pursue a 363 sale, yes.
Q. Which is where we are, correct?
A. Yes.
Q. So if you look down the column that says 363 scenario you see that there is a sub column for OldCo right?
A. Yes.
Q. And sub column for NewCo?
A. Yes.
Q. And the OldCo column represents, effectively, the liabilities that will be left behind in the sale, correct?
A. I believe so.
Q. And the NewCo column would represent the liabilities that will be assumed, correct?
A. Yes.

Q. Now, if you look at, for example, line 2 for accounts payable, don't those reflect the unsecured trade payables of GM?

A. As of the December 31 balance sheet, I believe that is correct, yes.

Q. And it's the intention of the purchaser to assume all of those liabilities at closing, correct?

A. I do not believe that's correct, sir. I believe that's what this document suggests, but I don't believe that's actually what we intend to do.

Q. Aren't most of the pre-petition unsecured liabilities of trade vendors going to be assumed as part of the sale?

A. Most practically, you said all in you question.

Q. I apologize. And you're absolutely right. Most of them are, though?

A. Yes. And the reason, of course, is because those suppliers are critical to the operations of General Motors.

Q. Okay. And with respect to the pension obligations, OPEB, same thing, you have a lot of unsecured debt that is going to be assumed by NewCo, correct? Under the current deal?

A. A lot of it. But I believe we made a number of changes to a number of these categories over the course of May.

Q. But there still is a significant amount of pension debt that is going to be assumed by NewCo, correct?

A. Yes.

Q. And that is all unsecured?

A. Yes.

Q. Okay, that's fine. Thank you.

(Pause)

Q. You talked earlier about the fact that Treasury had come to a decision that it would assume certain claims related to accidents that occur after the closing date, correct, for product liability claims?

A. Yes.

Q. And have you at any time, until sitting hear today, ever advised anyone at the debtor that there would be any change in the purchase price as a result of that decision?

A. At this point we have not.

MR. JAKUBOWSKI: No further questions, Your Honor.

THE COURT: Okay. Let's take ten minutes and continue with anyone else who wants to do a cross. Before I finish speaking, I would appreciate it if you not get up. Mr. Wilson, while we're in recess, keep to yourself. And we'll continue --

MR. MILLER: Your Honor, can we ask how many more interrogators there are?

THE COURT: All right, I think that might be helpful for all of us.

MR. JAKUBOWSKI: Your Honor, I move to admit PLCA 2 into evidence.

THE COURT: Is there any objection.

MR. MILLER: Okay, that's admitted.

(PLCA's Exhibit 2, e-mail from Mr. Worth to Mr. Wilson, was hereby received into evidence as of this date.)

THE COURT: How many other people are going to want to question Mr. Wilson on cross? All right. Five. We'll continue in ten minutes.

MR. MILLER: Thank you, Your Honor.

(Recess from 11:09 a.m. until 11:23 a.m.)

MS. DAVIS: Good afternoon, Your Honor. Tracy Hope Davis for the United States trustee. I'm here to introduce Alan Shapel who is the ombudsmen who has delivered a report to us with respect to the sale. We wanted to introduce him with a consent of the debtor and the committee. We just wanted to give you a moment to say hello.

THE COURT: Certainly. You said Shapel.

MR. SHAPEL: Yes, sir.

THE COURT: Good morning, Mr. Shapel.

MR. SHAPEL: My firm is called Shapel & Associates, and I was appointed by the U.S. trustee's office as the privacy ombudsmen. And my role here is to, among other things, is assist the Court that the transfer of personally identifiable information is contemplated by debtor, is done so in accordance with applicable law. And to that end I've compiled a report which to my understanding either has been filed or will shortly

be filed, so that Your Honor is free to review the entire report.

I'm happy to go into as much detail as Your Honor would like, but I thought I would begin with a very high level overview of my recommendations and that should take approximately five to seven minutes, if that's okay with you, Your Honor.

THE COURT: People okay with interrupting here with that overview?

MR. MILLER: Yes, Your Honor.

THE COURT: Okay; go ahead.

MR. SHAPEL: I do have additional copy right now if Your Honor would like to --

THE COURT: Okay.

MR. SHAPEL: May I approach?

THE COURT: Yes.

MR. SHAPEL: So, essentially, my role is to evaluate what, if any, representations were made by debtor to consumers at the point that the consumers were making their consent decisions. So in other words, did debtor adequately inform consumers regarding how the debtor would use their information. And as the transfer of consumer information is contemplated here in accordance with debtors' representations.

So I've reviewed under other documents GM's privacy policy, the privacy policy of the Chevrolet Saturn dealership

in Harlem, and the privacy policies of several thousand of GM's independent dealership.

I also had multiple conference calls and e-mail exchanges with debtor and debtors' counsel to help me understand debtors' privacy practices.

So most of the information at issue here was collected under GM's privacy policy. This includes the information contained within GM's master customer relationship management database. So GM's privacy policy did not specifically address the transfer of information per a bankruptcy proceeding, therefore, I'm recommending to the Court that the Court require GM to notify those consumers who had provided their information under GM's privacy statement that such information will be transferred into New GM and that New GM provides those consumers with the opportunity to opt-out of such transfer.

THE COURT: You mean to tell Old GM that it doesn't want New GM to know about?

MR. SHAPEL: To provide them with the opportunity so that Old GM is not allowed to transfer their information into New GM. Now, in my experience as a privacy professional, Your Honor, the percentage of consumers that will exercise that type of opt-out choice is very low. And, specifically, here we're talking about the GM CRM database, which is essentially used for marketing purposes. So to be clear, we're not talking

about information that's used for warranty purposes or for recall purposes or for a host of reasons which would be a public policy.

THE COURT: To continue to get that information. So if there's something they need to know about their cars, they would get it.

MR. SHAPEL: Correct. So regarding the information collected by the Harlem Dealership my recommendation is the same. Provide those consumers with some notification and offer them opt-out choice.

There were also several thousand dealerships that have been already offered deferred termination pursuant to an agreement between those dealerships and GM. While typically in bankruptcy proceedings, privacy ombudsmen will only look at the privacy representations made specifically by debtor, and here these representations were made by debtors' independent dealerships.

However, here the agreement between GM and what I'm calling the deferred termination dealerships stipulates the transfer of consumer information that was collected by those dealerships to New GM. And potentially, the transfer of information to other of GM's independent -- or New GM's independent dealerships.

So in light of this I thought it was appropriate to review the representations made by the deferred termination

dealerships and include that analysis in my report.

So to that end, I obtained a confidential list of the deferred termination dealerships from GM. Most of those deferred termination dealerships posted privacy policies that were substantially similar to GM's privacy policy and the privacy policy of the Harlem dealerships. So my recommendation there is the same. That for those consumers that they be offered notice and opt-out choice.

However, there were about fifty of the deferred termination dealerships that had privacy policies that in my opinion prohibited the transfer of information as contemplated today. For those dealerships my recommendation to the Court is slightly different. Require GM and New GM to provide notice to those consumers. However, require GM to obtain what is known as their affirmative consent of those consumers, opt-in consents or their permission, before one of two things happening. Before the transfer of those consumers' information from GM to New GM, again for marketing purposes. Or number 2, before the transfer of information from a deferred termination dealership to the new dealership.

Did I state that clearly enough, Your Honor? I know there's a lot there.

THE COURT: I understand what you're saying.

MR. SHAPEL: All right. Good. Okay. So that, in summary, is what my recommendation is to the Court. I'm happy

to go into some of the specific laws that we addressed both at a federal and state level. But, again, that's covered in pretty good detail in the report.

THE COURT: Subject to people who want to be heard, I'm confident that you -- Mr. Miller, do you or any of your folks or any parties-in-interest, want to come on what he said?

MR. MILLER: No, Your Honor. We really didn't have an opportunity to review the report, but I don't have any comments at the present time.

THE COURT: Okay. All right. Thank you very much, Mr. Shapel.

MR. SHAPEL: Thank you, Your Honor.

THE COURT: I think that you always have to have the opportunity to be here and then we'll figure out what, if anything to do, or if anybody has any type of different perspective to your report.

MR. SHAPEL: Okay. Thank you, Your Honor. May I be excused?

THE COURT: Yes, you may.

MR. SHAPEL: Thank you.

THE COURT: Okay. Back to cross-examination. Is it Mr. Esserman?

MR. ESSERMAN: Thank you, Your Honor. I just have a few minutes of cross-examination.

CROSS-EXAMINATION

BY MR. ESSERMAN:

Q. Mr. Wilson, my name is Sandy Esserman, and I represent the ad hoc committee of asbestos claimants. And have a few questions for you. First, I'd like to discuss the wind down expenses in this estate. I believe you address that in your declaration, is that correct?

A. I believe so.

Q. And the wind down expenses for the estate is estimated by you -- at least the government has agreed to so far, is 950 million dollars, is that correct?

A. As of the date of my declaration, yes.

Q. Okay. Has that changed?

A. Well, there's been -- I think you may be aware from yesterday's testimony, there is an ongoing dialogue between ourselves and the AlixPartners team as the fiduciaries and representatives for OldCo as to what the appropriate amount would be.

Q. And is that -- has that amount been determined, or is that -- are those negotiations continued?

A. They're continuing.

Q. Do you know when they'll be concluded?

A. We believe they'll be concluded very soon. Frankly, they've been a little bit delayed because my participation is integral to that conclusion, and I was obviously been committing time here. My expectoration is that as soon as I'm

done here, I would be able to reengage in those discussions. And our expectation would be that we would likely conclude them as soon as Friday morning.

Q. Would you anticipate then that those discussions would be concluded prior to the time that the sale, to the extent this Court determines to approve it, would be approved?

A. I can only speculate on the latter, because that's obviously Judge Gerber's decision. But on the former we would work as expeditiously as possible and would commit to not creating any delays as a result of that.

Q. Okay, thank you. Let's talk a little bit about claims of people who have received asbestos disease as a result of exposure to General Motors' products, I'd like to discuss that subject with you.

Are you aware that there's been a report that General Motors, in fact, put in their 10K and I believe 10Q from HR&A that provides for a 650 million dollar approximate estimate of future claims over the next ten years?

A. I'm familiar with that estimate, I'm not familiar with the underlying work to a significant extent, but I'm familiar with the number.

Q. Okay. Are you generally familiar with the asbestos claim against GM, what they're based on?

A. Not in any great level of detail, no.

Q. But generally, as a result of exposure to asbestos in

brakes, are you generally familiar with that?

A. Yes, I'm familiar with that part of the issue.

Q. And one of the things you're asking this Court to do is to sell this Old GM to New GM free and clear of any asbestos claims, is that your intention?

A. Yes.

Q. And you're aware that there are claims that are going to occur at various points in the future, that is the people that have been exposed to GM asbestos?

MR. MILLER: Objection. I just want to be clear when Mr. Esserman uses the word claim, he's not using that necessarily in the Bankruptcy Code context, but --

MR. ESSERMAN: That's correct.

MR. MILLER: -- current to the annual?

MR. ESSERMAN: Yes.

THE COURT: All right. It's clarified by Mr. Esserman. Do you remember the question?

A. Can you please repeat it?

Q. Let me start over and break it down a little bit, Your Honor, in a couple of different sections. You're aware that there's currently lawsuits on file against General Motors based on claims of exposure to asbestos from GM products, is that correct?

A. Yes.

Q. And you're aware, in fact, based on the HR&A report that

there will be such claims post-sale in the future that will arise?

A. Again, I'm not --

MR. MILLER: Please. The 650 million dollars, first of all, Your Honor, are not claims. The include the cost of defense. And there is no concession that these are valid claims, in any sense of the rule.

MR. ESSERMAN: I'm not seeking a determination of the validity.

THE COURT: I understand that. And on the one hand I'm going to sustain the objection. But on the other hand, it would be helpful if everybody understands that I'm generally aware of the issues. Mr. Esserman, either be more precise in your questions. Don't try to monetize them, we have to monetize them. (Inaudible)

MR. ESSERMAN: That's fine. Let me attack it simpler and briefly, Your Honor.

BY MR. ESSERMAN:

Q. To the extent there are any claims that arise post-sale, would it be the intention of you, as the purchaser, or the government as the purchaser that anyone that has a claim or demand based on asbestos exposure be asserted against OldCo rather than NewCo?

A. Well, if I could answer your question this way, NewCo is not acquiring any of the liabilities associated with any of the

asbestos claims.

Q. And that's a decision that has been made by the Auto Task Force?

A. As we've reviewed all the liabilities that we can pick and choose from in the context of the General Motors' balance sheet, we applied that same commercially necessary determination to each of them. And may of these cases, and some cases obviously quite tragic, we did not feel that any of them had a commercial bearing on the future success of New GM.

Q. Okay. So just so I'm clear and I'm almost done with my questions here, to the extent that there's a claim that arises in the future based on asbestos exposure to a GM product, it is -- you're requesting that this Court not pass that claim to NewCo, but that it remain with OldCo, is that correct?

A. That's correct.

MR. ESSERMAN: Thank you, Your Honor.

THE COURT: Mr. Eckstein.

(Pause)

CROSS-EXAMINATION

BY MR. ECKSTEIN:

Q. Mr. Wilson, good morning. My name is Kenneth Eckstein, I'm representing the official creditors' committee in this case.

Let me just start by returning to the question that you were asked a moment ago with respect to the wind-down budget.

You were in Court yesterday and you heard Mr. Koch's testimony with respect to the status of that budget, am I correct?

A. Yes, I did.

Q. And is it my understanding that you're working principally with Mr. Koch and his team in order to, I guess, refine the estimate of the wind down expenses?

A. The status so far has been that members of my team and members of Mr. Koch's team have been working together on exactly that. And I have not, because I hadn't gotten to the point where it was ready for me, frankly, had not yet gotten involved in any level of detail.

Q. And is it fair for me to assume that the goal of this exercise is to try to refine the estimate of the wind down expenses so that ultimately the wind down expenses can be satisfied in full with the amount of revised DIP loan that's provided to this estate?

A. That's correct. As we indicated in our discussions with representatives of the bondholders on a pre-petition basis, we indicated we would fund reasonable expenses associated with the wind-down of OldCo.

Q. Thank you, sir. Mr. Wilson, do I understand correctly, that you were one of the principal negotiators of the summary term sheet that provided the basis for the master purchase and the sale agreement?

A. Which summary term sheet, sir?

Q. Were you one of the principal negotiators on behalf of the treasury of the transaction that is being presented to the Court for approval today?

A. Yes.

Q. And as part of those -- as part of this transaction did you have the occasion to negotiate with representatives of the ad hoc bondholders committee prior to the commencement of the case?

A. Yes.

Q. And who were the individuals that you principally negotiated with on behalf of the ad hoc bondholders?

A. The lead members were Mr. Eric Siegert from Houlihan Lokey and Mr. Andrew Rosenberg from Paul Weiss.

Q. And approximately when did those negotiations take place?

A. Well, they had approached the Treasury Department earlier in the case. We indicated to them that we needed to work through the operating restructuring plan with the company in order to determine what obligations the company could bear on a restructured or in the ultimate revolution of the case on a NewCo basis and then engaged with them in earnest in late May.

Q. And am I correct that as a result of those negotiations an understanding was reached that provided for ten percent of the NewCo equity to be left in the OldCo estate for the benefit of unsecured creditors?

A. That was a portion of consideration, yes.

Q. And in addition to the ten percent of the equity, there were also warrants, is that correct?
A. Yes.
Q. And was there also a provision, Mr. Wilson, that provided for the possibility of additional direct equity to be provided to the OldCo estate?
A. Yes. In the event that claims exceeded thirty-five billion dollars, which we considered unlikely at the time, that there would be a sliding scale from thirty-five to forty-two billion dollars, where up to two percent of additional equity would be awarded to -- two percent of the equity of NewCo would go to the creditors of OldCo.
Q. So that was, essentially, an equity cushion in the even claims exceeded what was expected to be the likely amount of allowed general unsecured claims, is that correct?
A. Yes.
Q. And at the time that you conducted these negotiations, did you have an understanding as to the amount of general unsecured claims other than the bondholder claims that you thought would be allowed against OldCo in this case?
A. No, we did not. We were focused at that point as NewCo as the purchaser of certain assets and the assumption of certain liabilities. And had not really worked through what the unsecured claims against OldCo could be.
Q. Am I correct that you understood that the bondholder

claims were approximately twenty-seven to twenty-eight billion dollars, is that correct?

A. Yes.

Q. And the level at which the two percent equity cushion kicked in you said was thirty-five billion dollars, is that correct?

A. That's when it started to kick in, yes.

Q. So if I understood your testimony that you didn't think the thirty-five billion dollars was going to be exceeded, is it fair to assume that you didn't think the other unsecured claims against OldCo was going to exceed eight billion dollars?

A. I think seven to eight, between the bonds being twenty-seven to twenty-eight.

Q. Did you have any general sense of what you think the number was likely to be?

A. We thought it would be less than that.

Q. Do you have any recollection as to whether that number was intended to be approximately three to four billion dollars?

A. I don't recall that specific point in time, I know we had some discussions around it. But it was certainly expected to be less than the seven billion, but I can't recall exactly what we thought at that point in time.

Q. And did you have any sense as to what categories of claims made up the claims other than the bondholder claims that were going to be allowed claims against OldCo?

A. Sure. Much of the claims have been the subject of today's discussions. It was the claims from the so-called splinter unions, the asbestos claimants, the product liability claims we've discussed, and any other unsecured claim that may come forth.

Q. And at that point in time you had also taken into account workers' compensation claims?

A. I believe so, that was part of the company's balance sheet.

Q. Mr. Wilson, in connection with this transaction, my understanding is that the U.S. Treasury is intending to receive approximately 72.5 percent of the NewCo equity, is that correct?

A. No, it's not correct.

Q. What is the percentage of equity that the U.S. Treasury expects to receive?

A. It will be approximately 60.8 percent.

Q. 60.8 percent, thank you. And the U.S. Treasury is receiving this equity in connection with a credit bid, in connection with its outstanding indebtedness, is that correct?

A. As well as additional funding, yes.

Q. And am I correct that the credit bid is in respect of, both pre-petition debt and debtor-in-possession financing?

A. Yes.

Q. And there's also going to be some additional financing

over and above the pre-petition plus the debtor-in-possession financing?

A. Well, I think it depends on the point in time. The debtor-in-possession financing as contemplated under the DIP order, plus the pre-petition financing I believe is the subtotal of our credit bid.

Q. And am I correct that the pre-petition financing that is the subject of the credit bid is approximately 21.4 billion dollars?

A. I believe the pre-petition financing is 19.4 billion dollars.

Q. 19.4 billion dollars. And what do you expect would be the amount of the --

MR. ECKSTEIN: Well, let me withdraw that.

Q. What is the amount of the debtor-in-possession financing that's outstanding as of today?

A. As of today, the -- well, I'm sorry. AS of the last I knew, which is roughly yesterday or today, was approximately ten to eleven billion dollars.

Q. And have you made any estimates as to the amount of debtor-in-possession financing that you expect to be outstanding at the time of the closing?

A. Yes. It is our understanding and expectation that the entire DIP budget will be used.

Q. And that will be how much, sir?

A. 33.3 billion dollars.

Q. Thank you. And has U.S. Treasury made any allocation of the NewCo equity that it expects to receive as between the pre-petition debt and the debtor-in-possession financing?

A. No.

Q. Does it expect to do so prior to the closing, sir?

A. We don't see any reason why we would.

Q. Thank you very much, sir, I have no further questions.

MR. HOFFMAN: Good morning, Your Honor. John Hoffman on behalf of the IUE and the other objecting unions.

CROSS-EXAMINATION

BY MR. HOFFMAN:

Q. Good morning, Mr. Wilson.

A. Good morning.

Q. I think I'll be very brief. Do you recall when I took your deposition this Monday?

A. Yes, sir.

Q. And do you recall this morning when you told Mr. Salzberg that you did not recall whether or not you had seen Exhibit 2 -- Bondholder Exhibit 2 prior to that deposition?

A. Yes.

Q. Do you have Bondholder Exhibit 2 up there, at this point, Mr. Wilson?

A. Is this it?

Q. Yes, sir.

A. Yes, I have it.

Q. And do you have your deposition transcript up there, at this point?

A. Yes.

Q. And do you recall at that deposition when I asked you these two questions?

MR. MILLER: Can you give a page, please?

MR. HOFFMAN: Yes, at page 22, line 20, through 23, line 6.

Q. And what we had in front of you I believe at that point was Exhibit 3 to your deposition, which is now Bondholder Exhibit 2. Do you recall when I asked you these questions and you gave these answers?

"Q. And did you attend the meeting at which Cadwalader had presented this? I think it's actually a deck of slides?

"A. Actually, I don't recall meeting. I don't know if I did or not.

"Q. So you don't know whether you attended the meeting at which this was presented, but you saw it in some respect during your work at the task force?

"A. That's correct."

And did you give those answers to me on Monday?

A. That's correct and that's a helpful reminder.

Q. Pardon?

A. I said that's correct and it's a helpful reminder.

Q. Pleased to be of service, Mr. Wilson. And I'm going to ask you to turn to page 12 of Bondholder Exhibit 2. And let me just set a predicate here. Before you joined the task force in March of this year, you did have some experience with Section 363 of the Bankruptcy Code, is that correct?

A. Yes.

Q. And it was your understanding that one of the considerations that made a Section 363(b) sale attractive was the ability of the purchase to cherry pick the liabilities it assumed?

A. Yes.

Q. And that was one of the considerations that you used and the Task Force used in deciding on the form of this sale, is that correct?

A. Yes.

Q. And in deciding what liabilities New GM was going to assume your task was solely that the assets assumed should be commercially necessary for the viability or help for the New GM, is that correct?

A. That was the focus of our assessments, yes.

Q. That was the test you used?

A. The primary test, yes.

Q. And you didn't give any consideration to Section 1114 of the Bankruptcy Act or the priorities of those liabilities under the Bankruptcy Code, is that correct?

A. Well, to the extent that Section 1114 was relevant, we consider that a consideration for the creditors of OldCo.

Q. And you didn't consider it in terms of what assets you were going to purchase in NewCo?

A. Well, we did not believe that any of the assets we were purchasing required any of the liabilities associated that would fall under the question you're asking.

Q. In deciding what liabilities NewCo was going to assume you did not consider any of the effects of Section 1114 of the Bankruptcy Code, is that correct?

A. I think that's fair to say.

Q. I'm sorry; what was that?

A. I think that's fair to say.

Q. Okay. Could you turn, in the large book of exhibits, to your deposition and following that Exhibit 12, and these are in evidence at this point. Exhibit 12 to your deposition. If you need help, I can come up and, I think, help you.

A. Is this it?

Q. No.

MR. HOFFMAN: May I approach the witness, Your Honor?

THE COURT: Yes.

(Pause)

Q. And I really want to refer you to the third to the last page of this exhibit, Mr. Wilson. It has the heading salaried and splinter union benefit obligations guideline objectives.

MR. HOFFMAN: May I approach?

THE COURT: Yes.

(Pause)

MR. HOFFMAN: Exhibit 12, the third to the last page.

Q. And did there come a time when the task force set, for GM management, a target of two-thirds reduction in certain retiree benefits?

A. Yes.

Q. And did GM come back and --

THE COURT: Are people in the back of the room able to hear me and Mr. Hoffman? All right. ECRO -- do we have electronic record? So we don't know if it's going to any of the other room and we need to make sure. I think we have no choice but to take a recess and see if we can resolve this. Let's go to a recess. We'll try to be beck within five minutes after it gets fixed but I don't know how long it will take to have it fixed.

(Recess from 11:55 a.m. until 11:59 a.m.)

THE COURT: I'll give folks a chance to be seated and then we can continue.

(Pause)

MR. HOFFMAN: May I proceed, Your Honor?

THE COURT: Yes, sir.

MR. HOFFMAN: Thank you.

Q. Focusing, again, on the third to the last page of Exhibit

12, Mr. Wilson, does this reflect the proposal that GM management made to the task force concerning its request for a two-thirds reduction in the 7.9 billion dollars in retiree benefits?

A. Yes, this was the first response from the General Motors management team.

Q. Right. And in it they had reflected a reduction in the retiree basic life insurance and the 10,000 dollars flat, is that correct?

A. Yes.

Q. And they had not further cut salaried retiree healthcare recognizing that it had been cut at the beginning of the year, is that correct?

A. Yes.

Q. They cut executive non-qualified pensions by thirty-two percent, is that correct?

A. Yes.

Q. And that's what we call a SERP, right?

A. Yes, I believe that line item is the SERP.

Q. And what they did was for retired executives earning less than one hundred thousand dollars on their retirement SERP benefit, they got a ten percent reduction -- excuse me, a combined retiree pension and SERP benefit of less than one hundred thousand dollars, they got a ten percent reduction.

A. Yes. But just to clarify one thing I said earlier, I

think, as it says here, there's -- this is part SERP and part just ERP. So I think there are elements of this program that are not just the SERP.

Q. Okay. So let's take it as a benefit as a whole.

A. Yes.

Q. They got a ten percent reduction if they had under a hundred thousand dollars total retirement payments, right?

A. Yes.

Q. Per year. And if they had a two-thirds reduction of any amount over a hundred thousand dollars, is that correct?

A. Yes.

Q. And the executives lost their life insurance but they still had the retiree basic life insurance, is that correct?

A. I believe so. Yes.

Q. And the splinter unions, as they're called, they were proposing we're going to lose eighty-four percent of the value of their health insurance, correct?

A. That was the end result of a policy to provide the same level of benefits for the splinter union retirees as for the salaried retirees. The math of that became eighty-four percent

Q. And -- excuse me, I didn't mean to interrupt but to you and the task force, symmetry between the retiree healthcare benefits and the splinter union healthcare benefits was an important factor, wasn't it?

A. Well, we struggled with this issue for some time, Mr.

Hoffman. And the -- one of the things we wrestled with was no assumption of retiree benefits. And we felt that that was, at least initially, a reasonable position as a buyer of the assets for New GM. And the response we received from the management team was that that would have a significant deleterious effect on the moral of management, most of whom are coming over to NewCo as we've discussed, and we should modify that. And in the course of -- as a result of many, many discussions around this topic concluded that we settled on the two-thirds reduction overall and felt that we really left it to the management team to decide how to do that. And this was, of course their, as I discussed earlier, their first proposal on that.

Q. Thank you. And the task force's response to this proposal was what?

A. We said two-thirds and we meant two-thirds.

Q. Yeah. So come back again and tell us how you're going to do the two-thirds, in words or substance, correct?

A. I missed the second half of what you said, sir.

Q. So GM management, come back again and tell us how you're going to achieve two-thirds, in words or substance that's what you told them, right?

A. Yes.

Q. Yeah. Could you turn to Exhibit 13, the second page, please?

(Pause)

Q. And do you believe the second page reflects where GM management came back and told you how they were going to reach the two-thirds?

A. Yes, absent the black lining, but yes.

Q. And what they did was move the cost share on retiree health to forty-five percent cost share, and that resulted in salaried healthcare losing twenty-five percent of their benefit and the unions losing eighty-seven percent of their benefit, is that correct?

A. Yes, sir.

MR. HOFFMAN: Other than that, Your Honor, we'll rely on the deposition of Mr. Wilson.

THE COURT: Okay.

MR. HOFFMAN: Thank you, Mr. Wilson.

THE WITNESS: You're welcome. Thank you.

THE COURT: Anyone else? Ms. Cordry?

MS. CORDRY: Thank you, Your Honor. Karen Cordry on behalf of the Attorneys General. I'd like to ask the witness some questions about the proposed sale order that's part of the sales motion. It's obviously something the Court can take judicial notice of. I can put it in as an exhibit separately if you'd prefer.

THE COURT: It might be easier, Ms. Cordry, if you'd consider it an exhibit as well.

MS. CORDRY: Attorneys General Exhibit 1, I guess.
(Attorney General's 1, proposed sale order, was hereby marked for identification as of this date.)
MS. CORDRY: And I have a copy for the witness if I may approach.
THE COURT: Yes. Thank you. Do you have an extra for me?
THE WITNESS: Thank you.
CROSS-EXAMINATION
BY MS. CORDRY:

Q. Okay. First, have you seen what's been labeled Attorney General's Exhibit 1 that I've handed to you?
A. I have skimmed this before, yes.
Q. Okay. Have you -- you said you skimmed, does that mean you have read it all the way through?
A. I skimmed it all the way through.
Q. Okay. Who on Treasury's side is responsible, in depth, for the actual terms of that order, the specific language going into that order?
A. Well, the general business principles I would be primarily responsible for. But the actual language would be my colleague, Matthew Feldman.
Q. Okay.
A. Who's an attorney.
Q. But as the business principals you would be familiar with

the terms that are in here and what -- to the extent the order encompasses the decision by Treasury to assume liabilities, to refuse to assume liabilities, those kind of trade offs you're familiar with that, is that correct?

A. Certainly the high level.

Q. Okay. To your knowledge, is this order still the only one that's been filed with the court?

A. To the best of my knowledge, yes.

Q. There are ongoing discussions, are there not, with respect to the terms of this order, various negotiations with various objecting parties to you knowledge?

A. There had been, I don't know that they're continuing.

Q. Do you know -- have you been party to any of those discussions?

A. Not on a day-to-day basis, no.

Q. Okay. To your knowledge, have all those discussions been resolved and placed into an order?

A. To the best of my knowledge we have heard all the issues that are outstanding. We've formulated a view on what we're willing to do and I think we've resolved that view.

What's been communicated to the various parties or what's been set forth in the documents, I'm not familiar with.

Q. Okay. And who is communicating those views to -- is your position being communicated to the debtors, to the other parties, how is that communication being made?

A. I'm not certain. I believe that there's been direct dialogue between at least our outside counsel at Cadwalader with the various parties. But since I'm not part of those conversations I'm not exactly sure who's in those conversations.

Q. Okay. Could you look at paragraph 27 in that order; it's on page 23.

(Pause)

Q. The second sentence there -- it says, "The purchaser shall not be deemed as a result of any action taken in connection with the MPA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition to purchase assets to (i)be it legal successor or otherwise be deemed a successor to the debtors other than with respect to any obligations arising under the purchase agreements from and after the closing; (ii)have de facto or otherwise merged with or into the debtors; or (iii)be a mere continuation or substantial continuation of the debtors or the enterprise of the debtors." That's a correct reading of what's there?

A. Yes.

Q. Okay. With that statement there, do you know if a legal analysis was made as to whether under the facts of these transactions the debtor is in fact the new debtor, the New GM, the purchaser and this new enterprise would be considered to be

a successor of Old GM?

MR. SCHWARTZ: To be clear, the question is whether an analysis was performed?

MS. CORDRY: Yes, that's the question.

THE COURT: That's exactly the way to do it without blowing a privilege.

MS. CORDRY: Right.

THE COURT: And with the clarification, especially, I think it's clear that the question can and should be answered.

MR. SCHWARTZ: Could we make clear that it's a yes or no question?

MS. CORDRY: Well that question, I think, probably is a yes or no question, yes.

THE COURT: I think it is a yes or no question.

A. Could you please repeat it?

Q. Okay. Do you know whether any legal analysis was made as to whether under the actual facts of this transaction would the purchaser, the new GM enterprise, be a successor to Old GM?

A. I believe so.

Q. And who would have made that analysis?

A. I believe it would have been Mr. Feldman in conjunction with outside counsel.

Q. And do you know whether they analyzed that under federal law or state law?

A. I don't know.

Q. And did they come to a conclusion on that?

THE COURT: Answer yes or no.

A. Yes.

Q. Okay. And I'll ask this --

MS. CORDRY: You can object if you want.

Q. -- was the conclusion that under all circumstances and for all types of claims that they were not a legal successor?

MR. SCHWARTZ: Objection.

THE COURT: Sustained. That question can't be answered without getting into substance.

MS. CORDRY: Okay.

Q. The order also states that --

MR. SCHWARTZ: With respect, I'm going to object to the relevance of the entire line of questioning. I understand that the attorneys general have a legal objection that is set forth in their objections about some of the terms of the sale order. I also understand that there is a work through of many of the issues that objectors have raised and that the document is in flux. I'm not sure that it makes sense to question this witness about that document. It's a legal issue.

THE COURT: Mr. Schwartz, I'll be the judge of that.

MR. SCHWARTZ: Of course.

THE COURT: Ultimately, the decision is a legal one for the Court. Within the bounds of reason, I'm going to let the parties develop factual records. I have no doubt that I'm

going to hear in summation argument on the legal issues, and frankly I'll tell you, Ms. Cordry, what kind of homework people do before that is relevant to my legal decision but I'm going to cut you a little slack in this regard, as long as you don't abuse it.

MS. CORDRY: Right. Because I think the question I'm asking, although I'd be happy to know what their answer was, the question I'm asking is in this order it appears to say, and I think your various testimony appears to be that the purchaser will not proceed unless it's really a successorship liability in a broad sense. And I'm trying to parse through that a little bit and try to find out what the intentions actually are, depending on the legal analysis of the Court and whether that analysis will have any affect on what the government is prepared to do.

THE COURT: Well, we can limit some but I'll let you question.

MS. CORDRY: Thank you.

Q. So my question is, going to that point that the order is asking for a determination that under all circumstances this purchaser is not a successor of the old debtor, if the Court finds to the contrary, so I'm not asking you to make a legal determination -- if the Court finds to the contrary as to one or more aspects of the claims that in fact this purchaser would be a legal successor, is the purchaser -- is Treasury prepared

to walk away at that point.

A. It is, of course, hard to answer a hypothetical without knowing the terms of that -- of the outcome of that. But certainly our strong view is that we are not going to be seen as successor and cannot take on successor liability.

Q. Okay. And that's what I'd like you to distinguish now, the difference between being seen as a successor and then the second aspect as successor liability which is, this order is also asking the Court to determine that the sale can be made free and clear of successor liability. Is that your understanding?

A. Yes.

Q. So that even if you were a successor it is asking that the sale be made, that the Court find that legally the sale can be made without regard to any liabilities that you might have, is that your understanding?

A. Yes.

Q. Okay. With that distinction between those two aspects of successor liability, if the Court found the latter, that it could be sold free and clear of successor liability, but either found that you were a successor perhaps more properly said I don't need to find if you are a successor or not because I'm allowing you to sell free and clear that liability, is Treasury prepared to walk away if they don't get that legal finding that you are not a successor?

A. I'm not sure my legal knowledge, is extent to one constitutional law class would give me enough basis to kind of assess exactly what your question is. But I can tell you that the sale motion was put together very deliberately and it was certainly based on the predicate that we will not have any successor liability and that the sale motion would find that we were not a successor.

Q. I understand. But I am asking you and I think the Court needs an answer before we go to this and I don't know whether you're prepared to give the answer at this point or not. But if the Court found that you were not going to be held liable for successor claims but found that you were still a successor, because those are two very different issues and have two very different consequences, I'm asking you as a business judgment whether the Treasury has even considered the distinction between those two aspects of successor liability?

MR. SCHWARTZ: Objection. Mr. Wilson has already answered that if the sale order is not entered by July 10th it is Treasury's intention not to fund. What Ms. Cordry is really trying to do is negotiate the language of the sale order with Mr. Wilson on the stand.

THE COURT: I don't think so, Mr. Schwartz. Ms. Cordry, I'm not going to let you question as to their deliberations but if Treasury or the task force now has formed a view on what it will do if I rule adversely on any element of

successor liability, you've got to tell me.

THE WITNESS: We do not have any intention to move forward if the sale order, with regards to successor liability, is not entered as described in here.

Q. Okay. Now, on the other hand you are continually drafting the order so in fact you are prepared to make some changes in this order and I believe that some of those go to successor liability.

A. Well, I think that's where we started the conversation. And what I indicated was we're taking all kinds of perspectives and views and input, all which we had received prior to June 1 because it was clear what was happening in General Motors and there are no surprises. But even despite that, we still were, we believe, extraordinarily accommodating in taking all sorts of input from all sorts of people post June 1. And at this point in time we've taken all the input we intend to take and have formulated our final views on that.

Q. Okay. But that really was not my question. My question was, in fact, the draft orders that are going around have changes in provisions that relate to successor liability, do they not?

A. Yes.

Q. Okay. So this order is not the one you're going to necessarily ask the Court to enter, correct?

A. That is correct.

Q. Thank you. And again, just to be absolutely clear, your position now is that you want the Court to say that even if the Court finds that legally you would be a successor but that the Court would relieve you of free and clear -- would allow you to sell free and clear of that liability, that your position would be you would walk away from that unless the Court allows you to sell -- I'm sorry. You would walk away unless the Court finds that you are not a successor regardless of what the law might say?

A. That's our position.

Q. Okay. So the order would have to find you're not a successor regardless of what the Court finds the law to be in order for the sale to go forward.

A. Ma'am, I think honestly you're stretching well beyond the boundaries of my legal knowledge. I explained to you the business principles underlying our position.

Q. That is the business principles I'm asking you for --

THE COURT: Time out, Ms. Cordry. If you don't like his answer you can move to strike but you can't interrupt him in the middle.

MS. CORDRY: I'm sorry. I'm sorry, Your Honor.

Q. And I'm sorry, Witness. Please complete your answer.

A. No problem. And as I testified at the very beginning, I'm more than happy to answer any questions on the business principles outlined herein and that's been the basis of my

answers throughout my testimony. But to the extent you're asking for legal distinctions that are beyond my knowledge, I can't answer it thoughtfully or accurately.

Q. I think I was looking at the business judgment that that was where they would take the order but let me move on to one other set of questions.

In terms of, you said, this order was very carefully drafted, I believe you said, correct?

A. I don't recall if I said that or not but I certainly hope it was.

Q. Okay. One of the things that has come up here, certainly in our discussion and I think with other peoples and so forth, is the question of just how broadly this free and clear sale might extend and so forth and what might be covered by this. Someone made copies of this but apparently, I'm sorry, they only made copies of -- it was a double-sided page and it was only made with single-sided pages.

MS. CORDRY: Could I possibly borrow back your originally order and we'll substitute corrected one.

THE COURT: You're talking about the proposed order?

MS. CORDRY: Yes.

THE COURT: Yes, you can borrow it.

MS. CORDRY: I'm sorry.

(Pause)

Q. If you look at paragraph T there, which talks about

selling free and clears of liens and claims and encumbrances and so forth, can you just briefly read down that paragraph and then I'll ask you a question about it.

THE COURT: Ms. Cordry, pause please.

MS. CORDRY: Yes.

THE COURT: I'll see if I have another copy.

(Pause)

THE COURT: Mr. Miller, can one of your folks provide me with one? You may approach.

MR. MILLER: Just give us a moment, Your Honor.

THE COURT: Sure.

(Pause)

THE COURT: You want to make a reference to T, if I recall?

MS. CORDRY: T, right. It would be page 8.

(Pause)

Q. Have you had a chance to finish reading that?

A. Yes.

Q. Okay. If you go through that paragraph, if you'll notice at the top it refers to claims with a small (c). If you look halfway down it refers to claims, with a small (c) (as defined in the Bankruptcy Code). And I believe towards the ends it talks about large (C) claims in the next to last line.

A. I see the -- I see the large (C) claims in the second to last line, I don't see your other two references.

Q. Okay. It would be seven lines from the bottom is the claims (as that term is defined in the Bankruptcy Code), do you see that?

A. Yes.

Q. And I believe up at the beginning of it, when it starts talking about what's being sold free and clear of liens, claims, encumbrances and so forth, do you see that?

A. Yes.

Q. Okay. Without the parenthetical?

A. Yes.

Q. Is it your understanding that those three terms are meant to be something different in the same paragraph?

MR. SCHWARTZ: Objection. Mr. Wilson testified he had only skimmed the document and he wasn't a draftsman of the document.

THE COURT: All right. I'm going to sustain that but you are entitled to question, Ms. Cordry, as to whether he, as a businessman or as a government official, has a businessman's understanding as to whether he was intending to make any distinctions between the two.

Q. As the judge stated, as a businessman is it your understanding that this document was intending, in that paragraph, to make a distinction between those three sets of uses of the term claim?

A. I haven't spent any time on the details of the document.

I know there was some discussion yesterday around the distinction between lower case C and upper case C, but I didn't spend any time on that issue.

Q. And are you aware of what the defined definition of -- the upper case C defined definition of a claim is, according to the master purchase and sale agreement?

A. Not off the top of my head, no.

Q. Are you aware that it goes beyond a bankruptcy claim that includes things like defenses and investigations and right to recoupment?

A. I'm not aware of that.

Q. Okay. But if I state to you that that's what it says, would you doubt that your purchase and sale agreement goes beyond a simple bankruptcy claim?

MR. SCHWARTZ: Objection. Calls for a legal conclusion.

THE COURT: Sustained.

Q. I'm simply asking, do you disagree with me that the master purchase and sale agreement says that if I make a representation to you that it says that, do you disagree with that?

MR. SCHWARTZ: Objection. The document speaks for itself.

THE COURT: Well, Mr. Schwartz, documents often speaks for themselves but when a document is drafted in this

fashion that's debatable.

MR. SCHWARTZ: At least the document should be in front of the witness.

THE COURT: No. Forgive me, Mr. Schwartz. I'm not going to get into a debate with you. That objection is overruled. I'm going to reiterate, Ms. Cordry --

MS. CORDRY: Yes.

THE COURT: -- that you're free to ask him his understanding, as a non-lawyer, what he's trying to accomplish.

MS. CORDRY: Yes, Your Honor.

THE COURT: I am not going to have him construe this document.

MS. CORDRY: No, Your Honor.

THE COURT: It may be tough enough for me to construe the document.

MS. CORDRY: Yes, sir.

THE COURT: And even if he had read it more extensively, which the record indicates he hasn't done, the question would, in my view, be inappropriate.

MS. CORDRY: Okay.

THE COURT: So while I don't go as far as Mr. Schwartz' objections or to sustain them, the ground rules for this examination are that you're allowed to find out his businessman's understanding and to the extent he has intentions what they are.

MS. CORDRY: Yes, sir.

THE COURT: Go ahead.

MS. CORDRY: Okay.

Q. For purposes of this question, I'll simply make the representation that as a factual matter the defined term claim says it includes small C claims and those other matters that I mentioned, things like defenses, right to recoupment, investigations. So for the moment I'm simply saying that's what the words say, are you prepared to accept that as my representation that that's in fact what your document says?

A. I don't have any reason to doubt your integrity, no.

Q. Okay. Thank you. Are you aware if there's been any analysis of whether any rights under the Bankruptcy Code to sell free and clear of bankruptcy claims extends beyond that to the extent of the matters covered by your defined term claim?

A. I haven't spent any time on that issue.

Q. I'm not asking you that. I'm asking you has there been any legal analysis done as to whether there's a distinction in terms of the ability to sell free and clear between the bankruptcy term claim and your defined term claim?

A. Not that I'm aware of.

Q. Okay. Has there been any determination, then, as to whether if the Court limited the sale free and clear of claims to the bankruptcy definition claim, rather than your defined term claim, whether the Treasury would pull out of this

agreement?
A. Since we haven't discussed it I can't -- of course we don't have a position on it because we haven't discussed it.
Q. If -- all right. So if the Court found that it was illegal to go beyond a bankruptcy claim and could not extend the free and clear to your defined term claim, you at this point have no position as to whether or not the Treasury would need to terminate the sale or not, is that what I hear you saying?
A. Yes.
Q. Okay. Conversely, the purchaser has not yet taken the position -- has not determined that it will only complete the sale if the Court finds that it can -- if the Court includes a provision in the order that says regardless of what the law is you can have your defined term claim as what can be sold free and clear?
A. For the same reasons, that we haven't discussed this issue, yes.
Q. Okay. Thank you.

MS. CORDRY: That's all, Your Honor

THE COURT: Okay. Mr. Bernstein?

CROSS-EXAMINATION

BY MR. BERNSTEIN:

Q. Good afternoon, Mr. Wilson. My name is Norman Bernstein. Just a few quick questions. During the run up to the

bankruptcy, after December and before May 30th, were there any conversations that you're aware of regarding GM's bidding for this then ongoing environmental obligations?

A. Could you repeat the question?

Q. Sure. During the period, December through May 30, December 19, 2008 through May 30th of 2009, were there any conversations, that you are aware of, regarding GM's continuing to pay for its ongoing environmental obligations?

A. I guess the reason I asked you to repeat the question is I wanted to make sure I understood it. Are you talking about GM in the context of that period of time?

Q. Yes.

A. And its obligation during that period of time?

Q. Yes.

A. We assume that they're doing what they should be doing under law.

Q. What would be the basis for that assumption?

A. Perhaps it was ill founded but certainly our expectation was that in all aspects of the business they were complying with the law.

Q. Apart from expectations, if those expectations turned out to be incorrect, was there any conversation that you know of relating to that subject?

A. Not that I'm aware of.

Q. If this Court were to conclude that a, what I'll call de

minimis exception to the successor liability in the amount of 62,700 dollars was appropriate because of conduct by general motors in or about May of 2009, would that prevent, the 62,700 change, prevent the Treasury from going forward?

A. I'd have to, obviously, review the facts and circumstances of this year to ultimately opine. But it's hard to see, even though as I've said many times that we've only what is absolutely commercially necessary and it's hard to draw a fine line on viability. It is hard to say that the 62,000 dollars would swing the difference.

MR. BERNSTEIN: Thank you very much, Your Honor.

THE COURT: Before you leave, Mr. Bernstein.

MR. BERNSTEIN: Yes.

THE COURT: When we eventually get to summations, I want both sides to address a question that I'm likely to ask at the beginning of argument which is that when you have a consent decree that requires the payment of money, is that regarded as an obligation of law on the one hand or an ordinary contractual obligation on the other?

MR. BERNSTEIN: I believe --

THE COURT: I don't want you to answer it now.

MR. BERNSTEIN: Yes.

THE COURT: I want both parties to address that when it's time.

MR. BERNSTEIN: Thank you, Your Honor.

THE COURT: Okay.

MR. BERNSTEIN: And also, Your Honor, I have attached to my affirmation about four documents, Judge Nolan's order, the consent decree, the trust agreement and the assessment. Could those be deemed marked in evidence?

THE COURT: Well, certainly marked. I assume that you mean is admitted into evidence. Any objection?

MR. MILLER: No, Your Honor.

THE COURT: No objection; they're all admitted.

(Judge Nolan's order was hereby received into evidence as of this date.)

(Consent decree was hereby received into evidence as of this date.)

(Trust agreement was hereby received into evidence as of this date.)

(Assessment was hereby received into evidence as of this date.)

MR. BERNSTEIN: Thank you, Your Honor.

THE COURT: Okay. Ms. Cordry?

MS. CORDRY: Could Attorney General's Exhibit 1 also be admitted into evidence? I'm sorry. I forgot to ask earlier.

THE COURT: Any objection?

MR. MILLER: No objection.

THE COURT: All right. It's admitted for what I understood it to be, which was to be a proposed order that was

tendered at the time. Okay.

(Attorney General Exhibit 1, proposed sale order, was hereby received into evidence as of this date.)

THE COURT: All right. Who else? Anyone? Mr. Parker?

CROSS-EXAMINATION

BY MR. PARKER:

Q. Good morning, Mr. Wilson. I'm Oliver Parker.

A. Good afternoon.

Q. Give me one second.

(Pause)

Q. I know you weren't with the government in December of 2008 when the LSA was executed, the loan and security agreement between general motors and the U.S. Treasury. But as part of your job with the Treasury since March of 2008 have you had cause to review the LSA?

A. Yes.

Q. Okay. The loan that the U.S. Treasury gave to General Motors, was that loan for the purpose of purchasing new property?

A. No.

Q. Okay. The property that was liened under the terms of that loan or mortgaged under the terms of that loan, was that property that was already owned by General Motors?

MR. MILLER: Your Honor, objection. This testimony -

- the answers to these questions are already in the record. We can stipulate to them and save a lot of time.

THE COURT: All right. You may offer a stipulation, Mr. Miller.

MR. MILLER: I would stipulate, Your Honor, that the funds were not used for the purpose of buying property to attach liens. What was the next one?

MR. PARKER: The liens --

THE COURT: Come next to him on the microphone so that whatever you said will be gotten down.

MR. PARKER: The properties that were liened were properties that were already owned by General Motors.

MR. MILLER: Correct.

MR. PARKER: And that the liens were not given to secure partial progress advance or other payments pursuant to any contract or --

MR. MILLER: So stipulate.

THE COURT: Okay. Fair enough. We can move onward.

MR. PARKER: One final question on this, maybe he wishes to stipulate that as well, that stockholder equity was -- the stockholder equity -- sorry -- the loans were greater than twenty percent of the existing stockholder equity.

MR. MILLER: No.

MR. PARKER: No. Okay.

BY MR. PARKER:

Q. In your course of work with the Treasury, have you come to review the financial statements of general motors in December of 2008?

A. In some level of detail, yes.

Q. Okay. Is it your understanding that General Motors' liabilities were in the neighborhood of 190 billion dollars?

A. That sounds about right.

Q. And their assets were in the neighborhood of eighty to ninety billion dollars?

THE COURT: You mean book value of assets or measured by some different standard?

MR. PARKER: Book value, sir.

A. Yes, on a book value basis I think both the liability number you quote and the asset number is about correct.

Q. Okay. Are you aware of any other valuation number for those assets?

A. At that point in time I'm not aware of any valuation work that General Motors had undertaken, no.

Q. Okay. Is there any reason for thinking that those assets had a greater value than book value?

A. Well, sir, as I'm sure you're aware, the book value of the assets is never a predictor of market value of the assets. So if anything the market value would almost certainly be different then the book value.

Q. Okay. Is it safe to say that at least under book value

the stockholder equity was negative in December of 2008?
A. Yes.
Q. Okay. Also, were the share prices of General Motors stock roughly between four dollars and five dollars a share in December of 2008?
A. I believe so.
Q. And since there are 600 to 650 million shares, the total market value of the shares would have been somewhere between two and a half and three and a half billion dollars, is that correct?
A. That's roughly correct.
Q. And the initial loan on December 31st was four billion, the initial advance?
A. Yes.
Q. And that would be greater than twenty percent of two and a half to three and a half billion?
A. I believe your math is correct, yes.
Q. Okay. Thank you. I believe that you stated that the United States Treasury and General Motors negotiated with regard to the master sale and purchase agreement, is that true?
A. Yes.
Q. And that they've been in negotiations since, what, March, somewhere in that area?
A. Well, not on the specifics of the MSPA, no.
Q. But of how General Motors ought to reorganize itself?

A. Well, yes there's been an ongoing dialogue between Treasury and General Motors around a range of restructuring or sale options.

Q. Okay. Is it true the General Motors management --

MR. PARKER: Strike that one second. I'm going to come back to that.

Q. There was one other thing I needed to ask you; was the United States Treasury aware, when they issued the or when they entered into the security agreement with the LSA with General Motors that there was a limitation on the liens provision in the bonds?

A. Sir, I can't speak to the Treasury's knowledge at that point in time.

Q. Okay. Did General Motors management forcefully negotiate with regard to executive retirement benefits?

A. Yes.

Q. Okay. Did they forcefully negotiate for items that they felt were important to the continuation of the business going forward?

A. Yes.

Q. Did they forcefully negotiate for what sort of payment should be given to the bondholders?

A. Yes.

Q. Who determined the ten percent figure?

A. Which ten percent, sir?

Q. The ten percent offer to the bondholders of share equity?
A. But sir, as part of the exchange offer or as part of the sale?
Q. Well, let's start with the exchange offer, as part of the exchange offer?
A. Well, the circumstances around that time, is the management team wanted to pursue an exchange offer and they felt the more equity they could offer to the bonds the greater the likelihood of success to that exchange offer. They knew that we would have to approve the terms of any exchange offer, in particular because part of the exchange offer expected or was requesting some equitization of Treasury loans. And in the context of those discussions, we told them under no circumstances are we willing to allow more than ten percent of the equity to the bonds and that we weren't sure that we would actually allow ten percent of the equity of the bonds.
Q. So the ten percent upper limit on equity in exchange for bonds was set by the Treasury?
A. Well, I think that General Motors management did not want to launch an exchange offer with no chance of success. And so they approached us and said obviously one of the conditions of the exchange offer was the commercial terms under which Treasury would agree to. And that was the basis for the discussion that is described.
Q. But General Motors wanted to give more than ten percent,

is that correct?

A. They -- yes, as I stated.

Q. And it was Treasury that decided that ten percent was the highest number that should be offered?

A. We communicated that the most we'd be willing to entertain would be ten percent.

Q. Okay. Did -- with regard to the present offer of ten percent equity in the master sale and purchase agreement, who made that determination?

A. That was a Treasury decision.

Q. Okay. Did the United States Treasury ever negotiate with the Main Street Bondholder Association?

A. I don't believe they ever approached us, sir.

Q. Okay. Is it true that in April of 2008, I believe it was the ad hoc bondholder group, made a counterproposal to General Motors of a bond exchange?

A. I don't know if they made a formal proposal, I know there was some press discussion about their desire for more equity.

Q. And they wanted to do a sixty percent exchange, is that correct?

A. I think that was roughly right. I don't remember the exact terms.

MR. MILLER: It's '09.

MR. PARKER: You're right. It's '09, I stand corrected. It was '09.

Q. Did General Motors negotiate with the ad hoc committee?
A. I don't know how much interaction they had with the ad hoc committee at that point in time.
Q. Okay. Just to be clear on something, do I understand correctly it is the intention of the United States Treasury to fully fund the administrative and priority claims of the remainder of the General Motors estate after the sale?
A. Do you mean in connection with the wind down budget we discussed earlier?
Q. Yes.
A. It is, as we said in our term sheet with the representatives of the bondholders back in May, and as I stated earlier today, it is our intention to fund reasonable expenses.
Q. Okay. So you're in negotiations to raise the figure above the 950?
A. We're in negotiations around what would be reasonable expenses, yes.
Q. Okay. Do you have -- does Treasury have any idea of how long they would expect before the stock and warrants are distributed to the unsecured creditors?
A. That is part of the discussions we're having. We understand that the creditors of OldCo would like to see that as soon as possible. We're certainly supportive of that. The question, of course, becomes how quickly could the AlixPartners folks do the work they need to do at OldCo. And we have an

incentive for them to do it in an orderly basis. The creditors of OldCo have an incentive for them to do it in an orderly basis. And we're trying to think through how that mechanic would actually work.

Q. Well if I recall correctly, Mr. Koch testified yesterday that he believed the heavy lifting could take two to three years and that further wind up could take another two to three years. What I'm curious about is it is anticipated that the unsecured creditors will have to wait until the estate is fully administered before they get their distribution?

MR. MILLER: Objection, Your Honor. Mr. Wilson's not an expert on administration of cases under Chapter 11.

THE COURT: Sustained. If you've formed a view on that, Mr. Wilson, you can tell him. But if you haven't formed a view on that, tell him that also.

THE WITNESS: I don't have a view.

Q. Okay. Mr. Wilson, is it -- am I correct in understanding that the funding for the purchase of the assets from General Motors are coming from TARP?

A. I believe --

Q. Is that a yes, sir?

A. I believe so.

Q. Okay. Is the government a commercial lender?

A. How would you define commercial lender?

Q. Are they in the business of lending money?

A. Not under normal circumstances but we're not living under normal circumstances, sir.

Q. Okay.

A. I think we'd both know if we hadn't this company would have liquidated a long time ago.

Q. I understand. I just want to know if that's -- I think you've answered your question.

THE COURT: Move on to another question please, Mr. Parker.

MR. PARKER: Yeah, I will.

Q. Did you testify earlier that no commercial lender is large enough to fund a GM restructuring?

A. I think at this point in the economic cycle that is correct.

Q. Okay.

A. As evidenced by the events of the last few months.

Q. I'd like to talk about the credit bid for a minute and the factors that would influence an allocation of shares that the Treasury's going to keep in NewCo relative to the DIP financing and relative to the pre-bankruptcy loan of 19.4 billion.

If I understand correctly, NewCo is going to have approximately -- NewCo is going to owe the U.S. Treasury a little over seven billion dollars, is that correct?

A. In the form of debt, yes.

Q. And that will be -- that seven billion dollars is from the

DIP facility, is that correct?
A. I believe so.
Q. Okay. Also, of the 33.3 billion in DIP financing, is part of that being contributed by the Canadian government?
A. A portion is being contributed by Canadian governments, the federal government and the government of Ontario.
Q. Right. Okay. By Canadian governments, a portion of it is?
A. Yes.
Q. And do you know how large of a portion?
A. I believe it's 3.2 billion dollars.
Q. Okay. So the amount of DIP financing that is being replaced by equity by the governments is roughly twenty billion, is that correct?
A. I'm not sure how you developed that math, Mr. Parker.
Q. I subtracted seven billion debt and 3.2 billion that Canada's contributed, because they're also getting equity. And when you subtract it from 33.3 billion that leaves twenty billion.
A. I would have thought closer to twenty-three.
Q. You're right, twenty-three. But isn't General Motors also getting -- I'm sorry, not General Motors. Isn't the United States Treasury also getting two billion in preferred stock?
A. It's just over two billion, yes.
Q. Okay. So when you subtract that out, that would leave

twenty-one, is that correct?

A. Roughly.

Q. So the split between DIP financing that's being converted to equity and old loans that's being converted to equity is something like a fifty-five/forty-five split. The fifty-five being for DIP, the forty-five being for old debt.

A. We haven't thought about it that way, sir.

Q. Okay. But it would be one way to think about it?

A. No, not necessarily. I guess it would be a conceivable way to think about it but we also could have structured it in a range of different ways. We thought about it as was the sum total of our investment/loan into the company.

Q. Okay. So you really haven't done an analysis one way or the other?

A. I think I testified to that earlier.

Q. Right. Okay.

MR. PARKER: I believe that's all I have. Thank you.

THE COURT: Has everybody now had a chance to --

MR. SALZBERG: Your Honor.

THE COURT: Mr. Salzberg?

MR. SALZBERG: Yes, we had reserved a right on one specific issue, if I may?

THE COURT: You May.

MR. SALZBERG: Your Honor, I'd like to mark for the record Bondholders' Exhibit 4. And if I may approach?

(Bondholders' Exhibit 4, printout of an article released by The Detroit News on their website, was hereby marked for identification as of this date.)

THE COURT: Yes.

(Pause)

CROSS-EXAMINATION

BY MR. SALZBERG:

Q. Sir, have you had a chance to read this? What is Bondholders' Exhibit 4?

A. Yes.

Q. And you see that it is a printout of an article released today by the Detroit News on their website?

A. That's what it appears to be.

Q. Okay. And you would agree with me, would you not, that what the article addresses is the July 10th deadline which we discussed earlier today in your testimony, that being the deadline set by the U.S. Treasury for entry of the sale order?

MR. MILLER: Objection, Your Honor. The article is a report on the proceedings that happened before the Court yesterday and a description of those proceedings.

THE COURT: Well, if your point is what happened before me as the best evidence and that the article is hearsay, I agree. So, Mr. Salzberg, I've got to figure out where you're going to see whether you're relying on some hearsay exception or something for which this is probative evidence of something

I should be assuming as prohibited.

MR. MILLER: I would also add, Your Honor, that this morning counsel said -- I believe the question that was propounded was would Mr. Wilson agree with Mr. Henderson saying that the government would not walk. The article doesn't refer to Mr. Henderson saying anything in that respect, Your Honor.

THE COURT: I'll need help from you on this respect, Mr. Salzberg.

MR. SALZBERG: I'm sorry?

THE COURT: I need help from you --

MR. SALZBERG: Yes.

THE COURT: -- from you to address the points Mr. Miller raised on how to rule on this.

MR. SALZBERG: The first issue is, Your Honor, I asked the witness whether or not the U.S. Treasury's position on the July 10th deadline was at odds with public pronouncements made by General Motors. And I specifically referenced some news articles. And then I said that we did not have the articles since they just were released this morning. So that's what we were talking about this morning and that's what we reserved our right to come back and ask the witness about this afternoon.

On the second issue regarding the hearsay, if I may, we're not introducing this exhibit into evidence at this point. I've just asked him to identify it and if I can point him to

one section of the article and ask if that section of the article is consistent or inconsistent with the U.S. Treasury's position as testified to by Mr. Wilson earlier today.

MR. MILLER: It's still -- it's double hearsay, Your Honor.

THE COURT: Sustained.

MR. SALZBERG: May I attempt to ask a question and get around the hearsay issue because we're not introducing this exhibit to prove the truth of the matter asserted.

THE COURT: I only ruled on the last objection. You can ask another question and I'll rule on it if there's a further objection.

BY MR. SALZBERG:

Q. Mr. Wilson, would you take a look at the top of page 2 of the article and the first paragraph that reads, "While the government could stop funding GM" --

MR. MILLER: He's introducing it into the record, Your Honor, that's not the way you do it.

THE COURT: You're right, Mr. Miller. The way you've got to do this, if I remember from the twenty years I did this before I became a judge, permit the witness to read it to himself without putting it before the judge. Obviously, there's a little bit of a fiction because I have the exhibit before me. The distinction would be more meaningful if this were a jury trial, obviously.

MR. SALZBERG: Right.

THE COURT: In this case, the witness can read it and you can ask him a question premised on what he read without taking his statement as being established or as refreshing his recollection. But this is not evidence as to either what the GM's spokeswoman said, intentionally being a little bit vague or whether what she said was true. If there is a memory that the witness has, you can ask him that. If there is a non-repetitive understanding that he has that hasn't been previously asked, you can ask that.

But Mr. Miller is right that depending on the portion of it, this article is hearsay, double hearsay or perhaps hearsay and speculation. And it doesn't have any value in establishing that you asked a question in good faith.

MR. SALZBERG: Okay. Well, with that in mind I would ask Mr. Wilson to read the first paragraph on page 2. And my question to Mr. Wilson is --

Q. Is that section that you just read inconsistent with your prior testimony today as to the Treasury's position on the July 10th deadline?

A. I'll answer it this way, Mr. Salzberg. I've spent hundreds of hours inside this company. I've met probably upwards of a hundred executives. I know, you know, the vast -- I know probably well north of a hundred executives on a first-name basis. I have never once met, nor even heard the name,

Renee Rashid Marren (ph.) before. I have no idea who she is and under whose authority she speaks. She clearly has absolutely no insight into the position of the United States auto task force.

Q. Again, my question, sir, is the statement that you read consistent or inconsistent with the U.S. Treasury's position to which you testified earlier today?

A. Her statement is inconsistent with what I testified to earlier. But as you can tell, it's not even a complete sentence. And what I don't know is what she may have said in the either lead up to this quote that was quoted, if the quote is accurate or if she said a bunch of other things that aren't incorporated into this article.

Q. So would the U.S. Treasury be motivated to continue funding if the July 10th deadline is not met, given the amount funded to them at that point?

MR. MILLER: On the basis of this newspaper article?

MR. SALZBERG: No.

THE COURT: Is that a free-standing question?

MR. SALZBERG: Free-standing question, Your Honor.

MR. MILLER: Objection, Your Honor.

THE COURT: All right. The objection is then moot. Let me hear that -- that objection is moot but I need to hear the question again, Mr. Salzberg.

Q. Would the U.S. Treasury be motivated to continue funding

General Motors if the July 10th deadline for entry of the sale order is not met?

MR. MILLER: Objection, Your Honor. He's answered that question four or five times today.

THE COURT: Sustained.

MR. SALZBERG: I have no further questions, Your Honor.

THE COURT: Have I now given all objectors a chance to cross? All right. Mr. Miller or anyone else want to redirect? Mr. Schwartz or Mr. Jones?

MR. SCHWARTZ: Could we confer for one moment?

THE COURT: Sure. Try to do it in place, though. I don't want to take a recess.

(Pause)

REDIRECT EXAMINATION

BY MR. SCHWARTZ:

Q. Mr. Wilson, when Treasury extended its first loans to GM under the LSA in December of 2008, did it have an expectation of being repaid?

A. I wasn't at Treasury at that time.

Q. Have you subsequently come to have an understanding about whether Treasury had an expectation that it would be repaid?

A. Yes.

Q. And what is that understanding?

A. That based on both the collateral package for the loans as

well as the seniority of the loans and the prospects for General Motors' business, yes that the loan would be repaid.

Q. You referred to the collateral package; did Treasury have a view as to whether it was adequately secured under the loans extended pursuant to the LSA?

A. I don't know if there was a specific analysis done around the value of the security package at that point in time.

Q. Okay. Do you have a view as to whether Treasury was oversecured, undersecured?

A. The only view I have now is the liquidation analysis that was done by Mr. Koch who suggests we were, in retrospect, undersecured.

Q. In response to Mr. Salzberg's first line of questioning, you talked about the decision to pursue a 363 transaction as opposed to a plan, do you recall that?

A. Yes.

Q. What was GM's involvement in that decision?

A. Well, we pursued -- we considered a variety of different options. We had extensive discussions with the management team to try to understand the implications for the business. The ways in which it could be effectuated; obviously in the course of a 363 sale there would significant operational issues regarding the separation of assets from Old General Motors. And so we had extensive discussions along those lines.

Q. And was the ultimate decision to pursue a 363 transaction

a decision that was made jointly with General Motors?
A. No, it was really a decision by the Treasury.
Q. Okay. Subsequently to making that decision, did General Motors and Treasury enter into negotiations on what became the MSPA?
A. It was parallel tracked but yes.
Q. And could you describe the tenor of those negotiations?
A. Contentious, often difficult, sometimes exasperating.
Q. Could you elaborate on what particular subjects were the negotiations contentious?
A. Well, there are a number of issues where we, as the purchaser, as I mentioned many times earlier, were only willing to acquire -- we wanted to acquire the best assets and we want to only acquire the liabilities that we thought were commercially necessary for the success of NewCo. And there's, kind of, much discussion around both the assets as well as the liabilities.
Q. After General Motors filed for bankruptcy, the United States extended further credit pursuant to a DIP facility, is that correct?
A. Yes.
Q. And the funds for both the LSA and the DIP were TARP funds, is that right?
A. I believe so.
Q. The transaction that's before the Court today, the 363

transaction, does that involve any additional funding from Treasury?

A. I don't believe so. No.

Q. It's a pure credit bid, is that correct?

A. Yes.

Q. So in response to Mr. Parker's questioning, when he asked whether the assets for the purchase of GM came from TARP, you were referring to the loans that were extended under the DIP and the LSA, is that right?

A. Yes.

Q. Okay. You testified, on a few occasions, that Treasury had no intention to fund General Motors after July 10th if the sale order is not entered, is that right?

A. Yes.

Q. Why not?

A. Well, it goes to the core principle or concern about any Chapter 11 proceeding, which is that this business cannot withstand the uncertainty of an open-ended process or a process of uncertain duration. We did an extraordinary amount of work, sir, on this issue in the months leading up to June 1. We talked to, as I mentioned earlier, dozens of experts, advisors, consultants, industry experts, who collectively had thousands of years of experience in the automotive industry, as well as, obviously, the management team at great length. And throughout that period of time, I -- as I mentioned earlier, I can't

recall a knowledgeable consultant or expert who thought that General Motors could survive a bankruptcy. There were tons of critical articles written about us as the cowboys in Washington who don't understand the business, who felt that this was a recipe for a disaster and that, even after the successful resolution of the Chrysler case in early May, there are articles to that effect that General Motors is far too large, far too complex and far too complicated to be able to survive a Chapter 11 process.

So when -- that was what animated much of our thinking around a 363 sale, as we discussed, and that is what our concerns are about any kind of change to the process. General Motors' market share today is dramatically lower than it was a year ago before the financial distress entered in. Market share this time last year was about twenty-two percent. It's a little bit over eighteen percent now. That's a massive erosion. And that was based on the fears of distress and despite the intervention of the U.S. Treasury. I imagine if there was concern about how that would play out over time, it would only be dramatically larger, in our estimation.

So that's why we cannot take an open-ended commitment. We have a fiduciary duty to the U.S. taxpayers. We've made a judgment that the funding associated with this process was appropriate but that any incremental funding we are not willing to provide.

Q. Now, I notice in your response you did refer to the liquidation analysis that was performed by AlixPartners. You're familiar with that?

A. Yes.

Q. And that shows that the government's recovery on its secured claims in a liquidation scenario would be not good, is that right?

A. I think "not good" is a fair characterization.

Q. Does that affect Treasury's ability to fund -- Treasury's inclination to fund further if a sale order is not entered by July 10?

A. Well, the way we look at this, and the reason we look at it the way we do, is it's better to cut one's losses and that, while we would certainly have substantial losses if GM entered into a liquidation in July, for sure we'd have extremely significant losses. We believe that that is an economically more rational decision than funding into an open-ended process whereby the losses could be much, much more dramatic.

Obviously, entering into that process, sir, there are no certain outcomes. It could be that we fund even more money and have no more of a recovery and therefore lose more. It could be that we fund more money and have an outcome that's not commercially satisfactory to the U.S. Treasury. There are a whole range, in fact arguably an infinite number, of outcomes that many of which could lead to much more substantial losses.

Q. Now, in response to questioning by the representative of the state's attorney general, you remember about big (C) Claim versus little (c) claim?

A. Yes.

Q. You said that Treasury hadn't made a determination about whether it would fund if the sale order released little C claims but not big C Claims; remember that?

A. Yes.

Q. And then another questioner asked you about the 62,000 dollars, what Treasury would do if that were a de minimis payment. Do you recall that?

A. Yes.

Q. I believe you testified earlier that Treasury was in the process of considering or maybe had already considered all of the objections that had been filed to the sale, is that correct?

A. Yes.

Q. And that you and your designates and your counsel were negotiating a final version of the sale order, is that correct?

A. Yes.

Q. And is it your expectation that that final sale order, when it is submitted to Judge Gerber, will reflect the Treasury's final position on all of the objections that have been filed?

A. That's correct.

Q. And if that final order, as it reflects Treasury's resolution of all of the objections that have been filed, is not entered on or before July 10th, does Treasury have an intention to fund?

A. No.

MR. SCHWARTZ: Thank you.

THE COURT: Okay. Anybody else on redirect? Mr. Miller?

REDIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Wilson, prior to your joining the Treasury, what was your occupation?

A. I was an investor, sir.

Q. And what does that encompass?

A. Well, I spent virtually all of my career post-college investing in companies, many of which, in most cases, that were troubled.

Q. Distressed companies?

A. Oftentimes, yes.

Q. And often on the side representing a secured investor?

A. Typically, yes.

Q. And in your --

A. More often, yes, excuse me.

Q. I'm sorry.

A. I'm sorry, I meant to say "often". I didn't -- I

shouldn't say "typically".

Q. And in your experience over the course of years as a secured creditor representing a secured creditor, have you found it unusual for a secured creditor to lose confidence in a CEO?

A. Unfortunately, no. It happens all the time.

Q. And what does a secured creditor do in those kind -- in that circumstance?

A. It depends on the situation. If there are no -- there's no breach of covenants or no need for incremental capital, a secured creditor could complain. But in the events where, as I faced a number of times in my past, where the company requires additional funding or is in violation of a covenant or some other term of the loan agreement, it would be typical for that lender to indicate their dissatisfaction with management and indicate they're not willing to fund unless certain things take place.

Q. And in connection with this situation, Mr. Wilson, the -- after February 7, the viability plan that General Motors had submitted was deemed to be inadequate by the Treasury?

THE COURT: Pause, Mr. Wilson. Mr. Richman's --

MR. RICHMAN: I apologize.

THE COURT: Come to a microphone, please.

MR. RICHMAN: I listened to a few of the questions to try to understand where this is going. I don't really think

there's any foundation in the record for this witness to be qualified as an expert in connection with his prior experiences. There isn't anything of record that really explained -- he said he was an investor and, from that, Mr. Miller extrapolated that he had some knowledge of how secured creditors act. I don't believe there's any foundation for that and I would ask that the background and foundations be laid before we continue with this line of questioning.

THE COURT: All right, well, there's a Second Circuit case on point and which I relied on; I think it was the Perry Koplik case. You're right that he can't give lay-opinion testimony. There is some room under Second Circuit authority, and I'd have to take a recess to get the name of the case that I cited in Perry Koplik for observations that were made. But on balance, Mr. Miller, if he's trying to talk about what's common in the industry, you have to lay a foundation for what he knows about the industry.

MR. MILLER: No, Your Honor, I asked him what his -- in his experience as an investor and a secured creditor, in the course of his career, his experience, not common in the industry.

THE COURT: The problem, Mr. Richman, is you put into issue whether the government was acting unusually when it expressed its concerns about Mr. Henderson's predecessor.

MR. RICHMAN: Your Honor, I agree with that. I just

don't understand, from the record so far, what this particular witness's experience actually is. I don't know who he worked for, how many years, how many transactions like this he was involved in. Are we talking about --

MR. MILLER: He could take him, Your Honor.

MR. RICHMAN: -- two cases? Are we talking about ten cases? That's the kind of foundation I would need.

THE COURT: I'm going to sustain the objection on this record, but I'm going to let you inquire more, Mr. Miller, as to his ability to observe. And you're not to ask him a question of opinion. You're only to ask him a question as to what he observed.

MR. MILLER: Yes, sir.

BY MR. MILLER:

Q. Mr. Wilson, would you briefly describe to us your business experience since graduating from college?

A. Sure. I graduated from Harvard College in 1993. I went to work in the investment banking division of Goldman Sachs, which involves a number of advisory transactions, and assessed a number of principal transactions. At that point I transitioned to a full-time investment role for the balance of my career, first at a firm called Clayton Dubilier & Rice, with a break to attend Harvard and graduate from Harvard Business School. I then joined The Blackstone Group in the private equity division and then left there to help build a firm called

Silver Point Capital, which is extraordinarily active in distressed and troubled situations.

Q. And during -- how many years were you at Silver Point Capital?

A. I was at Silver Point for about five -- a little bit over five years.

Q. And during that period of time, you were involved in situations involving distressed entities?

A. Many situations, yes.

Q. In which Silver Point had an investment?

A. Yes. And during that period of time, Silver Point, through its principal finance business where I sat on the investment committee for that business, and it was the investment committee that approved all the loans of that business, probably made between fifty and a hundred secured loans, typically to distressed companies.

Q. And in connection with circumstances involving distressed companies, what did you observe in terms of workouts and restructurings as to the eventual disposition of the CEO?

A. It would depend on the circumstances. But in situations where the lender no longer had confidence in the management team, and particularly the CEO, and that company was either -- needed capital from us, additional capital beyond what had already been lent, or was in violation of a covenant or some other breach under the agreement, we would be not shy about

communicating our position.

Q. Thank you. Now, in connection with Mr. Henderson, Mr. Wilson, has the Treasury offered Mr. Henderson any contract of employment?

A. I believe Mr. Henderson realizes and knows that we intend for him to be the CEO, but I don't believe we've offered a contract.

Q. Do you know if Mr. Henderson has an employment contract now?

A. I do not think he does.

Q. Has the Treasury offered employment contracts to any of the executives at GM who may be going to New GM?

A. Not at this point in time, no.

Q. Who is Mr. Ron Bloom?

A. He is a colleague of mine on the auto task force.

Q. And did Mr. Bloom participate in all of the negotiations concerning General Motors?

A. A very small number.

Q. In the negotiations with the UAW, who participated in those negotiations?

MR. RICHMAN: Your --

THE COURT: All right, pause.

MR. RICHMAN: Your Honor, I think we're beyond anything that was covered in cross, so I really don't know where this is going. But I --

THE COURT: Sustained, unless you can come back closer to what we --

MR. MILLER: Okay.

THE COURT: -- covered in cross, Mr. Miller.

Q. Mr. Wilson -- I'm sorry, Mr. Wilson, you were cross-examined in connection with the agreement made with the UAW VEBA?

A. Yes.

Q. Do you remember that?

A. Yes.

Q. And the shares of stock in NewCo which will be given to the VEBA?

A. Yes.

Q. Who's giving those shares of stock to the VEBA?

A. NewCo.

Q. And NewCo is the Treasury-sponsored entity?

A. Yes.

Q. And that's coming out of the shares that are being acquired by the Treasury in NewCo?

A. That's correct.

Q. Does the Treasury have any plans as to the disposition of its equity position?

A. Well, certainly over time we anticipate selling our shares.

Q. Is there any contemplation of an IPO?

A. We're anticipating an IPO sometime in 2010.
Q. 2010, thank you. Mr. Parker examined you about the credit bid. Do you remember if -- were you here during the testimony of Mr. Worth?
A. Yes, I was.
Q. And did you hear Mr. Worth testify as to the estimated purchase price?
A. I believe so. I wasn't, frankly, paying complete attention to it, but I do remember him talking about it briefly.
Q. Do you recall Mr. Worth using a figure of ninety-one-plus billion dollars as the net purchase price?
A. No, actually I don't recall that.
Q. In connection with the purchases, the Treasury -- excuse me, has New GM assumed liabilities?
A. Yes.
Q. So that the purchase price includes a series of elements: the credit bid, the assumption of liabilities, the stock which is going to OldCo?
A. Yes.
Q. And has the Treasury done a calculation as to what that total purchase price would be?
A. We have not.
Q. Are you familiar with the Chapter 11 case of Delphi Corporation?

A. Yes.

Q. Is the Treasury involved in that Chapter 11 case?

A. We're involved and to the respect of we -- in working with General Motors to provide the funding that will be associated with that case.

Q. And do you know how long that Chapter 11 case has been pending?

MR. RICHMAN: Your Honor, I have to object --

A. I believe a file --

THE COURT: Wait.

MR. RICHMAN: -- to this line. Again, I don't see what relevance this has to anything that we've had on record or the motion.

THE COURT: Mr. Miller?

MR. MILLER: Your Honor, the Treasury is intimately involved in the Delphi case. The Delphi case is a Chapter 11 case which was supposed to be confirmed two years ago.

THE COURT: All right, I don't want you to testifying, but you've satisfied me that it's relevant and it's within the scope of cross. So the objection's overruled, but I don't want you testifying --

MR. MILLER: Yes.

THE COURT: -- Mr. Miller. It's got to come out of Mr. Wilson, a witness.

BY MR. MILLER:

Q. Mr. Wilson, do you know how long the Delphi case has been pending?

A. I believe they filed in the fall of 200 -- well, it's three and a half -- little bit over three and a half years ago, so the fall of 2005.

Q. October of 2005?

A. That sounds correct.

Q. And is the Delphi case administratively solvent?

A. Delphi's been on the verge of liquidation for, in my opinion, months.

MR. MILLER: Thank you, Your Honor. That's all.

THE COURT: Anybody else for redirect?

Any recross?

MR. RICHMAN: One second, Your Honor.

THE COURT: Mr. Richman, sure.

MR. RICHMAN: No, Your Honor.

THE COURT: Any other --

MR. JAKUBOWSKI: I have one --

THE COURT: Mr. Jakubowski, come up, please.

RECROSS-EXAMINATION

BY MR. JAKUBOWSKI:

Q. Mr. Wilson, on redirect you were -- you said that the auto task force decided to pursue the sale and made decisions about the separation of assets and liabilities, right?

A. Yes.

Q. And you had said that what, quote, "we wanted to do was to acquire only the commercially necessarily liabilities for the success of the business," correct?

A. Yes.

Q. So I'd like to understand a little bit of just who "we" is, or "we" are. So the auto task force is comprised primarily of four individuals, right, in terms of the decision-makers?

A. Well, I'm not sure which four you're --

Q. Well, let me ask this. The auto task force is a division of Treasury?

A. I don't -- to be honest with you, I have no idea --

Q. It's --

A. -- how the bureaucracy works.

Q. But it is part of the executive branch, correct?

A. Yes.

Q. And the head of the executive branch is President Obama, correct?

A. Yes.

Q. Now, has anyone --

MR. SCHWARTZ: Objection. This is really quite beyond the scope of redirect.

MR. JAKUBOWSKI: I have one final question, Your Honor, with respect to the question of "we", and that's it.

THE COURT: Why don't you go back to that question, then?

MR. JAKUBOWSKI: Okay.

Q. Was the head of the executive branch, President Obama, ever advised about the treatment of preexisting product liability --

MR. SCHWARTZ: Objection.

Q. -- claims in the sale?

MR. SCHWARTZ: Objection. That's privileged.

MR. JAKUBOWSKI: I just asked whether he was advised. I didn't ask --

MR. SCHWARTZ: Objection. There's a presidential privilege.

THE COURT: Sustained.

MR. JAKUBOWSKI: I have no further questions, Your Honor.

THE COURT: Okay. All right, any re-redirect? All right, Mr. Wilson, you're excused.

THE WITNESS: Thank you.

THE COURT: It's now about 1:20. Mr. Kennedy, you're rising to cross whom?

MR. KENNEDY: No, Your Honor. I'm not rising to cross anyone. I'm rising on a sort of a housekeeping matter because I had a sense that we might be moving into a break. And I have a number of witnesses that have been here, prepared to be available for cross-examination, which I don't think will occur, in connection with declarations.

THE COURT: Well, you're reading my mind, Mr. Kennedy, because I wanted to get my arms around who we have left to cross. And if there are people who are not going to be crossed, subject to your rights to be heard, I'm of the view that I should excuse them from having to be in the courtroom. That's kind of your point, Mr. Kennedy?

MR. KENNEDY: Exactly, Your Honor.

THE COURT: Okay. Mr. Miller or the folks on the movant's side, you made a motion to strike the testimony -- or to exclude the testimony of what I think were Mr. Kennedy's folks. My tentative (sic) on that, subject to your right to be heard, and I won't make Mr. Kennedy respond unless you want to push it --

MR. KENNEDY: Your Honor --

MR. MILLER: It wasn't Mr. Kennedy, Your Honor.

MR. KENNEDY: -- there is no such motion.

THE COURT: I'm sorry? I thought I got an indication of a desire to exclude those affidavits --

MR. MILLER: No, Your Honor.

THE COURT: -- a written document to that effect. I'll try to find it.

MR. MILLER: Hold on just a moment, Your Honor, if you may.

THE COURT: Sure.

UNIDENTIFIED SPEAKER: Well, it's a big firm, but at

least Mr. Miller has said he's not prepared to --

MR. MILLER: Your Honor, if there was such a motion it's withdrawn.

THE COURT: Fine. Is there a desire to cross-examine Mr. Kennedy's folks?

MR. MILLER: Not by the debtors, Your Honor.

THE COURT: Is there a desire by anybody to cross-examine Mr. Kennedy's folks?

UNIDENTIFIED SPEAKER: No.

THE COURT: All right. With no response, Mr. Kennedy, your guys' declarations or affidavits or whatever they are, are deemed to be part of the record and cross has been deemed to be waived. You can tell them, if you choose to, that they needn't stay, but if they want to stay they may.

MR. KENNEDY: Thank you, Your Honor. Just for the record, that constitutes the declarations of James Clark, Debra Turner, Dennis Bingham, David Hill, Earl Williams, Joe Patrick, Betty Humphrey and John Humphrey, all of which have previously been put onto the docket of the case. And I'll just note that we are also of course moving for the admission of Exhibits 9 through 12, which is the large book that had previously been tendered to the Court and, in fact, a number of parties have used during this proceeding.

THE COURT: All right. Is there any objection to or disagreement with what Mr. Kennedy said?

MR. MILLER: No, Your Honor.

THE COURT: All right, hearing none, your stuff is admitted, Mr. Kennedy. And my ruling on what your folks get into, if they choose to, remains.

(IUE-CWA's Exhibit 9, transcript of deposition of Michael Raleigh dated 6/28/09 and supporting documents, were hereby received into evidence as of this date.)

(IUE-CWA's Exhibit 10, transcript of deposition of Fritz Henderson dated 6/28/09 and supporting documents, were hereby received into evidence as of this date.)

(IUE-CWA's Exhibit 11, transcript of deposition of Harry Wilson dated 6/25/09 and supporting documents, were hereby received into evidence as of this date.)

(IUE-CWA's Exhibit 12, IUOE documents, were hereby received into evidence as of this date.)

THE COURT: Okay, to what extent, folks, do we have further cross at this point?

MR. BROMLEY: Your Honor, James Bromley of Cleary Gottlieb on behalf of the UAW. We also have a declaration of David Curson to be offered into evidence, and he's available for cross. We just wanted to --

THE COURT: Right.

MR. BROMLEY: -- clarify that.

THE COURT: Is there any objection to the Curson declaration being taken as his direct testimony?

MR. MILLER: Not by the debtors, Your Honor.

THE COURT: And not by anybody. Okay, the Curson declaration is in as direct testimony. Is there a desire to cross Mr. Curson?

MR. RICHMAN: Yes, Your Honor.

THE COURT: Okay. Mr. Richman, what's your extent as to how long you want to take to do that, you or your partner?

MR. SALZBERG: Your Honor, ten, fifteen minutes at most.

THE COURT: What I think I would like -- and thank you, Mr. Salzberg. Is there anybody who is going to see a need to cross-examine anybody besides Mr. Curson? I think we've covered all of the declarants, if I'm not mistaken. No response. What we're going to do, Mr. Bromley, Mr. Salzberg, we're going to take -- I'm going to take Mr. Curson on cross now. That should complete all of the testimonial evidence unless the debtors have rebuttal beyond what they did by redirect. Mr. Miller, do you have a sense as to whether you will?

MR. MILLER: I doubt it, Your Honor.

THE COURT: Okay. Then what I would be of a mind to do is to take -- let people have a lunch break, about an hour, and to get into argument after the lunch break. Mr. Parker?

MR. PARKER: Your Honor, I had attached to my original declaration two determinations by the Treasury

Department, and I'd like them to be admitted.

THE COURT: What exactly are we talking about?

MR. PARKER: It's in regard to the TARP issue, Your Honor. I simply wish the record to show that Treasury had -- well, what the position of the Treasury had been on TARP on two particular occasions.

THE COURT: What I think I would like you to do -- if you're talking about documents out of government files, it's possible that it's an evidentiary matter, putting aside your standing issues. You and Mr. Schwartz can agree on whether or not I should take judicial notice of them. If there are particular exhibits that are of a different character, I need to have a dialogue on what they are so I can make the necessary evidentiary rulings.

MR. PARKER: All right, I'll --

THE COURT: But frankly, folks, I have Mr. Curson waiting to be crossed here.

MR. PARKER: Right. Okay.

THE COURT: And I think, out of courtesy to him and to all the other lawyers in the room, the other two or three rooms, the overflow rooms, I would like to complete the opportunities for cross and redirect of Mr. Curson. And then it might make sense for you and Mr. Schwartz to talk over the lunch break to see whether he has any problems with your exhibits. And when I said "Mr. Schwartz", I didn't mean to

exclude anybody else, but I assume he's the guy who's principally going to care about that.

MR. PARKER: Right. Thank you, Your Honor. I just thought I should bring it up now.

THE COURT: Sure. I understand. Okay, is --

MR. MILLER: Your Honor, one housekeeping detail.

THE COURT: Yes.

MR. MILLER: I'd like to move into evidence, Your Honor, the affidavit of service of the Garden City Group Inc.

THE COURT: Could you come closer to a mic --

MR. MILLER: Yes.

THE COURT: -- because I didn't hear you.

MR. MILLER: I would move to admit into evidence, Your Honor, the second amended certificate of service of Jeffrey Stein, the vice president of business reorganization with the Garden City Group Inc.

THE COURT: Okay. Any objection? No objection. It's admitted.

(Debtors' Exhibit 17, second amended certificate of service of Jeffrey Stein of the Garden City Group, was hereby received into evidence as of this date.)

MR. MILLER: That would be, I think, Your Honor -- that is Exhibit 17.

UNIDENTIFIED SPEAKER: Yes.

MR. MILLER: Thank you, Your Honor.

THE COURT: Okay.

MR. SCHWARTZ: And just so the record is clear on the other issue, the two determinations that Mr. Parker were referring to were attached as exhibit to the government statement on the opening day and can be incorporated into the record here without objection, or, as you did at the DIP hearing, you can take judicial notice of the two determinations.

THE COURT: Either way, then, it's in. And that's no longer a matter of dispute between you and Mr. Parker?

MR. SCHWARTZ: Exactly, subject to, as Your Honor said, the arguments about standing and relevance.

MR. PARKER: So they're a part of the record now?

THE COURT: The two documents Mr. Schwartz was talking about are, yeah, but I got the impression that you had another two, Mr. Parker.

(Two Treasury Department determinations were hereby received into evidence as of this date.)

MR. PARKER: No, no, just those two.

THE COURT: All right, then that discussion --

MR. PARKER: I mean, plus the one I'd already introduced, Parker's Exhibit 1.

THE COURT: Fair enough.

MR. PARKER: Would these bear exhibit -- his exhibit numbers or what?

THE COURT: I don't think it makes a whole lot of difference, folks, what numbers are given to exhibits. Okay. Is Mr. Curson here -- oh, Mr. Eckstein?

MR. ECKSTEIN: Your Honor, I'm sorry, I understand that you'd like to hear Mr. Curson, and I have no objection to that. Once he concludes, I'd like to just address the Court with respect to some issues regarding the closing arguments but I thought I would do it after the testimony.

THE COURT: Absolutely. Mr. Curson, come up, please. Come on over here, please, Mr. Curson, and remain standing for a minute. Karen?

THE CLERK: Please raise your right hand.

(Witness duly sworn)

THE COURT: Have a seat, please, Mr. Curson. Mr. Salzberg, whenever you're ready.

MR. SALZBERG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SALZBERG:

Q. Good afternoon, Mr. Curson.

A. Good afternoon.

Q. Just a few questions. You are -- your declaration's proffered on behalf of the UAW, is that correct?

A. That is correct.

Q. Okay. And the UAW had a collective bargaining agreement with General Motors pre-petition, is that correct?

A. We did.
Q. And that CBA, we'll call it, was amended on, I believe, in May of 2009, is that correct?
A. That is correct.
Q. So, prior to the petition date, the CBA was amended?
A. Yes.
Q. Okay. How is the CBA -- procedurally, how was the CBA amended?
A. How was the CBA amended? In December of 2008, Chrysler and General Motors came to us; they had requested a bridge loan from the government in order to survive. The bridge loan -- the terms of the bridge loan set a number of targets that General Motors and Chrysler had to meet in order to receive bridge loans. Some of those targets included being competitive, having labor agreements that were competitive with transplants; that's foreign-owned auto manufacturers that are located in the United States. They approached us and required to bargain amendments to the 2007 labor agreement in order to meet those targets, in order to get the bridge loans, in order to survive. So we agreed and we entered into the negotiations.
Q. Okay. And once the parties -- the parties being the UAW and General Motors -- reached agreement, was the proposed amended CBA submitted to the union members for ratification?
A. Well, it's a little more complicated than that. We reached an initial tentative agreement in February, February

17th, which we thought met the targets of the terms of the loan agreement. And shortly thereafter, President Obama said that -- that labor agreement was folded into a plan, an overall plan by both General Motors and Chrysler, and submitted to the government for their proposal to be a company that could survive after the loans.

President Obama came out and announced on March 30th, I believe was the date, that the companies didn't go far enough and the labor agreements didn't go far enough, and we were charged with the responsibility to go back in and renegotiate what we had already negotiated as an amendment to the 2007 agreement, which then -- we began -- in ultimately about May 23rd we reached a tentative agreement, the second tentative agreement that we presented to our members for ratification.

Q. Okay. And so, just so I'm clear, the amended CBA was submitted to your membership for ratification sometime after May 23, 2009?

A. That is correct.

Q. And when was the amended CBA actually ratified?

A. It was ratified -- the vote was consolidated and announced on May 29th.

Q. And when did the --

MR. SALZBERG: Well, strike that.

Q. Is the amended CBA now in place?

A. The amended CBA is effective now, yes.

Q. When did it become effective, sir?
A. The Monday following ratification.
Q. Do you know the date?
A. I don't know the date --
Q. Okay.
A. -- but I --
Q. Was the effectiveness of the amended CBA contingent upon anything happening apart from ratification?
A. Certainly. All of the amendments are considered ratified based on the terms of ratification. That means all of the components of the amendments were voted on in ratification by our members. That meant our members couldn't -- and as an example, the collective bargaining agreement versus the VEBA, the agreement for our retirees' health care, they were two major components of the agreement, but they were voted on in one vote. Our members had to vote it up or vote it down. And if either one -- if there wasn't compliance with either one, we would consider the amendments not ratified and not in play.
Q. So is it -- I'm sorry, sir, is it your testimony that there is a provision within the amended CBA that says if the new VEBA agreement is not approved by the Court, the amended CBA is not effective?
A. We would consider it -- yes, if it -- if the new VEBA -- if the terms of the agreement -- if the health care for our retired members was not going to be provided for any reason, if

the Court denied the VEBA, if the company couldn't fund the VEBA or couldn't fund at any point, that they couldn't deliver what they agreed to deliver to our retired members, we, at that point, would have a right to withdraw all of the amendments to that agreement.

Q. Okay. And are those terms regarding the UAW's right to withdraw from the CBA, are they contained in a memorandum of understanding?

A. They're in the settlement agreement.

Q. In the UAW retiree settlement agreement?

A. It's in the settlement agreement for the amendments for the collective bargaining agreement that we signed on the 29th.

Q. I'm sorry, sir, is that attached -- is that agreement attached to your declaration?

A. Yeah, I believe it is, yes. It's in with the white book.

Q. Yeah.

(Pause)

Q. Well, there are multiple attachments to your declaration. Do you know --

A. It's entitled "The White Book". I don't have it with me. I don't have it in front of me.

MR. SALZBERG: It's in the declaration? Okay.

(Pause)

A. Okay, I have it here.

Q. Does it bear a page number on the bottom?

A. It's -- it looks like an "i".

MR. SALZBERG: If I may approach, Your Honor.

A. Roman numeral i.

THE COURT: Yes, you may approach.

Q. All right. And so, sir, you pointed to the 2009 modifications to the 2007 UAW/GM agreement, contract settlement agreement, dated May 17th, 2009, is that correct?

A. That is correct.

MR. SALZBERG: May I approach, Your Honor?

THE COURT: Yes.

Q. And just so the record's clear, it is the UAW's position that if the -- that that agreement provides that if the new VEBA is not approved by the bankruptcy court in the UAW retiree settlement agreement, the amendments to the collective bargaining agreement can be nullified?

A. That is correct.

Q. Okay. All right.

MR. SALZBERG: No further questions, Your Honor.

THE COURT: Okay. Anybody else want to question Mr. Curson? Mr. Bromley, any redirect?

MR. BROMLEY: No redirect, Your Honor. Just to move admission of the declaration and exhibits into evidence as UAW-1.

THE COURT: Okay. Any objection?

MR. MILLER: No objection.

THE COURT: No objection. Hearing no objection, it's admitted.

(UAW-1, declaration of David Curson and accompanying exhibits, was hereby received into evidence as of this date.)

MR. MILLER: Beyond Mr. Bromley, does anybody have redirect? All right, folks, am I correct that everybody who wanted to have a chance to ask questions of Mr. Curson has had that opportunity? No response. Mr. Curson, thank you. You're excused.

THE WITNESS: Thank you.

THE COURT: Okay. Before we break for lunch, folks, to what extend does anybody have a desire to put anything further into the evidentiary record at this point? I took an extra long pause this time. Mr. Bressler?

MR. BRESSLER: Your Honor, I just wanted to confirm, we did submit our deposition designations and it's subject to counter-submissions. I would move their admission.

THE COURT: Okay. Once those counterdesignations are made, my tentative, subject to your rights to be heard, is they're a part -- they also become part of the record. Anybody have a different view? No. Okay. They're in, Mr. Bressler --

MR. BRESSLER: Thank you, Your Honor.

THE COURT: -- or will be in when counterdesignations arrive. Is there --

MR. ROY: Excuse me, Your Honor.

THE COURT: Excuse me, I don't know your name.

MR. ROY: It's Casey Roy with the Texas AG's office. May I have just a moment with counsel?

THE COURT: Sure. Sure.

MR. ROY: Thank you.

(Pause)

MR. ROY: Your Honor, this is the exhibit list that was filed by the state of Texas.

(Pause)

MR. ROY: Your Honor, for the Court's information, these are the participation agreement documents that relate to the dealer modifications. And for the record, Your Honor, all of this was timely filed.

(Pause)

MR. ROY: Your Honor, we move to offer into evidence Exhibits 1 through 9 for the state of Texas.

THE COURT: Okay. Any objections?

MR. MILLER: No objection.

THE COURT: No objections. They're admitted.

(Texas AG-1, General Motors Corp. cover letter dated 6/1/09 regarding proposed Participation Agreements relating to GM's dealer agreements and restructuring plans, was hereby received into evidence as of this date.)

(Texas AG-2, General Motors Corp. proposed Participation Agreement dated 6/1/09 regarding GM dealer sales and service

agreements, was hereby received into evidence as of this date.)
(Texas AG-3, General Motors Corp. proposed letter agreement dated 6/1/0/ modifying the Participation Agreement, was hereby received into evidence as of this date.)
(Texas AG-4, informal request for production to Weil Gotshal and Manges, LLP dated 6/23/09 from J. Casey Roy, was hereby received into evidence as of this date.)
(Texas AG-5, e-mail dated 6/23/09 from J. Casey Roy to Weil Gotshal and Manges, was hereby received into evidence as of this date.)
(Texas AG-6, General Motors Corp. cover letter dated 6/1/09 accompanying the final version Participation Agreements, was hereby received into evidence as of this date.)
(Texas AG-7, General Motors Corp. final version of Participation Agreement dated 6/1/09, was hereby received into evidence as of this date.)
(Texas AG-8, General Motor Corp. final version of proposed letter agreement dated 6/9/09 modifying Participation Agreement, was hereby received into evidence as of this date.)
(Texas AG-9, e-mail dated 6/26/09 from Evert Christensen forwarding Exhibits 7 & 8 to J. Casey Roy was hereby received into evidence as of this date.)

MR. ROY: Thank you, Your Honor.

THE COURT: All right. Just hand it up personally to me, please, Mr. Roy.

MR. ROY: Thank you.

THE COURT: Thank you. Okay, now that we took care of Mr. Roy's needs and concerns, anybody else? Mr. Parker, I thought your issues were addressed.

MR. PARKER: Yeah, I only have one other, Your Honor, which is how can I get a list of all the exhibits?

THE COURT: By checking the docket like every other party in the case.

MR. PARKER: Oh, because, I mean, like, I have a witness and exhibit list, but I don't have -- I don't know whether they put them in that order or not.

THE COURT: Mr. Parker, I'm not in a position to give you any more help than any of the other lawyers in the case that are subject to --

MR. PARKER: Thank you.

THE COURT: Okay. All right, the evidentiary record is now closed, ladies and gentlemen. Mr. Eckstein, you had some matters you wanted to bring to my attention.

MR. ECKSTEIN: Your Honor, thank you. I was simply going to rise in response to the suggestion that Your Honor had made about the timing for the closing arguments. And I gather Your Honor's initial inclination is to move forward today with closing arguments, and I assume Your Honor would like to try to wrap this up as promptly as possible. The only point I wanted to bring out was, putting aside -- I'm sure there are certain

parties who would always like a little more time to prepare, but with that one issue to one side, there are several significant issues that we've heard about both yesterday and today, in a conference with Your Honor and in testimony, that appear to be very close to favorable resolution. And at least from the committee's perspective and, I believe, listening to the objections from various other parties, it would seem to me that the resolution of those issues would dramatically narrow the issues that are the subject of debate and that will have to be considered by Your Honor. And I simply wanted to raise with Your Honor whether or not there was an opportunity to see if we could actually bring closure to some of the issues that seem to be on the verge of resolution and --

THE COURT: That would no doubt narrow matters --

MR. ECKSTEIN: Dramatically, Your Honor, I believe.

THE COURT: I hear you, but I don't know how to get my arms around it, Mr. Eckstein. Let me throw out a thought not in the nature of a ruling, which is, do you think it would be productive for you to have a caucus with other parties-in-interest over the lunch break to see if people are in a position to make joint recommendations to me as to how we should handle argument?

MR. ECKSTEIN: Sure, I'd be happy to, Your Honor. And we can certainly consult.

THE COURT: Consulting is always easier than

agreeing, I will understand that, but the practical problem I have that I would ask everybody in the room to consider is that, given the company's liquidity and the July 10th date that we have, certainly everybody understands my desire to use my time as efficiently as possible and to allow as much time as I can allow myself to give you guys a decision of the quality that you all deserve. So what I need to do, and to ask you all to do, is to figure out a way to balance the need to keep things moving forward to avoid a lot of argument on matters that could be resolved in the manner that you articulated, Mr. Eckstein.

So my thought would be that when argument begins it will be from the debtor with the chance for people with different perspectives to respond and for the debtor to reply. But so long as the debtor understands that if we go forward it's going to be up at bat first, it seems to me that it's no harm, no foul and maybe very sensible to have the kind of dialogue we're talking about over the lunch break for you and Mr. Miller to agree, and other folks like Mr. Richman and tort litigants and AGs and the like, as to how we should do it.

A propos that, full stop, you, Mr. Eckstein, and the two indentured trustees on your committee are in kind of a hybrid capacity because you support the motion in some respects and you have concerns about it in others.

MR. ECKSTEIN: That's correct, Your Honor.

THE COURT: I would like to get your views -- probably not fair to ask for them now, but probably after lunch -- as to when and how you and the two indentured trustees should be heard and whether you want to bifurcate your argument or what. And when I said I would be hearing from the debtors, I did not mean to exclude from argument opportunity folks who generally agreed with the debtors, like the government, the UAW, the larger bondholder group and anybody -- both the Canadian government and anybody else who I might have overlooked.

So what I'm of a mind -- I don't know if you're going to be successful or not, Mr. Eckstein, but I think it couldn't hurt to have that dialogue and that we propose that you have it over the lunch hour.

MR. ECKSTEIN: We'll do that, Your Honor, and obviously we'll include Treasury in that discussion because they're a critical participant in these discussions. And it may be that certain of the arguments will naturally carry over to tomorrow morning in any event, and that may actually provide the window to resolve some of the issues that are open and hopefully can get closed. But I don't know whether that will or will not get accomplished.

THE COURT: All right, well, given our track record, I think it would take extraordinarily favorable circumstances to finish all oral argument this afternoon or even this

evening. Mr. Miller?

MR. MILLER: Your Honor, a propos of that statement, which I don't think is a subject for the luncheon conference, is Your Honor going to set any time limits on oral argument?

THE COURT: That's a good point. Probably, I think, I need to. And while I would not do it the way this circuit does, or even the Supreme Court, we can limit a party to twenty minutes or whatever it is before the yellow and red lights go on. I think I would like recommendations, when we resume after the lunch break, as to what would be fair for the various objectors and what would be consistent with due process on the one hand and not turning this into a circus on the other.

MR. MILLER: Yes, sir.

THE COURT: Okay. But I'm not going to decide it this minute. I got to think about that one myself.

MR. MILLER: Thank you, Your Honor.

THE COURT: All right, thank you. Ms. Cordry, do you want to rise before we break?

MR. CORDRY: I would just like to second Mr. Eckstein's position because the Attorneys General, as you know, had filed an omnibus objection and had quite a few issues on the table. I think we're extremely close on virtually all of them, except successor liability we have some real determinations there. But it's been very difficult to close the sale, if we can use an auto term there, on most of these,

at least in part, because everyone who needs to deal with those issues has been very tied up in being in this hearing and so forth. And we've been at a stage of almost-done for several days now. So I think, in fact, if there was a clear period of a few hours where both on their side and our side, everyone, could sit down there, work through the pieces and make sure that both Treasury and the GM side are okay with that, I think we and, I think, some of the other folks would be able to dramatically reduce the amount of our argument. So --

THE COURT: Well, fair enough. I can't obligate anybody to agree with anything.

MR. CORDRY: Clearly not.

THE COURT: But it would help me do my job, just like it would help Mr. Eckstein and you do yours, if I get my arms around what has been resolved and what's still outstanding. In fact, that was why I asked --

MR. CORDRY: Right.

THE COURT: -- you guys to give me those supplemental sheets so I knew which issues you had which you perceived as not being satisfactorily or fully addressed and those that are now behind us. Am I right that you're allied with the brief I got from the Nebraska AG --

MR. CORDRY: Yes, yes. I'm arguing that brief, yes.

THE COURT: -- that seventy-one page brief?

MR. CORDRY: Yes, and -- I'm sorry, and we did file

table of contents last night --

THE COURT: Well, you weren't -- you didn't sign the brief, but I suspect you were a co-conspirator --

MR. CORDRY: Yes. Yes --

THE COURT: -- as part of that submission?

MR. CORDRY: I actually looked at the Local Rules and I did not see the table of contents; we were very late on time. It turns out it's in the case management order, which I had not seen, and I deeply apologize, Your Honor.

THE COURT: All right, well, you understand why I want to get your perception on TWA and compare it with theirs and --

MR. CORDRY: Exactly.

THE COURT: -- all the others.

MR. MILLER: Exactly.

THE COURT: And, with agreement, those issues are going to be narrowed. And what I need to -- I think they've already been narrowed, but I need everybody's help on the extent to which they remain.

MR. CORDRY: Right. I would note that the narrowing is actually in some of the areas such as the dealer agreements, the warranty provisions and those sort of things, some of which are starting to come into being filed with the master purchase agreement, some of which are in draft orders which have not been filed yet, some environmental --

THE COURT: So you're talking about a narrowing of two different types --

MR. CORDRY: Right.

THE COURT: -- their being narrow on some of your dealer provisions where there may or may not have been comparable progress on successor liability issues?

MR. CORDRY: Right. All of the issues, I say, apart from successor liability, are very close to being done. But we don't have everything done; we don't have it in filed orders. We kind of -- until we see the actual written piece of paper, we'll need those.

On the successor liability, we certainly -- I think there's room -- if we actually sat down and talked some more to Treasury, I think there's room that we could narrow that some more. I've seen the draft order; it has some language there that comes part of the way. We have not had any chance to discuss that language with them to see where their thoughts are on that.

THE COURT: All right, here's what I'd like to do, not ordering, suggesting. If Mr. Miller and U.S. Attorney's folks and Mr. Eckstein think that your attendance at their lunchtime chat will be productive, maybe that would be a good idea.

But I understand, Mr. Eckstein, you can't have the kind of caucus you're talking about if it has thirty-five

objectors in the room. You're going to have to figure out what's most appropriate in terms of how you think you can get the dialogue that you think is constructive. I mean, I can see that one extra person for dinner is no big deal. If you have forty people coming into your living room, it can be a bigger production.

MR. ECKSTEIN: Without getting too far into the weeds, my sense is that we probably can break the issues out into essentially what I would give the umbrella of the successor liability-type issues, and then there are financial issues. I believe the financial issues are the ones that, at least based upon what we've heard so far, should be susceptible, at least in the ideal world, to a resolution and clarity. And I believe that it would be very constructive if we can, if we can, to try to get those issues as resolved as possible before launching into closing arguments.

I believe that the successor liability issues warrant discussion, but the sense that I have at least is that we all have -- we know what the positions are, and those will probably have to be argued. Obviously, if there can be more movement and clarity, I think that'd be great. But I think that, for purposes of the closing arguments, at least my assumption is that we're working off of the record that we have. And I think that Your Honor is going to want to hear the legal arguments associated with --

THE COURT: Right, and I would be surprised if anything that was being done is going to alleviate Mr. Richman's concerns, and probably Mr. Parker's as well.

MR. ECKSTEIN: I believe that's probably right, Your Honor.

THE COURT: Nevertheless, the debtor will have the first argument.

Mr. Richman, I don't know if you are rising or not or merely to point out what I just recognized.

MR. RICHMAN: Just wanted to add my own two cents, Your Honor, to try to be constructive. I don't mind admitting that the influx of information that has come in over the last two days has been rapid, and in some sense it's overwhelming. We haven't yet been able to get transcripts from yesterday or today. I did my best to take notes, particularly during Mr. Wilson's deposition -- I mean, his testimony. He spoke very fast; I wasn't able to get it all down. And when Your Honor talks about limiting argument, I would submit, not just for myself but, I think, generally for everybody, that with some more time to organize notes and prepare to be able to refer to particular testimony in support of particular legal arguments, all of the arguments will be more streamlined and better organized and shorter in length.

So my view, and particularly taking into account the need of parties to confer to narrow issues, and in particular

our need to organize the arguments as in a streamlined and effective a fashion as we can, is that we should commence argument in the morning, take a break this afternoon, let people have the discussions they want to have, let people organize the way they need to and coordinate other issues and presentations.

THE COURT: Mr. Miller, unless you're sure you know what you want to do now, I was going to suggest you think about that over the lunch break and let me know if you prefer to start this, your argument, since you're the number one batter, this afternoon, or whether or prefer to start tomorrow.

MR. MILLER: Your Honor, certainly will think about it, but I would note, Your Honor, there is an urgency to the situation. You have an enormous record before you. You have a lot to do, as you said, to render a decision. Time is really of the essence. Now, in terms of transcripts, there were depositions all weekend. A lot of the testimony, Your Honor, and, Your Honor, it was redundant, it was over and over. I think the issues are very clearly drawn. If there can be a resolution on -- some of these are narrow -- some of these issues, that's fine. But I really believe, Your Honor, it's important to move forward. There are a lot of things waiting that have to happen in connection with this transaction, if it is approved. And lots of physical, mechanical things have to be done that will take time. And if this transaction's

approved, the faster this transaction is consummated, the better the chances that that ten percent of stock that's going to OldCo is going to have some real value. So time is of the essence, Your Honor.

THE COURT: All right, well, let me know if that remains your thinking after the lunch break.

MR. MILLER: Yes, sir.

THE COURT: Okay. Now, by my watch, a minute or two before 2:00. We'll resume in an hour. We're in recess.

(Recess from 1:58 p.m. until 3:05 p.m.)

THE COURT: All right, everybody, have a seat, please. Mr. Miller, Mr. Eckstein, is there any consensus on approach? I'm going to ask Mr. Richman the same question.

MR. ECKSTEIN: Your Honor, I think I was reasonably effective at herding as many cats as I could over the last hour, and I think the consensus that we have is as follows. I think people are prepared to go forward now.

THE COURT: Again?

MR. ECKSTEIN: People are prepared to go forward this afternoon with the closing arguments. My understanding is that the company is going to begin and parties in support are going to argue. And I gather that -- it sounded to me like it was probably under an hour and a half for the arguments on that side. And to the extent I've been able to speak to the various objectors, and I haven't spoken directly with each of them, by

my count, Mr. Richman is going to be speaking and I'm told that they would like to reserve somewhere between thirty and forty-five minutes. Mr. Bressler is going to be speaking and he thinks he needs approximately fifteen minutes. I haven't had a chance to speak directly to Mr. Jakubowski, but I'm assuming that he will speak in addition to Mr. Bressler, and I assume approximately ten minutes because that was going to be covered together. Mr. Kennedy is going to speak, and he told me that he needs approximately twenty minutes. Mr. Esserman and Mr. Reinsel are going to speak, and they have told me they need approximately twenty minutes; that's for the --

THE COURT: For the --

MR. ECKSTEIN: Those are the asbestos --

THE COURT: Oh. Okay. Oh, Esserman you said.

MR. ECKSTEIN: Yes.

THE COURT: Okay.

MR. ECKSTEIN: Mr. Esserman and Mr. Reinsel are both going to both speak in support of the asbestos objections. The Attorneys General, there are three objectors and they've told me that they need between thirty and forty-five minutes collectively. And I haven't had the opportunity to speak directly to Mr. Parker; I'm assuming he's going to want to speak as well, and I assumed approximately twenty minutes for that as well. That looks to me like it's somewhere between two and a half and three hours if you assume everybody takes the

allotted time that I mentioned. And I'd be prepared, Your Honor, to describe where the committee is right now and where things stand with respect to our discussions with U.S. Treasury, which I think are productive. And I can do that either now or I can do that when Your Honor is prepared to shift to the merits.

THE COURT: Okay. Mr. Eckstein, were you contemplating talking about the successor liability issues, or are you going to leave that to the tort litigants and the AGs?

MR. ECKSTEIN: Your Honor, at present I think I'm going to probably leave that to the individual objectors and the AGs. We do have a call with our committee for this afternoon at 4:30 which we'd like to have to update them generally upon where a variety of issues are. And if there's anything further that I need to say, I would ask Your Honor to give us the opportunity after that call to do so, but I don't think it will require Your Honor to interrupt the proceedings for us to have some representatives of our firm out participating in the call.

THE COURT: All right.

MR. ECKSTEIN: But I would like to speak on the other aspect of our objection and how we believe that is being dealt with based upon discussions we've had with the government.

THE COURT: Would you prefer to wait a little longer before you speak to that, or were you looking for an early

opportunity to do that?

MR. ECKSTEIN: I'd probably do that early, Your Honor, because I think we have a direction that is -- at least as far as I can tell, works for the government, works for the committee and I think is satisfactory at least to the individual committee members who have an interest in the issue and have heard where we are on that.

THE COURT: Would it be your preference to address it before or after Mr. Miller and other movants speak?

MR. ECKSTEIN: Probably before, Your Honor.

THE COURT: Okay with you, Mr. Miller?

MR. MILLER: Okay with me.

MR. ECKSTEIN: I can --

THE COURT: Oh, wait, Mr. Bernstein, you rose your hand -- raised your hand.

MR. BERNSTEIN: Mr. Eckstein omitted --

MR. ECKSTEIN: I'm sorry.

THE COURT: I'm sorry, Mr. Bernstein?

MR. BERNSTEIN: Mr. Eckstein omitted me from the list. And, in addition, Your Honor specifically asked us to address a particular legal issue in oral argument. I'm having that researched right now and would very much prefer, if it's possible, and oral arguments getting over till tomorrow, to maybe have -- to address that issue in the morning rather than this afternoon.

THE COURT: Well, I won't make you argue it today. You can either do it tomorrow, or if we're somehow done with everything today I'll take a -- you can just give me a letter or a short memo.

MR. BERNSTEIN: That'd be fine, thank you, Your Honor.

THE COURT: Okay. All right, go ahead, Mr. -- Mr. Esserman?

MR. ESSERMAN: Very quickly, Your Honor.

THE COURT: Come to a microphone, please.

MR. ESSERMAN: Yes. Your Honor, I definitely -- Sandy Esserman, for the record. I definitely don't want to slow the train down, but I do think it is a little unfair to have to go into argument without understanding what kind of order the debtor is seeking. And, as I understood it, that is moving around and it could have issues on claims, capital C or small C claims, that could have an effect on what we argue and how we argue it. I wanted to raise that because it certainly would be nice to know what they are seeking.

THE COURT: You know what the debtor's asking for now, and you can only do better than that, right?

MR. ESSERMAN: I don't know. I hope so.

THE COURT: I would assume that the debtor's not going to -- I have difficulty seeing how they could make it any worse, from your perspective.

MR. ESSERMAN: I agree. But it would be nice to know --

THE COURT: It seems to comport with your due process needs and concerns. And if the debtor -- or the government, more likely, makes a decision that some of the stuff that bothered you you're not going to ask for, I assume that you will either not complain and you will say I'm not complaining about that portion but I'm complaining about the portion you didn't take care of.

MR. ESSERMAN: Correct.

THE COURT: It sounds like it skins the cat, to me, Mr. Esserman.

MR. ESSERMAN: Okay, thank you.

THE COURT: Okay. Mr. Richman.

MR. RICHMAN: Your Honor, my concern is a little different. And, first, you've run a superb trial under difficult conditions, incredibly speedy in the circumstances. As I indicated before lunch, I feel that I have not had an adequate opportunity, given the importance of the issues that I want to be able to address as articulately as possible to this Court, to effectively marshal all of the evidence that came in at rapid speed and be in a position to respond to the arguments for a large number of people who I think are relying on us to articulate a position for them.

I don't believe that the difference between having

all of the closings today or tomorrow morning can credibly be considered material, even if one accepts that July 10 is an important date for the debtors. I don't think anybody could have predicted that the testimony would have been over today and the hearings might have gone over until tomorrow in any event.

And so all I ask, with all due respect and no criticism of the Court intended, is that I be given an opportunity for additional preparation time so that I can present a more effective argument with reference to the evidence in the morning. I have no objection to other parties wanting to start today if they feel ready and prepared to go forward. I'm not trying to put anybody at disadvantage. I'm also fine if the debtors would rather have it all done -- and it sounds like it's about three hours in total. So three hours in the morning to take care of argument and maybe have other things cleaned up in the meantime still seems to me to be fair to everybody, give due process to everybody. And so I would respectfully ask that Your Honor consider that and consider a recess until the morning.

THE COURT: I'm going to do a variant of that, Mr. Richman, because I do believe in due process. And it's now a quarter after 3. I'm going to make you second to last, and I'm going to take all of the object -- or take the movants and all of the other objectors today, except for Parker, Mr. Parker.

Mr. Parker's arguments are so duplicative of yours that I want to hear them from you first. And then any that he wants to make that you haven't satisfactorily addressed he can make. So I'll hear everybody else, and you can have first thing in the morning.

MR. RICHMAN: Thank you, Your Honor.

THE COURT: All right.

MR. PARKER: Your Honor, thank you.

THE COURT: Okay. Mr. Miller, I guess we're ready for your closing at this point. Just pause for a second.

MR. KAROTKIN: Not Eckstein?

THE COURT: Oh, yes. Forgive me, Mr. Eckstein. Yeah, thank you, Mr. Karotkin. Let me just hear from Mr. Eckstein.

MR. ECKSTEIN: Thank you, Your Honor. Just to tie a, I guess, a ribbon around the issue that I've been referring to, what I had suggested before the break, and I feel that it was worth the effort, one of the significant issues that has influenced the committee from the outset and remains an important part of our view of this transaction is that the business support for this transaction at the committee level, and similarly before the case was commenced from the ad hoc bondholders committee level, was the understanding that the stock and the warrants that were being left with OldCo were going to be available for distribution to unsecured creditors

and that U.S. Treasury was going to be providing DIP financing on a limited recourse basis in an amount sufficient to fund the wind-down and transition and administrative expenses of the estate. And that originally had been estimated at being 950 million dollars. And as Your Honor has heard, there were negotiations that were ongoing and discussions to ultimately increase that amount based upon further estimates.

What I've been told based on discussions with representatives of the U.S. Treasury is that they are highly confident that those discussions will conclude now that Mr. Wilson is off the stand and is able to refocus on the issue, that those will conclude so that the parties are in a position to come back to court, I'm told, by tomorrow morning and represent to the Court and the parties what the increased amount is going to be. And what we understand is that it's going to be an amount that JayAlix (sic) is satisfied, in its view, will be adequate to fund what they believe are reasonable wind-down transition and administrative expenses.

UNIDENTIFIED SPEAKER: Not Jay.

MR. ECKSTEIN: AlixPartners? Thank you.

And I've been told that we should assume, for purposes of how we proceed, that that is going to in fact take place and that if for some reason it doesn't play out that way, that the Treasury understands that all bets are off and parties would have the right to continue to advance the arguments that

we had intended to advance in the first instance.

We would obviously prefer that matter to be resolved. Similarly, there was an issue that was discussed earlier this morning with respect to workers' compensation claims and where those are going to reside. And we've been told that those -- that issue also has been resolved favorably for OldCo. Those will continue to be obligations at NewCo, and we are told that that issue has been resolved with the state so that we no longer have to be concerned about a material modification in the amount of unsecured liabilities moving from NewCo to OldCo. And, similarly, I've been told by the Treasury that that issue, if for some it does not get confirmed by tomorrow morning, then parties will have an opportunity to come back and reopen that issue.

So, based upon those representations, Your Honor, we feel that that is quite productive. And we're prepared not to argue further on that issue today and to give the Treasury and AlixPartners the opportunity to finish that process and hopefully come back and confirm tomorrow morning the business resolution.

THE COURT: All right. Fair enough. I think we're ready for you then, Mr. Miller.

MR. MILLER: Thank you, Your Honor. I was beginning to feel I'd never get here. Good afternoon, Your Honor, on behalf of the debtors. Your Honor, since the publication of the

notice of the hearing to consider the 363 transaction, and starting with the middle of June 2009 and up through June 19, 2009, the bar date for filing of objections to the transaction, and thereafter, more than 850 written objections to the sale have been filed. Many of these objections relate primarily to the portion of the motion dealing with Section 365 of the Bankruptcy Code and the assumption and assignment of executory contracts and unexpired leases of real property. Those objections, Your Honor, are directed primarily to the cure amounts that have been stated by General Motors. It's the intention of the debtors to deal with those objections in accordance with procedures that will enable the resolution of the cure amount objections in an orderly process.

THE COURT: Pause, please. Is there anybody who thinks that the mechanisms you proposed aren't fair? I mean I understand why they want their needs and concerns taken care of, but there aren't any real procedural objections, am I correct?

MR. MILLER: Not that I'm aware of, Your Honor.

THE COURT: Okay.

MR. MILLER: Okay. There remain several hundred other objections to the 363 transaction. In reviewing those objections, Your Honor, certain salient facts resonate from all of the objections.

One, no party suggests or indeed opposes the

consummation of a sale of the General Motors' assets.

Two, no party suggests or proposes an alternative viable -- alternative viable to a sale of the General Motors' assets.

Three, no party suggests or proposes a source of alternative financing that would be sufficient to satisfy the secured indebtedness of approximately fifty billion dollars that would owed to the Treasury and the governments of Canada.

No person has come forward with or an expressed interest to propose a higher or better offer for the assets that are to be sold pursuant to the Section 363 transaction.

No person has come forward to contest the liquidation analysis that has become part of the record made by Alix Partners and Mr. Koch.

In addition, notwithstanding the huge media or congressional attention to the claim plight of dealers, virtually no GM dealers have objected to the 363 transaction. And, in fact, approximately 99.6 percent of the dealers who have been offered the opportunity to continue as GM dealers have agreed to new ongoing participation agreements. And over 98 percent of the dealers who will be discontinued have accepted wind down agreements.

THE COURT: What's the percentage again, please?

MR. MILLER: Ninety-eight percent of the discontinued, Your Honor.

All of such agreements are to be assumed by the purchaser. Various attorneys general and regulators, despite the agreement of the dealers, do object to the application of Section 363(f) to state franchise laws but not to the sale, per se. The limited objection in deposed by the general unsecured creditors' committee, which represents a constituency composed of bondholders, unionized employees, dealers, suppliers, cloth and asbestos claimants, there's a reflection of the common theme of the objections.

The official committees' objection states that it is, and I'm quoting, "Satisfied there is that no viable alternative" and I'm inserting this, to the 363 transaction, "exists to prevent the far worse harm that would flow from the liquidation of GM." And, the "current transaction is the only option on the table."

The official committee further states that the Section -- that the 363 transaction, "serves the core purpose of the bankruptcy code and constitutes a strong business justification under Section 363 of the code to sell the debtors' assets outside of the plan process."

Despite this universal appreciation of the fact that the sale of the GM assets is in the best interest of all economic stakeholders, we do have these hundreds of objections. The essence of the objections soon becomes apparent.

First, the recurring demand of the objectors, "I want

more" or "Cut someone else out."

Second, "I don't like the process and with more time I might be able to have more leverage and thus extract more consideration."

The objectors fail to recognize that what we are dealing with is an asset sale of fragile assets. To an independent purchaser, that is their sole source of financing and investment. They ignore the central characteristics of a purchase and sale transaction. The purchaser makes the decisions as to what it is willing to purchase and on what terms it will purchase those assets and what it will pay and what it will assume.

The desire for more is characteristic of creditors in the world of bankruptcy. Such desire doesn't equate to a legally cognizable objection. It doesn't mean that a transaction is fatally or otherwise flawed or, indeed, that the purchase price is unfair. While everybody empathizes with everybody who is suffering because of what is happened to General Motors both in the monetary, emotional or physical sense, bankruptcy, in all its permutations, Your Honor, whether Chapter 11 or Chapter 7 is a zero-sum game.

A 363 sale enables the establishment of the value of the assets and leads to a determination of what the pie will be and ultimately, in subsequent proceedings, who will share in that pie. There can be no doubt that Section 363 empowers the

Court to consider and approve the sale proposed by the debtors. As the Court has noted many times, one must start with the words of the statute.

Section 363(b) is unambiguous. "The debtors after notice and a hearing may sell property other than in the ordinary course of business with the approval of the Court." There is no prohibition contained in Section 363 or any other provisions of the bankruptcy code that prohibits a Section 363 transaction. The Section 363 interpretive cases fortify the plain meaning of the statute and establish the determinative criteria that a Court should look to to exercise its decisional power.

The Lionel case in this circuit and its progeny, including the TWA case in the Third Circuit and the scores of cases that this Court and other courts have ruled on in connection with the application of Section 363(b) sales, particularly in the last two years, likewise establish beyond any doubt the power of the Court to authorize a sale of substantially all of the assets of a debtor pursuant to Section 363. The Lionel line of cases stand for the principle that if there is an articulated business justification for the sale of the assets by the debtor, the sale should be approved. The reasonable exercise of business judgment on the part of the sale proponent, the debtor, and the good faith of the purchaser establish the basis for the approval of a Section 363 sale.

In the case of GM, Your Honor, the record that has been made over the last day and a half is replete with articulated business reasons which justify the approval of a 363 transaction. The case in favor of GM's decision is even more precedent as the assets that are being sold are so prone to substantial deterioration and loss of value. And there is no alternative to the sale without substantial prejudice and detriment to all economic stakeholders.

No party in interest disputes the need to preserve the going concern value over GM assets. The only way to save that value is through the approval of a 363 transaction. The alternative, as clearly set forth by Mr. Henderson, a chief executive officer of GM, and confirmed by Mr. Wilson, on behalf of the Treasury, is liquidation.

Implementation of the Section 3 -- of the 363 transaction is the only way to begin the process of stopping recurring losses that have been incurred by the debtors and to reshape and reinvigorate the transfer of assets to form the new GM. There is no other option that is available to the debtors and their economic stakeholders.

The F&B bond holder's assert, Your Honor, that this is not the right process to follow but rather a Chapter 11 plan process should be affected and in some magical way there will be an accelerated Chapter 11 plan that possibly could be confirmed in ninety days. Yet there is nothing in the record,

Your Honor, to substantiate that contention. And the major premise upon which the F&B bondholders are relying upon, as it developed in today's testimony, was that the UAW employees would be bound under the amended collective bargaining agreement that was ratified in May of 2009 and, therefore, would have to perform services even if the sale is not approved. The testimony of David Curson, just before the luncheon break, established unequivocally that if UAW retirees settlement is not approved, all the modifications of the amended collective bargaining agreement are withdrawn and GM is put back into the same position that it was before those amendments with labor rates, work conditions, etcetera, which were unsatisfactory in the operation of a business, unsatisfactory to the Treasury. So saying that the 363 process is not the right process without more is just a conclusion. And doesn't take into account what would happen in a Chapter 11 case. We have seen in these proceedings, Your Honor, how many objections have come forward. I wouldn't call it a Tower of Babel but we were pretty close, I think.

Your Honor has enough experience in Chapter 11 cases to know that things go awry. And this morning when I was examining Mr. Wilson I referred to the Delphi case. And in the Delphi case, Your Honor, there was a sale. There was a proponent for a sale. And because of what occurred in the Delphi case, the proponent backed out of the sale. And in a

case that was filed in October in 2005 in which it was represented at the first day hearings that that case would be over in sixteen months, we are now approaching the fourth anniversary of that case. And what has happened to that case, Your Honor? At one point in time, the plan of reorganization was contemplating close to a hundred percent distribution to creditors -- general unsecured creditors. The current state of that case is that the debtor-in-possession financing is undersecured. And that the --

THE COURT: The DIP is undersecured?

MR. MILLER: -- undersecured, Your Honor -- that there aren't sufficient funds to pay the debtor-in-possession financing in full.

In effect, Your Honor, the estate is administratively insolvent. And GM is very actively involved in that estate, Your Honor, because Delphi is a major supplier of parts. If you transpose that, Your Honor, to a Chapter 11 case for General Motors, Delphi did not have the problem of worrying about consumers. All Delphi had to worry about was suppliers -- I mean raw material suppliers.

THE COURT: Pause here. To what extent, if any, was any of the stuff you said about the Delphi case not ascertainable for me reading the documents?

MR. MILLER: It's all ascertainable from reading the documents in the case Your Honor.

THE COURT: All right. And anywhere in putting any embellishment on it, all of those facts are set forth by me just looking at pleadings?

MR. MILLER: Yes, sir.

THE COURT: All right. Continue.

MR. MILLER: I was about say, Your Honor, Delphi was dealing with an industry providing raw materials, etcetera. GM is dependant upon consumers; hundreds of thousands of consumers. A GM in bankruptcy will always give rise to the issue of is it going to be a successful bankruptcy? Will these vehicles that are being produced have resale value? Will they be serviced? The President can talk about warranties, but somebody has to service those warranties. And if GM is not there to service those warranties, how do they get serviced?

This is a different situation, Your Honor, than the situation which Delphi faced in just convincing its suppliers to keep going along with it. Here you have a consumer community, which as we pointed out previously, Your Honor, the purchase of an automobile is a major expenditure for a consumer. The consumer is looking for reliability, a good product, resale value and a future that in reliance upon the reliability of the manufacturer. That will disappear, Your Honor. Any kind of an extended Chapter 11 case.

Beyond that, Your Honor, I think it was Mr. Richman who was examining Mr. Repko this morning for substantially less

than forty-five minutes in which he made an assumption about financing during this accelerated somehow Chapter 11 case. The record is absolutely clear; there is not other source of financing for this company. As the record also demonstrates, this company is losing money every month.

As Mr. Parker so eloquently pointed out, Your Honor, there's a negative stockholders' equity that is almost fifty percent -- I'm sorry, the liabilities exceed the assets on book values by over a hundred percent. And the market value today, obviously, has gone down substantially.

In this economy, with a credit crunch that has been pervasive since September of 2008, who is going to finance a continuing Chapter 11 debtor called General Motors? In a malage, Your Honor, that would have to take out the treasury. The treasury would have to be primed or taken out. And as Mr. Repko said in his direct -- in his declaration, which is his direct testimony, there was no debtor-in-possession financing available in anything close to the amount that would be necessary to continue the operations of GM.

So the alternative of suddenly converting this into an ordinary Chapter 11 or an accelerated Chapter 11, whatever you wish to call it, is not an alternative. And we have the testimony of Mr. Wilson that if the sale approval, or whatever, is not entered on June 10th the treasury is not going to go ahead and continue financing and will call the loan.

What does that mean? That means, Your Honor, we then have to revert to Mr. Koch's liquidation analysis. And when Your Honor looks at that exhibit that Mr. Koch testified to, the recoveries, the general unsecured creditors, is zero. And as Mr. Wilson testified, even the U.S. Treasury claims will be impaired. So in the context of what we're talking about where the only alternative is liquidation, these are exactly the circumstances in which Section 363 comes into play. That's why it's in the statute, that's why it's been recognized by bankruptcy courts, over and over again starting from pre-code law when the issue was are the assets in some danger; are they burdensome? When the code was adopted in 1978, it brought forward those principles but on the basis of business judgment. You no longer had to establish that the assets were deteriorating. It was an exercise of business judgment.

And again, Your Honor, what this record demonstrates beyond any doubt whatsoever, is that General Motors considered its alternatives. It considered various alternatives and it came to the conclusion the exercise of reasonable business judgment, after a lot of study and a lot of paper produced, that the best alternative to preserve the going concern value of these assets was the consummation of a Section 363 transaction provided that the United States Treasury, which was its largest secured creditor, was willing to go along with it and would finance the new GM. And that's what happened, Your

Honor.

And as Mr. Wilson testified, those negotiations were frustrating, difficult and strenuous. And they occurred over a period of time. Mr. Wilson is an extremely adroit negotiator. And fortunately, for the creditors, Your Honor, when you look at the purchase price for these assets and you look at, if Your Honor recalls, the testimony of Mr. Worth yesterday and the exhibits to which he referred to, the net purchase price, assuming the value of the equity, which is going to be issued is as Mr. Worth testified, is approximately ninety-plus billion dollars. I venture to say, Your Honor, there is no one else in the world who would pay ninety billion dollars for these assets. And maybe it's a great compliment for the bargaining acumen of the GM team that they were able to get that bargaining -- that purchase price. So the concept that there's some sort of a Chapter 11 process that's going to work here, just isn't true, Your Honor. It's not going to happen.

363 sales are consistent with the concept of allowing the market to establish the value of assets as directed by the Supreme Court in 203 North LaSalle Street, a case in 1999 at 526 U.S. 434. In these cases despite, as I said the extreme notoriety of GM's distress and the thirty-day period that was provided for under the sales procedure order, no party, not one party desired to conduct due diligence for the purpose of proposing a different or other offer for the assets of General

Motors.

The purchaser in this case is the treasury sponsored vehicle, now New GM Co. or NGMCO, Inc. The treasury is a holder of the prepetition secured obligation of the debtors in the amount of 19.4 billion dollars. Since the onset of these Chapter 11 cases, pursuant to the June 25 order, another 33.3 billion dollars in the IP financing has been provided. And as Mr. Wilson testified, that amount will be drawn before the consummation of this transaction.

Under the terms of the 363 transaction, I could read into the record but I'm not going to do it, Your Honor, in the interest of time, a description of the purchase price. Maybe I should do that, sir. In the --

THE COURT: I mean I have read the purchase --

MR. MILLER: And I will not do it, Your Honor.

THE COURT: Is there a particular part that you wanted to bring to my attention?

MR. MILLER: No, Your Honor. I was just taking it out of the MSPA -- the MPA --

THE COURT: All right. Go ahead, explain it.

MR. MILLER: Okay.

"The consideration for the purchase -- of the purchase assets will be:

A) A bankruptcy code Section 363 credit bid in the amount equal to; 1) The amount of indebtedness owed by the

parent and its subsidiaries as of the closing as defined below.

Pursuant to the existing sponsor credit facilities and 2) The amount of indebtedness of parent and its subsidiaries as of the closing under the debtor-in-possession credit facility, the DIP facility, less 8,022,488,605 dollars which is going to be assumed by New GM as part of the exit financing. Plus,

B) The return of the warrant issued by parent, that's GM, to sponsor in consideration of the secured indebtedness owed by parent to sponsor under the existing sponsor credit facilities. Plus,

C) The issuance by purchaser to parent of 50,000 -- I'm sorry, 50 million shares of common stock of purchaser (the parent shares) and warrants to acquire 90,909,090 shares of common stock of purchaser ("parent warrants"), plus

D) The assumption by purchaser of the assumed liabilities."

All of that, according to Mr. Worth's testimony, adds up to a net purchase price of in excess of 90 billion dollars. There is no comparable offer. Nothing even close to it, Your Honor, for the assets that are to be sold and transferred.

The purchaser has added an increment, obviously, to the purchase price in the interest of serving national interest. "No other entity can compete with the purchase price that has been offered by the purchaser."

In considering the 363 sale and referring to the Lionel case, Your Honor, the factors that are cited in that case, the Second Circuit noted that one of the more important factors, or maybe the most important factors is whether the assets are deteriorating. And in this case, Your Honor, that is a fact.

There has been testimony about the June sales and the June sales were better than the downside projection. But yesterday, Mr. Henderson testified, taking into account everything the month was a terrible month. It was thirty percent less than the same period in 2008. And also, as Mr. Henderson testified, fleet sales, which are a very important component on the sales of General Motors, had substantially decreased because of the uncertainty in the minds of fleet owners. That uncertainty, Your Honor, could only appreciate and grow in the event that this sale is not consummated and there is some effort to continue this Chapter 11 process. But that's not even in the cards because the treasury has said, there will be no financing. And that, I am sure, Your Honor, will be in newspapers and blogs tomorrow. And when dealers -- I'm sorry, excuse me, Your Honor, not dealers -- fleet owners and even consumers read what has transpired here, the level of uncertainty will go even higher. And then the potential for revenue perishability, loss of market share will be right in the front of this company and will severely damage its value.

Now, in breaking down the objections, Your Honor, the way I look at them, there are essentially four categories.

The first is that the 363 transaction constitutes a sub rosa plan.

The second, the sale results in unfair treatment of hourly retiree employees and perhaps others.

Three, the conditions of the sale violates state franchise law as relating to dealers.

Four, the scope of Section 363(f) as it relates to successor liability issues.

The objections, Your Honor, from our perspective, as you might anticipate, are without merit and should be overruled.

The 363 transaction in no way constitutes a sub rosa plan. There is no provision in the 363 transaction or relating to the 363 transaction that prescribes the treatment of creditor claims in the liquidating Chapter 11 cases. The portion of the purchase price consisting of shares of common stock in the warrants of a purchaser will constitute the debtors' estate for eventual disposition in a plan of liquidation to be negotiated with the debtors' allowed claim holders. How that portion of the purchase price will be allocated to holders of allowed claims in the Chapter 11 cases is in no way dictated by the Section 363 transaction.

The Section 363 transaction does not contravene the

holding of the Braniff case. It is consistent with the Lionel line of cases and the recent decision in the Chrysler case. The precise arguments made by the objectors here were made in Chrysler. That Fiat -- the Fiat sale was a sub rosa plan. Judge Gonzalez, in his decision of May 31, soundly rejected that argument. It must be assumed that the United States Court of Appeals for the Second Circuit, in affirming Judge Gonzalez's decision, likewise, found the sub rosa argument without merit.

The 363 transaction is no more and no less than a sale of assets for the best possible price available and with no other conditions imposed on the debtors as to the disposition of the consideration received by the debtors. Some objectors assert that the UAW, the collective bargaining agent and the UAW VEBA, will represent over sixty thousand employees of the debtors are receiving a high recovery on its Chapter 11 plan than others and therefore not only is the Section 363 transaction unfair, but it rises to a sub rosa plan.

As the testimony demonstrates, Your Honor, without any contravention, the recovery by the UAW retirees' claim is coming directly from the purchaser and not from the debtors. It is a transaction that was negotiated by the US Treasury directly with the UAW. And why was it negotiated? It was negotiated because the purchaser, like any purchaser in a 363 transaction who is buying the assets that conduct the business,

needs to have the wherewithal to conduct that business.

There are sixty thousand UAW employees who operate these plants. Without those employees, there is no business. And if there is no business there is no going concern value. So in order to protect its investment, the purchaser had to reach an arrangement, an agreement with the UAW and that is an arrangement between the U.S. Treasury and the UAW. And part of that arrangement, Your Honor, is that the UAW is releasing its claim against the debtors' assets. That claim, Your Honor, is in excess of twenty million dollars. Not quite as big as the bondholders, but pretty damn close; which would certainly dilute any recovery that bondholders might make as long as that claim was there in the Chapter 11 cases. So there is a benefit from what the U.S. Treasury has negotiated with the UAW.

THE COURT: Mr. Miller, am I right or off base if I looked at the UAW's willingness to proceed with New GM under more pro management terms as consideration for New GM?

MR. MILLER: Yes, Your Honor; intangible but more consideration.

THE COURT: Okay.

MR. MILLER: My view, Your Honor, the concessions that were made -- if I can go back a minute, if Your Honor may recall in Mr. Wilson's testimony -- I'm sorry, Mr. Curson's testimony, Mr. Curson said, "The union was advised that as far as the treasury was concerned in connection with the bridge

loans that were made commencing on December 31, 2008 and into 2009, the treasury had made it perfectly clear that the cost of operations of GM had to be reduced and that included the cost of unionized hourly employees. And those concessions were made in the context of allowing GM to survive to get to the point where there can now be a New GM which has these modified terms -- and this is not unusual, Your Honor, 363 buyers come in in companies that have been unionized and are able to negotiate new concessions in appropriate cases. This case is extremely complicated because of the size of the case the size of the financing needed. But in my view, Your Honor, it certainly is a concession.

THE COURT: So strictly speaking, the new collective bargaining agreement was entered into with the existing GM and wouldn't last for as long as Old GM and the principal beneficiary of accommodations being made with the New GM?

MR. MILLER: The structure of the transaction, Your Honor, if the new agreement was negotiated with the debtor on the premise that it would be assumed and assigned to New GM.

THE COURT: Assumed and assigned in its modified form?

MR. MILLER: That's correct, Your Honor. Subject to the consummation of this transaction. As Mr. Curson said, "If the transaction is not approved, all of those concessions are withdrawn." The ratification of that new agreement is no

longer effective.

It's a well established rule, Your Honor, that in connection with 363 sales, the purchaser may elect, in its discretion, what liabilities should be assumed and what arrangements the purchaser may make with the employees of the debtor. This was clearly evidenced, Your Honor, in a case in this district in the Maxwell Publications Chapter 11 cases in connection with the sale of the Daily News to Mortimer Zuckerman, in which Mr. Zuckerman made direct agreements with the various unions involved in the Daily News case. The unhappiness, Your Honor, of retired hourly employees, who are both distressed and envious of the status of the UAW represented employees, is unfortunate.

However, Your Honor, as your testimony and the record indicates, essentially, there are no active employees who are represented by the IUE. And from the perspective of the purchaser, as Mr. Wilson testified, the purchaser, the U.S. Treasury and the government was looking to the creation of a viable entity on the other end of this transaction. And viability of a business entity very much depends on its capital structure and its cost base. So the determination was made by the U.S. Treasury that essentially the principle that it was operating on was what expenses should be assumed that are necessary to make NewCo, or New GM, a viable company?

If everybody here could do it, Your Honor, on this

side, they would move all liabilities to New GM. And we have another company that maybe overleveraged. And in particular, Your Honor, the IUE, as testimony demonstrates, continuation of the hourly retiree health and medical benefits is not an insignificant fund. It's over 300 million dollars a year. And unfortunately, Your Honor, the way the world is, those employees, or retirees, I should say, are not contributing any benefits to the New GM. And the increase of that liability may affect the ongoing business of New GM. Right now, Your Honor, the seasonally adjusted annual rate of sales of vehicles in the North American market is approximately 9.95 million to 10 million vehicles a year. At that rate, Your Honor, no OEM is making any money. And so when, Your Honor, when you read the reports, its not only GM and Chrysler and Ford that are losing money, but the giants like Toyota, Honda, etcetera.

At 9.5 million units, over 10 million units, GM is not at a breakeven point. So this entity that's going forth, this New GM, has a challenge before it. It has to materially increase sales. It has to lower its cost of operation. It cannot afford to take on unnecessary expenses. And that's the underlying guiding principle that resulted in the IUE hourly retirees being left behind. But being left behind, Your Honor, did not leave them with nothing.

There was a process to try and deal with the issue. And that process, as the record demonstrates, was to give them

the same benefits, and it's for all the splinter unions Your Honor, as GM was offering to its retired salaried employees. Now, granted they are reduced benefits, but they are benefits just the same, Your Honor. Mr. Kennedy pointed out that in connection with the salaried retirees there was also an increase in the pension at the same time that reductions were made in the past year by increasing the pensions by 300 dollars per month. Well, that did not come out of a hide of GM, Your Honor. That came out of the pension fund. An overfunded pension fund that hadn't increased benefits for a long period of time, according to Mr. Henderson's testimony. The --

THE COURT: Pause, please. Let me make sure I'm keeping up with you.

MR. MILLER: Yes.

THE COURT: The 300 bucks a month that were given to the salaried --

MR. MILLER: Retirees.

THE COURT: -- retirees, which I gather they could use either for paying for supplemental health coverage or for putting in their pockets, came out of the qualified pension trust as contrasted to GM?

MR. MILLER: That's correct, Your Honor.

THE COURT: All right.

MR. MILLER: And so, it did not affect the cash flow of the operating company.

So it's unfortunate, as I said, Your Honor, that there is harm and frustration and damages as a result of what's happened to GM. The fact that the retired hourly employees believe that the UAW has been favored, is not a substantive legal objection to the 363 transaction. There sole complaint is a claim with insufficient benefits to them.

In the most recent filing by the IUE, which I think was made the day -- Monday, perhaps, it's asserted that the 363 transaction was structured as part of a conscious and deliberate conspiracy to deprive IUE hourly retirees of their health and medical benefits. The IUE claims that the 363 transaction was structured to circumvent the provisions of Section 1114 of the bankruptcy code.

The surreply, if I can refer to it as that, fails to take cognizance of the fact that from the purchaser's perspective, there are no benefits to the New GM as the IUE represents no active employees. In total disregard of the economics and the intention to have a viable, successful, economically viable New GM that will enhance the value of the shares of stock that will be held by Old GM, the IUE casually asserts that the purchaser must assume the IUE health and medical benefits obligations. I believe, Your Honor, the cases are legend. That the bankruptcy court cannot direct a purchaser as to what obligations it will assume or pay. These are obligations that run into the millions of dollars per

month.

The IUE also asserts that the 360 transactions are simply unfair because more could have been taken from other entities, such as executives. It doesn't note that executives previously took sharp and significant reductions over the years while reductions could not be taken in respect of the splinter unions because those benefits were subject to collective bargaining agreements.

The fact that the purchaser has voluntarily contracted to provide benefits to UAW employees is self-evident, they are a necessity to operate the business and enhance the assets. That doesn't give IUE and the other splinter objectors a legally sufficient objection to the 363 transaction. And I would point out to Your Honor that certain other small splinter unions have agreed to the proposal that GM has made to equate hourly's with salaried retirees and have NewCo assume that obligation.

It is an unfortunate economic circumstance but not the result of any conspiracy. The 363 transaction offers the IUE retirees and other splinter union retirees an opportunity to receive benefits and recoveries that will be lost if the 363 transaction is not approved.

The liquidation analysis demonstrates, and it is unchallenged, Your Honor, that there will be no recoveries to IUE retirees and all unsecured creditors. A result that should

not be allowed simply to seek the envy of IUE retirees, vis a vis UAW represented employees and retirees.

IUE also points out that salaried employees in connection with a reduction in their health and medical benefits -- I've spoken to that already, given the cost, Your Honor, of the IUE health and medical benefits plan, its axiomatic that during the course of the pending Chapter 11 cases and probably sooner than later the debtors will move to reject the IUE retirees' health and medical plans as Mr. Koch testified.

Just one minute, Your Honor.

Hourly employees will stand pari passu with salaried retirees as to health and medical benefits. The number of IUE retirees is the largest and most significant group of hourly employees who have not accepted the proposal. That, in and of itself, Your Honor, is unfortunate, but as I said does not create an impediment to the approval of a 363 transaction.

The record is now clear, Your Honor, that the U.S. Treasury will not go forward with continued financing absent approval of the -- of a sale and the collective bargaining agreement with the UAW will fall apart, as Mr. Salzberg established this morning through Mr. Curson.

In connection, Your Honor, with Section 363 sales and successor liabilities in this circuit, it has been consistent that Section 363 sales have been approved as free and clear of

all claims, encumbrances, interests, etcetera, and successor liabilities pursuant to Sections 363(f) and 105 of the bankruptcy code. Various parties have objected to the scope of the requested relief. The same issues came up in the Chrysler case and in Judge Gonzalez's decision in relation to the rejection of dealer contracts that was decided on June 19, 2009 and Judge Gonzalez again denied the same objections that have been raised in connection with this 363 transaction.

Protection against successor liabilities is a standard provision and appropriate in respect of Section 363 sales. Moreover, since the filing of the objections and a connection with product liability claims, the MPA has been revised so the purchaser, as established by the record, will assume all express warranty claims and all product liability claims that arise subsequent to the closing of the 363 transaction, irrespective of when the vehicle purchased. And as Your Honor questioned yesterday in connection with the indemnification agreements, mostly the GM dealers are indemnified in connection with product liability claims. So eventually, they leach up to General Motors. And I --

THE COURT: The guys that you're terminating, the dealers who are underneath the termination agreements with the "soft landing" so to speak, if one of those terminated dealers gets sued by somebody injured, do you still have massive indemnification?

MR. MILLER: I don't know the answer to that question, Your Honor.

UNIDENTIFIED SPEAKER: Yes.

MR. MILLER: Yes, Your Honor.

THE COURT: Okay.

MR. MILLER: And, Your Honor, I would just -- one minute -- the situation we have before the Court today, Your Honor, is a situation in which the choices are between approving a sale and from the debtors' perspective liquidating this company. And I think in that context, facts and circumstances, Your Honor, I believe that the decision in the Third Circuit, in the TWA case, is right on point. And the Third Circuit said, "Given the strong likelihood of a liquidation, absent the asset sale to American", that's American Airlines, "a fact which appellants do not dispute, we agree with the bankruptcy court that a sale of the assets of TWA at the expense of preserving successor liability claims was necessary in order to preserve 20,000 jobs including those of certain named individuals and to provide funding for employee-related liabilities including certain retiree benefits."

Now, in the case before Your Honor, it's not 20,000 employees, there are over 90,000 employees in the North American operations and globally for GM, it's over 200,000 employees. The consequence of liquidation to those employees will be horrific.

In respect of the asbestos claims, Your Honor, that's an issue for OldCo. This is not an asbestos driven case as Your Honor's previously noted. And 1114 is not applicable to the purchaser.

THE COURT: I think you mean 524(g).

MR. MILLER: Oh, I'm sorry; 524(g).

THE COURT: But I have a question on that. The proposed order in the last form I saw it, and I understand it's being looked over again and may be amended, but I think it has an injunction in it. It actually has the words "are enjoined from proceeding with asbestos claims". Does that walk and quack a little bit like a 524(g) --

MR. MILLER: No, Your Honor.

THE COURT: -- or the entity that's being protected is the purchaser of NewCo rather than the insurance company?

MR. MILLER: I don't believe so, Your Honor, because it's not only a question of the assertion of the claim. When claims are asserted you have to defend against them. That costs money. That takes time and effort. Here, what we're trying to do is effectuate a sale where a purchaser will acquire these assets, work these assets and not be subjected to lawsuits. And it's different in the other cases, Your Honor, because OldCo will still be there. And OldCo will have to decide how to deal with these asbestos claims, including perhaps, Your Honor, the future claims. In connection with the

motion that was made to appoint a committee -- an additional committee of asbestos claimants, Your Honor denied that motion without prejudice pending further developments that may occur in connection with the administration of that estate. And there are various alternatives that can be adopted in the administration of the liquidating Chapter 11 case that it's going to be a negotiated plan of liquidation. There could be a fund created to deal with the future claims so that's set aside and as future claims arise, they will have a resource to go to. But that's an issue for the old company. What we have is a purchaser who's laid down some conditions that are certainly within the power and jurisdiction of this Court consistent with the TWA decision, consistent with Lite Motor; this is within the power of the Court. And I believe, Your Honor, that the injunction is necessary because without in any way being disrespectful, asbestos claimants know how to pursue litigation whether it's with merit or without merit. And that's expensive litigation.

THE COURT: Talk about the similarities and differences between what you're asking for and -- in the way of asbestos protection and what was given by Judge Gonzalez and affirmed by the Circuit in Chrysler?

MR. MILLER: As I understood the Chrysler decision, Your Honor, I will defer to anybody else who -- it is the equivalent of -- first, it's free and clear of all claims and

encumbrances and I believe there's an injunction in that order.

THE COURT: I guess the best evidence of that is whatever Judge Gonzalez entered?

MR. MILLER: Yes, Your Honor.

And so, Your Honor, we would submit that the successor liability issues are simply not issues that should deter this Court from exercising its approval of this 363 transaction because it complies with Section 363 for all the reasons stated in Lionel and it's the progeny of Lionel.

The dealer issues, Your Honor, which came to the forefront soon after the commencement of the Chapter 11 cases and relate to the reconfiguration and the dealer relationships certainly created a tempest in a teapot. GM, in contrast to what occurred in Chrysler, carefully and meticulously undertook to work with its dealers to efficiently downsize the dealer network. Rather than rejecting the dealer contracts under Section 365, GM undertook to agree on mutually satisfactory arrangements that would alleviate the costs and effects of termination and changes. As the dealers who GM has proposed to continue receive participation agreements with proposed amendments to the dealer agreements that were explained to such dealers, as I said before, the overwhelming acceptance, 99.6, that is a tremendous statement of the position of the dealers that they want to continue, they want to support a new GM.

As I said with respect to the proposed discontinuing

with dealers, over ninety-eight percent accepted the wind down agreements. And those wind down agreements, Your Honor, provide for some financial support for these discontinued dealers. It's giving them an opportunity of twelve or more months to liquidate their inventories with support from New GM. These agreements are being assumed by New GM.

The ultimate objective of the dealer program is to reduce the total number of GM dealers from approximately 5900 dealers to approximately 3500 to 3600. Over 900 discontinued dealers filed appeals for review. What GM did, Your Honor, is it set up a process that even after giving a notice of discontinuance, if that's the appropriate term, the dealer had an opportunity to object to the discontinuance and enter into an appeal process. Nine hundred discontinued dealers did file appeals and currently over sixty decisions have been reversed.

As a general proposition, the dealer community is relatively satisfied with the approach taken by GM. Unfortunately, various state's attorney general and regulators contend that the participation agreements are violative of state franchise laws and therefore impermissible. Again, the Chrysler case is instructive. The same arguments were presented to Judge Gonzalez. In his decision of June 9, 2009, in connection with the rejection of dealer contracts, which is cited at 2009 LEXIS 1382, Judge Gonzalez ruled that "Under the supremacy clause of the United States constitution, state

franchise laws, which do not concern public safety or health and welfare but are rather economic in orientation, were subject to the overarching jurisdiction of the bankruptcy court to the extent necessary to implement the objectives and policies of the bankruptcy code." And these state statutes, Your Honor, are clearly economic in orientation.

THE COURT: The distinction you are making was between regulatory provisions that are regulating their health and safety or the public health and welfare? Did I hear you right?

MR. MILLER: Yes, Your Honor.

THE COURT: And the contrast fee and those that are essentially economic in nature?

MR. MILLER: That's correct, Your Honor.

THE COURT: All right. Continue.

MR. MILLER: The arguments which I presented Your Honor, apply with equal force to the arguments which have been made by the consumer victims committee. The arguments to which have been made on behalf of the five product liability claimants represented with my -- Mr. Jakubowski. And then, Your Honor, it likewise applies to the other objections, I think Mr. Parker was making an objection along those lines also. But Mr. Parker's primary objective, Your Honor, as I understand it anyway, is that GM in some mystical way violated its obligations under certain indentures and granted liens

and --

THE COURT: Under the equitable and ratable clause that it contends exists?

MR. MILLER: Yes, Your Honor. The fact of the matter, Your Honor, no lien or security interest was granted to the United States Treasury in violation of any of those indentures. And --

THE COURT: They're equal in ratable salary?

MR. MILLER: Equal in ratables, sir.

Section 406 of the indenture that Mr. Parker referred to states, and I'm going to paraphrase, Your Honor, GM is not going to put any liens on any principle domestic manufacturing property of GM or any manufacturing subsidiary or upon any shares of stock or indebtedness --

THE COURT: Except excluded assets?

MR. MILLER: I'm sorry, Judge?

THE COURT: Except excluded assets?

MR. MILLER: These are the excluded assets, Your Honor.

THE COURT: Okay. So the issue is do we have a definition of excluded assets?

MR. MILLER: It's put in the record, Your Honor. And it is the principle domestic manufacturing properties and manufacturing subsidiaries -- the shares of manufacturing subsidiaries. Those are excluded Your Honor.

THE COURT: Okay.

MR. MILLER: And in January 7, 2009, GM issued an 8-K, and it said on the 8-K that the "The seller is secured by substantially all of GM's and the guarantors U.S. assets that were not previously encumbered including their equity interest in most of the domestic subsidiaries and their intellectual property that real estate, other than their manufacturing plants or facilities". And in Section 401 of the loan and security interests, it states, Your Honor, it is -- that's where the definition of excluded assets come from and it states, "Excludes a lien on any property that gives rise to an obligation to grant a lien to another party, such as the bondholders". And it states --

THE COURT: All right. So you're saying that if it would have triggered the equal and ratable clause it was listed amongst the excluded assets and, therefore, when the deal was structured it was an intentional effort to avoid triggering the equal and ratable clause?

MR. MILLER: Absolutely, Your Honor.

THE COURT: Go ahead, Mr. Miller.

MR. MILLER: And beyond that, Your Honor, Mr. Henderson testified that there was no violation of the indentures. There was nothing in the record. Mr. Parker has not produced any notification or record of the filing of any liens against the excluded properties. So this record is clean

that are no such liens.

Mr. Parker --

THE COURT: So you --

MR. MILLER: Sorry.

THE COURT: So you're saying the debtors didn't purport to subject the critical property to a security interest. In fact, evidenced the intention to avoid it. And apart from that, didn't throw a mortgage or a UCC lien on the affected property.

MR. MILLER: That's correct, Your Honor. I might even point out there's actually a provision that if by accident a lien had been granted it would be invalidated because it violated the indenture.

Mr. Parker also makes an argument, Your Honor, for recharacterization over equitable subordination of the treasury's claim, including I think what he's saying some concept of deepening insolvency, there is nothing in the record, Your Honor, that in any way would establish the grounds for equitable subordination or recharacterization and should not be --

THE COURT: Forgive me, Mr. Miller, before you get too far, can you give me the cites to the definition of excluded assets and of the section of the financing agreement. I think we're talking about the December LFA, December 2008, on that granted a lien but also was a carve out previously --

MR. MILLER: Yes, Your Honor.

THE COURT: -- well, could one of your guys do that?

MR. MILLER: Could I furnish that to Your Honor by this afternoon?

THE COURT: Yes, I just need to be able to read it for myself.

MR. MILLER: Yes, sir.

THE COURT: To second-guess you in that regard.

MR. MILLER: Your Honor, the --

THE COURT: With you and Mr. Parker.

MR. MILLER: Yes, sir. And, Your Honor, in connection with the infamous 62,700 dollars, an unfortunate incident. Your Honor asked the question as to what would be the status of claiming of that 62,700 dollars? I would refer Your Honor to the case of Doe v. Pataki, 481 F.3d --

THE COURT: George Patki?

MR. MILLER: Pataki, a former governor.

THE COURT: My classmate?

MR. MILLER: I didn't know that, Your Honor. You're a fortunate man indeed.

THE COURT: Go on. Doe versus Pataki.

MR. MILLER: 481 F.3d 69 and 75-76, a Second Circuit decision in 2007.

THE COURT: What was the jump cite?

MR. MILLER: I'm sorry, sir?

THE COURT: The page cite.

MR. MILLER: 75-76.

THE COURT: Okay.

MR. MILLER: And I'm quoting, Your Honor, "The basic principles governing interpretation of consent decrees and their underlying stipulations are well-known. Such decrees reflect a contract between the parties (as well as a judicial pronouncement) and ordinary rules of contract are generally applicable", citing United States v. ITT Continental Baking Co., at 420 U.S. 223, 236-37 (1975), see Crumpton v. Bridgeport Education Associates, 993 F.2d, 1023,1028 (2d Cir. 1993). In the face of the holding in that case, Your Honor, we would conclude that, unfortunately, that the 62,700 dollars is a contract claim.

THE COURT: A contract claim and, therefore, it's just like all the other contract claims that you can only take for the remaining unsecured community?

MR. MILLER: Exactly, Your Honor.

Your Honor, the arguments that have been made, and which are not supported by the record, that disapproving the 363 transaction would be a benefit for bondholders, in particular, and maybe the consumer victims make the same argument. But, Your Honor, the economics that are before the Court don't change if this transaction is not approved. They just get worse.

GM is in a losing position now. Continuation of this case in Chapter 11 will lead inevitably to a liquidation. A liquidation which will have systemic results, Your Honor. There is a whole community of suppliers that rely upon GM that have been acknowledged by the federal government to be in the danger zone if this company should be liquidated. There are hundreds of thousands of jobs in the supplier industry that would be affected and would deepen whatever the economic crisis -- whether you want to call our economic crisis a recession or a depression, but it would deepen that crisis to the detriment not only of the economic stakeholders in this case but to the nation as a whole. And in all of the circumstances that have been presented, again, I have to say Your Honor, there is no alternative. It is liquidation or this sale and liquidation is draconian.

So we submit, Your Honor, that the 363 transaction complies with the applicable principles of law. The debtors have amply justified the exercise of their reasonable business judgment and have articulated the rationale for their judgment. There is no realistic alternative to preserve the going concern value of the business and the assets to be sold. In support of the motion the debtors have filed all of the declarations and exhibits that support this transaction. The testimony of Mr. Worth is not challenged as to the values here by any other financial expert. The testimony of Mr. Repko is not challenged

in any way as to the lack of financing. The testimony of Mr. Henderson, including his declaration, sets forth at length and in detail the considerations that went into the commencement of this 363 transaction. The considerations that the company went through in the negotiations with the U.S. Treasury --

THE COURT: Pause, Mr. Miller.

MR. MILLER: I'm pausing.

THE COURT: Back to fairness opinion, if there aren't any competing bidders or any alternatives to liquidation, how important is it that anybody trying if the consideration is as much as Worth thought, I would think that if the secured lenders pushes the credit bid and as long as it's more than the liquidation analysis and if that bid is the only game in town, does it matter if the liqui -- if the fairness opinion was right or not?

MR. MILLER: I'm going to give you my view, Your Honor before everybody jumps up in the back from the investment banking community and jumps on me.

THE COURT: You going to tell me that they give a lot of money for something they didn't need?

MR. MILLER: No, Your Honor. We're dealing with one of America's largest corporations. We're dealing with a company which has a public board of directors. Almost all the directors, with the exception of Mr. Henderson, are independent directors.

THE COURT: And he'd like to be protected against claims of breach of fiduciary duty and due care and the like?

MR. MILLER: Exactly, Your Honor.

THE COURT: I assume they had -- do they have their own counsel?

MR. MILLER: Yes, Your Honor. The board of direct -- the independent members of the board of directors are represented by Cravath, Swain & Moore.

THE COURT: All right. And to the extent that you are relying beyond a good business reason that the ordinary stuff we look at on any ordinary business judgment test getting a fairness opinion goes a long way to helping and business judgment?

MR. MILLER: Exactly, Your Honor.

THE COURT: All right. Continue.

MR. MILLER: So, Your Honor, we conclude that this transaction is in the best interest of these debtors. Is in the best interest of every economic stakeholder and benefits the general unsecured creditor body. Because without this transaction, there is no recovery for general unsecured creditors and it may be a very valuable recovery. I mean a large recovery, Your Honor. As Mr. Wilson testified this morning, it's the intention of the treasury to try and facilitate an initial public offering as early as 2010, which will provide liquidity to these shares of stock. And there is

downside protection that was granted in the context of the warrants that are part of the deal that was made between the treasury and the bondholders. A deal that was negotiated directly with the treasury and a voluntary contribution by the U.S. Treasury to provide more consideration.

So, Your Honor, this is a classic 363. I don't think I can recall a case that demanded the necessity for consummation to avoid what would be horrific consequences for all of the parties involved and all of the communities in which this company does business and all of the communities in which its suppliers do business. So we ask Your Honor to approve the transaction. Thank you very much.

THE COURT: Does the government, Mr. Jones or Mr. Schwartz want to be --

MR. JONES: Yes, Your Honor.

THE COURT: Before you get up, Mr. Jones, how long do you think you're going to be? If you're going to be more than ten minutes, I wouldn't mind taking a break.

MR. JONES: Your Honor, I expect to be less than that.

THE COURT: Okay. Let's do it.

MR. JONES: May it please the Court, David Jones, Assistant U.S. Attorney for the Southern District of New York.

The United States joins and strongly supports the 363 motion before the Court. As we've stated throughout the case,

the United States has committed enormous public resources to achieve the swift certain creation of a commercially sound new General Motors. The evidence is overwhelming and uncontradicted. The only feasible way to achieve that goal is through the 363 motion before the Court today and the transaction confers enormous value on the estate that will remain to be administered through the bankruptcy process.

This transaction more than meets with the requirements of Section 363. The evidence is abundantly clear that it was negotiated intensively and at arm's length. It is far and away the highest and best offer achieved through sales approval -- sales procedures that this Court has previously approved and, indeed, no other offer has come in. The transaction far exceeds the estate's liquidation value and the record is also undisputed that liquidation, which would be calamitous and a freefall situation, is the only alternative to this sale.

As the evidence also has made clear, time is absolutely of the essence as New GM's commercial viability requires rapid completion of the sale. We have unambiguous testimony during the hearing that the government conditions its funding on a prompt sale order. That has been a condition of the government's lending throughout. And we heard during the hearing that it remains a condition of the government's willingness to participate.

The government acted based on its sound and independent business judgment that it cannot and will not risk public dollars on the slower and less certain process and that the 363 transaction contemplated is both legally appropriate and necessary.

Your Honor, there's been -- has been or may be some question or allegation the government has not acted in good faith. But to the contrary, the government has exhibited paramount good faith at every aspect in its -- in every aspect of its dealings with General Motors. There's no evidence of collusion or improper conduct to undermine the bonafides of this sale. Indeed the government was motivated first by acting as a prudent lender and then in connection with the 363 transaction as a purchaser, as Mr. Wilson repeatedly testified, motivated simply by the goals of serving it's commercial necessity as it moved into a phase where it would be operating the new GM.

Your Honor, I won't dwell on the objections. My remarks would be just duplicative of Mr. Miller's in which I join. But no one has seriously called any of what I've just said as to the fundamental merits of the transaction into doubt. And there is no basis to call those assertions into doubt. We do join in Weil's analysis of why each and every objection lacks merit. And for these reasons, we join General Motors and urge the prompt approval of the 363 motion. Thank

you, Your Honor.

Oh, I'm sorry, Your Honor, I have one more narrow comment to say which is in response or in elaboration to some questions directed to Mr. Miller regarding the Chrysler sale order, in case it may be helpful.

THE COURT: Yes, thank you.

MR. JONES: The 363 order in Chrysler, which was entered on June 1st, and I apologize I don't have extra copies, but I think --

THE COURT: I think I can find it on ECA.

MR. JONES: -- yes, it's obviously available -- defines the claims that are being -- that the property of the debtor was delivered free and clear of on pages 2 and 3 of the document, that's where the defined term is located. In turn, that paragraph 9 on page 26 of the order, the order provides that the assets are transferred free and clear of claims as defined earlier in the document at pages 2 and 3. And Mr. Miller finally was correct that the order includes injunction language. That's located in paragraph 12 of the order at pages 28 and 29.

So, Your Honor, the broad principles I've just enunciated and we strongly support the motion, and I do note that the remarks I just made and the particulars of the Chrysler sale order make clear that what's being done today is perhaps unprecedented in economic scope in some respects, but

precedented and fully supportable as a matter of bankruptcy law. Thank you.

THE COURT: All right, thank you. Who else is -- Canadian government?

MR. SCHEIN: Yes --

THE COURT: All right. Canada and Ontario. Mr. Schein, come on up, please.

MR. SCHEIN: Good afternoon, Your Honor. Michael Schein for Export Development Canada on behalf of the governments of Canada and Ontario and as the DIP lender and a contemplated equity owner of New GM. Your Honor, Canada has and continues to support the prompt emergence of GM and the sale transaction before this Court. Canada believes the arguments made by the debtors and supported by U.S. Treasury, in respect of the consummation of this sale, both is supported by the record before this court as well as applicable law. Moreover, Your Honor, timely closing of this transaction is important to Canada and marks a historic restructuring and the alternative, Your Honor, liquidation, is in no one's interest including Canada.

According, Your Honor, we respectfully request that the Court approve the sale transaction and overrule all of the objections for the reasons set forth by debtor's counsel. Thank you, Your Honor.

THE COURT: Thank you, Mr. Schein. UAW want to be

heard? It'll be you, Mr. Bromley, or Ms. Ceccotti?

MR. BROMLEY: Actually, Your Honor, if I could ask your indulgence, it would be both of us for a reason I'll explain.

THE COURT: Sure. Sure.

MR. BROMLEY: Just to start, the UAW is obviously very supportive of this transaction representing over 500,000 Americans who are concerned about the rapid emergence of General Motor. The UAW has spent a lot of time, several years indeed, working with all of the major automobile companies in the United States to guarantee their continued viability.

THE COURT: The 500,000 you're talking about talking is more than the number who work for GM in North America but includes the suppliers who would be adversely affected by --

MR. BROMLEY: Well there are 61,000 -- I'm sorry, Your Honor.

THE COURT: No. Go ahead.

MR. BROMLEY: There are 61,000 active UAW members, as well as 475,000 retirees.

THE COURT: I see, okay. Continue, please.

MR. BROMLEY: And in connection with all the work that has been done over the past several years, the UAW entered into the VEBA arrangements several years ago. And in the fall of 2008, stood by, side by side, in the person of President Ron Gettelfinger with the chairman and CEO of each of Ford,

Chrysler, and GM, when they appeared before congress looking for assistance. And as Mr. Curson testified, the UAW negotiated two complete collective bargaining agreements, one prior to the February deadline, and another prior to the May deadline, in order to help facilitate the rehabilitation, not only of General Motors but of Chrysler as well.

And we stood before Judge Gonzales less than a month ago, urging his indulgence and the approval of the deal relating to Chrysler and we stand here again today asking the same from you, Your Honor. Mr. Curson's declaration in his testimony made clear that the collective bargaining agreement amendments were needed and required by the U.S. Treasury, and that those amendments are part and parcel of the deal with the VEBA. Indeed, without one there would not be the other. And were the deal not to go forward on the consolidated basis, that the modifications to the collective bargaining agreement would not be honored and be in effect.

So, Your Honor, we believe that the arguments that have been made with respect to the UAW being advantaged here, did not take into account the issues that Mr. Miller raised, and indeed, the issues that Mr. Wilson raised, which are that there are certain commercially necessary liabilities that the new company needs, and those liabilities relate to a workforce that can come in and bring this company back up onto its feet very quickly. And without the VEBA, and without the amendments

to the collective bargaining agreement, it would be impossible to do so. Indeed it's a condition to the DIP, and it's part and parcel of the master sale and purchase agreement.

So for these reasons, Your Honor, we certainly urge that the deal be approved. We also reserve any rights to respond to any comments that are made by the objectors in connection with the UAW. With respect to Ms. Ceccotti, there's also a list of objections that have been raised by individual retirees, because part of the motion is the approval of the UAW retiree settlement agreement. And so it's with respect to those specific retiree objections that Ms. Ceccotti would approach the Court.

THE COURT: Sure. Ms. Ceccotti come on up, please.

MS. COCCOTTI: Good afternoon, Your Honor, Babette Ceccotti, Cohen, Weiss & Simon, LLP, co-counsel to the UAW, and as Mr. Bromley indicated, we submitted two filings in support of the sale transaction. The first response dealing with the matters that Mr. Bromley referred to, and in addition, we submitted a supplemental statement in support of the transaction specifically directed to approval of the UAW, the document that is known in the various documents in this proceeding as the UAW retiree settlement. Here we have specifically addressed responses in individual letters that have been submitted by UAW retirees expressing their objection to approval of the retiree settlement agreement.

In case it hasn't been mentioned before, I should point out that the UAW retiree settlement agreement is an exhibit, it's Exhibit D to the MSPA, which I believe is in evidence as Exhibit 6A. The supplemental response is at docket number 2631 and Mr. Curson's declaration is also submitted in support of our supplemental statement, I should note. Out of approximately half a million retirees and others -- and here I'll just pause to explain a little bit more about the numbers, since your Honor raised the question a moment ago.

The number of roughly 475,000, we think it's probably closer to half a million at this point, that refers to retirees, surviving spouses and dependents. So -- all of whom we consider "UAW represented retirees" when we talk about retiree health benefits and the group for whom UAW serves as the 1114 representative in the bankruptcy context. So we have -- in discussing the settlement we basically, roughly use the figure a half a million. I'm going to reference in a moment a joinder to our statement in support of approval that was filed by class representatives in the Henry 1 and Henry 2 litigations that you'll note that they are using a number of --

THE COURT: Pause, please.

MS. COCCOTTI: Yes, they're --

THE COURT: The number between 475,000 and 500,000 that's all folks who either they or their spouses had once worked for GM?

MS. COCCOTTI: Correct. Yes. And they, for example --

THE COURT: Compare and contrast it to other big three manufacturers or supplier companies.

MS. COCCOTTI: This is strictly GM only. I should say GM only, in addition there are some Delphi retirees; Delphi was once part of GM and now going to be returning to default, so with those two groups, Your Honor. So out of this, let's call it half a million, retirees and others, the UAW was able to indentify fifty-six individuals whose letters indicated or could be read to indicate or state an objection to the approval of the retiree settlement agreement. We compiled those letters -- we did two things actually, Judge. We submitted to your chambers copies of the letters in this format. If you don't have that I'm happy to hand you up another one, just for convenience, we pulled them straight off the docket so that you could read them.

THE COURT: I think your gathering them up is helpful so if you can hand it up at some point, that would be useful.

MS. COCCOTTI: I will do that, Judge. We also have a chart at the back of our supplemental statement that, again, lists these individuals and just attempts to characterize the nature of their objection as best as can be determined. Perhaps, not surprisingly, most of those who have written letters have focused on changes in the plan of benefits that

will go into effect almost immediately upon approval of the retiree settlement agreement, if it's approved by this court. Individuals understandably concerned and unhappy about the loss of dental benefits, vision, and the like.

There were some other objections as well, we had several retirees who objected based on the fact that under the UAW's governing constitution, they do not vote in the ratification process that Mr. Curson described to us this afternoon. There were some scattered other objections, some concerned about pension benefits, some which were just sort of blanket "I object," "I object to the GM bankruptcy," "I object to sort of everything about the process." And as we stated in our papers, the courts have generally found that where we have such generalized objections, they don't help the court in determining how to deal with them, and in general they're not considered beyond that.

With respect to the others, we have said in our papers that, in essence, the types of objection having to do with changes in benefits and reductions in benefits are objections that the courts, in dealing not only with the Henry 1 and Henry 2 settlements have addressed, but also courts in similar -- in addressing similar settlements involving retiree health, particularly where retiree health obligations shift, as they did in GM, from the employer to an independent VEBA. And what these courts have said and which we think is right on

target here as well, is that while the benefit reductions are regrettable, the alternative to this transaction and the alternative to approval of the retiree health settlement is as Mr. Miller described and therefore placing the benefits that those retirees enjoy today at great risk. So that while the reductions may be regrettable, over all the settlements -- settlement, we believe, should be considered fair, reasonable, and adequate, vis a vis the retiree class and vis a vis these retirees on that basis and should be approved, notwithstanding their objections.

I did note, and I would like to note again, the joinder of the class representatives in the class actions, Henry 1 and Henry 2, their joinder is at docket 2636 and they are supportive, as well, of approval of the retiree settlement agreement, in essence having joined our supplemental statement. With that, your Honor, I would be prepared to rest on our papers unless the court has other questions.

THE COURT: No, I don't.

MS. COCCOTTI: Okay. In that case, your Honor, I will hand you up the individual objections.

THE COURT: Thank you. Is there anyone -- any other folks who want to speak for the motion? I see no response. We'll take ten minutes and then we'll take the first objector. I said Mr. Richman would be able to start tomorrow so who will be the first person to speak under those circumstances.

MR. BRESSLER: We'll be happy to start, Your Honor.

THE COURT: Okay, Mr. Bressler. See you after the break. Thank you. We're in recess.

(Recess)

THE COURT: All right, Mr. Bressler.

MR. BRESSLER: Thank you, Your Honor. Barry Bressler from Schnader, Harrison, Segal & Lewis, for the Ad Hoc Committee of Consumer Victims of General Motors. As Mr. Richmond noted, I hope Your Honor will give me some indulgence. We'd be a little better prepared if it was tomorrow having heard half the evidence today but we appreciate the opportunity. I represent a fragile financial and physical constituency. I know Your Honor appreciated it yesterday; there were some of our clients in the courtroom, coming from all over the country. These are folks who have suffered accidents, and if deprived of the opportunity for full redress, will lose the chance to recover from medical benefits, will lose the chance to replace their lost wages and will lose their chance to recover for pain and suffering and will be thrown into the unsecured creditors' pool.

I heard Mr. Henderson say that he's concerned about the humane treatments of the GM employees and I would hope that someone, either the Treasury or GM would also be equally concerned about the humane treatment of GM customers and product tort liability claimants. I will try and address

myself, Your Honor, to our first two objections and I will leave the argument over the 363 sale to the Attorney's General and to other counsel who have addressed it in their papers.

Mr. Miller has told us that this is a routine 363 sale case but I think I just heard the Attorney General say that this is an extraordinary case and I believe it's an extraordinary case. I think it's an extraordinary case because the purchaser, the debtor in possession financier, and the prepetition lender are all, in this case, the federal government. I'm not sure that that's ever happened before and I'm not sure in a regular commercial case that Your Honor might not have a different reaction if the prepetition lender, the DIP lender and the largest shareholder of the purchaser was all the same entity.

We do commend the Treasury for agreeing to assume future product liability tort claimants. And we do agree that that will help the reputation and the ability of New GM to sell cars. We have not heard anything that convinces us that not assuming current product liability claimants will not hurt the ability of New GM cars. And whether the assumption was because of the commercial reasons that were articulated or because this was a politically sensitive issue or because of comments made by the Second Circuit in Chrysler doesn't matter. It is commendable that the future tort claimants are being assumed. But here, the standards are not necessarily being met for a 363

sale. And unfortunately I am in the position of saying to Your Honor under those circumstances, I would hope that you would turn down the sale motion with some indication that if the successor liability issues were addressed in a different way that the sale might go through.

Let me briefly address some of the reasons. First of all, this in not the Chrysler case. There is no independent buyer. We were beaten to death in Chrysler with Fiat as an independent buyer, putting in a new technology that's going to teach Chrysler to build smaller, more fuel efficient vehicles. That's what the government said. That's what the purchaser said. Here, we have GM, which as I understand the testimony will sell the same vehicles; Cadillac, Chevrolets, Buick and GMC brand vehicles. They will have largely the same executives, will have largely the same workforce which they made an arrangement with the union for -- we'll talk about that later -- which will use most of the same plants, which will have the same dealer network. That doesn't sound to me like a totally independent buyer. I also do believe that Mr. Wilson is a very --

THE COURT: Mr. Bressler's, to what extent would be Fiat era Chrysler stop selling Jeep Cherokees and all of the other types of vehicles for which we now think of Chrysler.

MR. BRESSLER: And I would say that I made the argument in Chrysler that it was not an independent buyer and

was rebuffed and I understand Judge Gonzales' decision. But I think that Fiat made it clear that over the course of two years, they were going to switch around the technology and that they couldn't immediately stop selling the other vehicles and wouldn't stop selling the other vehicles but that they were going to introduce a smaller Fiat model as soon as possible and that the consideration that they were putting in the transaction was no cash but technology valued, depending on which point you looked at it, at between ten and thirty billion dollars for small car platforms, small car engines, small car power trains that they though Chrysler lacked and they would turn it over a period of time. They also had new management that they thought could run the company better and they brought in independent management that came over. And the new president was going to be a gentleman who was with Fiat and was coming in to run the company. That is not the same here.

THE COURT: Before you get too far, because I didn't want to interrupt you for a side but I'm afraid you're going to lose the train of thought. You made reference in your earlier remarks about comments made by the Second Circuit. The only -- I mean I have obtained and read the transcript of the argument of the Second Circuit, and insofar as I'm aware, the only thing that's formally issued for the Second Circuit yet, is something that says in substance, we affirm for substantially the reasons of -- stated by the Bankruptcy Court.

MR. BRESSLER: That is correct, Your Honor.

THE COURT: Okay. What was it in the comments made by the Second --

MR. BRESSLER: There was a comment --

THE COURT: -- that you were referring to?

MR. BRESSLER: I apologize. There was comment made by one of the judges. I think it largely went to the futures, that would a State Court really enforce the order of a Bankruptcy Court as to an accident that didn't happen for which there was no notice, that was going to happen several years after the sale transaction was confirmed.

THE COURT: I hear you. But at least seemingly, that would apply only to an unmanifested asbestos claim or a tort claim of the type for which your folks have now gotten the debtors consensual movement.

MR. BRESSLER: That is correct, Your Honor. And that was my point. That whatever the reason for moving over there, I commend that movement. I'm not sure which of the three reasons it was.

THE COURT: All right. Continue, please.

MR. BRESSLER: Thank you, Your Honor. The proposed transaction, while called an asset sale transaction, looks very much like a debt-for-equity exchange and the US Treasury currently owns one hundred percent of the New GM entity. Not withstanding Mr. Wilson's negotiating skills, I think it's

probably easier for him to negotiate with a company where the executive officers are all going to be working for him, within a very short period of time, if the transaction is approved.

Mr. Henderson testified, and Mr. Wilson for the Treasury, that it was the UAW VEBA receiving a percentage recovery substantially greater than that of other unsecured creditors. I understand the argument that essentially the VEBA and the UAW are the same party but I'm not sure that the legal differentiation here between them should not carry weight with the Court. There is an independent board for the VEBA, as we established. The VEBA is a separate trust fund administered by an independent board of trustees and the VEBA trustees have a fiduciary duty to the retired workers, specifically, and not to the UAW. And it is the VEBA trustees who decide what will happen to the stock in New GM that the VEBA receives.

That sounds to me like it satisfies some of the criteria for sub rosa plan argument, which is the one that we were making. The code says that under those sorts of circumstances, if you do a Chapter 11 proceeding, it is intended that there will be some delay. It is intended that there will be time for objection. It is intended that there will be some collaboration and negotiation and that those procedural and substantive safeguards are set up under the plan process. It did not sound like the difference between a sixty-day period and a ninety-day period was so substantial that the

planned process could not have been gone through.

I understand Mr. Miller's argument. I understand his argument about all the terrible things that could happen if the planned process dragged on. But I also have seen, Your Honor conduct a streamlined procedure and I am sure that you also could have conducted as streamlined a procedure for an expedited plan if that's the way that the debtor and the Treasury had decided to proceed. Good faith of the purchaser under Abbots insures that a 363(b)1 will not be employed to circumvent the creditor protections of Chapter 11 that I've just talked about.

THE COURT: Well Abbots is a Third Circuit case, if I'm not mistaken. Would I be more appropriately looking at Gucci in the Second Circuit for that proposition --

MR. BRESSLER: I understand --

THE COURT: -- on that issue?

MR. BRESSLER: I understand Your Honor's distinction and I understand where you're going with it.

THE COURT: All right. Continue, please.

MR. BRESSLER: And I understand also the DWA is a Third Circuit case but that we now have Chrysler in the Second Circuit, so that's where we are. The testimony has shown that assuming the existing tort claims will not affect the viability of the new company, that discriminating against the existing tort claimants will not help the consumer confidence and

reputation of New GM. Does anyone really believe that the US Treasury, for its enunciated reasons of supporting the 363 sale, for the jobs, for the position in the American economy, etcetera, would allow the sale to go down for covering what is probably five hundred million dollars but at most nine hundred million dollars worth of tort claims?

I want to cover one more area before I sit down, Your Honor, because I think that the Court has a misapprehension. It is correct -- and it sounds like most of the dealers are indeed indemnified by New Co however the Court should know, and we will submit supplemental papers if given the opportunity, that there are states where one cannot sue the dealer for product liability claims. It's a minority of states but there are such states. And the nature of the suits is also different in many other states where the standards for proving a case against the dealer are more stringent and higher than proving a case against the manufacturer and, of course, there are the economic and social realities of, in some rural states, the General Motors dealer being a person in town who is known to --

THE COURT: Or he's little league and stuff like that?

MR. BRESSLER: Exactly. Your Honor took the words out of my mouth. And the type of recoveries that could be had by a person who's severely injured are certainly different, as I think Your Honor could take judicial notice, against a large

national manufacturer deep pocket or against a local dealer. I think I have covered my arguments as to good faith. I think I have covered my arguments as to sub rosa plan and I will let others cover the 363 arguments as to why claims and not just interests should not be release under these circumstances.

THE COURT: Okay. Thank you very much.

MR. BRESSLER: Thank you, Your Honor.

THE COURT: Jakubowski, are you up next?

MR. JAKUBOWSKI: Yes, thank you, Your Honor. Your Honor, Steve Jakubowski for five product liability claimants, Callan Campbell, Mr. Junso, Mr. Chadwick, Mr. Agosto and, I'm sorry, Mr. Berlingieri. First, Your Honor, I would like to say that it has been a great pleasure to be here. I teach mock trial at a local high school in Chicago and I'm going to use this transcript as a way of teaching them some of the evidentiary rules, some of the mistakes that can be made and some of the proper ways to address the Court in terms of evidence and I appreciate that.

I also would like to thank the lawyers from Weil Gotshal, the -- from the U.S. attorney's office. We have been acting under extreme time pressures. I personally got involved in the case because of my shock at the Chrysler decision. I'm from the Southern Circuit and we look at things differently out there.

THE COURT: Especially certain of your circuit

judges.

MR. JAKUBOWSKI: Exactly. And in fact Your Honor, so within that short time frame I can say that while Gotshal has been fantastic in terms of responding to document requests promptly, providing thirty-five gig data -- document production that had a full concordance index that was fully OCR-ed that enabled us to quickly get to the heart of the issues and I think that's why the trial was as speedy as it was and again the same for the U.S. attorney's office.

So, I went to school with Judge Posner and he was my professor and now he's my Circuit Court judge. And again, we look at things differently out there. To us, successor liability is a matter of statutory interpretation and it is not a constitution that we are expounding but a statutory scheme that we are interpreting. And while TWA represents one circuit view, and it's unclear, based on your discussion and what we know from what's happened in the Second Circuit, it's unclear what exactly the Second Circuit holds as to successor liability claims.

And so, we also have the Sixth Circuit. And the Sixth Circuit says in the Michigan Wolverine case which is cited in the long footnote in my brief, that case says that 363(f) does not allow for in personam claims to be treated as interest in property; they're just not. So, I recall at one of the national conference of bankruptcy judges that -- yes, Your

Honor?

THE COURT: You think that Michigan Wolverine therefore should be regarded as overruling the White Motor which agrees with you on one of your points but disagrees with you on the bottom line?

MR. JAKUBOWSKI: Well, what I think that what White Motor does is -- it agrees with White Motor on the 363(f) point that White Motor says which is that 363(f) does not provide for in personam claims to be treated as interest in property. It says that very clearly and it's --

THE COURT: And then issues a free and clear order anyhow.

MR. JAKUBOWSKI: And why? And I don't mean to ask you questions but that's rhetorical.

THE COURT: I think that we agree there's an implication of 105(a).

MR. JAKUBOWSKI: Exactly. And that was in 1986, well before a number of Supreme Court decisions came out which significantly constrained the ability of Bankruptcy Courts to use Section 105 as a roving manner of equity and that's the Raleigh case.

THE COURT: We're rolling on the textual analysis and I agree with you that that's where an analysis would start. Let's -- the dance with the textual analysis --

MR. JAKUBOWSKI: Okay.

THE COURT: -- dance for as long as you can.

MR. JAKUBOWSKI: Okay. I dance for a while.

THE COURT: But I -- I beg your pardon?

MR. JAKUBOWSKI: I can dance for a while on that issue.

THE COURT: All right. We still have to stay within the --

MR. JAKUBOWSKI: I will. Well, I'm not sure I will.

THE COURT: Claims is defined in 101 of the code but interest is not --

MR. JAKUBOWSKI: Sure. Right.

THE COURT: -- nor is the expression interest in property

MR. JAKUBOWSKI: Right.

THE COURT: And we're going to come back to stare decisis because of -- I might come to the view that 363(f) when combined with an undefined interest in property under 101 is ambiguous. That stare decisis might be the way that one needs to go.

MR. JAKUBOWSKI: I'm sorry, Your Honor. Stare --

THE COURT: Forgive me.

MR. JAKUBOWSKI: Okay. I'm sorry.

THE COURT: But I guess my question to you is when the reason by which a tort litigant can go after a New Co, a purchaser, is solely by reason of the transfer of the property

or the acquisition of the property, isn't that something as to which the code is silent and leaves us with a hole that requires judicial interpretation?

MR. JAKUBOWSKI: I think the answer to that is no, obviously. That's why I'm here. And the reason I think it's no is for several reasons. First we start with Butner, in terms of what is an interest in property. And Butner says interest in property defined --

THE COURT: Well, Butner speaks as property rights.

MR. JAKUBOWSKI: Property interests and that's -- and that's no different than interest in property.

THE COURT: Doesn't Butner deal with what is property?

MR. JAKUBOWSKI: No. It deals with who has the authority -- that where -- how are those rights determined. Under what law are those rights determined. And those rights are state law rights; they're founded in state law. And the problem with Chrysler in determining that all tort liabi -- all product liability claims of all fifty states are interest in property that can be rejected as -- they can be sold free and clear is that it doesn't recognize that that determination is a state law determination and unless Chrysler has gone out and examined every single one of the fifty states to determine whether or not it is an interest in property in that state, I think it erred. And worse than that, I don't think it even had

the jurisdiction to be able to do that because at the end of the day, Your Honor, this is a question -- this is a case of boundaries. And the questions are from a statutory perspective or from a jurisdictional perspective, how far can we go here? And I think we're limited by the jurisdiction of 157.

THE COURT: Well, the problem I have with 157 is that distinguishes between a lowly bankruptcy judge, like me, can decide and the higher level Article 3. But wouldn't the same issue exist at district judge who are asked to make the same decision that I'm asked to make?

MR. JAKUBOWSKI: Yes.

THE COURT: All right.

MR. JAKUBOWSKI: Yes, it would. But they still could at least apply the law of the state. And determine whether or not it's an interest in property under the law of the particular state. In some states it may be and some states it may not be. The general tendency among the states that are surveyed in my brief in the long footnote, is that from a statutory perspective, these are not interest in properties. So, in a way, we just have to get beyond that and see -- well and so -- and deal with the policy issue of whether or not from a policy perspective it makes sense to sell the assets free and clear. In most of the cases it doesn't really matter. But when you're dealing with a case where there's sixty-nine million vehicles on the road and we know there's nine

hundred -- well let's take out the future claims -- there's five hundred, six hundred, something like that, million dollars worth of reserves out there for future claims, I think we -- I think we have to step back and see whether or not the policy -- you know, how to deal with the policy issues that are applicable here. And one of the -- one of the things that was raised in the reply brief from Weil Gotshal is it cites all these string cites that of cases that successful liability orders were entered.

Now, I have two problems with that. One is a procedural problem and that is that your case management order said very specifically, that when they string cite orders that have not -- that are not in books that we can find on LexLaw, that they have to go forward and lay out the procedural background and the context and why that's relevant. They didn't with respect to any of those. And I don't think the burden should be on the parties to figure out what the relevance of each one of these is or whether it's even distinguishable. So, I would ask, and I think that the case management order says that you will not consider those cases and I ask that you not consider them.

THE COURT: Well, I hear you on that.

MR. JAKUBOWSKI: That's --

THE COURT: But since I know the cases of that character that was --

MR. JAKUBOWSKI: Um-hum.

THE COURT: -- decided on my watch --

MR. JAKUBOWSKI: Okay. True. Which ones were those, Your Honor?

THE COURT: I'd have to go back in your brief but I suspect it was Bearing Point --

MR. JAKUBOWSKI: Okay.

THE COURT: -- perhaps Adelphia.

MR. JAKUBOWSKI: Okay.

THE COURT: And perhaps one or two others. I do know that for the most part 363(f) has not been disputed and ruled upon by the judge but at least in one exception, when using corporation of America, I think Mr. Smolinsky's in the courtroom, I ruled against your opponent, the United States government on that when their local U.S. attorney's office was representing the EPA and was asking for successor liability when I felt the environmental disaster was being sold from one -- from the debtor to the purchaser.

MR. JAKUBOWSKI: Um-hum.

THE COURT: And I ruled in that case after a 363 analysis that from day one the purchaser would be liable for the mess and for continuing duties from then on to keep it clean and/or to clean it up --

MR. JAKUBOWSKI: Um-hum.

THE COURT: -- but that it wasn't liable for the

original debtor's liabilities to the U.S. government for penalties and for prepetition duties to comply with orders to clean it up. That U.S. attorney wasn't very happy with me then but they did not appeal.

MR. JAKUBOWSKI: Um-hum.

THE COURT: Now, I guess they're very happy they didn't appeal. But you're quite right that the practice in this district and in Delaware, and maybe in other parts of the country, are just throwing out a bunch of orders with -- where something was done without the judge ruling on it ain't the most persuasive precedent.

THE COURT: Right. So --

THE COURT: -- but what they're doing has been ruled upon by a Bankruptcy Court affirmed by the Second Circuit, which is where I really need your help --

MR. JAKUBOWSKI: Okay, and I will be --

THE COURT: -- because --

MR. JAKUBOWSKI: Um-hum.

THE COURT: -- I don't like to cross the circuit.

MR. JAKUBOWSKI: I understand that.

THE COURT: And --

MR. JAKUBOWSKI: And I can't blame you.

THE COURT: Earlier this evening. I politely suggested to the circuit that it reconsider something because I thought it was really very wrong but until the circuit told me

I could, I did what the circuit tells me to do.

MR. JAKUBOWSKI: Okay. So, here's -- obviously, I've thought of that issue and I don't necessarily have the greatest answers in the world, but I think I have good answers. First, the circuit has not come out with his opinion yet and so we don't really know what they've held with respect to this issue. They've said substantially the reasons but these have different facts and we'll go through some of the facts that are different, that particularly make this different from a ruling on a policy grounds as in TWA and Chrysler. Because at the end of the day, TWA and Chrysler were decided on policy grounds. If you throw away the statutory, they were decided in the alternative. And you throw away the statutory ground and you say, okay, well, we got it wrong on the statutory ground but it doesn't matter because it's affirmed on the policy ground. Here I think that the policy grounds are different, and I'll get into that in a little bit. So, that's the first thing.

The second is -- and that -- the fact is there is a split in the circuits. I mean, my circuit comes down very strongly in this issue and Judge Posner is very articulate on this and he's no patsy to the plaintiff's bar by any stretch of the imagination. And when he comes down and says there are boundaries to 363(f), this decision came down two weeks after TWA. And he specifically cites to that and says, it's -- this is not a lien we're talking about, this is possessory interest.

It's not anything but it is an interest. It is -- it has something tangible and it has a right to that property.

So, I think that -- so let me get to the pot -- let me get to the facts here and why I think this is distinguishable from Chrysler. And so, I don't know if you have the Chrysler opinion in front of you, if you don't, Your Honor, I'd be happy to certainly read through what I think are the key aspects of it.

THE COURT: Give me a second. I'm not sure if I brought it out with me or not.

UNIDENTIFIED SPEAKER: If Your Honor would like a copy.

THE COURT: Yes, thank you. Just hold on a second. I found my White Motors so maybe there's something funny --

MR. JAKUBOWSKI: Okay.

THE COURT: I have a TWA. I have the Chrysler opinion.

MR. JAKUBOWSKI: Okay.

THE COURT: Go ahead.

MR. JAKUBOWSKI: All right. So, I start at -- I don't know if you have the West version of it --

THE COURT: I have the West one.

MR. JAKUBOWSKI: I start at headnote 14, which starts with Category 3 consists of tort and consumer objections. It says, the leading case on this issue --

THE COURT: Time out.

MR. JAKUBOWSKI: I'm sorry. The page number?

THE COURT: You have a jump cite --

MR. JAKUBOWSKI: Yeah. I do --

THE COURT: Mine actually has page references already.

MR. JAKUBOWSKI: Okay. It's -- I think it's 110 -- 111. And it starts Headnote 14.

THE COURT: Okay.

MR. JAKUBOWSKI: Okay. So, I'd like to start with first, however, the leading case on this issue, In re: TWA. So, I guess as long as we'll do a little exegesis here. First, I don't think that's a leading case on this issue. It may be the leading -- it may have -- it may be -- Collier says it's kind of a trend, but if you look at even the quote in the omnibus reply from the debtor and you actually read what Collier says, it doesn't say that everybody follows TWA now. And in fact, when you look at the case law, when it comes to 363(f), nobody follows TWA. Policy is another story. We'll talk about policy. But in terms -- I don't think it's a leading case. That's number one. Number two -- and you've got Fairchild -- I mean there are a whole bunch of cases that I cited in my brief that go against what TWA says with respect to the statutory 363(f). And then the next sentence, the code court overrules TWA, overrules the objections. Even so --

THE COURT: No, it says the court follows TWA --

MR. JAKUBOWSKI: -- follows --

THE COURT: -- and overrules the objections.

MR. JAKUBOWSKI: I'm sorry. I apologize, Your Honor, that's correct. And then it goes on, and I would like to criticize this next line. Even so, in personam clients, including any potential successor, state successor or transferring liability claims against New Chrysler, as well as in rem interest are encompassed by 363(f) and are therefore extinguished by the sale transaction, okay, citing White Motor which we've already talked about, does not hold that at all. And Ashburn was decided on policy grounds. It doesn't even mention 363(f) from a statutory perspective. So you can't say don't --

THE COURT: By that you mean, it was a 363(f) decision but it didn't engage in textual analysis --

MR. JAKUBOWSKI: None.

THE COURT: -- of the type that you think should be engaged in.

MR. JAKUBOWSKI: Has to be. The court says that -- the Supreme Court says Ron Pair, BFP -- I mean one after the other, just start with the text. And you branch out and I wanted to get to Judge Waldron. I mean, he at the NCBJ, right after BAPCPA rule came down -- everybody's pulling their hair out -- how do you determine this stupid statute? And so they

say, you have a toolbox. And the toolbox, you start with plain meaning. And after -- and you look. Is it plain? Is it clear? And you -- okay. Well maybe it is. Maybe it's not. But then you look at Piccadilly and you look at some of these other cases and they say, well look at how else it's being used in the code. So that's why I attached to the brief the forty times that the words "interest in property" are used in the code. And there's not a single time that you can replace the word interest with claim and have it make any sense at all.

And then you look at -- and then you say, okay, well are there any Supreme Court cases that have looked at interest in property. Look at Barnhill head. Barnhill's a great case. You know -- it's known for when -- when is the date of transfer. It's not when is the date of transfer. It's when did the interest in property -- when was the interest in property transferred? And the interest in property was transferred when there was an interest in the property. And the claim against the debtor for a dishonored check, for a bounced check, is not an interest -- or for a check, for the right under a check, is not an interest in the property in the debtor's account. That is a critical case.

Now, the other case that's a great case is BFP, which Judge Scalia is looking at the tortured definition of reasonable equivalent value and says you just -- you can't torture the language of the bankruptcy code to cut -- you know,

this left-handed, around your back, you know, to scratch your nose. You just can't do that. Because you'll give no meaning to what the code is. And that's what TWA did. Because by saying that they had to elevate -- that basically, if the debtor had never used the assets in the way the way they used it, the claim never -- would have never come up in the first place. Well that's -- then anything is a property in interest. It has -- that's why Judge Scalia said in -- it needs to be the majority, not the dissent but the majority in BFP, he said, you know, that would be infinitesimal -- to put reasonable and equivalent value the way that you wanted to -- you may as well have reasonable infinite value. You may as well mean anything. And it's the same here. If you're going to say that an interest in property is any -- arises with respect to any claim as to which there's -- from simple deployment of the debtor's assets, then you're basically saying there's nothing that's not an interest in property. So, anyway, that's kind of my response to that issue.

The second -- the next point kind of leaves the statute and goes to policy. Now before leaving the statute and going to policy, there are other tools in the toolbox that I think are important, that I raised in my brief and I'm not going to explain them here, but that are important to look at. And the first tool after you go through the language, and you look at interest in property, you then go to Congressional

intent. And so how do you determine it here? And there's three basic rules. First, you look at the other use in the code. And 1141(c) is a perfect example of how Congress could have structured 363(f) to read exactly the way everybody who's a proponent for the sale wants to read it, because it includes interest in property whereas 363 -- claims and interest in property and not just interest. And so I've cited to this footnote of the National Bankruptcy Review Commission. It was chaired by Marcia Goldstein, where they specifically -- this was the precursor to BAPCPA. This was the 1997 --

THE COURT: Yeah, but -- time out here, because she pointed out that Congress could have said it a lot clearer. But the fact that Congress has not said things as clearly as it could, and I don't want to be disrespectful of Congress, but they're a bucketful and --

MR. JAKUBOWSKI: I --

THE COURT: -- especially messy. But across the code, where Congress could have said stuff a lot better to express itself.

MR. JAKUBOWSKI: And --

THE COURT: I mean, the Catapult rule. Do you think for half a second that Congress intended that a reorganized debtor couldn't use his own intellectual property?

MR. JAKUBOWSKI: No. But again, we're not talking about Supreme Court case law. There are Supreme Court cases

that say, that Congress meant what it says and it says what it means. And that is -- I mean if anything's binding on you, Your Honor, it's the Supreme Court. And that is the rule that it follows through the Second Circuit. And we saw the Groom versus United States case, where you -- you mention something, it's you know, it assumes that it's not there. And it's not like this is -- it's not like this is BAPCPA but it's not BAPCPA. It was identified in '97. And it would -- nothing could have been a more pro-business change to the code than 2005. And it's not there.

So, I think you can't presume that Congress, you know, was lazy or didn't know what it was doing. I think in this instance, I don't think that's a fair presumption and I think in that respect, you're better off sticking with the Supreme Court guidelines that say, as in Decone v. Dela Cruz (ph.) case, cited Gratzluf (ph.) and all the ones that I've cited, that you're better off -- you're safer assuming that Congress says what it meant and meant -- and knows how to do that.

The next -- and then, of course, you look at pre code law. Pre code law was actually cited in the Second Circuit case in Manville. And so you ask, what is the Second Circuit's view on this? And until -- until Chrysler, I assumed the Second Circuit's view on all of this was the Johns-Manville case that just reversed by the Supreme Court, the Traveler's

case. But it got reversed by the Supreme Court on such a narrow ground that it didn't reverse it at all on any of the other issues which were, you know -- which were, I think, controlling in this case. You can't condition financial -- you can't condition releases on financial participation. That's an abuse. And it cites the Carta case. And it cites the Combustion Engineering. I mean, you -- the idea that you can -- that you can condition a major transaction in a bankruptcy, whether it's a sale or whether it's a plan on the financial participation, the do or die conditioning of the purchaser, is an abuse. That's what the Second Circuit calls it. An abuse.

And you look at the transcript in Travelers. There's -- you don't find a justice on the Supreme Court that disagrees with what Justice Stevens and Justice Ginsberg said in their dissent that when it comes to jurisdiction and releases of non-debtor parties that -- that you can't do that in a bankruptcy case without extreme, extreme protections. The Court just doesn't have that power. Doesn't --it's beyond the boundaries. Out of bounds. So, I think, Your Honor, that maybe this is the time, before the Second Circuit rules, to get it right. You have the opportunity, as nobody else will after you, to tell -- to give the Second Circuit some guidance as it comes down with that opinion.

THE COURT: Usually it goes the other way around.

MR. JAKUBOWSKI: Usually it does but here's -- but here you do have that opportunity because they haven't ruled yet. And my guess is that they're pulling their hair over this issue. And as I read the news reports about what happened in the transcript was -- should we just let the Supreme Court hear it? Okay, let's take it over there. Everybody said, yeah, let's go there. But the Supreme Court does --

THE COURT: I lost you.

MR. JAKUBOWSKI: I thought that -- I thought that the expedited nature of that process was so fast, that I'm not sure that the Second Circuit had the opportunity to give it the kind of serious consideration, with respect to this issue, the other issue I don't have any quarrels with. But this issue, I don't think that that was the focus.

THE COURT: Is that the kind of judgment that I, as a Court, two levels below the Circuit, am I allowed to make?

MR. JAKUBOWSKI: Yes. I think that --

THE COURT: Yes?

MR. JAKUBOWSKI: I think so.

THE COURT: Meaning --

MR. JAKUBOWSKI: Here today.

THE COURT: -- assuming arguendo that I agree with you on textual analysis, I mean, I don't think I'm going to lose my job if they disagree with me but I -- I really think I've got to follow my Circuit.

MR. JAKUBOWSKI: I don't -- I don't know what they said on that issue. I don't know what they said. And I don't how they applied it to this case.

THE COURT: If anything, Judge Gonzales, where I'm on record in four, five, six decisions as saying that -- in believing in stare decisis and that the interest of consistency and predictability for the financial community, certainly in this district but nationwide since so many people look to law out of our district, is that we should follow each other's decision. I'm not talking about district judges; I'm talking bankruptcy judges who know bankruptcy.

MR. JAKUBOWSKI: Okay. And you know what?

THE COURT: Forgive me.

MR. JAKUBOWSKI: I'm sorry.

THE COURT: And we follow each other's decisions in the absence of manifest error. And assuming without now deciding that I agreed with you on textual analysis, and/or believing that Fairchild is a better reading than somebody else's reading of 363(f) and its related provisions, I sure don't think Judge Gonzales' decision is fine here.

MR. JAKUBOWSKI: Well, I'll tell you why I think it's distinguishable. Because let's assume that it's error on part A but who cares because you can decide in the alternative. And so let me explain why I think this case differs from Chrysler on policy grounds and therefore is -- will fit within the

Second Circuit's ruling on policy -- on policy grounds. And for that, let's turn to the next Headnote 15, 16 and 17. The first -- there're two basic policy grounds in Chrysler. One is -- well, excuse me. The two basic policy grounds in TWA. The one of them is picked up in Chrysler. But let me talk to TWA's -- both of their policy arguments because I think they're both important in terms of being able to ground your decision here.

And let me deal with the easy one. The easy one is TWA decided the way it did in large measure because of the fact that they were unwilling to accept the idea that some creditors would do better than others. They were unwilling to upset the relative priorities among the creditors by giving one a leg up and a second bite at the apple as Judge Posner said is fine, TWA said is not fine. They weren't -- they just weren't comfortable with that idea. Well, that, as we know, does not apply here. The relative priorities were irrelevant to the purchaser and there's -- the relative priorities are being undermined at every single level of debt.

So some creditors are getting paid in full, some aren't and everything depends on one issue. One issue only. And that is, as Mr. Wilson well stated, is the -- any liability was assumed that was necessary to advance the commercial interests of the successor. That was it. That was the sole basis for the decision. Not relative priorities, that actually

didn't matter and the reason that it didn't matter because nobody was getting anything in this case anyway so they could do whatever they wanted. That was the whole point of why it wasn't sub rosa and all that stuff.

So, the question then is okay, let's put issue A from TWA aside and now let's look at the other issue. And this is the key issue and Judge Gonzalez touches on it in the first sentence of Headnote 15. And he says other objections are premised on the category that a free and clear sale would be fundamentally unfair, inequitable or in bad faith. The policy -- that I really highlight that word; the policy, not the law -- the policy underlying 363(f) is to allow a purchaser to assume only the liabilities that promote its commercial interests. See Fish -- New England Fish And White Motor. That is true. That's what those cases hold. It's policy.

But the question is can you decide -- can you hold here that the policy applies. In Chrysler, there was a real issue on whether or not the buyer would really actually continue would the successor liab -- if the successor liabilities were in place. Here, I don't think the evidence shows that. And I think you need to make a factual finding on this. And the reason I don't think -- and that's what I think will distinguish this case from the ones before you or the ones to the side of you or above you and the factual finding is this. The debtor and the treasury sat down and they split up

the liabilities and they had this -- there were pensions that were being assumed, and credit bids of secured debt and other secured debt would be assumed and they went through the whole laundry list.

And there was -- if you look at Exhibit 6 to the Henderson deposition, there were 176 billion dollars of liabilities on the balance sheet of GM at 12/31/08. And they took six billion and put them in a bucket on the side and said these are our politically sensitive assets and liabilities. We've got environmental product liability, asbestos, splinter unions and some other miscellaneous. Add total, six billion dollars. So, those were politically sensitive in the sense that nobody really knew, as of May 7th, how they wanted to deal with those yet because of the ramifications of them from a business perspective and from a political perspective; that's the testimony. And so they had continuing discussions about it and continuing phone calls and letters from senators as to all this stuff. And as time went on, decisions were made as to whether to assume them or reject them or visa versa.

And as of -- and when Mr. Henderson went to the board on May 29th, they reached a decision as to what that segregation would be. And you look at the PowerPoint that's attached to his deposition as Exhibit 31 which I know it's been designated. You will see that at page, I believe, 8, it's the section that's entitled liabilities to be assumed at closing.

So, at the bottom there's a bullet; No purchase price adjustment regardless. And what that meant was that there would be no segrega -- that once that decision was made as to the liabilities that would be segregated in that politically sensitive bucket, there would be no further adjustment to the purchase price either a higher purchase price for the purchaser or a diminution in the estate -- to the estate in terms of proceeds, if subsequent decisions were made that changed that allocation as to that bucket.

And how do we know that that's true? Because there were two changes that were made with respect to product liability claims and neither of them resulted in a change of the consideration. There's not a single case out there that holds that if there's no change in consideration that TWA analysis doesn't apply. Because in all those cases, there's -- in TWA, there's a possibility of a discounted bid. Every case where there's an issue with respect to the effect of the estate because of the diminution in consideration, then you had a TWA issue and that's why they were able to approve the sale and that's what Chrysler was about. But that's not the case here with respect to this bucket.

THE COURT: I understand. Continue.

MR. JAKUBOWSKI: Okay. So, I guess --

THE COURT: And forgive me Mr. Jakubowski. I've been hearing a lot --

MR. JAKUBOWSKI: I know and I --

THE COURT: -- that you've got the most important issue on the motion today.

MR. JAKUBOWSKI: Thank you, Your Honor.

THE COURT: But try to --

MR. JAKUBOWSKI: Believe me, I think I've said just about everything -- I've danced just about as far as I can here. Obviously, I have other things that I say in my brief but I would like --

THE COURT: Which I've read and I'll read again.

MR. JAKUBOWSKI: Thank you. I would like to raise a couple of issues with respect to the argument of counsel. First, maybe other parties want more. This is really not a question, in my view, of giving some -- of simply giving somebody more. This is a question of what can you do? What does the law -- what are your boundaries? What does the law allow you to do? And that's different. That's why we're here. You know, bankruptcy is what it is and you roll the dice with the way they are but there are issues -- this isn't just a question of wanting more. This is a question of what you can do.

Now, one of the things that I haven't heard yet that I think is critical here and that surprises me is that the idea that if you change this bucket and say look with respect to this bucket that's politically sensitive, that there was no

change in consideration, I'm not going to allow -- I don't think I have the authority under TWA or any other case to allow those not to be assumed, I'm sorry. You know, you challenge lenders -- they want to be a commercial lender, come into court -- how many times have you told a commercial lender you can't do it, I'm sorry. Go back, come back with something else. That's what they want to be, I think that's what you have to do here. And there's a number -- there's a lot in Second Circuit authority about telling lenders to go home and come back with a new proposal.

But more importantly, let's say they were --

THE COURT: DIP lenders overreach all the time.

MR. JAKUBOWSKI: Well, exactly. Okay, but --

THE COURT: But I don't know if there's the same basis for conclusion that the United States government is trying to avoid a systemic risk that's going to affect not just a couple of hundred thousand North American employees or maybe the couple of hundred thousand is beyond North America, I'm not sure but many, many employees. And as importantly, the supplier community that needs GM to survive so they could survive and the communities that look to GM for their economic health. You really think that's analogous to the way that commercial lenders behave?

MR. JAKUBOWSKI: Well, in this instance with respect to this issue, yes. And the reason is for -- twofold. First,

Mr. Wilson, if he didn't say anything, he said I am a commercial lender. That's one thing -- in this case I'm a commercial lender, it's a commercially reasonable, I'm going to do what a lender's going to do.

THE COURT: Wasn't the context of that where people were trying to say that forty-nine million bucks of taxpayer money should be converted to --

MR. JAKUBOWSKI: No. No, it wasn't. It was in response to my questions. It was a response to the question of does the lender -- why are you rejec -- why are you not assuming these? Because I'm a purchaser. I'm basically -- I'm a credit bid lender. I'm not interested in this stuff. I have no -- what obligation do I have to pick these up? That's what every lender in the world that comes in with a credit bid says. So, with respect to this issue, they're acting like a commercial lender and I think they should be treated as such and that's the way they want to be treated and that's why they're being so hardnosed here.

Now, the other thing is that if they were -- let's say they were to come in and say, Your Honor, congratulations, you just killed GM. I would turn to the Creditors Committee and say, when are you filing the complaint for breach of contract? They have a contract here. They have a contract that they are required to act commercially reasonable under. They can't walk because of -- because there's a few -- for

62,000 bucks in some bucket. They can't do that. And I'm sure the Creditor's Committee would jump on that.

So, I think it's different. I don't think they can come in here and just walk away. They signed a contract. They put us all through a significant amount of work and toil with respect to this. And they can't just walk away from that contract without exercising commercial reasonableness. And walking away from a bucket that is inappropriate as a matter of law to walk away from, that there's no effect on the estate if they're required to take it, is commercially unreasonable breach of contract were they to take that position. And they would be, in my view, responsible for all the damage to the estate for that, whether it's a -- whether it's a subordination that they're in, so you subordinate their debt. You know the good thing is? You make that decision.

THE COURT: I would think the Court of Claims would

MR. JAKUBOWSKI: Well, I don't know. In Court of Claims of Chicago it's about a two hundred and fifty dollar limit. That's why I'm laughing.

THE COURT: A court -- a Federal Court?

MR. JAKUBOWSKI: Ok. That's -- I guess that's right.

THE COURT: That's suffering from any --

MR. JAKUBOWSKI: Well that's right.

THE COURT: -- issue that's subordinated --

MR. JAKUBOWSKI: Well, no I think it is.

THE COURT: -- and --

MR. JAKUBOWSKI: I don't think it is here because they came in. They're acting like a commercial lender. They signed a contract they're subject to. They're subject to the normal laws of contract. If you're a defense contract, the U.S. breaches the contract, they come before a Court of Claims and get sued and pay up if they have to.

THE COURT: Go on.

MR. JAKUBOWSKI: Now the other thing is that there is no -- there is no factual basis in the record to say that they will -- they will walk. In fact, I think, because I don't have the transcript, but I think when we see the transcript of Mr. Wilson's testimony, he will say that there were an infinite number of possibilities of what could happen. And he did go through all the scenarios of what they might do and how they might respond. So, I don't think it's -- this is -- they are a commercial lender and they're not a commercial lender. Right. They're a commercial lender in the way they're acting but they're not a commercial lender in the sense that they're in -- it's a national priority -- and Mr. Wilson himself said that we will respond. We don't know how they're going to respond. They don't know how they're going to respond. But that's why it's in your hands.

Now, what's interesting is that just the way the world is set up here, they negotiated with everybody but they

can't come to the Court and say, Your Honor, what's acceptable to you? We'll make this part of the deal. They said -- Mr. Wilson said, we paid the least amount we could possibly pay for this. It turned out to be ninety billion dollars. Okay, so they paid ninety billion dollars for the company. But that was the least amount they had to pay to get the deal done, because it was so important to them to get the deal done, that's what they paid. Now what is this -- so -- but they couldn't come to you and say, Your Honor we think -- we talked to counsel, we think we know what the law is and there's been a lot of precedent in the Circuit, there's Chrysler, there's all these other decisions. But they can't come to you -- they didn't even know you -- who -- whether you were going to be the judge, and negotiate out what would be an appropriate resolution in advance.

So, we had to go through all of this and come here and they say to you, okay negotiations are over, this is what -- take it or leave it. How fair is that? I mean, it's only because of the way it's set up that they didn't come to you in advance. But they went to everybody else in advance, they got everybody else's agreement so why don't make them come back to you with the right response and get the right answer and follow the law and respect the boundaries and do the right thing?

I have nothing else, Your Honor.

THE COURT: Thank you. Okay. I'll hear other people

on the tort side. But, obviously -- I think we've pretty much covered things. Mr. Esserman, I'll hear from you next. Mr. Esserman, I think at this point I'd prefer if you limit yourself to things that relate to asbestos.

MR. ESSERMAN: That's what -- I'm sorry.

THE COURT: Okay, go ahead.

MR. ESSERMAN: Sandy Esserman for the ad hoc committee. That's what I was intending to do, Your Honor, I was not going to cover any other of the topics that were either covered by other parties or covered in my brief. And to a certain extent Mr. Jakubowski covered certain things that I was going to cover. In fact, his presentation sounded like the presentation of "This is My Life", he cited so many cases that I either argued and won or lost or have been in.

But anyway I want to focus strictly on the future clients' issues which I think is to me one of the more troubling aspects of this -- of this sale. And a week or so ago I asked that there be a future clients tort czar appointed in this case. Well, why did I ask that? Because what I felt GM was doing, in fact they are doing, is trying to bind the futures in some way without having the futures present or having the futures represented. And the way I left the hearing was, it's -- it was and is the choice of GM on that issue.

There was a way to do this; they chose not to. With asbestos claims in particular it's very specific about how you

bind future claims and that's through a Manville type 524(g) type solution. We think that's clear from the statute and why is it clear from the statute? It's a matter of -- it's not just the statute is a matter of constitutional due process. The futures are here, I don't represent the futures, I don't -- I may have a future claim, I don't know it. I sure hope not.

But we're -- we're talking about a claimant that is going to develop a disease two, three, four, five, six, seven years down the road. We have testimony that there's an estimate of ten-year present value that there's going to be asbestos claims. Ten years. Up to at least ten years from now, probably more. There's a long incubation period. This is very well known and those people are not present. They cannot speak and it's hard to see under the constitutional due process binding them in any way.

There's no notice that can be given or should be given. And I think we need to look not just to the statue of 524(g) but also the practical implications of the whole thing. Let me just give You Honor an example. This is how the case could well come down. Your Honor could approve the sale. This could be a wrap-up in say two years, perhaps, maybe less. Maybe within a year Your Honor's going to institute a bar date, there's going to be a claims bar date. Probably a year or two or so there's going to be distributions, year three or day two plus one someone is going to get sick of cancer and die.

Someone who was a mechanic that been working on a GM -- on GM cars. It has a twenty, thirty, forty, ten-year -- who knows how long incubation period.

Where is that person going to go? Well, you heard some testimony, they can't, according to the -- the purchaser, the purchaser says no, not me, I'm not taking any of that liability. So if -- if Your Honor would uphold that, that claimant has -- cannot go to New GM, notwithstanding the successor claims issues that have been discussed so far, and he can't go to OldCo, because there's been a distribution made and a bar date has been instituted.

And that's the problem and that's why 524(g) has been instituted. In addition we've had a decision that came down that won in the Second Circuit and lost in the Supreme Court but I don't think it's really a loss, and that's the Manville case, also known as Travelers v. Bailey, which came down and I think this Court is going to need to reconcile anything that it does in this decision with regard to future tort claims -- future asbestos claims with the June 18th, 2009 decision of the Supreme Court.

These -- I think that court very clearly held that -- and it was an unusual decision, Second Circuit decision had a lot to it also that wasn't necessarily reversed. But in essence it held that when you're before the court, for instance, my tort committee, they're all current claimants,

they're before -- they're before your Court. They're going to be bound whatever you do and say, whether it's extra-jurisdictional or not.

But what the Supreme Court said a couple weeks ago were those people that were not there cannot be bound by anything that happens in the bankruptcy court. And in that decision, the slip opinion at page 17, they specifically cite how they could be bound and what kind of channeling injunction has to -- can be issued specifically citing 524(g). And they say on direct review today "A channeling injunction of the cert issued by the bankruptcy court in 1986 would have to be measured against the requirements of Section 524(g) (to begin with at least)" and that's a direct quote.

And in that decision of a couple weeks ago we're going back to the Second Circuit, unfortunately Judge Sotomayor, who was on my panel is -- will no longer be there probably, but the other judges will be. And we're going to have to determine whether my clients in that case in fact were bound by the 1986 decision, because the Supreme Court left open the issue and said we are not necessarily bound by the 1986 decision or injunction, channeling injunction of the court, if they somehow were not present or represented or did not exist or whatever and they said the same thing for the Chubb Insurance Company.

So I think to a certain extent the issues that Your

Honor has to wrestle with are constitutional and jurisdictional as well -- as well as sale. And in my view, dollar-wise I don't want to say it's a pimple on the elephant but this is not an asbestos driven case; we know that. But these are constitutional and due process issues that we consider to be very, very important and have to be dealt with, with appropriate consideration.

So I would urge Your Honor to reconcile whatever he does with that opinion of the Supreme Court. In addition, Mr. Bressler referred to some colloquy of the Second Circuit in the Chrysler decision, and there's been some discussion of that. I'm sure I'm misremembering this and the record will reflect what actually happened but I actually think that was colloquy that I had with Judge Sack and Judge Sack was saying to me during that oral argument, because I was involved in that one too, while future claims clearly, you know, they may not be -- well, you just go ahead -- you just go ahead and institute suit. And my response to that was that's sending the wrong message to ignore a court order or to try and get around a court order or hope a state court will ignore a successful liability or the court that says you cannot do something.

THE COURT: One of the problems I have, Mr. Esserman, is how I should work with things the judge is saying as a part of the back and forth with counsel in oral argument I remember an instance in Adelphia where somebody cited me a transcript

from a certain district judge and I couldn't believe some of the things she said, but then I realized that judges say all sorts of things in oral argument, at least sometimes they do want to be devils' advocates; sometimes they mean them and sometimes they're just probing and other times they haven't thought about it as much they would after the argument was over and they sit down and they read the cases. And how do I slice and dice comments in oral argument to know which of those multiple categories something can be in?

MR. ESSERMAN: I agree with Your Honor, I just wanted to comment on it, you've got to wait for the opinion or at least look at the opinion when it comes down -- when and if it comes down before you can really do anything because as Your Honor knows, Your Honor may ask the question that indicates one thing and completely rule the opposite. And I understand that. It was just a very telling comment to me by Judge Sack and it would have been consistent with everything he's ever written that I've ever read that he would hold that future claimants would not be bound. But that assumes that he's going to be consistent with his other opinions, which I think you have to look at.

THE COURT: Then there is room for me to try to make a judgment as to whether the appellate judge is really telegraphing the way he's thinking as compared to being the devil's advocate?

MR. ESSERMAN: Your Honor, I would not urge that on this Court, I think that that's a -- that would be -- I think it is -- it should be of interest perhaps to the Court but I don't Your Honor ought to base any ruling on that. I think Your Honor has to base his ruling on current decisions and as Mr. Jakubowski quoted, and as I'm quoting to you Supreme Court decisions, I think that those and -- and due process decisions, I think that that's the safer -- that's the safer play.

Of course we don't have an opinion from the Second Circuit. We don't what they're doing, we don't know what their hold -- what they're really going to hold, we don't know whether they're going to make some broad policy arrangement or decision because Chrysler was in fact a shut down company in which nobody was working, everyone had been thrown out of work, the plants had been shuttered, every one of them. They stopped production; it wasn't like a GM which is an operating business. Chrysler was not an operating business; Chrysler was shut down and if Fiat didn't come to the rescue, it was going to stay shut down.

So we don't know exactly what is going through the Court's mind there other than saving 30, 40,000 jobs it may have been more for the Chrysler Company, which is frankly -- I would say GM has some similarities there because there's a reason the Treasury is here. It's not just because they are a commercial lender; this is highly unusual. We all recognize

that, we all know that the stakes are just not a loan to a corporation that this is -- this had been one of the more important companies in American history and to the American economy and that cannot be ignored. The Treasury wouldn't be doing what they are doing. Reminded of a phrase made by a guy named Charlie Wilson, who a few people off to my right I'm sure know but probably nobody else, and this isn't the Charlie Wilson of Charlie Wilson's war, he's a former --

THE COURT: I saw the movie if that's the one.

MR. ESSERMAN: I did too; different Charlie Wilson.

UNKNOWN SPEAKER: He was secretary of defense, Your Honor.

MR. ESSERMAN: He was secretary of defense --

THE COURT: Probably a different war too.

MR. ESSERMAN: Yes, Secretary of Defense under Eisenhower and he says "For years I thought what was good for our country was good for General Motors and vice versa". And of course President Obama said the same, paraphrased it, he actually thought he was quoting it but I actually quoted it.

THE COURT: Not without knowing the name of the guy who saw that I'm old enough to remember that.

MR. ESSERMAN: Well, unfortunately -- I am, too, although I look much younger. Strike that from the record, please.

Anyway, Your Honor, this has been a long two days;

it's been a hot two days too. We recognize the issues and truly the weighty issues that Your Honor has to wrestle with. Nobody would like to be in your seat right now. I understand the pressures, both political, national/international to approve this -- approve this sale.

I'm officially telling you that I'm resting on my papers, but I certainly can understand a decision whereby you try and reconcile some of these issues and approve a sale. But carve out certain things: carve out the issues of future claims in which we have testimony that that's not material to the company and that the company couldn't handle these claims without a problem -- without a problem financially. We had testimony from the CEO of GM on that. Thank you very much.

THE COURT: Thank You. Ms. Cordry, I think you're up on deck but I think some of the things you were going to say we're pretty ably handled by the two guys there.

MS. CORDRY: All right.

THE COURT: Come to a mic if you would, please.

(Pause)

MS. CORDRY: As I suggested earlier today that we are still trying to talk to Treasury and the debtors to resolve these issues and we've had some more discussions -- true, everyone's been popping in and out of the door every few minutes.

THE COURT: But the truth that has preoccupied us.

MS. CORDRY: Yes.

MS. CORDRY: Good. Better than watching me go in and out. I have talked to Treasury, we are -- have another set of proposals on the table. I indicated that because there are forty-five odd attorneys general on these papers and staff and in order -- the discussion's at a point where that I wanted to talk to them some more before I could make a commitment --

THE COURT: Would it be helpful if I put you behind Mr. Richman tomorrow?

MS. CORDRY: Exactly. So that's what we discussed is that I'd prefer go in the morning. Thank you.

THE COURT: Sure. Thank you. Who's next?

MR. KENNEDY: I believe we are, Your Honor.

THE COURT: Okay, Mr. Kennedy, come on up, please.

(Pause)

MR. KENNEDY: Good evening, Your Honor, Tom Kennedy, the IUE-CWA, the steelworkers and the operating engineers. I want to join my colleagues in expressing appreciation to the Court for the time and attention you've paid to these matters, for your obvious preparation and for the concern that you've expressed for the participants.

The numbers that are involved in our programs I want to share with you just to again frame the magnitude of the problems that we think the Court needs to deal with. There are 26,500 IUE represented retirees. There are 4,000 USW

represented retirees. Counting the dependants of those individuals who are involved in the health programs that General Motors is seeking to terminate, we have 47,000 Americans.

We've presented a number of their statements today; I think they speak eloquently to the human cost that would be involved in the benefit terminations and modifications that have been urged by General Motors. But we think there are critical issues in this case, legal issues. Not just the human cost that we think is so hot.

May a creditor with substantial post retirement health benefit obligation choose to sell its assets through a 363 process when one of the express purposes of that process is to deprive the participants of the otherwise applicable protections of Section 1114? Can a creditor who opts for a Section 363 sale proceeding in order to defeat the rights of some, but not all, of its unionized retirees sell those assets free and clear under Section 363(f) of the Section 7 rights of those retirees? And finally of the retirees represented by the objecting unions --

THE COURT: Stop, Mr. Kennedy. Section 7, what did you mean by that?

MR. KENNEDY: What I mean by that is that there's been quite a bit of discussion this afternoon about the meaning of the kinds of interests that are dischargeable in effect

under -- 363 that -- 363(f). And in our view, it's important for the Court to reconcile the rights under 1114 with 363. And in our view the rights under 1114 would survive a 363(f) transaction and that the participants whom we represent should be entitled to exercise their 1114 rights against both Old GM and New GM.

THE COURT: I understand that argument, but I thought you said Section 7 rights, and I don't know what you mean by that.

MR. KENNEDY: No, I did not. I use that phrase so often as a labor lawyer I may have fallen into it, but I didn't mean to. I meant to say --

THE COURT: Is that an important labor law context?

MR. KENNEDY: Yes, that would be --

THE COURT: Are we -- is it just like -- one of the provisions of the Taft-Hartley Act?

MR. KENNEDY: Yes, it is, the heart of the Taft-Hartley Act from the point of view of union members is Section 7; it protects the right to form, join and assist labor organizations.

THE COURT: Oh, Okay.

MR. KENNEDY: I don't believe it has anything to do with this proceeding.

(Laughter)

THE COURT: Okay.

MR. KENNEDY: Certainly not the way the employers have been acting.

THE COURT: I had something so long ago that I don't claim any remaining expertise with it, assuming that my professor thought I once did.

MR. KENNEDY: I'm sure he did, Your Honor, I 'm sure you did well and any questions I'd be happy to answer but --

(Laughter)

MR. KENNEDY: -- from the point of view of the Bankruptcy Code, which is what we really focus on today, we do think that Section 363(f), the interests that are dischargeable under it, do not include rights under Section 1114. And then I think you have to ask whether the retirees represented by our unions have been treated fairly and equitably in this process, and since they manifestly have not what are the consequences of that to this proposed sale?

Now a number of people had mentioned to you, and I think it's the right thing to do, that we start any statutory analysis with the words of the statute itself. And 1114 could not be clearer that it was intended to protect in ways unlike almost any other interest under the code the rights of retirees to continue their medical benefits unless there are certain procedures that are followed. In fact, what we think is very significant in terms of harmonizing 363 and 1114 is Subsection (e)(1), the very first operative section of the statute, which

begins "Notwithstanding any other provision of this title" there is an effort by Congress to elevate 1114 other -- over other aspects of the code and in our view specifically over other general sections of the code like 363.

The second part of the statutory analysis under 1114 is to observe -- and you cannot read the statute without observing that it is based on the notion of fair treatment, full disclosure, equal treatment to the retirees that are involved. The only proposal that a trustee is permitted to make, the debtor-in-possession is permitted to make, is one that "under Section (f)(1)(A) that assures all creditors, the debtor, and all of the affected parties are treated fairly and equitably". That's extraordinary language; not just the participants, but the creditors, the debtor and all of the affected parties. Clearly the IUE-CWA, USW and IUOE retirees have not been treated fairly and equitably, there are others who have been preferred over them; could not pass the merits of 1114 the treatment to which they have been subject.

Section (f)(2) states that the trustee, before he can impose -- before he can come to court and ask that there be a termination of retiree benefits he has to demonstrate, having conferred in good faith that attempting to reach mutually satisfactory modifications of retiree benefits. There's been no good faith negotiations between these parties. And what you find if you look further into the statute that in order to

achieve a termination of benefits the -- the company has to show that the union involved, in a unionized situation, has refused to accept any proposal they had made without good cause. And in our view the discrimination against the splinter unions, as opposed to the IUE -- the UAW members would inevitably establish good cause to reject any proposal the company made which had the effect that we're sitting here today and observing.

And I would notice, Your Honor, that it's not only our observation that the unions would have good cause to reject this proposal, but in evidence there's an e-mail from the labor relations representatives of General Motors in which they inform the upper leadership, including Mr. Henderson, that the unions would not accept an offer which provided only twenty percent return to them from what their book value had been on the OPEB obligations. This offer was thirteen percent, there is no chance that the unions would accept that offer, they had good cause to reject it; this approach could never withstand 1114.

Then I wanted to make an observation is that under (f) -- excuse me, (g)(3), Your Honor, any modification that would be approved has to "assure that all creditors, the debtor, and all of the affected parties are treated fairly and equitably", which is -- harks back to something earlier in the statute, but this section ads "and is clearly favored by the

balance of the equities". So equities would have to balance, as well, in favor.

Now if you look at that statutory history it's interesting because it is precisely condemns what General Motors is attempting to do. Senator Heinz, when 1114 was enacted, stated that Congress was also concerned over the treatment of retirees after a company filed for bankruptcy. There's one sentence I want to use here, "Once the retirees lost their benefits they were forced by the bankruptcy law to go to the end of the line of creditors and patiently wait for years to get a small cash settlement." That notion of translating retirement benefits into a claim in bankruptcy court as an unsecured creditor is precisely what Congress was attempting to preclude through 1114. Senator -- excuse Representative Edwards, at the same time this bill was being passed, said it is important we pass this bill to give retirees peace of mind by removing the possibility of any sudden and unilateral termination of retiree health benefits. They are suddenly and unilaterally terminating health benefits for 25,000 of the 30,000 individuals that are covered under the IUE-CWA and other unions.

There is simply no suggestion in the statue, 1114, or its legislative history that these retiree protections can be avoided in a Chapter 11 proceeding by the simple expediency of disposing of the assets of the debtor through Section 363

instead of having the debtor accomplish it on its own. And what we know here, and it's important to remember this, is that this is not suspicion on our part, that the IUE-CWA OPEB in particular was a motivating reason for this 363 transaction. If you look at Exhibit Raleigh 13, Raleigh 14, both of them are internal reports by General Motors to its labor relations and top management people in which they specifically say we are seeking to leave IUE in OldCo. They mean by that they want to turn the IUE OPEB obligation from a enforceable benefit into a claim that retirees can wait years to enjoy.

Under item 16, under Raleigh Exhibit 16 that's a May 1st review with the U.S. trustee at page 4 under the listing GM Liabilities to New GM, "leave behind splinter group health/life obligations". That was one of the reasons they selected 363 as the forum under which this bankruptcy proceeding would be conducted. That was repeated on April 15th. April 15th, very important document, it's number 3 under Mr. Henderson's exhibits. It's a specific analysis, it's a long document, 107 pages, exhaustively analyzing should we go 363, should we try a pre-packaged planned bankruptcy. Under the 363 advantages, it states "IUE and other splinter group obligation may be more addressable in 363." You could not be clearer that 363 was chosen specifically to defease our clients of their rights to their health benefits and to do it in a manner which did not have to comply with 1114.

THE COURT: Are you saying that was the purpose or an effect?

MR. KENNEDY: I'm saying it was a purpose. I think there's one other document which is very --

THE COURT: Dominant purpose or an incidental purpose?

MR. KENNEDY: More than incidental, I think dominant, and I will tell you exactly what I mean by that. If you look at Mr. Worth's affidavit, Exhibit F, is the board of directors' report by his firm to the board of directors of General Motors on May 31st, 2009, the meeting at which they approved the filing of the bankruptcy, he identifies the capital structure of the new company once they approve the 363 application. In that description of the new company they call out specifically, and the only obligation that they're being able to dump through the 363 that they call out specifically, is the gain from the elimination in non-UAW OPEB. If this were not a dominant, if this were not a motivating factor in their deciding to use 363, it would not have been the only discharged obligation mentioned in that report to the board of directors at the critical meeting by individuals who had opportunity to know and that decided what the important elements were going to be. And I asked Mr. Worth, I said did you include this particular item on this sheet of paper it's a bullet point sheet of paper, it's not a string cite, there's about probably a hundred words on

it, and eight of them are "gain from the elimination in non-UAW OPEB". It's clear that this was an important and a motivating influence.

THE COURT: Please, Mr. Kennedy, what's the citation of source for what you were just talking about?

MR. KENNEDY: Exhibit F, the Worth affidavit, it's a board of directors report 5/31/09. I will get you a page citation before we leave today; it's not one of my exhibits and I don't have it with me, Your Honor.

It's important to note in evaluating the relationship between 1114 and 363 that despite the worried tales of ugly negotiations these people were talking to themselves. Who is kidding who? Mr. Henderson is the CEO of Old GM, he's the CEO of New GM; that's true for every single executive. It's true for most of the workers, it's true for most of the assets. They carefully selected the people they were throwing overboard, fine. But that doesn't make it tough negotiations between completely independent and arm's-length parties. To -- even if you could imagine a circumstance in which the commercial reality was such that a 363 transaction had to occur and there were unionized OPEB individuals who were affected by that, if it were truly arm's length, truly independent relationship, that would be one level of analysis.

Here where we do not have an arms-length independent relationship, we have as seamless a transition as the -- all of

the participants in this party could make it, it's particularly inappropriate to suggest that they had a right under 363 to ignore their otherwise applicable obligations under 1114. The deliberative process in this case, in the months of April, May and June, were specifically and repeatedly intended to accomplish the elimination of splinter union OPEB and the only explanation that's been given for that is Mr. Wilson's candid acknowledgement -- yeah, I think Mr. Henderson, to be candid, said more or less the same thing, but he was -- I thought Mr. Wilson was clearer that they used a doctrine of commercial necessity. If they didn't have to keep a liability, they wouldn't do so.

Well, you know, that's a great doctrine from the point of view of the individuals who are going to end up running this company. But the doctrine of commercial necessity and the obligations under 1114 with its repeated and specific obligations of good faith are simply incompatible. That commercial necessity can't be an eraser which eliminates all of the rights under 1114. The value of the offer made to IUE-CWA retirees, also USW and IUOE, is shockingly low. It's thirteen percent of the value that GM admits for their OPEB as of December 31st, 2008.

And that itself is exaggerated. The actual recovery by these participants could be much lower. Mr. Miller said an interesting thing in his presentation. I wrote it down, "We

did not leave them with nothing". Well, that's not true; they did leave them with nothing. And although I don't want to get too deeply into the weeds about the details in a particular health plan I think a few details will illustrate just how much nothing in fact this plan constitutes. First it's the position of the unions, and always has been, that their rights to retiree health coverage are vested, uncancellable by the company.

In fact the evidence shows in the Raleigh exhibits that in October of 2008, only eight months ago, General Motors agreed to fund 2.455 billion for an IUE VEBA. Essentially the same deal that had been set aside for the UAW. We had that agreement in place, in fact, as our brief reports; they advised Congress in December of 2008 that they had reached an agreement with the IUE on the creation of a VEBA. They repudiated that agreement in January, and they did because UST, U.S. Treasury, had imposed obligations on them that were inconsistent with the funding that had been agreed to during 2008.

My point beyond that is to observe that if they really had a claim that these rights to OPEB benefits were cancellable or voidable by them, they would not have agreed to fund two and a half billion dollars into an IUE-CWA OPEB VEBA. So let's look at what in fact they're giving to our retirees. Well, of the 26,500 IUE retirees, approximately 20,000 are just eliminated. Benefit over, see you later. The other 6,000 are

being, because they're pre sixty-five, are being given the so-called salary plan. But the salary plan has the following provision: NewCo." reserves the right to amend, modify or terminate the plan at any time.

They want and have insisted that the IUE-CWA concede that even this crummy plan is terminable at will by General Motors at any point. They could do it January 1, 2010. The value, the thirteen percent value they've ascribed to their offer, that 470 bill -- million, rather, 470 million, assumes that the benefit stays in place throughout the period of time that any pre sixty-fives remain short of that age and second, assumes full participation by IUE-CWA members.

In fact, neither is true. The company has a right to cancel it at any time and the second is that the benefits are such that it is a programmed failure plan. Let's remember how this works. There are caps on company expenditure, low caps. Caps, in fact, from 2006 of 4,000 dollars an individual. Now, that 4,000 dollar cap is multiplied by the number of participants. Let's say we start with 6,000 participants. You can do the arithmetic, 6,000 times 4,000 comes up with a number. If they can drive the number of participants down to 3,000, their cap for a year is only 3,000 times 4,000.

Normal medical inflation will make this plan more expensive for participants. In fact, as it is now, the first 8,000 dollars for retirees comes out of the member's pocket.

They then go into a zone of coverage. But the first 8,000 comes out of their pocket. Our members can't afford 8,000 dollars up front as medical expenses when right now their out-of-pocket medical expense is probably around the order of 800 dollars a year under the current plan. To go to 8,000 a year, though, our people won't take the plan and as we indicated in the declarations that we submitted, that will be a significant number of people.

Once people start dropping out of the plan it's the healthy ones that don't take the insurance. The people who say "well, gee, 8,000 is a lot of money, but it's better than the 50,000 I'm going to incur in medical expenses this year", will drive the cost of that plan sky high. And it is specific in this offer in a way I've never seen before. I must have evaluated 500 company proposals over the years; I've never seen one say, as this one does, that you must agree in advance that every dollar over 4,000 in any given year will be recaptured by the company by making the plan terms worse the following year. So if you track this out, seven or eight years from now you would have to pay 50,000 dollars in premiums to get 4,000 dollars in coverage. This plan is a sop, it only reflects the reality that there are political considerations, as the company acknowledged, they wanted to make it look like they were doing something, in fact they're doing nothing. There is no protection for IUE-CWA steelworker or operating engineer

retirees under this proposal and there's no way you can take this 4,000 dollar cap and make it seem a real health plan because it's not.

The treatment afforded to IUE-CWA steelworker and operating engineer retirees is dramatically worse than other similarly situated unsecured creditors of General Motors. Let's look at the interplay between Treasury and General Motors about how the IUE-CWA and other union people ended up where they were. The story is, I suppose it's correct, is that at some point Treasury said well, we're not going to get too far into this, we're going to take a group of obligations that are all unfunded, that collectively are 7.9 billion dollars, and we're going to say to General Motors we want you to reduce those by two-thirds, okay? General Motors looks at that; one of the components is executive SERP, another component is salaried life. Most of the components, four or five of them, are for salaried executive individuals. Now we know, because of the Sprague case, that all of them are cancellable by the company at will. General Motors had the right to terminate each one of those programs. The same is not true, in our view, with respect to the splinter union health and life. But because none of them are funded, Treasury apparently concluded that they would take that 7.9 billions dollars and they would determine that the two-thirds would be applied as against that. What Mr. Wilson told them, I quoted his testimony, "We told GM

to cut two-thirds; we told them to figure out how to do it." That's Mr. Wilson's testimony.

The mechanics on it are reflected by Mr. Henderson's Exhibit 12 -- excuse me, I believe it's -- it's the -- yeah, excuse me, it's Henderson 14 where the -- and you've seen this chart before, Your Honor, where they charted out the total of 7.9 billion and the percentage deductions that would be applicable to each, and I'm referring to page 2, as I said, of Exhibit 14 of the Henderson deposition. Retiree life was cut sixty-six percent. Salaried retiree health care, in the first iteration to Treasury by General Motors, was cut zero, no cut at all. Executive nonqualified pension, that's the SERP, was cut thirty-two percent. Executive life, Treasury told them they had to dump that, wasn't vested, no claim to continuation, that they eliminated. The splinter unions on the other hand, their health care was cut eighty-four percent. Eighty-four percent. Now the package of cuts came to sixty-two percent, and this -- this is pretty late day, this is June 4th, by the way. On June 4th the e-mail was sent, correct -- I should say responding to the fact that the sixty-two percent was rejected by Treasury. Treasury said no, we said two-thirds and we meant it, you need to go back and get that extra -- that extra five percent, from sixty-two to sixty-seven. Now that five percent represents million dollars of value in the benefit program. The executives of General Motors --

THE COURT: The incremental five percent is --

MR. KENNEDY: It's four hundred million, sir.

THE COURT: Four hundred million additional?

MR. KENNEDY: Yes, it moves the cuts, if you want the exact numbers, from 4.8 billion to 5.2 billion. Started with 7.9, they had proposed 4.8, Treasury said it's got to be 5.2. That four hundred million, the executives of General Motors took every penny of it out the salaried health care, but more importantly they took it out of the splinter union health care. Because by lumping them into the same program, that program I told you about a moment ago, the -- what they did is they took that 4,000 dollar cap and reduced it for the year 2010 and going forward so that now medical inflation will bump up against the lower cap and that allowed them the present value of the number at a smaller rate and allowed them to put an even worse plan out on the table. A worse plan that as time goes on will get worse and worse and worse till the point rapidly where there is no health coverage at all for the 47,000 people that I mentioned we represent. That's wrong. And there was not a union member, not a union leader, not a union person involved in those negotiations or decisions.

One of the points of 1114 is to be able to say to the unions and the representatives and the participants here's what the company wants to do, be part of the process. If you have a problem with it, if you think it's unfair the bankruptcy court

will hear you and will give you relief, will give you the opportunity to demonstrate that it's unjust. We don't have that. We heard the head of Ajax, what was -- that outfit is, saying that within a week from now they were going to start an 1114 proceeding. Now when they do that we'll be dealing with Old GM that has 1.25 billion dollars in cleanup money that's well spoken for and shares and warrants that won't be subject to cashing out for some time -- for some years.

There's no room to continue the IUE-CWA health benefits under Old GM; they know it. They know the 1114 will be a sham, but they intend the sham 1114 traction because -- transaction because they drained the assets out of New GM -- excuse me, out of Old GM and put them into new -- into New GM.

Now the other thing that I want to call to your attention, Your Honor, is that -- the alleged equity of including union retirees with salaried retirees for purposes of a health ban -- plan is all set by one critically important fact. On January 1, 2009, just six months ago, the salaried retirees who had -- had their insurance taken away were provided a 300 dollar a month pension increase from the salary pension fund.

THE COURT: Yes, I understand that, but your opponents say that that didn't come from GM; that came from a qualified pension trust.

MR. KENNEDY: That's true.

THE COURT: It was overfunded.

MR. KENNEDY: I believe it came from something called the salaried retirement plan, the SRP, I think that's correct. I don't think it's overfunded by the way, Your Honor, it's well funded, but I don't think it's overfunded. The hourly help -- the hourly pension plan, in our view, could similarly sustain a pension increase to our members, the -- there are carrying costs involved with any pension increase, there's an amortization period and the amortization period would have some impact, but from the point of view of the members, from the point of view of the individuals that no longer have insurance, were given money with which they could purchase insurance, the fact that we can say well, don't worry about that, it didn't come from GM, you're not being treated unequally because that came from the salaried pension plan, I don't think that's a very convincing response. They've made no effort to demonstrate that that same 300 dollars couldn't be paid from the hourly pension plan.

And the reason I bring it up is to demonstrate that their suggestion that there is a parity between these groups, salaried and non-UAW unionized, is false, untrue and a lie. It was not a parity; it was dramatically different because they provided alternative funds with which to purchase insurance.

I want to look at two other pieces of the General Motors conduct in this. They've made the -- they and as I

said, Mr. Wilson, contend that there is no commercial necessity for bringing on the IUE-CWA and other non-UAW union OPEB. Well let's look at that principle applied in other situations. If we look at the SERP obligation, the SERP obligation that they agreed to assume by New GM is 730 million dollars. They didn't have to assume that. More than three-quarters of that is for retired executives. Not for people currently working for General Motors. There's no distinction between covering our retirees who are no longer currently working for General Motors and retired executives who are no longer working for General Motors. There's no reason why one would be preferred over the other, except there was an act in this little drama that probably led to it.

Mr. Henderson, legitimately concerned over his group, sent an e-mail to Mr. Rattner lobbying, advocating for two types of insurances to be maintained. The first was the SERP plan and the second was the salaried health plan. There were no similar e-mails lobbying for continuation of unionized benefits. We weren't at the table; we didn't have the opportunity to make that claim. Had they been forced to go through an 1114 proceeding before any of these benefits were changed that wouldn't be true, we'd have had notice, opportunity to be heard, standards applied and the demonstration that what was going on was fundamentally unfair.

Now the Court has mentioned on several occasions the

Chrysler case, and I just want to address that for a minute. The Chrysler case, in our view, has little to teach us about this particular transaction from our perspective. I'm sure there are things that are overlap well between Chrysler and GM, but from our perspective, which is to say what happens to non-UAW members that don't have opportunity to participate in a VEBA. There were no similar union objections in Chrysler.

Chrysler did not, was not asked to, and the Chrysler Corp was not asked to and did not rule on the relationship between 1114 and 363. What Judge Gonzalez did say is that even after a court determines that the criteria of Section 363 had been met, that has not happened here and we hope it does not, but if it were to be true, the Court must then determine whether the elements of Section 363(f) are satisfied. And in our view the free and clear of any interest in such property cannot apply to interest that the unions that represent members have under 1114; they are contractual, statutory under the Bankruptcy Code, statutory under ERISA, they are an important web of deeply, deeply significant interests that these individuals have and to have them washed out is fundamentally inconsistent with the language of 1114 that says that notwithstanding any other portion of the code these protections will apply.

Now I just want to touch on two things that were said by Mr. Miller. Mr. Miller used the word "jealousy". And

that's not true, Your Honor. It's a misreading of everything we stand for. Everything the unions I represent have brought to you today. We care not that the UAW members have gotten something in exchange for their OPEB. We're delighted that as retired Americans they're going to have the opportunity for some health care protection. Our concern is that we were not given that same opportunity. It's not jealousy; this isn't a party, this isn't high school. These are people being deprived of fundamental rights. Rights that in the absence of the insurance will affect not only them but their families and for decades.

There was also a notion of conspiracy, now I think that was chosen as a word, because I believe Mr. Miller choses (sic) his words carefully because he wanted to minimize the extent of the unions' complaint, the notion that we saw some vast conspiracy in which we were somehow deprived of benefits and we're suggesting that nameless, shapeless forces were somehow behind it. We don't need to do that, we've got their documents. Their documents prove that through -- that the ability to eliminate our OPEB was a substantial motivating force behind selecting the 363. If he wants to call it a conspiracy, be my guest, but it's not nameless and it's not faceless, we know who it was, we know when it happened and we who did it. And who were the victims, we were. It's unfair and we ask the Court if you would -- to not approve this sale

as it's currently constructed. If it is approved, we ask that you approve it conditionally upon their satisfying the rights under 1114 -- or their obligations, I should say, under 1114 with respect to our members.

And finally that if a sale does go through, in our view any 1114 process would extend to both Old GM and New GM, we should have the opportunity to demonstrate a week from now, when they start the 1114 proceeding -- procedure that they promised that we have a right to all of those assets as an opportunity to demonstrate that the only fair result is one in which we maintain our benefits. Thank you, Your Honor. Otherwise I rely on my papers.

THE COURT: Okay. Fair enough. Who do we still have for tonight?

MR. MCRORY: Russell McRory for the Greater New York Auto Dealers' Association.

THE COURT: Fine, Mr. McRory.

MR. MCRORY: Good afternoon, Your Honor, I'll be short. My name is Russell McRory from Robinson Brog Leinwand Greene Genovese and Gluck on behalf of the Greater New York Automobile Dealers' Association. Your Honor, the association does not oppose the sale. The association indeed supports and looks forward to GM's revitalization. The association recognizes and appreciates that GM has treated its wind-down dealers much better than Chrysler treated its rejected dealers.

And the association also applauds the appeals process instituted by GM in contrast to what Chrysler has done with a lack of an appeals process for its rejected dealers.

There is however one issue of concern to the association. That concern is that the approval of the 363 sale involves the ratification of conduct by the debtors that is deemed unlawful by New York's Franchise Motor Vehicle Dealer Act and impermissible under the Federal Automobile Dealers' Day in Court Act. That conduct is this, that the debtor has coerced its dealers to sign away their state law protections and federal law protections through the execution of participation in wind-down agreements. This was done at the proverbial point of the gun. Dealers were told to sign these agreements or else they would be rejected and end up exactly like the Chrysler's rejected dealers.

This conduct violated the Federal Automobile Dealers' Day in Court Act, which proscribes the manufacturer from using intimidation and coercion in its dealings with its franchisees. Virtually all fifty states, including New York, have similar proscribe -- laws proscribing such conduct. I realize of course, Your Honor, that in the usual bankruptcy case the debtors will use their powers to assign or to assume or reject contracts, to extract concessions from its contract counterparties and then assume those contracts as amended. However this is not the usual case.

In this case, Your Honor, as I mentioned above, the Automobile Dealers' Day in Court Act, as well as state laws, have a say in the matter. The usual contract counterparty is not protected by such laws. And it is not without irony, Your Honor, that the -- that Chrysler did not try to do this in its bankruptcy. Chrysler did not attempt to extract concessions from its continuing dealers as a -- in exchange for being assumed and not rejected.

THE COURT: Pause please, Mr. McRory, you said half a second ago that GM is trying to do better for its folks than was done by Chrysler Corporation; it's kind of sounding like no good deed goes unpunished. I mean, I can understand how you'd be pretty upset if Chrysler had just -- excuse me, if GM had just rejected all of these folks. And it's giving them a soft landing and you're saying that because it did, but because it's saying that we're giving you a soft landing under certain terms, it should be penalized for that.

MR. MCRORY: Your Honor, these are two different groups of dealers. The -- it was the rejected dealers in Chrysler that were just rejected. Here in -- and GM is giving a soft landing to its wind-down dealers, the dealers that otherwise would have been rejected.

THE COURT: So you're not complaining about the terminated group --

MR. MCRORY: No.

THE COURT: -- dealers, you're complaining about those who have an even better deal which is that they're continuing.

MR. MCRORY: They are continuing, Your Honor, however as I've to draw the distinction that in the Chrysler case the continuing dealers had their franchise agreements assumed without -- without amendment and without being put through the course of process of having their agreements amended.

THE COURT: But of course if they hadn't been amended then we have a bloated dealership structure that addressing which was an important element of restructuring GM.

MR. MCRORY: No, it doesn't change the fact, Your Honor, that the wind-down dealers are eventually leaving GM, it doesn't change the fact --

THE COURT: No, but for those who are going forward there was a decision, as I understand the evidence, that you had to amend those agreements or you wouldn't be in a position where you could assume them.

MR. MCRORY: Your Honor, that is not -- that is not the case. As I understand it, GM could simply have assumed the continuing dealers franchise agreements exactly as Chrysler did for its continuing dealers. There was no require -- there was no requirement that they be amended first through a participation agreement.

THE COURT: Go on, I'll check the record on that.

MR. MCRORY: Sure. And, Your Honor, as evidence of that I just cited exactly what happened to Chrysler. That is what happened to Chrysler. The Chrysler dealers who were continuing had their franchise agreements assumed as-is. The specific incit --

THE COURT: Okay. The problem I'm having, Mr. McRory, is it seems to me that GM's program both for the continuing dealers and for the terminated ones was more fine-tuned to both sides' needs and concerns than Chrysler was. And it sounds to me like GM, if I were to accept your arguments, would be penalized for that

MR. MCRORY: No, Your Honor, I don't think it's a matter of being penalized, I think it's a matter of -- that we're dealing with -- we're not dealing with the same situation where GM is either accepting or -- either assuming or rejecting the continuing dealers -- dealer agreements. They're doing an extra step. And that is that extra step of causing an amendment to those agreements to be signed first before assuming those agreements. That is the sole focus of what I'm talking about now.

And the reason why I'm focusing on that -- those amendments to the continuing dealers' franchise agreements is because it was brought about through a coercive process. And those were in violation of state law, in violation of federal law. And 28 U.S.C. 959(b) says that a debtor-in-possession

must manage and operate its business in accordance and with valid state laws.

And -- so the -- essentially, Your Honor, what the association is arguing is that it was a bridge too far, in effect, for GM to not simply assume the -- assume the continuing dealers' franchise agreements, but the bridge too far, and which violated the state dealer laws which are made applicable through 959(b) was to coerce the execution of the participation agreements which took away otherwise their state law rights.

And let me emphasize, this is not a challenge to the debtor's right to sell its assets in a 363 sale.. We're not challenging the debtor's rights, generally, to reject contracts or assume contracts in its sound business judgment. What we're challenging is the debtor's post-petition conduct, its post-petition conduct in coercing its dealers in violation of the state dealer laws and the Automobile Dealers' Day in Court Act to rewrite their franchise agreements.

Now clearly there's a tension between 959(b) and the Bankruptcy Code. The question is when does a state law have to yield to the debtor's rights under the Bankruptcy Code or when is a debtor obligated to follow those state laws under 959(b)? And the case law cited in our brief includes -- holds that that tension is resolved by looking at whether the debtor's ability to circumvent state law gives that debtor an unfair advantage

in the marketplace. And in addition to the cases cited we also list Stable Mews here in the Southern District which cited Butner v. United States for that basic concept.

And that is precisely what is occurring here. Ford cannot simply rewrite its dealer agreements in this way. Toyota, Honda, Mercedes and the other import brands cannot do so and indeed, Your Honor, as I pointed out earlier, Chrysler did not do so in its bankruptcy proceeding. In other words the debtors violating of state dealer laws during the pendency of this proceeding has given GM a substantial competitive advantage against every other manufacturer in the marketplace.

THE COURT: But the complaint's not coming from Ford or Chrysler or even Toyota; it's coming from people who by not having their dealerships rejected are benefitting from the opportunity to continue to be GM dealers

MR. MCRORY: They are benefitting from the opportunity to continue to be a -- be GM dealers, Your Honor, but again it was done at the proverbial point of the gun to sign this agreement or else. And that is the coercive --

THE COURT: Mr. Miller, I'm going to give you a chance to reply but --

MR. MILLER: Your Honor, I just want to make one statement if I might, Your Honor. Counsel keeps talking about coercion, I would just like to point out, Your Honor, an oral argument, closing argument should relate to the record. There

is absolutely no evidence --

THE COURT: Okay, yes, but we haven't up to this point and I would like to continue, Mr. Miller, not interrupting each other making the argument. You can certainly point out when it's you turn to reply, which I guess you will be able to do tomorrow, that Mr. McRory has distorted the record or spoken to hoarse the record or whatever.

MR. MCRORY: You Honor, I think it's clear just by the very words of the wind-down agreements and the cover letters from GM that they were told in bold print in those letters that if they did not sign, their agreements would be rejected. So however one wants to look at that, it is the positi -- it is -- you can look at it as coercion or something else, but if you're told sign or your dealer -- or your agreements will be rejected that, in my understanding of the word, is coercion. And those are GM letters and documents that they submitted to every single dealer.

THE COURT: Okay.

MR. MCRORY: So, Your Honor, to wind up, so to speak, the debtor has gone far beyond simply jettisoning unwanted contracts and assuming the contracts that it wants to assume. In -- what it is doing is rewriting the rules applicable to dealer and factory relationships, rules that every other manufacturer has to adhere to. And that is precisely the situation with 959(b) applies and demands that debtors comply

with the same laws that all other manufacturers have to comply with. Thank you, Your Honor.

THE COURT: All right, thank you. All right, we covered everybody for tonight? I think so. All right. Tomorrow we have Mr. Richman and then Mr. Parker -- oh, I have duplicates. Mr. Mayer, you would care to be heard as well? Well, you or Mr. Eckstein? I guess you've relieved him at this point.

MR. MAYER: Your Honor, if I may, this is a placeholder. Mr. Eckstein said on his piece on some particular issues -- said the committee's piece on some particular issues at the beginning. We are holding a committee call at 8 p.m. tonight. It is possible we will have a short statement tomorrow, and I would like to reserve some time to do that.

THE COURT: Why don't we put you in right after Mr. Richman and Mr. Parker. By then you should have a better handle, I would hope, on what you want to tell me.

MR. MAYER: Thank you, Your Honor, that would be appropriate.

THE COURT: Okay, we'll put it down. And then tomorrow, Mr. Miller, I'll hear rebuttal from you, your reply on all of the folks who spoke after you did today along with comparable opportunities for -- oh, I have indentured trustees. Okay, just --

MR. FELDMAN: Your Honor, I don't intend to speak

tonight, I'm happy to -- David Feldman, Gibson Dunn & Crutcher, on behalf of Wilmington Trust, the indentured trustee for more than twenty-two billion dollars of bonds in this case. It's our intention to make a brief statement tomorrow in connection with our joinder to the committee's response. I think it would make more sense for us to go tomorrow when as Mr. Eckstein described we'll have a better clarity on where we are in particular with regard to the wind-down budget issue, which is a very central issue to our joinder papers. And as a result I would ask that we be able to follow the committee tomorrow -- tomorrow morning.

THE COURT: Sure, Mr. Feldman. And I suspect I'm going to get the same request from the other indentured trustee.

MR. FELDMAN: I expect you might.

THE COURT: I know you're -- I note you're from Kelley Drye but forgive me, I forgot your name.

MS. CHRISTIAN: That's correct, Jennifer Christian.

THE COURT: Go ahead, Ms. Christian.

MS. CHRISTIAN: From Kelley Drye & Warren, we represent Law Debenture Trust Company of New York and we would just make the same request that we be allowed to follow the committee counsel.

THE COURT: Sure.

MS. CHRISTIAN: Thank you.

THE COURT: Sure. Okay. Yes, sir?

MR. BACON: Excuse me, Your Honor, my name's Doug Bacon, I'm with Latham and Watkins and I represent GE Capital. We have filed an objection, and we've been -- I've been in the courtroom next door for two days. We have a solution and a stipulation and I just want to make sure I get a place in line at the right point and that I'm not estopped from speaking. We had a settlement with the debtor and I don't know how procedurally you want that layered in.

THE COURT: If you think you can state it now and that the debtor thinks it's a good time, I would say let's do it right now or if they prefer tomorrow morning I wouldn't deprive you of the opportunity to do it if you had something.

MR. BACON: Thank you, Your Honor, I'll do whatever they prefer.

MR. WEISS: Your Honor, Robert Weiss, Honigman Miller Schwartz and Cohn.

THE COURT: Sorry, but -- do you have a cell phone in your pocket, Mr. Bacon?

MR. BACON: I have a BlackBerry, but --

THE COURT: You have -- no, BlackBerries destroy our sound system. Mr. Bacon, your product liability case in --

(Laughter)

THE COURT: All right, okay. Can I ask you, now that you're not being drowned out, to repeat who are?

MR. WEISS: My name is Robert Weiss, I'm with Honigman Miller Schwartz and Cohn, special counsel to General Motors Corporation.

THE COURT: Okay, Mr. Weiss.

MR. WEISS: You Honor, we have been in negotiations and discussions with Mr. Bacon as well as the creditors' committee. There have been a number of revisions to the stipulations made continuously throughout the day and into this afternoon. I have not had an opportunity to discuss the latest revisions with my client and I'd like the opportunity to do so before we can present a stipulation.

THE COURT: Can I ask you then, Mr. Weiss, and -- forgive me, did I see you on the aircraft rejection list?

MR. WEISS: Yes, you did, Your Honor.

THE COURT: Yes, I acknowledge that. Why don't you caucus with whomever you need to caucus with tonight and then put it on the record in the morning, if that's not a problem.

MR. WEISS: That'd be fine. Thank you, Your Honor.

THE COURT: Mr. Bacon, you cool with that too?

MR. BACON: That'd be fine, Your Honor, thank you.

THE COURT: Okay. All right, then. What else do we have for tonight? Sir, are you waiting to come up to see me, speak to me?

MR. QUIGLEY: Yes, sir. Sorry to delay, Judge, Sean Quigley from Lowenstein Sandler on behalf of a bunch of

dealerships. I don't know if you want me to put a statement on the record tomorrow or --

THE COURT: I think at this point I want all statements tomorrow, including those who haven't spoken yet.

MR. QUIGLEY: All right.

THE COURT: And at this point we're going to adjourn for the evening. Mr. Richman, would you be in a position where you could start at 9 tomorrow instead of 9:45?

MR. RICHMAN: Yes, Your Honor.

THE COURT: Okay.

MR. MILLER: Are we in this courtroom?

THE COURT: Yes, we will be. And you folks can leave your stuff here under the same understandings that you did yesterday.

MR. MILLER: Could we have someone stand, Your Honor, on time for Mr. Richman and Mr. Parker?

THE COURT: Well, Mr. Richman, I think you told me something once but I don't remember what it was.

MR. RICHMAN: Well, I think Mr. Miller argued for a little over an hour by my reckoning. I don't expect to be that long.

THE COURT: Yes, but he was taking care of seven different groups of objections.

MR. RICHMAN: I guessed earlier thirty to forty-five and I think I'll still be in that range.

THE COURT: Okay.

MR. RICHMAN: Thank you, Your Honor.

THE COURT: All right, see you folks tomorrow, we're adjourned. Good night.

(Whereupon these proceedings were concluded at 7:02 p.m.)

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I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

_____

LISA BAR-LEIB

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Date: July 6, 2009

Exhibit V

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- -x

In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 2, 2009

9:02 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Motion of the Debtors for Entry of Order Pursuant to 11 U.S.C. § 363(b) Authorizing and Approving Settlement Agreements with Certain Unions

HEARING re Debtors' Motion Pursuant to Bankruptcy Code §§ 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 to Amend DIP Credit Facility

HEARING re Continuation of GM 363 Sale Hearing

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Good morning, folks.

MR. MILLER: Good morning.

THE COURT: Have seats, everybody. Come on up, please.

MR. WEISS: Good morning, Your Honor. Robert Weiss of Honigman Miller Schwartz & Cohen, special counsel for General Motors Corporation.

THE COURT: Right, Mr. Weiss.

MR. WEISS: When we ended last evening, I indicated that we had arrived upon a stipulation order resolving objection to sale motion with regard to GECC and some equipment leases that are critical to the sale of the company should it proceed based upon this Court's order.

I'm pleased to advise the Court that we have come to a final resolution in the form of a stipulation and order resolving objection to sale motion. We have consulted with counsel for the creditors' committee whose input is incorporated within the final terms of the stipulation.

Your Honor, just very briefly, if I may, the subject of the leases are very substantial equipment for both manufacturing and assembly that's included in a number of different General Motors facilities. The stipulation is only effective if the Court approves the sale and the sale closes. In that period of time, the debtor has not yet elected whether

it will assume or reject these leases. This stipulation permits the use of this equipment post closing in the period before a decision is made as to whether to assume and assign or reject these leases. All rights and interests of the parties are protected and we believe that this is a stipulation that is very much in the interest of both constituents. I would ask that the Court approve it.

THE COURT: Okay, Mr. Weiss. Anybody else want to comment? Mr. Schmidt, creditors' committee?

MR. SCHMIDT: Good morning, Your Honor. Robert Schmidt, Kramer Levin, on behalf of the committee. Your Honor, Mr. Weiss presented the stip to me a little while ago. He's represented that one of my colleagues has signed off on it. I have no reason to not believe that but I just want to take a quick look at it and we'll advise the Court at a break.

THE COURT: I'm going to be tied up for the next hour or two --

MR. SCHMIDT: I suspect we'll have plenty of time to read it.

THE COURT: Fair enough. Mr. Weiss, would it be helpful more than just that? Would it be necessary -- would you like an order entered on that today assuming the creditors' committee is so (indiscernible)?

MR. WEISS: Yes, we would, Your Honor. And I can represent to the Court that, as Mr. Bacon can attest to, we had

a number of different conversations with Adam Rogoff. And he has, in fact, signed off on the stipulation in the form in which we're going to present it.

MR. BACON: And by email as well.

THE COURT: Sure. The practical problem that a lot of parties are having in this case is that this is a complicated case. You can't do it with one lawyer. And people have to kind of have enough time to talk to each other when they're so busy on other things.

MR. WEISS: Sure.

THE COURT: So that's fine. Mr. Schmidt, could I simply ask you if either you or Mr. Rogoff or somebody communicate with my chambers perhaps by lunchtime just to give me comfort that you guys are okay with it?

MR. SCHMIDT: Absolutely, Your Honor.

THE COURT: Thank you. Thank you.

MR. WEISS: Your Honor, shall I --

THE COURT: Yes, Mr. Weiss?

MR. WEISS: Would you like me to present to the Court a copy of the stip and order at this time?

THE COURT: Well, actually, giving it to me is not going to be that helpful right now. So, yeah, you can give it to me but I won't really be able to look at it until next recess at the earliest or maybe after we're done today.

MR. WEISS: May I approach the bench?

THE COURT: Oh, sure. Sure. Thank you.

MR. WEISS: So just so I understand, assuming that the creditors' committee confirms that the form of the order is satisfactory to them, we need to appear before the Court again on this matter?

THE COURT: I wouldn't think you need to.

MR. WEISS: Okay. Thank you, Your Honor.

MR. SCHMIDT: Thank you, Your Honor.

THE COURT: Thank you. Do we have other housekeeping matters before -- yes?

MR. WARREN: Good morning, Your Honor. Irwin Warren, Weil Gotshal & Manges, for the debtors. Two housekeeping matters. On the record yesterday, I believe it was, there was discussion about provisions of the loan security agreement between the Treasury and the debtors, in particular with respect to the question of what collateral did or did not have liens. Going to Mr. Parker's question, we advised the Court we would provide a letter with the relevant sections. And if I may hand that up to Your Honor, we have done that. We've provided it to Mr. Parker and to all other counsel for the objectors. The particularly important provision is the exclusion of collateral which is in here and the definition of excluded collateral basically says it's any property to the extent that the grant of a lien on it would give rise to a lien under any other document. So it's sort of elegant in its

simplicity of addressing the question of whether a lien has been granted. If it would grant a lien and it would have done what Mr. Parker says, the government doesn't have it.

If I may hand up that letter?

THE COURT: Yes, Mr. Warren. Thank you.

MR. WARREN: The second housekeeping matter, Your Honor, is Mr. Bressler had indicated that rather than putting a witness on for certain of the questioning, he would designate certain testimony from the depositions and Your Honor had said we should counter designate by this morning. The IUE also chose to designate not just with respect to Mr. Henderson but with respect to Mr. Raleigh. We have put together our counter designations. Those will be filed but Your Honor had asked that marked copies of the transcripts be provided color-coded to indicate who are the objectors.

THE COURT: I say color coded. I simply meant so that I could tell whose is what.

MR. WARREN: We figured the easiest --

THE COURT: Black and white, that's equally satisfactory.

MR. WARREN: We thought color might work. We have taken the liberty of taking all of the objectors designations and put them in yellow. Ours are in pink. And if I may hand those up to Your Honor, these are the Henderson and Raleigh transcripts. Hopefully, this will be of assistance.

THE COURT: Okay. And I assume all of your opponents also have.

MR. WARREN: Yes. They all have been provided copies and they'll have the designations which are filed. Thank you, Your Honor.

THE COURT: Thank you, Mr. Warren.

MR. JONES: Sorry, Your Honor. Very quickly. David Jones.

THE COURT: Mr. Jones?

MR. JONES: Let me note that on the Wilson designations, we're in the process of doing the same thing. We don't have it in hand yet. The designations are filed and we'll provide it as soon as possible.

THE COURT: Okay.

MR. LEHANE: Good morning, Your Honor. Robert LeHane, Kelly Drye & Warren, on behalf of the debtors' landlord and its Roanoke, Texas distribution facility.

THE COURT: Good morning, Mr. LeHane.

MR. LEHANE: Your Honor, we filed a limited objection that raised three issues: cure, adequate assurance and the debtors' ability to remain in the premises prior to a designation of the lease. The parties have, we believe, arrived at a business decision, a business settlement. There's a lease amendment that has yet to be executed. But the settlement involves the debtor confirming for the record, one

of the issues raised in the adequate assurance objection. Your Honor, the debtors agreed to assume the lease and assume the lease at closing and that in connection with the assumption of the lease, the debtor agrees that it will assume all of the obligations to indemnify the landlord whether or not those relate to incidents that may have occurred pre-closing or pre-petition. The debtors also agreed to pay all tax obligations under the lease. Specifically, in Texas, the real estate taxes are billed at the end of the year and they may relate to periods pre-petition and pre-closing and the debtors agreed that it would confirm for the record that it has agreed to assume all of those obligations. If debtors' counsel would simply confirm that for the record, we can --

THE COURT: Okay. Anybody have any problems with what Mr. LeHane said. Mr. Smolinsky?

MR. SMOLINSKY: Good morning, Your Honor. Joe Smolinsky, Weil Gotshal & Manges for the debtors. Your Honor, we have a number of contract resolutions, of cure disputes, that are on the calendar today. We were hoping to do it in a streamline fashion, so as not to cause a stampede, one at a time. We are in the process of working out with LBA the terms of a modified lease amendment. I think the statements that were made are accurate to the extent that there's an unknown indemnity event that occurs prior to closing that that -- to the extent it's covered any indemnity agreement under the

lease, the purchaser is assuming that liability.

I didn't want to upset the flow of this hearing today. And to the extent that we want to deal with these issues now or deal with them later, we can.

THE COURT: You know, you're reading my mind, Mr. Smolinsky. And, frankly, I didn't know what Mr. LeHane was coming up to say. That's fine, Mr. LeHane. I think you've got it done, though. But, folks, what we have here now, which is what appears to be a line of people who want to get up on relatively minor matters, important to you all, of course, but smaller in the scheme of things, it raises the risk of really spiraling out of control and undercutting, if not undoing, everything I've been trying to accomplish in the last couple of days in terms of triaging these matters and dealing with the most important issues first.

Unless there are any other things of major importance, such as modifying any of the arguments that I've already heard, I'm going to ask all of the people who are on line to speak to sit down until I can hear from Mr. Richman and Mr. Parker and reply by the movants. And then rest assured that before I leave today, we will have dealt with everybody. Okay, folks.

MR. SMOLINSKY: And, Your Honor, I think I could later present a streamlined approach to the cure objections so that we can make sure we cover everybody's concerns in the

fastest possible way.

THE COURT: Sure. Thank you, Mr. Smolinsky.

MR. SMOLINSKY: Thank you.

THE COURT: All right. Mr. Richman, I think you're up.

MR. RICHMAN: Good morning, Your Honor. Your Honor, Michael Richman, Patton Boggs, for the unofficial committee of family and dissident GM bondholders. Your Honor, our principal argument, which I'm going to focus on this morning, is that the debtors have not satisfied their burdens to demonstrate the right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case.

After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code may have circumvent the Code's various creditors' rights and protections by labeling its restructuring a sale and then conditioning its rescue on a quick sale to itself.

We understand the argument that but for the government's rescue effort, we and many other stakeholders would have nothing. And so, we should be grateful for receiving anything. But that is not the way that bondholders and other creditors and stakeholders look at what is being proposed. Instead they ask why is a financial rescue under

Chapter 11 not according equal and ratable treatment to different groups of claimants whose claims are legally similar. They do not understand how our legal system can permit the government to resort to Chapter 11 and yet choose to favor some constituencies over others.

The government's answer is that it is purchasing the best assets under Section 363. So it has the right to take what it wants, leave what it doesn't want and make special deals by allocating its equity in order to take care of the constituencies that it needs to operate the new company. The new company doesn't need the old company's bondholders. It doesn't need or want a lot of other things. Provisions of Chapter 11 that might require a restructuring to recognize that the value of New GM belongs to all of Old GM and its estates to be allocated in a more equal and ratable way are simply inconvenient.

The debtors argue that this Court has the power to authorize this transaction if it finds that there is an articulated business justification. The business judgment must be reasonable and the purchaser must have good faith. This derives from Lionel and its progeny.

But, Your Honor, I submit that assumes a genuine sale. That assumes independence between a purchaser and a seller. That assumes that a debtor has a real choice other than to bend to the will of its lender and its purchaser

whereas here, the record shows an utter dominance of the debtors including the fact that the principal negotiators for the debtors are also to be the principal managers of the new GM negotiating with the owner of New GM, the protestations of arm's length negotiations and good faith are simply irrelevant. The absence of real choice and the dominance of the government creates an environment unique in this case in which those factors that are required for a 363 sale cannot credibly exist.

Indeed, the testimony was that the sale price was not so much negotiated as derived on the basis of asset values, but was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders. It's clear from the response that the fairness opinion and the liquidation analysis was window dressing for the board, and maybe for the Court.

In this case, no one came to the company offering to buy any assets. The government came to GM with financial rescue, not to buy assets. The government then came up with a restructuring plan with union and bondholder settlements. But it concluded that implementing it through a Chapter 11 plan would give rise to potential rights and uncertainties and the

possibility of longer time than if it could be implemented as a sale. So they made a conscious strategic decision to label their restructuring a sale and a conscious strategic decision to bypass and circumvent the Chapter 11 plan process.

The evidence shows that Treasury's lawyers presented to Treasury alternative means of restructuring the company including through a Chapter 11 plan and that 363 was chosen for strategic purposes.

THE COURT: Pause, please, Mr. Richman. You've been around the block a few times. To what extent either in this court or Delaware or anywhere else in the country have you ever seen a Chapter 11 case? Put aside a large one like this, even medium size one, even cases in the fifty million dollar, hundred million dollar range -- that has ever gone from filing to confirmation within a period of ninety days.

MR. RICHMAN: Well, Your Honor, what we mention in the briefs is pre-packs and pre-negotiated plans certainly have been confirmed very rapidly. And this restructuring plan was fundamentally a pre-negotiated plan. There were agreements in place with the union, important agreements in place with some of the senior bondholders. This could have been filed as a pre-negotiated plan and put on an accelerated time frame.

Not only that, Your Honor, if the business objective here, both on the --

THE COURT: Pause. Forgive me. Can you give me any

more specificity than that? Ninety days is a very short time. A pre-negotiated plan, by definition, is, aside from the fact that you haven't solicited your votes from the disclosure yet, I get so-called pre-negotiated plans all the time where there have been pre-negotiated secured debt or with major elements of the unsecured creditor community. But when they've been filed that way, I can't count the number of times, even in my pre-packs, where one issue or another comes up and -- I'm trying to think of any specific example to any you know which have been able to meet that time frame. We have testimony, as I understand it, from Mr. Wilson that he had gone to -- and I'll have to look at the record for the number -- any number of people experienced in Chapter 11. And the view was unanimous, subject to me checking the record, that it would be suicidal to expect it to be completed in that period of time.

MR. RICHMAN: There were two alternatives. Well, first, let me respond to that, Your Honor. I have complete confidence that, with the resources available here, that (a)a pre-negotiated plan with the agreements that are in place and sought to be approved with the sale could have been filed on June 1st; and that Your Honor, upon cause shown, would have accelerated the timetable and all of the objections and issues and creditors' rights issues and many of the things that we're hearing today in a truncated way could still be determined by Your Honor, could still be determined on a fast track. Just

consider the extraordinary manner in which these hearings have been held in the last couple of days, discovery over the weekend, shortened times for everything. The same thing could be done in an accelerated plan if the same arguments were being made but creditors' rights would be accorded to that.

I can't tell you standing here right now of a specific case where I know that that was done. Honestly, I haven't had time to look for that. We did cite cases where the record showed confirmation within so many days of filing all of which were within thirty, sixty, ninety days, some of which were a couple of days. Most of those were pre-packs; some were pre-nego -- I believe some were pre-negotiated plans. I'd have to check and we could submit something afterwards, if Your Honor wishes.

But the other thing that I think is a useful response to Your Honor, if the goal here that everybody says they want is to create spinoff New GM, and it has to be done quickly because that'll get it out of the bankruptcy environment and allow public to understand that there's a new GM in place, that could have been done without allocating the equity. The company could have spun off the assets into a New GM. It could do so today. It could do so under 363. But it could retain the equity so that all the equity -- all the interest holders in this case would still have a stake in it and that equity allocation could then be done later pursuant to a plan so that

full creditors' rights are protected. And that would achieve all of the objectives that the government and the debtors claim that they have to achieve. It would be outside the bankruptcy environment but instead of the government holding the equity and determining how it gets allocated, the debtors would hold the equity until a plan could determine how it should be allocated.

Your Honor, the evidence shows that Treasury's lawyers presented various alternative means of effectuating the restructuring including through a plan and that 363 was a deliberate strategic choice. It was only at that time, after they decided to effectuate the restructuring through 363, that the format of a sale was devised with a shell company and the sale format was plugged in to fit the strategy. Once Treasury mandated a restructuring using a 363 sale strategy, the script was written in order to make that work. The company and its advisors analyzed only two options: the sale or a liquidation. They conspicuously failed to analyze or to present to the board the possibility of spinning off GM's best assets to a new GM, as I just indicated, or in an accelerated plan process.

The evidence shows that the government decided to use 363 not for any goal that a real purchaser would have but as a restructuring tool. The government doesn't want to buy, own or operate a car company. That's been said many, many times on the public record. But if the Court allows this restructuring

under 363 then the government can take control more easily, quickly and without providing value or distributions of a type or amount that conceivably otherwise would be required in a Chapter 11 plan.

It's a good strategy. We understand why they did it. They have nothing to lose. They told the public, as did the White House, that they hope to emerge from Chapter 11 in sixty to ninety days. So if this Court decides that in the unusual circumstances of this case including very distinguishing factor from Chrysler, the absence of any independent third party purchaser whose commercial needs are driving the deadlines, if this Court decides that there is insufficient support under Lionel and Chrysler to restructure under 363, the government and the debtors can easily spin this as a temporary setback but still well within their initial time frames. This case tests the very meaning of Lionel and its limits.

These were the very concerns that the Second Circuit had in articulating the Lionel guidelines, a balancing of tensions between the need to preserve a business and the need to protect creditors' rights. Lionel gave us six nonexclusive factors for evaluating the propriety of 363 sales to dispose of substantially all of the debtors' assets. But just before reciting those factors, the Second Circuit cited to the Supreme Court opinion in Committee for Independent Stockholders of TMT Trailer against Anderson for the proposition that, and I quote,

"The need for expedition is not a justification for abandoning proper standards." The president of the United States made a similar statement in his inaugural address which we quoted in our brief. In essence, we should not compromise our principles for the sake of expediency.

Then the Second Circuit had to say, in words that apply fully to the situation we face today, and I quote, "A bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups; rather, he should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike."

As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value. The need to preserve value, particularly where there is evidence of deterioration, is often argued and cited to support unusual speed, particularly when the sale is sought so early in the case as it is here.

The only evidence before the Court demonstrates that since filing Chapter 11, GM's assets are not wasting. They are not deteriorating; they are not melting. Chapter 11 has apparently, so far, stabilized the company and sales have increased over the pre-bankruptcy period. Therefore, the

asserted need to effectuate a new GM very quickly or at least by July 10, is not supported by evidence of declining value. Indeed, it's clear from the testimony of both Mr. Henderson and Mr. Wilson that the debtors' and the government's first day fears about the negative effects that Chapter 11 would have on GM were greatly exaggerated and unsupported at least over the first thirty days. And we presume over the first sixty to ninety days that they predicted that the case would last and inform the public that the case would last. What we see in the evidence is that because the parties attempted at all cost to justify the need for a fast track sale, there were a number of conclusory statements and predictions of dire consequences that turned out not to be true.

Mr. Henderson's first day affidavit in evidence as Debtors' Exhibit 15 states at paragraph 82 that "The value of and consumer confidence in the GM brand and its products and support systems are fragile and will be subject to significant value erosion unless they are expeditiously transferred to New GM and its operations start fee from the stigma of bankruptcy. Any delay will result in irretrievable revenue perishability and loss of market share to the detriment of all economic interest. It will exacerbate and entrench consumer resistance to General Motors products." Mr. Wilson said that his concerns about timing were informed by articles from commentators who predicted GM could not survive Chapter 11.

But as we have seen from the evidence, these first day predictions turned out not to be true. It is evidence and not prophecy on which this Court should rely.

Though GM's overall financial performance was in decline over a long period of time and clearly it is today on a year-over-year basis below what it was a year ago, it enjoyed improved performance in the first month of bankruptcy over the month of May. Some of this may be attributable, as Mr. Henderson testified, to the government backstopping of warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating.

Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business was doing better than expected in June was customer expectation that the bankruptcy process would go quickly but he later conceded that that was pure conjecture. Indeed, it became clear from Mr. Henderson's testimony, as well as Mr. Wilson's, that the fears of business decline that they said motivated their desire for a fast track 363 as distinct from any alternative were based on worries over a prolonged case -- "prolonged" was a word in the testimony -- one where the company "languished" in Chapter 11. Mr. Wilson said Treasury

was concerned about a "traditional" Chapter 11 process.

Mr. Miller spent argument time warning of dire consequences as well, not in the record of evidence but in Mr. Miller's opinion, and concluded with the point that a Delphi-like case would be bad for the business. That's not really debatable but it's not the point.

The debtors argue that this transaction is the only alternative to a liquidation but is it fair to say that there is no viable alternative to a sale where you deliberately limit your alternatives? I understand an aversion to a traditional plan process. But here, where there was already the equivalent of a pre-negotiated plan, an accelerated plan process could have been and could yet be attempted. But no advisors were asked to consider that or value it or present it as an option to the board. Mr. Repko agreed that the value of a new GM under a plan could be comparable to the value under the 363 transaction.

Now, Mr. Miller said that our suggestion of a Chapter 11 process that could be concluded within ninety days was magical. Yet, as I indicated before, and I'd be prepared to supplement the record with some further research, we know that many cases with pre-packs and pre-negotiated plans have been completed in that time frame without magic. And there is no doubt that the debtors and the government have the resources to do that here, to at least try that here. Perhaps the magic

that he was referring was making creditor objections disappear. And if that's what he meant, then I agree that you couldn't do that in a plan process. But this Court could have easily dealt with as easily such issues in an accelerated plan time frame as the Court demonstrated it could do with these hearings especially in an extraordinary case like this. If there was any magic here, it was the debtors and the government taking a magic wand to a restructuring and saying poof, now you're a sale. And with that, creditors' rights and plan protections disappeared.

Since the evidence does not establish that the business is deteriorating, the debtors' business judgment, if it actually has any judgment of that sort in a case like this, is narrowed to its asserted belief that the business opportunity, if what the government is offering could even be characterized as a business opportunity, is limited and perishable. The government's offer of financing will expire on July 10. If the debtors do not comply with the government's dictates, liquidation will inevitably follow. The important question is whether this Court has any power to disbelieve that. From the debtors' perspective, we completely understand the argument that they have to try this. They have to advocate it and believe it. It's not business judgment, though, because there's no real choice involved. It's inconceivable that any company would choose to liquidate in the face of such a

government offer. Simply inconceivable. And we're not criticizing the fact that the debtors have chosen this course. And we're not criticizing the fact that they sensibly decided not to liquidate. We're objecting to the form of the transaction.

Even though the debtor had no choice, this Court does. This Court can look through the form to the substance, through the evidence to the truth and through the magic in order to stand for the Chapter 11 process.

Now yesterday, Your Honor commented about our familiar experiences with overbearing lenders. I believe the comment was that lenders frequently overreach. In many such situations the debtor, in dire need of financing, is in no position to negotiate effectively. As here, the debtor is given no real choice. Where the debtors' will is overborne, the Court can and does step in. We see that all the time with DIP financing and purchase -- 363 purchase provisions. Desperate debtors agree to things demanded of them because they have to. But the Courts will not hesitate to push back and tell the lenders, sorry, I'm not approving those provisions.

THE COURT: I've done this a few times, Mr. Richman. When you say we don't hesitate, I think that understates it a little. Every time a judge rules on a DIP, he's rolling the dice that he's going to crater the whole case if he messes around with economic terms. If you give them extra time to do

investigations so they can bring their avoidance actions, we make individualized adjustments as to whether 506(c) labors are appropriate or handing over the proceeds of avoidance actions are appropriate. But I cannot think of a single time in the nine years I've been on the bench or the nearly four years I've been doing this where I've ever told -- seen a judge tell a lender that he has to agree to different deal terms.

MR. RICHMAN: I wasn't suggesting that, Your -- I actually agree with Your Honor up to that point in the sense I wasn't suggesting that you tell what the deal should be. But Courts do and Your Honor has pushed back on provisions that Your Honor was being told we're absolutely required by the purchaser with the DIP lender. And Your Honor has said and other judges have said, I want to prove those even though there was the threat, difficult threat to deal with that the party would walk away because the Court stands for the law and the parties understand that they have to follow those dictates if they want to do a transaction under Chapter 11. My only point, which I think Your Honor was agreeing with, is that it's not uncommon. When the debtor doesn't have the ability or leverage or the independence of will to be able to fight back over onerous provisions or even a mandated sale, the Court still has the power and authority to do so.

Bankruptcy courts call the bluffs of billing lenders and purchasers all the time. And that brings me to footnote 15

of Judge Gonzales' opinion in Chrysler In Chrysler, as here, the main argument was that the debtor had no viable options but a sale or a liquidation. Now, in that footnote, the Court commented on a third option raised by dissenting creditors. And I quote: "Based upon the U.S. government's substantial interest in preserving the automobile industry, jobs and retiree benefits, the intimation is that the government was bluffing when it indicated that it would walk away from exploring other options if the Fiat did not close quickly." The proposed third option is that the debtors could have refused to accede to the government's terms in the hope that the government would capitulate and agree to consider other alternatives. The Court concludes that gambling on the possibility that the government was bluffing and listing the potential for a lesser recovery in a resulting liquidation would have been a breach of the debtor's fiduciary duty.

Judge Gonzales did not, however, say that he or any other judge would be without power to call such a bluff. We are not challenging the debtors' choice which was a non-choice to proceed with the strategy. But we do say that in the circumstances of this case, the Court has the power and authority to push back. Many people say that Chrysler is the blueprint for GM and that the cases are the same. They are not. And they are completely distinguishable in the most fundamental of ways. The deadline pressures in Chrysler were

in the main driven by the commercial needs of an independent purchaser. The business opportunity was legitimate, commercial and limited. By contrast, there is no real purchaser in this case. The government is not setting any deadlines with reference to commercial exigencies of the automotive marketplace; it has no experience running a car company. The deadlines were set to support the strategy of a 363 restructuring.

If you go to a Broadway musical, you expect an orchestra. For a 363 fast track sale, you need a drop dead date. It's part of the scenery; part of the show.

As distinct from the dissenters in Chrysler, we are not suggesting that the debtor should have refused to attempt the 363 transaction. We don't see how they could have. They had no choice. As the evidence has showed, and as other parties have argued, the principal decision makers and senior management were not acting with any independence. They were across the table from their new employer. They were arguing with their new owner.

But this Court can push back. This Court can call the bluff in the overriding interest of upholding the Chapter 11 process. Consider: the government has repeatedly said it will not allow GM to fail. It has said it is committed to creating New GM. It has already invested 19.4 billion dollars pre-petition and perhaps as much as thirty three billion

dollars including DIP lending. It told the public it was on a sixty to ninety day track. Like any powerful lender or purchaser, it says, my way or the highway.

Mr. Wilson said that if the sale order was not approved, Treasury would cut its losses. Now, I submit that Mr. Wilson's credibility was open to question on some points. His demeanor was markedly different from the other witnesses. He's smart enough to know what findings the Court needs to make to approve the transaction and I believe and I submit that he answered some questions in ways designed to serve the end. For example, he said that his understanding of the term "languishing" meant anything more than thirty to forty days. Most of his testimony was carefully couched in terms of present intentions and beliefs.

But while the drop dead threat is out there, there is nothing that binds the government to abandoning GM and the government can and will react to a decision here, a decision of law by this court, in a manner that is both politically and economically sensible. Their agreement on funding administrative expenses was limited to 950 million dollars. But we heard Mr. Koch testify that he had a feeling or a belief that they would step up and do something more. It wasn't in writing but there may be a number of unwritten understandings here as part of the strategy of how the parties are going forward. And the clear impression from the sixty to ninety day

pronouncements from both GM and the White House is that while Treasury may not be obligated to fund beyond July 10, they will step up and do so if they have to. They have to threaten to cut off financing.

THE COURT: Pause, please. Can you repeat that? And say a little slower. And if you had a particular reference to something, I ask you to repeat that as well.

MR. RICHMAN: Yes, Your Honor. I said the clear impression from the sixty to ninety day pronouncements, which we quoted in our brief from the outset of the case, is that while Treasury may not be obligated to fund beyond July 10, they will step up if they have to. And to expand on that, it's inconceivable to me that the White House press secretary or GM's CEO would be telling the public sixty to ninety days if they didn't have some assurance of financing beyond July 10th.

THE COURT: Okay. You preceded the words about clear impression. It's an inference you want me to draw --

MR. RICHMAN: Yes.

THE COURT: -- or, in fact, is it something somebody said?

MR. RICHMAN: That's correct, Your Honor.

THE COURT: Okay. Continue.

MR. RICHMAN: The government has to threaten to cut off the financing in order to limit the debtors' options and perhaps those of this Court as well. But I don't think and I

don't believe this Court should believe that the government is now going to abandon GM if this Court merely says that the use of 363 is not legally supportable in this case. Do it another way. It's not credible to think that the White House will say tomorrow, we've now decided to let GM fail because we don't want to follow the law. We didn't get our way in court on an attempted fast track sale so we're going to give up -- sacrifice three-quarters of our investment and flush GM away and the thousands of jobs with it and the dealer network and the dependent suppliers and so on and so on. All the same considerations that the debtors have argued are important reasons to approve the transaction are at least equally important reasons why the government will obey the law if Your Honor determines that the law is that 363 can't be used on a fast track under these circumstances.

Now, there was a related power or leverage threat that seemed to come through in the hearings, something like an additional drop dead threat that might be added, pressure for approval of the transaction. And that was the suggestion that the UAW agreements to modify their collective bargaining agreement were in some way conditioned upon and could be rescinded or undone by a failure to approve the sale order by July 10. And I thought that's what Mr. Curson said in his testimony.

Your Honor, we checked the documents that were

submitted in evidence in the records and we could not find anything in writing in the evidentiary record which conditions the collective bargaining agreements in any way. And both Mr. Henderson and Wilson testified that those amendments were already in effect and that the amended bargaining agreement is now governing.

In particular, we looked at the amendments that the UAW filed. We just didn't see anything which provided that if the sale order wasn't approved by July 10 that those amendments would be rescinded.

Now, the agreement to fund the VEBA, which we ask questions --

THE COURT: Pause, please. Can you slice and dice that piece of information? If I heard you right just a second ago, you said by July 10. Would you mean to include or exclude by that whether you had a view as to whether the union would continue to perform this day to day stuff if it didn't get its VEBA funding, new VEBA funding, one way or another or if you're back to square one?

MR. RICHMAN: I do have a view of that, Your Honor. My view on that is that the collective bargaining agreement is a binding contract. And it's in effect and it's operative now regardless of what happens to the VEBA at least as I read the record and the evidence. The VEBA deal, I think, is a separate deal. And I understand if it is, at least again as I

understand the record, it makes sense to me because one could argue that the overall settlement in terms of the amendments to the collective bargaining agreement are an asset of the estate and that the VEBA deal is part of a consideration that should actually go to the estate. But if you keep them legally separate such that the VEBA is not inextricably intertwined then maybe you create a better argument that the VEBA is like the equivalent of giving stock to somebody by the purchaser and isn't really consideration for the modification and then the assumption and assignment of the collective bargaining agreement.

THE COURT: Help me on that a little more, because I thought the duty to the UAW's VEBA was in the ballpark of twenty billion bucks and it was a liability rather than an asset.

MR. RICHMAN: Your Honor, all I can say is we didn't find any linkage that would cause that to fail in any way. And in any event --

THE COURT: Your basic point is that, if you read the documents, you're questioning whether Mr. Curson's right in his view that he's got a package deal here.

MR. RICHMAN: Exactly. It goes to the question of whether there's some further dire consequence that Your Honor should consider would result if Your Honor did not approve this transaction by July 10. And I submit that it's not a dire

consequence because of the lack of linkage. And if there's a separate agreement on the VEBA, that separate agreement, I don't know that it's conditioned on a July 10 approval, but presumably that would still be in play for a plan process.

THE COURT: Go on, please.

MR. RICHMAN: As we've seen from the hearings, there are many other questions and issues that a plan process could better address: Why is the government getting full credit for prepetition loans that could be challenged as equity? Doesn't that call for more cash to be put into any deal, whether under 363 or a plan? Other counsel have raised serious questions about the bypassing of rights under Section 1114 of the Code and of attempts to shed successor liability. And we've also raised other arguments in our brief, to which we continue to adhere, including that the transaction should also be rejected as a sub rosa plan.

THE COURT: Okay. Pause, please. On the recharacterization point, are you contending that not only the pre-petition secured debt ballpark or nineteen billion bucks -- I'd have to check, or maybe it's thirteen billion, I'd have to check the exact figure on that -- should be recharacterized? Are you also contending that the thirty-three billion bucks of U.S. and Canadian DIP financing also has to be recharacterized?

MR. RICHMAN: Only the pre-petition debt, Your Honor. I think that in a case that wasn't moving at quite this

lightning speed where parties had a real opportunity to negotiate allocations and distributions, that there would be greater focus on the priority of that pre-petition loan as compared to other creditors. I partic --

THE COURT: But stick with me for a second. Suppose the U.S. government had only bid thirty-three -- credit bid thirty-three billion instead of fifty-nine billion. I'm not aware of there being any bids in the wings that could have trumped a credit bid if it was low as thirty-three billion -- as low as.

MR. RICHMAN: And we know, we know, as a fact that --

THE COURT: -- as thirty-three billion as well.

MR. RICHMAN: We know as a fact that there weren't. I think that the way I would answer that is if the debtors have produced a fairness opinion that indicates that the fair value for the company is 90 billion dollars or 70 billion dollars, and then you back out 19.4 billion dollars, it suggests that the consideration is short by 19.4 billion dollars and that there either has to be a reallocation of the equity or the infusion of additional funds in order to meet the fair price.

But I agree with Your Honor that had this gone differently as a real transaction might have gone -- remember, this wasn't negotiated as a sale of assets. This was a determination of how much money it would take to reach settlement agreements with the favored constituencies, and

everything else was backed into that. And then, so, a price was derived on the back end.

We also argued, Your Honor, that the transaction should be rejected as a sub rosa plan. I'm not going to spend a lot of time on that. The debtors' answer to that is that it doesn't predetermine a plan because, the way this transaction is designed, the 10 percent of stock and the warrants to acquire another 15 percent and, I guess, the 950 million dollars for administrative expenses is being left behind to be distributed in the normal course.

But, Your Honor, if you engage in a transaction which removes from the plan matrix an important class of creditors and give them favored treatment outside of the plan process, that's as much predetermining the plan as leaving them in the plan process. You are still predetermining and creating the construct of a plan but you're doing it through extra plan provisions. So I don't think -- just because this doesn't dictate distributions to every class doesn't mean that somehow it's not a sub rosa plan.

I want to be clear about an important point, and it's another distinction from the Chrysler case, particularly in respect of parties who stand in the position of bondholders, as our clients do. We've never argued, and we don't contend, that GM should liquidate. We support the creation of a New GM. We think it's a fine idea and we defer to the collective judgment

of the professional advisors on that issue.

And we appreciate that GM would already be liquidated if the government had not come in late last year to provide financing that no one else could provide. We wouldn't be here discussing this today if the government wasn't committed to saving GM. But that does not earn the government an exemption from the law. Our gratitude to the government rescue does not include sacrificing our legal principles. Perhaps the government could nationalize GM, and we would all be left with nothing, but they chose Chapter 11. And once you choose Chapter 11, you should comply with all of Chapter 11. The government should not be permitted to cherry-pick which provisions of Chapter 11 it will use and which it will not use.

Right now, the value of New GM rightfully belongs to the estates and all of its creditors. New companies are spun off through Chapter 11 reorganizations all the time. In that normal process, all of the major constituencies participate in negotiations concerning overall value and allocations of that value. The final results are accompanied by full disclosure. Parties-in-interest have protection against oppressive results through Section 1129. These negotiations would determine how much equity in New GM the Old GM should award to the government or the union or to other parties. That's the essence of the Congressionally-mandated corporate reorganization process of Chapter 11.

By taking what would otherwise be a deliberative reorganization involving all major parties on an accelerated basis and calling it a sale that must be completed by June 10 to avoid dire consequences, the debtors and the other favored parties in the allocation of values are engaged in a fiction, in a pretext, in a subterfuge to avoid a plan process in which the allocations of value might be determined differently.

We get their arguments. If you accept that this transaction is a legitimate sale, then of course the purchaser can choose to divide up the ownership any way it likes. And therefore, of course, its arrangement with the UAW and the Canadian and Ontario governments, parties who are providing unique present and future value to the new business, is its prerogative. But if it's not a legitimate sale, or if the other tests of 363 are not met, then these important allocation decisions would not be the purchaser's to make.

If this Court does not have the freedom to push back, if any distressed company can be diverted into Section 363 in order to avoid plan confirmation requirements by overbearing lenders or purchasers setting arbitrary deadlines or, more importantly for the facts of this case, by an overbearing government, then the Court does not truly have discretion.

We have seen before in our history how in times of stress and extraordinary circumstances government asserts itself on more grand and powerful scales than before. In

substance, this appears to be an historic first attempt at a Chapter 11 nationalization. GM has no ability to resist that power. In our system of government, it is the judicial system which is the primary check on that power. This Court can and should draw the line and hold that this transaction goes too far. Doing so is consistent with Lionel and with Chrysler. Such a holding which recognizes the important distinctions between this and every case that has gone before sends a powerful message that even in the bankruptcy courts of the nation's commercial capitol there are limits and that due process and creditors' rights are important values not to be sacrificed in the interest of expediency. Thank you, Your Honor.

THE COURT: Thank you. Thank you, Mr. Richman.

All right, Mr. Parker, I'll hear from you. Mr. Parker, on anything that Mr. Richman addressed, I'll ask you to limit yourself to anything where you think Mr. Richman failed to do an adequate job.

MR. PARKER: Okay, Your Honor. If I may, may I begin by asking the Court to -- for time reasons, and because I think certain things have been adequately argued already, I'm not going to argue some points that I've raised in my objections, but I'd like to preserve those points.

THE COURT: Of course. Anything anybody said in a brief or in a pleading is deemed to have been asserted. I

mean, the purpose of oral argument, in my court, is not to repeat or to have to say again what you said in your papers. It's to give me orally anything which helps me better understand the papers or answer things where you're plugging the holes.

MR. PARKER: Okay. So I'm not waiving anything, any points --

THE COURT: Right.

MR. PARKER: -- by not mentioning it.

THE COURT: That's what I said.

MR. PARKER: I know, I'm just clarifying for myself. I'd also like to also incorporate by reference the arguments of Mr. Kennedy and of --

THE COURT: To the extent you need to, it's done.

MR. PARKER: Okay, and also my immediate predecessor up here.

THE COURT: Same.

UNIDENTIFIED SPEAKER: Mr. Richman.

MR. PARKER: Mr. Richman, right.

Thank you, Your Honor. Your Honor, basically I want to address four points, if I may, four points that I don't think have been addressed. One I wish to address very, very briefly, and I'll begin it with apologizing to the Court for my less-than-stellar performance on Tuesday. But I think that less-than-stellar performance is at least partly the result

of -- I object to the process, and I've objected in my objections, to the process chosen by the debtor. This is not a criticism of the Court or of yourself; this is a criticism of the process they chose.

I don't believe that there has been adequate time to prepare a response to their motion. For example, and after making the example I'll move onto another point, for example, they criticize, or in their oral argument to the Court they have emphasized, that they're the only ones who've provided any valuation scenarios for General Motors. Well, of course, they had several months to prepare those valuation scenarios. We've had less than thirty days. The time frame -- I mean, I filed my objection on June 19th, so I've basically had eleven days. In eleven days you can't find an expert, have an expert get access to the records and create a valuation report. I don't think it can be done. So I'm objecting on those grounds.

But I'll move on. One of the things I'm objecting to, and I believe I'm the only one who's objecting on this, is the limitation-on-liens argument. The -- I rest upon two documents -- well, three documents: first, the 1995 indenture, which I believe is Debtors' Exhibit 10 in evidence, if my notes are correct. Section 1408 provides that it's governed by New York and is to be interpreted by New York law. Section 406 contains a limitation-on-liens provision, which I think the Court can read; I don't think the Court needs me to repeat it.

In addition, there's Parker's Exhibit 1 in evidence, which I believe is my only exhibit, which is a prospectus supplement dated June 26, 2003 for six and a quarter Series C convertible debentures due in 2033, with an attached prospectus dated June 19th, 2003. If you look at page 23 of the June 19th prospectus, the one that's attached to the supplement, you'll find that the identical limitation-on-liens provision is found in that prospectus and that it applies to my bonds. The prospectus also states that my bonds are issued under the 1995 indenture.

Now, the third document that I'm relying upon is -- I believe it's Debtors' Exhibit 6. Again, back there it's difficult to keep track of which exhibit is which, but it's the loan and security agreement dated December 31st, 2008. And if you'll give me one second to get the agreement. Here we go. If you go to page 35 of Exhibit 6, which -- and I'm using the numbers on the top right-hand corner --

THE COURT: Go on.

MR. PARKER: Do yours have the same pagination? Otherwise, I'll use the pagination from the original document.

THE COURT: Why don't you speak to it, because it'll take me a little bit of time to find it. But --

MR. PARKER: Sure, if I may.

THE COURT: -- I'll assume, unless somebody disagrees, that you're accurately reading to me. And I'm

familiar with the issue. What I want you to focus on is excluded assets within the meaning of the December 31st, 2008 agreement.

MR. PARKER: Yes, sir, I know, I'm getting there. Paragraph -- or I should say section 4.01(a) creates a lien on all real and personal property wherever located, except where excluded. Okay, section -- subsection - sub-subsection (a)(6) provides a lien on all personalty; it gives a nonexclusive definition of personalty, including equipment and instruments.

Section 4.02 provides that General Motors is to provide UCC filings in order to perfect the government's liens on all equipment. And there's a schedule of all the properties where equipment is located that UCC liens are to be filed for; that's section .402 (sic) on page 36. And, again, I'm using the pagination 36 of 111 in the top right-hand corner.

Section 6.09 has excluded collateral, and it refers one to schedule 6.29. It states that section 6.29 is a complete and accurate list -- by the way, that's 6.29, I'm sorry, not 6.09. Section 6.29, which is on page 51 of 111, states that, on excluded collateral, "See, set forth on Schedule 6.29, is a complete and accurate list of all excluded collateral of each property." When you go to schedule 6.29, you get a blank page. It says "Schedule 6.29, Blank". So apparently there is no excluded property.

It then goes on --

THE COURT: Mr. Parker, are you going to eventually get to subsection v --

MR. PARKER: Yes, yes.

THE COURT: -- romanette v, one of the definitions of excluded collateral?

MR. PARKER: Yes, sir, but -- okay. I am eventually. My point about what I -- to summarize, I was going through the documents to show you -- I realize that there is a subsection v on -- bear with me a second -- section 4.01, subsection v, defines excluded -- has a definition of excluded property but says "any property, including any debt or equity interest, any manufacturing plant or facility which is located within the continental United States, to the extent that the grant of a security interest therein to secure the obligations will result in a lien or an obligation to grant a lien in such property to secure other obligation". I understand that that's there. What I'm trying to show the Court is that even though that's there they still went and filed liens on property. And I don't think you can file liens on property and get an excuse for it by saying oh, well, I filed someplace else a statement that if I did it I didn't mean it.

The documents show that -- I might add, if you go to section 6.30, Mortgaged Real Estate, that's actually the only section that I've been able to find where they have language that says we do not have a lien on mortgaged real estate if the

lien would give rise to a lien in favor of a person as set forth in schedule 30 hereto. By the way, schedule 30 hereto is also blank.

It seems to me that they have, whether they were allowed to or not, and whether they've excused themselves from doing it or not, filed liens on two classes of property that I would like to bring to the Court's attention. The first class of property is listed in schedule 6.25, which is the UCC filings. They have filed the UCC filing -- lien on the following -- on the manufacturing and equipment of the following localities: the Doraville Assembly Center, the Janesville Assembly Center, the Moraine Assembly Center, the Massena Castings, Pittsburg Metal Stamping, Grand Rapids Metal Stamping, Spring Hill Manufacturing Campus, Wilson Run (ph.) PDC, Latsina (ph.) PDC, Pontiac North Pitt 17, Pontiac North PC, Yps -- I can't even pronounce it -- Ypsilanti Vehicle Center, Beavertown PDC, Grand Blanc Metal Center, Former Cherry Town Assembly, Former Validation Center, Former Lansing Plants 1, 2, 3, and 6.

Finally, Your Honor, under schedules 1.1 and 1.2, they've made it clear that among the assets that have been liened are Saturn. Saturn is -- at least according to the testimony of Mr. Fritz Henderson, Saturn is the only manufacturing -- American manufacturing subsidiary of General Motors. They've liened that. And indeed, because they liened

that, I believe that Saturn is a -- has an accompanying bankruptcy proceeding that's consolidated with this one.

Now, I realize they say they gave themselves an escape clause and if we lien something and we shouldn't have it as liened. But in point of fact, they did lien it. And the escape clause shows that they knew that they had obligations not to lien it. And when they liened it, when they liened these facilities and when they liened Saturn, under the terms of the bond indenture, the 1995 bond indenture, the bondholders acquired liens equal and ratable to that of the government.

THE COURT: Mr. Parker, do you think that if Mr. Schwartz had come in to me and said I got a lien on that stuff and any other party-in-interest in the case showed me romanette v he wouldn't have been left out of court?

MR. PARKER: I don't know, Your Honor. I do know that they attempted to perfect a lien on these assets even though they were prohibited from doing so. And, Your Honor, if nothing else, I believe that that goes toward the issue of bad faith. I believe -- which, by the way, gets us to the next issue that I wish to discuss.

THE COURT: Good time to do it.

MR. PARKER: Pardon?

THE COURT: Go ahead, please.

MR. PARKER: Give me a second to get there.

In order to approve a 363 sale, the government must

allege and prove good faith. In looking at good faith, the Court, I believe, needs to take a look at the totality of the circumstances concerning not only the sale but of the events leading up to the sale under the arrangement between the lender and the debtor. Even if they did not succeed in acquiring liens on the properties -- on that long list of manufacturing equipment that I listed -- and on Saturn, the only -- to the best of my knowledge, and according to Mr. Henderson's testimony, the only manufacturing subsidiary of GM, they attempted to acquire liens. They made UCC filing statements. Schedule 6.25 shows the places where they scheduled and what they -- the places where they liened the equipment and what they liened. Doing so, attempting to do so, Your Honor, is an attempt to violate the covenants of our indentures.

In addition, the further evidence of bad faith is found in the fact that their 363 sale procedure is tantamount to a distribution plan which discriminates in favor of certain favored creditors against others, as has been previously argued by others. Also, their 363 plan, as argued by Mr. Kennedy, is designed to avoid a Section 114 hearing and the effects of the 114 hearing.

THE COURT: 114?

MR. PARKER: 1114, I'm sorry. 1114. Further, Your Honor, as ably argued by --

UNIDENTIFIED SPEAKER: Mr. Richman.

MR. PARKER: Mr. Richman, sorry. You can obviously tell there's not been much coordination between us. As ably argued by Mr. Richman, there is no real purchaser. There is no real -- there's been -- there's no real purchaser, there's been no real negotiation. This is basically the government selling GM to itself.

Furthermore, Your Honor, and I guess this gets me to my next point, I've argued in my objection that the government is not authorized to purchase General Motors under EESA, that is, the Emergency Economic Stabilization Act, or under TARP, the Trouble Assets Recovery Program. The -- as Mr. Wilson testified, the loans that were given to General Motors were given from TARP funds. I have argued -- and I'm not going to repeat the arguments here, I'm going to rest upon the argument in the objection -- I have argued that the government is not authorized, was not authorized to make those loans under TARP. Making loans that it is not authorized to make is also evidence of bad faith.

I realize that there is some question of whether I have standing to raise this issue, and I'd like to address that very briefly. I do not believe that I have standing to challenge the use of TARP money for the DIP lending, for the DIP loans. I believe you entered an order authorizing DIP financing back on June 25th. I had no standing to object because I was not harmed by that action. Because I did not

have standing to object, I didn't object. However, I am harmed by the government's proposed sale procedure, and because I am harmed -- if they are going to use a credit bid of roughly forty-nine billion dollars of TARP money to purchase GM. So they are using TARP money to make a purchase.

If my argument, as set out in the objection, is correct, they are not authorized to use TARP money. They may use TARP money to buy a bank; they may use it to buy all sorts of financial institutions. But whatever else General Motors may be, it is not a financial institution. The use of money to do something that they are not authorized to do is evidence of bad faith.

Finally, Your Honor -- further, Your Honor, on bad faith, I have argued in my brief that there are Constitutional probl -- that there are Fifth Amendment taking problems with the proposed proceeding. I'm not going to repeat those arguments here. But, again, those concerns are evidence of bad faith.

Which gets me to my final point. I'm trying to go as quickly as possible; I'm trying not to use too much time. My final point, Your Honor, if I can find it -- oh, yes. I need to refer to one more exhibit, if I may. Here we go. My final complaint, Your Honor -- and by the way, I -- my final complaint refers to the scheme of distribution, the distribution of the sale proceeds of this 363 proceeding. Now,

I want to make clear, I'm not objecting to the sale price. As I understand it -- and I'm referring now to the declaration of Stephen Worth, Debtors' Exhibit 3, Exhibit F, page 15. I don't know what exhibit number Stephen Worth -- I don't know what exhibit number it is, but his declaration is in evidence -- he testified -- Exhibit F, page 15. It is an analysis of the proposed transaction. It shows that the United States Treasury is paying 104.5 billion dollars. By the way, I'm using the lower numbers in these calculations. There's a difference; he gives a range of -- it's usually only two to three billion dollars different; I'm using the lower number. You can redo the calculations with the larger number if you prefer.

He gives a bid of 104.5 billion dollars. That's what, according to him, the Treasury is paying for General Motors. I think that's a fair price for General Motors; I'm not quibbling over that. According to him, the way that the government is paying it is they're making a credit bid of 48.7 billion dollars of secured lending. Now, I don't think he quite explained to you how that number comes about, so I'd like to explain it to the Court, if I may. The total secured indebtedness, excluding my argument about bonds, the total secured indebtedness is approximately fifty-six billion dollars. The way you get that number is you take the 19.4, you take the 33.3 and you add on the 6 billions that are owed to previously secured lenders. You add all those numbers up; you

come into approximately fifty-six billion dollars.

The government is taking back a loan, a secured loan, from General Motors, the New General Motors, of approximately seven billion dollars. They're also taking back two billion dollars in preferred stock. If you take those two numbers out, you come up with the 48.7 billion dollars that is listed here on page 15 of Exhibit F of Stephen Worth's declaration.

Now, I fully recognize that secured lenders should be paid first. So out of the 104 billion dollars they should get their 48 billion. The problem is that when you look at the sheet you realize that he -- that the other way, the other consideration given, is that -- and if you look at the second column -- the government is assuming and paying in full, or agreeing to pay in full, 48.4 million (sic) dollars of unsecured debt, which, by the way, according to the testimony of everybody who's been up here, does not include the debt of the UAW VEBA.

Now, personally, I find that testimony to be -- I question the testimony. It seems to me that if the UAW VEBA is getting 20.5 million dollars and is releasing its claim of 20. -- did I say million? I meant billion -- 20.5 billion dollars and releasing its claim of 20.5 billion dollars in the estate, that seems to me to be a payment.

For the purpose of this argument at the moment though, I'm not going there. I've argued that in my objection;

I will -- obviously have argued that here. I agree with that argument. But I'm arguing something slightly different. If you take -- since the 20.5 billion is gone, according to this sheet the total indebtedness for General Motors, that is, I guess, real indebtedness, not just pro forma indebtedness, is roughly 104.5 billion dollars, excluding the -- no, that's not right, it's 48 and 48 makes 96; 97 plus 35 makes -- roughly 132 billion; I may be off by a billion or two because I did a fast calculation in my head. The real debt in General Motors is 132 billion, excluding the 20.5 billion that's owed to the VEBA. The government's getting 48.7 billion to pay off secured lenders. That leaves 83.4 billion dollars in unsecured debt that needs to be taken care of. 48.4 billion is being paid 100 percent on the dollar; 35 billion, including the 28 billion in bonds -- and by the way, they keep saying it's 27, but when you do the math with interest to June 1st or May 31st, take your pick, 2009, it actually comes to 28 billion. The 28 billion dollar debt is getting 7.4 billion dollars; roughly 20 cents on the dollar.

So under the sale procedure, some unsecured creditors, favored unsecured creditors, and we're not talking about the VEBA now, are getting a hundred cents on the dollar while others are getting twenty cents on the dollar. My objection is let's take the purchase price but let's treat all the unsecured creditors equally and ratably. And if you do

that, they would all get sixty-six cents on the dollar.

Furthermore, Your Honor -- so, Your Honor, that, I believe, is my final point. The government is not only showing favoritism with regard to the VEBA; they're showing favoritism with regard to other unsecured claims. In a Chapter 1129 proceeding, those unsecured claims would be treated like all other unsecured claims. And this, by the way, gets back to good faith. In order for the government to be showing good faith, they must be treating all unsecured creditors fairly.

Now, allegedly they have a good business reason for treating the VEBA differently. I don't buy it; you may. I'm not arguing that for this second. I don't agree with it. I've argued otherwise in my objection. But putting that to one side, they still have an obligation to treat all the remaining creditors fairly, and they're not doing so. They're picking winners and losers. And they've given no business justification for these other winners that they've picked.

And for these reasons, Your Honor, I would urge you to reject the sale. And I will make clear, I want General Motors to reorganize. It is not in my interest or any bondholder's interest to see General Motors liquidated, although we have not had time to make a liquidation analysis. All we want is an opportunity to negotiate in good faith with the government to come up with a plan that is fair, fair to all unsecured creditors.

With that, thank you very much, Your Honor, and I want to thank you for your indulgence over the past three days.

THE COURT: Very well. Thank you.

All right, Mr. Bernstein?

MR. BERNSTEIN: I'll try to be brief, Your Honor.

THE COURT: Yes, I understand the issues. The main thing I want to hear from you on is whether there's recall authority supporting the idea that the consent decree obligation is something other than a monetary obligation.

MR. BERNSTEIN: Yes, Your Honor. First thing that supports it is that -- may I approach the bench, Your Honor?

THE COURT: Yes, sir.

MR. BERNSTEIN: Nolan entered a joint stipulation, modified the consent decree and then entered the pack of them as a final judgment of the United States District Court for the Southern District of Indiana.

PENINA 1:24:32

THE COURT: Is this new evidence, or is this --

MR. BERNSTEIN: I believe you can take judicial notice of this. We found this last night in response to Your Honor's question, and you'll see the second as the final judgment, Your Honor. It was entered by Judge Nolan under 54(b).

THE COURT: All right. Pause, please, Mr. Bernstein. Mr. Miller, do you object to me considering this?

MR. MILLER: No, Your Honor.

THE COURT: Okay.

UNIDENTIFIED ATTORNEY: I'm sorry, Your Honor, we don't have a copy of the judgment --

MR. BERNSTEIN: I can give you -- I have extra copies for you, I'd be glad to provide them. Here's the stipulation and order, and let's see if I have copies -- and here's an extra copy of the final judgment.

The second point, Your Honor, the legal context is set by the Supreme Court of the United States. One of the leading cases is Rufo v. Inmates of Suffolk County Jail. The citation is 502 U.S. 367. And the relevant citation is at page 378: "There's no suggestion in these cases that a consent decree is not subject to Rule 60(b)." I have Rule 60(b) as a rule for modifying judgments.

THE COURT: Right. And --

MR. BERNSTEIN: Right. "A consent decree, no doubt embodies an agreement of the parties, and thus in some respects is contractual in nature. But it is an agreement the parties desire and expect will be reflected in and be enforceable as a judicial decree that is subject to the rules generally applicable to other judgments and decrees."

The case counsel cited was one of these cases involving an interpretation of the language of a consent order or a consent decree, and yes, to that narrow context, the

courts look to contractual reasons, because the judgment reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce -- I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context.

"The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather than have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The --"

THE COURT: I hear you, Mr. Bernstein. But where I need help from both sides --

MR. BERNSTEIN: Yes, sir.

THE COURT: -- is whether when a federal court proceeding gives rise to a judgment, consent or otherwise, that creates a monetary obligation --

MR. BERNSTEIN: Yes, sir.

THE COURT: -- where the monetary obligation is a

discharge of a debt?

MR. BERNSTEIN: I misunderstood the question that you raised yesterday. I thought you were raising the question whether this was a mere contract or whether it was --

THE COURT: That was, for better or for worse, another way of saying the same thing. And if I didn't say it as well as I should have, I owe everybody in the room an apology. But as I understand the issue, a consent decree issued by a federal court required the debtor to pay money.

MR. BERNSTEIN: That is correct, Your Honor.

THE COURT: And the question that I need help in is, is this like a lot of the other -- the debtors' other contractual debts which, at least, seemingly fall within the unsecured creditor community, or whether there's something special about a monetary obligation that's been created by a federal court decree that makes me analyze it in a different way?

MR. BERNSTEIN: I would answer it this way, Your Honor. This is a judgment, and the deliberate refusal by General Motors to honor that judgment was inequitable conduct, indeed conduct potentially punishable by civil contempt. And therefore the Court has good grounds to modify on an equitable basis, the sale agreement to provide for the small adjustment we requested. And of course, Mr. Wilson yesterday testified it was unlikely that the transaction -- the financing would be

affected by that.

THE COURT: Okay.

MR. BERNSTEIN: Thank you.

THE COURT: Thank you very much. All right. Yes?

MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski --

THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us.

MS. WICKOUSKI: Um --

THE COURT: And that your predecessors haven't done it adequately.

MS. WICKOUSKI: -- yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I think, innocent inadvertence on the part of debtors' counsel, they were not addressed in the omnibus objection by oversight.

This came to our attention on the eve of the hearing, and we've had subsequent discussions that I think have partially resolved and expect to resolve over the next week, our objections. So I wanted to indicate what has been discussed. I'm also here with counsel --

THE COURT: Tell me, Ms. Wickouski, I'm wondering how

much this is consistent with what I said before. If you have a deal, and you're telling me that you're working it out, this isn't the time that I wanted to deal with matters of that character. And I don't want to be a jerk or a martinet, but I am trying very hard in a case with 850 objections, to deal with them in a way so that I can triage the matters before m.

MS. WICKOUSKI: I understand, Your Honor. And I apologize. It was my misunderstanding that the indenture trustees were not being heard at this time.

THE COURT: Well, if you're saying you've got a lien and that your lien has to be addressed, and you've either got to get satisfaction of the lien or a carry-through on the lien, or something like that, that doesn't strike me as rising to the level of controversy as a lot of the other matters that I have.

Now, if I'm understating your legal concerns, and you want to argue a legal point, I'm not going to but a sock in your mouth. But if you're telling me that you and the debtor are having a dialogue that lenders and debtors have all the time to address issues of this character, I applaud that, and I simply say, if you want to confirm your understanding at the end, when I deal with other similar confirmations, I'd be happy to hear that.

MS. WICKOUSKI: Yes, Your Honor. And my apologies. I misunderstood in terms of the course for proceedings, and I --

THE COURT: I understand that I don't always speak with perfect clarity. And no offense intended. But certainly I want to deal with it, Ms. Wickouski.

MS. WICKOUSKI: Understood, Your Honor. Thank you.

THE COURT: Thank you. Okay. Do I have any other substantive objections that are actually being argued that I haven't heard yet? Mr. Schulman? Mr. Mayer?

MR. MAYER: Yes, Your Honor. If I may. Well, this --

THE COURT: Oh, another asbestos objection.

MR. REINSEL: Your Honor, Ron Reinsel on behalf of Mark Buttita. I will try not to rehash anything Mr. Esserman said or anything the very eloquent Mr. Jakubowski said. I want to make just a couple of points and a clarification.

We have objected on a number of grounds, including sub rosa plan, and the extent to which the requested sale extends pat the bounds of 363, specifically to claims, and most importantly to future claims; that they are not interests in property, and a certainly that future claim that has not come into existence, has not arisen, goes so far beyond the pale of an "interest in property" even if that is permitted. But I want to concentrate on just a couple of points that distinguish this case both from Chrysler and TWA, and also the White Motor case that the debtors have relied on.

Contrary to Chrysler, Judge, and contrary to TWA,

this isn't a sale of assets that will meld assets into an existing business. It is, instead, a standalone, complete continuation of the exact same business enterprise. It is the same products; it is the same employees; it's the same management; it's the same marketing; it's the same logos. And to accomplish what the debtor and Treasury has indicated they want is "a seamless transition in the eyes of consumers." In other words, New GM is just the same Old GM.

Yet, they want to escape the strictures of potential continuation of liability as a successor of existing GM. They look -- in the order that they're going to present to you, while we haven't seen any final order yet, but we've seen what they're looking for. And that is complete, but not just an approval of a sale, but protection from specific factual findings that may lead subsequent state courts to find that there is continuation of liability under relevant state law; despite the fact that many of those findings fly specifically in the face of the evidence that we heard here, that could well lead a state court to find such continuing liability.

Secondly, Judge, as you noted yesterday also in that order, they're looking for an injunction. And you asked if that injunction didn't kind of sound like a duck -- like the injunction under 524(g). Well, Your Honor, it not only sounds like a duck, it quacks like a duck, it walks like a duck, it flies like a duck, and leaves feathers behind it like a duck.

It is completely the injunction as to future asbestos liability that was provided for in Section 524(g).

Now, aside from the discriminatory treatment that's provided here, they're trying to get protections under the code without complying with the code's requirements. Now, Mr. Miller pointed out that this is not an asbestos case. This is not an asbestos-driven case, and that they're not seeking relief under -- they're not including Section 524 treatment here. All of that is absolutely true. The point is, however, they're trying to get equivalent relief without complying with the statutory requirements. And that goes both to the ability to even give the relief, as well as the effective notice and due process requirements that are required in order to get that relief.

Let's distinguish some of those cases -- the other cases. White Motors, it acknowledges, found that 363 did not provide a basis to sell assets free and clear of claims. And it went on to find that in order to do that, however -- this is certainly beyond the express statutory language -- the statue says "free and clear of interest in that property."

Now, whether or not claims become interest in property, cited in other cases. But it found that 363 didn't provide that basis. We had to look to Section 105 of the code, the Court's general equitable powers to make things happen --

THE COURT: Yes, I know. We went through that with

Mr. Jakubowski.

MR. REINSEL: All right. But here's where I wanted to get with that, Judge. White Motors was decided in 1987. In 1994 Congress enacted Section 524(g). Section 524(g) provides a comprehensive design by Congress for dealing with asbestos claims specifically, both present, and more importantly, future claims; looking at the unique situation that that kind of injury entails, particularly that it's an insidious product, it went into commerce, and it has a very long latency period, such that from exposure to actually manifesting a disease, finding out that you have a claim, is a matter of decades. Ten, twenty, thirty, forty years. Such that those folks who will develop disease, who will become claimants, are not presently claimants. In fact, the nature of their potential future illness is specifically excluded from the definition of a claim under the Bankruptcy Code. And in fact, under 524(g) it's referred to a demand.

The problem of recognizing of how to give adequate due process to those future potential claimants, those demand holders, and how to give adequate notice, because you can't give them notice -- in fact, we asked Mr. Henderson -- one of the few questions I asked here, was, you gave broad notice of these proceedings in order to give everyone notice of their rights were at issue and could be affected. But he recognized that GM has 650 million dollars-worth of projected asbestos

liability going out over a period of at least ten years, and that many of those claimants, many of those potential claimants, don't presently have a disease, don't know they have a claim, and that whatever publication notice was given to them, wouldn't have reached them and would have done them no good whatsoever.

In Chrysler, they kind of gave that notice issue fairly short shrift. There's one -- they deal with it in about two sentences on page 111 of that decision, simply holding that "With respect to potential future tort claimants, their objections are overruled, as those issues have been discussed. Notice of the proposed sale was published in newspapers in very wide circulation, and the Supreme Court has held that publication of notice in such newspapers provide sufficient notice to claimants 'whose interests or whereabouts could not be with due diligence, ascertained'", citing to the Supreme Court's decision in Mullane v. Central Hanover Bank.

Mullane was a trust fund case. You either held funds in a trust or you didn't. This --- we're not presented here with a question of we can't ascertain the location of folks; we can't, with reasonable due diligence send them a specific notice, such that the publication even becomes sufficient. We're dealing with individual whose claim doesn't yet exist, who don't know that they have rights that may be affected, and won't know that for years. That's why Congress, in Section

524(g), provided mechanisms to provide due process to those folks, by the creation of a specific representative in the court.

Last week you were asked to appoint someone -- a futures representative to look out after the interests of those future folks. You declined. You said we may look at that later. But the point is, there is no one here looking out for their interests today. They didn't get notice of this proceeding. You can't give effective notice of this proceeding. And no one is representing them here. I want to be clear, I am representing a single current asbestos claimant. Mr. Esserman was representing single current asbestos claimants. We're not advocating -- other than saying they're not here, Judge, we're not here in a position where we can reasonably represent their interests in this case.

But let me be clear about the impact of 524(g) here. As we said, this is not an asbestos-driven case. There is no requirement that the debtor use 524(g) here. However, the point is, if they don't -- if they don't employ the processes that Congress designed in that section of the code to provide adequate notice, adequate due process to claimants, then you don't get the protections that that section provides. You don't get the injunction that they're looking for, at least as to asbestos claimants. You don't get the removal of future successor liability as to those asbestos claimants. It's a

question -- it's up to the debtor, and in this case, and the buyer, to decide if they want to include those sorts of relevant protections. If they don't -- protections for the claimants and future claimants. However, if they don't the point is, they take their chances, and you, Judge, can't give them the same protections as that specific statute would under the Court's general 105 equitable powers. That's all, Your Honor. Thank you very much.

THE COURT: Thank you. Mr. Mayer?

MR. MAYER: Thank you, Your Honor.

(Pause)

MR. MAYER: Excuse me, Your Honor. I need thirty seconds to decide -- to figure how much of what we talked about last night can be put on the public record at this moment. Is it possible to take a five --

THE COURT: How much time to you need?

MR. MAYER: -- take a short recess, perhaps?

THE COURT: Actually, since we've been going so long, let's take a ten-minute recess.

MR. MAYER: Okay. Thank you, Your Honor.

THE COURT: See you back in ten minutes, folks.

(Recess from 10:47 a.m. until 11:10 a.m.)

MR. MAYER: Thank you, Your Honor. And good morning. Again, Thomas Moers Mayer for Kramer Levin Naftalis & Frankel, counsel to the official committee of unsecured creditors.

First, a housekeeping item. I'm pleased to report that we can't confirm that we are fine on the GE matter; I think that may be a typo. My partner at Waldorf was actually with his wife at a medical facility and was able to get to us and tell us he had this --

THE COURT: That's fine.

MR. MAYER: The committee is prepared to withdraw its limited objection to the sale motion subject to the following:

First, individual committee members have forcefully advocated certain of the arguments advanced in the committee's limited objection, and the committee's withdrawal of its limited objection is without prejudice to any position taken by those individual committee members on their own behalf.

Second, the committee's withdrawal of its limited objection is subject to the completion of the wind-down budget and the sale order to the committee's satisfaction. And in that connection, Your Honor, I'm pleased to report that in literally the last sixteen hours, in a meeting that went until I think 2 in the morning and resumed at 7, and it was handled primarily for the committee by FTI's Conner and Anna Phillips and two partners from my firm who are not here today, Amy Caton and Bob Schmidt. Actually, Bob is here, I apologize.

We were able to close the substantive gap on the wind-down budget. My understanding, which I would ask the government to confirm is that the total amount of the facility

being provided to cover wind-down expenses has been upsized such that the government is going to make available financing in the amount of 1.175 billion dollars, Your Honor.

In addition, there is an agreement that asset proceeds which have previously been dedicated to the repayment of the government's facility will be available to fund additional expenses if needed.

The government has agreed that asset sale proceeds that were previously dedicated to the repayment of the government's wind-down facility will now be available for the payment of wind down expenses if needed.

MR. JONES: Also correct, Your Honor. And I should make clear that the funding facility is on a non-recourse basis, as has been the case throughout these discussions.

MR. MAYER: The details are still being fine tuned, but those are the highlights. We also had useful discussions with AlixPartners on its administration of the wind-down, again, details will be forthcoming. But we believe we have an agreement in principal on certain elements on that that are important to us and will be disclosed at a later time when Alix is prepared to come forward with its application.

With respect to corporate governance, there are two time periods. There's a period between now and confirmation and -- strike that. Consummation. And there's a period between consummation and final distribution. And to be precise

we talked in this proceeding, Your Honor, about a sale consummation, that's not what I mean here. I mean, there's a period between the sale and the consummation of a Chapter 11 plan. And then there's a period after consummation of a Chapter 11 plan. And we have agreements in principle for the most part on both periods. One is ready for publication.

During the period from the sale until consummation of a plan of reorganization, it is our understanding that the board of directors of this debtor will be composed of one designee from Alix, one designee from the creditors' committee. And there's a third individual who the parties have agreed on, but I'm not entirely sure he has agreed on it, so perhaps I should keep his name confidential for the moment. But we have an agreement on a person that would be acceptable to both of us. And actually is quite a good pick.

And, again, the permanent board -- the board for the post-consummation, GM -- Old GM will be in a plan of reorganization and disclosure statement, itself, but we have the outlines of an agreement on that as well.

Based on those agreements and one or two other things, there was an issue that came up yesterday, about workers' compensation claims in connection with the State of Michigan. Our understanding is that the order or relevant documents will be changed so as to have New GM bear responsibility for Michigan Workers' Comp claims. Old GM will

not bear responsibility for Michigan workers' comp claims. Does that need to be amplified.

MR. JONES: No amplification needed, Your Honor. That description is correct so far.

THE COURT: Am I right in assuming Michigan has the most workers and potentially the most workers' comp?

MR. MAYER: Mr. Henderson is nodding yes.

Finally, the committee reserves its rights with respect to the master sale and purchase agreement and related documents. As indicated by the narrative as to how late we went last night, these things are still being machine, as is not uncommon. And we intend to continue to work with Treasury and the debtors. They fully involved us last night, we appreciate that. We look forward to working with them to reach a consensual resolution on these documents and we expect that we will reach some if for some unforeseen reason there's an issue of such moment that compels us to come back to the Court we will let Your Honor know. But this is in the nature of negotiating documents that we expect to reach an agreement on and one that does not affect what I have said previously.

And if the Court has any questions, I'm happy to answer them.

THE COURT: Just a couple. If I heard you right the creditors' committee is withdrawing it's limited objection and it is no longer taking the position one way or the other on the

tort and asbestos issues that at one time the creditors' committee as a whole were taking. As of now you're just leaving that to the individual advocates on both sides.

MR. MAYER: That's correct, Your Honor.

THE COURT: I sense that you folks are working very hard to further narrow issues. But this is an ongoing process. Is it possible for you, in consultation with other parties, to figure out a mechanism to keep me informed over the next several days, even though it's a holiday weekend, so that I can keep my arms around where you are in that. Obviously, I don't want to be ex parte. You have to figure out a mechanic to notify me. Not on what's going on but when issues are buttoned up, just like you reported to me now.

MR. MAYER: Yes, Your Honor. I think together with the debtors and Treasury we can definitely do that.

THE COURT: Okay. Anything else at this point, Mr. Mayer?

MR. MAYER: Well, we are withdrawing our objection so we are no longer opposed to this transaction going forward.

THE COURT: Okay.

MR. MAYER: Thank you.

THE COURT: Thank you very much.

MR. MAYER: I don't want to leave any confusions. The committee's papers were originally not in opposition to the transaction going forward. The committee remains in support of

the transaction going forward. The particular objections that we had to features of the order, those are withdrawn, and so you can view the papers that we have filed the withdrawal of those objections as being in support of the transaction.

THE COURT: Okay.

MR. MAYER: Have I neglected to -- about members in the audience, people we negotiated with, if I misstated or omitted anything. Thank you, Your Honor.

THE COURT: Thank you. Forgive me, which indentured trustee do you represent, Mr. Feldman.

MR. FELDMAN: I represent Wilmington Trust Company, the indentured trustee under the 1995 indenture and 1990 indentures, with bondholdings in the aggregate of more than twenty-three billion. So we are the principal indentured trustee in the case, with it's clear to say the largest unsecured creditor constituency that will remain with Old GM in this case.

Wilmington Trust Company also serves as the chairman of the creditors committee. I will note there's been much said about the equities of this case and the various parties involved in the case, and about the importance of employees, the importance of customers, the importance of dealers, the importance of tort victims.

GM is an interesting case. Typically, when I stand up here on behalf of bondholders, I'm standing up on behalf of

major financial institutions. GM bondholding are widely distributed among thousands of mainstream Americans as well as those financial institutions. So it was with -- in consideration of our entire constituency. Some subset of our constituency is represented by separate counsel. Paul Weiss represents as stated in their 2019, approximate twenty percent of the bondholding class. Mr. Richman according to his 2019 represents three bondholders -- I think three bondholders aggregating, about two million of the twenty-eight billion bondholders. And Mr. Parker has indicated that he is in his individual capacity a bondholder.

We stand up here and we filed our papers on behalf of those without a voice in the case. Wilmington Trust as an indentured trustee believes it's his job to preserve and protect the claims of the bondholder community that it represents. And it is with that fiduciary duty in mind that we carefully considered the transaction that was presented. Wilmington Trust was not part of the team negotiating the transaction. We came to this party and we got a chair at the table, frankly, after the deal had been cut. And we were presented with a binary choice, which is to support the sale or to seek to object to the sale. And effectively as has been dictated earlier, to potentially role the dice and hope upon an objection to the sale that a debtor recovery for bondholders was forthcoming. We took that obligation and that concern very

seriously. We had extensive discussions with the debtors' advisors, with the committee's advisors, with the committee members themselves, and with the ad hoc bondholder advisors. And when I say the ad hoc bondholders I'm talking about Paul Weiss and Houlihan. We reviewed the papers of substantially all the parties in this case, with particular attention to the papers filed on behalf of bondholders which are within our constituency. And based on all of that information available to us, we were of the view, and as our joinder indicates, that based on all the facts available we felt that under the current facts and circumstances that the sale appeared to be in the best interest of the bondholders.

We did, however, have some particular concerns with the transaction, not seeking to, frankly, to derail the sale from going forward. But to ensure as Mr. Miller indicated in his comments, that the sale creates a pie and it creates a universe of people who are going to fight over that pie. We understood that was the game when this case filed. What's going to happen post-closing was there was going to be a numerator and that is stock and warrants that the bondholders and the other unsecured creditors are going to have discussion and potential litigations over, how big the denominator was. What we were fundamentally concerned with at the outset, was that the size of the pie was set. We have heard today that the wind-down budget issue, we had heard on the eve of this

hearing, that the wind-down budget was insufficient. And we were concerned if the wind-down budget was insufficient that it would eat into the stock and the warrants that had been set aside as testified by various witnesses, was designed to be set aside for unsecured creditors. We were concerned that that wind-down budget would gain access to that stock and warrants. And we've been told based on the representations today in Court that that wind-down budget has been increased by 225 million dollars. Plus the proceeds of any asset sales. And we are comforted by that fact.

We reserve our rights to review the definitive documentation in connection with that issue, and we will work alongside the committee, as we have throughout this process to streamline the process.

But with that in mind, Your Honor, and in closing -- and I think that Mr. Richman on behalf of his three individual creditors and Mr. Parker on behalf of himself, they have the ability to make informed decisions by themselves as to whether or not they would like to roll the dice and potentially seek alternative outcome. Unfortunately, we as -- fortunately unfortunately, as a fiduciary for all these bondholders, our job is to preserve and protect the value that is available to bondholders under the deal. What we don't see and notwithstanding Mr. Richman's very eloquent presentation, what I haven't seen yet is a clear articulation of what happens if

this sale doesn't go forward, and, in fact, we got to planned process. I think on behalf of Wilmington Trust I would say it's not at all clear to me that on behalf of all the bondholders that we represent that a plan process and the delay attended to that plan process, would be designed to enhance the recovery. Or would, in fact, enhance the recovery to bondholders under this case. Frankly, it made the delay. And the other issues that may be attended to a plan process could very well diminish the recovery to bondholders. It's a risk on behalf of our twenty-three plus billion dollars worth of constituents we're not willing to take. And with that, Your Honor, we withdraw our joinder subject to the reservations I've indicated.

THE COURT: Thank you. Ms. Christian, you're the other indentured trustee?

MS. CHRISTIAN: Yes, Your Honor.

THE COURT: Come on up, please. Is Law Debenture Trust your client?

MS. CHRISTIAN: That's correct, Your Honor. Jennifer Christian of Kelley Drye & Warren for Law Debenture Trust Company of New York as proposed successor indentured trustee for the holders of eight series of GM's bonds.

Your Honor, Law Debenture fully confers with the committee and with Wilmington Trust, and is prepared to withdraw its joinder to the committee's limited objection

subject to the conditions that have been outlined and with eh full reservation of our rights. Thank you.

THE COURT: Okay. We up to --

MR. FRANKEL: Good morning, Your Honor. It's Roger Frankel from Orrick Hamilton. I represent the GM National Dealer Counsel and the committee that is formed. We also represent Paddock Chevrolet that's a member of the official committee.

I wanted just to state for the record we had filed a limited objection, reservation of rights. We had been working with the debtors and have been satisfied since we filed that and even before we filed that that certain concerns that we had have now been resolved.

This committee is comprised of dealers that were elected by the entire dealer body as well as three members of the National Automobile Dealers Association. The National Automobile Dealers Association is also an ex officio member of the committee. And we think it's important for the dealer voice to be heard here and we are supportive that his transaction move forward and move forward as quickly as possible.

The one thing that I would add, Your Honor, I just heard yesterday for the first time, the recommendation of the privacy ombudsman, briefly looked at the report this morning, and I would hope that GM would incorporate and Treasury would

incorporate the recommendations of the privacy ombudsman in the sale order. Thank you, Your Honor.

THE COURT: Okay, thank you.

MS. TAYLOR: Good morning, Judge. I'm Susan Taylor, I'm an assistant attorney general for the State of New York and I represent the interest of the Department of Environmental Conservation here today.

We filed an objection separate and apart from that as to which Ms. Cordry has been speaking. And I am here to tell the Court that we are not in the same category as many of the objectors. Mr. Miller very nicely articulated the difference between the State of New York and many of the objectors here. We are not here about money. We are here because we are concerned that there appears to be an attempt in the proposed order to impair the police and regulatory powers of the State of New York. And we are here to ask you not to let that happen.

The department has an interest in being able to enforce the state's environmental laws in order to protect the public health and safety. That interest is not an interest in property within the meaning of Section 363. And it cannot be extinguished or impaired through the means of a 363 sale. The whole statutory scheme and many cases make clear that regulatory and police powers do not give way to the important interest protected by bankruptcy law. To the extent that there

are provisions in the order that are still overly broad, and one of those is still, in for instance, paragraph T, although I confess that I have not this morning seen what may be an order that has changed. But to the extent that there is still language in there that appears to extinguish or impair the right of the state, to enforce its regulatory and police order, we ask the Court not to let that happen.

In the State of New York two sites are not being transferred, are not going with New GM. One of them is Messina GM, which is a national priorities list superfund cite in the northern part of the state. It is adjacent to tribal land. It has serious contamination and has in place consent and administrative orders of the Department of Environmental Conservation. It came to our attention only on Friday that there appears to be another site that has contamination that may also be excluded. It's a little unclear from the schedule, we've been unable to get clarification as to whether that site is, in fact, not being transferred. And we are very concerned about the department's abilities to continue to protect the health and safety of the people of New York through consent orders, administrative orders, and the ability to impose injunctive relief, with respect to those and other sites.

If you would like to argue that the state's interests are not interest in them I would be happy to do that. I think that is clear. But to the extent that the Court?

THE COURT: You have a brief on file, don't you?

MS. TAYLOR: We do have a brief on file and I would refer to the cases cited in the brief on that. If you disagree, however, we would ask you to condition a sale pursuant to 363(e) in order to protect the state's ability to enforce its police and regulatory powers. And we have language that we have circulated to GM and its counsel over the past few days that we would like to see added to the order. I would be happy to submit that to the Court anytime today if you would like that.

Essentially, it would provide "that nothing in the order would release, nullify, enjoin, or otherwise affect the police and regulatory authority of any governmental unit or its ability to enforce." And, of course, being lawyers it goes on, but that is its essence.

THE COURT: If it's consensual by all means. If I have differing proposal on that, I need to get yours in writing and the debtors' perspective and argument. The debtors' perspective as to the language they think makes the most sense in writing if it's different than what I have now. And if you're not in consensus obviously you need to get argument on both.

MS. TAYLOR: Happy to do that, Judge. At this point I cannot represent that it is consensual. If you don't have any questions, I will rest on our papers.

THE COURT: Thank you.

MS. TAYLOR: Thank you.

THE COURT: Okay. Mr. Roy, you're coming up.

MR. ROY: I'm coming up in thirty seconds, Your Honor.

THE COURT: Okay.

(Pause)

MR. ROY: Your Honor, for the record, Casey Roy from the Texas Attorney General's Office on behalf of the State of Texas.

We filed a limited standalone objection. We've reached an agreement with the debtors, subject to entry of that agreement on the record, we will be prepared to withdraw.

THE COURT: Okay.

MR. ROY: Thank you, Your Honor.

THE COURT: Thank you.

MR. MOTIF: I'm not an attorney. I'm coming to you --

THE COURT: Just a minute. Is there -- I announced earlier in the hearing that I wasn't going to hear oral argument on all the objections. Come up, tell me your status so I can make a judgment as to whether you should be resting on your papers.

MR. MOTIF: My name is Normaji, last name is Motif.

We bought GM's bonds, 400,000 paying the same amount.

And I --

THE COURT: Sir, you're a bondholder?

MR. MOTIF: Yes, sir. Unsecured.

THE COURT: Unsecured bondholder. Do you have any points that weren't made by either Mr. Richman, Mr. Parker or the two indentured trustee?

MR. MOTIF: That's correct.

THE COURT: And you filed a written objection.

MR. MOTIF: I did, but I want to make this.

In the master purchase and sales agreement they never really splintered the phrase going concern. As a grave concern this needs to be sorted fast enough so that the value doesn't go down. I'm not sure whether they're talking about the legal term of grave concern or the accounting term of grave concern. No matter whether we go on the legal term or the accounting term, that phrase cannot be used. GM operations like the (indiscernible) cooperation which I read the (indiscernible) very frequently they use of the word grave concern. They took operations and cooperated in Delaware. And Delaware's (indiscernible) law with regard to the cooperation applies. Even if this case is filed in New York State I would like the Court to take analyze that usage of the going concern as a property of (indiscernible). I can understand that it's an operating concern, they will be borrowing money and running the business. But definitely it is not a grave concern whether it

is a legal usage or accounting usage.

The (indiscernible) cooperation -- I mean, the GM cooperation whether you want to use the title GAAP. GAAP means the general acts of accounting principals, or you want to use the fair market values of some of the methodology that you use. The corporation became insolvent three year ago. And since then especially with the loan agreement signed by the Treasury it seems that even though they have created documents stating that this is the loan agreement, actually nobody, if especially, if the government is going to be approving commercial businessman would never lend money. So the expectation was a situation created and not a reality. And you have seen what Mr. Henderson and Mr. Wilson and others saying that if the loan never came through then GM could not have functioned, like what happened in the case of Chrysler.

Now, there are rules in the corporation's law of Delaware saying that at a particular stage if the money was lent not as a businessman but for other reasons, and especially if control of the corporation has been taken over indefinitely, then that entity should be treated as insiders. And so, therefore, the loans must be subordinated to the equity and to the unsecured bondholders. Because it would not be treated as a loan as a creditor, but would be treated as insider, and so therefore it is a capital contribution.

The important reason for that is if that is the

capital contribution and not a law then --

THE COURT: The recharacterization subordination points were made in many briefs, I understood them.

MR. MOTIF: I'm ready to come to the other important point.

If the Court determines that it is a capital contribution and not a loan per se, then the participation fails because in the proposals out of 19.4 billion dollars that was the pre-petition advances made, two million dollars worth of (indiscernible) being taken by the New GM with approximately about eight billion dollars of (indiscernible) and so that leaves about nine million dollars as the big money so there will be a shortage in the bid amount, even if you include the DIP money less the other things. I believe that this money was given here, that the total purchase price of the total value was between fifty and sixty billion dollars. If that is the case then it is my submission that the Treasury bring down that nine million dollars and give it to the Old GM as part of the purchase price. Plus also the eight billion dollars for eight million dollars of the note, plus two billion dollars that also must come for a total of 19.4 billion dollars, must come to the Old GM.

Now, the other argument is that --

THE COURT: Are you getting near the end, sir?

MR. MOTIF: Yes, give me five minutes.

THE COURT: Five more minutes.

MR. MOTIF: Yes. Because this is a very crucial case and I need to explain that clearly. May I proceed?

THE COURT: Yes.

MR. MOTIF: Now, I raised an issue that as an unsecured bondholder there is a breach of contract by GM when they --

THE COURT: GM has breached its contract to everyone of its twenty-eight --

MR. MOTIF: I know, I know. But I'm coming to the final points, Your Honor. There were secured bondholders and there were unsecured bondholders, you've got two categories before September 31 of 2008. I do not know that the secured bondholders are fully secured or partially secured. And I have no idea as to what properties are fully secured, or partially secured by the secured bondholders. Now, when they borrowed 13.4 billion dollars from the Treasury they put a first lien on the property, which is not covered by the secured bondholders. And with regard to the secured bondholders property they put a second lien. The document indenture of 1995 is clear that the moment a lien is put then the unsecured bondholders must be repeated on par with the --

THE COURT: Is that the exact point Mr. Parker made?

MR. MOTIF: No, I'm going to go further, Your Honor. He made one point, but he did not elaborate more.

Accurately, he admitted in his brief that they realized this lien problem. So if you read the brief he acknowledges my brief --

THE COURT: I did read his brief.

MR. MOTIF: Pardon?

THE COURT: I did read his brief.

MR. MOTIF: Yeah. And he acknowledges that he got the idea from me.

THE COURT: Okay.

MR. MOTIF: Here is the question. I read the Chrysler opinion by Judge Gonzalez. He said with regard to the unsecured creditors the takings clause -- and I think he said might apply because they don't have a lien. But if this Court were to decide that the fact that a lien was put on that and that automatically triggered the other problem which is that the unsecured bondholders also has liens on par with the treasury, both with regard to the first lien that decided with regard to the other property, and the second lien that decided on the secured bondholders' property. Then we have a right to argue that the takings clause under the Fifth Amendment do apply.

So with that, Your Honor, thank you very much.

THE COURT: Thank you. Now, putting aside deals on the record and so forth, which we can deal with later, is there any other substantive argument of a non-duplicative nature to

be heard? Sir?

MR. CHEEMA: Your Honor, good afternoon. Bik Cheema, Baker Hostetler on behalf of the Bureau of Ohio Workers' Compensation.

THE COURT: Ohio Workers' Comp.

MR. CHEEMA: Yes. It's OBWC. We filed a limited motion, we don't oppose the sale. The limited motion was the OBWC reads the sale motion as indicating that New GM intends to assume all the debtors' Ohio workers' compensation obligations.

In the last few hours we've reached an agreement on some clarifying language with the U.S. Treasury, and we wish to just offer that clarifying language for the record. It will literally take thirty seconds.

THE COURT: Thirty seconds, it will take longer for me to tell you to sit down and comply with what I said before. So go ahead.

MR. CHEEMA: "Pursuant to the master sale and purchase agreement, New GM is assuming all of Old GM's liabilities and obligations, under the workers' compensation laws, rules and regulations of the State of Ohio. OBWC reads the provision to include the assumption by New GM of Old GM's obligation to provide and to continue to provide security for the payment and performance of all obligations under the workers' compensation laws, rules and regulations of the State of Ohio owed by Old GM. New GM will be required to apply for

status as a self-insuring employer in the State of Ohio. If it seeks such status and nothing in the Court's order approving a sale shall exclude New GM from satisfying all requirements and conditions, including any requirement to provide security of the OBWC to grant self-insuring employer status under applicable Ohio law, rules and regulations."

THE COURT: Okay.

MR. CHEEMA: Thank you, Your Honor.

THE COURT: All right. Mr. Miller, are you ready for -- sir, is this an objection, further argument, non-repetitive argument?

MR. KANSA: This is a non-repetitive very brief argument, Your Honor.

THE COURT: All right, come on up.

MR. KANSA: Good morning, Your Honor. Kenneth Kansa, Sidley Austin on behalf of the TPC Lender Group.

The TPC Lender Group is a consortium of nine commercial lenders with first priority liens on two of the debtors' facilities, one in White Marsh, Maryland and the second in Memphis, Tennessee.

Your Honor, we filed a limited objection to the sale transaction. We are in the process of working on language that we hope will resolve that objection, but we haven't dotted the I's and crossed the T's yet. The only point I would raise in addition to our papers, Your Honor, is in rebuttal to some of

the points that the debtors have made in their reply about our limited objection, which really seeks to characterize this as a garden variety secured creditor 363(f)(3) issue; where on the one hand you have is it the value of the collateral, on the other hand, is it the face amount of the lien. We think in this context, Your Honor, that misses the point. There is only one value on the table here today. That is the amount of the lender's allowed secured proof of claim on file at 90.7 million dollars. The debtors have stated that they will settle for a purchase price in excess of the value of all liens on the property, that's their obligation under 363(f)(3), and that's the subsection they rely on to sell the facilities. Our point is simply in response, no purchase price has been specified, no value has been allocated. The only value that is out there is the value of the claim in our secured proof of claim. And the only value out there is --

THE COURT: You're saying that if you say that your collateral is worth a certain amount it's binding on the world?

MR. KANSA: I'm not saying it's binding on the world, Your Honor. I'm saying if they are going to rely here today on 363(f)(3), saying that they are selling in excess -- for our purchase price, in excess of the value of our liens, that is what the value of the liens is. Today there is no other competing value out there. There's nothing in the record.

THE COURT: You'll agree that sometimes there is a

difference between the amount that people claim in their proofs of claim as secured claims, and the value of their collateral. And that the actual value of the secured claim is measured by the value of the collateral and the remainder is unsecured, I assume.

MR. KANSA: No disagreement, Your Honor.

THE COURT: Okay. So basically the issue to the extent there is an issue, is that you're claiming an amount which the debtor and other parties in the case, probably every single other party in the case, might have a difference in perception from you and might say that your secured claim is measured by the value of your collateral. But the remainder of your claim is unsecured.

MR. KANSA: That's true, Your Honor. But the point is there is no -- no one has articulated their belief as to the other value here today.

THE COURT: I understand your argument.

MR. KANSA: Thank you, Your Honor.

THE COURT: All right. Are we now ready for Mr. Miller? No, one more.

MR. WISLER: Good morning, Your Honor. Jeffrey Wisler on behalf of Connecticut General Life Insurance Company.

Your Honor, I have a non-resolved, non-cure executory contract objection. Would you like to hear that now, Your Honor.

THE COURT: If it's an objection I think I would.

MR. WISLER: Understood. Your Honor, Connecticut General Life Insurance, also known as CIGNA provides a range of healthcare administrative services to GM and administers GM's self-insured employee healthcare benefits plan for thousands of its employees.

CIGNA's objection isn't just critical to CIGNA, it's critical to GM, New GM and it's employees because we want to make sure that the debtors attempt to assume and assign the arrangement it has with CIGNA gets the job done and assures that the employees of New GM will have the benefits that they currently have now with Old GM. So while we do have a cure objection I understand that will be deferred.

Today's objection is more fundamental. And that is that the debtor has not given CIGNA or this Court what is necessary for this Court to approve the assumption and assignment of agreement. And there's three fundamental problems, Your Honor. First is, the debtor in its contract notices identified what appeared to be eight separate contracts relating to CIGNA, but with no detail that we can comprehend. It simply has vendor numbers, contract numbers, row numbers, I don't know what those are. CIGNA has looked at these, they're sophisticated business people, they don't know what these are. And we haven't received any clarification on what they are. Except that GM intends to assume and assign all of the CIGNA

contracts. Well that's meaningless also because we need to know what they are, we need to make sure what we think is all and what they think is all, is the same thing. Because, in fact, CIGNA's position is that there is one overriding contract, it's an administrative services contract. And under that are addendums, and riders, and amendments that encompass all of what CIGNA does for GM and its employee benefit plan.

So to warrant this Court's approval of the assumption and assignment of that agreement, the debtor needs to formally and unequivocally identify that contract and say to the Court and to CIGNA, this is the contract we intend to assume and assign.

THE COURT: Pause please, Mr. Wisler. What extent did you or any of your guys pick up the phone and have a dialogue with the debtor to kind of exchange information and get answers to each of those concerns?

MR. WISLER: Both sides have done that, Your Honor, it is not yet resolved.

THE COURT: And help me understand the problem, because this stuff is done all the time. I didn't hear you accusing the debtor of cherry picking or trying to split apart the master agreement, am I right that that's not your concern?

MR. WISLER: Given the debtors' statement that it wasn't to assume all of our contracts, I will assume that is not the case.

THE COURT: All right. Forgive me, but I know a little bit about this area, and I still can't understand the problem.

MR. WISLER: Well, Your Honor, if a debtor comes to the Court and does not identify the contract it wishes to assume and assign, I don't think the Court can permit that assumption and assignment.

THE COURT: Assuming arguendo that you're right, I mean after you had the dialogue with them you're saying they didn't tell you what contracts they wanted to assume and assign?

MR. WISLER: Not to any specificity that anyone could use to identify these agreements.

The fundamental problem, being number one, that we think there's one agreement and they think there's more than one.

THE COURT: But if the agreement with all of them what difference does that make?

MR. WISLER: If two parties don't agree what all means or, more specifically, if one party believes there's one and one party believes there's multiple agreements, I don't think there's a meeting of the minds, Your Honor. And I'm certainly not standing up here saying this is not a resolvable problem. Today's the day for the sale hearing, today's the day we have to present our objection. We've attempted to come to a

resolution, we may actually be close to a resolution. But because we're not at a resolution I need to present this objection to the Court.

THE COURT: Okay. Make your remaining points.

MR. WISLER: Understood, Your Honor.

THE COURT: And then I'll hear your adversary.

MR. WISLER: Secondly, Your Honor, there are two bank accounts that make this plan work for GM and its employees. And these bank accounts have authorization approvals between GM and CIGNA. And there has been no confirmation and no reference to it in the APA or the form of order and the motion that those authorizations will continue. If they do not continue the self-insured plan that CIGNA administers will not work because there will be no money passing from one account to another to pay employee benefit claims, employee healthcare claims.

So, again, until that is unequivocally and formally confirmed we don't think any contracts, any of this particular contract that CIGNA has with GM can be assumed and assigned.

And, third, Your Honor, and very importantly, nowhere in the APA or the proposed form of order, or the motion, is there confirmation that New GM will be responsible for claims -- healthcare claims -- employee healthcare claims that were incurred prior to closing but will not be processed and paid until after closing. That's very important because as claims come through a system they come through at different

times. If someone goes to the doctor last week, the doctor may take some time to submit the claim to the insurance company, the insurance company has to process it. If it's approve it's then paid. That takes time. There is no way to draw a bright line on a closing date and say hey, these claims are not going to be paid, these claims aren't. It's not a cure issue, it's a question of is New GM going to take responsibility for paying those claims that were incurred prior to closing.

My understanding with the discussions with the debtor is yes, they are. But, again, that ahs not been --

THE COURT: I've encountered this issue over the years. Whether you have to slice and dice whether a claim is a pre-petition claim or post-petition claim. But I've never encountered it with the context of the assume and assign, because it envisions a smooth transition. Has your dialogue led you to believe that there's some difference in perception on this one?

MR. WISLER: No, Your Honor, that's what I was just saying. My dialogue with the debtor indicates that this -- that it is New GM's intent to just continue to pay claims in the ordinary course of business regardless of when they were incurred. But, again, that has not been formalized, it has not been unequivocally stated. Today's the day I have to present this objection. If it's not formalized or unequivocally stated, we have a problem is we go into closing and we don't

know the answer to that question. So our simple request for relief is, Your Honor, do not approve assumption and assignment of the CIGNA agreement until the debtor formally and unequivocally clarifies those three points.

THE COURT: Thank you, Mr. Wisler.

MR. WISLER: Thank you, Your Honor.

THE COURT: Mr. Smolinsky, you're rising. Is this just to respond to what Mr. Wisler said?

MR. SMOLINSKY: Yes, it is.

THE COURT: Sure, come on up.

MR. SMOLINSKY: Your Honor, again, Joe Smolinsky from Weil Gotshal.

I'm not sure if Mr. Wisler is in communication with his client. We are aware of the CIGNA situation. Seth Drucker of Honigman Miller has been working with Janice Heulig, who is the head of HR at GM. I've received no fewer than a dozen e-mails over the last forty-eight hours specifically with respect to CIGNA. We are assuming the CIGNA contracts. We have provided them with the -- with a lot of information. In fact, Jay Manor, an employee of GM who is on vacation this week, came back to the office to put together the documents that CIGNA has requested. There are bank accounts that need to be moved, the company is in the process of moving those bank accounts.

As I understand it, CIGNA has requested execution of a variety of documents. Consent agreements and other documents

which other of our suppliers, such as Medco who provide a similar service, has not requested. I haven't reviewed those document yet to the extent that they are not problematic we will provide them with the assurances they need. But to the extent that CIGNA does stand in our way of closing and transferring the employee benefits we will be back in front of you, Your Honor.

THE COURT: All right, thank you. Okay. Can I now get to debtor reply.

MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first.

THE COURT: Sure, Mr. Jones.

MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first.

First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then I'll have remarks on additional issues.

THE COURT: Sure. Mr. Schwartz.

MS. CORDRY: Your Honor?

THE COURT: Ms. Cordry?

MS. CORDRY: Yes, sir. Karen Cordry from National Association of Attorneys Generals.

We've been working with the debtors late into the night and this morning, and all this time. I think we're at

close to an agreement. But the discussion we've been having with them when we had the terms in the order we would be able to say we have a resolution that I am still in the process of getting all the attorneys general to sign on to that. If it didn't then we would be in position to weave our objections on the record, if the order is not done. I didn't realize I was momentarily distracted, we got it in of everybody else there.

I think we are very close to having that. I guess I would just like to reserve my right to state where that whole position is. I don't want to necessarily hold up all this. And I don't think anything I would say with that would necessarily require them to have any different rebuttal than they would have.

THE COURT: What's your recommendation, Ms. Cordry, do I let Mr. Schwartz or Mr. Miller speak? Maybe you'll have the answer again. Otherwise, I assume that on issues that haven't been resolved to your satisfaction I have your papers. But I also sense that you're so close to the go line that you're saying it might help me to do my job if you have some news to report to me.

MS. CORDRY: Yes. I think in the same way that you were saying that other people were trying to work towards reporting, I hope I'm going to be in that position as soon as I hear back their last couple of words or two on that page.

THE COURT: Let's agree that as of this point the

train hasn't left the station. If you need to be heard after everybody else is done, I'll give you that chance, subject to anybody else's rights to express a different view if you need to.

MS. CORDRY: Okay. And when I do that I would certainly keep in mind Your Honor has heard a great deal on a great many topics that we had in our papers.

THE COURT: Yes. I've also heard capable arguments.

MS. CORDRY: Exactly, every capable arguments, far beyond what I was probably planning on doing. So anything that I would say would be specifically on very short points and other issues that people definitely have no raised to this point. So thank you, Your Honor.

THE COURT: Okay.

MR. MILLER: Your Honor, there will be one other speaker. I understand that the UAW would also like to speak.

THE COURT: Is this a good time, or would the UAW be speaking after the U.S. and the debtor?

MR. MILLER: After the Treasury, Your Honor.

MR. SCHWARTZ: Why don't I make my remarks which will take about a minute, and then Mr. Jones and Mr. Bromley can discuss their order.

I just wanted to address -- Matthew Schwartz for the United States, the questions Your Honor asked about environmental consent decrees because, of course, we're here

representing the United States, including the Environmental Protection Agency.

Your Honor asked two specific questions, I'd like to quickly provide answers and then suggest why it is you don't have to answer those questions yourself today on this motion.

First, I heard the Court ask yesterday whether an environmental consent decrees is a contract -- an executory contract that can be rejected by a debtor in bankruptcy. As Mr. Bernstein said, a consent decree has features of contract and features of order. But I think the law is relative clear that they are not executory contracts that can be rejected. I would point you to Judge Coudle's (ph.) opinion in New York v. Mirant. That's at 300 B.R. 174 at page 181.

The further question that Your Honor asked today, I think the important question, is whether a consent decrees is, therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a monetary or injunctive obligation. Whether it embodies a claim within the meaning of the Bankruptcy Code that's Chateaugay in the Second Circuit, Trouweko in the Third Circuit. That is a remarkably fact-intensive inquiry. And the fact --

THE COURT: Depends on what the decree actually says.

MR. SCHWARTZ: That's right. And I've only skimmed the consent decree that Mr. Bernstein was speaking to, but I'll make the general comment that simply because the obligations of

the debtor under a consent decree are to pay money does not necessarily mean that it is a claim within the meaning of the Bankruptcy Code. I think that's enough for today's purposes. Because ultimately the objection that Mr. Bernstein raised is not an objection to the sale. His consent decree is either enforceable against GM or it isn't. So that obligation will either be treated as an unsecured claim, or it will be enforceable and so they will have to pay in full. But either way, the claim is against OldCo. The claim is not against NewCo. There's no basis, as Mr. Bernstein suggests, to go into the MSPA and rewrite excluded liabilities to add his consent decree. That's the only issue on today's record. And so Mr. Bernstein's objection should be denied and we can take up the more substantive issues on a --

THE COURT: To be denied without prejudice to his raising it in a different context against OldCo.

MR. SCHWARTZ: Against OldCo, correct.

THE COURT: Okay.

MR. SCHWARTZ: Against NewCo it's just essentially the successor liability issue.

THE COURT: Okay. All right, Mr. Jones?

MR. JONES: Thank you, Your Honor.

Your Honor, the government simply is not sacrificing principles for expediency as it has been accused of doing. Far from it. We are using established law to purchase assets full

stop. Specifically, the government sponsored purchasing entity is purchasing the pieces necessary to operate the strongest possible New GM. This is a liquidating estate, there's no dispute about that. There is no alternative and no scenario in which this bankruptcy proceeding ends in anything other than some form of liquidation. And as in any liquidation proceeding, the goal is to maximize recoveries and distributions to the estate and its creditors.

So what is before the Court today is simply an asset sale. It's not a plan. What is before the Court does not dictate anything about the treatment of any creditor going forward in the bankruptcy proceedings which will remain in place. The evidence is clear that this sale achieves far and away the highest possible recovery for the assets being sold. And as is salient for legal purposes, vastly in excess of their liquidation value which is the only legally relevant or possible alternative scenario.

The evidence also shows that the opportunity to achieve value through the sale is fleeting. And that the achievable value of this -- of any portion of General Motors is fragile and soon will be lost if not seized now.

There will be a plan as this case progresses. Again, the case will go forward and there are mechanisms to ensure the estate will remain administratively solvent and funded through an orderly wind-down process. And the Court's well established

procedures under the Bankruptcy Code will provide the framework for determining the respect of recoveries for all parties-in-interest

Your Honor, the evidence is unambiguous and unrebutted that the government has no intention of funding this deal if an order is not in place by July 10th. Mr. Richman speculates that the government doesn't really mean it, and that the government will fund beyond that date if Your Honor just calls our supposed bluff. But, Your Honor, speculation does not trump evidence. There is no evidence of bad faith and there is no evidence undermining what the government has plainly stated in Court during these proceedings.

To the contrary, Mr. Wilson was extraordinary forthright and he explained compellingly and without hesitation what steps the government has taken in regards to General Motors so far. And the reasons for those actions. And its plans for its future actions with regard to New GM.

Your Honor, the gamble that Mr. Richman asks the Court to take would be extraordinarily risky and contrary to the best interest of the estate. In fact, he concedes that the risk he asks the Court to take today would, in fact, breach the fiduciary duty if undertaken by GM itself. It is clear that the Court cannot require a lender to lend. It is clear that the Court cannot compel a buyer to buy.

This transaction is certain. It is here today. It

is extraordinarily favorable, and it is the only one insight. The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets.

Your Honor, the -- I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will note that Fiat's counsel did an extraordinarily abled job of doing just that in arguing before the Second Circuit. So, for my purposes today, Your Honor, I'll limit myself to saying the case law is very clear and establishes that exactly what is happening here today is permissible and entirely authorized by Section 363.

So -- and, Your Honor, in addition to being law, case law that, at a minimum under principles of stare decisis,

supports the relief sought today, the ruling was correct on its own terms, as shown in ours and GM's papers, and that ruling simply controls here.

Your Honor, I won't elaborate, although -- and go into --

THE COURT: That ruling being Chrysler, you're saying?

MR. JONES: I'm sorry?

THE COURT: That ruling being Chrysler?

MR. JONES: Correct, Your Honor. And through Chrysler, because it expressly adopted TWA, TWA's analysis as well.

THE COURT: Um-hum.

MR. JONES: Your Honor, I'm not going to go into detail on objections. I expect that Weil will address those very ably, more than ably. I want to take a moment to thank the extraordinary assistance provided throughout these proceedings by the Cadwalader who is not authorized to represent the government in court but has done a fantastic job of supporting us in our endeavors and in serving the government as a whole. And, Your Honor, in closing, let me simply urge the Court that for the reasons stated and supported by the evidence presented to the Court over these three days, the Court should grant the 363 sale motion. Thank you.

THE COURT: Thank you.

Sure, Mr. Schein, come on up.

MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada.

I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee.

I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical Products Corp. v. First Interstate Commercial Corp., and Eighth Circuit Court of Appeals Case, 950 F.2d 566. And just one statement. The Court said that that duty, which was the duty of good faith and fair dealing, however, cannot be breached by actions that are specifically authorized in an agreement. That's just the one clarification, Your Honor. Thank you.

THE COURT: Thank you.

Mr. Bromley?

MR. BROMLEY: Thank you, Your Honor. James Bromley of Cleary Gottlieb on behalf of the UAW. Just want to make one particular point before I ceded to Mr. Miller, which is, to address Mr. Richman's issue as opposed -- as it relates to the linkage between the collective bargaining agreement and the VEBA. Mr. Richman made a fair amount of hay out of a lack of linkage, as he said, in the documents and in the evidence. But I think it's important to look at the evidence. What we have here is testimony from Mr. Henderson that if there was no VEBA there would be no collective bargaining agreement, and with no collective bargaining agreement there would be no workforce.

We have testimony from Mr. Wilson, again, saying if there was no VEBA there would be no collective bargaining agreement and, again, without a 1collective bargaining agreement, no workforce.

Mr. Curson's declaration said exactly the same thing. The exhibits to Mr. Curson's declaration, the ratification summary at Exhibit 1 -- Exhibit A, I'm sorry, at page 1 and page 11 made it crystal clear that when the UAW membership was voting, they were voting on both the VEBA and the collective bargaining agreement. And as Mr. Curson said unequivocally, it was a single vote, up or down, for both.

Exhibit B to Mr. Curson's declaration is the white book, the white book which contains the amendments to the collective bargaining agreement. It makes absolutely clear

that the VEBA and the modifications are part of the collective bargaining agreement that appears at page i, which says that the ratification is on the terms of the ratification, that single vote up or down.

And the addendum relating to the changes to the VEBA appears at page 169 of that white book, and it is indeed part and parcel of the amendments to the collective bargaining agreement.

And this shouldn't come as any surprise to the objectors. It's not new. Indeed, of all the information that's been provided to the Court, this is probably the least new because there is a full paragraph in the Chrysler opinion going directly to this point where Judge Gonzalez found that there is unequivocal evidence presented in the Chrysler trial by Mr. Curson as the witness that there was direct linkage, there was clear and unequivocal value being presented to the new company and that the value of the VEBA was receiving was not being received by the old company but indeed by the new company.

In addition, the UAW is an express third-party beneficiary of the master sale and purchase agreement. That agreement requires that the collective bargaining agreement be assumed and assigned. It requires that the VEBA be entered into by the new company. These are unwaivable conditions to closing.

In addition, Section 7.4(h) of the DIP says that unless by July 10 the agreement, the master service sale and purchase agreement, is approved, that there'll be an event of default under the DIP. That includes all of the related documents, and the UAW retiree settlement agreement in Schedule 1.1(e) to the DIP is one of those agreements.

So, Your Honor, I think that the record is replete with evidence of linkage between the UAW's collective bargaining agreement and the VEBA. And there shouldn't be any doubt or any concern that a showing's been made on that front. And it's very important to keep in mind that that showing is being made by the UAW on behalf of the 475,000 individuals who have either worked or depended on those who've worked for General Motors, as well as the 61,000 active employees. There are over half a million individuals who are dependent on this transaction closing, and closing quickly. And I think we need to look through the shorthand that is being used as timing. If a little more time is given, everything will be fine, nothing will change. But that's shorthand for if there's a little more time, I can get a little more, maybe a lot more. And it would fundamentally change all of the carefully constructed arrangements that have been put in place and, indeed, would go directly to the problem that both Treasury and General Motors have pointed out, which is the damage that would be done to this business in connection with a long-term contested Chapter

11 proceeding.

So for those reasons, Your Honor, the UAW strongly urges that the Court approve the sale transaction.

THE COURT: Okay.

MR. BROMLEY: Thank you.

THE COURT: Thank you.

Mr. Miller?

MR. MILLER: Good afternoon, Your Honor. Harvey Miller on behalf of the debtors. First, Your Honor, one overarching comment. I was brought up in the school that closing arguments should be confined by the record that was made before the Court. As I sat here and listened to the closing arguments, Your Honor, many of the closing arguments made no reference to evidence which is in the record in these cases. Rather, we heard opinions as to what could have happened and not references to evidence that's in the record. So I just make that as an overarching comment.

I want to note that none of the objectors has suggested to the Court that it wants to see a liquidation of the assets of GM. Rather, each of the objectors reiterates that it should not be affected by the 363 transaction and, therefore, it will receive more consideration than what otherwise will be recoverable from the Old GM pursuant to the plan of liquidation which will follow the consummation of the 363 transaction.

Every objector recognizes that a liquidation will result in no recovery to general unsecured creditors. So what has happened? By objecting to the 363 transaction, the objectors are exercising what they perceive to be their leverage. Certain of the objectors are asking the Court to conditionally allow the 363 transaction by laying down terms and conditions that the purchaser would have to comply with or walk.

To paraphrase the words of Mr. Jakubowski, Your Honor, they want you to enter the negotiations and bargain with the purchaser. Indeed, Mr. Jakubowski suggested that the debtors and the purchasers should have come to you as soon as they knew you were assigned to the case to negotiate the terms and conditions of the sale before finalizing the master purchase agreement. I suggest that the role that Mr. Jakubowski has tailored for you is inconsistent with your role and your responsibilities as a judge.

The essence of what the objectors want, as pointed out by my predecessors, is that you should gamble the preservation of the value of the GM assets, the hundreds of thousands of jobs involved, the welfare of the communities they rely upon in an ongoing automotive industry as well as incur the risk of the probability of systemic failure in the hope that the undisputed testimony of the Treasury's representative is a lie and that the Treasury will not exercise its rights to

cease financing the debtors.

This is an awesome gamble. It ignores the interests of all other economic stakeholders, including the over 60,000 UAW active employees as well as the approximate 500,000 retirees and dependents represented by the UAW, as well as the bondholders who have supported the 363 transaction, the suppliers and their industry and the states and communities who will be severely prejudiced if the gamble is lost. Essentially, the objectors ask Your Honor to play Russian Roulette.

Now, Mr. Richman referred to footnote 15 in Judge Gonzalez's decision, and he read to you a portion of it, but he did not read the last sentence. He read the sentence, "The Court concludes that gambling on the possibility that the government was bluffing and risking the potential for a lesser recovery in a resulting liquidation would have been a breach of the debtor's fiduciary duty." The next sentence is the key sentence, Your Honor: "This was simply not a viable option."

So what Judge Gonzalez held and used as a material point in his decision, he could not take that option of the financing disappearing and risking and bluffed -- that the U.S. Treasury was bluffing.

In effect, the objectors are saying if I can't get my pound of flesh, then let GM go down in flames and everybody lose and the devil take the hindmost. It is not a rational

avenue for the Court to go down in the face of the record in these proceedings. Liquidation or the risk of liquidation is too great a danger to imperil the many beneficiaries of the 363 transaction. A transaction, Your Honor, that squarely complies with the applicable principles of law, no objector questions the business rationale articulated by GM in support of the sale. No evidence was presented to Your Honor, through testimony or otherwise, that the business rationale to reconstitute these assets and make them the foundation of a viable automotive manufacturing company -- there is no contrary evidence in the record. Rather, the complaint is that the pie is not big enough to satisfy the particular needs of each objector and, therefore, the 363 transaction cannot be approved. That is not a legally sustainable objection.

Mr. Bressler, representing the tort victims, or some tort victims who have actual claims has argued that this clients are entitled to extra indulgence. He cites no legal proposition or authority for that proposition -- I'm sorry, no legal authority for that proposition. Of course everybody empathizes with his clients, but as stated, bankruptcy is a zero-sum game. And if GM is liquidated, his clients will receive no recovery.

He described the purchase as an extraordinary transaction because the government is not the usual purchaser. But as Mr. Jones has pointed out, Your Honor, the United States

Treasury, in the perspective of this case, is a creditor; it is a secured creditor. It can stand in the position of any secured creditor that appears in the bankruptcy proceeding.

From that conclusion, he jumps to another and more far-fetched contention that the purchase is a result of a conspiracy among the Treasury, General Motors, and I guess the UAW, to deprive his clients of their right to trace the assets to New GM. He argues that New GM must assume the potential liabilities due to his clients because there was no independent purchaser of the GM assets. Yet, the record is devoid of any evidence to establish the facts that would support a finding and conclusion of the existence of a conspiracy directed at all product liability claimants. It's just not in the record, Your Honor.

So Mr. Bressler argues that there are no similar situations where a pre-petition lender has been the purchaser and the DIP financer and pre-petition creditor. I suggest that Mr. Bressler is on weak ground. The concept of loan-to-own has permeated bankruptcy practice throughout this decade. An example is In re Radner Holdings Corporation, 353 B.R. 820, a bankruptcy case in Delaware before Judge Walsh. In that case, Tennenbaum Capital Partners was a substantial investor. It continued to finance the debtor as its fortunes declined and acquired more and more collateral security in substantially of the debtor's property. When the debtor's revolving lenders

threatened to cut off funding, the company commenced a Chapter 11 case.

TCP, Tennenbaum, agreed to purchase the assets under Section 363 and credit bid its 128.8 million dollar pre-petition date claims. That was challenged, Your Honor, as not an independent purchaser, was challenged in the context of recharacterization and equitable subordination.

In another case, Your Honor, of that -- and I didn't have a chance, Your Honor, to do a great deal of research, but another case is In re Medical Software Solutions, 286 B.R. 431, a bankruptcy case out of the district of Utah.

THE COURT: Before you go on to the second one, the Software Solutions, you told me the contention rendered. Judge Walsh rejected the contention and he said that the lender did in fact have the ability to --

MR. MILLER: Yes, Your Honor.

THE COURT: -- take it over?

MR. MILLER: And he approved the 363 sale, and in a long opinion, Your Honor.

THE COURT: With the same types of protection on 363?

MR. MILLER: Yes, Your Honor.

THE COURT: Um-hum.

MR. MILLER: In the Medical Software case, Judge Thurman held that there was a sound business reason that existed for the sale of the Chapter 11 debtors outside the

ordinary course of business and outside of the plan based chiefly upon the lack of funds for continued operations and the narrowing window for the sale of assets before they significantly declined in value.

THE COURT: The Judge Thurman, is that Bill Thurman out in Utah?

MR. MILLER: Yes, sir. A corporate insider that had provided both pre- and post-petition financing for the operation of the debtor's business had a valid security interest in the assets being sold and could credit bid its secured claim. An insider qualified as a good-faith purchaser, and the Court approved the sale as being for a fair and reasonable price and supported by sound business reasons.

There are -- I'm sure, Your Honor, with additional time, we can find many more cases that follow in the concept of loan-to-own.

So, turning to the concept that this was not an independent transaction, the record demonstrates, Your Honor, that there were strenuous arms'-length negotiations. There were differences of opinion. There were requests made by GM; they were either rejected by Treasury or they were negotiated. And one example, Your Honor, is that GM tried to, in respect of the seven-plus billion dollars of retiree benefits, it tried to keep the cut down to sixty-two percent, but the Treasury came back and said no, it's got to be sixty-six and two-thirds.

There was a negotiation over that, and that's just one little item, Your Honor, of what was negotiated during the course of this somewhat complex proceeding.

In terms of independence, Your Honor, a great deal of moment is given to the fact that Mr. Henderson will be the CEO of New GM. Other executives will be employees of New GM. And because of that, this is a tainted transaction. But as Your Honor knows, there are many cases in the bankruptcy court where an acquirer of a business will take that business with its employees. And when you think of this behemoth that is Old GM, a purchaser would not be in its right frame of mind if it did not take the employees who know the business, at least initially, to allow the stabilization of the business while other events may unfold. The testimony is clear, Your Honor, Mr. Henderson doesn't have an employment contract, he has no employment contract with the purchaser, and none of the other executives have employments contracts.

And in terms of independence, Your Honor, what's happened to the stockholders of Old GM? They're being wiped out, Your Honor, because of the financial condition of the estate. New GM will have new stockholders. In addition, New GM, Your Honor, will have an independent board of directors. Five independent directors from Old GM, people of great repute and great business experience, are moving over to New GM. Mr. Henderson is moving over to New GM. But there will be

seven other directors. And Mr. Edward Whittaker, the former CEO of AT&T, has already been designated to be the chairman of the board of directors.

That board of directors, Your Honor, will decide the role in the future -- I mean the future role that Mr. Henderson and other executives and other employees of Old GM will occupy in the operation of New GM. There has been full disclosure, Your Honor, in this record of what the relationships are between the parties and which, I submit to Your Honor, clearly established the independence of the parties.

Mr. Bressler also complains that the UAW VEBA is just too good a deal to be approved. He ignores the fact that it is the purchaser who made the deal with the VEBA in its interest of getting employees to operate the business and enhance the recoveries and the general unsecured creditors who will receive equity securities as part of this transaction. One objective of this transaction, Your Honor, is to enhance the value of the equity securities. And that enhancement obviously requires the employment of the UAW and the other employees. There would be no business without that. And as Mr. Curson testified, Your Honor, and notwithstanding Mr. Richman's statements, the record is clear there is only one witness -- and he testified, and he's a union officer -- that the ratification of a modified collective bargaining agreement and the VEBA was one ratification. And if the VEBA is not approved, all of the

modifications to the collective bargaining agreement are rescinded and we're back to where we were before with work conditions, wage rates, et cetera, which are not tenable in an automotive industry that is in such severe crisis as this automotive industry.

The argument, Your Honor, that another potential 900 million dollars of liabilities, irrespective of the asbestos liabilities, assuming the asbestos liabilities, and another 300 million-plus dollars of liabilities in connection with retiree benefits, is insignificant. And, therefore, the purchaser should be required to assume those liabilities.

The objective of the purchase, as I said, Your Honor, is to acquire the assets and assume only those liabilities that will contribute to the success of the purchaser. You take 900 million, 300 million, another 600 million, and pretty soon you're in the area where Senator Dirksen said you're talking about real money.

The purchaser has drawn the line as to what it is willing to pay for the assets in the context of its credit bid and its assumption of liabilities and the voluntary contractual obligations that it has made to the UAW VEBA.

Now, Your Honor, turning to Mr. Jakubowski, Mr. Jakubowski made an impassioned argument. Essentially he told the Court that it should forget about being in the Second Circuit and it should ignore the Court's stated principle of

consistency in the decisions of the bankruptcy court in this district. Mr. Jakubowski speaks of Judge Posner in the Seventh Circuit as if he is immortal and infallible. I have great respect for Judge Posner and for his colleague Judge Easterbrook, but neither is infallible and particularly conversant with bankruptcy in Chapter 11. I once debated Judge Easterbrook at a University of Pennsylvania Business and Law Forum. He argued that persons in businesses should be allowed to contractually waive the benefit of the right to seek bankruptcy protection. He posited the argument on the basis that the contracting parties had equal bargaining leverage and could freely negotiate that provision. I asked Judge Easterbrook if he had ever studied a credit card agreement and tried to change the terms of that printed agreement or borrowed money from a financial institution while in financial distress. He replied in the negative and then said he would have to rethink his position.

As for Judge Posner, Mr. Jakubowski never named a particular case that he was talking about yesterday and stating that it was in conflict with TWA. Let us not forget, Your Honor, that the Seventh Circuit is the circuit that is the Chicago school of finance, and it is the circuit that is the least receptive to business reorganizations. A circuit, Your Honor, that is so unreceptive that it does not endorse the critical vendor situation that is so important in most

reorganizations. But --

THE COURT: Or NOL protection.

MR. MILLER: Or NO -- exactly, Your Honor. But be that as it may, Mr. Jakubowski argued that the jurisdiction of this Court is extremely limited and unless you are able to find specific words in the Code you are acting beyond your power. He invites you to teach a lesson to the Second Circuit and tell the judges of that court that they don't really understand statutory construction. Yet, his idol Judge Posner, in a case called FutureSources LLC v. Reuters Limited at 312 F.2d 281, 283, a 2002 case, Judge Posner criticized a district court for relying on an unreported opinion from another circuit and for one of the parties to rely upon it in his argument. Judge Posner said that while, and I'm quoting, "The reasoning of a district judge is of course is entitled to respect, the decision of a district judge cannot be controlling precedent. The law's coherence could not be maintained if district courts were deemed to make law for their circuit, let alone for the nation, since district courts do not have circuitwide or nationwide jurisdiction." Notwithstanding those piercing words of Judge Posner, Mr. Jakubowski wants you to take on the Second Circuit judges and, in effect, suggests to them that they really ought to act a lot more like Judge Posner. I don't believe that Your Honor has a death wish.

Last week in the argument on the effect of the

Sprague Sixth Circuit decision, Your Honor unequivocally stated that Sprague was never binding on you -- was not binding on you and that your obligation is to follow the directions of the Second Circuit and to maintain consistency of bankruptcy court decisions in this district in the absence of clear error. And as Your Honor stated yesterday, you don't view Judge Gonzalez's decision as clear error. And right now, Your Honor, the law of this circuit is the decision of the Second Circuit affirming the Chrysler decision on the basis of the reasoning that Judge Gonzalez used in his opinion. That's the law in this circuit which I believe Your Honor is required to follow.

Mr. Jakubowski alluded to stare -- I'm sorry, Your Honor, alluded to stare decisis and the peril of the Court to fill in gaps in the statute. Mr. Jakubowski argued that 363(f) subject to the plain meaning rule and must be construed narrowly based upon a whole host of Supreme Court decisions that he cited generally involving Chapter 7 or Chapter 13 cases. Bankruptcy courts deal with business reorganizations as situations which require flexibility and the exercise of reasonable judgment by a bankruptcy court. Courts need to fit the requirements of the case in achieving the objectives and policies of the Code. A perfect example of the kind of role that must be played by bankruptcy courts is demonstrated with the situation that arose as a result of the Supreme Court's decision in Hartford Accident and Underwriters v. Union

Planter's Bank at 530 U.S. 1, a 2000 case. As Your Honor undoubtedly knows, the case involved the construction of Section 506(c) of the Bankruptcy Code and whether the Hartford Accident and Underwriters could present a case for administrative expenses under 506(c) when the language of the statute read that only a trustee could do that.

And the Supreme Court, in applying what essentially, I think, was Judge Scalia, the plain meaning rule, said the statute says the trustee can only do that, therefore Hartford could not step into the shoes of the trustee, could not qualify under 506(c), and that's what the statute says and that's what courts have to pay attention to. So -- and they cite the Ron Pair case and some of the cases that were cited by Mr. Jakubowski.

So what followed after Hartford? In 2003, a case came to the Third Circuit, Cybergenics case at 130 F.3d 545, a 2003 case. This was an en banc --

THE COURT: You're talking about Cybergenics before or after the first en banc?

MR. MILLER: I'm talking about the en banc decision, Your Honor. The issue in Cybergenics involved Section 544(b) of the Bankruptcy Code and that's the section, part of the avoidance powers where a trustee may prosecute actions based upon nonbankruptcy law to recover preferences, fraudulent transfers, et cetera.

The language of the statute is almost precisely the same as Section 506(c) of the Bankruptcy Code. And when the case was heard before the Third Circuit on appeal from the bankruptcy court and the district court, a three-judge court in the Third Circuit reversed the lower courts on the basis of the Hartford Accident case, a pure case of statutory construction as far as the three-judge court was concerned. That decision was withdrawn as a result of the granting of a motion that the case be heard en banc.

When it was heard en banc, the issue of the creditors' committee prosecuting avoidance actions under Section 544(b) was upheld by a majority of the en banc court. The Third Circuit decision, the en banc decision, reflects a court recognizing the needs of the case and the necessity of making the statute work. And, if I might find -- let me just get that decision.

THE COURT: You're talking the second Cybergenics decision, the en banc one that --

MR. MILLER: Yes, I am. As Your Honor does with great frequency, first you look at the statute. And they looked at the statue. And -- can you hear me? How's that.

First the Court noted that statutory construction is a holistic endeavor, citing the Timbers case. And then, Your Honor, in reviewing what had occurred, the Third Circuit noted that the fact that the language does not authorize derivative

action in the first instance, should be recognized. But that there was a missing link. And where there was a missing link the Court said we believe that the missing link is supplied by bankruptcy court's equitable powers "to craft flexible remedies in situations where the Code's causes of action failed to receive their intended purpose."

The Third Circuit went on to say, Your Honor, "that the Supreme Court has long recognized that bankruptcy courts are equitable tribunals that apply equitable principals in the administration of bankruptcy proceedings." And it noted, Your Honor, that the Court in the 105(a) has the power to issue any orders, process or judgment that is necessary or appropriate to carry out the provisions of this title. No provisions of this title providing for the raising of an issue by a party-in-interest shall be construed to preclude the Court from sua sponte taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

So what that -- those decisions say, Your Honor, is where there is a statutory provision that doesn't comport with a holistic interpretation of the Bankruptcy Code, and the objectors and policies of the Bankruptcy Code, the bankruptcy courts have the equitable power to construe that statute to accomplish those objectives and purposes of the Bankruptcy Code.

And in connection with Section 363(f), Your Honor, Mr. Jakubowski says you can't give it effect. It cannot -- it just doesn't cover claims. Claims are not included in the statutory language and, therefore, this Court is without power to issue an order that provides free and clear of all liens, claims and encumbrances.

Now, if you think about Mr. Jakubowski's argument, Your Honor, what he is basically saying that every single unsecured claim carries over, that 363(f) is totally inapplicable, that it doesn't work. That, Your Honor, is not a principal statutory construction. Courts are under the duty, I believe, Your Honor, to give effect to the words of a statute, and to harmonize a statue so that it is effective. And for many, many years, Your Honor, courts have issued 363(f) protections in connection with the 363(b) transaction. And the law in this Circuit, based upon Judge Gonzalez' order, is that this Court -- the bankruptcy court has the authority to issue a free and clear order as requested by the debtors in this action, which is almost identical to the order that was entered in the Chrysler case.

The scope of the power of the bankruptcy court under Section 363 Your Honor once referred to in the Magnesium Corporation of America case. And you said in that case on June 13, 2002 "I believe Judge Walsh got it exactly right in TWA. I am not going to burden this already very lengthy decision by

telling you all of the reasons I believe Judge Walsh is right. But I have rarely seen on my time on the bench a decision that was as closely relevant and directly on point" -- and this was in connection with a 363(b) sale, "and as well thought out as his decision. At the risk of appearing less than thorough I am going to adopt his analysis by reference."

THE COURT: That is the same TWA but before it was affirmed all the way up to the Third Circuit?

MR. MILLER: That's correct, Your Honor. Your Honor also referred to the Leckie Smokeless Coal Company case at 99 F.3d 573. Your Honor said that Leckie -- that you interpreted the Fourth Circuit as saying "That Congress did not expressly indicate that the language of 363(f) was intended to limit the scope of its application to in rem interest."

If Mr. Jakubowski's argument was taken and adopted by Your Honor it would mean, Your Honor, that 363(b) is out of the statute, and there can never be any sales of assets if they're always going to be subject to the claims, the unsecured claims, of the debtor. Even outside of selling substantially all of the assets every single sale under Section 363(b) would be impaired by the fact that the purchaser is assuming or is going to be responsible for claims that may drift or migrate with the assets that are being sold. That, Your Honor, cannot be the law. Common sense says that you cannot effect that kind of a ruling in the face of what has transpired in bankruptcy courts

through thirty years since the adoption of the 1978 code. And, again, Your Honor, as I said before, the law in this circuit is clearly Chrysler.

Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government.

Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does not give rise to a breach of contract. And it is not subject to a commercially unreasonable actions."

In connection, Your Honor, to the arguments that Mr. Jakubowski made that the treasury is not -- if it wants to act like a commercial bank it should be treated like a commercial bank. I would submit to Your Honor that the commercial bank analogy is inappropriate. We are not just talking about a JPMorgan or a Citibank, we are involved with a federal

department that is attempting to salvage an industry and all it represents, as well as protect the taxpayers' money. The Treasury hired an extremely abled cadre of experienced persons to discharge this function. They have made -- the Treasury has made a decision that a prompt approval of the 363 transaction is a condition precedent. If there is no sale order there's no more financing. And, Your Honor, there is no evidence to the contrary in respect of that.

Mr. Richman raises for the first time the credibility of Mr. Wilson. Mr. Wilson testified yesterday candidly and at length. And there is nothing in his testimony which would establish that he was lying, falsifying any respect whatsoever. And counsel for the treasury has reiterated the position that Mr. Wilson testified, and there's nothing else in the record, Your Honor.

The Court must accept that undisputed evidence and take it into account the consequences of non-approval. So in connection with Mr. Jakubowski's argument, both the statutory construction, I would submit to Your Honor that this Court has ample power under its equitable powers to construe a statute so that it may implement and further the interests of bankruptcy reorganization and bankruptcy law under the bankruptcy code.

And in the context of stare decisis, again, Your Honor, the Chrysler case is the decisional authority in this circuit. And, certainly, the TWA case is very persuasive, both

on bankruptcy court level and on the Court of Appeals level.

So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors' committee will have to deal with in structuring a plan of liquidation for OldCo. How existing asbestos claimants are going to be treated to the extent they have allowed claims, and potential future claimants may be treated is an appropriate subject for OldCo. And it would not be different from some other cases where, in the situation of a liquidation, a specific fund is created to deal with future claimants. But

that's an issue to be determined, Your Honor, after the sale is consummated.

THE COURT: Mr. Miller, there's no channeling order, but there is an injunction requested. And the two lawyers who were raising asbestos issues pointed out that if you did give personal notice and applied it to every state in the United States you wouldn't be able to do much with it because they wouldn't know that they've contracted asbestos.

Now, I have an interesting twist here. Both of those folks represent existing asbestos claimants who analytically in the Jakubowski situation. But I also believe that this issue was raised that hasn't been discussed in the Second Circuit argument in the (indiscernible) appeal. To what extent would it be proper or improper in Your view if words were added to any approval order that said to the fullest extent constitutional principal?

MR. MILLER: Just speaking for myself, Your Honor, without consultation for client, I don't have problem with that language. But I would, again, note, Your Honor, that Judge Gonzalez dealt with the issue of notice and I do not recall the colloquy between Judge Sack and Mr. Esserman, and I'm not sure that colloquy related to injunctions or the ability to sue. All I'm saying, Your Honor, there is going to be an estate. And estate which we believe will have significant value.

Part of the claimants who will have rights against

the property of that estate will be asbestos claimants, current and future. And that estate, as part of its plan of liquidation can provide a mechanic to deal with future claimants. That's not unheard of, Your Honor, the creation of a fund or putting aside assets, so when the disease manifests itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor.

And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, that in the appeal in Chrysler it was considered as Your Honor may have noted in the colloquy, there was a discussion of it.

THE COURT: Oh, there was definitely a discussion of it.

MR. MILLER: And also, Your Honor, I think we have to refer to the per curiam decision of the Supreme Court in connection with the application for a stay. While the Supreme

Court said that it wasn't ruling on the merits, it did say that the applicant, the Indiana Pension Funds, had failed to demonstrate: 1) a reasonable probability that four justices would consider an issue sufficiently meritorious to grant certiorari, or to no probable jurisdiction. Now, in reaching that conclusion they had to evaluate what was decided by Judge Gonzalez. 2) a fair prospect that a majority of the Court will conclude that the decision below was erroneous; and 3) a likelihood that an irreparable harm would result from the denial of the stay. So while it's not a ruling on the merits, Your Honor, it does say something about the Supreme Court's view of Judge Gonzalez's decision.

So coming back, Your Honor, into the context of stare decisis, again, this is the law in the Second Circuit, and this is the law that should be followed in connection with this transaction that is so important to so many people.

Now, Your Honor, turning to Mr. Kennedy who made, likewise, a very impassioned and emotional argument, and likewise, I and everybody here, Your Honor, empathizes with his clients and wished that there was a way to assuage his emotion as well as his client's. But alas, I can't do it, Your Honor. He took issue, Your Honor, with a statement I made in connection with my initial closing argument referring to his papers as construing that there was a conspiracy, a conspiracy among GM and the Treasury to deprive the splinter union

retirees of their benefits.

There is nothing in this record, Your Honor, that would support a determination of a conspiracy and all of the elements that would constitute a conspiracy. Indeed, the record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees.

And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 -- I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for large population from legacy operations (e.g. Frigidaire) not represented by active members - relatively small active population to generate wage and COLA deferrals."

So what does that demonstrate, Your Honor? That in 2006, GM was in actual negotiations with the IUE about creating a VEBA, a VEBA that would have provided the health and medical benefits, and yet the union resisted that. That VEBA could

have been set up in 2006, Your Honor, and it would have been active.

In addition, Your Honor, Mr. Kennedy is an excellent lawyer, and he knew how to play the strings on numbers. He talked about the 26,000 retirees of the splinter unions who will be deprived of retiree benefits. And actually, as he spoke, Your Honor, he went on to say that approximately 20,000 of those retirees are already post-sixty-five, so they're on Medicare. And under the proposed retiree benefits that had been offered, all benefits cease from the VEBA or General Motors at the point that you go on Medicare. So basically, Your Honor, we're talking about 6,000 retirees, who right now, are getting their retiree benefits.

Unfortunately, as OldCo goes into liquidation, there's no way that you can sustain paying 26 million dollars a month for retiree and medical benefits. The exhibit -- I forget the number, Your Honor -- of the statement made by Mr. Henderson, clearly demonstrates that there was an effort to try and find a way, a means, to assist the splinter union retirees and the maintenance of benefits for those retirees. There's nothing else in the record, Your Honor, except that what happened at the end of May when a decision was made that there had to be a transaction, there had to be something to regenerate and maintain the going concern value of these assets, and that the 363 transaction was the best way to do

that, that this sale was finalized.

That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo.

This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up the Workman's Compensation obligations. Now, why was that done? That was done because if GM -- New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self insurer.

Essentially, Mr. Kennedy, in his impassioned plea, is arguing something which is novel. He is basically saying, Your Honor, that Sections 1113 and 1114 are effectively in the same status as liens on the land. They run with the assets. That you cannot transfer assets of a unionized business without dealing with obligations under 1113 and 1114. There is no legal authority that supports that proposition, Your Honor.

There is no requirement that before you transfer assets, you must reject the collective bargaining agreement, if that's the condition. There is no requirement in connection with a 363 sale that you must comply with 1114. OldCo --

THE COURT: Can I assume that there will be compliance by OldCo with 1114?

MR. MILLER: Until such time as Your Honor may rule on an 1114 motion. Yes, sir. Right now, today, all of the IUE retirees are still receiving the full benefits under that program. That's what's costing -- and I'm including all the splinter unions, Your Honor -- that's what's costing approximately twenty-five- to twenty-six million dollars a month.

Now, as OldCo goes into its liquidation phase, obviously that is not a sustainable benefit in a liquidation scenario, nor is it a sustainable benefit in the context of New GM, Your Honor. Are we going to inflict upon New GM some of the problems that contributed mightily to the demise of Old GM. The concept of having job banks of thousands of employees who sit around and don't do anything except paychecks with no benefit to the ongoing operations, work rules, et cetera, and conditions under collective bargaining agreements. What has happened here, Your Honor, is the Treasury, a government sponsored purchaser, who has had to make an agreement with the UAW because otherwise there would be no employees. And it's

unfortunate that the IUE has basically no active employees. Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale.

Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative effect on consumers. Everything that this company has been fighting for the last thirty days to make it clear to the consumer that it's not going to be entangled in a bankruptcy case, that these assets which will form a foundation of a new OEM will be there free of the entanglements of bankruptcy will dissipate.

And Mr. Richman, again, raised the issue in his closing argument well, GM is really doing well in Chapter 11,

look at the month of June. It was only thirty-three percent below June of 2008. And as Mr. Henderson testified lead sales were down by an even greater margin. And if Your Honor happened to read this morning's New York Times it shows the relative figures between Chrysler, Ford and GM. And what you have to surmise out of that or infer out of those discussions, Your Honor, that Ford's market share is rising. And where is that market share coming from. As we sit here today -- stand here today, GM's market share is our owee. And the longer it's in this process the more that will happen.

And Mr. Henderson testified that GM will not make money in 2009, which means that somebody has to finance these operations going forward. And not one objector has brought forth a financier. Not one objector has brought forth an alterative -- a viable alternative other than, Your Honor, you should deny this application, we'll play poker or Russian roulette with the government. And if the government walks, well, we'll just have a Chapter 11 case and see what happens.

Well, what does that mean, Your Honor? Without financing it would be the obligation of Old GM to close every factory, to terminate every employee except those that are needed to preserve and protect the properties. The results will be catastrophic, Your Honor, and irreversible. So we're be brought back again, Your Honor, to the bluff game.

But there's nothing in the record that says that the

Treasury is bluffing. And I take the representation of counsel for the United States that that representation is made on information furnished to him by his client, the U.S. Treasury. But again we hear the argument, Your Honor, that this was all a -- this is not a true sale, and part of that also relates back to this infamous document, Bondholders' Exhibit 2 from the Cadwalader firm, about the use of Section 363. I would venture to say, Your Honor, if anybody goes to a CLE program on bankruptcy, they will get this slide show without the names. I don't want to demean Cadwalader, Your Honor, but I think that this is in general circulation.

Now, looking at that exhibit, Your Honor, and looking at the record as to what GM did, if the board of directors of GM did not consider the various alternatives, that board of directors might have been remiss in its duties. It had an obligation to consider all alternatives and to rely upon the advice of its professionals and advisors. That's what the board of directors did, and that's what the exhibits establish. Clearly, there were presentations to the board as to what bankruptcy provides for, what happens in a bankruptcy. Otherwise, the board of directors could not be discharging its fiduciary obligations.

I just want to see where I am in this, Your Honor.

Now, if I might, Your Honor, I would turn to Mr. Richman's comments. Last evening, Your Honor, Mr. Richman

asked for more time to prepare his closing arguments so that he could address the evidence in the record. I listened carefully to Mr. Richman's argument. There were no references to the record other than his claim that Mr. Wilson is not credible. During the course of these proceedings, he put on no evidence, no witnesses, no declaration of fact, no expert witness. In fact, he didn't do very much other than work off what was in the record.

All of the others' evidence shows good-faith bargaining, good-faith business judgment. And he concedes that it's in the best interest of all parties that the GM assets be sold. His cross-examination of Mr. Wilson certainly did not shake Mr. Wilson's credibility. What he's doing, Your Honor, he's asking you to take his opinion and speculate on the future and not refer to the evidence that has been sworn to in these cases -- in these proceedings. And basically he says, Your Honor, oh, Chapter 11 is an easy process, given a few days parties can agree on various things and in ninety days we can be out of Chapter 11. I would just say, Your Honor, just taking these three days of hearings as an example of what happens in a Chapter 11, the concept that you could file a Chapter 11 plan, and he doesn't even describe the Chapter 11 plan that you would file on the first day, but any Chapter 11 plan that you file that had open ends to it would involve the appointment of creditors' committees, disclosure statements,

arguments over valuation. The concept that a case of the size and complexity of GM would move through some accelerated basis so that you can have a confirmation in ninety days, I think, Your Honor, is not credible. It just doesn't happen.

I refer to the Delphi case. The Delphi case was supposed to move on a fast track. That track seems to have disappeared. And in July -- later this month, I should say, Your Honor, Delphi will either have a resolicited plan of reorganization or will have a 363 sale with substantially less recoveries for the creditors and basically no recoveries for the unsecured creditors.

The problem with long term bankruptcies -- and I don't mean long term to be years, Your Honor -- is that things happen in bankruptcy cases. People come into the court with all kinds of motions, applications, and various moves to get leverage. We spent three days on this proceeding. Think of the days that would be spent in valuation discussions; the possibility of the appointment of an examiner; fights between ad hoc committees and independent committees. And all during this process, Mr. Richman never refers to who's going to finance it. Where's the money going to come from while everybody's having fun in the courtroom.

Mr. Jones says don't look at the Treasury. We've got to protect the taxpayer's money and we're not going to put good dollars after bad dollars. And while this is happening, Your

Honor, the consumer is scratching his or her head and saying is there going to be a GM that's going to produce good vehicles, reliable vehicles that I know I can service? What are the dealers going to say, Your Honor, when this process goes on with no plan other than "We're going to stiff the Treasury and we're going to make the Treasury put in more money." That is an awful gamble to play in this case when you're dealing with -- and I sympathize with Mr. Kennedy and his 26,000 retirees, but we're talking about the UAWs with almost 600,000 retirees and active employees, 235,000 GM employees worldwide.

Yesterday, I think, Your Honor, Lear, a supplier to GM, commenced bankruptcy, Chapter 11 cases. In the past month I think there have been three or four suppliers. If this case doesn't come out the way it has been programmed, with a 363 transaction, there will be chaos in the supplier industry. Systemic danger is all over the horizon, Your Honor.

So what do we get down to, Your Honor? We get down to a situation in which there is no palatable alternative. No financier has shown up, and I think it is very significant, Your Honor, that notwithstanding all the notoriety about GM pre-Chapter 11 and post-Chapter 11, nobody -- no hedge fund, no private equity fund, no foreign investor has come along and said gee, I really would like to take a look at GM and maybe I would like to buy it or parts of it. Not one party has been interested. Not one party has been willing to sign a

confidentiality agreement to get into the data room and look at it for the purposes of considering a bid. There hasn't been one expression of interest.

So we have a situation, Your Honor, where the only offer at all for these assets is the government-sponsored purchaser, the only entity that will be able to get financing and make these assets into a valuable original equipment manufacture. The only other option is to commence the liquidation process because this company cannot survive without financing, and there is no financing. And when that becomes public knowledge, that's the end of its ability to really sell cars. Then you are in the liquidation and no consumer, unless he gets a terrific discount and takes his chances or her chances, will buy a GM vehicle.

There has to be a cutoff and a creation of certainty as to the future of these GM assets. And the fact, Your Honor, as I alluded to before, that GM management is moving over, doesn't make it a nonsale. It's a sale. There's a real purchase price that's being paid here. There is an independent company that is buying these assets and will be an independent company going forward, and hopefully in a very short period of time, a publicly owned company for the benefit not only of shareholders of this company but the whole automotive industry.

Mr. Richman said that the White House will not allow GM to fail. I haven't heard anything come out of the White

House recently about these cases, but I recall President Obama's speech that either Chrysler finds itself a purchaser by May 1 or April 30 or there will be no further financing. And if GM doesn't come up with a viable plan by June 1st, that's the end. And I believe the President meant it. And clearly, the Chrysler people believe that he meant it, even though it must have given Fiat some bargaining leverage. There is nothing on the record -- I keep repeating this Your Honor -- that there will ever be additional financing.

I believe all of the objectors agree that if Your Honor found that this is a legitimate sale, then the transaction should be approved. Delaying the transaction so that various parties can try to exercise leverage by being ad hoc committees in a Chapter 11 or attempting to be additional committees only means further delay in the conservation of a plan, a delay that cannot be borne by this company.

Mr. Richman's closing argument, Your Honor, as I said, had nothing to do with the record that was made before Your Honor in the past two days. It was his ipse dixit as to what he thinks could happen in a Chapter 11 case. With no expert testifying, there's no other person offering any support for that position. He offers nothing in the way of a purchaser. He offers nothing in the way of a financier.

I believe, Your Honor, Mr. Richman's closing argument was just his opinion and his advice to you that you should take

up the purported bluff of the U.S. Treasury and that's an awesome responsibility that he wants to impose on your shoulders.

With respect to, Your Honor, to Mr. Parker, we have submitted, Your Honor, and I'm not going to speak further on it, the statements and the arguments made by Mr. Parker with respect to the equal and ratable clauses in the indentures, are just not accurate. Mr. Parker has not established and he's not produced any certifications or a record of any lien filings with respect to the excluded assets, and the agreements are quite clear that if there were no liens granted to the federal government, the U.S. Treasure in connection with the security agreement of 12/31/08 that was subject to those indentures.

THE COURT: Let me go back to the Secured Financing 101. UCC-1 perfects the security interests but the security interest has to -- it's separately granted, am I correct?

MR. MILLER: That's correct, Your Honor.

THE COURT: And romanette v says that (indiscernible) will be granting the security interest?

MR. MILLER: I'm sorry, sir?

THE COURT: And romanette v says, in its excluded assets -- or excluded liens provision, that there isn't a grant of security?

MR. MILLER: That's correct, Your Honor.

THE COURT: Okay.

MR. MILLER: And Mr. Henderson testified at length, Your Honor, that there were no liens granted in violation of the indentures.

Bad faith. Mr. Parker says that the purchaser has not acted in good faith. Yet the record is to the contrary. The record establishes the extent and nature of the negotiations, how they were conducted, and that they were consistent with the standards of good faith under the cases.

The TARP argument. Again, Your Honor, that argument was raised in Chrysler, and Judge Gonzalez ruled on that. It involved the DDSA and TARP, and that argument was not successful and was continually raised by the Indiana pension plans that you can't use TARP money for these purposes. And in this circuit, Your Honor, at least, that is not an argument that can stand.

Mr. Parker also complains about the scheme of distribution. And again, the basis of his argument on the scheme of distribution is the UAW is just getting too much, while the record is replete with the rationalization and reasons why the UAW ended up in that position. There are sometimes, Your Honor, when union membership is a good thing. Sometimes not. But these active employees are critical to this transaction. If we did not have these employees, there would not be a 363 transaction. And more importantly, Your Honor, the consideration that is being given to the UAW VEBA is coming

from the purchaser and not from OldCo.

And if this deal is not approved and this transaction doesn't go forward, and Mr. Curson's testimony demonstrates, the UAW claims, the VEBA claims will be reasserted in the OldCo case so that you will be adding on an additional twenty plus billion dollars of liabilities which will substantially dilute the position of the bondholders and other creditors.

I am not going to deal with Mr. Bernstein's argument, Your Honor, as to the consent decree and the effect of that. That's an issue that can be determined in the future. My colleague, Mr. Karotkin, said I should refer to the case of In re Rochnunis (ph.) and say pay the 62,000 dollars. I'm not going to do that.

As I understand it, Your Honor, the indenture trustees are no longer objecting. Mr. Reinsel, I think his name is, made the same arguments as Mr. Esserman in respect of asbestos claimants, and I think I've dealt with that.

So Your Honor, we get down to the basic issue. And in connection with --

THE COURT: Before you wrap up, do you want to comment in any way on Ms. Taylor's point that I should have language in the approved order that says, in substance -- I don't know if she's saying just that nothing in this order affects the government's ability to use its police power or if she's looking for more than that. And I don't know if what she

says has controversial implications that I'm not sensitive enough to.

MR. MILLER: I would just note, Your Honor, that the proposed sale order in paragraph 55 states, "Nothing contained in this order shall in any way: 1) diminish the obligation of the purchasers to comply with environmental laws or 2) diminish the obligations of the debtors to comply with environmental laws consistent with their rights and obligations as debtors-in-possession under the Bankruptcy Code." I would submit to Your Honor that is fairly broad language that imposes on the purchaser and the debtors as debtors-in-possession. And there is no intent to circumvent or evade the environmental laws. To the extent that New GM is acquiring plants that may have environmental problems, they will be responsible for that. To the extent --

THE COURT: Kind of like in Magcorp.

MR. MILLER: I'm sorry?

THE COURT: Kind of like in Magnesium Corporation of America.

MR. MILLER: That's correct, Your Honor. And to the extent that OldCo retains plants that haven't -- I mean, the whole controversy, Your Honor, about the wind-down budget only related to environmental claims. As the analysis of the environmental claims and the potential exposure there went up, the committee, justifiably, said we need more in the wind-down

budget to cover environmental claims. So there is no intent -- and I would submit to Your Honor the language is sufficiently broad, and if the New York State Attorney General has a problem with it, we'd be happy to work that language out with her.

THE COURT: Okay. Continue.

MR. MILLER: So Your Honor, we come down to the final aspect, I hope, of this proceeding. The record, Your Honor, I believe is abundantly clear. The business justification has been articulated. Mr. Richman referred to the Lionel case and the various factors in the Lionel case. And in the Lionel case, as Your Honor may recall, the sale was disapproved. It was disapproved and reversed by the Second Circuit because it was being done at the insistence of the creditors' committee who wanted a cash distribution as part of a subsequent plan of reorganization. And the issue was their electronics, the common stock of that partially owned subsidiary. But in the Lionel case, Your Honor, there was no danger of diminution in value. Dale Electronics was an independent company listed on the New York Stock Exchange. The value of that stock was not diminishing. And as it turns out, three years later or two years later it was at the same value.

We have a different case, Your Honor. And as pointed out by the Second Circuit in Lionel, the most important factor is the potential diminution in the value of the assets. This record establishes that if this transaction is not approved,

the value of the GM assets will deteriorate and may deteriorate at a much more rapid pace than either you or I or Mr. Richman understands. The fact that GM did better than its downside projections in the month of June doesn't establish anything when the month of June was thirty-three percent below the same period in 2008, and a decline of forty-three percent in fleet sales. And then we have Mr. Henderson's testimony, even going forward GM will lose money in 2009. If we don't start -- if the purchaser doesn't start using these assets as part of a new GM, a new, leaner, more competitive, more efficient GM, the downward cycle will be irreversible.

So we fit right within Lionel and its progeny. We have -- I will have to call it, Your Honor -- I don't want to call it a melting ice cube because I got criticized for that once before -- a wasting asset. These are assets that will deteriorate in value. And that deterioration will be felt by all of the stakeholders, including the stakeholders that oppose this transaction.

The bottom line, Your Honor, is that there is no viable alternative. And that's the kind of situation that Section 363 was enacted for, to deal with a situation where there had to be a relatively quick sale of assets. And fortunately, we've had thirty days to see if there's anybody else in the market for these assets. What we have done, Your Honor, is establish the value of these assets. We've also

established that nobody's interested in buying them other than this purchaser.

And the fact that it's the government, Your Honor, doesn't detract that it is a purchaser. It's voluntarily doing this, Your Honor. One, to protect the taxpayer's monies in the hope that it will recover a portion of the taxpayer's monies. And two, to try and salvage an industry. But there are limits to that, Your Honor, and the government has clearly said what the limits are.

So we are in a situation where we can do this transaction, we can create a new GM. Yes, we're going to use the same name, but we're only going to have four brands, Your Honor. We're going to have Cadillac, Chevrolet, Buick, and GMC. A leaner, more competitive GM that will benefit the domestic industry, that will provide more value to the economic stakeholders than any other alternative that has been proffered, and no alternative, unfortunately, Your Honor, has been proffered to date.

So on behalf of the debtors, Your Honor, we submit that this case fits squarely within the four corners of 363(b). There has been an articulated business reason for this sale. It is reasonable business judgment. The board of directors of GM discharged their fiduciary obligations in considering the alternatives and going forward with this Section 363 sale. And the purchaser, the government-sponsored entity, has acted in

good faith in negotiating this transaction, as demonstrated by the negotiations that have gone on to this very hour. There has been no bad faith as Mr. Parker alleges.

To allow these assets to go through a process of liquidation would be horrific, Your Honor, a situation that Your Honor should not allow. And Your Honor should approve this transaction. Thank you.

THE COURT: All right. Thank you. All right. Ladies and gentlemen, this hearing is now closed. We're going to take a lunch break for an hour, and then if you have any deals to announce to me or any housekeeping matters, I'll hear them an hour from now. However, there will be no further argument on today. If it turns out that there are no additional deals to announce or understandings to confirm, it will be very short an hour from now. The purpose of this, among other things, is to give you a chance to talk to folks to ascertain whether or not you need or want to put anything on the record. And there may be other people similarly situated. I also will need to talk to at least one person of medium or higher level seniority from each constituency to discuss getting the transcript and exhibits to make sure that I have a full set and the like. This matter is taken under submission and at this point we're in recess. Thank you.

(Recess from 1:42 p.m. until 2:54 p.m.)

THE COURT: Okay, folks, I need to get to work. And

we said that we would set aside some time for you folks to put deals on the record and deal with housekeeping matters, and I have one or two of my own.

Mr. Karotkin or Ms. Cordry, who would like to take the lead on taking care of some of those things?

MR. KAROTKIN: Your Honor, I believe we have reached an understanding with Ms. Cordry as to the proposed terms and provisions of a proposed order to address the concerns she has raised.

THE COURT: Okay.

MR. KAROTKIN: Is that correct?

MS. CORDY: Yes.

MR. KAROTKIN: Okay. And the one -- so I think that addresses those issues. If I might, Your Honor, the Attorney General from the State of Texas would like to leave to catch a plane.

THE COURT: Sure.

MR. KAROTKIN: So I --

THE COURT: Would you like to say something before you have to go?

MR. KAROTKIN: He had asked me if I would read into the record --

THE COURT: Oh, okay.

MR. KAROTKIN: -- three paragraphs which would address his concerns as well.

THE COURT: All right.

MR. KAROTKIN: These would be three paragraphs that would be inserted into the proposed order:

"Entry by GM into the Participation Agreements with Accepting Dealers is hereby approved, and that the offer by GM and entry into the Participation Agreements was appropriate and not the product of coercion. The Court makes no finding as to whether any specific provision of any participation agreement governing the obligations of Purchaser and its Dealers is enforceable under applicable provisions of state law. Any disputes that may arise under the Participation Agreements shall be adjudicated on a case-by-case basis in an appropriate forum other than this court."

THE COURT: Mr. Roy, did he get it right?

MR. ROY: He got the first paragraph right, Your Honor.

THE COURT: Still didn't express your last implication there?

MR. KAROTKIN: This is very stressful for me, Your Honor.

THE COURT: Okay.

MR. KAROTKIN: The next paragraph would be, "Nothing contained in the preceding two paragraphs shall impact the authority of any state to regulate Purchaser subsequent to the closing."

And the final paragraph is as follows: "This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements.

"The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation Agreements, which disputes shall be adjudicated as necessary under applicable state or federal law in any other court or administrative agency of competent jurisdiction."

THE COURT: Okay, I'll try to -- again, Mr. Roy, did he get it right this time?

MR. ROY: He got it all right this time, Your Honor.

THE COURT: Okay. Fair enough.

MR. KAROTKIN: I believe, with that, this gentleman is prepared to withdraw the --

MR. ROY: Yeah, Your Honor, with the agreement that that language is going to be in the order that the debtors submit as a proposed sale order, and with the understanding that there's no objection from any other party, including Treasury, the State of Texas is prepared to withdraw its objection.

THE COURT: Okay, Mr. Schwartz?

MR. SCHWARTZ: That's correct, there's no objection. We had a small tweak to add the federal government's ability to continue to regulate the purchaser. I'm not sure if these folks have signed off on it.

THE COURT: In other words, you're proposing that there be an even more regulatory environment than what Mr. Roy was asking for?

MR. SCHWARTZ: Exactly right.

MR. ROY: So I'm getting more than I asked for.

THE COURT: It sounds to me like you wouldn't care if they got that, Mr. Roy.

MR. ROY: No, not at all. This -- I believe that this protects the state's ability to enforce its regulatory scheme.

THE COURT: Okay. Well, fair enough. I assume that

takes care of your needs and concerns then, Mr. Roy?

MR. ROY: It does, Your Honor.

THE COURT: Have a good flight.

MR. ROY: Thank you so much.

THE COURT: Thank you.

MR. ROY: It's been a privilege.

THE COURT: Thank you.

Ms. Cordry?

MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed.

Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's also like every other Chapter 11 case in that it has to follow the Bankruptcy Code. The Supreme Court has told us that the uniformity clause sets aside bankruptcy from every other portion of Congress's powers. So it's for those reasons that the states initially analyzed this case under their view of what the Bankruptcy Code says without a special exception for the mega auto bankruptcy problems.

We had a number of problems with the order with respect to clarity in a number of respects, with taxes,

environmental law, other provisions. We had concerns with the substance of the terms in terms of what was being assumed, what was not being assumed. The treatment of these dealer agreements was a major issue for the states, and I'll get to that in just a moment, and then some of the terms of the order in terms of the way it was phrased about successor liability, which was some of the questions I asked yesterday.

We have worked very hard since the beginning of the case with debtors' counsel initially, with Treasury counsel, almost everybody in this room at some point or another, it feels like. And I think a great number of improvements have been made in this agreement over that time period. The first was the assumption of the future product liability claims. Obviously, we -- you know, in a perfect world, we would not be distinguishing between those two categories, but certainly that's better than none of them. And it certainly goes a ways to addressing issues that were raised by the state Attorney Generals. And by the way, I am speaking strictly on behalf of the forty-five-Attorney-General-objection that's there.

With respect to the dealers, you heard yesterday, one set of dealers talked to you about the process of being required to sign on to those. And there was a statement that while 99.6 percent of the people signed it, so it must have been a great deal. I -- as a matter of reality, I think most things that you get 99.6 percent of people signing on are

probably not the greatest deal in the world; they're just better than something really awful. But we're leaving aside that concern.

There was a second concern that the ongoing terms of those agreements that we were being asked to sign had provisions that could be substantively unlawful under state law. And we do not understand that anything that is said with respect to rejection can carry over to the notion of saying that if you assume a contract you can thereby assume some terms that violate state law on a going-forward basis, any more than if someone could make you sign a contract that said I'll take less than the minimum wage and then assume that contract and make you take less than the minimum wage.

So that was a concern on the dealer agreements. And what you just heard read into the record dealt with that by leaving us free to -- and the jurisdictional piece as well, taking the jurisdiction to enforce ongoing agreements between nondebtor parties, post-closing, that could not affect the estate in trying to leave them in this bankruptcy court's jurisdiction.

THE COURT: Let me interrupt you --

MS. CORDY: Sure.

THE COURT: -- for a second, Ms. Cordry. When Mr. Roy was standing up next to Mr. Karotkin, they were talking about the things in the context of resolving Mr. Roy's

objections. That was -- he was standing there and you weren't, but that was part of a dialogue to which you were also a part.

MS. CORDY: Right. Yes, and that is part of the overall package that is here. He spoke to it simply because he had the separate objection on it. But, yes, that is one of the pieces that went into this overall deal here.

So we were very concerned about that treatment of assumed contracts, and that agreement works on that part. We also wanted to be sure that lemon laws were covered under the notion of warranty claims, but they did not specifically refer to state lemon laws, and that coverage is being picked up.

Privacy, we had no idea what they were going to do with privacy. We've read the consumer privacy ombudsman's report. We couldn't talk to them directly, but we did try to give some input. And what I've seen from his report appears to be constructive and useful. And there is some language in the agreement right now that was drafted without seeing his report. It's pretty much consistent with what the report recommends, perhaps not completely consistent. That's, I think, up to Your Honor to decide with the debtor what they'll require for that. We had signed off on the other language before we saw what the consumer privacy ombudsman said.

On taxes, we clarified that the taxes in the first-day order are all being assumed by the purchaser. We clarified a number of other pieces of language; some of them are in with

the environmental piece.

THE COURT: Time out, Ms. Cordry.

MS. CORDY: Yes.

THE COURT: I thought I authorized taxes to be paid under the first-day order.

MS. CORDY: Yes.

THE COURT: Your point being that, to the extent they haven't been paid, they'll be assumed?

MS. CORDY: Well, that the -- the assumption was clarified, which was somewhat unclear in the order, that the provision for assumption of taxes is congruent with the kind of taxes that were covered by the first-day order so that if they are the kind of taxes that were being picked up under the first-day order, they will be the kind of taxes that will be assumed, either that there -- there may be some that have just not been paid yet or a dispute or an audit, an ongoing assessment, any of those kind --

THE COURT: One way or another, they'll get paid --

MS. CORDY: Right.

THE COURT: -- at some point in time?

MS. CORDY: Right, and that so they're going to be assumed. And similarly with the environmental liabilities, we clarified that the New GM intends to be fully liable for environmental liabilities of its transferred facility.

So all of these were matters that were very important

to us.

The other piece we talked about, obviously, was the successor liability. And the basic construct we dealt with was this notion that I raised yesterday of what is -- assuming you can sell free and clear of liability on a claim or on something, what is the scope of that? And we came to an agreement that we would limit it to a bankruptcy claim, a 1015 claim. So the language on that is all in the agreement.

On the TWA issue, I can only say our view remains as to what it is of the proper construction of law. But we also recognize that there's been a little water under the dam and a lot of people have structured deals based on what they believe the law to be, and certainly this case is an example of that.

So for all those reasons, after exhaustive, literally of course, negotiations, we have reached agreement with the debtor, with Treasury on the terms of the order that I have recom -- well, when we say "we", mostly me. I've recommended to the AGs; I have talked to the staff, counsel, contacts, the ones I could gather last night at 10:00. We have sent it around. We have made the request to all the Attorneys General to sign off on this, which they started getting that request at about 9:30 this morning. As of now, I've been told there are forty-five -- the final total, I believe, was forty-five Attorney Generals on the brief. At this point I've been told, I think, that the last count of approvals so far is twenty-

seven. I'm reasonably optimistic that we will continue to get the rest of them signed on over the course of the day or so.

At this point, my view would be I believe that we have an agreement. I don't believe we're going to have dissent that would overturn the agreement, but the last position, I understood, with the debtors and Treasury, was simply that if for any reason we -- if the other fifteen AGs come back and say no, no, over our dead bodies, that we would just say the deal's off, the order goes back to what you were doing before you had the agreement without us, and we'd just stand on our objections. But as of now, we think this agreement is going to hold and we think it is a preferable agreement for the Attorney Generals. We also think it's preferable for all the other parties as well in not having the Attorney Generals seek to overturn this transaction.

THE COURT: All right, thank you.

Mr. Karotkin?

MR. KAROTKIN: Thank you, Your Honor. With respect to Ms. Cordry's colloquy and commentary, I don't know if that was meant to be interpreting what the order said or embellishing what the order said. As far as we are concerned, the agreement we have reached is in the order. And we are not necessarily agreeing that how she described it or how she interpreted it is accurate or inaccurate. It is what it is.

THE COURT: If I approved the motion and entered the

order in the form as modified, the order would say whatever it says?

MR. KAROTKIN: Correct.

THE COURT: Okay.

MR. KAROTKIN: For example, to the extent she was referring to how environmental laws are being treated under the order, they are being treated as they are being treated.

THE COURT: You're saying the order has them in support of sales.

MR. KAROTKIN: Exactly, sir.

THE COURT: And that what she's saying isn't like a presidential signing statement or --

MS. CORDY: I would stipulate to that, Your Honor. If I get to be president, then I'll determine what kind of authority I have at this point. But --

THE COURT: Okay.

MS. CORDY: -- I was simply attempting to deal with the fact that we did deal with issues regarding environmental laws and made some improvements in that area that I think are --

THE COURT: Okay.

MS. CORDY: -- hopeful and satisfactory to my clients. Thank you.

THE COURT: All right. Fair enough.

MR. KAROTKIN: Thank you, sir.

THE COURT: To what extent do we have other things that people want to note on the record?

Mr. Smolinsky, I see a few people coming up. You want to, kind of, help coordinate that, if you can?

MR. SMOLINSKY: Sure, Your Honor. Let me at least try. Your Honor, there are approximately 600 objections related to what I would call contract issues, and they continue to come in. So I thought, to try to head off everyone coming up and making reservation of rights, that I would describe to Your Honor the process that we're undergoing and perhaps that satisfies everyone's concerns, and we could make -- shorten the time here.

Your Honor, in connection with the sale, the purchaser has identified over 700,000 contracts for probable assumption and assignment. We've done everything in our power to manage the process focused on three goals: First, to have the ability to update the reconciliation process as new invoices come in from the pre-petition and post-petition period; two, allow the purchaser to continue its due diligence with respect to the contracts; and, finally, to try to not bog down this Court's docket with multiple objections.

The company, together with AlixPartners, developed a fully trackable system to allow counterparties to see online their contracts which are scheduled for assumption, as well as backup on how cure amounts are derived.

You've heard a little bit about the call center. The call centers set up in Warren, Michigan have been fielding calls, have been proactively reaching out to all parties who have filed objections, and have also handled over 6,600 calls from other parties that are making inquiries as to their supplier agreements.

Your Honor, when we filed our initial reply last Friday, we attached to it a schedule of those parties that filed objections with respect to contract disputes. And on Monday when we filed our supplemental brief, we attached a new Schedule J, which had three schedules in it, creatively named J-1, J-2 and J-3.

I just want to walk Your Honor through these schedules. And let me just update that, Monday night after we had made further progress on the contracts, we filed a supplemental schedule and I think we made some significant progress. And if Your Honor would allow, I'd like to hand up a copy.

THE COURT: Sure.

MR. SMOLINSKY: I have taken the liberty of highlighting for you the few changes that have been made since then. Your Honor, if you turn to Schedule J-1, which is about six pages long, that is a schedule of withdrawn objections. Now, just to make clear for the record, that doesn't mean that each and every counterparty on the schedule has agreed that

there are no reconciliation issues. Either they've been withdrawn because the reconciliation issues have been resolved, or they signed trade agreements which elected into the alternative dispute resolution to the extent a reasonable resolution can't be obtained simply by talking to the call center and working out their differences. And we've had significant progress there.

The only changes I just want to note for the record, on page 1, Cellco Partnership d/b/a Verizon Wireless is going to be moved to J-2; the same for Fiat on page 2. On page 3, Hitachi Cable Indiana, Inc. and Hitachi, Limited will be moved to J-2. Isuzu Motors will be moved to J-2; LMC Phase II to phase (sic) 2. On page 4, Progressive Stamping Company, Inc. moved to J-2. On page 5, Interpublic Group of Companies Inc. to page 2 -- to J-2, as well as Toyota Motor Sales U.S.A. And on the last page, the two Verizon contracts will be moved to J-2.

Other than that, Your Honor, we believe that the remaining objections can be marked off calendar.

We have provided, in consultation with the creditors' committee, to include in the order that if a contract was withdrawn and then there's still a basis for coming back to the Court, that both parties can do so on no less than fifteen days' notice in case there are any further mistakes or omissions. What we'll propose at the end is to file a final

schedule and then to provide Your Honor's chambers with a list by docket number rather than alphabetically so that the matters could be marked off calendar.

Your Honor, Schedule J-2 is a schedule of objections that have been limited to cure disputes, and they are subject to adjournment. And we have included in the order a request for a hearing date around the third week of July for Your Honor to carry these objections while we continue to try to resolve them and get them off the Court's docket.

We have been having open dialogues with each of these parties; we have delivered documents to them. We have worked with them on finalizing a list of contracts and cure amounts. And we've dealt with a number of them in stipulations, which I'll get to in a moment.

So the only changes to Schedule 2 is on page 2. Behr-Hella Thermocontrol has filed a withdrawal, and that could be moved to J-1, along with, on page 3, the Hewlett Packard three objections can be moved to J-1 as well.

Your Honor, Schedule J-3 is a schedule which has gotten shorter and shorter, which deals with objections that we have not been able to resolve, some of which we have been now able to resolve, and I just want to walk through a few of them and then we can give the other parties an opportunity to speak today if they still have ongoing objections. To the extent that they don't, I would suggest that we move them to J-2 and

adjourn them along with the others as a holding date while we continue to reach out for them.

So if you turn to --

THE COURT: I sense the way you did it, Mr. Smolinsky, that these deal with something different than cure amounts?

MR. SMOLINSKY: It's unclear, Your Honor. We've looked at all of these objections and we believe that most of them, even though they may raise adequate protection -- adequate assurance issues, they -- I believe they're all quintessentially cure objections, with the exceptions of the ones that I'm going to walk through.

THE COURT: Okay.

MR. SMOLINSKY: The first one that I'd like to speak about is Hertz Corporation. Your Honor will recall that Mr. Henderson testified that some of the fleet customers are not purchasing vehicles from General Motors because they have issues, internal issues. Hertz is a prime example. They have securitizations. And if their contracts are not assumed by a certain date, then they have to provide additional collateral into their securitizations, which is an anti-competitive issue for them.

So we have entered into discussions with Hertz. We have agreed to assume their contract now with the understanding that they have no objection to the assignment of that contract

to New GM upon the sale closing. They acknowledge in the stipulation they're not aware of any cure amounts that are outstanding, and we do not believe that there are any either. We've discussed this with U.S. Treasury, we've discussed this with the committee, and they have no objection.

THE COURT: Okay. Continue, please.

MR. SMOLINSKY: Okay. Your Honor, the next contract, Kolbenschmidt Pierburg AG, that could now be moved to J-2. LBA Realty Fund -- I think you heard from counsel to LBA this morning.

THE COURT: Mr. LeHane?

MR. SMOLINSKY: That's correct, Your Honor. And, again, I could put it on the record, but I think you heard the agreement that we intend to assume at closing, to the extent that we finish our amendment discussions, or modification discussions, and the indemnities will follow through with respect to any claims that arise or become known after the closing.

Pratt & Miller Engineering & Fabrication can be moved to J-1. They withdrew their objection.

Royal Bank of Scotland, these contracts -- there are four contracts that relate to the Lordstown plant. Subject to closing, GM has agreed to assume those contracts and we agreed to work cooperatively with RBS to make sure that we deal with any transfer documents that are necessary and any third-party

consents.

Last one, Trafasee (ph.) Marketplaces Inc., that could be moved to J-2 as well.

So, Your Honor, we did our best in these schedules to reflect the desire and intention of the parties. We're also working with the committee to add language to the order to make it clear as to what the cure resolution process is and to preserve everyone's rights while we work it out.

We're not currently intending to bar any reasonable late objections. We understand the process was quick. We're -- ultimately our goal is to try to reconcile all the claims to the satisfaction of all parties. Of course, if there's an unreasonable delay, then we'll bring it to Your Honor.

We intend to send notice; we propose in our order within two business days of the entry of the order. We would send out notice to each of the parties in here notifying them of the adjourn date for their objection or, if their objection has been withdrawn, notifying them as to why it was withdrawn and giving them the opportunity to come back and explain if there was an error.

Turning to stipulations -- and many of these stipulations, I don't believe, require the signature of Your Honor; we're simply to going to file them -- we have received the stipulation from approximately 115 suppliers who have

agreed to withdraw their objection and to appear on Schedule J-1 and defer into the alternative dispute resolution process so that we don't have to deal with them further in the bankruptcy process.

We have some additional stipulations, one with International Automotive Components Group, one with Dell and one with Timken that likewise withdraw their objection, but they have not agreed to the ADR process. They have agreed to work with us to try to reconcile, and if they can't reconcile then we would use the procedure that I explained before that on fifteen days' notice we can come back to Your Honor and litigate the objection.

Your Honor, like Hertz, Avis is another fleet customer. They're having a similar issue, but they don't have the same timing issues that Hertz has. So they've entered into a stipulation, again, acknowledging that they're not aware of any cure amounts under the agreements. But we have agreed to assume and assign those contracts upon the closing. So, unlike Hertz, which happens immediately, the Avis will happen upon the sale. Again, we shared that stipulation with the committee and the Treasury and they have no problem.

Cigna, Your Honor, I think, we talked about earlier. We continue to work with Cigna to try to get their comfort level up on the assignment of those employee benefit-related contracts. And, again, we wouldn't expect to be back before

Your Honor unless there's a problem in assigning those contracts.

Equipment lessors. I just want to put on the record that Manufacturers and Traders Company, as well as Wells Fargo Bank, have equipment leases with the company. They've filed objections. There are additional indentured trustees related to those that have objections. And we've agreed to put on the record that all those contracts are still in the undetermined bucket, meaning that they haven't been noticed out for assumption and assignment. Everyone reserves their rights. We reserve the right to assume and assign those contracts. They reserve the right to object. And we're going to work with them over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor on that.

Your Honor, I think that's the end. Of course, people may want to make statements, and I'm happy to come back and explain any clarifications that are necessary.

THE COURT: Okay.

People can now come on up, and those who I sent back can now come up again.

Go ahead.

MR. BACON: Good afternoon, Your Honor. Doug Bacon with Latham & Watkins for GE Capital. We spoke at the end of

yesterday's hearing and this morning and tendered a proposed stipulation and order that has been underway for about the last five days, about twenty hours a day. And Mr. Weiss, who had to depart but left his colleague here and his special counsel to the debtor, we have been successful in getting the creditors' committee's support, or lack of objection.

Mr. Mayer -- this is the stipulation that Mr. Mayer confirmed that indeed they're fine with and Treasury's counsel is not opposed to. And we -- this bears the signature of the debtors' special counsel and me as counsel for GE. Mr. Weiss explained it to some degree earlier. We can certainly go into more detail. There's a great deal of money involved and hundreds of millions of dollars' worth of equipment, which is why both sides have put a lot of energy into this.

We tendered this earlier today, Your Honor. And since then, the only change that has been made is to change the name of the purchaser. And I'm hoping Your Honor, under the circumstances, will just indulge us in interlineation.

THE COURT: I would if it weren't for the fact that it has to be electronically entered. I guess it can be scanned. Otherwise, if I could ask somebody to -- do you have a floppy disk with the underlying document?

MR. BACON: I can arrange to have that down here this afternoon, Your Honor.

THE COURT: Can you have it e-mailed to my chambers?

MR. BACON: Easily, Your Honor.

THE COURT: Okay. My law clerk can help you as to how to do that. And I'm glad -- it's just as well that a new one's coming, Mr. Bacon, because I think you did hand me up something, or did you?

UNIDENTIFIED SPEAKER: Yes.

MR. BACON: We did.

THE COURT: I don't know if you saw how much paper was on this thing just --

MR. BACON: I understand, Judge.

THE COURT: So e-mail it when it's finalized to the Gerber chambers. Charlie will give you the exact e-mail address. And on the transmission for the e-mail, note that this is the one that Gerber said that he would enter today. And we'll take care of it today.

MR. BACON: Thank you, Judge. Thank you very much. May I approach Charlie?

THE COURT: Yes.

MR. BACON: Thank you.

THE COURT: Who's on deck?

MR. DUETCHE: I think I am, Your Honor.

THE COURT: Sure. Come on up, please.

MR. DEUTSCHE: Good afternoon, Your Honor. Benjamin Deutsche, Schnader Harrison Segal & Lewis on behalf of New United Motor Manufacturing Corp., commonly referred to as

NUMMI. NUMMI is a joint venture between Toyota and GM. We had -- we received a notice to assume and assign. Based on the notice and based on the Web site, we simply can't tell what contracts GM is talking about. We're trying to work it out. I believe -- I thought -- I spoke to Mr. Smolinsky earlier. I thought we were going to have a stipulation, basically push this over, give the parties a chance to figure out which contracts they're talking about and then mark this down for something later in July.

THE COURT: I think Mr. Smolinsky's being pulled in more than one direction at the same time.

MR. SMOLINSKY: Your Honor, I believe we've been having communications with Foley & Lardner, who are representing Toyota in this matter. And we've agreed that we're going to work together to resolve all these contracts.

MR. DEUTSCHE: Yeah -- I represent NUMMI and, obviously, my clients instructed us to get resolution. I don't represent Toyota --

THE COURT: Who does Foley represent?

MR. DEUTSCHE: I believe the Toyota part of NUMMI.

THE COURT: And who are the agreements with?

MR. DEUTSCHE: I believe with NUMMI. But, yeah, I'm sure they're contracts --

MR. SMOLINSKY: We'd be happy to involve them in the discussions.

THE COURT: Yeah, why don't you just turn it into a three-way conversation so nobody's toes get stepped on.

MR. SMOLINSKY: Certainly makes sense, Your Honor.

THE COURT: Okay.

MR. DEUTSCHE: Thank you, Your Honor.

THE COURT: All right.

MR. QUIGLEY: Good afternoon, Your Honor. Sean Quigley from Lowenstein Sandler on behalf of Group 1 Automotive Inc., a company owning approximately seven dealerships in Texas. Your Honor, we filed a limited cure objection. Subsequently, however, we recently learned from the debtors that the Group 1 dealers were sent either participation agreements or wind-down agreements. Certainly, we don't object to the sale, Your Honor, but --

THE COURT: Some have one type and some got the other?

MR. QUIGLEY: Correct, Judge. Certainly, we don't object to the sale, but to the extent there are any cure amounts or other payments due under these agreements, we simply want to reserve our rights.

THE COURT: Okay.

Would it help, folks, if I said that, unless there's some reason why I shouldn't, Mr. Smolinsky or Mr. Schwartz, that everybody who wants a reservation of rights on this stuff can have it? Or is it more complicated than that?

Got an affirmative nod from the government.

Mr. Smolinsky, that's okay with you too?

MR. SMOLINSKY: We have no problem, Your Honor.

THE COURT: Okay, good. So anybody who wants to just take a reservation of rights doesn't have to, unless they want to. You certainly have one, Mr. Quigley.

MR. QUIGLEY: Thank you, Judge.

THE COURT: Mr. Sullivan?

MR. SULLIVAN: Thank you, Your Honor. James Sullivan of Arent Fox, counsel for the Timken Company and Superior Industries International Inc. Two things, Your Honor. First, I had some communications with counsel for the debtor. We were able to get the debtor to agree to some language added to the sale order, and that's the reason why I didn't come up and actually argue anything. Assuming that the language of the sale order remains as has been represented to us, we would not be pursuing any objection. I just wanted to reserve our right to perhaps send -- or comment on the form of order that is finally submitted to Your Honor.

THE COURT: That's a big problem, Mr. Sullivan. You better get your comments in on the form of the order before the proposed form of order is sent to me, because I can't have hundreds of parties waiting for somebody to comment on the form of the order.

MR. SULLIVAN: Your Honor, as far as I know, I think

the changes have already been included, although I've not been able -- counsel for the debtor has not been willing to circulate the current form of order to all the parties.

THE COURT: I would agree upon the language, Mr. Sullivan, but I think I made my position on that clear.

MR. SULLIVAN: Okay, I'll discuss it with counsel for GM.

THE COURT: Okay.

MR. SULLIVAN: The second thing, I just wanted to correct something. I think Mr. Smolinsky made a comment on the record about the Timken Company, about the ADR procedure. I don't believe that they've opted out of that procedure. I believe that they are in fact -- agreed to that procedure. So I don't think that needs any further comment.

MR. SMOLINSKY: Your Honor, I think I said that the 3 parties that have not agreed to the ADR are subject to separate stipulations from the 120 that did.

THE COURT: Okay. All right. Thank you.

Next.

MR. BEELER: Good afternoon. Martin Beeler of Covington & Burling, on behalf of Union Pacific.

THE COURT: Okay, Mr. Beeler.

MR. BEELER: Union Pacific provides rail transportation services to the debtors under various executory contracts. We filed a limited objection to the sale, noncure

or adequate assurance-related limited objection, for the avoidance of doubt, simply seeking language in the sale order clarifying the setoff and recoupment rights of nondebtor executory contract parties for nonassumed and assigned contracts, similar to language that was included in the Chrysler order for the same purpose.

And our understanding of the MPA is that receivables related to those nonassigned contracts would stay with the debtors and, consequently, setoff and recoupment rights would be unimpaired. In discussion with debtors' counsel and in reviewing the MPA provisions with debtors' counsel, we are confirmed in that understanding and prepared to withdraw the objection.

THE COURT: Okay. Pause, please, Mr. Beeler.

Mr. Smolinsky?

MR. SMOLINSKY: Your Honor, I just wanted to be clear on this. I reviewed the language in the Chrysler order. Frankly, I really didn't understand it but -- on this point, but what the MPA says, and I'm only paraphrasing, is that receivables related to excluded assets, assets which aren't going to NewCo, are excluded assets themselves. And so I asked counsel to simply rely on that language. I didn't want to paraphrase it in the order or change the subject matter of the contract by adding language to the order.

But I think that he has reviewed the contract and is

now comfortable that the contract protects his client's rights.

THE COURT: All right.

Anything further, Mr. Beeler?

MR. BEELER: No, that's fair enough.

THE COURT: Okay, good.

MR. BEELER: Thank you.

THE COURT: Mr. Brozman?

MR. BROZMAN: Thank you, Your Honor, and good afternoon. Andrew Brozman, Clifford Chance, for the Royal Bank of Scotland, ABN AMRO and RBS Citizens. Your Honor, the agreement that I think we've arrived at with the debtors involves a structured lease transaction for the supply of energy to the Lordstown, Ohio plant. The record should note the exact contracts that the debtors have agreed to assume and assign, since the Web sites did not correctly list them and I'd like to be clear on that. There is a lease dated July 17, 2003 between ICX Corporation, which is an affiliate of RBS Citizens, as assignee of Kensington Capital Corp. and General Motors. There is a tripartite agreement of the same date among Lordstown Energy LLC, ICX, again as assignee of Kensington, and General Motors, together with the two sets of schedules pertinent thereto.

We have agreed to the assumption and the assignment. There is no dispute, to my knowledge, raised by the debtor with respect to cure amounts, if any. And the debtors, since this

is a structured lease transaction, have agreed with us to grant us further assurances in the filing of safe harbor documents in connection with the transfer of the assets.

And I think that accurately states our agreement, and I appreciate Your Honor's time.

THE COURT: Okay.

Mr. Smolinsky, do you need to be heard on what Mr. Brozman just said?

MR. SMOLINSKY: I agree, Your Honor.

THE COURT: Okay. Fair enough.

Who's next? Ms. Taylor?

MS. TAYLOR: Yes. Judge, I just wanted to report back -- Susan Taylor from the Attorney General's Office -- that we accept Your Honor's offer for a reservation of rights. And I want it to be clear that New York's objection had two parts: the part we discussed this morning, and it appears that acceptable language may be being inserted in the final order. But I don't currently have authority from my client to withdraw our objection to that portion.

And in addition, in our papers we submitted we have a successor liability -- part of our argument turns on successor liability. That part we didn't argue because it has been very competently argued. And I just wanted to be clear that we are not withdrawing the objection as to that portion either and it is now before the Court.

THE COURT: Okay.

MS. TAYLOR: Thank you very much.

THE COURT: Thank you.

Did I take care of everybody?

Mr. Bromley?

MR. BROMLEY: Your Honor, James Bromley of Cleary Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up.

THE COURT: That's not a problem. You can give them to Charlie.

MR. BROMLEY: Thank you very much.

THE COURT: I appreciate that.

Okay, to what extent do we have anything else, folks? All right, I think -- I thought we were done but I see some folks have now come back into the courtroom.

MR. SMOLINSKY: Your Honor, just -- I'm not sure I said it, so I wanted to make clear on the record. There have been a number of objections that have been filed since we filed our last reply. We would propose to just carry those along with all the others until the holding date, July --

THE COURT: These are executory contract objections?

MR. SMOLINSKY: Cure objections, sorry.

THE COURT: Cure? Okay.

MR. SMOLINSKY: Thank you.

MR. KANZA: Good afternoon, Your Honor. Ken Kansa of Sidley Austin on behalf of the TPC lender group. We have agreed language for the order with the debtors and the purchaser that resolves the TPC lenders' objections. And so on reliance on that language, we withdraw the objection.

THE COURT: Okay.

Anybody else?

Going once. All right, I see no response.

MR. SMOLINSKY: Your Honor, we've been working on a term sheet for a resolution of the Michigan workers' compensation issues. I think everyone is agreed in principle. We just revised the term sheet over at Kinko's. And we would just need everyone to sign off, but we think that everyone is in agreement on the terms.

MS. PRZEKOP-SHAW: Good afternoon, Your Honor. My name is Susan Przekop-Shaw. I'm an assistant attorney general for the state of Michigan.

THE COURT: Forgive me again. You're last name, please?

MS. PRZEKOP-SHAW: Przekop-Shaw.

THE COURT: Okay.

MS. PRZEKOP-SHAW: It's spelled P as in Peter, R-Z-E-K-O-P, hyphen, S-H-A-W. On behalf of -- I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New -- NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations.

What's left is that there's -- as Mr. Smolinsky indicated, that there's ongoing steps being taken to incorporate those terms into a binding agreement that the appropriate parties, after they are identified, can sign on behalf of NGMCO.

The representation was made today that such an agreement will be finalized and signed at the end of today. And on that basis, we feel that that addresses a major concern for Michigan, who really wants to have a seamless transition for GMCO to come into there.

There were several other legal issues that were

presented based upon the proposed order that was filed. Paragraph 52 on the new one that Ms. Cordry worked with on behalf -- with counsel to culminate in has a paragraph that discusses NGMCO's assumption of these workers' compensation obligations. And we have been advised by Old GM's counsel that they will appropriately amend the master sale and purchase order to reflect that provision.

And we also observed that proposed order paragraph 41, which was dealing with preventing a state to essentially implement its statutory and regulatory system, that this provision will not apply if there's a stipulation on the record that it will not apply to the circumstances. And here, the Michigan Workers' Compensation Agency --

THE COURT: Time out. What do you mean by that, that if there's an individual stip it'll trump the moot stip?

MS. PRZEKOP-SHAW: From my understanding of paragraph 41, as provided, that effective upon the closing and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter, that that provision would -- and the following terms would not apply. And in regards to that provision, Michigan Workers' Compensation Agency and the Funds Administration, in order to operate its regulatory scheme and enforce the self-insured process in Michigan, will need to have that stipulation made on the record, and I understand counsel are prepared to do so

today.

MR. SMOLINSKY: Your Honor, I think the agreement, with respect to paragraph 41, and just to make sure that we're all clear, is that the stipulation that we're entering into allows the Workers' Compensation Board to do their business, to actually take the permit, the application that's proposed to them, to make sure they have all the documents available and to grant their license and then to regulate New GM going forward. And so the agreement that we reached is that that paragraph will not interfere with the Workers' Compensation Board exercising their regulatory duties.

Is that accurate?

MS. PRZEKOP-SHAW: In regard -- yes.

In that regards, to its ongoing regulatory obligations to meet the Workers' Compensation Agency's -- the acts requirements and the rules that apply to that.

THE COURT: Mr. Jones, you heading up?

MR. JONES: Yep. Yes, Your Honor. Thank you, Your Honor. I just need to note, the Treasury fully agrees to the agreement as -- with the agreement as described. I just do need to note for everyone that the signatory we need for the actual stipulation may not be available today, although we're trying to get that person. Failing that, we expect the person to sign tomorrow.

THE COURT: Okay.

MR. JONES: Thank you.

THE COURT: All right -- I'm sorry, go ahead.

MS. PRZEKOP-SHAW: No, thank you.

THE COURT: Thank you.

Mr. Schmidt?

MR. SCHMIDT: Yes, Your Honor. And I apologize, one point harking back to the TPC matter that you heard a few minutes ago. I just received a note from one of my colleagues that we hadn't seen that language in the order yet, and we'd just like to take a few minutes to look at it.

THE COURT: Okay. Can somebody get the creditors' committee the language they need to satisfy themselves?

MR. SCHMIDT: Thank you, Your Honor.

THE COURT: Sure.

All right, what else do we have, folks?

Mr. Karotkin?

MR. KAROTKIN: Your Honor, I think, as to the sale motion, there is nothing else, unless I'm mistaken.

THE COURT: I have one or two things. I'm not going to prejudge the motion. But I gather you have been, and may even now still be, doing a lot of work on the order that you would want me to enter, if I approved it, which, among other things, requires you to implement a lot of understandings that you have been working on even up to this minute. Am I correct in assuming that there is going to be a revised proposed order

that's going to be sent to my chambers sometime when you've been able to embody all of your deals, Mr. --

MR. KAROTKIN: Yes, sir.

THE COURT: Do you have some sense as to how long it's going to take you to -- believe me, you don't have to worry about it not getting here in time if it's going to take more than twenty-four hours, but -- or even more, but what's your sense as to how long it's going to take you to embody all of your stuff so that something comes to me?

MR. KAROTKIN: I think, actually, we've made a lot of progress. It's our intention to go back tonight, revise it, circulate it to the parties this evening and hopefully get their comments tomorrow morning, and hopefully get it to you either sometime tomorrow night or Saturday, if that's fine with you.

THE COURT: Yeah, that'll be fine.

Now, to what extent do parties have transcripts -- paper transcripts of the last three days?

MR. KAROTKIN: Excuse me, sir.

(Pause)

MR. KAROTKIN: We only have June 30 in the afternoon. There was the problem in the morning with the microphones. We don't have the other two days, but we're arranging to get those as soon as possible.

THE COURT: Those have been ordered?

MR. KAROTKIN: Yes.

Have they been ordered?

Yes.

THE COURT: On expedited --

MR. KAROTKIN: Yes, sir.

THE COURT: -- request? Okay. As soon as you or any of your colleagues -- by that I mean the Treasury, creditors' committee, other parties-in-interest, anybody gets them, I would like to have them e-mailed to the chambers e-mail address.

MR. KAROTKIN: Yes, sir.

THE COURT: All right. I think that takes care of the housekeeping matters I had, Mr. Karotkin. Do you have other stuff?

MR. KAROTKIN: There are two other items on the calendar for this afternoon.

THE COURT: Go ahead.

MR. KAROTKIN: I believe the first item, Your Honor, relates to a motion by the debtors seeking authority and approval of certain settlement with four different unions. This was noticed on shortened time pursuant to an order of your court.

This motion, Your Honor, involves a settlement with four of what, over the last few days, you've come to know as the splinter unions. They --

THE COURT: These are both non-UAW and --

MR. KAROTKIN: Non-I --

THE COURT: -- nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third.

MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree -- the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well.

But these four unions have agreed to that. Two of the unions have -- that have the active employees have also -- the debtor has also agreed to modify collective bargaining agreements with those two unions. And all of this is conditioned on approval and consummation of the sale.

And, again, like the UAW, in connection with each of these agreements, they've agreed to waive their claims for the retiree health and life benefits as against the debtor company.

THE COURT: Okay.

Any desire from the creditors' committee to be heard on this?

All right.

MR. KAROTKIN: Now, if I --

THE COURT: Normally -- I think the deadline for objections has passed, but considering the short notice, is there anybody who wants to be heard in the way of objection to that settlement?

Record will reflect no response.

MR. KAROTKIN: If I could interrupt for one second?

THE COURT: Yes.

MR. KAROTKIN: I'm sorry. If Your Honor's inclined to grant the relief in the motion, I would suggest that -- we don't have a proposed form of order with us. It was -- the form that we had was incorrect in a few respects, and we haven't had time to change it. My suggestion is if we could send it down to chambers over the next day or so.

THE COURT: I'm going to approve the motion, and your mechanics are okay with me, Mr. Karotkin. When you do that, I want your -- either your letter transmittal or your e-mail message accompanying any attached proposed order to be able to give me a representation of counsel for all of the objected unions and the creditors' committee and the U.S. government are satisfied with the form of the order as consistent with reflecting the deal as everybody understands it to be.

MR. KAROTKIN: Very well, sir.

THE COURT: Okay. Thank you.

What else do we have?

MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars.

I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it -- the terms of which have been substantially agreed to by both the debtors, the U.S. Treasury, the creditors' committee and the Paul Weiss firm representing the ad hoc committee of bondholders.

I don't -- there was some suggestion, Your Honor, that if we could take a short recess, perhaps we might even have a form of document down here. But --

THE COURT: That's not necessarily a problem, but before we get that far, I want to give Treasury and especially

the creditors' committee a chance to be heard if either of them wants to be.

Ms. Caton?

MS. CATON: Good afternoon, Your Honor. Amy Caton from Kramer Levin Naftalis & Frankel, on behalf of the creditors' committee. The wind-down credit facility has been a -- the product of a lot of negotiation by the creditors' committee. This is a very important document to us because it's going to govern how these estates run after the sale closes.

I believe we are satisfied largely with the resolution on the credit facility and the loan that Treasury is making. And there are a few nits that we still had to the credit agreement, but I think those will be worked out.

The one substantive comment that we have to the form of order that we're still trying to work out is corporate governance and how Old GM will be governed after the sale closes and the board leaves. I believe we have a proposal right now on the table, which is that two -- there will be a five-member board, two members of which will be proposed by the creditors' committee, nominated by the creditors' committee, and basically go through the same board approval.

THE COURT: Time out, Ms. Caton.

MS. CATON: Yes.

THE COURT: Is this an evolution since what I heard

this morning on that? I thought I heard of a three-person board, and now it sounds like it's up to five.

MS. CATON: Yes. Yes, Your Honor, it is.

MR. ECKSTEIN: There has been developments --

THE COURT: Evolution.

MR. ECKSTEIN: There has been evolution. A lot of parties have been put into this issue, and we have been trying to deal with changes as they've been evolving.

THE COURT: I understand. Okay.

MS. CATON: I apologize. I forgot about the representations that were made this morning.

THE COURT: No, that's fine. I am really trying to pay attention to what people tell me.

MS. CATON: That's good. That proves -- that definitely shows you're paying attention.

THE COURT: Is this like the guy who gets credit for having given another litigant an idea, or --

MS. CATON: Your Honor, I believe that the proposal on the table is acceptable to the creditors' committee and Weil, but we still need -- and the debtors, but we still need Treasury's acceptance of that, and that's what we're waiting on.

With that, I believe that we'll be prepared to have the order entered. And if Your Honor has any questions about the credit facility, we or Weil or anyone is happy to answer

them.

THE COURT: Well, I understand it in general terms. I'm sure I don't have the detailed understanding that the parties do, but certainly the concepts are fine with me.

Okay, anything else from your perspective, Ms. Caton?

MS. CATON: No, Your Honor.

THE COURT: Okay, Mr. Schwartz or Mr. Jones, either of you want to comment?

MR. SCHWARTZ: Not particularly. I think that was an accurate description in that we were comfortable with what was announced this morning. There have since been some proposals that we're working through, as well as the form of the order.

THE COURT: All right.

Mr. Karotkin, I'm not going anywhere this afternoon, but I'm not sure, from what I heard, whether you're going to have an order that's ready for me anytime that quickly.

MR. KAROTKIN: You read my mind. It's kind of like what you say. I suggest, Your Honor, since everyone pretty much has agreed on the substance, that rather than sticking around, we'd just submit an order to Your Honor after we've circulated it.

THE COURT: That's agreeable. And the drill is going to be the same. When I get it sent to me, I need a representation from whoever's sending it to me that it's been run past the people who are the principal ones who need to be

heard on it; I think that's Treasury and creditors' committee and the estate and Canada.

UNIDENTIFIED SPEAKER: Yes, Your Honor.

THE COURT: Right.

Okay. Mr. Schein, are your folks putting money in this deal too?

MR. SCHEIN: Your Honor, Canada is not actually funding this. But since it does change the rights of the existing DIP facility, it's conditioned upon certain provisions allowing the closing to happen. That's why we are concerned.

THE COURT: Sure.

Okay. Mr. Rosenberg?

MR. ROSENBERG: Good afternoon, Your Honor. Andrew Rosenberg, Paul, Weiss, Rifkind, Wharton & Garrison, on behalf of the ad hoc bondholders. I did -- actually, I think I was the second person or so to speak the first day. I didn't intend to be just the last person to speak on the last day, but I guess that's the way -- I just wanted to mention that when Your Honor was mentioning who needed to be served or passed by in terms of the documents, the Paul Weiss firm obviously has also been involved in looking at the sale order and the DIP order and the credit agreement. We just want to make sure also that we're staying in the loop and are going to see all drafts of those documents.

THE COURT: By all means.

Okay, Mr. Karotkin, I'm going to look to you to focus more than I focused on who needs to look at the paper you send me.

MR. KAROTKIN: Yes, sir.

THE COURT: And if you can give me a representation both that you've gotten the okays and that you've consulted everybody who has expressed the interest or need to be consulted, that'll be good enough for me.

MR. SMOLINSKY: Thank you, sir.

THE COURT: Okay.

And to what extent do we have anything else?

All right, I think we're done.

And you can get me your proposed orders by e-mail. I'm going to ask Mr. Pollack, Charlie, to hang around in case anybody needs details of e-mail addresses and things of that sort.

We're adjourned. Thank you.

MR. SMOLINSKY: Thank you, sir.

(Proceedings concluded at 3:57 PM)

I N D E X

R U L I N G S

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

_____

LISA BAR-LEIB

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Veritext LLC
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Date: July 6, 2009

Exhibit W

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- -x

In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 30, 2009

10:07 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Debtors Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (i)Approve (a)the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (b)the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (c)Other Relief; and (ii)Schedule Sale Approval Hearing

HEARING re Notice of Settlement of an Order Denying Motion of the Unofficial Committee of Family & Dissident GM Bondholders for an Order Directing the United States Trustee to Appoint an Official Committee of Family & Dissident Bondholders

HEARING re Debtors' First Omnibus Motion to Reject Certain Unexpired Leases of Nonresidential Real Property

HEARING re Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a) and 366 (i)Approving Debtors Proposed Form of Adequate Assurance of Payment; (ii) Establishing Procedures for Resolving Objections by Utility Companies; and (iii)Prohibiting Utilities from Altering, Refusing, or Discontinuing Service

HEARING re Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a), 327, 328 and 330 for Authorization to Employ Professionals Utilized in the Ordinary Course of Business

HEARING re Application of the Official Committee of Unsecured Creditors of General Motors Corporation, et al. for an Order Authorizing and Approving the Employment and Retention of Kramer Levin Naftalis & Frankel LLP as Counsel, Nunc Pro Tunc, to June 3, 2009

HEARING re Debtors' Second Omnibus Motion to Reject Certain Unexpired Leases of Nonresidential Real Property

HEARING re Greater New York Automobile Dealers Association's (i)Motion for Consideration of Amicus Curiae Statement; and (ii)Amicus Curiae Statement Regarding Debtor's Motion to Approve Sale Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC

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P R O C E E D I N G S

THE COURT: Good morning. Have seats, everybody. Before we begin, I want to make some apologies to you. It wasn't practical to move to another courthouse with a bigger courtroom and better air conditioning. I'm told that our amplification system is overloaded, is overheated. I'll try to keep my voice up until we can get the amplification system fixed.

As far as the temperature goes, you all have permission, if you need it, to take off your suits -- your suit coats. You can take off your ties, for that matter. Anything you want to do to help make yourself more comfortable under these circumstances is fine with me.

ALL: We can't hear you, Your Honor.

THE COURT: Can you hear me now?

ALL: A little better.

THE COURT: Well, I don't mind raising my voice a little but I'm kind of screaming now. Can you hear me in the back at all?

ALL: No, Your Honor.

THE COURT: All right. Then we're going to have to take a recess until we can get this straightened up.

(Recess from 10:09 a.m. until 10:59 a.m.)

THE COURT: All right, folks. Have seats, please. I'm sorry. I don't know how many courts are typically capable

of handling a case with the needs of this one that would jog with a 100 year old building. Let's get to work.

With so many people appearing about so many things, we're going to have to establish some orderly procedures. So here's what we're going to do. If anybody sees the need to do the lease rejection motion, he can do it. He can have about five minutes or less. If counsel really wants to be heard on that, he's going to have to address my decision in Ames Department Stores. Is he here -- she here? Okay. Back then I ruled -- it's a written decision; I assume you have a copy -- that compliance with broom-clean and cleanup obligations can't be an impediment to exercising the rights to reject under 365. And that would seemingly be dispositive of this motion. But if there's something that you want to say to show me that I got it wrong back when I decided Ames Department Stores, I'll give you that opportunity.

Turning to the main issues, folks, from everything I've read, I understand the issues. And I don't want openings. They're not necessary. With everyone who has filed papers, if we had openings, we'd be here forever. We will, of course, have appropriate opportunity for summation and argument at the end of the evidentiary phase of the hearing, subject to the requirements for coordination and limits to avoid duplication that I'll discuss.

I do, however, want to hear from you, Mr. Miller, or

your designee as to how issues have been narrowed or eliminated since I got all of those briefs. And if you can speak to that after my preliminary remarks, that would be helpful.

I am also going to want, at some point, and I'll take your recommendations as to the best time, for objectors on successor liability issues, which are the main issues in this case, and of the debtor, to give me one-page submissions as to their understanding as to which of the successor liability issues remain and which have been eliminated. I want to know the extent to which modifications in the purchase agreement or otherwise have made successor liability issues go away and which of them still remain matters of concern to parties.

Okay. Then we're going to get the evidentiary record buttoned up. I'm going to take evidentiary objections first from anybody who wants to raise them. We're then going to take the cross and, of course, any applicable redirect and the like from the movant witnesses. If there's any adverse direct of any of those witnesses, and I sense from your pretrial submissions that there may be, it's my view subject to parties' rights to be heard that we should deal with it then so I won't have to make witnesses bounce up and down and to go through this stuff more than once. Then, likewise, we'll have cross of any objector witnesses, rebuttal witnesses, if any, then summation and argument. More about that in a minute.

I didn't receive any designations of deposition

testimony or, if I did, I don't know about it. Normally, I get them a few days before. But I understand how hard you folks have been working and it's possible that you folks were working right through the weekend or even yesterday to do depositions. Subject to your rights to be heard, my thought is that if anybody wants to designate any deposition testimony, he or she should do it by noon tomorrow with twenty-four hours for the debtors to submit any Rule 32 counterdesignations. If anybody thinks that's not a workable course here, I'll hear discussion on that.

Oral argument. I can't blame anybody, especially since you were obligated to put in your objections at the same time. But the objecting briefs make many similar points over and over again. As we've done in all of my other huge cases where there were many, many parties who would be aligned in interest in making the same points, we have to have some coordination. After first hearing from the debtors and the debtors' allies and their advocates for the motion, which are to be likewise coordinated to avoid duplication, with the debtors speaking first unless the debtor has a different view, I'll first take oral argument from one representative each of the following objector or limited objector groups: first, the creditors' committee to the extent it's an objector; next, the dissenting bondholders. Mr. Richman, you or your folks; Center for Auto Safety or another representative for tort claimants;

asbestos litigants; AGs; dealers; non-agreeing unions; nonunion retirees.

If issues are still outstanding and argument is really necessary, I'll take brief, very brief argument, from lienholders, taxing authorities and the County of Wayne.

I won't take oral argument from shareholders, workers' comp objectors or any objectors other than the County of Wayne expressing concerns as to decisions as to whether or not to close down particular plants.

Other parties in the classes I've described are to coordinate with their group advocate and won't separately be heard except on issues that weren't addressed at all to come back and be -- or whether there's a conflict of interest between the various objectors. Remember, folks, I have the briefs.

If the U.S. trustee or the indenture trustees wish to be heard, they can be heard any time they choose. And as I said, the U.S. government, PBGC, the UAW and other supporting unions -- supporting bondholders and others supporting the motion should coordinate with the debtors. But if they have points to make after the debtors have been heard then we're going to give them that opportunity.

Cross-examination. Cross-examination is going to be heard in the same coordinated fashion that I discussed with respect to argument with the objector representatives that I

noted being heard first. So, by way of example, we would start with the creditors' committee, then Mr. Richman and move on from there.

After that, others feeling the need to cross will have that chance but subject to other parties' rights to raise asked and answered objections and my inherent power to control my courtroom and avoid duplicative questioning. Actually, that principle will be applicable throughout. I hope that we won't have the need to raise a lot of asked and answered objections but if I have to rule on them, I will.

Next: briefs. Folks, I understand people worked hard on their briefs. But there was much too much in the way of failures to comply with the requirements of the case management order whose purpose is to help me understand briefs when -- if you put them all together, they're almost two feet high; failures to highlight defined terms so I've got to go back and make sure that you're talking about the things that I think you're talking about; and especially failures to give me tables of authorities and tables of contents make it much, much harder for me to do my job and for me to help you all. You know, I won't embarrass any particular constituency in the courtroom but when I get a sixty-one page brief without a table of authorities or a table of contents, how am I supposed to compare your discussion of TWA with the debtors or on Fairchild Aviation or of White Motor?

So, it's tough on me when you do that, folks, and -- now I don't have a page limit on briefs and I feel like no good deed goes unpunished. So the people who failed to comply with the requirements for tables of authorities and tables of contents have now until noon tomorrow to give it to me. You don't have to give me new briefs. I'm not going to strike your briefs. I'm not going to make you comply with the other respects in which you were deficient. But you're going to give me those tables of authorities because when this is done, I'm going to be going back to put your discussion of the TWAs and the other cases that are relevant to this against the debtors. And we're going to see who's right and who's wrong. But I can't do that unless you help me out, folks.

All right. Fair enough. On the listing of the issues that remain or are resolved on the successor liability issues, there should be lists or bullet points, one page hopefully per constituency and they're not to include federal argument. I just need to know what's open and what isn't.

Okay. With that said, I think it's time to hear from you, Mr. Miller.

MR. MILLER: Good morning, Your Honor. Harvey Miller, Weil Gotshal & Manges, on behalf of the debtors. In response to your question, Your Honor, as to what has been changed since June 1, as Your Honor noted, the weekend and yesterday were really devoted to depositions. They went on

through Saturday, Sunday and Monday. So there was little opportunity, Your Honor, to try and reach conclusions as to open issues. There are two areas in which there has been progress. On the product liability side, Your Honor, in respect of product liability claims arising from expressed warranties in connection with accidents from products, anything -- any accident that occurs after the closing date, Your Honor, irrespective of when the vehicle was manufactured and sold, will be assumed by the purchaser, now New General Motors Corporation. Product liability claims that may arise subsequent to the commencement of the Chapter 11 case and up through the closing to the extent they're triggered by an accident, those, Your Honor, should be administrative expense claims. So there is a major concession on the part of the purchaser, Your Honor, with respect to that type of claims.

There hasn't been any progress, Your Honor, in respect of the asbestos claimants as to future asbestos claimants and existing asbestos claimants so that those claims, under the proposal, Your Honor, would remain with Old GM.

Other tort claims, other than what I've already explained, Your Honor, would remain with Old GM. In connection with what we refer to, Your Honor, as the splinter unions and the contention made by the splinter unions led by the IUE that the treatment which may be afforded to those claimants, retirees, those will be claims against the old company. There

are no active employees of IUE or these other splinter unions that will be working for the new company. And the purchaser has exhibited no desire to assume any of those liabilities, Your Honor.

There has been an amended and restated master sales and purchase agreement which was filed on Friday, Your Honor. It is also on the website. It makes a number of changes, not many substantive changes at all, Your Honor. And we have copies here for anybody who's interested in it.

That, essentially, Your Honor, is where we stand today. The motion is as it was filed with these exceptions. And what we would propose to do, Your Honor -- one exception, Your Honor. There has been some issue raised in connection with the loan and security agreement with the United States government that was entered into on December 31, 2008. And we would like to offer that -- that was not, I think, on our original exhibit list. And we would like to offer that into evidence as part of the debtors' direct case. With the schedules that are attached to that loan and security agreement.

MR. SCHWARTZ: It's on the exhibit list.

THE COURT: Oh, it's on the exhibit list, Your Honor, but the schedules weren't there. And these are the schedules that are attached to it.

THE COURT: So the basic agreement is but the

schedules to it aren't?

MR. MILLER: Yes.

THE COURT: Okay. Any objection? Hearing none, that's admitted.

(Loan and security agreement between GM and U.S. government dated 12/31/08, was hereby received into evidence as of this date.)

MR. MILLER: And we would offer as the debtors' direct case, Your Honor, the declarations or affidavits of Mr. Henderson, the first day affidavit and the supplement to that; the declaration of Mr. Repko; and the declaration or affidavit of Mr. Worth and Mr. Koch. And in the amended evidence and witness list which was submitted to the Court, we had listed, Your Honor, Exhibits 1 through 16 in support of those declarations and affidavits. And to anybody that doesn't have a copy, Your Honor, we have additional binders with all of these documents.

THE COURT: All right. Fair enough. Any evidentiary objections? Mr. Richman?

MR. RICHMAN: Your Honor --

THE COURT: I think you need to come to one microphone or another, Mr. Richman.

MR. RICHMAN: There are two -- and we're trying also, Your Honor -- Michael Richman for the -- Patton Brogs for the family and dissenting GM bondholders -- to try to narrow the

issues and the focus to be as constructive as possible. And the issues that are the most important to us that are what we believe to be the fulcrum of the hearings are the Lionel factors of the debtors' business judgment; related to that, the expressed need for urgency; and tied into that, the effect which the bankruptcy case has on the value of the enterprise. And I say that to create focus and not to waive any of the other factors or issues. And I also don't want to argue extensively; I'm mindful that the time is limited. But as to those issues, we believe that witness credibility is very, very important. And that Your Honor should see and hear the witnesses on those issues that we should be able to see and hear them and be able to cross-examine what the witnesses actually say as distinct from what the declarations have been written to say.

So, to the limited extent of any of the declarations providing evidence on those issues, we object and we would request that there be live direct examination. Thank you, Your Honor.

THE COURT: All right. Mr. Miller?

MR. MILLER: Your Honor, I've read --

THE COURT: My message to you -- I was going to surprise you. It sounds to me I'm too loud. And, folks, including me, and I'll comply, please move back from the microphones for the benefit of the people in the other rooms.

MR. MILLER: Your Honor --

THE COURT: Go ahead, Mr. Miller.

MR. MILLER: I have read Your Honor's case management order very carefully. And Your Honor's order really states -- too loud?

THE COURT: As much as I'd like to avoid excessive sound to the others, I think it's more important that people in the courtroom and me hear what you have to say and that you guys hear what I have to say. So, this close, Mr. Miller, speak so people in the back can hear.

MR. MILLER: I'm saying, Your Honor, that I read your case management order carefully and your case management order clearly enunciates that direct cases can be put into a declaration and affidavits. Mr. Henderson, Mr. Worth, Mr. Koch are all in the courtroom and can be cross-examined as to everything that is set forth in the affidavits and declarations, Your Honor. If we're going to move this process forward, that's the way to do it.

THE COURT: Okay.

MR. MILLER: I must add one other thing, Your Honor. I neglected to say there has been considerable advances made with respect to the tax claims by governmental entities. And we believe that that will be resolved before the end of this hearing, Your Honor.

THE COURT: Okay. Thank you. Mr. Richman --

MR. MILLER: If I may, Your Honor, add one more thing about the F&D dissidents bondholders committee. As Your Honor may recall, there was a motion made by the F&M dissident bondholders committee for the appointment of an additional bondholders committee. And at the time of argument, the U.S. trustee raised the issue as to the completeness of the Rule 2019 statement on behalf of the bondholders. And counsel said that there was no problem, they would file that 2019 statement subsequent to the hearing.

There was an indication or a suggestion during the hearing, Your Honor, that the three members of the F&M dissident bondholders committee were almost par-bias of GM bonds. Subsequent to the hearing, Your Honor, an amended 2019 statement was filed. And in that 2019 statement for these three members, one member who was actually buying bonds on June 1, 2009, the date of the filing of this petition, the cost of that bondholder per hundred dollars of value was two dollars. The other bond -- none of these bondholders, Your Honor, paid more than twenty dollars per hundred dollars of -- per thousand dollars of value of these bonds. These are three bondholders, Your Honor, who claim to represent family and dissident bondholders. But there are only three members. And every one of those three members, Your Honor, bought their bonds substantially below par and one significantly, significantly below par. So I would question, Your Honor, their motivation

and their standing in connection with this proceeding.

THE COURT: All right. I'm not going to make Mr. Richman respond on the issue of standing because the amount that these guys paid for their investments to make them bondholders still doesn't go to their rights under 1109 to appear and be heard in the case.

Practically everybody in this room knows that we get distressed debt investors all the time in this courthouse and other districts as well taking very active roles in these cases having bought their bonds or other investments at very distressed prices. So I'm overruling your objection to deny him standing. And I'll allow you or anyone else, subject to relevance considerations, to amplify on the points you made as we go forward.

I looked at his amended 2019 and I find it to be in compliance with what 2019 requires. So I don't need to deal with the issues of what I or any other judge would do if a 2019 failed to comply or if constituency failed to file a 2019 at all or gave a grossly insufficient one.

The underlying objection on the direct testimony affidavit is overruled. And I don't need to spend a lot of time on the reason. As Mr. Miller appropriately pointed out, my case management order provides for it. And it's the only ways guys like me can function in complex cases with a lot of numeric and statistical information, a lot of historic facts.

This is, of course, without your right, Mr. Richman, to pool on the credibility issues as much as you choose to on cross.

Although the objection was only focused at the movants' witnesses, the same applies to anybody else who gave their direct testimony affidavits or declarations going forward.

I sense that there may be a relevance objection to some of this splinter union affidavits. I'll deal with that. But that isn't an objection on whether the affidavits are admissible at all. The question is the relevance of what they say. All right. Are there -- yes, sir?

MR. JAKUBOWSKI: Yes, Your Honor.

THE COURT: Would you identify yourself for the record, please?

MR. JAKUBOWSKI: May I approach the podium?

THE COURT: Of course. But do me a favor. I intentionally didn't want everybody making a lot of appearances on the record. But when you first speak, folks, please identify yourself.

MR. JAKUBOWSKI: Thank you, Your Honor. My name is Steve Jakubowski. I'm here from Chicago and I very much appreciate your permitting me to appear in this case. I represent product liability claimants and I'm also joint counsel with the Center for Auto Safety --

THE COURT: Yes. I saw your submission, Mr.

Jakubowski.

MR. JAKUBOWSKI: -- and a number of consumer organizations.

The evidentiary issue that I'd like to bring to the Court's attention is the question of the exhibits and the documents that we would like to have -- to use for purposes of cross-examination of witnesses. Every one of the documents -- I have five particular documents that we've designated last night as exhibits that we would like to be able to present to Your Honor to deal with the limited issues of successor liability in the TWA case. And all of those are privileged -- or excuse me. All of those are highly confidential documents that are subject to an agreement among the parties between myself and the debtor and myself and Treasury regarding the ability to disclose them in court.

The debtors have raised an objection to relevance but the relevance objection came before my particular exhibits were designated. So what I would like to do is ask whether or not -- is to try to come up with some procedure as to how to be sure that the exhibits that I would like to present to the witnesses on cross-examination are appropriately held confidential but enough to be able to give you the information you need to be able to rule properly.

THE COURT: I need some help from you, Mr. Jakubowski. Without disclosing the confidential portion, can

you tell me the nature of the confidentiality concern?

MR. JAKUBOWSKI: Sure. Well, I'm not sure. It's their concern and we haven't really discussed --

THE COURT: Oh, is the debtor concerned --

MR. JAKUBOWSKI: It's the debtor's concern.

THE COURT: -- that you got the document subject to a confidentiality --

MR. JAKUBOWSKI: Correct, Your Honor.

THE COURT: Well, maybe I should give them a chance to be heard and give you a chance to respond if you need to.

MR. JAKUBOWSKI: Thank you, Your Honor.

THE COURT: The presumption, folks, is that in a hearing in a case of this type that's of fairly considerable public importance, I really do not want to have to close the courtroom or to deprive the public of access to this if there's any possible way to be avoided.

Let's see if we can flesh this out. Another possibility, Mr. Jakubowski, is that since, under my guidelines, I would be giving the creditors' committee and Mr. Richman the first opportunities to cross, is it helpful for me to suggest that you have a caucus with the movants in the next recess to see if you can work something out with them on giving you what you need to do or the ability to do what you need to do without impairing any commercial confidentiality concerns?

MR. JAKUBOWSKI: I would be happy to do that.

THE COURT: Mr. Miller, can I get your views, please?

MR. MILLER: I beg your pardon, Your Honor?

THE COURT: Can I get your views, please?

MR. MILLER: I -- Your Honor, this amended and restated witness list from Mr. Jakubowski came in at 2 a.m. this morning. I think Your Honor's suggestion is the appropriate suggestion. I think we need some time to talk with Mr. Jakubowski and see if there is some way that we can alleviate this problem.

THE COURT: Fair enough. Then let's get on with the cross. And, Mr. Jakubowski, if you would drop down a couple notches in the questioning order, that won't be a big deal and that way you guys can hopefully resolve it at this juncture.

MR. MILLER: And, Your Honor, I take it that what I described before is now moved into evidence?

THE COURT: Yes. It is so moved and admitted. (Declarations/affidavits of Mr. Henderson, Mr. Repko, Mr. Worth and Mr. Koch were hereby received into evidence as of this date.)

MR. MILLER: Thank you, Your Honor.

THE COURT: And you had a writing for me with that stuff in the other courtroom. But if you want to just give me an extra one now, that might be helpful.

MR. MILLER: May I approach, Your Honor?

THE COURT: Yes. Thank you.

MR BRESSLER: Your Honor, may I be heard before the Court?

THE COURT: Yes.

MR. MILLER: Excuse me just one moment. This is the amended and restated master exhibit list.

THE COURT: Okay. Good morning.

MR. BRESSLER: Good morning, Your Honor. Barry Bressler from Schnader Harrison. We're the ad hoc committee of consumer victims.

THE COURT: Pause, Mr. Bressler. Now, unless I read the briefs incorrectly, you have similar concerns to Mr. Jakubowski, don't you?

MR. BRESSLER: I wanted clarify where we do not. We represent 300 tort claimants not his five. We do have a similar concern as to 363. But we have raised two other objections on which we have deposed the witnesses: one is the sub rosa plan objection and the other is a bad faith objection not raised by the --

THE COURT: Purchaser bad faith?

MR. BRESSLER: Yes. And as to those, since Mr. Jakubowski did not have those objections, I would like to be heard for the consumers.

THE COURT: This is kind of what I was talking about, that overlap, folks, 'cause Mr. Richman made very similar points. I'm not going to rule in advance but this is exactly

the kind of thing where we need to avoid duplication. And whether you agree with Mr. Richman or disagree with Mr. Richman, nobody can suggest that he wasn't a capable advocate for the views that he advanced.

So I'm going to hear from Mr. Richman. And then when it's tort claimants' turn, I'm going to hear from Mr. Jakubowski or the Center for Auto Safety, which, I gather, is his ally on this, first. And then subject to what I ruled before, if Mr. Richman failed to make a point that you think he should have made or could have made, not made it badly but if he left out -- I don't think there's going to be a distinction because if he makes it, he's going to make it competently, I think you can assume, this willingness without prejudice to your rights to come up and say we could ask something else.

MR. BRESSLER: Thank you, Your Honor. We do not intend to duplicate.

THE COURT: Okay. Anything else? All right. Mr. Richman, do you have a preference as to who you cross-examine first?

MR. RICHMAN: Your Honor, Mr. Henderson. And my partner, Mark Salzberg, is going to be my designee for this purpose.

THE COURT: Okay. Mr. Salzberg was it?

MR. RICHMAN: Yes.

THE COURT: Thank you. Is Mr. Hen -- yes. Mr.

Henderson, could you come up to the witness box, please, and remain standing to be sworn by the operator.

(Witness duly sworn)

THE COURT: Have a seat, please, Mr. Henderson. Normally, I tell people to keep their voices up. In this situation, I don't know whether to do that or tell you the opposite. Why don't you try talking the way you feel like talking and if the people can't hear then raise your hands and hopefully it won't be too loud for the other people.

THE WITNESS: Thank you, Your Honor.

THE COURT: Mr. Salzberg, proceed.

MR. SALZBERG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SALZBERG:

Q. Good morning. Can you please state your name for the record?

A. My name is Frederick Henderson.

Q. And, Mr. Henderson, what is your present position?

A. I'm the president and chief executive officer of General Motors.

Q. And you became the president and CEO of General Motors on what date?

A. April 1st of this year.

Q. And prior to that, you were the chief operating officer, is that correct?

A. That's correct, sir.
Q. Okay. The U.S. Treasury extended certain loans to General Motors and certain of its affiliates on December 31, 2008, is that correct?
A. That's correct.
Q. And there were some loans extended in the months subsequent up until the petition date on June 1, 2009.
A. Also correct.
Q. Do you know what the amount of those loans were that were extended on December 31, 2008?
A. Four billion dollars.
Q. And at the time the four billion dollars was extended on December 31, 2008, was GM adequately capitalized?
A. No.
Q. Okay. Was it able to pay its debts as they become due -- as they came due, excuse me.
A. Without that loan, no.
Q. Okay. And at that time, were the assets of GM in excess of its liabilities?
A. Could you repeat the question, sir?
Q. Sure. At the time that the initial four billion dollars was extended on December 31, 2008, were GM's assets in excess of its liabilities?
A. No.
Q. Okay. And there were subsequent advances made in January,

February, March, April, May of 2009, correct?
A. That's correct.
Q. And is it fair to say that in each one of those instances, when those subsequent loans were extended, GM was not adequately capitalized?
A. That would be my opinion, yes.
Q. Okay. And GM was not able to pay its debts as it came due.
A. Without those draws, correct.
Q. Okay. And its liabilities exceeded its assets, is that correct?
A. Also correct.
Q. Okay. When GM first received the initial four billion dollars, how did GM intend to pay that four billion dollars back to the U.S. Treasury?
A. At the time, we were planning to develop -- we had plans to develop a viability plan which would restructure our business, restructure our business preferably outside of a bankruptcy court. And one key objective of that restructuring would be to repay the loans to the Treasury.
Q. So it was a question. GM was not sure it could pay the loans back in its restructured business, is that correct?
A. That's correct.
Q. And would the same be true at each time that the subsequent pre-petition loans were extended that GM was only

able to pay back those loans if it restructured its business?
A. Yes.
Q. And did that restructuring include converting the debt into equity?
A. Not initially. That was not initially the view, sir.
Q. And when did that become the plan?
A. In the second quarter of this year when we launched the bond exchange, one element of that was to equitize at least half of the loans that were provided by the Treasury prior to June 1st.
Q. Okay. So sometime in April or May of 2009, GM came to the conclusion that it could only pay back its loans to the U.S. Treasury or loans from the Treasury by at least partially equitizing those loans, is that correct?
A. When we launched the bond exchange, we felt that in order for us to proceed, and for the bondholders to consider their opinions that we needed to identify that as one of the conditions to the bond exchange. We felt it was important for that to happen in order for us to have an adequate capitalization.
Q. But just so I'm clear and so the record is clear, was it GM's belief that the only way it could satisfy -- it could pay back, at that point, the approximately seventeen billion dollars in pre-petition loans was that if some of those loans were converted to equity?

A. That was our judgment, yes.

Q. Okay. So would it be fair to say that since December 31, 2008, the United States Treasury had some sort of lev -- some type of leverage over General Motors?

A. Correct.

MR. MILLER: Objection to the form of the question, Your Honor.

THE COURT: Overruled.

Q. And when GM received the four billion dollar installment December of '08, was there any other source of funding for GM? Any other source of loans?

A. No.

Q. And since that time, from December of '08 until the petition date of June of '09, was there any other source of funding for GM?

A. For our U.S. operations, no.

Q. Okay. And under the loan agreement that was entered into between the debtor and the trustee -- I'm sorry, U.S. Treasury, excuse me -- was the U.S. Treasury able to call the loans if a viability plan was not proposed by GM which was sufficient in its view?

A. Yes.

Q. So at any time from December of '08 through June 2009 when the bankruptcy was filed, U.S. Treasury could have said these loans are payable now, immediately due because GM has not

proposed a viability plan which we find acceptable?

A. Yes.

Q. Now your predecessor CEO was Richard Wagoner, is that correct?

A. Yes.

Q. And he resigned sometime around April 1st, I guess, 2009, is that correct?

A. Correct.

Q. What were the circumstances surrounding --

MR. RICHMAN: Well, let me rephrase that. Excuse me.

Q. How did Mr. Wagoner come to resign as CEO of GM?

A. We were asked to come to Washington and review with the automotive task force their preliminary results of our viability plan that was submitted on February 17th. That was a Friday. I believe it was March 27th but it was the Friday of that week. Whether -- I'm not sure if it was exactly the 27th.

At that meeting, the head of the automotive task force, Steve Rattner, asked to see Rick Wagoner in advance in a one on one meeting. And at that meeting, he asked Rick to step down.

Q. So Mr. Rattner asked the CEO of GM to step down?

A. I was not at the meeting but Mr. Wagoner indicated to me that he was asked to step down as both chairman and CEO.

Q. Do you know under what authority Mr. Rattner, on behalf of the auto task force, asked Mr. Wagoner to step down as CEO?

A. No.

Q. Did he have -- did the U.S. Treasury have contractual authority to essentially terminate the CEO of GM?

A. Not that I'm aware of.

Q. Are you familiar with papers filed by the U.S. Treasury in support of the sale motion?

A. Umm --

Q. Have you seen them?

A. No.

Q. Okay. There's reference -- I will represent to you that there's reference, and Mr. Miller will correct me if I'm wrong, to the U.S. Treasury acting as a "prudent lender" in the statement. Are you familiar with that phrase or are you aware that they use that language?

A. Yes.

Q. Okay. Do you know of any other instances where a lender has acted as a prudent lender where it actually instructed its borrower to terminate its CEO?

A. I'm not aware of any.

Q. Do you know of any other instances where lenders have instructed borrowers to terminate their CEO or undertake --

MR. MILLER: Objection, Your Honor. This assumes facts that are not in the record. Mr. Henderson testified that Mr. Rattner asked Mr. Wagoner to step down.

UNIDENTIFIED SPEAKER: We can't hear.

MR. MILLER: Sorry. Mr. Henderson testified, Your

Honor, that as far as he knows, Mr. Rattner asked Mr. Wagoner to step down. He did not terminate him. That was a decision that had to be made by the board of directors of GM. And if counsel has the document, he should show it to the witness who said he never saw the document.

THE COURT: All right. I'm going to sustain the objection on form without prejudice to rephrase.

MR. SALZBERG: Thank you, Your Honor.

BY MR. SALZBERG:

Q. Mr. Henderson, you were a member of the GM board of directors, is that correct?

A. I am now, yes.

Q. Okay. Were you a member prior to April 1 of 2009?

A. No.

Q. Okay. Were you -- did you -- well, as a nonmember, did you attend the board of directors meetings where Mr. Wagoner's resignation was discussed?

A. Yes.

Q. Okay. How did the board -- I'm sorry. Did the board ask Mr. Wagoner to resign as CEO at that meeting on or about March 27th, 2009?

A. There was a telephonic meeting of the board that had been regularly scheduled for noon that day, on the Friday. At that meeting, Mr. Wagoner indicated to the board what was asked of him and a discussion ensued. And, no, the board did not ask

for his resignation at that meeting.
Q. So how did Mr. Wagoner end up resigning?
A. Mr. Wagoner resigned, I believe, on Sunday, that weekend, after a number of board calls.
Q. Would you agree with me that Mr. Wagoner resigned at the suggestion of the U.S. Treasury?
A. Yes.
Q. And would you agree with me that Mr. Wagoner resigned at the suggestion of the head of the U.S. auto task force?
A. Yes.
Q. And would you also agree with me that Mr. Wagoner resigned at the suggestion of the only lender that GM had at that time?
A. Yes.
Q. Okay. Now, the debtor has not filed a plan of reorganization as we stand here today, is that correct?
A. That's correct.
Q. There were discussions prior to the filing of the petition regarding --
MR. SALZBERG: Strike that. Let me rephrase that.
Q. Prior to the bankruptcy being filed, there were discussions between GM and the U.S. Treasury regarding filing a plan of reorganization to accomplish this asset sale, is that correct?
A. Could you rephrase the question, please? I'm sorry.
Q. Sure. Were there discussions prior to the petition date

between the debtor and the U.S. Treasury regarding different processes for accomplishing the asset sale?

A. Yes.

Q. And one of those processes that was discussed was filing a plan, a pre-packaged plan of reorganization, is that correct?

A. Correct.

Q. And was one of the processes discussed filing a pre-negotiated plan of reorganization?

A. Yes.

Q. Okay.

MR. SALZBERG: Excuse me. Your Honor, if I may?

THE COURT: Yes.

MR. SALZBERG: Your Honor, Mr. Miller and I just have to talk about the confidentiality issue that was raised by counsel 'cause we do have some exhibits.

(Pause)

MR. SALZBERG: I apologize, Your Honor. We're just dealing with procedural --

THE COURT: Oh, I understand. Go on.

(Pause)

MR. MILLER: No objection, Your Honor.

MR. SALZBERG: Your Honor, this is a mea culpa. Over the last few days, we've been attending depositions and the one thing I forgot were exhibit stickers. And so I apologize. But may I approach -- Your Honor, may I hand mark --

THE COURT: Do it the old-fashioned way. Take a pen and then you can mark it as an exhibit.

MR. SALZBERG: Thank you, Your Honor.

THE COURT: Just tell me how you've marked and, for the record, a general description of your document without prejudice to the witness' ability to identify it --

UNIDENTIFIED SPEAKER: Your Honor, I have sticker.

MR. SALZBERG: Thank you, Your Honor. Your Honor, for the record, I'm going to mark this document Bondholder Exhibit number 1.

THE COURT: Sure.

MR. SALZBERG: And if I may approach the witness and Your Honor?

THE COURT: Yes, you may.

THE WITNESS: Thank you.

(Bondholder's Exhibit 1, proposed pre-packaged plan of reorganization, was hereby marked for identification as of this date.)

Q. Do you recognize this document, sir?

A. I recognize parts of this document but not the document in its entirety.

Q. Okay. Thank you. If you would, please turn to page 4 which is entitled "Plan B Options".

A. Yes, sir.

Q. Okay. Do you recognize this page of the document?

A. No.

Q. I'm sorry?

A. No.

Q. Okay. Let's get to it this way. You see there are three -- three boxes that one is noted "90-day Cramdown, 4/1"; the second is "60-day pre-pack, 5/31"; and the third is the "363 Sale, 5/15", do you see that?

A. Yes, I do.

Q. Okay. Were there discussions prior to the filing of the petition between the debtor --

MR. SALZBERG: Well, I'm sorry. Let me rephrase.

Q. Did the debtor contemplate filing a plan of reorganization on or about April 1, 2009?

A. No. Not April 1st.

Q. Okay. But there were discussions prior to the filing about filing a plan on the petition date, is that correct?

A. Yes.

Q. And there were discussions -- the debtor considered using the plan confirmation process in order to effectuate the sale of the assets, is that correct?

A. There was a discussion regarding a plan of reorganization pursuant to a pre-packaged bankruptcy. And also a discussion of a 363.

Q. Okay. But I just want to be clear that one of the issues -- one of the processes discussed was filing a plan of

reorganization on the first day, is that right?

A. That's correct.

MR. SALZBERG: Your Honor, I'm going to show the witness what's been marked as Bondholder Exhibit number 2. And if I may approach?

THE COURT: Yes, sir.

MR. SALZBERG: Two copies. There you go.

THE WITNESS: Thank you.

MR. SALZBERG: You're welcome.

MR. MILLER: Let me have a copy, please.

MR. SALZBERG: Yes. Your Honor, if I may, I'd like to move Exhibit -- Bondholder Exhibit 1 into evidence.

THE COURT: Any objection?

MR. MILLER: No objection.

THE COURT: Bondholder Exhibit 1 is admitted.

(Bondholder's Exhibit 1, proposed pre-packaged plan of reorganization, was hereby received into evidence as of this date.)

MR. SALZBERG: For the record, Bondholder Exhibit 2 is a document bearing Bates stamps GMPR92336 through 92360 and it bears on the first page "Cadwalader Use of Section 363 to Expedite Restructuring of Distressed OEMs".

Q. Sir, Cadwalader, the law firm, represents the U.S. trustee in this case -- the U.S. Treasury in this case, is that correct?

A. Yes.
Q. So during the planning of this bankruptcy, you had discussions -- you, being GM, had discussions with Cadwalader, is that right --
A. Yes.
Q. -- in conjunction with your counsel, is that correct?
A. Yes.
Q. Okay. If you would turn to page 3 of this document -- first of all, have you ever seen this document before?
A. Yes.
Q. Okay. When did you see it?
A. Sunday.
Q. At your deposition?
A. Yes.
Q. Prior to that had you seen it?
A. I'd seen parts of it but not in its entirety.
Q. Okay. Page 3 of the document -- did you see this page 3 prior to your deposition on Sunday?
A. No.
Q. Okay. You see there are two columns, one is entitled "Section 363" and the other is entitled "Plan"?
A. Yes.
Q. Okay. And if you read under Section 363, there's some bullet points there. Do you see the bullet points?
A. Yes, I do.

Q. Okay. Was one of the reasons why the debtor chose to file a sale motion as opposed to file a plan because the consent of creditors and shareholders would not be required under a 363 sale whereas they would be required in a plan?

A. Could you rephrase the question, please?

Q. Sure. Was one of the reasons why the debtor chose to file a sale motion as opposed to filing a plan on the petition date because the Section 363 sale could be done without obtaining the consents of creditors and shareholders?

A. No.

Q. That had nothing to do with it?

A. The discussion with respect to the Treasury was what structure they were prepared to do in terms of both financing the company as well as, in this case, the view was that they were prepared to proceed using a 363 process. The discussion, for example, of shareholder votes was not a critical factor that we discussed during the deliberations and then how creditors were being affected were basically depending upon what path was chosen.

Q. But it's correct that one of the issues pointed out by Cadwalader in support of the 363 sale was that consent of shareholders and creditors would not be required, is that correct?

A. Yes, that's correct.

MR. MILLER: Objection, Your Honor. Mr. Henderson

testified that he never saw that page.

UNIDENTIFIED SPEAKER: Can't hear.

THE COURT: I'm going to sustain the objection on the ground that what the document says is the best evidence of what it says and I'm not going to ask a witness who's only seen parts of the document before to characterize it --

MR. SALZBERG: Okay.

THE COURT: -- without prejudice to your rights to argue in summation and to bring parts of the document to my attention.

MR. SALZBERG: Thank you, Your Honor.

Q. Without looking at the document and without referring to the document, were there discussions between the debtor and the U.S. Treasury leading up to the petition date that a 363 sale would be better strategically because the standards for the sale would be lower than that required under a plan of reorganization? By U.S. trustee, I meant U.S. Treasury. I don't know why I keep making that mistake.

A. Yes. The -- we did have significant discussion regarding the benefits and the risks of 363 and a plan through -- over many months. So, I'm just trying to make sure I understand your exact question.

Q. Well, was one of the benefits you discussed, benefits of the 363 sale, was it that the standards for the sale would be lower than that required under a plan confirmation?

A. Well, I understood the standards were different, for certain.
Q. Okay. And was one of the reasons why the debtor opted for the 363 sale because it would provide less of an opportunity, less of an opportunity, for creditors to object?
A. I don't recall that discussion.
Q. Okay. Would it be fair to say that one of the reasons -- well, there were strategic reasons why the debtor chose to effectuate the sale of the assets through 363 as opposed through a plan, is that correct?
A. That's correct.
Q. Okay. Are you aware of any document filed in this proceeding which identifies the recovery for unsecured creditors as compared to the UAW retirees?
A. I've seen the document in that regard so it must be a part.
Q. Okay. And it's your testimony, just so I'm clear, that there is a document in this file which would identify the level of recovery that the unsecured creditors would get dollar wise, the dollar value of recovery, as compared to UAW retirees.
A. Yes.
Q. Okay. Do you know what the dollar value in comparison is in the recoveries?
A. It depends on the value of the equity.
Q. Okay. Well, is it correct to say that the unsecureds,

which primarily --

MR. SALZBERG: Let me back up.

Q. Is it correct that the unsecured creditor class consists primarily of the bondholders?

A. That's correct.

Q. Okay. Do you know the percentage of the claims, the bondholder claims, which make up the unsecured creditor class?

A. I don't know. I just know that the unsecured bondholders at twenty-seven billion dollars would be the largest component of the unsecured creditor class.

Q. Okay. I believe that the Form 8K filed by GM in late May said the bondholder claim would be primarily the -- primarily all the unsecured creditors.

A. That's correct.

Q. Okay. And the UAW retirees will get what out of this deal as proposed?

A. The UAW --

MR. MILLER: Objection, Your Honor. If counsel would lay a foundation -- get from whom?

UNIDENTIFIED SPEAKER: Your Honor, we can't hear.

THE COURT: Mr. Miller, there is a microphone on your desk but I don't know if bringing it closer to you is going to help --

MR. MILLER: I don't think it's on, Your Honor.

MR. SALZBERG: I'll refer --

THE COURT: People in the background, do you hear Mr. Miller's tapping on that microphone?

UNIDENTIFIED SPEAKER: No.

THE COURT: All right. Then, Mr. Miller, you're going to just have to come up to the main lectern microphone.

MR. MILLER: Your Honor, counsel keeps referring to what the UAW employees or retirees are getting as a result of the Section 363 sale. He fails to identify from whom and how. He's making an assumption that -- a predicate that is not in the record.

THE COURT: Well, I don't think there's a predicate that's not in the record but I think there's an ambiguity. So why don't we sustain it on form and you just clarify the question. You can ask it again sharpening the question.

MR. SALZBERG: Yes, Your Honor. And, by the way, I would ask that Bondholder Exhibit 2 be moved into evidence.

MR. SCHWARTZ: Objection.

THE COURT: Any objections? Please, Mr. Schwartz?

MR. SCHWARTZ: I just want to be clear for what purpose it's being --

THE COURT: Mr. Schwartz, you're going to have to come up to the mic, too. Unfortunately, we're talking into three corded ones here.

MR. SCHWARTZ: Matthew Schwartz for the United States. I just want to be clear for what purpose the exhibit

is being offered. Probably I ought to have made the same objection to the first exhibit. If it's being offered for the truth of the content, it's hearsay. And if it's being offered for anything else, Mr. Henderson testified he hadn't seen the entire document before.

THE COURT: Okay. I'll take a response.

MR. SALZBERG: Your Honor, I believe that document number 2 is a business record maintained by -- it's either the U.S. trustee -- U.S. Treasury, excuse me, or the debtor. It was produced by GM, actually, in response to a document request. It was -- from its contents, it was drafted by its counsel sometime immediately prior to or during the lead up to the bankruptcy filing.

THE COURT: Well, I don't think it's a business record. But it may qualify as an admission depending on who its author was and the purpose for which it was put forward. It also raises issues of double hearsay. My inclination, folks, is for you to -- well, it's more than that. If I mention it, it's my ruling. Lay a foundation. Find out who the author of the document is. If the author of the document is GM, they're your opponent and I'll admit it as an admission. If the author of the document is the auto task force or Treasury, they're a party in interest with a different perspective but I have problems with taking it as an admission at least without a case that says that a party -- a multi-party

1109 case -- Chapter 11 case is, by reason of 1109, a party opponent with the Federal Rules of Evidence.

Alternatively, if you want to offer it for a lesser purpose, not for the truth of the matter asserted but for the fact that somebody said something, then at least standing there, you wouldn't have any hearsay issues at all. So I'm -- Mr. Schwartz kind of hit the nail on the head when he talked about the purpose. It may be admissible for all purposes but it may be admissible only for certain ones.

MR. SALZBERG: Your Honor, in response, I believe that Mr. Wilson, who will be proffered by the U.S. Treasury, will be able to identify the document. Cadwalader acted as U.S. Treasury's outside counsel in this matter. But I think just for purposes of right now, what the document is being -- what we're seeing to introduce the document for is to show not necessarily that 363 is better than a plan for the reasons stated here but that there were discussions between the debtor and the U.S. trustee (sic) at the U.S. Treasury, and their outside counsel concerning these very issues.

THE COURT: All right. Well, if your only purpose is to show that it was discussed, I would think that that isn't for the truth of the matter asserted. Mr. Schwartz, am I missing something?

MR. SCHWARTZ: I think you're exactly right. And for that purpose, it's appropriate to mark it Bondholder's 2 for

identification, so it can be used as a talking point, but not to move it into evidence.

THE COURT: All right. Here's my ruling.

MR. SALZBERG: Your Honor, if I may? I'm sorry.

THE COURT: Yes.

MR. SALZBERG: And the other issue is that Treasury did file an opposition to our, the bondholders' opposition to the sale motion. So they are taking an affirmative stand against our position.

THE COURT: I understand that. And that's why I had the uncertainty as to what the case law would say about whether many parties in an 11 are considered party opponents for the purpose of what's an admission. And, of course, I'm talking the old style long before there were Federal Rules of Evidence.

Here's what we're doing, folks. Here's what I'm ruling. I'm taking it, for all purposes relevant to whether something was stated. I'm not yet taking it for the truth of the matter asserted, by way of example, whether 363 is better than plans, or the plans are better than 363. That's especially a matter of concern when you have subjective views being expressed in the document as to which people in this room elsewhere have differences in view.

It's without prejudice to anybody showing me a case that if somebody who disagrees with you in a multiparty alleging or anything they say is an admission. I've been at

this for almost forty years. I don't think I've seen a case on it. But you guys have done a lot more homework in preparation for this hearing than I have. So I'll keep an open mind on that second level issue.

I mean, a classic example of that is the creditors' committee. The creditors' committee has said stuff. Some people agree with the creditors' committee on some issues and not on others. I'm not of a mind, subject to seeing some case, to say that anything the creditors' committee generates is an admission of all of the unsecured creditors in this case, because its agent, the creditors' committee, said something. That's a pretty complicated area, and I'm not going to decide that on the fly now. So it's admitted for the purpose of anything that's in it having been expressed as a view. Beyond that, the objection is sustained without prejudice to reconsideration. Go ahead.

(Bondholders' Exhibit 2, document entitled "Cadwalader Use of Section 363 to Expedite Restructuring of Distressed OEMs", was hereby received into evidence for a limited purpose as of this date.)

MR. SALZBERG: Thank you, Your Honor. I'd like to mark this document -- mark it as Bondholders' Exhibit 3. And if I may approach, Your Honor?

THE COURT: Yes, sir.

(Bondholders' Exhibit 3, GM/UAW/UST VEBA discussions dated May

18, 2009, was hereby marked for identification as of this date.)

(Pause)

MR. SALZBERG: For the record, Bondholders' Exhibit 3 is Bates stamped Treasury IUE CWA 2609 through 2626. And the first page bears the title "GM/UAW/UST VEBA Discussions Dated May 18, 2009."

BY MR. SALZBERG:

Q. Sir, do you recognize this document?

A. Yes.

Q. What is this document?

A. It's a document that reviews the nature of the VEBA obligation, restructuring terms, pro forma analysis of the capital structure, and the benefits of the restructure.

Q. Was it prepared for you?

A. (No response)

Q. Let me rephrase that. Who prepared the document?

A. I think General Motors prepared this document.

Q. Okay. And did you see it on or about May 18, 2009?

A. Yes.

MR. SALZBERG: I would ask that Bondholder Exhibit 3 be moved into evidence.

THE COURT: Any objection?

MR. MILLER: No objection.

THE COURT: Admitted without objection.

(Bondholders' Exhibit 3, GM/UAW/UST VEBA discussions dated May 18, 2009, was hereby received into evidence as of this date.)

Q. Sir, if you would turn to page 12 of this document? Just tell me when you get there. What is page -- page 12 bears the title "Illustrative Valuation"?

A. Yes.

Q. What does page 12 --

THE COURT: Forgive me, Mr. Salzberg, what page were you referring to?

MR. SALZBERG: I'm sorry. Page 12.

THE COURT: Thank you.

Q. What is this page of this document purporting to show?

A. It's purporting to arrive at a pro forma common equity value.

Q. The second -- the bottom half of this page bears the title "Recovery Analysis". Do you see that?

A. Yes, I do.

Q. And we were talking a moment before regarding the recovery to be achieved by the unsecured bondholders and UAW retirees. Do you recall that conversation?

A. Yes.

Q. If you look at the line item that says New VEBA -- and VEBA, just to clarify for the Court, what does VEBA stand for?

A. It's the Voluntary Employee Benefit Association. But in this case it is intended to be the vehicle with which post

retirement healthcare plans were paid for UAW members.
Q. Simply for the UAW retirees, correct?
A. Yes.
Q. And if you look at the last column, for line item New VEBA, it shows a 65.6 percent recovery rate. Do you see that?
A. Yes, I do.
Q. And then for bondholders, who you said consist of primarily or they make up primarily all of the unsecured claimants, this is a nine percent recovery rate. Do you see that?
A. Yes.
Q. Now, these numbers were calculated using a proposal to the UAW which is not the proposal that's not on the table today, correct?
A. That's correct.
Q. There is a UAW retiree settlement agreement which has been made part of the sale motion which has different recoveries for the UAW retirees than the one shown here, correct?
A. Correct.
Q. And those are actually higher recoveries, correct?
A. Depends on the equity value.
Q. Under the UAW retiree settlement, the retirees are going to receive seventeen and a half percent of the common stock of New GM, correct?
A. Correct.

Q. A 2.5 billion dollar note, correct?

A. That's correct.

Q. 6.9 billion dollars in preferred stock?

A. 6.5.

Q. 6.5, excuse me. And warrants to acquire an additional 2.5 percent of the common stock of New GM, correct?

A. At a 75 billion equity value, yes.

Q. And that stands -- well, let's compare that to what the bondholders/unsecureds will recover out of this bankruptcy. What is that?

A. The bondholders/unsecureds would --

MR. MILLER: Objection, Your Honor. Counsel used the phrase "out of this bankruptcy"?

MR. SALZBERG: I'll rephrase.

MR. MILLER: The UAW is getting --

THE COURT: All right. Once he said he would rephrase, you don't have to continue. Go ahead, Mr. Salzberg.

Q. What is the recovery for the unsecured creditors?

A. The unsecured creditors would receive ten percent of the equity of the New General Motors and two different sets of warrants, each at seven and a half percent, so fifteen percent warrants. The first is a seven-year warrant, struck at a fifteen billion equity value, and the second, I believe, is a ten-year warrant stuck at a thirty billion equity value.

Q. And the UAW retiree claim, how much is that?

A. We've estimated the liability that was owed to the UAW at approximately twenty billion dollars, actually twenty-one billion dollars.
Q. Okay. And the unsecured -- well the bondholders' claim is twenty-seven billion dollars?
A. That's correct.
Q. Now, there were references in the sale motion that the U.S. Treasury has said that it will not fund the DIP -- continue to fund the DIP if the sale order is not entered by July 10th. Do you recall that?
A. Yes.
Q. Now, if the U.S. Treasury does not fund on July 10th and the sale order is not entered by that date, what options are there for GM at that point?
A. Well, if they don't continue, we would liquidate.
Q. And has a calculation been done by GM as to what the U.S. Treasury will recover in a liquidation?
A. We have done liquidation value, the focus of which is to determine what the recovery is of the unsecured creditors. I don't recall what the recovery of the U.S. Treasury would be.
Q. It won't be a hundred percent recovery, would it?
A. No.
Q. Do you think -- do you have any understanding of what the range would be a projected recovery?
A. I'm sorry, I don't.

Q. Let's talk about the performance of GM right now. Were there targets set for sales of vehicles in June of 2009?
A. Yes.
Q. And how is the company performing as compared to those targets?
A. We're performing in line, if not slightly better than the targets, in terms of retail.
Q. So the company is doing better than expected?
A. The company's certainly better than the forecast coming into the month, again, with respect to retail. We're off on fleet sales, because fleet customers have actually pulled back their orders associated with the bankruptcy because they didn't know their status in the bankruptcy.
Q. But with respect to other sales other than fleet, you're doing better?
A. Yes.

MR. SALZBERG: Your Honor, may I have a moment to confer?

THE COURT: Yes, sir.

(Pause)

Q. Now, in the sale motion that was filed by the debtor, there are assertions that the sale has to take place by July 10th, correct?
A. Yes.
Q. How was that date arrived at by the debtors?

A. That date was arrived at by the purchaser, actually, as a key date that they felt that was important to them.

Q. Do you have an understanding as to why that date was important to them?

A. Because they, like we, are concerned about the business status of the company in a bankruptcy process.

Q. But again, we discussed that the business of the debtor is actually doing better than expected, correct?

A. The business is doing better for a number of reasons, one of which is the expectation that this will move quickly and that the company, in the 363 process, would be successful.

Q. Just a few more questions. There are references in the documents that were produced over the weekend to a sixty to ninety-day sale after the petition date. Is that correct?

A. Yes.

Q. And so that would mean that the sale would be closing outward of ninety days out, which would be August 31 of 2009. Is that correct?

A. We said no later than that, yes.

Q. So actually, the debtor had contemplated with -- I'm --

MR. SALZBERG: Let me rephrase that.

Q. Was the August 31 date chosen in conjunction with or in communication with the U.S. Treasury?

A. Yes.

Q. So there were discussions between the debtor and the U.S.

Treasury about a sale actually closing as late as August 31, 2009?

A. The actual closing, yes.

Q. Yes, okay. Were there any discussions prepetition as to whether it was feasible to file a plan on the petition date of June 1 and get to plan confirmation within ninety days?

A. I don't recall those discussions.

Q. And you would agree with me that the plan confirmation process would afford additional opportunities for creditors and other stakeholders to raise objections and be involved in the process. Is that correct?

MR. MILLER: Objection. It calls for a legal conclusion.

THE COURT: Sustained on legal conclusion, but I'll permit his layman's understanding.

A. Could you repeat the question, please?

Q. Sure. I think. You would agree with me that a plan confirmation process would provide additional opportunities for creditors and other stakeholders to be involved and to assert objections to the proposed disposition of the GM assets?

A. That was my understanding of how it would work, yes.

Q. And in fact, in the plan confirmation process, creditors would know how other stakeholders and creditors are being treated, correct?

A. That's my understanding, yes.

Q. And there would likely be disclosure in the disclosure statement showing expected recoveries for the creditors and other stakeholders?

A. Yes, that's my understanding.

MR. MILLER: Objection. Same objection.

THE COURT: I'm taking it only as his layman's understanding, and it's subject to what the law thinks that he is.

MR. SALZBERG: I have no further questions, Your Honor. Thank you.

THE COURT: Okay. Before I provide for redirect, I'm inclined to have all of the cross proceed. Who is next along the lines that I outlined previously?

MR. RICHMAN: Your Honor, auto safety group, Your Honor. Auto safety group.

THE COURT: Thank you, Mr. Richman. Auto safety wish to -- does auto safety want to yield to Mr. Jakubowski?

MR. JAKUBOWSKI: I am here with my co-counsel, Adina Rosenbaum, for Public Citizen. We would like to yield in order to have the ability to speak to Mr. Miller --

THE COURT: Certainly. Certainly. Okay. How about asbestos litigants? Is that Mr. Esserman or somebody different? I see Mr. Esserman in the back there. You can keep it off, if you want, Mr. Esserman.

MR. ESSERMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ESSERMAN:

Q. Mr. Henderson, my name is Sandy Esserman. I represent the ad hoc committee of asbestos claimants in this case. You're aware that there are asbestos claims against General Motors, are you not?

A. Yes.

Q. And General Motors has done an estimate of its liability that they put to 10K, that shows a ten-year estimate, present valued at about 650 million dollars. Are you generally familiar with that statement?

A. Yes.

Q. And from what does this liability arise?

A. It's my understanding -- I'm not an expert. But it's my understanding that it principally arises as a result of asbestos that was used in brake linings.

Q. Did General Motors --

THE COURT: Pause, please. Did you say brake linings?

THE WITNESS: Yes.

THE COURT: Okay.

Q. And would the exposure to these claimants occur when the brakes were cleaned or changed or brake jobs were done on the cars?

A. I don't know for certain, sir. I'm sorry.

Q. Does General Motors still put asbestos in their brakes?
A. I do not believe so.
Q. Do you know when they stopped putting asbestos in their brakes?
A. I do not know.
Q. Are you aware of the treatment of asbestos claims in the sale agreement that you've entered into with the Treasury?
A. Yes.
Q. And what is that treatment?
A. The assumption of liability is not contemplated by the New General Motors.
Q. And that liability -- is that liability for current claims, for claims on file now?
A. It's my understanding it's on -- it's with respect to any claims that are outstanding today.
Q. What happens if -- are you familiar with the disease mesothelioma?
A. Not -- no, sir.
Q. Asbestos related cancer?
A. I'm familiar with that, yes.
Q. Okay. If a claimant who was working on General Motors' brakes develops asbestos related cancer five years from now, is it your understanding that New General Motors will be liable for that, if there's anything found to be liable for, for that claim?

A. Sir, I'm not an expert in this area, so I couldn't give you an opinion.

Q. What's your intention as a layman, as a representative of General Motors? Is it to take care of that claimant is it to send him to the bankruptcy court with a proof of claim?

A. In the case of the purchaser of the company is not planning to assume the obligations associated with asbestos liabilities, it would be my expectation that it would not an obligation of the New General Motors.

Q. Calling an asbestos claim that will arise post sale a future claim, would it be a correct statement of fact that all future claims would not be assumed by the new purchaser, relating to asbestos claims?

MR. SCHWARTZ: Objection, Your Honor. I think as to this entire line of questioning, the actual sale and purchase agreement is the best evidence of the terms of the deal. I know a lot of objectors are going to have questions about what stays and what goes.

THE COURT: I think, the Court's view is that's right. So Mr. Esserman, help me understand why his layman's understanding is better than what the plan says?

MR. ESSERMAN: Well --

THE COURT: Unless it's the predicate for some further questioning that --

MR. ESSERMAN: -- that's exactly what it is.

THE COURT: Can I make a suggestion?

MR. ESSERMAN: Yes, sir.

THE COURT: Perhaps not evidentiary perfect. Why don't you ask a question premised on your understanding of what the 363 sale contemplates, hopefully articulated in a nonargumentative way, so Mr. Schwartz would agree with you. And then, if the question is reasonable in its assumptions, you can ask questions concerning his businessman's understandings or knowledge that are premised upon that undisputed fact.

MR. ESSERMAN: That's fine, Your Honor.

THE COURT: Thank you.

BY MR. ESSERMAN:

Q. Mr. Henderson, it's my understanding that the New GM will not be assuming any liability for future asbestos claims. Is that --

A. That's my understanding as well, yes.

Q. But that's not true with regard to all tort claims. Is that correct?

A. That's correct.

Q. And what tort claims is GM -- what is your understanding of tort claims that GM is assuming in the future?

A. In terms of product liabilities, sir?

Q. Yes.

A. The assumption of liability would include, for any vehicle sold post-June 1st, number one. Number two, for any accidents

incurred post closing, irrespective of when they were sold. And then finally, we have indemnification obligations with respect to our dealers.

Q. And was this a recent decision that was made with regard to product liability claims?

A. The recent change was the agreement to assume obligation for accidents post-closing.

Q. And when was that change made?

A. Late last week.

Q. But there's no change as regards to asbestos claims. Is that correct?

A. That's correct.

Q. If New GM were to assume the asbestos claims, the liability from the asbestos claims, is it your understanding that that would not have an effect on the viability of the new entity?

MR. SCHWARTZ: Objection. Relevance?

THE COURT: Pause. I'm going to overrule the objection but require a predicate as to whether he has an understanding, first. If he has an understanding, you can ask him.

Q. Do you have an understanding of whether or not assumption of asbestos claims would have an effect on the viability of New General Motors?

A. My business judgment would suggest that it would not

impair our viability.

THE COURT: I couldn't hear the answer.

THE WITNESS: Excuse me. I'm sorry, Your Honor. In my judgment, it would not impair our viability.

Q. GM would still be a viable com -- just so I understand what you said, GM would still be a viable company if, in fact, the purchaser would assume the asbestos claims?

A. Yes.

Q. Whose decision was it not to assume the asbestos claims?

A. The purchaser, in their judgment, felt it was not appropriate that they should be responsible for the asbestos claims.

Q. Was that the United States Treasury?

A. Yes. They're the purchaser.

Q. In that negotiation with the United States Treasury, did you participate?

A. I participated in a number of negotiations with the U.S. Treasury.

Q. For New General Motors --

A. Yes.

Q. -- for the purchase? Were you aware of whether or not there was anyone at the bargaining table to create new General Motors that was advocating on behalf of tort claimants or asbestos claimants?

A. We outlined for the U.S. Treasury, as the purchaser, a

range of obligations that we felt were sensitive that we wanted to discuss with them, including, number one, quantifying them; number two, explaining them; and number three, outlining a range of options that might be considered.

Q. So if you considered a claim sensitive, then it was something that you advocated for with the Treasury to assume?

A. It's something that we felt warranted the discussion, yes.

Q. Did you discuss asbestos claims?

A. Yes.

Q. With the United States Treasury?

A. Yes.

Q. And what decision was made?

A. The conclusion was that the asbestos claims would not carry forward to the New GM.

Q. And did you agree with that conclusion?

A. Yes.

Q. Well, you're referring to the purchaser as New GM, but isn't New GM the same as Old GM, without some of the liabilities?

A. Well, the assets of General Motors are being purchased in forming New GM, and so, pursuant to a 363 transaction. That's how I understand it.

Q. But New GM -- there's going to be no difference between New GM and Old GM, except for shedding liabilities. Isn't that correct?

A. No, that's not correct.

Q. Well, tell us what the differences are, in your opinion?

A. Our business will be fundamentally restructured in terms of the operating -- the operations of the business and the capital structure of the business will be significantly changed and improved.

Q. So the capital structure might be changed, but the products you sell are the same, aren't they?

A. Yes.

Q. You're not moving offices, are you?

A. No.

Q. Your management isn't changing after the sale, is it?

A. It could well change, but we haven't announced those changes yet.

Q. Your employees are the same?

A. Yes.

Q. And your name's the same?

A. We'll changes some names, but the operating business will still be General Motors.

MR. ESSERMAN: I'm almost done, Your Honor.

THE COURT: Okay.

MR. ESSERMAN: There may be one other asbestos claimant that may have some follow-up questions. Thank you. I was just informed, he does not.

THE COURT: All right. Very good. I want to pause

here for a second and ask you folks to comment. We lost an hour -- more than an hour because of the overload. But now we're proceeding. It's now 12:20, though, and I don't know if you folks want to give up your lunches entirely or to give up a chance to take even breaks. So this is a possible breaking point for either a break or a lunch hour. I'd like to get your views on it. I would like to keep this hearing moving forward, and I would like to get Mr. Henderson off the stand as quickly as circumstances permit, consistent with your opportunity for folks to do their jobs. Mr. Miller, can I get your thoughts first?

MR. MILLER: Your Honor, Harvey Miller. The debtor joins with Your Honor. We are perfectly prepared to waive lunch and to proceed.

THE COURT: All right. I don't know if we're prepared to waive lunch all the way up to dinner time.

MR. MILLER: We are prepared to waive dinner too, Your Honor.

THE COURT: Well, okay. That's why judges decide things. Do other parties want to weigh in on this? I don't see any voices here. Here's what I want to do, folks. I just want to give folks a chance to go to the bathroom or get a drink. And then while we're on a roll, I don't want to take our long lunch recess now. So let's take -- I would say five minutes if I thought that people could get back from the

bathroom that quickly. Let's take ten, but with the understanding that we mean it. In that ten minute gap, Mr. Miller, I'd like you to talk to Mr. Jakubowski, about seeing if you can button up any understandings vis-a-vis what documents he can use and what he can't. And then -- folks, when I'm speaking, please give me the courtesy of not even rising or yammering.

MR. JAKUBOWSKI: Your Honor, I have one issue.

THE COURT: All right. Just a minute, please. But I still can't let you interrupt me. Mr. Jakubowski. Then we're going to resume. Mr. Henderson, while you're in recesses and while you're under cross, or for that matter, before you're questioned on redirect, I'm going to ask you not to talk to anyone other than maybe whether you want a tuna fish sandwich for lunch.

THE WITNESS: Thank you, Your Honor.

THE COURT: Okay. Mr. Jakubowski, I'll hear you now.

MR. JAKUBOWSKI: Your Honor, I have just one technical issue. I ordered my documents from Chicago by FedEx. I hear they didn't get there until 10:30. I'm going to ask Ms. Rosenbaum if she will go over to the hotel and get the documents so that we could continue through. In the meantime, I will talk to Mr. Miller about the documents being admitted into evidence. And so hopefully, I will be able to accommodate the schedule, but I do have a technical issue in terms of just

getting the box which is about half a mile away to the court.

THE COURT: Why don't I just not prejudge those things now and see if we can skin the cat by giving anybody else who wants to question a chance to get ahead of you, and -- was it Ms. Rosenbaum? Rosenberg? I'm sorry. I saw the name on the --

MR. JAKUBOWSKI: Adina Rosenbaum, Your Honor.

THE COURT: Okay. All right. Ten minute recess.

(Recess from 12:25 p.m. to 12:38 p.m.)

THE COURT: Have seats everybody. Can we resume?

(Pause)

THE COURT: Okay. Mr. Henderson, you're still under oath. Next questioner, please.

MR. CORDRY: Good afternoon, Your Honor. I was going to say good morning but we've managed to make afternoon. Karen Cordry, bankruptcy counsel for the National Association of Attorneys General and I'm appearing here on behalf of the various Attorney Generals that have filed objections in this case.

THE COURT: Sure, Ms. Cordry, go ahead.

MR. CORDRY: Thank you. Just a couple of questions.

CROSS-EXAMINATION

BY MS. CORDRY:

Q. In discussions about the specific language in the order, quite a few provisions in the order of the asset purchase

agreement dealing with successor liability. Who drafted that language as between GM and the purchaser?
A. I don't know, ma'am.
Q. Did GM have a hand in drafting that language?
A. General Motors would but who specifically I don't know, within our staff.
Q. I'm not really looking for a person as opposed to sides. Was General Motors, then, involved in drafting that language?
A. Yes, General Motors would have been involved.
Q. And was Treasury involved in drafting that?
A. I believe so. Yes.
Q. Okay. Was it primarily Treasury? Primarily GM? Was it a collaborative process? How was that language reached?
A. I have no idea.
Q. Okay. Who would have been the parties involved in deciding those issues from GM?
A. I believe it would have been the U.S. Treasury as the purchaser, General Motors as the debtor, our counsel; counsel to the Treasury would have been involved.
Q. Okay. And your counsel would be Weil Gotshal, is that true?
A. Yes, ma'am.
Q. Okay. And Treasury's counsel Cadwalader?
A. Yes, ma'am.
Q. Okay. Do you know if these are primarily issues that were

being decided on a lawyer to lawyer basis, on a business judgment to business judgment kind of process?
A. I think a combination, ma'am.
Q. Okay. Were you present at any of those discussions about that language?
A. No.
Q. Okay. So specifically would you also have any idea about who decided provisions in the order that provide that the purchaser would not be treated as the successor for any purpose?
A. I don't know for certain who would have done that but my presumption is it would be the U.S. Treasury as the purchaser.
Q. Okay. And the same question with respect to the language in a number of places there that tries to describe what -- let me back up. There's a description of a claim in the master purchase agreement that uses language, including things like defenses and rights to recoupment and investigations and so forth, do you know who drafted that language?
A. No, ma'am.
Q. Okay. Do you know between General Motors versus Treasury --
A. I don't know.
Q. -- where that came from? And has there been any discussions that you've been involved in since the case was filed about changing the scope of that -- the language in the

original purchase agreement or the order with respect to successor liability?

A. The only discussion that I've been involved in, subsequent to June 1st, had to do with the changes last week with respect to product liability.

Q. Okay.

A. That's the only area.

Q. Okay. And apart from the substance we will cover claim X versus claim Y, are you aware if there have been any discussions going on about the more global language, I will say, the language actually in the order that says that we will sell free and clear of various things, those kind of provisions?

A. I have not been involved in those discussions.

Q. And that would -- would it be the lawyers involved in that?

A. Yes.

Q. And would there be anyone else at GM that the lawyers would have been speaking to about those kind of issues if it wasn't you?

A. Yes.

Q. Okay. And who would that be?

A. I would think it would be our subject matter experts depending upon the area.

Q. Okay. So again, I'm really looking at a more global

level. There's specific inclusions and exclusions in the purchase agreement. But in the order there's some very broad language about things are being sold free and clear, we're not a successor, those kind of provisions and that's what I'm really trying to get at. Who would have been making the decisions as to whether or not to consider any changes in that language?

A. I believe the purchaser would.

Q. Okay. As opposed to GM?

A. A purchaser, this is directly relevant to them.

Q. Okay. Nothing further.

A. Thank you

THE COURT: Okay. Next please. Mr. Eckstein?

CROSS-EXAMINATION

BY MR. ECKSTEIN:

Q. Mr. Henderson, good afternoon. I'm Kenneth Eckstein from Kramer Levin representing the creditors' committee, if I may ask you a few questions?

A. Certainly.

Q. Mr. Henderson, I'm assuming as the CEO of General Motors that you are generally familiar with the principal documents that comprise the sale of substantially all of the assets from Old GM to New GM, am I correct?

A. Correct.

Q. And do those documents include the master purchase and

sale agreement?
A. Yes.
Q. And the master lease agreement?
A. Yes.
Q. And a transition services agreement?
A. Yes.
Q. And am I correct that each of those agreements are agreements between Old GM and New GM?
A. I believe so. Yes.
Q. Okay. Can you tell me who negotiated -- on behalf of Old GM who negotiated the master purchase and sale agreement?
A. It would have been the management team as well as our counsel.
Q. And were you involved in the negotiation of that agreement, sir?
A. In some areas, yes.
Q. And did there come -- and is the same true for the master lease agreement and the transition services agreement?
A. Yes, but I would not have been involved in either of those two.
Q. And who at the company had principal responsibility for the transition services agreement?
A. It would depend on the area, sir, I don't know. I mean, I think it would be multiple people.
Q. All right. Sitting here today do you know some of the

individuals in senior management who would have been responsible for the transition services agreement?
A. Certainly, for example in the area of accounting it would have been the chief financial officer and our chief accounting officer in terms of provision of accounting services. There's a whole series of issues that have to do with transition.
Q. And would you know who, among senior management, would have been responsible for the master lease agreement negotiations?
A. No.
Q. Now did there come a point in time when the board of OldCo or current GM approved the principal documents for the sale of substantially all the assets from OldCo to NewCo?
A. Yes.
Q. And about when did that board meeting take place?
A. The board meeting took place -- the final board meeting took place on May 29th and 30th in New York, which was a Friday and a Saturday.
Q. And has the board met since May 29th to consider any amendments to the principal agreements?
A. Yes.
Q. And when did those meetings take place?
A. I believe last week.
Q. Has there been only one meeting or more than one meeting since May 29th?

A. We have regular briefings for our board. I know there's at least one where it was an official meeting, which is where the amendments were considered. As to whether or not there were any other official meetings, I don't remember. We have regular briefings with our board, so there was at least one.

Q. So the board approved the basic agreements on or about May 29th, am I correct?

A. May 30th, actually. Yes.

Q. May 30th. And you're a member of the board?

A. Yes.

Q. What's your position on the board?

A. I'm a director.

Q. And who's the chairman of the board?

A. The interim chairman of the board is Kent Kresa.

Q. Thank you.

THE COURT: That name again, please?

THE WITNESS: Kent Kresa.

THE COURT: K-R-E-S-S-A?

THE WITNESS: K-R-E-S-A.

Q. And am I correct that you participated in the May 30th board meeting to approve the principal documents associated with the transaction?

A. That's correct.

Q. And the meeting that took place last week, do you recall the date of that meeting, sir?

A. It's normally Friday. And so I believe Friday but I'm not certain. We have regular briefings for our board.
Q. I understand. Middle of June?
A. Yes.
Q. And did you participate in the middle of June board meeting to approve the amended agreements?
A. Yes.
Q. And are there board meetings scheduled to approve any further amendments that are being negotiated or have been negotiated in the last few days?
A. No.
Q. And so I'm correct that the board of Old GM approved the principal transaction documents on or about May 30th and then approved the amended documents at the meeting held in the middle of June, is that correct?
A. That's correct.
Q. Now can you tell me, sir, how many members of the board are there today?
A. I believe there are either twelve or thirteen today.
Q. Now can you tell me, what is the current contemplation with respect to the board composition for NewCo? How many of the twelve or thirteen current board members are expected to become the members of the NewCo board?
A. Five members of -- five independent board members from the old General Motors will move to the New General Motors board

and myself, so six.
Q. So essentially six of the twelve or six of the thirteen are going to move and become members of the NewCo board?
A. That's correct.
Q. And presently are any members of the current board expected to become members of the OldCo board once the transaction closes?
A. No.
Q. So at present do you know who will comprise the members of the OldCo board?
A. The chief restructuring officer of what will be the Old General Motors, Albert Koch is -- has been going through a recruitment process with respect to selection of board members for the OldCo board.
Q. And am I correct, sir, that you are intended to be the CEO of NewCo, is that correct?
A. That's correct.
Q. And so therefore as CEO of NewCo am I correct that you will essentially be in charge of enforcing the principal documents that comprise this transaction as between NewCo and OldCo?
A. That's correct.
Q. You had testified in your direct, sir, that unsecured creditors of OldCo are expected to receive ten percent of the equity of NewCo, is that correct?

A. Plus warrants, yes.
Q. And in addition they're going to receive warrants from NewCo as well, that's for an additional fifteen percent, am I correct?
A. Yes.
Q. In addition to the stock that's been allocated to unsecured creditors, are there funds that have been set aside in OldCo to wind down the OldCo estate?
A. Yes.
Q. And how much has been set aside?
A. Approximately 950 million dollars.
Q. And am I correct that those funds are intended to fund the administrative and priority obligations of OldCo?
A. And wind down costs, yes.
Q. And wind down costs. And in your view are those claims intended to be adequate to fund the administrative and priority obligations of OldCo?
A. When we sized -- when we developed an estimate of what the cost would be, we developed it with the intention that it would be sufficient to cover those costs.
Q. And do you have any reason to believe today that those aren't sufficient?
A. I believe updated estimates have recently been done with respect to possible cost of environmental which might result in additional amounts beyond the 950 million dollars.

Q. Do you have any sense, sitting here today, what additional funds might be necessary?

A. I am advised that the most recent estimate could be between 1.1 and 1.2 billion dollars. But again, this is an area where the precise number is difficult to determine sometimes.

Q. But am I correct that the intention of the transaction was that there would be funds in the estate sufficient to fund the wind down of the estate so that the monies that were allocated for unsecured creditors who had the stock and warrants allocated for unsecured creditors would be distributed to unsecured creditors?

A. Certainly when we sized the 950 million dollars we intended to cover the total cost. Our current estimate is it may be short to a certain degree and certainly the other assets are there but certainly what we would hope is that the amount that was allocated would be sufficient.

Q. Thank you, sir.

A. Thank you.

THE COURT: Mr. Frankel?

MR. FRANKEL: Good afternoon, Your Honor. It's Roger Frankel from Orrick Herrington.

THE COURT: Mr. Frankel?

MR. FRANKEL: Frankel. Your Honor, we represent the unofficial creditors' committee that was appointed by the

National Dealer Counsel. I actually don't have any questions of Mr. Henderson but the dealer community was on your list and I wanted the Court to know we were in the courtroom all the way in the back so it's a little bit hard to get up here and I may have questions of some of the other witnesses.

THE COURT: Thank you, Mr. Frankel. Next?

(Pause)

MR. KENNEDY: Good morning, Your Honor. Thomas Kennedy for the objecting unions IUE-CWA, the steel workers and the operating engineers. We have prepared, Your Honor, a set of exhibits that we will be referring to many of them in the cross examination of Mr. Henderson. They consist of the deposition, extract from them, that were done on Saturday, Sunday and Monday and the exhibits that were identified in those depositions.

We've pointed out to Mr. Miller and given him copies and I would ask that I provide you with a book of those exhibits and the witness as well.

THE COURT: I couldn't hear your question.

MR. KENNEDY: Yes, I'd just like permission to provide you with a book of our exhibits.

THE COURT: Oh, all right.

MR. KENNEDY: And the deposition extracts.

THE COURT: You can give me the book and then separately focus on the one you have and you want to introduce.

MR. KENNEDY: Thank you.

(Pause)

CROSS-EXAMINATION

BY MR. KENNEDY:

Q. Good afternoon, Mr. Henderson. Would you agree with me that as of April 30, 2009 the IUE-CWA represented more than 25,000 GM retirees?

A. Yes.

Q. And the steel workers represented another 4,000 GM retirees?

A. Yes.

Q. And the operating engineers approximately forty, correct?

A. Yes.

Q. And the December 31, 2008 post retirement health and life obligation that GM owed to the IUE and other non-UAW unions as of that date was 3.724 billion dollars?

A. Correct.

Q. And ninety percent or more of that 3.724 billion dollars was owed to IUE-CWA members?

A. That's my understanding, yes.

Q. In April of 2009 GM had decided that it wanted to arrange a consensual restructuring without resort to the bankruptcy court, is that correct?

A. That's correct.

Q. And GM had determined that it needed the consent of three

key constituencies to attempt consensual organization, do you agree with that?
A. Yes.
Q. And those three were the bondholders, the UAW and the U.S. Trustee acting as a secured lender?
A. Correct.
Q. And I take it that GM launched a bond exchange in late April that would have required at least ninety percent of the bondholders to agree to exchange their bonds for slightly above ten percent of General Motors, is that also correct?
A. Yes, sir.
Q. And the UAW was asked -- the UAW VEBA was asked to accept at least one half of its obligations from GM in equity in General Motors?
A. It was a condition to the bond exchange, yes.
Q. And was a further condition to the bond exchange that the treasury would agree that one half of the pre-June 1 borrowings would be taken in the form of equity in General Motors?
A. At least one half, yes.
Q. And if the bond exchange and its preconditions had been satisfied, General Motors, as far as you understand it, would not have commenced the bankruptcy proceeding, correct?
A. Had we been successful, our view is we would have likely not proceeded with the bankruptcy proceeding.
Q. Now during the time that the bond exchange was being

proposed in April of 2009, were you having discussions with the GM leadership group about the advantages and disadvantages of a prepackaged bankruptcy for GM as opposed to a Section transaction?

A. In April, sir?

Q. Yes.

A. Yes.

Q. You examined, in that period of time, the advantages of a possible 363 asset sale, possible cram down and a traditional Chapter 11 process, correct?

A. Correct.

Q. And you examined the advantages and disadvantages of each?

A. Yes.

Q. Had General Motors made a determination of which of those three alternative bankruptcy processes if the bond exchange failed you would undertake as of April 15, 2009?

A. No.

Q. Did General Motors prepare a detailed contingency plan that described the advantages and disadvantages of a 363 filing on or around April 15th?

A. We did that type of analysis through April and May. I don't know, on or about April 15 but I think it would -- I think, yes, we were in mid-April and we were doing that kind of analysis.

Q. All right. Well, let me direct your attention to Exhibit

3, to the exhibit we have marked for your deposition which would be Exhibit 10, which is entitled contingency plan update.

A. Exhibit 10?

Q. No, Exhibit 3.

A. Okay. I'm sorry.

Q. Let me just be clear about the structure. The exhibits attached to your deposition are, for the purposes of that book, called Exhibit 10. The Exhibit 3 to your deposition is the one I'm directing your attention to right now, okay. And you've seen that --

THE COURT: Help me too, Mr. Kennedy.

MR. KENNEDY: Sure.

THE COURT: Is the document you're talking about one that says IUE APBO on the top?

MR. KENNEDY: No, Your Honor. The first thing to do would be look for the inner tab which says 10 Henderson Transcript.

(Pause)

THE WITNESS: Oh, 10 Henderson Transcript. I'm sorry.

MR. KENNEDY: Yes.

THE WITNESS: I was also on the IUE.

THE COURT: Well, maybe Mr. Henderson's with you, but I'm not.

MR. KENNEDY: I understand that, Your Honor.

THE COURT: Are we talking about this huge notebook you gave me, Mr. Kennedy?

MR. KENNEDY: Yes.

THE COURT: Okay. And if I open up to tab 10, should I see what you're talking about?

MR. KENNEDY: No, Your Honor. The first forty-seven tabs, I'm sorry. I think this is the source of the confusion, are actually part of Exhibit 9, the Rawley (ph.) transcript.

THE COURT: Oh, I see. Then I find a tab that says Henderson transcript.

MR. KENNEDY: Yes.

THE COURT: And then I go to another tab 3.

MR. KENNEDY: Yes, you do.

THE COURT: Contingency plan update?

MR. KENNEDY: Yes.

THE COURT: Okay. I'm with you now. Okay.

BY MR. KENNEDY:

Q. Now hopefully with us all literally on the same page, do you recognize this as a contingency plan that General Motors had prepared on or about April 15, 2009?

A. Yes.

Q. And for purposes of analyzing the impact of a Section 363 plan as opposed to a cram down, isn't it a fact that General Motors concluded that the UAW collective bargaining contract, your obligations with respect to it would not be affected

whether you took a 363 approach or a cram down approach. Do you have a recollection as to that, sir?

A. No, because one element of our Treasury funding a facility was that we needed to renegotiate our collective bargaining agreement with the UAW to become competitive and at the same time we needed to equitize at least half of our VEBA obligations. Whether it was outside of bankruptcy or inside of bankruptcy, that was a requirement of our loan agreement.

Q. Could you do me a favor then and take a look at page 17 of that contingency plan update that we've identified as Exhibit 3 at your deposition?

A. Certainly.

(Pause)

Q. You'll note under the title Pension OPEB and Employee Obligations there's a statement that UAW CBA will drive hourly life EDB legal and other benefit obligations - assume that similar result reached for both filing scenarios.

A. Yes.

Q. Do you see that, sir? Does that refresh your recollection?

THE COURT: Pause please, Mr. Kennedy. What serial number page was that?

MR. KENNEDY: It's page 17, Your Honor. The Bates number of that page is 327319. It's page 17 of the contingency plan.

THE COURT: I don't see the page number but it says US Liability Analysis at the top?

MR. KENNEDY: Yes, the page number is on the lower right-hand corner, white against black, sir.

THE COURT: Oh, okay. Go ahead.

Q. So does that portion of the page I just reminded you of or I should say directed your attention to, Mr. Henderson, does that refresh your recollection as to whether the UAW-CBA issues were regarded to be the same under both filing scenarios?

A. We needed the change under both, yes.

Q. All right. And isn't it also true that General Motors had concluded that IUE and other splinter group obligations may be more addressable in a 363 proceeding?

A. Yes.

Q. And you see that as the next bullet under the one I had just read you, correct?

A. I do.

Q. And when you -- General Motors concluded that the obligations for the IUE and other splinter unions could be more addressable in a 363 situation, what did you mean?

A. Well, in the event of a 363 transaction, it was not expected that the new General Motors would need to have a contract with the IUE because there were no active employees. And so therefore it wouldn't necessarily be the case that the new company should assume nor enter into a contract with the

IUE or the other splinter unions.
Q. So I take it then it was General Motors' view that under a 363 proceeding it would be easier to eliminate the obligations for the employee post retirement health and life care that we talked about at the beginning of our conversation.
A. Well, our conclusion was at that point that decision hadn't been taken. But if the new company did not need to have a contract, it did not have to assume those liabilities
Q. In fact, I gather you understood in a section 363 transaction a purchaser can cherry pick the liabilities that it assumes?
A. That was in one of the earlier exhibits, yes.
Q. And that was your assumption and General Motors assumption in planning the 363 process, correct?
A. Well the purchaser, as I understand a 363 process, it's an asset sale and the purchaser could then decide what obligations need to be assumed as part of the asset purchase that are necessary for purposes of running the business.
So it's my understanding that the selection of those liabilities is the purchaser's discretion and they can decide which liabilities they choose to assume and which they don't.
Q. I'm not asking you for a legal conclusion but as a businessman did you understand that the Bankruptcy Code imposed any obligations on the purchaser in a 363 transaction to assume certain liabilities of the seller?

MR. MILLER: Your Honor, he just answered that question.

THE COURT: Sustained.

Q. In the April and May timeframe of 2009, did you understand that if the prepackaged bankruptcy option had been chosen General Motors would need to negotiate contracts with its other unions, non-UAW unions, including principally the IUE-CWA?

A. Yes.

Q. I take it it's because in a prepackaged bankruptcy proceeding the existing General Motors would have continued to perform and would therefore have continued its obligations to its other unions?

A. That was my understanding, yes.

Q. Did General Motors prepare, from time to time, contingency planning documents that identified which obligations would be assumed by the New GM?

A. Yes.

Q. And do you know if there was a document that was prepared on May 7th that concluded that a potential 363 offered demonstrated financial advantages over a cram down?

A. A liability reduction.

MR. MILLER: Your Honor, excuse me. If there is a such a document why didn't counsel show it to the witness?

MR. KENNEDY: I'm happy to.

Q. Would you turn to page --

THE COURT: All right. Objection sustained. Go ahead.

Q. Would you turn to document 6?

A. In my deposition?

Q. In your deposition, yes.

(Pause)

Q. Specifically page 2, the first line.

A. Yes.

Q. And you would agree with me that at the point in time this documented was generated, on May 7th, General Motors had concluded that the 363 process had demonstrated financial and execution advantages over cram down?

A. Yes.

Q. And I gather, from the following line, that General Motors had concluded that a 363 process allowed incremental liability extinguishment of approximately six to seven billion?

A. Yes.

Q. Were the retiree health and life obligations owed to the non-UAW unions part of the six or seven billion that could be incrementally extinguished as part of the 363 process, as you understood it?

A. I believe so. Yes.

Q. And I take it, if you turn to page 8 of that document, there's a listing of GM liabilities to New GM, and I'm referring to page 8 of document 6 in the Henderson exhibit

portion of the book. Do you see that listing of liabilities, sir?
A. I do.
Q. And am I correct that the fourth of fifth item down indicates that the GM liabilities to the new GM were expected to include a substantial impairment to splinter group health and life benefits, is that correct?
A. It was the assumption and yes it was identified that we would have expected that.
Q. And again, that was an assumption in the context of the 363 sale, correct?
A. That's correct.
Q. Now are you aware that as part of this contingency planning 363 analysis on May 7, 2009 a pro forma analysis of the financial implications of a cram down versus a 363 scenario was created?
A. Yes.
Q. And I direct your attention to Page 11 of the document we've identified as Item 6. I'm sorry; would you make that page 10.
(Pause)
Q. Are you with me?
A. Yes.
Q. Okay. The third item on page 10, entitled GM Consolidated Liabilities Analysis - Detail, under number 3, Pension OPEB

there's a line that says "Other hourly health and life," do you see that, sir?
A. Yes, I do.
Q. That repeats that 3,724,000,000 figure that we used earlier in our discussion?
A. Correct.
Q. Do you see that? And under your cram down scenario, how much of that liability is presumed to go to the NewCo?
A. This assumed it would go in its entirety.
Q. So all 3.724 billion would go to NewCo under the cram down scenario?
A. In this analysis that was the case, yes.
Q. Yes. And the 363 scenario indicated that 1.4 billion of the non-UAW OPEB would remain with OldCo and 2.3 billion would go to NewCo, is that correct?
A. This analysis indicated that, yes.
Q. And do you know where these numbers were drawn from?
A. No, I do not know.
Q. Do you know who was responsible for preparing the May 7th contingency planning analysis?
A. I believe it would have been put together by Joseph DeMore (ph.).
Q. And he's one of your executives?
A. Yes.
Q. And I assume he was incorporating information he was

receiving from the U.S. Treasury as part of the liabilities the Treasury was willing to assume?

A. As of this date, May 7th, we wouldn't have had definition around that yet on this particular liability. So we were estimating what it might be.

Q. Well at some point, in terms of the non-UAW retiree obligations, did you get direction from Treasury to provide an outcome for the non-UAW unions that was similar to what was being given to the UAW members?

A. No.

Q. You never got -- General Motors never got such a direction?

A. Is it similar to the UAW members?

Q. Yes.

A. No.

Q. Okay. At any point was there a discussion with Treasury and General Motors about NewCo accepting some portion of the liabilities that were owed to non-UAW union members for retiree health and life?

A. Yes.

Q. And what was that discussion, sir, and can you tell us when it first occurred?

A. It was later in May and it was done in connection with a total number of liabilities. We had highlighted this through the month of May but in late May the Treasury asked us to look

at a total of liabilities which were approximately 7.9 billion dollars, which included the other hourly health and life and indicated at the time that the target reduction of that liability should be approximately two-thirds or alternatively that one third of those liabilities, which in their judgment as a purchaser may not be necessary to run the business going forward and they were prepared to assume. And so they asked they asked the management to consider a two-thirds reduction in this total 7.9 billion liability.

Q. Okay. We'll go into that conversation. Prior to that conversation, which we'll call the 7.9 billion dollar conversation, had you had any direction or had General Motors had any direction as to NewCo assuming some responsibility for non-UAW retiree health and life?

A. Discussion, no definition.

Q. Okay. And you mean by that you've had discussions with Treasury but you didn't get a definitive direction from them?

A. As the purchaser, that's correct.

Q. Has General Motors concluded that if the 363 process goes through it is probable that the Old GM will go through a Section 1114 proceeding to cancel retiree health benefits to non-UAW members?

A. That decision would either be taken by Mr. Koch as well as the board of directors of the Old General Motors. I can't presuppose what they would do. My expectation is they would

likely do that.
Q. In fact, you regard it as probable that they will go through an 1114 process once the 363 goes through, if it goes through, to cancel the non-UAW OPEB, correct?
A. Again, it's their decision not mine. But my opinion is they will likely do that.
Q. Now Old GM, at this point in the planning process if the 363 sale goes through, is going to last for how long?
A. I don't know, sir.
Q. Is there a target date as to when it will wind up its affairs?
A. I don't -- I have not seen a specific target date.
Q. I assume Mr. Koch's job, as the new CEO, is to wind up the affairs of old GM, correct?
A. Yes.
Q. And have you had any discussions with him about how long that's going to take?
A. Typically it's about several years but there's no certainty as to what the date would be.
Q. Would it be fair to say you expect it to be completed before three years are out?
A. Again, I can't say for certain but I think that's a reasonable expectation, yes.
Q. And the assets of Old GM, if the 363 sale goes through, will consist of the 950 million dedicated for wind up

activities and the ten percent of New GM plus the warrants for an addition fifteen percent, correct?
A. That's correct.
Q. Where in that process would there be any money to fund the 3.724 billion dollars that Old GM owes to non-UAW retirees?
A. The 950 million would clearly not be sufficient to fund us.
Q. So what is your anticipation as to how these retirees, many of whom worked thirty years for General Motors, are going to be able to continue their lifetime healthcare if the 363 plan goes through?
A. This was one of the reasons why we, in discussions with the Treasury, suggested we needed to bring forward at least a portion of the liabilities to provide coverage for IUE members.
Q. Because you knew that as structured -- as left in Old GM they will not be able to maintain their health benefits, correct?
A. We were concerned about that. Yes.
Q. Did you at some point conclude that the issue of retiree health and life insurance for non-UAW members was politically sensitive?
A. Yes.
Q. And you informed the Treasury that the retiree obligations to the non-UAW members were politically sensitive, correct?
A. Amongst other liabilities, yes.

Q. Who is Steve Rattner (ph.)?

A. Steve Rattner is in Automotive Task Force.

Q. In fact, is he essentially the head of it for purposes of these discussions?

A. In effect, yes.

Q. Did there come a point in time in May 2009 when you had detailed discussions with Mr. Rattner about the splinter unions?

A. Yes.

Q. And you mentioned earlier that Mr. Rattner and you discussed a grouping of liabilities that in total composed 7.9 billion?

A. That's correct.

Q. And am I right that the four elements of that -- of those liabilities consisted of salaried life and health, number one. Number two, executive life and health; number three, executive pension and number four non-UAW union healthcare and life insurance?

A. That's correct.

Q. What was the largest single element of the 7.9?

A. The 3.7 billion

Q. That was owed to the IUE and other non-UAW?

A. Yeah, the non-UAW health and life.

Q. I think you've already identified Mr. Ken Kresa as the acting chairman of the board, correct?

A. That's correct.
Q. Did you ask some GM executives to get together some information about splinter union obligations so he could present the information to Steve Rattner?
A. Yes.
Q. And did you -- did Mr. Kresa advise Mr. Rattner that General Motors was targeting to negotiate reduced OPEB liabilities with its splinter unions?
A. It was the recommendation of General Motors and Mr. Kresa that we assume a part of the liability. And, however, at the same time it would have been a reduction, yes.
Q. I'd like to direct your attention to Exhibit 7 in the portion of the book that relates to your testimony.
A. Yes.
Q. And you recognize that as an e-mail from Mr. Kresa to Gregory Lowe?
A. I do.
Q. And Mr. Lowe is an executive of some sort with General Motors, I suppose?
A. He is.
Q. Okay. And the second page of this e-mail represents the information concerning splinter unions that you had asked Mr. Lowe to get together for Mr. Kresa?
A. That's correct.
Q. Okay. I'd like to direct your attention to the second

sentence of the second paragraph which reads, "The initial direction with the UST was to provide similar funding as used for (on a pro rata basis) as with the UAW." Had you seen that before today?

A. Yes.

Q. Okay. And are you able to conclude from that that at some point General Motors had received a direction from UST to provide similar funding for the non-UAW unions as was used with the UAW?

A. I don't remember when we would have gotten that direction. We were, again, exchanging ideas as to what a possible treatment might be.

Q. Well what are Mr. Lowe's duties?

A. Mr. Lowe is responsible for executive compensation.

Q. And you asked him to get together information for Mr. Kresa to discuss with Mr. Rattner, correct?

A. That's correct.

Q. And do you assume he accurately compiled information as to what the splinter union discussions had been prior to this e-mail on May 27, 2009?

A. Yes.

Q. Is it possible that there was a direction from UST to provide similar funding for the non-UAW unions --

MR. MILLER: Objection. That's not what it says, Your Honor. Object to the form.

THE COURT: Okay. Why don't you rephrase.

MR. KENNEDY: Sure.

Q. In terms of the normal operations of you as CEO and in terms of your role with or in the discussions that were going on between Treasury and General Motors, is it likely that you would not have been aware of a direction from the Treasury to provide similar funding for the non-UAW health and retiree obligations?

MR. MILLER: Objection, Your Honor. That's not what the exhibit says. It says the initial direction with the UST. It means the initial direction made by Mr. Kresa and GM.

MR. KENNEDY: I disagree with that.

THE COURT: All right.

MR. KENNEDY: Mr. Miller can testify if he wants --

THE COURT: Folks, we're not the English parliament here. We don't talk to each other. I am going to sustain the objection but not for the reason that you said, Mr. Miller. Mr. Kennedy, you can read him the language and probe his understanding of what the language means, to the extent he has an understanding. He seems, as I understand it, to have been copied on this but not to have been the author. So you can ask it that way, don't assume that he was the author. You can read the language exactly the way it reads and find out what he knows about it and ask him to tell you what he knows about it.

Go ahead.

MR. KENNEDY: Thank you, Your Honor.

Q. Just to be clear, Mr. Henderson, the second page of the document we've been referring to was created by Mr. Lowe at your direction, correct?

A. The second page of the document was actually created by Tom Krosky (ph.) for Greg Lowe, yes.

Q. Okay. But it was ultimately at your direction?

A. Yes.

Q. And you were copied on the e-mail which included page 2?

A. Yes.

Q. And when the e-mail arrived did you read it?

A. Yes.

Q. And did you advise either Mr. Lowe or Mr. Krosky that they were in error in how they had summarized what the discussions between UST and General Motors had been at the time of the e-mail?

A. No, because the second sentence there, which was my understanding at the time, was once the Treasury understood that there were very few active workers that a much lower level of funding was going to be required.

Q. Okay. So would it be fair to say that there came a point in time when the Treasury decided, or I should say learned, that there were very few active members that were included in the non-UAW union?

A. Yes.

Q. Do you know when that was and how they learned it?
A. It would have been likely early mid-May and we would have supplied the information to them.
Q. And prior to that point, was the Treasury position -- prior to the point they learned how many actives were involved, prior to that point was it the treasury position that General Motors, the New General Motors, should provide the same level of funding for the non-UAW unions that the UAW had gotten?
A. We had, Mr. Kennedy, reviewed various alternatives and I didn't have, at any point, until later in May what I considered firm direction from the Treasury as to what they wanted to do. We looked at multiple scenarios but we had not yet engaged in something which I would consider to be direction to us.
Q. I take it at least one of the scenarios you did discuss with Treasury was the idea of funding the non-UAW retiree health and life at the same level as the UAW had received?
A. Yes.
Q. It is true, as we stand here today, that the IUE-CWA has very few active members, correct?
A. Yes.
Q. If we went back in time a year to June of 2008, the General Motors Moraine plant was still operating, correct?
A. Yes.
Q. It might have had 1,500 members?
A. That's a reasonable estimate.

Q. Okay. And General Motors closed that plan on December 23, 2008, correct?

A. Yes.

Q. So am I right that General Motors is using the fact that it closed the last IUE plant to then decide that it didn't have to provide continuing healthcare to the 25,000 IUE retirees?

MR. MILLER: Your Honor, I object to the question, grounds of relevance.

UNIDENTIFIED ATTORNEY: Can't hear.

MR. MILLER: I object to the question on the grounds of relevance.

THE COURT: Overruled. You may answer, Mr. Henderson.

A. We closed the plant because sales of the vehicles built in that plant were no longer sustainable.

Q. And the IUE asked you to put additional product in that plant, correct/

A. They did.

Q. And there has been product assigned since that plant was closed, isn't that correct?

A. Yes.

Q. And that some of those products could have been put in to the Moraine facility, isn't that also correct?

A. Could have, yes.

Q. And if product has been put in the put in the Moraine

plant, then is it your understanding that the IUE-CWA members would have been given the same OPEB treatment that the UAW members were given as a result of this bankruptcy?
A. I don't know but we would have had active employees and we would have had to negotiate an agreement.
Q. Now at some point in late May, you understood that GM was prepared to offer a retiree health and life plan to the non-UAW unions that would cost eighty percent less then the amount being paid by the Old GM, correct?
A. The liability would be eighty percent less, yes.
Q. So that would be -- in essence we'll call it a twenty percent offer to the non-UAW unions?
A. Yes.
Q. And did you receive any information from your labor relations executives on whether a twenty percent plan was likely to be accepted by the non-UAW unions?
A. Yes.
Q. And what is it they advised you?
A. They advised that this would likely -- very likely not be acceptable.
Q. The ultimate offer that was made to the non-UAW unions for the retiree health and welfare, according to the company's figures, represents a thirteen percent recovery, correct?
A. Versus the book value, yes.
Q. And if your labor relations advisors had indicated to you

that the unions were unlikely to accept a twenty percent offer, what made you think that a thirteen percent offer would in some way be acceptable to the IUE-CWA, the USW or the IUOE?

A. We offered, as we put together the package our conclusion was we would offer the retirees, the IUE and the steel workers retirees the same packages we have for our salaried employees for healthcare. That was the conclusion and that's what we felt we should move forward with.

Q. Now you had earlier identified, and I'm sorry I'm backtracked a little bit, about the 7.9 billion discussion you had with Mr. Rattner that various executive programs were included in that 7.9 billion, correct?

A. Correct.

Q. And is it true that on May 11, 2009 you personally sent Mr. Rattner an e-mail that included several presentations in effect advocating Treasury to continue the executive SERP (ph.) and life insurance?

A. We made -- early May we made a number of presentations, including myself to Steve, Steve Rattner, talking about what alternatives might be for treatment of the SERP and other liabilities.

Q. Well, would you look at Exhibit 8 --

A. Sure.

Q. -- in the portion of the book that deals with your deposition?

A. Yes, sir.
Q. That's an e-mail you sent to Steve Rattner on May 11, 2009, correct?
A. Yes.
Q. And attached to it is a document entitled sales rationale for considering salaried retiree treatment?
A. That's correct.
Q. And the third and fourth pages refer to executive compensation issues?
A. That's correct.
Q. Now isn't it fair to say, Mr. Henderson, that in both of these attached documents you advocate for existing General Motors executive programs to be continued and absorbed in the New GM?
A. Yes.
Q. Did you ever send a similar e-mail to Mr. Rattner advocating that the IUE, USW or operating engineer retiree health and life insurance be continued by the New GM?
A. Well, we recommended that the pensions be brought forward for the IUE and the steel workers along with the UAW. And with respect to the obligation for health and life, as I said, we identified what the size of the liability was and what the options would be.
Q. But in the give and take of actual negotiations, I assume Mr. Rattner --

MR. KENNEDY: Let me withdraw that.

Q. I assume you expected Mr. Rattner would regard it as significant that you sent him a personal e-mail urging the continuation of certain programs; wouldn't you agree with me on that?

A. Yes.

Q. And did you ever send a similar personal appeal to Mr. Rattner urging that the IUE or other union, non-UAW union, OPEB be continued by the New GM?

A. I certainly was involved in discussions with Steve Rattner regarding bringing forward at least a portion of the liability to the new company so that some benefits could be provided, yes.

Q. Okay. Now the portion that would be brought forward to the new company was directly --

MR. KENNEDY: Let me withdraw that.

Q. When you talk about bringing forward a portion of the liabilities owed to the IUE and the steel workers and the operating engineers, you're referring to permitting certain of the IUE and other union non-UAW union members to participate in the salaried post-retirement plan, correct?

A. For healthcare, yes.

Q. For healthcare. Now did you at some point describe to U.S. Treasury what the terms of the salaried plan were that would be extended to the IUE and other union representatives?

A. Yes.
Q. In fact, if you look at Exhibit 13 to your deposition at page 5, does that contain the detail on what the actual plan would be if they were put in the pre-Medicare plan?
A. Yes.
Q. Is that the plan that was ultimately offered to the IUE or the steel workers or the operating engineers, do you know?
A. I don't believe so.
Q. In fact the plan that's described on the page 5 of Exhibit 13 is significantly better from the point of view of the participants, meaning cost the participants a lot less then the plan that was ultimately offered to the IUE-CWA and steel worker an operating engineer members, correct?
A. The final -- we did make final changes in order to achieve it, a two-thirds reduction of the liability.
Q. And the basic assumption that you had in talking with the Treasury representatives in late May, is that the IUE, steel worker and operating engineer members would be offered the same plan as salaried retirees, correct?
A. Yes.
Q. The plan for salaried retirees was cut off at age 65, correct?
A. That's right. Medicare.
Q. So it was a pre-Medicare plan?
A. That's correct.

Q. As things stand here today, the plan that General Motors offers to the IUE, steel workers and operating engineers is a retirement to death plan, correct?

A. Yes.

Q. There is no cutoff at age 65?

A. That's correct.

Q. So the plan you were offering to the unions I represent included a cutoff at age 65 of all benefits and a limited benefit pre-65?

A. Similar to our salaried retirees, yes.

Q. Okay. But isn't it a fact that your salaried retirees, as of January 1, 2009, were provided a 300 dollar a month pension increase so they could purchase a Medigap plan to cover them post 65?

A. We did increase the benefit by 300 dollars a month at the time we made these final -- at the time we made these changes, yes.

Q. And isn't it a fact that the purpose of the change was to permit the salaried retirees to purchase insurance to replace the insurance that was taken away from them on January 1, 2009?

A. Yeah, given the status of our salaried pension plan at that point, we were able to do that and we did that, yes.

Q. Okay. The offer that was made to the IUE-CWA, the steel workers and the operating engineers did not include a similar 300 dollar a month pension increase for retirees whose health

insurance, GM health insurance would be taken away as a result of your offer, correct?
A. Correct.
Q. Did you explain to Treasury at any point that although you were purporting to offer a parallel plan, in fact it was different in that the post 65s, under the salaried plan, had an extra 300 month and under the plan you were proposing to the unions I represent there wouldn't be the 300 dollars a month?
A. I believe we did.
Q. So did Mr. Wilson know that?
A. I don't know for certain.
Q. Now I'd like to direct your attention to Exhibit 14. It's a chart entitled salary and splinter union benefit obligations; do you see that, sir?
A. Yes.
Q. I'm referring to the second page of Exhibit 14. And the total obligations is identified as 7.883 billion?
A. It's the 7.9 billion I referred to before.
Q. Okay. And if we wanted to isolate the individual components of the liability, we would simply look under the word total in the first column under either retiree basic life or salaried retiree healthcare and so forth?
A. Correct.
Q. At the time this chart was created, it appears to have presented a sixty-two percent reduction in these six

categories, correct?

A. Correct.

Q. And was that approved by the board of General Motors?

A. It was approved to submit to the Treasury by the compensation committee of the board of General Motors.

Q. And in assembling this, who is it that decided which components would be cut the most, when you were looking at the sixty-two percent proposal that you were going to give to Treasury?

A. The management was responsible.

Q. And is it fair to say that the executive non-qualified pension plan, the SERP, under the initial proposal was cut by only thirty-two percent?

A. In total, yes.

Q. And would you agree with me that in many bankruptcy proceeding an unfunded, unqualified SERP goes to zero?

MR. MILLER: I object to the question.

THE COURT: Overruled.

Q. Now in the 363 proceeding that's being contemplated, New GM is going to absorb 787 million of the existing liabilities under the SERP, is that correct?

A. Yes.

Q. And is it also true that more than two-thirds of that 787 million is payable to executives that have already retired?

A. I believe so. Yes.

Q. So your analysis of the IUE-CWA and steel worker and operating engineer liability in which it needn't be carried forward to the New GM because there were no active employees, why would you, on the other hand, permit recovery of two-thirds of that 787 million by New GM even though these are retired executives who will perform no further work for either Old GM or New GM?

A. First of all, it was the decision of the purchaser in this case but in our judgment the pension plans for both the salaried and the hourly employees were unaffected and being carried forward in their entirety to the New General Motors. And so therefore carrying forward a portion of the executive non-qualified plan would be appropriate. But in this case, it had a thirty-two percent reduction.

Q. Would you agree with me that for individuals whose -- individual executives whose combined income, between the salaried retirement plan and the SERP plan was less than 100,000 dollars a year in retirement only received a ten percent decrease?

A. A ten percent decrease in their SERP.

Q. In their SERP.

A. Yes.

Q. Okay. So if someone had a 4,000 a month salaried retiree program benefit and a 4,000 a month SERP benefit, meaning 8,000 a month, they received a cut of 400 dollars in their benefit?

A. That would be accurate, yes.
Q. And are you under the impression that there's some basic fairness between taking executives and cutting them by 400 dollars and at the same time eliminating entirely the health insurance that had been promised to IUE-CWA members for years? Is there a fairness to that?
A. Our view was the fairness valuation of the pension was bringing forward the pension in its entirety for all hourly and salaried employees was an important consideration and then having all executives salaried and the IUE and the other unions on the same healthcare plan was the appropriate treatment.
Q. Now, at some point, when General Motors suggested that the group of liabilities identified on the first page of Exhibit 14 was cut by only sixty-two percent, is it accurate that the Treasury came back to you and said we said two-thirds, we meant it, bring it up to sixty-seven percent?
A. Correct.
Q. And does this tell us where that additional five percent was found within all of these categories?
A. Yes.
Q. It was found from the salaried retiree healthcare and the non-UAW union healthcare, correct?
A. Correct.
Q. And the effect of that ultimate change was to reduce the value of the offer to the non-UAW unions to only thirteen

percent of what the book value of the obligation showed?
A. Correct.
Q. And that 400 million dollars in extra reductions was achieved by making it, the health plan, less lucrative for participants and cheaper for GM, is that fair to say?
A. Correct.
Q. In fact, the health plan that was offered to the members of the IUE-CWA and the other unions, is one in which the company's obligations are capped and fixed, is that true?
A. Correct.
Q. And the cap is about 4,000 dollars a year for a single and 8,000 for family?
A. I believe that's true, yes.
Q. And those caps are based on 2006 medical figures?
A. Yes.
Q. But are you aware that the mechanic for accomplishing the extra 400 million dollar reduction in what we've identified as Exhibit 14, page 2 was to lower those caps for years beginning 2010?
A. No, I was not aware of the mechanic.
Q. What did you think the mechanic was for squeezing 400 dollars more out of the union retirees and the salary?
A. There were changes in vision and dental. And I was aware that further changes needed to be made in order to implement that direction.

Q. And if I told you those changes were to reduce the outyear cap so as we go on this plan becomes more and more expensive for union members, would you believe me?

A. Oh, yes, I would.

Q. Are you aware that when the plan that was presented to the IUE-CWA on June 5th of this year, was presented -- it was done a take it or leave it basis?

A. I think it was presented -- I don't know on what basis it was presented, I wasn't at the meeting.

Q. Was the first offer what the company described as its last, best and final offer?

A. I think it was described as what we were able to provide as part of the negotiation with the purchaser.

Q. If you had taken -- and when I say you, I mean General Motors, the extra 400 million that was used to get to sixty-seven percent from the SERP program, could the benefit plan that was offered to the IUE-CWA and other unions have been better from the point of view of the individual participants?

A. Yes.

MR. KENNEDY: I have no further questions, Judge.

THE COURT: Okay. I would like to keep going till 2 or 2:30, but I don't think we should do away with the lunch hour entirely.

MR. KENNEDY: Your Honor, my associate reminds me that I should offer these documents into evidence.

THE COURT: All right. Are there evidentiary objections? All right, hearing none, I'll admit it.

MR. KENNEDY: Thank you, Your Honor.

THE COURT: Yes, ma'am?

MS. KATZOFF: Your Honor, my name is Sue Katzoff and I represent the Schaeffer Group. And I believe I have a couple of questions which have not --

THE COURT: You represent who?

MR. KATZOFF: The Schaeffer Group which filed an objection to the motion. And I believe I have a couple of questions which are not duplicative of anything we've heard yet today.

THE COURT: First I need your name, then I need to understand the Schaeffer Group in the context of the various categories that I said I will be taking.

MS. KATZOFF: Okay, Your Honor. My name is Sue Katzoff.

THE COURT: K-E --

MS. KATZOFF: K-A-T-Z-O-F-F.

THE COURT: Okay, Ms. Katzoff.

MS. KATZOFF: And I represent the Schaeffer Group which is part of a tort litigation not covered by the other tort claimants. But we have sued GM as a third party for common law contribution and indemnification.

THE COURT: All right. Now, I don't think the

principal advocate for your class has been heard yet, if I'm not mistaken.

MS. KATZOFF: I don't know that I have a class beyond --

THE COURT: Are they tort litigants?

MS. KATZOFF: We, personally, are not. We are being sued by a former employee. And we have in turn sued GM for common law contribution and indemnification.

THE COURT: All right. You know, all my question is trying to find out where you are could possibly take longer than your questions. So just go ahead.

MS. KATZOFF: Thank you, Your Honor.

THE COURT: But I do want everybody in the room to understand that this is the kind of thing I'm trying to avoid by an orderly procedure. Go ahead, Ms. Katzoff.

MS. KATZOFF: Thank you.

CROSS-EXAMINATION

BY MS. KATZOFF:

Q. Good afternoon.

A. Good afternoon.

Q. I just have a couple of questions for you. I assume, and correct me if I'm wrong, that you're aware that your attorneys on behalf of GM filed on or about June 26th the first update to the seller's disclosure schedules which formulated a part of the sale motion?

A. Yes.

Q. And as pat of that they identified for the first time on Schedule 2.2(a)(7), which had not previously been filed, what personal property was going to be included, and, therefore, you could determine what could be excluded from the sale motion?

A. I'm not aware of that, no.

Q. Okay. So you're not aware that one of the things listed on the schedule is the GMPT Messina plant, specifically the metallurgy and sand lab as being part of the sale motion?

A. Well, I know we needed to deal with all of our facilities. Perhaps, I could see the document?

MS. KATZOFF: Your Honor, I only have what I printed off of the website. May I approach the witness and show him the exhibit?

THE COURT: Have you shown it to your opponents?

(Pause)

MS. KATZOFF: May I approach the witness, Your Honor.

THE WITNESS: Okay. Thank you.

MS. KATZOFF: You're welcome.

Q. The document as submitted lists the personalty that is to be included in the sale transaction, which the particular personalty is located on an excluded real property site. So the real property is not being transferred as part of a sale motion, but the particular identified personalty is, according to the schedule.

A. Okay.

Q. So my question to you is can you tell me what is included in the highlighted item located at the Messina plant?

A. No.

Q. Is there someone at the company that can identify with particularity what's included in that personalty?

A. Yes.

Q. And who would that be?

A. It would be the head of the core train, basically engines and transmission, power train engineering because it's a lab.

Q. And who is that person?

A. It could be Dan Hancock.

Q. And where is he located?

A. Detroit.

Q. Detroit.

A. Actually, Pontiac, Michigan in this case.

Q. So you, then, can't tell me whether or not particular cast line or furnaces are included in the personalty that is subject to the sale motion?

A. I'm sorry, ma'am, I cannot.

MR. MILLER: The exhibit says metallurgy and sand lab complete. That's what's being transferred.

MS. KATZOFF: Yes, Your Honor. But I don't know what's included in that. And that's what I was asking the witness.

THE COURT: I think the witness told you he doesn't know, and he can't give you any assistance in that regard, Ms. Katzoff.

MS. KATZOFF: Right. I was just responding to the objection. I know what the exhibit says, I don't know what is included, that's all I was asking.

THE COURT: Any further questions?

Q. You had indicated that the Old GM would have 950 million dollars dedicated to the wind-down process. Does the Old GM currently continue funding its workers' comp insurance?

A. It's my understanding that with the exception of four states workers' compensation moves to the new company. There is still an open issue with respect to the State of Michigan on certain conditions regarding that. But other than that workers' comp, there are four states that wouldn't happen, that would not move forward, the rest of them come to the New GM with this one issue in Michigan that I know is still open.

Q. And do you know with respect to New York State whether the workers' comp will move to the new company?

A. I believe New York State it does move to the new company.

Q. And the Old GM currently is self-insured with respect to its workers' comp?

A. I believe so, yes.

Q. And do you know if the New GM would also be self-insured?

A. In general that would be our preference, yes.

Q. And I have one last question. With respect to any books and records relative to anything that's going to be part of the sale motion, are the books and records going to be transferred as well?

A. I believe so, yes.

Q. And if something is excluded from the sale motion, can I assume, then, that books and records will remain with the Old GM?

A. I believe books and records are included in transition services agreements, but they're certainly available for the Old General Motors.

Q. Okay.

MS. KATZOFF: Thank you. I have nothing further.

THE COURT: All right. Before we take the next questioner, I'm going to speak very softly and I'm going to try to keep my cool. We have hundreds of lawyers listening to these proceedings in three courtrooms, all of whom are presumably billing their clients. And I would think that everybody in these three rooms shares the objective putting more money into the pockets of creditors and minimizing the legal fees associated with serving their needs. And keeping this hearing focusing on the important stuff. It was for this reason, folks, that I directed an orderly procedure by which questioning would proceed. And I have a fear that people have forgotten why we're here, what we're trying to accomplish.

And, though, I sometimes issue my rulings without saying I rule, folks, when I say something I mean it.

Now, I'm not going to deny anybody due process. But I expect questioning more focused on the important issues that we need to decide, and by the people that I've authorized to speak, as the people whom I reviewed of the briefs suggested to me, have the greatest attention to the issues that I need to decide here. Okay.

Mr. Jakubowski, are you now ready to proceed?

MR. JAKUBOWSKI: I am ready, Your Honor. Thank you.

THE COURT: Come on up, please.

CROSS EXAMINATION

BY MR. JAKUBOWSKI:

Q. Good afternoon, Mr. Henderson.

A. Good afternoon, Mr. Jakubowski.

Q. You remember me. Mr. Jakubowski, I represent five tort claimants, personal injury claimants, and I also am here as co-counsel with a number of consumer organizations, including the Center for our Safety and Public Citizen.

A. Yes, sir.

Q. Do you have this big binder right there?

A. Okay.

Q. I'd like to turn to your deposition. And, in particular -- excuse me for just one second.

(Pause)

MR. JAKUBOWSKI: We were talking about skinning the cat earlier, Your Honor. The Federal Express that I ordered somehow has not arrived even in my hotel. And Ms. Rosenbaum checked the hotel and it had not arrived yet.

I think in the -- because it's important to move this along, I think I can go through the matters with Mr. Henderson on the basis of the fact that he's already seen the documents, we've had a discussion about it. And I think I can do it through testimony. And I don't believe I'm going to need the three other short exhibits that I was intending on introducing into evidence.

THE COURT: You can try subject to the attorney's rights to be heard.

MR. JAKUBOWSKI: Okay. Let's try that, Your Honor.

Q. Mr. Henderson, do you recall that there is an item on your balance sheet as of 12/31/08 that identifies what the product liability claims are that have been accrued for the company, correct?

A. Correct.

Q. And that number we went through was 916 million as of 12/31/2008, right?

A. Yes.

Q. And you explained that that number relates only to product liability claims, correct?

A. Claims and claims costs.

THE COURT: Pause, please, Mr. Jakubowski. By claims cost you mean the cost of processing the claims --

THE WITNESS: And defense costs.

THE COURT: I beg your pardon?

THE WITNESS: And defense costs, Your Honor.

THE COURT: Okay, continue.

Q. And, in fact, there's two major components of the lost reserve of 916 million, correct?

A. Correct.

Q. And you didn't pick that number out of thin air, did you?

A. No.

Q. And neither did anyone at GM, correct?

A. No.

Q. And, in fact, what they did is they hired Aon Global Risk Consulting, right?

A. Yes, that's correct.

Q. And they hired Aon Global Risk Consulting in order to do an analysis of what those lost reserves should be for the year-ended 2008, correct?

A. Yes.

Q. And the methodology was rigorous, right?

A. Yes.

Q. And you enabled them -- when I say you, I mean GM. GM gave the full access to the litigation records, correct?

A. They were retained for purposes of providing expert

information for our financial statements. So I believe we would have provided them any and all access necessary in order for them to do that job.

Q. Okay, thank you. And the purpose of the report as you understand it, was to provide assistance to GM in establishing a reasonable estimate of retained loss and defense costs and containment expense, right?

A. Correct.

Q. And you believe they did that, correct?

A. Yes.

Q. And you believe they did a satisfactory job, correct?

A. No reason to believe otherwise.

Q. And, in fact, you put that number in your balance sheet?

A. Yes.

Q. And, again, let's go through the two components. The first component is the loss component, right?

MR. MILLER: Excuse me, Your Honor. I object. I don't understand the relevance of this. If Mr. Jakubowski wants a mitigating offer of proof, maybe we'll stipulate to it. But, otherwise, as to the issues that affect this motion before Your Honor, I don't see the relevance of this.

THE COURT: The relevance, Mr. Jakubowski?

MR. JAKUBOWSKI: Well, I think it's pretty clear, Your Honor. The issues here are what are the liability claims that are being left behind, and what are the liability claims

that are being assumed.

THE COURT: No, I understand your clients' position, and I'm happy about them, but have more difficulty understanding how the exact number of them -- dollars to the legal issue I have to decide.

MR. JAKUBOWSKI: Well, the legal issue you have to decide is whether or not there are releases of non-debtors with respect to claims, correct? In particular, whether the purchaser is going to be released from claims asserted by non-debtor third parties, under a theories of successor liability. And so the question is what is the magnitude of that? And the reason that's important is because later on I will establish through the board meeting that there was as determination made as to how a liability should be segregated pre -- for the liabilities that would be assumed by NewCo and the liabilities that would be left at OldCo. And there was a decision that was made through a process that took about a month, and that decision was made at the board meeting on May 29th, correct, Mr. Henderson?

THE WITNESS: Yes.

THE COURT: Wait, you don't do that.

MR. JAKUBOWSKI: I'm sorry, Your Honor, I apologize. But I'd just rather confirm that -- I'm sorry. Okay, I apologize.

THE COURT: Go on.

MR. JAKUBOWSKI: So at that board meeting on May 29th/May 30th, the decision was made as to what liabilities should be assumed, and what liabilities should be left. The PowerPoint presentation, I believe the testimony is that at that meeting a determination was made as to what that number should be. And there was an additional determination made that there would be no purchase price adjustment afterwards, period. There would be no purchase price adjustment afterwards.

Now, afterwards, after the case was filed, you know that there have been changes to the deal. There have been changes to the deal in two ways. The first way is that future claims are being assumed. The future claims is part of this 916 million dollars. The question is how much of the 916 million dollars is it and I believe that is established by the report.

Now, the question is, is there a purchase price adjustment as a result of that? And the answer is no, there is no purchase price adjustment because of that. And so --

THE COURT: I'm trying to be patient. Which I was looking for the answers of which was legally relevant to the argument vis-a-vis these claims and as articulated by the creditors' committee and certain other parties in this hearing.

MR. JAKUBOWSKI: I will tell you how it is. TWA in a number of cases suggest that it may be relevant for purposes of determining successor liability whether there is a purchase

price adjustment as a result of liabilities that would be assumed or not assumed as part of the transaction. It is my contention through the evidence that if the remaining successor liability claims with respect to product liabilities were assumed by the buyer, that, in fact, there would be no purchase price adjustment. And so if they'd done it voluntarily there could be nor purchase price adjustment. If it's done involuntarily through you, I believe there could be no purchase price adjustment. And, therefore, I think it's relevant to the analysis, the policy analysis in TWA as to whether the assumption of the liabilities would have an affect on the purchase which may have a related to affect on the estate.

THE COURT: Now, I'm not going to rule on the merits of your ultimate argument. Creating pauses suggest my uncertainty in that regard. I'm going to let you make your record subject to you asking the questions in a quickly and -- you articulated the reasons by which you were asking them.

MR. JAKUBOWSKI: Okay.

THE COURT: Without prejudice to Mr. Miller's rights.

MR. JAKUBOWSKI: Understood.

THE COURT: The last objection is overruled.

BY MR. JAKUBOWSKI:

Q. Now, the ultimate loss as determined as of 12/30/08 was 916 million, correct?

A. Correct.

Q. Now, that's broken into two pieces, correct? One is cases that exist, right?
A. Yes.
Q. And the other are cases that have not been reported yet?
A. That's correct.
Q. And those are called the incurred but not reported cases, correct?
A. Correct.
Q. And if they're not reported, the likelihood, they haven't been incurred yet. In other words, they're future claims, right?
A. I think incurred but not reported suggest they have been incurred but not reported.
Q. Well, but isn't it the case that you said that for every vehicle year as to which there's a reserve that it includes all the expected future losses with respect to their vehicle year?
A. That's correct.
Q. And, therefore, there are a number of claims in that reserve that, in fact, had not even been incurred yet, have not existed?
A. The accident hasn't happened yet, yes.
Q. Okay. And so you break into these two categories of cases that exist, cases that don't exist. Now, in the report do you recall that for the cases that have been filed and exist the reserve was 414 million dollars, approximately? I guess it

would be in your deposition, but I can --

A. Let's go to the page of the deposition so I can refresh my recollection?

Q. Okay, sure.

A. I think you were after Mr. Bressler. There you are Mr. Jakubowski, page 184.

Q. Thank you.

THE COURT: I don't think I have it. I'm going to let you proceed without giving it to me, but if it makes a difference I'm going to need to see it.

MR. JAKUBOWSKI: Okay, Your Honor.

THE COURT: If it refreshes Mr. Henderson's recollection I don't' need to see it.

MR. JAKUBOWSKI: Well, what I can do, Your Honor, is simply approach the witness, show him the report and he can confirm that it's in the report. Again, I apologize, the Federal Express simply did not come today, and there's nothing I can do.

MR. MILLER: Your Honor, please, I'm going to renew my objection as to relevance. As I understand Mr. Jakubowski's argument is that the amount is so small Your Honor can order the treasury to assume that liability. The way the deal is structured, Your Honor, if they're dissatisfied with sale order, they don't have to close. But what he's doing is making a legal argument. He can make an order of proof, and then we

can move on, Your Honor. This is hardly relevant to the issues.

THE COURT: Is there going to be a credibility dispute or any other factual dispute, or as is offer of proof, or you're going to accept it as a given.

MR. MILLER: I'll accept it, Your Honor.

MR. JAKUBOWSKI: Okay. That would be fine, Your Honor. I'd be happy to go through it.

THE COURT: If you will accept it as a given, is there anybody who is aligned with Mr. Miller who disagrees with Mr. Miller's undertaking?

All right, no response. Mr. Jakubowski, make your offer of proof.

MR. JAKUBOWSKI: Okay.

THE COURT: And if Mr. Miller accepts it as being part of the record, we'll move on.

MR. JAKUBOWSKI: Thank you. The evidence through Mr. Henderson and through this exhibit would show that the 916 million dollars in losses are broken in between 414 million dollars of existing claims, and 502 million dollars of claims to be incurred.

Of that amount, in fact, that's further broken down, because that's an aggregate amount that represents loss and expense -- litigation expense. And on page 32 of the report they break down the loss reserve, the actual claims for

liability at 388 million gross. The gross reserve of 916 million, 388 million, 793,000 represent cases that exist, and 376,403 represent, effectively, future claims that are to be incurred.

So that I believe is the -- and the remainder of 151 million reflects fees associated with the two buckets of case -- existing cases and future claims. And that's broken down twenty-five million dollars in legal fees for existing claims, and 125 million of existing fees for future claims. And that takes you up to the aggregate bucket of 414 million for existing claims, 502 million for future claims. That's all that I have to say with respect to this exhibit, Your Honor.

THE COURT: All right. Mr. Miller, are you okay with that as being incorporated his assumption that I can proceed with in any decision?

MR. MILLER: Yes, Your Honor.

THE COURT: All right. Does that --

MR. JAKUBOWSKI: It does, Your Honor. Thank you very much. I just had really a few more questions.

THE COURT: Oh, of course.

MR. JAKUBOWSKI: Let me finish up.

THE COURT: Yes, by all means.

BY MR. JAKUBOWSKI:

Q. Now, with respect to the liabilities that would be segregated as of the filing, in terms of what goes to the

purchaser and what stays with Old GM, there were certain politically -- what you called politically sensitive assets, and politically sensitive liabilities, right?
A. Correct.
Q. And what did it mean to categorize an asset or liability as politically sensitive?
A. We attempted to identify for the purchaser those assets and liabilities that might normally just simply be left behind in the Old General Motors. And we also identified assets, actually, that were in that category. But certainly liabilities. And we wanted to highlight for the purchaser what those liabilities were, how much they were, and what a range of possible treatments might be for each of those obligations.
Q. And one of those liabilities was product liability claims, correct?
A. Correct.
Q. And from the company's perspective, what is the customer relationship issue associated with product liability claims?
A. OH, as we look at product liability claims, the reputation of the company, whether it's via a warranty coverage, or for recall, or in this case, product liability is an important consideration for the company.
Q. And so from the company's perspective -- particularly, from a reputational perspective, you considered it important in your capacity as CEO of the company to assume -- to have all of

the product liability claims covered, correct?
A. We showed all the information to the purchaser. We shared with them what our views were on the reputational related elements of this particular decision. And discussed with them and negotiated with them how product liability might be treated, yes.
Q. And, originally, the decision was made by the treasury, correct, that none of those liability claims would be assumed?
A. The original decision was any vehicle sold post-June 1st, that the new company would assume liability for those. New company also continues to have indemnification responsibility with respect to our dealers. Subsequent to that, late last week, agreement was reached that we would modify that to ensure that any accident which occur post-closing would also be assumed by the new company.
Q. Okay. But in terms of the 916 million dollars that was on the balance sheet at 12/31/08, all of those liabilities under the original dealers of June 1 were rejected and were supposed to be left with OldCo, correct?
A. Can you repeat the question, please?
Q. As of the filing date, and as reflected in the existing purchase agreement -- excuse me, the purchase agreement that was filed as of June 1, all of the product liability claims that arose from cars that had been sold prior to the petition date, would not be assumed by the seller?

THE COURT: Mr. Jakubowski, does that go to you establish -- or at least, stuck in part of your proffer that a chunk of the 917 million was for the defense costs and processing costs. And that -- and this may or may not be in the same bucket, but a chunk of that is for existing claims and a chunk of it was for possible claims in the future.

MR. JAKUBOWSKI: True, Your Honor. And my point is that as of the first iteration of the document in June 1, none of those future claims, put aside the legal, none of those future claims that arose out of cars sold before the petition date were going to be picked out. One of the changes made by treasury was, in fact, to pick up those future claims that were -- that happened after the closing date.

THE COURT: Why don't you ask a new question that is more sharply consistent with what you established before.

MR. JAKUBOWSKI: Okay.

Q. So, there was -- after June 1 there was a change in the bucket with respect to product liability?

A. Correct.

Q. And that change was to effectively pick up the approximately 376 million dollars worth of estimated future claims that would be incurred after the closing?

A. I don't know if the number was 376 million, but certainly the conclusion was any subsequent -- any claim arising from an accident subsequent to the closing would be assumed by the new

company.
Q. And had the closing date been, for example, as of 12/31/08, that, in fact, the 376 million dollars of future claims would have, under the deal as it exists right now, been assumed by the purchaser, correct?
A. That's a fair estimate.
Q. But prior to that change the 376 million would not have been assumed, correct?
A. Yeah, that's correct.
Q. Okay. Now, with respect to that change it's your understanding that there's no change in the purchase price as a result of the buyer picking up this effectively 376 million dollar bucket, correct?
A. The consideration provided to Old General Motors in terms of shares warrants was unchanged as a result of this move.
Q. Did any consideration change that was being paid by the purchaser in the transaction as a result of this change?
A. Not to the best of my knowledge.
Q. Okay. So now we're dealing effectively with the 388 million dollars worth of what we'll call preexisting liabilities, okay. Now, those liabilities are not being assumed by the purchaser, correct?
A. So there would be vehicles sold prior to June 1st, and vehicles where the accidents incurred prior to June 1st. That's correct.

Q. Yes, that's correct. Vehicles that where the accidents were incurred, the cases exist, as of the petition date?
A. Correct.
Q. And that is -- let's assuming the closing date was 12/31/08 that number would be approximately 388 million dollars, correct?
A. Yes.
Q. Now, you said earlier there was another amendment that effectively picks up or indemnifies a third party for some of those claims, right?
A. Well, I don't think it was an amendment -- our agreement with our dealers provides indemnification for our dealers.
Q. So if the dealers are sued by some of these preexisting claimants under state laws or whatever state law exists to pay -- that would hold the dealer responsible for the product liability claim, I take it it's now going to be the obligation of the purchaser to indemnify the dealer for their loss?
A. That's correct.
Q. And have you undertaken any kind of analysis as to what that number is?
A. I have not seen that analysis, no.
Q. No. How many -- let me ask it this way. On a ballpark range, how many cars in the past three years, four years, are sold through dealers and versus any other manner?
A. All of our cars, other than direct fleet sales --

actually, even fleet sales are sold through dealers.

Q. So, effectively, what you're saying is that for product liability claims that were incurred in the past three years, to the extent that all of them were to go against -- have the right to go against the dealer, and would be successful against the dealer, the purchaser would be required to indemnify that dealer, correct?

A. Based upon all of those assumptions, yes.

MR. JAKUBOWSKI: Now, I guess I would like to make one additional proffer with respect to this report, Your Honor. And we will get it and I would like you to at least have it in your hand.

THE COURT: You know, what I'd like you to do, Mr. Jakubowski, I want you to take a second to concur with -- to consult with Mr. Miller and see if he concurs with what you would like to do.

(Pause)

Q. Now, let me ask this, Mr. Henderson --

MR. JAKUBOWSKI: I won't make that proffer, Your Honor.

Q. Let me ask you this. I take it that at the time that the purchaser signed off on the concept of indemnifying the dealers, correct?

A. Yes.

Q. And they did not demand a change in the purchase prices as

a result of that, correct?

A. It's part of our dealer contract, they understood that, yes.

Q. So there's going to be no increase to the purchase price as a result of this indemnity to the dealer?

MR. MILLER: Objection, Your Honor. That calls for a legal conclusion.

THE COURT: Sustained.

MR. JAKUBOWSKI: I'll stick with the last answer that we have, Your Honor. I think that last answer is fine.

Q. Now, I take it, Mr. Henderson, that none of the changes that were made with respect to the assumption by the purchaser of future claims and of indemnities for the dealers is in any way going to affect the viability of New GM, correct?

A. Not in my opinion, no. I agree with you.

Q. Now, I want to be clear on one additional point, because we're required to make submissions to the Court. With respect to claims that arise in this -- excuse me, that happen. With accidents that happen between June 1 and June 30, let's assume the purchase closing was today, that those claims are not being assumed by the purchaser, they're being left in the estate but they're going to be deemed an administrative claim, correct?

MR. KAROTKIN: Your Honor, that's a legal conclusion.

THE COURT: I have to sustain the objection insofar as it asks for a legal conclusion. If you're asking for this

man's understanding as a predicate for the next question, I'll permit it. What he says is not going to bind either the debtor or the creditors' committee or any other party in interest, vis-a-vis whether it's an allowed admin claim or not.

Q. Let me ask it this way to try to put it in a businessman's perspective. If there's a accident -- if an accident occurred on June 15th with respect to a car that was sold before June 1st, is it your understanding that in the event that a loss is determined that needs to get paid, that that liability will be paid by the purchaser?

A. Cars sold prior to June 1st?

Q. And the accident happened on June 15th. What's your -- who do you understand is responsible?

A. I don't know the answer to that question.

Q. Okay. But your understanding, though, is that one way or the other they're going to get paid?

A. I just don't know the answer to the question, I'm sorry.

Q. That's fine.

THE COURT: Mr. Jakubowski, so I understand the question you asked. Pre-filing date manufacture, post-filing date injury, that's the scenario for which you asked the question. And Mr. Henderson told you he doesn't know.

MR. JAKUBOWSKI: Correct, pre-closing -- the accident was pre-closing.

Q. So the sale was pre-filed, the accident was post-petition,

pre-closing, who pays, the estate as an admin -- who pays, the state or the purchaser?

A. Mr. Jakubowski, there's been some discussion about this. I just don't understand exactly how it works, so I can't answer your question in the detail that you'd like.

Q. So were you here when counsel represented on the record what the change in the deal was with respect to that?

A. I focused on accidents post-closing that would be covered. I know there's some discussion, but it was my understanding it was vehicles sold post, but I must say I'm not an expert in this area.

Q. Okay. I take it, though, that with respect to the negotiations that you've testified at length here, it was your understanding that it was really up to the purchaser. At then end of the day it was up to the purchaser to decide which liabilities would be assumed, and which liabilities would be left behind, right?

A. Correct.

Q. And you would make some recommendations, but at the end of the day that wasn't your call, right?

A. We made recommendations, we negotiated, but the purchaser made those decisions.

Q. And is it your understanding that -- isn't it your understanding that the relative priorities among the various claimants that are being assumed, was completely irrelevant to

the purchaser?

MR. MILLER: Objection, Your Honor, I don't know what's being questioned.

THE COURT: Sustained.

MR. JAKUBOWSKI: Okay. I'll ask that of Mr. Wilson, Your Honor, I don't think I need to incur that anymore. If you don't mind, give me one more minute here, Your Honor.

(Pause)

MR. JAKUBOWSKI: One further question.

Q. You discussed with the purchaser the concept of assuming the pre-petition for product liability, correct?

A. It was one of the options, yes.

MR. MILLER: Your Honor, the questions been asked and --

THE COURT: Well, that question has been asked and answered. But if you're using that as the predicate for the next question, it's common for litigators to just ask it to set the table for the next question. Go ahead.

Q. And isn't it true that after the filing you made no additional attempt to try to get the purchaser to assume these pre-petition claims?

A. Well, there's been discussions with the purchaser with regard to product liability after the filing, pretty significant amount of discussions during the month of June. So it wouldn't be true that we had no discussions.

Q. But I thought your testimony was that the purchaser made it very clear that they had no interest in taking responsibility for pre-petition claims, correct?

A. Yes, correct. Pre-petition accident.

Q. Pre-petition accidents, pre-petition claims?

A. Yes.

Q. And, therefore, you didn't even see a need in June to even talk to them about that issue because they were so dead-set against it, correct?

A. Well, we had ongoing discussions through the month of June on product liability, but their conclusion was clear.

Q. But those discussions were focused on future claims, correct?

MR. MILLER: Your Honor, the witness answered the question, he said there were discussions.

THE COURT: Sustained.

MR. JAKUBOWSKI: Okay. Your Honor, I have no further questions. I thank you for your indulgence.

THE COURT: All right. Before the next questioner I want to ask you a question -- a few questions under 614. Remind you, of course, that you have a right to object to my questions.

Mr. Henderson, I don't know how much you drilled down in the framework of management, do you have any knowledge for relief that isn't speculation as to who often GM gets sued in

products liability actions when it is sued and the dealer that sold the car isn't also sued?

THE WITNESS: No, Your Honor, I don't know the answer to that question.

THE COURT: Okay, no further questions. Does the Center for Auto Safety have any questions at this point?

UNIDENTIFIED ATTORNEY: No, we do not.

THE COURT: It's now 2:20, I think it's now time for a lunch break. And I want thing to keep moving forward. And I would make it less than an hour except that I don't think you can get down in the elevators quickly enough and get back up quickly enough, so we're going to make it an hour.

For anybody who wants to question after the lunch break I'd like them to register with my law clerk to tell me who they are, who they represent and what they propose to question about. We're in recess for one hour.

(Recess from 2:22 p.m. until 3:23 p.m.)

THE COURT: Have seats, everybody. Ad hoc torts committee. Mr. Bressler?

MR. BRESSLER: Yes. Thank you, Your Honor. Good afternoon. After a review of what's been said already and having reviewed Mr. Henderson's deposition, for which she was more than forthcoming, we're going to designate deposition sections and not ask any live questions.

THE COURT: Very well. What I would like you to do,

Mr. Bressler, is give your designations to the debtor and the debtor is going to have twenty-four hours to counter-designate. And then I would like you or them, it doesn't matter to me, to give me the parts that's been designated, your designations in one color, theirs in another, all returned with markings so I'll know whose is who. And I'll read it.

MR. BRESSLER: Thank you, Your Honor.

THE COURT: I would like to have it available as soon as is practical for the debtors. But the debtors can take the full twenty-four hours after they get it from you if they need that. Oh, U.S. government wants the same opportunity?

MR. JONES: Yes, Your Honor. David Jones from the U.S. attorneys' office. Please, we would appreciate that.

THE COURT: Of course. Anybody else feel like they want counter-designation rights? All right. Mr. Jones and Mr. Miller or their designees will get it. And they'll have a chance to assign a designee.

MR. BRESSLER: Thank you, Your Honor.

MR. JONES: Does Mr. Bressler know, Your Honor, when we will get them?

MR. BRESSLER: His Honor said by noon tomorrow. We'll try to get them over first thing in the morning actually.

MR. JONES: Thank you.

THE COURT: Okay. All right. Next. Oliver Addison Parker?

MR. PARKER: Just one minute, Your Honor.

THE COURT: Okay. For the four people who registered to question with my law clerk before the lunch break, I'm going to take Mr. Parker first and then I'll expect everybody, of course, to be nonrepetitive. And let's proceed.

MR. PARKER: Thank you, Your Honor. I'm Oliver Addison Parker. I'm an attorney in Ft. Lauderdale, Florida and I'm, I suspect, the largest uninstitutional bondholder of General Motors. I own five million dollars.

THE COURT: Pause, please, Mr. Parker. Just ask your questions.

MR. PARKER: Okay. Sure. Thank you.

CROSS-EXAMINATION

BY MR. PARKER:

Q. Mr. Henderson, first thing I'd like to ask you, Mr. Henderson, is in December of 2008, GM's liabilities were approximately 190 billion dollars and their assets were about 82 billion dollars, something in that ballpark?

MR. MILLER: Excuse me, Your Honor. Could he establish a foundation? Is he talking about --

MR. PARKER: I'm trying to establish a foundation for something.

MR. MILLER: If he wants to --

THE COURT: Don't communicate with each other. You're saying you want a foundation for the question he just

asked?

MR. MILLER: He's asking about assets and liabilities. Is he talking about for accounting purposes or what?

THE COURT: Fine. Sustained as to form. You can rephrase, Mr. Parker.

MR. PARKER: Okay.

THE COURT: Talk about whether you're talking book value, appraised value or whatever you want.

MR. PARKER: All right.

Q. In the fourth quarter in 2008, General Motors released a profit and loss statement, correct?

A. Correct.

Q. Okay. And under that profit and loss statement, they showed what they had, roughly 190 billion dollars in liabilities and something like eighty-two billion dollars in assets, is that correct?

A. I believe so.

Q. And so, under that profit and loss statement, shareholder equity in December of 2008 was negative, is that correct?

A. Correct.

Q. In 2008, the market value -- I mean, the share price of General Motors stock was somewhere around four or five dollars a share, is that correct?

A. Certainly, toward the end of the year, yes.

Q. And there were roughly 600 million, 650 million shares outstanding?

A. Correct.

Q. So the market value of the shares was somewhere between two and a half and three billion dollars? Maybe three and a half billion dollars?

A. Reasonable estimate.

Q. Okay. Now, in December 1st of -- sorry. In December 31st of 2008, General Motors signed a loan agreement with the United States Treasury, is that correct?

A. Correct.

Q. And under the terms of the loan agreement, you were supposed to get 13.4 billion dollars, that's billion with a B, with a first installment on December 31st of four billion. Is that correct?

A. Yes.

Q. Now, is it safe to say that four billion dollars is more than twenty percent of shareholder equity whether you use book value, which was negative, or market value which was between two and a half and three and a half billion dollars?

A. Yes.

Q. Okay. The mortgages -- the money that you borrowed from the Treasury and the mortgages that you gave the Treasury, the mortgages, the liens, the -- whatever else you want to -- security interest, were the loans for property that you bought?

Were the liens on security for the property that you bought?
A. No.
Q. Were the loans on property -- sorry. Were the security interests, the mortgages, on property that you already owned? By you, I mean General Motors.
A. General Motors? Yes.
Q. Now, had General Motors entered into any sort of a contract with United States that required General Motors to enter into a pledge or security agreement to secure partial progress, advance or other payments pursuant to contractor statute?
A. No.
Q. Okay. So this isn't a case where the government needed tanks to be built or needed whatever to be built and in order to make sure that you could do the job that required some sort of a mortgage or pledge in order to secure performance, is that correct?
A. Correct.
Q. This was just a straight out we need to borrow money, we're pledging assets we already have to get it?
A. Correct.
Q. Okay. The mortgage agreement that you entered into with -- by you, I mean, General Motors -- that General Motors entered into with the United States Treasury, what did it encumber?

A. It encumbered a series of assets, intellectual property, nonmanufacturing real estate, selected stocks in foreign subsidiaries, small amount of inventory.

Q. Credited its mortgage real estate, is that correct?

A. Nonmanufacturing related real estate.

Q. Okay. Did it mortgage General Motors equity or shares in any manufacturing subsidiaries?

A. Domestic manufacturing subsidiaries?

Q. Yes.

A. No.

Q. I see.

MR. PARKER: Just a second to find it.

Q. All right. Have you -- has General Motors introduced the loan and security agreement by and between the borrower listed on Appendix A and borrower, the United States Department of the Treasury?

MR. SCHWARTZ: Yes.

MR. PARKER: Have you entered these in as an exhibit?

MR. SCHWARTZ: Yes.

MR. PARKER: Could I ask what exhibit number it is?

MR. SCHWARTZ: 6.

MR. PARKER: Okay. So that's --

MR. SCHWARTZ: Exhibit 6.

MR. PARKER: -- GM6?

MR. SCHWARTZ: Yeah.

BY MR. PARKER:

Q. All right. Do you have a copy of GM6?

A. I have no idea, Mr. Parker, if it's in that book.

Q. All right.

MR. PARKER: Could I have a copy of GM6 to show the --

MR. MILLER: May I, Your Honor?

MR. PARKER: Thank you. May I approach the witness, Your Honor?

THE COURT: Yes.

Q. Would you please go to -- there's two paginations on this. There's a pagination that says 29. There's another pagination that says 35 of 111. The 35 of 111 is the top right-hand corner.

A. Yes, sir.

Q. Okay. Are you looking at Section 4, Collateral Security, 4.01, Collateral Security Interest?

A. Yes, sir.

Q. Okay. Does subparagraph (a) read: "Subject to any amendments, restatements, supplements or other modifications in Section --

MR. MILLER: Your Honor, the document speaks for itself. He doesn't have to read it into the record.

THE COURT: Of course the document does. If you want to call his attention, however, to a particular portion of it

and then ask him a question, you can do that. But don't ask him to simply read the document itself.

MR. PARKER: No. I'm reading it in order to get someplace, Your Honor.

THE COURT: All right. I'll overrule that objection but it would be helpful to me, Mr. Parker, if you got to the point a little more quickly.

MR. PARKER: Well, I'm trying to, Your Honor.

Q. If you'll go down, one, two, three, four -- four lines, does it say that "GM is giving a lien on and security interest in all of its right, title and interest in and to all personal property and real estate wherever located and without limitation the following whether now or here ever existed on where they're located"?

A. That's what that provision says, Mr. Parker, but it does go on to the next page to provide exceptions to that.

Q. Okay. If you would please tell me where the exceptions are.

A. The definitions are on page 30 of excluded collateral.

Q. All right. What paragraph is that in?

A. Top of page 30.

Q. 30 --

A. Top of page 36 of 111.

Q. 36 of 111.

A. Where it says "And the borrower is not pledging or

granting a security interest in" --
Q. What line is that in that paragraph?
A. In the third line, sir.
Q. Okay. Go ahead.
A. It says "The borrower is not pledging or granting a security interest in any properties except that such property constitutes excluded collateral."
Q. Okay. Now, was there a list of assets that were included anywhere?
A. Sir, my understanding is what's outlined in the document.
Q. Wasn't there a --
MR. PARKER: Bear with me a second.
Q. Wasn't there an appendix with a list of schedules to the document?
A. Sir, I didn't -- I wasn't involved in negotiating this document. There could very well be appendices but I wouldn't have necessarily reviewed them.
Q. Okay. So when I asked you on Saturday, I believe it was, in your deposition --
A. Sunday.
Q. Was it Sunday?
A. It was, sir.
Q. Okay. Sunday. You're right. When I asked you Sunday in your deposition, I believe you indicated that the excluded properties dealt with foreign properties and not with domestic

manufacturing?

MR. MILLER: Excuse me, Your Honor. If Mr. Parker has a deposition, would he show it to him?

THE COURT: That's the way we do it. Sustained. Show him the deposition transcript and ask him if he was asked this question and he gave that answer.

MR. PARKER: Very well, Your Honor. Since I don't have the deposition, I can't do that. However, let me at least -- 'cause I may be able to get it from other witnesses later. Let me at least go over a couple of things. Have you placed into evidence the 1995 indenture.

MR. MILLER: Yes.

THE COURT: What evidence number is it?

MR. SCHWARTZ: 10.

MR. PARKER: Okay. Do you recognize these as being copies of 10 so I can let him look at them? It's what you have provided me, right?

(Pause)

MR. SCHWARTZ: He's got it up there.

MR. PARKER: Oh, okay.

Q. Do you have Exhibit number 10 in that book?

MR. SCHWARTZ: That's the wrong book.

MR. PARKER: That's the wrong book?

MR. SCHWARTZ: It's not in that book.

MR. PARKER: Which book is it?

MR. SCHWARTZ: The one he was looking at before.

THE WITNESS: This book? Oh, okay, yeah.

Q. Exhibit number 10.

A. Yes, sir, I do.

Q. Could you go to Section 1408?

A. Of this Exhibit 10? 1408, okay.

Q. Yes.

A. Give me just a moment, sir. 1408 --

THE COURT: 1408?

A. -- says New York Contract.

Q. Right, right. The indenture is governed by New York law, correct?

A. Yes.

Q. Okay. Would you go to Section 406, please?

MR. PARKER: This is a horrible copy.

A. Yes, sir.

MR. SCHWARTZ: Wait a minute, please.

A. Limitations on Liens section.

Q. Limitation on Liens. It basically says, does it not, that GM will not give --

MR. MILLER: Your Honor, same objection. The document speaks --

THE COURT: Sustained.

Q. Under 406, could General Motors give a lien on its manufacturing facilities? Domestic. Domestic manufacturing

facilities.

MR. MILLER: Objection. Calls for a legal conclusion.

THE COURT: Sustained.

Q. From your business judgment, could GM give a --

MR. MILLER: Excuse me, Your Honor. It's not a question of business judgment.

MR. PARKER: Okay.

THE COURT: Sustained. Mr. Parker, I normally cut a lot of slack for pro se litigants. I don't get that many pro se litigants who are lawyers. I think under those circumstances I have to give you kind of a hybrid kind of courtesy.

MR. PARKER: Right.

THE COURT: What I would suggest is if there is exception of the document of undisputed content that you want to rely on --

MR. PARKER: Yes, sir.

THE COURT: -- read him the sentence that you have in mind. Then ask him if he has a business understanding as to what that means. This businessman's understanding isn't binding on the company or any of the other parties in the case as -- with respect to what it says it's a judgment of law that I would make after hearing appropriate argument when necessary.

MR. PARKER: Right. Okay.

THE COURT: But if and to the extent relevant you want to ask him his businessman's understanding on the provisions in the agreement, I'll let you do it notwithstanding that the fact that the legal conclusions trumps his businessman's understanding.

MR. PARKER: All right.

BY MR. PARKER:

Q. Section 406 provides that "For the benefit of the securities, the corporation will not nor will it permit any manufacturing subsidiary to issue or assume any debt secured by a mortgage upon any principal domestic manufacturing property or corporation of any manufacturing subsidiary upon any shares of stock or indebtedness of any manufacturing subsidiary whether such principal domestic manufacturing shares of stock, indebtedness, et cetera, together with that of the corporation" -- basically -- well, it's very long. Have you read it?

A. I just read it here.

Q. Okay. When General Motors entered into its agreement with the United States Treasury, were they aware of the limitation on liens provision of this document?

A. Yes, sir.

Q. Okay. Was the Treasury Department aware of the limitations on lien provision of this document?

A. Sir, I wasn't involved in the negotiation of the document in December of '08, but it's my understanding they were aware.

Q. Okay. Is an empty building a manufacturing plant or facility?

A. If it's an empty manufacturing plant, yes, sir.

Q. Okay. So what does a manufacturing plant or facility mean to you, sir?

A. It's a facility that's intended to manufacture vehicles, power trains, stampings, the various parts of our business.

Q. Would it include machinery?

A. Generally, yes.

Q. Okay. Did -- under the loan agreement, did you grant a lien on all of your machinery? The loan agreement with the United States Treasury, did GM grant a security agreement on all of its domestic machinery.

MR. MILLER: I assume, Your Honor, he's just asking for Mr. Henderson's understanding.

MR. PARKER: Yes.

THE COURT: With the clarification, the objection becomes moot.

A. Could you repeat the question, sir?

Q. Sure. Under your understanding of GM's loan agreement with the Treasury, did the Treasury have a security interest on the manufacturing equipment in domestic manufacturing plants?

A. I don't believe so.

Q. Okay. Did it -- did you give a security interest on the shares of stock of any subsidiaries of GM, domestic

subsidiaries?

A. No domestic manufacturing subsidiary to the best of my knowledge.

Q. What are the domestic manufacturing subsidiaries of General Motors?

A. Generally, our manufacturing operations are included in the corporation. I think if we have a domestic manufacturing subsidiary, it might be Saturn. But I don't think -- we generally don't have substantial domestic manufacturing subsidiaries. The parent -- the corporation owns the U.S. manufacturing plants.

Q. Is Saturn a separate plant -- I mean, a separate corporation?

A. I believe so, yes.

Q. And did you grant a lien on Saturn's shares?

A. I don't know.

MR. PARKER: May I ask a question of counsel? The exhibit -- no, no. The exhibit that you provided with the appendices, on the two appendices to the agreement that listed the properties that are included and the ones that were excluded, they were blank. Do you have a copy?

MR. MILLER: I don't know what he's talking about.

MR. SCHWARTZ: I don't know what you're talking about.

MR. PARKER: Okay. What I'm talking about is the --

(Pause)

MR. PARKER: You might notice it. It's a schedule -- that's out of order. This is the first page. It's a schedule of appendices to the loan agreement.

MR. SCHWARTZ: Which one?

MR. PARKER: The one between Treasury and GM. And when you get to the final two schedules, they're blank. They're the schedules for assets that are liened and assets that are excluded. Toward the end. Actually, if I may -- I'll show you since it's this area. Schedule 6.29 and 6.30. As you can see, they're blank with a statement that it's privileged information. Is it attached to what you gave the Court?

(Pause)

MR. PARKER: It was page -- on this, it's page GMPR3959 and GMPR3961 -- 3960. There's a big skip. Here's 3958. While they're looking, I'll move on.

THE COURT: Thank you.

BY MR. PARKER:

Q. Would you go to Section -- Schedule 6.28 of the document?

A. Which document, sir?

Q. The -- it's called -- it's schedules of, I guess, Exhibit 10.

A. 6.28.

Q. Yes.

A. Section 6.28, did you say?

Q. Yes.
A. All right. So it's earlier in the document.
Q. No. It's Schedule 6.28 not section.
A. Okay.
Q. I'm sorry. Schedule 6.28.
A. What's the name of the schedule, sir?
Q. Assets Subject to Senior Lien.
A. Maybe you can show it to me. I can't find it here.
Q. Well, this is the copy they gave me.
A. So, let me find it. Mr. Parker, which page so that I can get on the same page as you are.
Q. Does yours have the stamps on them?
A. No. Unfortunately, I don't have a GMPR on this page.
Q. 'Cause it's 3955. The schedules aren't otherwise aren't numbered. The only numbers on these schedules are the GMPR stamps.
A. Perhaps there's -- would you like me to work from yours?
Q. Yeah. If you take a look at the first one, the first asset, I believe it's -- there's a one 1,400,000,000 lien in favor of a bank, is that correct?
A. Yeah. This was a 1.4 billion dollar machinery and equipment term loan that was issued in 2006.
Q. On Saturn, correct?
A. That was Saturn as guarantor so it was basically, the parent -- the corporation as well as Saturn Corporation.

Q. Right. And did it also guaranty -- pledge sixty-five percent of Saturn's stock?

A. This is the --

Q. It's in that same page.

A. This is the 2006 transaction?

Q. Yes.

THE COURT: Forgive me. Mr. Parker, I'm trying very, very hard to be --

MR. PARKER: I know.

THE COURT: -- very, very patient. The costs to the creditors in this case with examination is enormous. I can no longer permit you to ask your opponents to find stuff for you.

MR. PARKER: Okay.

THE COURT: And I can no longer ask the witness to find things or to construe documents that are already in the record. If you want to make legal arguments based upon what the documents say, of course you may do that. But you're going to have to help me understand why this examination can't proceed more quickly and why you should be putting the witness through a memory test on what the company's documents say.

MR. PARKER: All right, Your Honor. It's my position that the -- it's -- I'm sorry. I've got the wrong page. If I may? It's my position the bondholders are actually secured creditors, Your Honor.

THE COURT: Fair enough. But if the documents are in

evidence, why can't you make you argument based on what the documents say?

MR. PARKER: All right. I'd like to introduce a document that is not in evidence, if I may. It's a document I received in discovery from General Motors. I'm going to ask the witness if he can identify it.

MR. MILLER: Your Honor, this is a document filed June 27, 20003.

MR. PARKER: Yes, it is.

MR. MILLER: I don't know where Mr. Henderson was on June 27th, 2003.

THE COURT: I guess he can tell us when Mr. Parker tries to lay the foundation for the submission.

MR. PARKER: All right. I'd like to label this Parker Exhibit 1 for identification. 4424D5.

THE COURT: All right. Parker Exhibit 1 for id.

(Parker's Exhibit 1, GM Perspecta Supplement 2, was hereby marked for identification as of this date.)

BY MR. PARKER:

Q. Could you take a look at that document, sir? Okay? Now, do you recognize it?

A. No.

Q. Did General Motors issue a set of Series C subordinated bonds?

A. Mr. Parker, at that time I was president of GM Asia

Pacific. I had nothing to do --

Q. Okay.

A. But I do believe we did issue bonds, the specifics of which I wasn't involved in at the time.

Q. All right. Who could identify it?

A. Well, this is a General Motors document. I mean, it's -- but I just --

Q. Well, but do you recognize it as a General Motors document?

A. Yes, sir. It looks like it's a Perspecta Supplement.

Q. It's a Perspecta Supplement with a attached Perspectus that it's a Perspecta Supplement 2.

A. Yes, sir.

Q. All right. So all I'm asking is can you identify it as a Perspecta Supplement from General Motors.

A. I believe it is, yes.

MR. PARKER: All right. Your Honor, I'd like to introduce --

THE COURT: Any objection?

MR. MILLER: No, Your Honor.

THE COURT: All right. It's admitted.

MR. PARKER: Okay.

(Parker's Exhibit 1, GM Perspecta Supplement 2, was hereby received into evidence as of this date.)

MR. PARKER: When I argue on it, may I refer to

sections of it, Your Honor?

THE COURT: Can't think of any reason why not.

MR. MILLER: What are we marking this as, please?

MR. PARKER: Parker's Exhibit 1 in a --

Q. Do you still have that other document?

A. I do, sir.

Q. On the second page of the document, is there -- does it indicate -- and the document, I believe, is the exhibits -- the atta -- the schedules to Exhibit 10, General Motors Exhibit 10.

A. I'm reading. This is the second page of the document you gave me.

Q. Yeah. Well, the second -- yes.

A. Yes.

Q. I believe it's Schedule 6 -- I mean, about 628.

A. 6.28, that's what it says.

Q. It's page 2 of Schedule 6.28, correct?

A. Yes.

Q. Does it indicate a loan? Not to the government.

MR. MILLER: Objection, Your Honor.

THE COURT: Sustained.

MR. PARKER: Your Honor, the predicate is under the term --

THE COURT: Forgive me, Mr. Parker, but I believe I've ruled. You can ask your next question.

MR. PARKER: Okay.

Q. Under the terms of that, is there an indebted creditor whose security is sixty-five percent of Saturn?
A. The sixty-five percent of the stock is Controlodora General Motors S.A. de Sivi which is General Motors de Mexico.
Q. Okay. I misread it then. Thank you.
A. You're welcome.
Q. So what's encumbered -- well, under the sales agreement that General Motors is asking the -- the master sale purchase agreement that the debtor is asking the Court to approve, your manufacturing facilities were being sold to the new GM, is that correct?
A. That's correct, sir.
Q. Is it true that in your negotiations with General Motors -- sorry -- in General Motor's negotiations with the Treasury Department regarding the master sale and purchase agreement that you strongly advocated the senior executive -- retaining the senior executive retirement plan?
A. I testified to that before, yes.
Q. Okay. Did you also strongly advocate negotiating a better deal for bondholders?
A. Yes.
Q. What were your efforts in that regard?
A. Two things. I had two areas I would call. One, when we launched the bond exchange, the Treasury indicated to us that they would not be supportive of offering the bondholders any

more than ten percent of the company. We, therefore, selected ten percent. We went to the maximum because we felt it was the right thing to do. And the second thing is, when the bond exchange failed and the Treasury approached us with regard to providing an updated proposal to the bondholders, this is subsequent to the bond exchange failing, we reacted quickly. That subsequent offer included both ten percent of the new company substantially de-levered from what was in the bond exchange plus the two different sets of warrants of seven and a half percent each. And we immediately moved to issue an 8K, provided a disclosure, so that the advisor to the informal bond committee could go out and contact bondholders.

Q. Okay. In April of 2008, did an ad hoc bond committee come to GM to try to negotiate a different settlement offer?

A. I believe it was April 2009, yes.

Q. Yeah. 2009, yes, sir. Did that happen?

A. We were approached and we suggested that -- since we were -- I don't remember exactly what date but we suggested that the committee approach the Treasury.

Q. All right. Did you tell the committee that you weren't authorized to negotiate?

A. Because at that point, I believe -- I'm not certain but I believe our bond exchange was in the market. And so, we were not authorized to negotiate.

Q. Okay. At any time, did you -- at any time subsequent to

that that you urged the Treasury to negotiate with the bondholders and give them more favorable treatment than the ten percent off?

A. In late May.

Q. Prior to that.

A. Prior to that? While the bond exchange was outstanding? We were quite careful that we would not -- we could not -- we could not bargain at that point.

Q. Is it true that you originally approached the government for a loan in late September -- by you, I mean GM -- in late September, early October of 2008?

A. I believe that's correct.

Q. Is it true that the Treasury Department said that they would not grant you a loan under TARP at that time?

A. I believe that's also correct.

Q. Did they recommend that you go to Congress to ask for a loan to get congressional authorization for a loan?

A. At some point, yes.

Q. Was Treasury's stated reason that they couldn't give you a loan was that TARP could not authorize -- they were not authorized to lend money under TARP?

MR. SCHWARTZ: Objection, relevance.

THE COURT: Well, if your point, Mr. Schwartz, is with the enabling legislation is what's relevant to Mr. Henderson's understanding of it basically -- is that basically

your relevance point, Mr. Schwartz?

MR. SCHWARTZ: That's one of several actually. I mean, in addition, the authority of Treasury to lend money under TARP is not relevant. The bills that were not passed by Congress are not relevant.

THE COURT: I need to hear your response on the evidentiary issue, Mr. Parker.

MR. PARKER: Yes, sir. I believe the fact that Treasury originally took the position that they were not authorized to act -- that TARP did not authorize them to extend loans, that they recommended that they go to Congress, that Congress declined to authorize them to lend loans to General Motors, and that subsequently Treasury changed its mind is relevant.

THE COURT: Well --

MR. PARKER: I'm simply trying to establish the facts.

MR. SCHWARTZ: If I might, I appreciate --

THE COURT: Yeah. Go ahead, Mr. Schwartz.

MR. SCHWARTZ: I appreciate the argument but this transaction doesn't involve any TARP money. The proper time to make this objection would have been last week in connection with the DIP which this Court approved with a specific binding that the funds were appropriately expended under EESA and TARP.

THE COURT: Yeah, I understand that. Of course, the

more fundamental issue is whatever the authority of the government to do what it did is, this witness' understanding of the governmental authority is irrelevant. I'm sustaining the objection.

MR. PARKER: Your Honor, I was simply trying to get the factual --

THE COURT: Mr. Parker --

MR. PARKER: -- predicate of what happened.

THE COURT: You're a lawyer. You know that when a judge rules --

MR. PARKER: Yes, sir.

THE COURT: -- you go on.

MR. PARKER: I'll go on.

BY MR. PARKER:

Q. Mr. Henderson, I believe you testified that there's approximately -- there's 950 million dollars that -- I'm unclear whether General Motors is leaving that behind or whether it's new DIP financing. Whichever way, the 950 million dollars that Old GM is going to have after the transaction might not be enough to pay all the administrative expenses, is that correct?

A. Correct.

Q. Under the master sale and purchase agreement, if it is insufficient to pay -- the 950 million is insufficient to pay the -- all the administrative expenses, is New GM under an

obligation to get further money?
A. No.
Q. Okay. Is -- how much money does General Motors have on hand at the moment?
A. We expect in the U.S. to have at the end -- well, excuse me. At the end of last week, we had a little over twelve billion dollars. We have very large secured -- the line of credit as well as the term loans are due and payable this week. So we expect substantial outflows this week.
Q. Okay. When you close the transaction, assuming that the Court approves the transaction, will there be a net transfer of cash from Old GM to New GM?
A. Yes.
Q. About how much?
A. I don't know.
Q. Do you have any idea?
A. Not today, no.
Q. Okay. Did Treasury require GM to negotiate with the UAW?
A. Yes.
Q. As a condition of the sale?
A. It was part of our loan agreement, number one. And number two, it was part of a condition -- as a condition of the sale, yes.
Q. Okay. Under 363 sale and purchase, is it your understanding -- do you have an understanding as to whether or

not a purchaser is required to assume a collective bargaining agreement?

A. I believe so, yes.

Q. Okay. So is General Motors going to assume all of the collective bargaining agreements that presently exist?

A. No. The new General Motors will not.

Q. New General Motors will not? Does the new General Motors have the right to decide which collective bargaining agreements it will --

THE COURT: Sustained.

MR. PARKER: Okay.

Q. Is management to receive any stock or stock options? Is the management of the new GM to receive any stock or stock options?

A. First of all, with respect to stock options, I think they're prohibited on -- as I understand, under current legislation, at least for the top twenty-five. And with respect to stock, it is expected that that would be the case. But at this point, no decisions have been made with respect to the amount of stock that might be granted to the management.

Q. But it's expected management will be given some stock?

A. Yes.

Q. You said that one of the differences between the old GM and the new GM is that management may be different in the new GM, is that correct?

A. Yes, sir.

Q. Okay. Do we know who the new CEO is going to be?

A. I believe it will be me.

Q. The senior management team, is it going from the old GM to the new GM?

A. Yes.

Q. Okay. Did -- under Section 4.05 of the 1995 indenture agreement, the management is required to give a statement of officers that the corporation is not in default of the loans within the first four months of each year. In 2009, did management give a statement of officers that General Motors is not in default under the terms of the bonds?

A. First four months in 2009?

Q. Yes.

A. I don't know the answer to that question.

Q. Okay. Is it true that the bonds that were issued in 2003 were under the 1995 indenture agreement with Citibank?

MR. MILLER: Your Honor, same objection. The document --

THE COURT: Sustained.

Q. Is there a limitation on liens provision in the loan and security agreement?

MR. MILLER: Same objection, Your Honor.

THE COURT: Sustained. I'm not, Mr. Parker, going to turn this into a memory case on what documents contain. If the

documents are otherwise admissible then you can tell me what they say in oral argument. It's not fair to Mr. Henderson and it's especially not fair to the creditors of this estate.

Q. Who determined the ten percent number for the bondholders -- well, for the unsecured creditors?

MR. MILLER: Your Honor, the guidelines for this hearing was that we should not be duplicating questions that have been already prepondered.

THE COURT: Sustained.

MR. PARKER: Okay.

Q. In May of 2009, was General Motors the top seller of automobiles in the United States?

A. Yes.

Q. So far, in June of 2009, is General Motors the top seller of automobiles in the United States?

A. Yes.

Q. Did Evercore do an analysis of New GM equity?

A. Yes.

Q. What was their analysis?

A. They did an analysis of what the possible equity value for the company might be.

Q. Okay. Could you give us what the result was if you know it?

A. They had a range of potential equity values on a steady state basis, if you will, of approximately thirty-eight to

forty-eight billion dollars.

Q. Thirty-eight to forty-eight?

A. Yes, sir.

Q. Okay.

MR. PARKER: No more questions, Your Honor.

THE COURT: Very well. All right. Who was next on our list?

MR. BERNSTEIN: I believe I was.

MR. PARKER: By the way, Your Honor -- Your Honor, would I be given an opportunity later to take a look at Exhibit 10 in evidence?

THE COURT: Now that the document's in evidence, it's a public document. Your point is that you didn't bring a copy so you need somebody else to give it to you?

MR. PARKER: No. I'm saying that my copy -- my point is that I don't have a -- if I've got a copy of it, it's apparently incomplete. And I just wanted to compare it with the copy that's in evidence.

THE COURT: Anybody object to giving Mr. Parker another look at Exhibit 10?

MR. SCHWARTZ: No, Your Honor.

THE COURT: No? I see a lot of negative nods. Work it out, Mr. Parker. Of course you may.

MR. PARKER: All right. Thank you.

MR. BERNSTEIN: Good afternoon, Your Honor. My name

is Norman Bernstein. I'm also one of the trustees, the Environmental Conservation Chemical Corporation Site Trust Fund.

CROSS-EXAMINATION

BY MR. BERNSTEIN:

Q. Mr. Henderson, I want to quickly summarize what I understood you testified to this morning as a preface to asking you a related -- a different question. Is it correct that from the latter part of December 2008 through the end of May 2009 General Motors could only pay its bills in the ordinary course as they came due by borrowing money from the Treasury?

A. That's correct.

Q. Is the reciprocal also true that by borrowing money from the Treasury, it could pay its bills in the ordinary course?

A. Correct.

Q. In May 2009, did General Motors pay all of its bills as they came due in the ordinary course given the fact that it could?

A. I believe so, yes.

MR. BERNSTEIN: Your Honor, I'd like to make a brief offer of proof based on the documents we've already submitted with our papers that on or about September 10, 1991, Judge Nolan of the United States District Court of the Southern District of New York entered a consent decree for the cleanup of a superfund site called Environmental Conservation Chemical

Corporation Site and that General Motors was a signatory to that consent decree as well as the United States, the state of Indiana and a significant number of other companies; second, that the EnviroChem Superfund Site is on EPA's national priority list of some of the worst, or at least most serious, superfund sites in the United States; third, that pursuant to the terms of that consent, a trust was created to obtain money from certain defendants, including General Motors, to fund the cleanup of that site and that, pursuant to the Court's order, General Motors was obligated to make payments to the trustees; that on April 20th of 2009, General Motor received an assessment from the trustees of the Environmental Conservation Chemical Corporation Site Trust Fund of one-half million dollars in total of which General Motors' share was 62,591 dollars.

It was not just simply a party to the consent decree, it was the largest company in terms of percentage interest. And that on or about May 20th, the trustees of EnviroChem Site Trust Fund were informed by General Motors that it would not honor any consent decree and that it would not pay the payment due in the consent decree even though it was a payment due in the ordinary course and, as we've established today, it, in fact, could do so.

THE COURT: All right. Putting aside the slightly argumentative last sentence, does the debtor prepared to

stipulate to that, Mr. Miller?

MR. MILLER: Your Honor, I don't have any knowledge of the facts concerning this.

THE COURT: All right.

MR. MILLER: Although, I'd be happy to look into it, Your Honor.

MR. BERNSTEIN: May I add, Your Honor, that all those facts are set forth in our papers which were duly filed with this Court under docket number 1865.

THE COURT: Yeah. I saw them there as part of my preparation, Mr. Bernstein.

MR. BERNSTEIN: Thank you.

THE COURT: Some of this stuff that you said I can take judicial notice of, like court decrees and the like. The fact that the debtor didn't pay it is probably something that you can stipulate to. Somehow I suspect that if the debtor had paid it, you wouldn't be here.

MR. BERNSTEIN: Yes, sir.

THE COURT: Let's do it this way because I think what we're really talking about is whether your objection is well grounded in law or not but it isn't particularly a factual dispute. I sense without prejudice to giving the estate a chance to hear that -- to be heard on that. So what I would like to suggest is that you propose the stipulation in oral terms with your offer of proof and the debtors will get back to

you after they've had a chance to sleep on it and to caucus on it. And if we need to find out a mechanism to find the core of facts which are deemed to have been satisfactorily evidenced as issues of fact, we'll figure out a way to do it without prejudice to your position and any opponent's position on the underlying solution.

MR. BERNSTEIN: That's fine, Your Honor. May I ask the witness one additional question?

THE COURT: Sure. Go ahead.

BY MR. BERNSTEIN:

Q. If, in fact, General Motors made a conscious decision not to carry out its obligations under a federal court consent decree in May of 2009, who would have had the authority at General Motors to make such a decision?

A. I honestly don't know, sir.

Q. Were you a party to any discussions concerning the payment for environmental liabilities?

A. This is the first time I've heard this discussion. So --

Q. Well, you previously testified that there were some politically -- I think you said sensitive issues. Were environmental liabilities one of the politically sensitive issues?

A. We discussed environmental liabilities in general.

Q. And with whom did you have that discussion?

A. It would be with the Treasury.

Q. And did the Treasury take any position as to General Motors payment of its environmental liabilities?

A. I wasn't involved in those discussions so I couldn't say what the purchaser's and Treasury's position was.

Q. Could you say who was involved for General Motors on those discussions relating to environmental issues, sir?

A. I'm sorry. I don't know who it would have been.

Q. Is it fair to assume that General Motors had a team that was doing the negotiating with the Treasury?

A. Yes.

Q. Who were members of the team?

A. That would include -- depends on the facts but it could include Mr. Jordan Barken (ph.); could include our counsel; it could include our labor team to the extent it was labor related; it could include compensation specialists to the extent it was compensation related; it could include me depending upon the subject matter; it could include the chief financial officer; it could include our general counsel; could include our head of manufacturing; could have included a lot -- we have a lot of people involved with the purchaser.

Q. Was there someone who had primary responsibility for environmental issues?

MR. MILLER: Your Honor, please, he's talking about 67,000 dollars. It's costing this estate more right now on his questioning of the 67,000 dollars.

MR. BERNSTEIN: If you'd pay your bill, I wouldn't be here, sir.

MR. MILLER: We didn't pay the bill and that may be a fact.

THE COURT: I'm going to sustain the objection simply on the Court's hearing power. Mr. Bernstein, I think we've laid the factual predicate that you need to get your objection heard if it's well founded in law. I think that this is not a good use of our time to be going beyond what you already accomplished.

MR. BERNSTEIN: All right, Your Honor. Thank you, Your Honor.

THE COURT: Thank you. Anybody else? Come on up, please?

MR. REINSEL: Good afternoon, Your Honor. Ron Reinsel from Caplin & Drysdale. I represent Mr. Mark Buttita (ph.).

THE COURT: Sure. Your last name again, please?

MR. REINSEL: Reinsel, R-E-I-N-S-E-L. Mr. Buttita is a personal representative of Mr. Sal Buttita --

THE COURT: Right. I know that.

MR. REINSEL: -- a deceased asbestos claimant.

CROSS-EXAMINATION

BY MR. REINSEL:

Q. Mr. Henderson, I want to follow up on just a few questions

that Mr. Esserman asked you. I don't want to be redundant but I'll just kind of take you back to that testimony if I could.
A. Certainly, sir.
Q. Mr. Esserman questioned you about and you said that you were familiar with a report referenced in GM's March '09 10K that provided an estimate of GM's asbestos liability. Do you recall that?
A. Yes, sir.
Q. And that that was about approximately a 650 million dollar liability over a ten year period, is that right?
A. That's correct.
Q. And, in effect, most of that 650 is for future claims, is that right?
A. I believe so, yes.
Q. And those are future claims of folks who have not yet become and don't know if they have a claim yet.
A. So this is a -- I understand this is a very complex area. I simply know that the liabilities intended to provide a longer term perspective. And as to when a particular liability is triggered, I'm not an expert in that field.
Q. But generally, illnesses haven't manifested themselves yet.
A. Over a ten year period? Again, I'm not an expert in this area.
Q. Would you agree, sir, that if people who have not yet

manifested their illness wouldn't know they have a claim yet?

MR. MILLER: That's speculation, Your Honor.

THE COURT: I'll allow it.

A. I think it's a fair assumption.

Q. Mr. Henderson, as a part of GM filing its present bankruptcy proceeding and the sale, it gave broad notice of these proceedings.

A. Yes, sir.

Q. The objective being to let people know that if they have a claim, those claims and their rights could be effective, is that right?

A. Yes, sir.

Q. You would agree that if someone doesn't know they have a claim yet, that notice wouldn't do them any good?

MR. MILLER: Again, Your Honor, same objection.

THE COURT: Overruled.

A. I would agree with you.

Q. 'Cause they wouldn't get notice.

THE COURT: You made your point once, Mr. Reinsel. You don't need to do it again.

MR. REINSEL: Second point -- second set of questions and I'm done, Your Honor.

Q. Mr. Henderson, as we understand if the sale is approved, goes forward as it's presently proposed with the exclusion of asbestos -- future asbestos liabilities, New GM, either because

those claims are not being assumed or they're otherwise being protected, New GM's being protected from people asserting those, a future claimant will not have recourse against New GM, is that right?

A. That's my understanding, yes.

Q. And if I recall your earlier testimony, if the sale goes through, Old GM will then liquidate, is that right?

A. Yes.

Q. If asbestos claim -- and you say that that liquidation period, you estimated, would be done within three years?

A. I said I didn't know for certain but it was a fair assumption that it could be done within three years. I just don't know.

Q. Relatively expeditiously.

A. I think that would be the objective, yes.

Q. And, say, then that if an asbestos or any of the other excluded future injuries arise after that liquidation is concluded, it would have no recourse against Old GM, is that right?

MR. MILLER: Your Honor, again it calls for a conclusion.

THE COURT: Yes. That calls for a conclusion as well and I'm going to sustain that objection.

MR. REINSEL: All right. Thank you, Your Honor.

THE COURT: And I don't think his businessman's

understanding would help us much in that regard.

MR. REINSEL: That's fine, Your Honor. Thank you very much.

THE COURT: Okay. All right. I think we've now heard everybody who told us that they wanted to follow up with a committee representatives and the main ones. I think it's time for your allies and the debtor to question. Do you need or would you like a short recess before we begin, Mr. Miller, or would you like --

MR. MILLER: Could we have five minutes, Your Honor?

THE COURT: Beg your pardon?

MR. MILLER: Five minutes.

THE COURT: You've got it. All right. We're in a five minute recess.

(Recess from 4:31 p.m. until 4:41 p.m.)

THE COURT: Can we settle down, please? Mr. Miller, as soon as it quiets down, you can begin. Mr. Henderson, you're still under oath.

MR. MILLER: Harvey Miller for the debtors.

REDIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Henderson, during your cross-examination, you referred to sales during the month of June. How did those sales compare with sales last year for the same period?

A. We expect to be down in total of approximately thirty

percent and then retail down at least twenty percent from the prior year.

Q. And in the prior year, did GM make money in the month of June?

A. I do not believe so, no.

Q. And did GM make money in 2009 in the month of June?

A. We do not expect to make money in June of 2009.

Q. Do you have an opinion as to why GM beat the downside projections for the month of June 2009.

A. I do.

Q. What is that opinion?

A. Three reasons, I believe. Perhaps four but we'll go through one at a time. First, our marketing has been focused on loyal GM customers. We have a GM credit card, for example, that has historically been used by loyal GM customers. We went out to those customers this month to offer them a set of incentives which made it attractive for a loyal GM customer to consider a GM vehicle in this particular month sold. Our marketing was very, very focused on the loyal GM customer as opposed to the conquest GM customer who we would like to have consider our product.

Number two, the offers we've had have been attractive for that loyal GM customer. So the value is there for the customer.

Number three, we have some fantastic cars and trucks with

a great offer on the table. And so, we have marketed them to the best of our ability.

And number four, I believe that there's a confidence certainly that a customer can purchase a GM vehicle -- certainly the loyal GM customers are looking at it and saying you can purchase a GM vehicle, be assured that it could be serviced. You can receive parts. The government has, in fact, actually stood behind our warranty even though we don't believe the government will have to ever make good on that guaranty because we will be there for the customer.

And the expectation that the bankruptcy process, having seen what's happened with Chrysler, would go quickly with General Motors as well.

Q. And do you believe that the Chrysler case had anything to do with the sales?

A. As I said in my comments, I think it's the last point, the fact that Chrysler did -- 363 transaction with Chrysler did go relatively quickly, provided some buyers certainly some assurance that, in fact, this can be done relatively quickly.

Q. And do you have a category of potential customers under the title of, say, "Conquest"?

A. Yes.

Q. What does it mean?

A. Conquest would typically mean where we are -- where a customer might either be loyal to a Toyota or a Nissan or some

other brand or, in fact, perhaps would consider us but wasn't coming out of a GM vehicle. So they hadn't been a loyal GM customer. So therefore, it could be someone who's been very satisfied with some other brand and we would be -- this is the toughest marketing challenge, if you will. Or, customers who are coming out of a GM product would consider our product but also looking at a full range of other products at the same time.

Q. And how did GM fare in the conquest category during these --

A. Our conquest matrix which have been -- I think it's one of our biggest challenges -- certainly, in the last several months and certainly in the month of June in the last wave of research we saw which show the consideration for customers thinking about General Motors has fallen which is of significant concern to us.

Q. And fallen for what reasons, if you know?

A. Well, the rapid falloff actually took place in the last wave of research which was in the middle of June. So we think at least, in part, it had to do with our filing.

Q. Now, Mr. Henderson, turning to the UAW settlement, do you know what the source of the consideration that would be provided to the UAW retirees and beneficiaries is?

A. I think the source is the purchaser.

Q. And as part of that settlement, the claim that the UAW may

have the VEBA and under the collective bargaining agreement, against Old GM, if this sale is approved, that claim will be waived, will it not?

A. It'll be released, yes, that's my understanding.

Q. And is OldCo providing any of the consideration that is going to the UAW as part of the UAW settlement?

A. OldCo, sir?

Q. Yes.

A. I believe not.

Q. Did GM manufacture any asbestos products?

A. No.

Q. What is the source of the asbestos claims against GM?

A. To the best of my knowledge, the largest single factor were asbestos used in brake linings.

Q. And those brake linings were furnished by a supplier?

A. Yes.

Q. And have you ever heard of the expression orphan-share?

A. No.

THE COURT: I didn't hear that expression.

MR. MILLER: Orphan-share, Your Honor.

THE COURT: Often-share?

MR. MILLER: An orphan. This is the share in an asbestos settlement where one or more of the companies has gone into bankruptcy, and whoever remains picks up that orphan share.

THE COURT: I've sat in many asbestos cases and I still didn't hear that. Often?

MR. MILLER: Orphan.

THE COURT: Oh, orphan. It must be your New York accent.

MR. MILLER: It's probably the New York accent.

THE COURT: Orphan-share, yes I have -- okay.

Q. Mr. Henderson, turning to the cross-examination by Mr. Kennedy. Mr. Kennedy referred to the 300 dollars per month that was added to the retirees' pension plan payments?

A. Yes, from the salaried retiree plan, yes.

Q. And that 300 dollars per month is payable out of what?

A. It's paid from the salaried pension fund.

Q. And at the time that the decision was made to increase the pension payments, what was the status of the fund?

A. It was overfunded at the time.

Q. And had there been a previous increase in the pension benefits prior to the 300 dollars?

A. For salaried employees?

Q. Yes.

A. No.

Q. For how long?

A. For many years.

Q. In connection -- if you would, Mr. Henderson, would you look at the binder that Mr. Kennedy was using?

A. Which one? First hearing or 9 to 12?

Q. Nine to twelve. And if you would look under the exhibits relating to your deposition? So that would be under 10. And if we could go to page 3, GM assets to New GM?

A. Page 3 of the deposition?

Q. Under -- yes. Not of the deposition. I'm sorry.

MR. MILLER: Might I approach, Your Honor, just to show him?

THE COURT: And after you help him, you can help me.

THE WITNESS: Oh, tab 3.

(Pause)

Q. If you look under tab 6 --

A. Tab 6 behind my deposition?

Q. Yes.

THE COURT: The contingency plan 363 now?

MR. MILLER: On page 3.

THE WITNESS: I have it now. Thank you.

Q. If you would look, Mr. Henderson, at page 3, GM assets to New GM, the third bullet point says, "Core Assets Retained." Do you know what was meant by the phrase "core assets"?

A. These would be assets that we generally consider to be necessary and important to run the business going forward.

Q. And was that a subject matter in which the U.S. Treasury was involved?

A. Yes.

Q. And essential in what sense?
A. We had iden -- it was management's view that we needed to identify those assets which needed to be part of the New General Motors to run the business. And we wanted to be able to show those and outline them for the purchaser.
Q. And that was in connection with making New GM a viable entity?
A. Yes.
Q. And if GM was a highly viable entity, what would be the effect on the capital stock of the New GM?
A. It provides the best chance to maximize value.
Q. And as more liabilities were imposed upon New GM, what wouldn't be the effect of that?
A. It would reduce value.
Q. How many active employees do the splinter unions -- and by the splinter unions, I mean the IUE and the other unions which Mr. Kennedy referred to --
A. Actually working today?
Q. Actually working today?
A. I think about 150.
Q. And how many active employees does the UAW have?
A. Approximately 60,000.
Q. 60,000? Would New GM be able to operate its plants without the UAW employees?
A. No.

Q. Do you know what the cost of the IUE retiree benefits are on a monthly basis?

A. The total cost that we're paying today is approximately 26 million dollars a month.

Q. And on an annual basis that would be --

A. That's not IUE. That's IUE plus all the splinter unions, yes.

Q. And on an annual basis --

THE COURT: Mr. Henderson, as to all the unions, you meant all of the splinter unions --

THE WITNESS: Yes, sir.

THE COURT: -- but not the UAW?

THE WITNESS: Correct, sir. Yes, sir.

Q. So that --

THE COURT: What was the figure? I'm sorry.

THE WITNESS: Twenty-six million dollars a month.

THE COURT: Thank you.

Q. So on an annual basis, that would be more than 300 million dollars a year?

A. That's correct.

Q. Now, if you would turn please to -- let me ask you this. The salaried retirees of GM, what will happen to their retiree benefits if the 360(b) transaction is approved?

A. The salaried retiree healthcare benefits?

Q. Yes.

A. They would be modified in accordance with the schedule to achieve the sixty-seven percent reduction in the liability, and they would continue on that basis.
Q. And those benefits would generally encompass what?
A. We provide a certain level of coverage that's capped prior to age sixty-five. And then once someone -- once a retiree reaches Medicare, they go to Medicare, and the company is no longer responsible.
Q. And the New GM will assume those responsibilities?
A. Correct.
Q. And as to pension for salaried employees and for hourly employees, are those being assumed by New GM?
A. In their entirety, yes, both plans.
Q. Now, Mr. Kennedy referred to -- if I can find it -- if you would turn, Mr. Henderson, I think it's Tab 14, entitled "Salaried and Splinter Union Benefit Obligations Guideline Objectives."
A. Yes, sir.
Q. And this is the chart which referred to the original proposal of sixty-two percent?
A. Correct.
Q. And the changes made?
A. Correct.
Q. Now, looking at the line SOBP-Executive Life, what happened to those benefits?

A. These were benefits provided to executives for life insurance, and they are eliminated in their entirety.
Q. And going above that, Mr. Henderson to "Salaried Retiree Health Care and Executive Nonqualified Pension (DB)", what actually had been taken with those benefits prior to the date of this document?
A. Well, the salaried healthcare plan had been changed several times in the last several years. The first thing that was done with the salaried -- and by the way, salaried healthcare includes all executives. So there's no difference in plan between -- on healthcare between an executive and a salaried employee -- or retiree, excuse me. We capped the company's contributions. I believe that was during 2006. And then effective 1/1/09 was when we -- when we drop after a retiree reaches Medicare.
Q. So that over the years prior to the date of this document, salaried employees have been subjected to a number of cuts?
A. Yes.
Q. And during that period of time, were members of the splinter unions subjected to similar cuts?
A. In 2006, subsequent to the negotiation in 2005 of healthcare changes with the UAW, we did negotiate with the IUE and made modifications which, in the end, lowered the company's costs associated with healthcare in a way that was analogous to what the UAW did in 2005.

Q. And that was the subject of collective bargaining?

A. Yes.

Q. And as to the salaried employees, GM had a unilateral right to reduce?

A. Correct.

Q. Mr. Henderson, did General Motors commence these Chapter 11 cases as part of a conspiracy to deprive the splinter unions of retiree health and medical benefits?

A. No.

Q. Now, in the cross-examination by Mr. Jakubowski, he spent some time about whether the purchase price was subject to modification. And he talked about the assumption of liabilities by the Treasury. Isn't it a fact that assuming liabilities increases the purchase price?

A. That's true.

Q. And puts more liabilities on NewCo?

A. Correct.

Q. And in terms of the provision in the MPA or the master sales and purchase agreement, it prohibits, without approval, adjustments downward in the purchase price, rather than upwards?

A. I don't know.

Q. And in connection with the indemnity of dealers as to product liability of clients, I believe you said that GM generally indemnifies all of its dealers?

A. Correct.

Q. And post closing of a 363 transaction, would that mean that in connection with product liability claims that are sustained, the New GM would have to indemnify the dealers concerning those claims?

A. Correct.

Q. And GM is going -- New GM will retain a good portion of the dealer network?

A. Yes.

MR. MILLER: Just one moment, Your Honor.

Q. Mr. Henderson, in the deliberations of the auto directors and management as to, let me call it, choice of debtor relief, consideration was given to a traditional Chapter 11?

A. Yes.

Q. And in connection with that consideration, was there any consideration given to the financing of such a Chapter 11 case?

A. Yes.

Q. And what conclusion was reached?

A. The conclusion was reached, we outlined this actually in a report that we submitted on February 17th, a viability plan, that a traditional Chapter 11 process, one, would involve very substantial amounts of financing, even beyond that which is being identified here, potentially; and two, it would take a reasonably long period of time. And the only source of financing was the U.S. Treasury.

Q. And to the best of your knowledge, that was a consideration that the United State Trustee gave in reaching its conclusions?

A. The U.S. Treasury?

Q. Yes.

A. I believe so, yes.

Q. And that additional -- the financing that has been approved by the Court in connection with these Chapter 11 cases is 33.3 billion dollars. You're aware of that?

A. That's the debtor-in-possession financing, yes.

Q. And the indebtedness to the U.S. Treasury pre-June 1 commencement date is 19.4 billion dollars?

A. Correct.

Q. And if the --

MR. MILLER: I'll withdraw that.

Q. Do you have any opinion, Mr. Henderson, that absent a UAW retiree settlement, what action the UAW would take in connection with their continued Chapter 11 for a different transaction for the disposition of these assets?

A. Well, certainly one of the requirements of our loan and service agreement and of the U.S. Treasury was that we needed to negotiate a new collective bargaining agreement or changes to the collective bargaining agreement which would allow us to be fully competitive and equatize at least half of the VEBA obligation we had. Otherwise it was our judgment that the

treasury would not proceed.

Q. And would you characterize the negotiations with the Treasury as arm's-length, strenuous negotiations.

A. They were very strenuous negotiations.

Q. And were they conducted in good faith?

A. Yes.

MR. RICHMAN: Your Honor, that calls for a legal conclusion.

THE COURT: If you mean by 363(m) standards, or rather good faith as used under the applicable standard for 363 sales, it's sustained on legal conclusion. If you want, you can rephrase and get a businessman's understanding, as long as it doesn't equate to what Mr. Richman is driving at.

Q. Mr. Henderson, during the course of your career, you've been engaged in a lot of negotiations?

A. Yes.

Q. And the negotiations with the Treasury, from your perspective, were they good faith negotiations?

MR. RICHMAN: Same objection, Your Honor.

THE COURT: Sustained.

Q. How would you describe those negotiations, Mr. Henderson?

A. I would describe them as professional, tough, just given the situation we were all in. I have, in my career, not seen a more dedicated group of people in the automotive task force working around the clock with us working around the clock to

try to find solutions. They were tough on us where they needed to be. We did -- we tried to problem solve to find solutions. And there were a number of cases where we were at loggerheads and we tried to find solutions, and in other cases, as the purchaser, their views were of paramount importance. And given their position as a secured lender, they had a significant amount of leverage in the negotiations.

Q. During a hearing in this Court last week, the attorney for the creditors' committee referred to the U.S. Treasury as an 800 pound elephant. Would you agree with that?

A. Well, it's a mixed metaphor, actually. But they were very powerful, yes.

MR. MILLER: That's all, Your Honor. Thank you.

THE COURT: Anybody supporting the motion want to redirect before I give an opportunity for recross?

MR. JONES: No, thank you, Your Honor.

THE COURT: Anybody else? Okay. I will now take a recross, same order as originally, limited to the scope of redirect.

MR. RICHMAN: Good afternoon, again, Your Honor. Michael Richman for the family and dissident GM bondholders.

RECROSS-EXAMINATION

BY MR. RICHMAN:

Q. Good afternoon, Mr. Henderson.

A. Good afternoon.

Q. I'm going to just ask a few questions related to some questions that Mr. Miller just asked. Mr. Miller was asking why you thought that GM's business was doing so well in June compared to prior months, and particularly after the bankruptcy was filed. And you gave four reasons, the first three of which were changes in the business model and other innovations in dealing with customers. Remember that testimony?

A. Yes, I do.

Q. Then you spoke to -- and I don't know if I remember your words correctly, but you said you also felt that customers have confidence now that a vehicle can be serviced and that the company would stand by the warranties, and an expectation that the bankruptcy process will go quickly. Isn't it a fact that the government announced that it was standing behind the warranties well before the bankruptcy case was filed?

A. Oh, it did. Sure.

Q. So the confidence that customers would have in warranties and servicing related to steps the government took that were completely independent of the bankruptcy filing. Isn't that correct?

A. It was -- they announced it before the bankruptcy filing, and it's been something we've continuously communicated through the process.

Q. Right. Now, do you have your declaration in front of you? I think it's Debtors' Exhibit 15.

A. I do not have it in front of me.

MR. RICHMAN: Do we have an exhibit binder with that?

THE WITNESS: Is it in here?

Q. It's in one of them. Do you have two?

A. I've got two. I don't think it's in the IUE. It must be in the other one.

Q. In the other one.

A. What tab is it in?

Q. It's toward the back. It is Debtors' Exhibit 15.

A. Here it is. Thank you.

Q. Thank you. I want to direct your attention to paragraph 84 where you discuss the risks to GM of a prolonged Chapter 11 process.

A. Yes, sir.

Q. Is that what you meant when Mr. Miller asked your opinion of a traditional Chapter 11 bankruptcy?

A. Yes.

Q. A prolonged process, in your words?

A. Yes.

Q. And isn't it a fact that when the case was filed, these bankruptcy cases were filed on June 1, that you made several public statements to the effect that GM expected to emerge from bankruptcy in sixty to ninety days?

A. No later than sixty to ninety days, yes.

Q. Yes. And then the White House made similar statements,

didn't they?
A. Yes.
Q. You also say in paragraph 84 that "Information compiled by or at the direction of the company confirms that the mere threat of a bankruptcy filing has depressed GM's sales, and that in an extended period of a bankruptcy case, the sales reductions and customer defections can be expected to be even more significant." Do you see that statement?
A. Yes.
Q. That hasn't happened yet, has it?
A. Based upon June sales, it has not happened yet.
Q. And when you told Mr. Miller that it was your opinion that customers had an -- expectations -- that one reason you were doing well in June was because customers had an expectation that the bankruptcy process would go quickly, was that based on any information compiled by or at the direction of the company?
A. That's pure judgment, sir.
Q. Your personal pure conjecture?
A. And -- well, dealers, talking -- basically we get anecdotal information from dealers as to what they believe. But there's no -- we don't have hard research which would suggest that.
Q. And were you to file a Chapter 11 plan that could create New GM in sixty to ninety days, don't you believe that customers would continue to be assured and will continue to

purchase vehicles as they have during the month of June?
A. Well, in this case, the U.S. Treasury as purchaser indicated that we needed to move forward with the 363 transaction. And that's how we've proceeded.
Q. Because Treasury directed you to do it that way?
A. They were providing the financing for the transaction.
Q. Right. And Treasury has indicated that its financing will go through July 10, but has not, so far as I can tell from anything I've seen in the record, said anywhere that at July 10, they will never agree to any extensions or further financing, have they?
A. I just know that July 10, sir.
Q. Is their deadline?
A. Yes.
Q. And that they've made -- today, they haven't made any commitments beyond that?
A. I have not heard any such commitments.
Q. Briefly, just on the collective bargaining agreement Mr. Miller asked you about with respect to the UAW. Isn't it a fact that the collective bargaining agreement as modified through the negotiations that Treasury asked you to engage in has already become effective?
A. The operating measures are -- I think at this point, are by and large, in effect.
Q. They are in effect. So the union is already operating in

connection with the amended collective bargaining agreement?

A. The -- I believe some parts of it are. For example, the changes in the jobs bank -- or excuse me, doing away with the jobs bank, launching the attrition plan. I'm not sure if all of the provisions are in place today. I'm just not sure. And I know that the VEBA has not yet, certainly, changed.

Q. If the Court expressed a preference to proceed under an accelerated Chapter 11 plan, to create a New GM in sixty to ninety days, do you have any reason to believe that the union is going to breach its collective bargaining agreement or otherwise cease working because the judge expressed a preference that a sale not take place within the time frame being requested?

A. I can't speak for the UAW.

Q. Okay.

MR. RICHMAN: I have nothing further, Your Honor.

THE COURT: Okay. Any re-redirect?

MR. MILLER: No, Your Honor.

THE COURT: Okay. Oh.

MR. JAKUBOWSKI: Your Honor, I have some questions.

THE COURT: Oh, I'm sorry.

RECROSS-EXAMINATION

BY MR. JAKUBOWSKI:

Q. Mr. Henderson, Mr. Miller asked you on direct, redirect, whether or not the purchase price to the seller increases to

the extent that it assumes various liabilities, right? And you recall saying the answer to that is yes?

A. Yes.

Q. But from the estate's perspective, there's no diminution, is there, as a result of that increase, is there?

A. Well, the purchaser would be paying more, and so therefore, if a liability that was otherwise with the old company was going to go with the new company, the old company would be better off.

Q. Okay. So the estate would actually be enhanced as a result of that increase -- the resulted increase in purchase price to the purchaser?

A. That's correct.

Q. Okay. Now, I would like to ask you about the dealer indemnity that Mr. Miller brought up on redirect.

MR. JAKUBOWSKI: And let me go to the next exhibit, is it Exhibit 4, Mr. Henderson? Does anyone know?

Q. How many exhibits do you have in front of you right now?

MR. JAKUBOWSKI: Does anyone know --

A. Incalculable.

Q. So we will do the product liability claimant advocates PLCA Exhibit 1.

MR. JAKUBOWSKI: And if I may approach the witness, and I'll give you a copy, Your Honor. And I will give a copy to --

THE COURT: I assume your opponent received a copy?

MR. JAKUBOWSKI: Yes, Your Honor.

THE WITNESS: Thank you, sir.

Q. Do you recognize this document, PLCA-1?

A. Yes.

Q. And could you just tell the Court generally what this document is?

A. It's providing an update on the 363 sale as of June 5th.

Q. And this is a format that the company, GM, has used to provide periodic updates to its executives and to Treasury, correct?

A. And to our board of directors, yes.

Q. And this is an update that was prepared after the filing of the bankruptcy, correct?

A. Correct.

Q. And in that, you have a -- on PowerPoint page 4 of that, you have identified what you call a liability reduction tracking sheet, right?

A. Correct.

Q. And what was the purpose of that?

A. To provide an update on where we stand on each of these individual liabilities.

Q. And these were liabilities that would either be assumed by NewCo or not be assumed by NewCo, correct?

A. Correct.

Q. And you broke them into various categories, buckets -- for example, your general debt; your pension; your OPB litigation; tax related; and operational liabilities. Correct?

A. Correct.

Q. And these were forecasted based on your 12/31/08 numbers, correct?

MR. JAKUBOWSKI: Strike that question. I'm sorry. I apologize.

Q. It also includes off-balance liabilities that you were tracking, correct?

A. Yes.

Q. Now, would you please turn to page 13 -- PowerPoint page 13 of the document? Excuse me. Please start with page 12. And the summary on page 4 is broken down at the back of the document at pages 12, 13 and 14, correct?

A. Yes.

Q. And as far as you can tell, do you believe that this reflected an accurate analysis on June 5th of the initial forecast of liability reduction and the current forecast as of that date?

A. As of June 5th?

Q. Yes.

A. No reason to believe otherwise.

Q. So if you look at the section called "Litigation", number 6 on page 13, you see it references product liability claims,

correct?
A. Yes.
Q. And the 934 million dollar initial forecast was based on the first quarter 10Q as of March 31, 2009, correct?
A. I believe that's true.
Q. And your current forecast as of June 5th says that that projected liability reduction is actually going to go down by 400 million dollars, correct?
A. Correct.
Q. And you said the reason -- isn't it the case that the reason it went down was because of the dealer indemnity agreements that you had struck just after the filing of the petition?
A. Our dealer agreements customarily include indemnification for dealers. And so it is true that we would have updated our estimate, and it's purely an estimate of what that might be.
Q. But your estimate at the time was about 400 million dollar assumption of liabilities by the purchaser, correct?
A. Through the indemnification, yes, that would be a fair assumption.
Q. Okay. Now, Mr. Miller talked to you a bit about product liability case. And are you aware, as a businessman, of the approximate number of states in which dealers are required by law to pay for product liability claims with respect to vehicles they sell?

A. No, I'm not.

Q. You have no sense of that?

A. No, sir.

MR. JAKUBOWSKI: Your Honor, I have no further questions. I guess I do have one question for you, if I may. And that is whether or not you have any interest in seeing a supplemental memorandum on the issue of the responsibility of dealers in various states for indemnity obligations?

THE COURT: No.

MR. JAKUBOWSKI: Okay.

THE COURT: I don't think that's relevant to legal issues that are before me.

MR. JAKUBOWSKI: Okay. I have no further questions, Your Honor. Thank you.

THE COURT: Fine. Mr. Esserman?

MR. ESSERMAN: Yes.

RECROSS-EXAMINATION

BY MR. ESSERMAN:

Q. Mr. Henderson, my name is Sandy Esserman. I represent the ad hoc asbestos committee, and I have a few follow-up questions that were raised by Mr. Miller's direct. And then I think you're just about done for the day. Mr. Henderson, you talked about several factors that you thought might be part of the reason why GM sales were looking pretty good. You talked about your marketing your GM credit card. Do you recall that

testimony just now?

A. What I said was our sales were going to be down twenty to thirty percent. So they were better than we had expected. They're still terrible. And the point is, is that the marketing around the GM card has been a factor, yes.

Q. And that GM credit card that you're talking about, that's used in connection with the purchase of a GM automobile?

A. Yes. There's credits that a customer would have that they could use in connection with the purchase of a GM automobile.

Q. And those credit cards are good for Old GM as well as New GM?

A. These are cards actually issued by a bank that's had an affinity program with us for many years.

Q. And have those cards been used to purchase Old GM cars, cars made by this debtor?

MR. MILLER: Can you fix a period in time, please?

Q. Any time prior to today?

A. Yes, certainly.

Q. And will those credit cards also be honored post-sale by General Motors?

A. The -- what the customer has are credits that they can use, akin -- I mean these are credits that they build up by using the card over time. And we very much welcome when customers wish to use them. As a form of incentive, it's actually a fairly attractive way to maintain loyalty with

traditionally loyal GM customers.
Q. Can we just cut through to all of that -- those credit cards were good to purchase cars from Old GM, they're going to be good to purchase cars from New GM?
A. That's not true. The credit cards don't purchase the cars. The credits --
Q. The credits, okay. The credits.
A. -- on the credit card can be used to purchase a GM vehicle.
Q. Both from Old or New GM, correct?
A. Well the Old GM won't be selling -- the New GM will be selling GM vehicles.
Q. Old GM's selling cars today, aren't they?
A. Yes. Yes, sorry.
Q. So, and there is no New GM yet, correct?
A. Correct.
Q. So all cars being sold by GM are being sold by Old GM. Is that right?
A. That's correct.
Q. And these credits can be used to purchase cars from either Old GM or New GM. Is that right?
A. New GM doesn't exist today.
Q. When New GM does exist?
A. That's correct.
Q. And you talked about your marketing loyalty of your

customers. Those would be the customers that you hope will continue from the Old GM to the New GM. Is that correct?
A. Well, loyal -- traditionally, a loyal GM customer would have been someone who would have bought over the course of years a number of GM vehicles and has a proclivity and inclination to continue to buy a GM vehicle. That's what we refer to when we talk about a more traditionally loyal GM customer.
Q. And you want that customer to view this as a seamless transaction, don't you?
A. Yes.
Q. Something that he won't notice that when he goes in to buy his Cadillac, that there's any difference from what he purchased last year. Is that correct?
A. Correct.
Q. And the same answer would be for your excellent GM service, your parts, and your standing behind the warranty. You want that to be a seamless transaction to New GM, do you not?
A. That's correct.
Q. Let's talk a little bit about the UAW settlement that Mr. Miller discussed with you.
A. I believe Mr. Miller stated and you agreed that OldCo is providing no consideration to the UAW, that their stock that they're going to receive as part of this transaction isn't

going to be paid by NewCo. Is that right?

A. The stock they received, they received from the Treasury. And so that's part of their -- that's part of the deal in the new company.

Q. And that OldCo is providing no consideration of the UAW, is that --

A. I'm not aware of any consideration of OldCo providing to the UAW.

Q. Okay. But isn't it a fact, under the sale agreement, OldCo is giving the UAW a release?

A. I think the UAW gives OldCo a release.

Q. OldCo doesn't give the UAW a release?

A. Perhaps they do. I don't know.

Q. It would be in a document if, in fact, it's the case?

A. I'm aware of the UAW and the VEBA giving OldCo the release, so that they no longer have a claim for post-retirement healthcare benefits against the Old General Motors.

Q. Are you aware of any releases being given by OldCo as part of this transaction to sell to New GM?

A. I'm sorry, sir, I'm not aware.

Q. That's fine. Part of Mr. Miller's recross was talking about --

MR. MILLER: Redirect.

MR. ESSERMAN: Oh, sorry, redirect. Thank you, Mr. Miller.

Q. -- I won't get into this orphan share, I frankly couldn't understand it either -- but this asbestos brakes is what he asked you about. Do you recall that line of questioning?
A. I do, sir.
Q. And Mr. Miller said that the asbestos brakes were furnished by suppliers to GM. Is that --
A. It is. The brake linings, yes.
Q. -- okay. And one of those suppliers was Delphi, isn't it?
A. I'm not -- I don't know if Delphi was ever in brake linings. They may have been. I just am not aware. They were brakes, but they were not -- I'm not sure if they were in brake linings.
Q. Do you know where GM purchased their brake linings from, then?
A. Multiple suppliers.
Q. Could Delphi have been one of them?
A. They could have been, but I don't know.
Q. Okay. Finally, Mr. Miller talked about the tough negotiations as part of the sale transaction. You're aware of that?
A. Yes.
Q. And a couple final questions I have for you. As part of these tough negotiations, would it be a correct statement of fact that no one from GM carried the banner or represented at the table the asbestos claimants?

A. I think we outlined for the Treasury the level -- the nature of the asbestos liability, the issues surrounding it, and the purchaser, or the Treasury, in this case, concluded that it was not appropriate to bring forward.

Q. My question -- and listen to my question carefully, because I understand your answer, but I don't think that was quite what I was asking. Did anyone at GM advocate for the interests of asbestos claimants in negotiating with the U.S. Treasury Department?

A. Beyond simply highlighting it, no.

Q. And did anyone at the Treasury Department advocate for the interests of the asbestos claimants?

A. I don't know.

Q. Do you recall giving your deposition few days ago?

A. Um-hmm.

Q. I'd like you to read a statement and see if you agree with this statement that I represent you gave --

A. Yes, sir.

Q. -- at your deposition. It was at page 415 -- 414, line 25. And see if this is a correct statement.

THE COURT: Mr. Esserman, what I normally like to do is, does he have a copy in front of him, I'd like if he'd be able to read along with you.

MR. ESSERMAN: Okay.

UNIDENTIFIED ATTORNEY: There's one in our book, Your

Honor.

THE WITNESS: I'll grab it. Hold on.

Q. Page 414, starting at line 25.

A. Yes, sir.

Q. Okay. "Question: In negotiating with the U.S. Treasury Department, did anyone at GM advocate for the interests of the asbestos claimants?

"A. The purchaser didn't. In looking at this, had no reason to assume these liabilities for a number of reasons, and concluded it wasn't necessary for the New General Motors to operate going forward."

And that's the end of the answer. Is that the correct answer?

A. That's what I said.

MR. ESSERMAN: Okay. Thank you, Your Honor. Thank you.

THE COURT: Are you done, Mr. Esserman?

MR. ESSERMAN: Yes.

THE COURT: All right.

MR. JAKUBOWSKI: Your Honor, while we're changing the guard, I inadvertently forgot to move for admission of PLCA-1 into evidence. And I would like to do that, with your indulgence?

THE COURT: Objections?

MR. MILLER: No objection.

THE COURT: No objection. It's admitted.

(Exhibit PLCA-1, debtors' update on 363 sale as of 6/5, was hereby received into evidence as of this date.)

THE COURT: All right. Now back giving the debtors any final opportunity.

MR. KENNEDY: Well, Your Honor, I had a question or two on recross.

THE COURT: Oh, I'm sorry, Mr. Kennedy. Come on up, please.

RECROSS-EXAMINATION

BY MR. KENNEDY:

Q. Mr. Henderson, could I direct you to Exhibit 14 in the section of Exhibit 10 that's related to your deposition in the exhibit, sir? It's that chart, "Salaried and Splinter Union Benefit Obligations" that I think you've addressed once or twice, and I believe you looked at again with Mr. Miller.

A. Yes, sir. Okay.

Q. Now, would you agree with me that since the Sprague decision in the eighties, it's been clear that General Motors' salaried employees were subject to having their retiree basic life insurance canceled at any point by the company, unilaterally?

A. Changed, modified or canceled, yes.

Q. Okay. And the same is true with respect to the salaried retiree healthcare plan, correct?

A. We did change -- we did freeze it and implement a new plan.

Q. And the executive nonqualified pension was subject to being canceled, certainly, in this bankruptcy proceeding, correct?

A. Yes.

Q. And the SLBP executive life was subject to cancelation by General Motors, correct?

A. Correct.

Q. And that leaves the splinter unions life insurance healthcare. Would you agree with me that the IUE, CWA and the other unions that are covered by that group, have always taken the position that their members' entitlement to these benefits is vested and uncancelable by the company?

A. That has been their position.

Q. And General Motors has taken the position that you could, in fact, change them, correct?

A. Yes.

Q. And in resolving those to positions, isn't it also true that in October of 2008, GM and the IUE agreed to fund a VEBA for IUE retirees in the amount from General Motors of 2.455 billion dollars?

MR. MILLER: If Your Honor pleases, that goes way beyond redirect.

THE COURT: Sustained.

MR. KENNEDY: I have no other questions, Your Honor. Thank you.

THE COURT: Okay. Are there any other objectors who I forgot. I seemed to have done that a couple of times. Now, one more time, Mr. Miller, anything further?

MR. MILLER: No, Your Honor.

THE COURT: All right. Mr. Henderson, you're excused. You can step down and remain in the courtroom.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you. Okay. It's 5:30. My energy level is okay. I'd like to keep going at least for another couple of hours, if you people feel up to it also. What I think I would like to do is determine now, who will be the next witness, take five minutes, and resume with the next witness, cross examination and the similar -- Mr. Richman, were you the leadoff man, you or your partner?

MR. RICHMAN: Yes, Your Honor.

THE COURT: Who would you like to take next?

MR. RICHMAN: Mr. Worth.

THE COURT: Mr. Worth?

MR. RICHMAN: Yes.

THE COURT: Okay. Five minutes, and we'll continue with Mr. Worth.

(Recess from 5:30 p.m. until 5:45 p.m.)

THE COURT: Take your seats, please. Before we begin

with Mr. Worth, I'd like to be in a position where we can help everybody to plan their evening and tomorrow. So I would like to take a moment for a nonbinding estimates, how long we expect to be with this witness, then to ascertain whether the person who's number 3 in the lineup would be needed tonight or I could tell him he could leave. I'm not going to put a sock in anybody's mouth or cut him off, but I'd like to get a sense from you, Mr. Richman, as to how long you think this would be. How many folks, besides you, want to question Mr. Worth, and then answer my questions for the next couple of minutes?

MR. RICHMAN: Thank you, Your Honor. We've had some discussions among counsel during the break, also, to see whether there was any common ground. I don't have a great many number of questions for Mr. Worth or for Mr. Koch. I don't think either of them will take very long.

THE COURT: That's the order of the two folks you want to take?

MR. RICHMAN: Yes.

THE COURT: You want to take Mr. Worth first and then Mr. Koch?

MR. RICHMAN: And then Mr. Koch. I can't speak for other parties in the courtroom and it may well be with my questions being limited that that could well expand the needs of other parties. But it certainly seems to us that once you get to Mr. Wilson, you're going to be engaged in another

exercise that may be comparable in time to what we had with Mr. Henderson. And I think for everyone's benefit, at a minimum that would be a good time for a break to start fresh with Mr. Wilson in the morning, rather than to try to begin that this evening.

THE COURT: I hear you. Then, what I would like to do is now ask the other folks whether a scenario that takes Mr. Worth and Mr. Koch tonight and starts with Mr. Wilson in the morning makes sense.

MR. RICHMAN: Just so I can clarify, Your Honor, I didn't mention Mr. Repko. We do not have any plans to question him, but other parties may. And he's the forth of the debtors' four witnesses who will be before we got to Mr. Wilson. So just for clarity of record, other parties may want to comment on that.

THE COURT: Fair enough. Why don't we invite other people to weigh in?

MR. MILLER: As far as the debtors are concerned, Your Honor, we would agree with Mr. Richman to take Mr. Worth and Mr. Koch tonight and start fresh with Mr. Wilson tomorrow morning, hopefully early, Your Honor.

THE COURT: All right. Mr. Jakubowski, you rise to be heard?

MR. JAKUBOWSKI: Thank you, Your Honor. We have no questions for any of the other debtors' witnesses that are

proposed. And the only other questioning we'll have is of Mr. Wilson.

THE COURT: Okay. Anybody -- Mr. Kennedy?

MR. KENNEDY: We have ten minutes or so for Mr. Repko, none for the other witnesses until we get to Mr. Wilson.

THE COURT: Okay. Mr. Eckstein.

MR. ECKSTEIN: We may have a few questions for Mr. Koch.

THE COURT: Yeah, I thought you might. Okay. Then let's assume that we're going to definitely start with Mr. Wilson in the morning. I guess the question is, is it too ambitious or should be give Mr. Repko a break and tell him he could go home tonight? Everybody's shrugging their shoulders. As far as tomorrow goes --

MR. RICHMAN: Did you mean Mr. Repko or Mr. Worth?

MR. KENNEDY: I meant Repko.

THE COURT: All right. As far as tomorrow goes, I have an 8:00 relief from stay motion which was perceived by somebody to be important. So I'll hear it at 8:00. And then what I was going to ask you people is if you wanted to start at 9 instead of 9:45. And if you want I'll start and finish that relief from stay motion if that helps. I don't know if it will or not. I would have thought that a relief from stay motion wouldn't take a long time, but I would have thought that it wouldn't be arguable. Mr. Richman, I want to get your

perspective.

MR. RICHMAN: Well, I think some of it relates to getting into the courthouse and the courtroom. This morning people weren't allowed in until about beginning at 8:30 and it took a very long time for the line to clear.

And related to that, will we have this courtroom tomorrow and we'll be able somehow to reserve these seats so we don't have the kind of chaos we had this morning.

THE COURT: Well, those are legitimate questions. I think that if I tell the marshals that I want you guys let in, they'll listen to me. And I'll do that.

As far as -- yes, we've got clearance to use this courtroom. And I know you guys all have your places and things like that, but what I would like to do is have the people who have their existing places and more prominent roles in the case, having the spots at cancel table. And those of you who are in the audience you're welcome to come back as far as I'm concerned. I do need to have the comfort that the people who have participated so far know that they can get into this courtroom and that they won't have to fight for places to be heard, or to hear what I have to say.

So, Mr. Richman, the answer is sure. I'll also let you leave your stuff here as long as you understand that I can't guarantee its security. But as far as having permission to leave your stuff in the courtroom, that's fine.

So the one open issue is what time we're going to start the main event tomorrow. And I'm afraid, Mr. Richman, even if I give the marshals the authority to let people in early we're still going to have logistic issues. So I'm going to start the main event a 9:00.

With that, let's bring up Mr. Worth. Okay. Mr. Worth is here.

MR. RICHMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. RICHMAN:

Q. Good afternoon, Mr. Koch -- I'm sorry, Mr. Worth. Just so we have clarity of the record, Mr. Worth, could you for the record describe what your and Evercore's assignment was in this case, when it began and where it stands right now.

A. We have been advisors to General Motors since about June of 2008.

Q. Could you use the mic? I think people are having difficulty hearing in the back.

A. Absolutely. Is that better?

Q. Yes.

A. We've been financial advisors to General Motors since about June of 2008, on a variety of matters, as this case has progressed.

Q. Now, are you -- next to Mr. Repko, are you the senior person responsible for the engagement?

A. Yes.
Q. And were you responsible for the preparation of the fairness opinion?
A. Yes.
Q. That fairness opinion I note is attached to your declaration which is in evidence as Debtors' Exhibit 3, is that -- did I get that right? Is it 3? Exhibit 3. So are you able to testify about the contents of the fairness opinion? Do you have specific knowledge from your oversight and preparation of it to be able to speak to its contents?
A. Yes.
Q. Do you have it in front of you, there should be a binder of debtors' exhibits? It would be tab 3, Exhibit 3. And just for the record it's called "Fairness Opinion Letter" which is Exhibit A to your declaration. And that's a letter dated May 31, 2009 on the letterhead of Evercore Group LLC, and addressed to the board of directors of General Motors Corporation?
A. Yes, sir.
Q. I'd like to refer you to page 3 of that letter.
A. Yes.
Q. The paragraph at the bottom of the page indicates "that in preparing the fairness opinion Evercore" -- and I'm just reading from the letter to ask you to confirm this "relied on management in Evercore's conclusion that GM's range of options have narrowed to a choice between (1)the 363 sale, or (2)a

bankruptcy liquidation as described in the liquidation analysis," that's a correct statement?

A. Yes.

Q. So would I be correct in saying you were directed not to consider a fair valuation of New GM under any other scenario?

A. Can you repeat the question?

Q. Did you perform any fairness valuation of New GM if New GM was created, for example, as a spin-off under a Chapter 11 plan?

A. No.

Q. Or any other scenario other than the two indicated in the letter, which is the 363 sale or a liquidation?

A. No, we did not.

Q. In your experience would there be any reason to believe that if New GM was created in a Chapter 11 plan with the same business objectives, that the valuation would be different than it would be in a Section 363 sale?

MR. MILLER: Objection, Your Honor. You have to establish foundation. Who does the financing? How the case is going to proceed without financing. He's talking apples and oranges, Your Honor.

THE COURT: I'm going to sustain it. But if you lay out a few more parameters in a way of background facts, and if you want to get his opinion on that opinion.

MR. RICHMAN: Thank you, Your Honor.

Q. Mr. Worth, how many Chapter 11 plan valuations have you been involved in, in your career, ballpark?

A. Very few.

Q. Very few?

A. Yes.

Q. Approximately how many?

A. Where I've testified?

Q. No, where you have as a professional provided a fairness opinion, or supervised a fairness opinion?

MR. MILLER: In a Chapter 11 context?

MR. RICHMAN: Yes.

Q. I'm asking specifically about the valuation of a company being created under a Chapter 11 plan?

A. Fairness opinions, none.

Q. Did you take into account or did person working under your supervision in preparing the fairness opinion, take into account General Motors' net operating losses?

A. Which General Motors; OldCo or NewCo?

Q. OldCo.

A. Not other than in the capital structure of NewCo. The only company we valued was NewCo.

Q. How are NOLs valued in NewCo? Where would I find that? Is that actually in the letter or in any of the documents that were produced?

A. Yes. It's implicit in the valuation of NewCo. There are

deferred tax attributes at current General Motors that carry over into NewCo, those are part of the valuation.

Q. Could I trouble you to just show me where I would find that in your fairness letter or in the exhibits?

A. In the valuation methodology description, it's probably the best place. Exhibit G, where we describe the various methodologies we use to value OldCo -- sorry, NewCo. Give me a second and I'll find a reference. I apologize, I don't see a page number. The third page of Exhibit G.

THE COURT: What exhibit?

THE WITNESS: Exhibit G.

THE COURT: G, golf?

THE WITNESS: G, golf. The third page last paragraph.

A. There's a description of how we valued the deferred tax attributes, deferred tax assets of General Motors.

Q. But this doesn't contain any particular amounts, does it?

A. No, simply methodology.

Q. Is there a place where I would find the amount of the NOLs?

A. It is more implicit in the core enterprise value than it is explicit on the amount in any page. So -- let me refer you back to the appendix. Give me one second. In Exhibit F to the affidavit.

Q. I appreciate your help with this.

A. Page 22 of Exhibit F. There's a line there that says "core enterprise value."

Q. This is in the -- it looks like a PowerPoint presentation?

A. Correct. There's a line three lines down that says "core enterprise value," the value of the tax assets is imbedded in core enterprise value.

Q. But it's not broken out as a separate number anywhere?

A. No, sir.

Q. So we can't see what the -- do you know what the existing NOLs are that are in the Old General Motors?

A. I recall the value of those tax attributes was somewhere in the ten to twelve billion dollar range?

Q. Ten to twelve billion, did you say?

A. Correct.

Q. And do you have any understanding of how they are able to get to New GM?

A. I'm not a tax lawyers, but I have a lay understanding of the process that they're going to use, called the G re-org, to preserve those tax attributes.

THE COURT: G re-org, did you say?

THE WITNESS: Yes, sir.

A. To preserve those tax attributes.

Q. But that hasn't been done -- that's not in the current structure?

A. It is assumed to have been accomplished as part of this

transaction. So those tax assets would be preserved if a G re-org is approved.

Q. Can you explain for us what a G re-org is, in your understanding?

A. Not being a tax attorney, probably not adequately.

Q. I'm not either.

A. It would have the net impact of preserving the value of the NOLs currently at General Motors, and being transferred from OldCo to NewCo.

Q. So am I correct in understanding that if this G re-org is not done then the value of the NOLs will not transfer to New GM?

A. Not in totality, no. Some but not all would be available to NewCo.

MR. RICHMAN: Excuse me one second, Your Honor.

Q. Just last question. When I was reading from page 3 of the letter before there was a reference to the two options; the 363 sale and the liquidation analysis. Was the liquidation analysis that was referred to in the fairness opinion, the one that was prepared by AlixPartners and Mr. Koch?

A. Yes, sir.

Q. Thank you.

MR. RICHMAN: I have no further questions, Your Honor.

THE COURT: Okay, thank you. Mr. Kennedy?

MR. KENNEDY: Your Honor, I was in error before, I do have some questions of Mr. Worth, not of Mr. Repko, I apologize.

THE COURT: All right. You want to come up?

MR. KENNEDY: Well, I'm typically not the second person, so I don't know if there are other people who want to go first.

THE COURT: I think Mr. Eckstein focused on Mr. Koch. Do you have any of Mr. Worth, sir?

MR. ECKSTEIN: I do have a few questions for Mr. Worth.

THE COURT: Whichever.

CROSS-EXAMINATION

BY MR. KENNEDY:

Q. Mr. Worth, I'd like to direct you to Exhibit F to your declaration, which is Exhibit 3 in the exhibits marked by the debtor. That consists of a project main presentation to the board of directors. Can you go to that, sir? Do you have in front of you?

A. I have it right in front of me.

Q. Would you describe what the Exhibit F is?

A. It is a presentation that we delivered to the board of General Motors on May --

Q. It's dated if it would help, the first page.

A. May 31st.

Q. And is that date the date it was presented?

A. Yes.

Q. And is that the same date that the board of General Motors made the decision to proceed with the bankruptcy petition?

A. Yes, sir.

Q. I'd like to address your attention to page 5, if I could.

A. Yes.

MR. KENNEDY: Do you have it, Your Honor?

THE COURT: Not yet. If you'll bear with me. You said Exhibit F, page 5?

MR. KENNEDY: Yes, sir. To Exhibit 3. And this is not my book. This one isn't my fault.

THE COURT: No. I understand. Bear with me.

MR. KENNEDY: You had it right there, sir. I think that could be it, I don't know.

THE COURT: You're right. Okay. Go ahead.

MR. KENNEDY: Move to page 5 of that.

THE COURT: Overview of transaction in (indiscernible) process?

MR. KENNEDY: Yes, sir.

Q. What is this page intended to depict, Mr. Worth?

A. It is a simplified version of the capitalization of the company at the end of the transaction.

Q. So at the end of the 363 transaction, this is essentially what the company is going to look like, correct?

MR. MILLER: As of that date?

Q. As of that date, yes?

A. Correct.

Q. And I take it that you identified a few of the important elements of the capitalization on this page, would you agree with me on that?

A. Yes.

Q. And I noticed that you called out pension and OPEB obligations, why were they among all the potential obligations of this company? Why were they called out for special mention on page 5?

A. Part of the success of NewCo and the profile of NewCo depended on the restructuring of some of those obligations. Principally OPEB obligations and Canadian pension obligations.

Q. Okay. So that they -- first the pension and OPEB obligations referred to is the obligation for NewCo to pay 900 million in cash and 700 million in note to a Canadian healthcare trust structure, is that correct?

A. Correct.

Q. And the second one was prefunding of an assumed Canadian pension with 3.6 billion in cash, is that also correct?

A. Correct.

Q. But the third one is actually a reduction of liability, it's not a recognition of liability on the new company, correct?

A. Can you rephrase the question?
Q. Sure. Is the third one item mentioned here a reduction in liability as opposed to a statement of cash or equity that would have to be paid out?
A. It is a statement of an assumption, which at the time we gave this presentation was still undefined that there would be a reduction in the cash flow requirements for the non-UAW OPEB obligations. And that that would then have an impact on the profile of NewCo.
Q. Okay. So that the non-UAW OPEB obligations which you've been sitting here you may now at least recognize refers to IUE, Steelworkers, IUOE and other unions, that was identified as significant enough to be included on this page, correct?
A. Correct.
Q. And how much of a reduction in OPEB obligation for non-UAW unions were you assuming at the point you were preparing this document?
A. I believe at the time we did this analysis we had assumed --
Q. While you think about it, let me remind you if it does. And I believe the total of the non-UAW OPEB obligation is 3.725 billion?
A. Correct.
Q. Does that help refresh your recollection as to how much you might have been referring to as a reduction?

A. Let me answer the question this way. At the time that we were developing the models -- I'm sorry, rephrase that. At the time that the NewCo models were being developed and we did the valuation of NewCo there was an assumption made around non-UAW OPEB. And at this very moment, I can't remember exactly what that assumption was. But there was an assumption that they would be reduced.

Q. In fact, would it be fair to say that the assumption of the reduction would be in billions of dollars or it would not have been identified separately on this page?

A. That's fair.

Q. And that that was one of the factors that the board considered in determining whether to go through the new company transition, or transaction, rather?

A. That's fair.

Q. All right. I'd like to address your attention to page 15. I take it from this page and from other information that the credit bid Treasury is making to accomplish the 363 transaction is in the amount of 48.7 billion dollars?

A. That's correct.

Q. And it's also true that as of the filing, June 1, Treasury had made 19.4 billion in pre-petition loans to General Motors, correct?

A. Correct.

Q. Are the 19.4 billion in pre-petition loans included in the

48.7 billion dollar credit bid which is referred to on page 15 of Exhibit F and elsewhere in these documents?
A. Yes.
Q. I also gathered from the document, and if you need to I'm referring to page 16, that the NewCo equity value is assumed to be between thirty-eight billion and forty-eight billion?
A. Yes, sir.
Q. And if you look at the combination of holdings that the U.S. Treasury has -- is expected to have as a result of the 363 transaction of 72.5 percent equity, and 2.5 billion in preferred, what amount of the thirty-eight to forty-eight billion would you understand Treasury to own?
A. The U.S. Treasury?
Q. Yes.
A. A loan?
Q. Uh-huh.
A. I believe the percentage is sixty percentish of the equity.
Q. So if we were looking at the equity range, thirty-eight to forty-eight billion, we would understand the treasury owned about sixty percent of that, or a little more, maybe?
A. Of the common shares outstanding at close, correct.
Q. And when you say at close, you mean at the expected close?
A. Correct.
Q. And how much of that sixty percent in effect of equity or

value that the U.S. Treasury would have is represented by the portion of the credit bid reflecting the 19.4 billion pre-petition loans?

A. Point of clarification?

Q. Sure.

A. The U.S. Treasury and Industry Canada are both part of the DIP loan.

Q. Okay.

A. So the equity that results from the credit bid --

Q. You might want to speak up, I hear somebody saying they can't hear.

A. Sorry. The equity that results from the credit bid is, both to the U.S. Treasury and Canada EDC.

Q. So that sixty percent figure is representative of both U.S. Treasury and Canada.

A. Sixty is just the UST.

Q. I see.

A. The Canada equity ultimately in the transaction comes from the credit bid and from the other amounts that the Canadian government is lending into the overall transaction. So it's -- you need a calculator to give you the answer that you just asked, which is the portion of the credit bid that is specifically related to the UST, which results in a sixty percent ownership.

Q. Okay. Is it at least clear as we sit here today that some

of the equity ownership the treasury is obtaining is as a result of their pre-June 1 loans to General Motors?

A. Yes.

MR. KENNEDY: All right. I have no other questions, Your Honor.

THE COURT: Okay. Mr. Eckstein.

CROSS-EXAMINATION

BY MR. ECKSTEIN:

Q. Mr. Worth, good evening. My name is Kenneth Eckstein, I represent the official creditors' committee. I have a few questions, if I may.

A. Good evening.

Q. Mr. Worth, can you just clarify for me on whose behalf did Evercore provide a fairness opinion in connection with this transaction?

A. We provided an opinion to the board of directors of General Motors.

Q. So, essentially, OldCo, the selling company, is that correct?

A. Yes.

Q. And do I understand correctly that in connection with providing the opinion, you advised the board of directors?

A. We provided the opinion to the board of directors. We've been an advisor to the company and to the board of directors during the course of our assignment.

Q. Did Evercore participate in the negotiations of the transaction as well as providing a famous opinion to the board of directors?
A. In portions.
Q. Which portions of the negotiations were you involved with, or was the form of Evercore involved with?
A. There were multiple areas that we were witnesses of and provided advice to the company. It was probably a half dozen different areas. We were not front and center in those negotiations, though.
Q. Did you participate in the negotiations between representatives of the bondholders and U.S. Treasury regarding the allocation of equity to OldCo?
A. During it's final iteration, no.
Q. Did you participate in the negotiations with UAW?
A. No.
Q. I assume that the opinion that Evercore provided was the written opinion that is attached to your declaration, is that correct?
A. Correct.
Q. And that's dated May 29, 2009, am I correct?
A. I believe it's dated May 31st.
Q. May 31 or May 29?
A. May 31st.
Q. May 31st, right. And was there a meeting with the board

of directors at which you presented your opinion and recommendations?
A. There was.
Q. Was that one meeting or several meetings?
A. There was a meeting on Saturday, the 30th, I believe, in which we went through our presentation. We subsequently delivered our opinion on a telephonic meeting on the 31st.
Q. Were there any subsequent meetings in which you dated your recommendations to the board?
A. Yes.
Q. When did those take place?
A. This past Friday we were asked whether the changes to the MSPA as they had occurred as distinct from the MSPA that we had May 31st the day of our opinion, whether had we known those changes at the time that we had delivered our opinion, would it have changed the substance of our opinion. And we met with our creditors' committee, we obtained the opinion committee on the substance of the changes and we advised the board during that telephonic board meeting that the substance of our opinion would not have changed had we known all of those facts at the time we had presented them with our opinion. We did not update our opinion in writing.
Q. Which changes to the MSPA were you considering in connection with your supplemental advice?
A. There were a few, about sixteen different small changes.

Some of them were mechanics in the MSPA. One specific was around the warrants and the capitalization table, which, at the time we delivered our opinion, we did not have the exact number of warrants that were being issued, nor did we have a cap table. We also -- another change was the product liability and the assumption of product liability.

Q. Was this the change that reflected the agreement by NewCo to assume product liability that arises subsequent to the closing of the transaction?

A. Yes. And there were a handful of other changes to the MSPA, all non-major substantive money issues.

Q. Were there any other changes that you could recall that, in your view, materially affected the amount of liability that was being left with OldCo or was not being assumed by NewCo?

A. Could you repeat the question?

Q. Were there any other modifications that in your view were material that involved an assumption of additional liability by OldCo or releasing NewCo of liabilities that it had previously agreed to assume?

A. There were none that were material to our opinion.

Q. Were there any modifications made in connection with workers' compensation liability?

A. I don't recall specifically. But, again, none that I recall that would have affected our opinion.

Q. And as you said, this was not done in writing, this was

done orally, am I correct?
A. Yes.
Q. Okay. Can you tell me what you understand the value of the equity that is being left with NewCo to be under this transaction?
A. Can you repeat that, you mean OldCo?
Q. What is the value of the equity being left with OldCo?
A. Again, clarification, the equity and the warrants?
Q. First the equity?
A. Our estimate of the value of NewCo was the range between thirty-eight and forty-eight billion dollars for 100 percent of the common equity of NewCo. So straight ten percent of that would be 3.8 to 4.8 billion dollars.
Q. 3.8 to 4.8 billion dollars was ten percent?
A. Correct.
Q. And did you ascribe a value to the seven-year warrant for seven and a half percent of the equity?
A. We did.
Q. And approximately how much value did you ascribe to the warrant?
A. The value -- I'm going to refer you back to page 14 of that same Exhibit F that we've been talking about. The value ascribed in this presentation was 2.1 to 2.9 billion dollars for that warrant -- the seven-year warrant. At the time that we did this valuation, we did not have the exact number of

warrants, nor the cap table, that affects the valuation slightly of both the warrants and the way that we would do the valuation. The net impact, though, internal of all of that new information was not significant on the bottom line range that you have here of 7.4 to 9.4 million dollars. So that is the value of the entire package; ten percent of the equity plus the fifteen percent warrants.

Q. So based upon the amended opinion that you provided last week, the value ranges have not changed in your opinion?

A. Not substantively, no.

Q. And just so I understand the value that you ascribed to the ten-year warrant, what is referred to as warrant B, is that one and a half to 2.1 billion dollars?

A. That's correct.

Q. And so am I correct that the value that -- of the equity -- the straight equity and the warrants that are being left with OldCo in your view is between 7.4 and 9.8 billion dollars?

MR. MILLER: He just testified to that, Your Honor.

THE COURT: I'm going to sustain. But just to try to get to the next question, you can move on. I think you got it enough that I wrote it in my notes, Mr. Eckstein.

MR. ECKSTEIN: Thank you, your Honor, that's fine.

Q. In connection with your opinions did you make any evaluation of the liabilities that were being retained by

OldCo?

A. Yes. In estimating the value of those assumed liabilities, we took the book value of those liabilities. But for pension where in all of our valuation methodology, we estimated the value of pensions to be the present value of future contributions.

Q. Can you tell me what liability level you were assuming was being retained by OldCo in connection with this transaction?

A. If you look at page 15 of that same exhibit the total numbers 48.4 billion dollars.

THE COURT: Mr. Worth, would you mind standing a little closer to the microphone, please?

THE WITNESS: Certainly, sorry.

A. So the total on page 15 is 48.4 billion dollars.

Q. These are the liabilities that are being retained by OldCo, or the liabilities that are being assumed by NewCo?

A. Forgive me, those are the liabilities that are being assumed by NewCo.

Q. I had asked you the question, did you make any assumptions as to the aggregate amount of liabilities being retained by OldCo?

A. No.

Q. So for purposes of your fairness opinion, you simply looked at the value of the -- let's called it the asset side rather than the liability side of the transaction, at least as

it impacted OldCo, am I correct?

A. Yes, sir.

Q. Did you express any opinion as to the fairness of the transaction on the OldCo creditors in connection with your opinion?

A. No.

MR. ECKSTEIN: Your Honor, that's all I have. Thank you.

THE COURT: Okay. Any other objectors want to question? No. Okay, redirect, Mr. Miller?

MR. MILLER: No, Your Honor.

THE COURT: All right. Mr. Worth, you're excused, thank you.

MR. PARKER: No. I do, sir. I raised my hand.

THE COURT: Come on up.

MR. PARKER: I don't have many questions.

CROSS-EXAMINATION

BY MR. PARKER:

Q. Mr. Worth, I believe you stated that the value of the net operating losses is ten to twelve billion dollars, is that correct?

A. Yes, sir.

Q. Is that their market value to acquiring a corporation?

A. No.

Q. Okay.

A. That is the value implicit in the value of NewCo. So it is the value of those tax assets to a fully operational NewCo.

Q. Okay. So on page 22 of your report you have the MPV at 37.3 to 53.9, is that correct? Page -- I think it was 22.

A. 22.

THE COURT: 22 of the exhibit, the one that said to NewCo DCF?

MR. PARKER: Yes, sir.

A. Can you repeat the question?

Q. Maybe I misheard your testimony that's why I'm asking. But you said the MPV is between 37.3 and 53.9?

A. That is the MPV of the base case, value of the equity in a base case, just in a cash flow analysis.

Q. Okay. So that has nothing to do with the net operating losses?

A. Included in that value it is an estimate of the value of the net operating losses to NewCo.

Q. Okay. Was there anywhere on this page where you had the value of the net operating losses?

A. No. It's implicit in the core enterprise value.

Q. Okay. I'm curious how you came up with a ten to twelve billion dollar figure for the net operating losses?

A. We valued the business as a full taxpayer.

Q. Uh-huh.

A. And a discounted cash flow analysis. And separately we

valued the usage of the NOLs based on the projected taxable earnings of the U.S. company, and of all the companies around the world.

Q. Do you know what the net operating losses of Old GM are right now?

A. The face value of them escapes me right now.

Q. Has old GM had operating losses of about eighty-eight billion dollars over the last five years, does that sound about right?

A. I don't know.

Q. You're being offered as an expert witness, right?

A. Yes, sir.

Q. Okay. Assuming for a moment that the net operating losses for the last five years were somewhere in the eight billion dollar range, what would be their value to a company?

THE COURT: Sustained, under what circumstances? In a liquidation as a going concern?

Q. Well, first off, what would be their worth to the company in tax savings?

A. Which one?

Q. The company who has them. Suppose GM started to make profits again, what would that be in tax savings to them, what would it represent?

A. The value of those --

THE COURT: Wait just a minute, an attorney rises to

be heard. You've got to pause. Mr. Miller, go ahead.

MR. MILLER: Your Honor, please, I object. It's pure speculation, there's no foundation laid.

THE COURT: I'm going to sustain. Mr. Parker, if you want to ask about this you'd better give a lot more facts.

MR. PARKER: Okay.

Q. Do that operating losses have a market value to someone who could purchase them to use them to offset income?

A. In isolation?

Q. Yeah.

A. If one can structure a purchase in such a way that the acquirer can take advantage of them?

Q. Yes.

A. Yes, they can have value.

Q. What kind of value can they have?

A. The value --

MR. MILLER: Excuse me. Again, Your Honor.

MR. PARKER: I'm asking for market value.

THE COURT: Well, I'm going to overrule the objection. It's a big question and it deserves a big answer. You can give an answer commensurate with the question that was asked.

A. The value of the net operating losses depends on their ability to shield taxes in the future.

Q. Okay. Do you know what the corporate tax rate is?

A. I would assume thirty-five percent.

Q. So thirty-five percent of eighty billion would be something like twenty-eight billion? That's the amount that --

MR. MILLER: Your Honor, that's the --

THE COURT: Sustained.

Q. Okay. On page 15 of your -- I think it's your Exhibit F, the one that says Analysis of Proposed Transaction Summary Purchase Price Analysis.

A. Yes, sir.

Q. Okay. I notice that in analyzing the -- I take it this is an order to analyze the fair price, the fair purchase price, is that correct, of the assets that Old GM is giving to New GM?

A. Sorry, can you rephrase the question?

Q. What was the purpose of the analysis of proposed transaction summary purchase price analysis?

A. To compare the purchase price as defined in the MSBA to the liquidation analysis performed by AlixPartners.

Q. Okay. You took the credit bid of 48.7 billion, added assumed liabilities of 48.4, added the 7.4 to 9.8 that's allegedly being given to OldCo and sub-rated out 13.4 billion in cash, is that correct?

A. Correct.

Q. And you came up with ninety-one to ninety-three billion?

A. Correct.

Q. The thing I'm curious about here is, a 48.4 billion that

you've got, does that include the 20.5 billion that's going to the UAW VEBA is giving up a claim of 20.5 billion against old UAW -- sorry, against Old GM when the transaction has been completed, I believe that was testified to by Mr. -- the new CEO of GM.

A. Mr. Henderson.

Q. Yeah. So does that include the twenty -- it says 48.4 billion in assumed liabilities, does that include the liabilities owed to the UAW VEBA?

A. No.

Q. Okay. One of the things in there it says is employee obligations, so what does that mean?

A. Can you flip to page 25?

Q. Sure.

A. It'll break it down for you, what was included in that obligation. The employee obligations you're referring to are payroll and pensions.

Q. Okay. The government's credit bid is for roughly forty-nine billion, is that correct?

A. That's correct.

Q. Okay. Other than 400 million that's owed by GM Canada to the Canadian government, is the Canadian government presently a creditor of GM?

A. Yes.

Q. How much are they owed?

A. In the DIP facility of 33.3 --
Q. Uh-huh.
A. -- the total amount of Canadian participation in the 33.3 should be about 3.2 of the --
Q. Okay. So if I recall the documents correctly Canada is supposed to be contributing roughly nine billion dollars between debt forgiveness and new money, is that correct?
A. Could you rephrase the question?
Q. Okay. Canada's contribution to the New GM roughly equals about nine billion dollars, is that correct?
A. I think about nine and a half.
Q. Nine and a half. And that includes debt forgiveness for new money, correct?
A. I don't understand the distinction debt forgiveness and new money.
Q. Well, right now it's contributing 3.2 million toward the 33.3 million, correct of financing?
A. Correct.
Q. Okay. It's -- where's the other six million?
A. That would be lent directly to GMCL, GM's Canadian operation.
Q. Post the transaction?
A. Some pre, some post.
Q. Okay. Then it sounds like the forty-nine billion dollar credit bid that the government's making includes 3.2 billion

that goes to Canada, is that correct?

A. Correct.

Q. So the government's contribution -- the government's share of the credit bid is roughly forty-six billion?

A. That sounds fair.

Q. 19.4 billion of which is pre-bankruptcy debt and the remainder is post-bankruptcy debt, right?

A. Correct.

Q. So you were earlier asked -- you admitted that some of the 60.8 percent of equity that the government is getting from New GM or retaining with New GM is due to pre-bankruptcy debt, the 19.4 billion. It would sound like it wouldn't be that hard to do a calculation, would it?

MR. MILLER: Your Honor, please. This is -- Mr. Eckstein did this. This has been on the record and he keeps repeating the same stuff.

THE COURT: Sustained. Mr. Parker, I'm not going to cut you off but you've got to be more focused on new stuff.

(Pause)

Q. I'm also confused by one other thing, is the value of New GM, the stock value, between thirty-eight and forty billion or is it between thirty-eight and forty-eight billion? I'm not sure which one I heard.

A. We chose a reference rate of thirty-eight to forty-eight.

Q. Thirty-eight to forty-eight? Okay.

MR. PARKER: No further questions, Your Honor.

THE COURT: Are we now ready for any redirect?

MR. MILLER: Just one question, Your Honor.

THE COURT: Go ahead, Mr. Miller. Come on up.

REDIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Worth, how long have you been in the investment banking business?

A. Over twenty years.

Q. And during the course of your career have you participated and formulated fairness opinions outside the Chapter 11 context?

A. Many.

Q. How many?

A. Over thirty.

Q. Thank you.

THE COURT: Any recross? All right. None. Mr. Worth, you're excused. Folks, I'd like to go right into Mr. Koch now unless people need a break. Mr. Richman?

MR. RICHMAN: That's fine. I do want to revise one statement I made earlier. Bbased on Mr. Worth's testimony I would like some limited question of Mr. Repko.

THE COURT: All right.

MR. RICHMAN: And that can be tomorrow.

THE COURT: Okay. Do we still have consensus that we

want to ask Mr. Koch to come up now?

MR. MILLER: Yes. I'm on the fence on that, Your Honor. If everybody wants to proceed we can proceed.

THE COURT: I think Mr. Koch is on the fence because you're on the fence.

MR. RICHMAN: He's at the gate, Your Honor.

THE COURT: Come on up, please, Mr. Koch. Mr. Worth, you want to give him your spot, please?

(Pause)

THE COURT: Mr. Koch, after you get in there, you want to remain standing for a moment?

(Witness duly sworn)

THE COURT: Okay. Thank you. Have a seat please, Mr. Koch. I think on balance you need to keep the microphone close to you.

CROSS-EXAMINATION

BY MR. RICHMAN:

Q. Good evening, Mr. Koch.

A. Good evening.

Q. Could you please describe your affiliation at present and your assignment for General Motors, when it began, what it consists of?

A. I'm a managing director and vice chairman with AlixPartners. And beginning in December we began serving as advisors to General Motors, primarily focused on contingency

planning in the event that an out-of-court solution was not possible. We were working with the company to prepare for a possible bankruptcy filing and that's been the substance of what we've been working on.

Q. And your declaration, I want to ask you if you have it in front of you, it's Debtor's Exhibit 5 in the binder.

(Pause)

A. I have it.

Q. That includes within it a liquidation analysis, doesn't it?

A. It does.

Q. Could you explain who asked you to prepare that and what the purpose of it was?

A. We were asked by the company's counsel, Weil Gotshal, to prepare that. And it is for the purpose of demonstrating that the -- what the creditors will receive under a proposed transaction with the U.S. Treasury is at least as great as what creditors would receive in a liquidation.

Q. When were you asked to prepare that?

A. I'm going to guess that it was early in May, perhaps a little earlier.

Q. Were you asked to prepare a liquidation analysis in connection with the proposed Chapter 11 plan?

A. The liquidation analysis would have been the same in a Chapter 11 regardless of how it was to be used in a chapter

proceeding.

Q. Were you surprised that nobody objected to the proposed transaction on the basis of perhaps a belief they would receive more in liquidation value?

MR. MILLER: Objection, Your Honor, whether Mr. Koch was surprised or not is not relevant to what's going on in today's courtroom.

THE COURT: Mr. Richman, help me on this one.

MR. RICHMAN: Your Honor, I'll move on.

THE COURT: Okay. Objection sustained.

Q. Did you hear my discussion earlier with Mr. Worth about NOLs?

A. I did.

Q. Do you have understanding of NOLs in your experience?

A. I have some. I'm not a tax attorney but I have some understanding.

Q. You have been in the business a long time, I know.

A. I have.

Q. About how many years have you been doing financial advisory work?

A. A long time.

Q. Ballpark.

A. More than forty years.

Q. More than forty years, congratulations.

A. Thank you.

Q. Approximately how many Chapter 11 cases have you been involved with, probably hundreds?

A. Certainly dozens.

Q. In forty years I bet it's more than that.

A. Well, I haven't been doing restructuring work for all of that forty years.

Q. Do you have an understanding from your experience of how a company can keep NOLs or transfer NOLs to a purchaser?

A. It is a -- it is relatively difficult to structure a transaction where NOLs will survive. And the specifics of how to do that are really beyond my expertise. In a Chapter 11, which is a reorganization where there's a change of control, there are typically limitations that are placed on the use of NOLs. I know that there was some legislation that benefitted -- will benefit the OEMs, General Motors in the use of NOLs going forward. But I'm not familiar -- I'm not conversant with the details.

Q. You said before that this liquidation analysis would be the same analysis that would be applied for a conventional Chapter 11 plan, is that correct?

A. Yes.

Q. So if the debtors had filed a Chapter 11 plan on June 1st and tried to get confirmation on an accelerated basis, the same liquidation analysis would have been used for that exercise, correct?

A. I believe that's correct.

MR. RICHMAN: Excuse me one second, Your Honor.

THE COURT: Sure.

(Pause)

Q. And just to be clear, when I asked you if the liquidation analysis would be the same, this liquidation analysis would be used to show that creditors under a Chapter 11 plan would receive more than the value shown in the liquidation analysis, correct?

A. Presumably that would be the case, yes.

Q. Okay.

A. The liquidation analysis would show what it shows.

Q. For a liquidation of the company?

A. Correct.

Q. Thank you.

MR. RICHMAN: That's all for now, Your Honor.

THE COURT: Okay. Mr. Eckstein, did you want to question too?

MR. ECKSTEIN: Yes.

CROSS-EXAMINATION

BY MR. ECKSTEIN:

Q. Mr. Koch, good evening.

A. Good evening.

Q. My understanding is that currently you are the chief restructuring officer for General Motors, is that correct?

A. That is correct.
Q. And am I correct that once the proposed transaction closes, that you are anticipated to become the CEO of what's referred to as OldCo, am I correct?
A. That is correct.
Q. And what do you understand your responsibilities as CEO of OldCo would be?
A. Well, it would be to oversee the wind down of OldCo, the settlement of claims and the distribution of the stock that -- of NewCo that is held by OldCo.
Q. And do you anticipate that OldCo will be retaining any of the employees of current General Motors?
A. The current plan is for all employees of General Motors to move to NewCo.
Q. So the employees of OldCo will essentially be yourself and other AlixPartners individuals, is that correct?
A. A number of AlixPartners individuals as well as other people, perhaps, that we -- perhaps retirees of General Motors that have a particular expertise that, you know, we may retain as consultants or as contractors.
Q. So am I correct that an important part of implementing the wind down of OldCo will be the implementation of a transition of services agreement between OldCo and NewCo, am I correct?
A. It is an element. It's an important element, yes.
Q. Do you recall hearing Mr. Henderson testify that the

transition services agreement was one of the key transactional documents being negotiated in connection with the transaction?
A. Yes.
Q. And are you responsible at the company -- principally responsible for negotiating the transition of services agreement?
A. I and my colleagues have, on behalf of OldCo, have taken a lead role in negotiating those, yes.
Q. And I assume you would agree that it's important to OldCo to make sure that we have as much cooperation as possible from NewCo once the transaction closes, am I correct?
A. That is correct.
Q. Now I'm assuming one of the areas where cooperation is going to be needed is going to be to maintain access to the legal staff at NewCo in terms of assisting OldCo in winding down the assets and the liabilities, am I correct?
A. Certainly we need access to legal records. I believe the decision has been made that GM legal will not be providing services to OldCo going forward.
Q. Who made the decision that GM legal will not be providing services to OldCo, Mr. Koch?
A. I believe GM legal.
Q. And sitting here today, do you know how you're going to get the legal advice necessary to deal with all of the remaining contracts and claims that are being left with OldCo?

A. Yeah. I believe we will primarily work with debtors' counsel. Weil Gotshal will remain our counsel going forward. So we'll primarily rely on them. To the extent necessary, we'll retain other law firms and if necessary we'll hire attorneys internally.

Q. Did you participate in the negotiation of that provision, Mr. Koch?

A. I would say yes.

Q. In your opinion, is this the relationship that you think is most advantageous to OldCo going forward with respect to the provision of legal services?

MR. MILLER: Objection, Your Honor. I don't know. This line of testimony doesn't relate to the issues which are before the Court.

THE COURT: Overruled.

A. I believe it's a satisfactory result.

Q. Would it be fair for me to assume that it would be preferable to OldCo if it had ongoing access to the in-house General Motors legal staff, isn't that correct?

A. I believe that I've answered that it's a satisfactory arrangement.

Q. In connection with the -- am I correct that part of the transaction that's being considered by the Court is an arrangement whereby OldCo will be leasing various plants to NewCo post the closing of the transaction?

A. That is correct.
Q. Approximately how many plants do you expect will be left with OldCo and leased to NewCo?
A. I'm going to say there might be -- I don't have a number on the top of my head, you know. I would say in the range of ten plants, perhaps, that have varying shutdown dates that have been identified that NewCo will lease from OldCo until the date that they're taken out of service.
Q. And do you know how the determination was made to leave certain plants with OldCo rather than have them go to NewCo?
A. I believe that was based upon the company's production plans going forward and in an assessment of the vehicles that are being produced and a whole range of business factors that led them to that conclusion.
Q. And so there are ten plants, thereabout, that are being left with OldCo and is there going to be a lease agreement that's being entered into between OldCo and NewCo in connection with these plants?
A. Yes, there is.
Q. And does this lease agreement essentially provide for NewCo to assume the ongoing responsibilities in connection with these plants while the plants are being used by NewCo in its business?
A. Yes, they're constructed as triple-net leases plus one dollar a foot rental income for OldCo.

Q. So it's fair for me to assume that the business intention is for OldCo not to have ongoing liabilities arising out of these plants while these plants are being utilized by NewCo, is that correct?
A. Let me phrase it this way, to the extent that liabilities are created between the date of the sale and the date that GM exits, NewCo would be responsible for those matters. To the extent there are existing environmental issues, they would be dealt with by OldCo.
Q. So let me understanding, you're saying if an environmental liability exists today, that liability is being left with OldCo?
A. Yes, sir.
Q. But if an environmental liability arises post closing while the plant is being operated by NewCo, that would be a liability of NewCo, is that what you're saying?
A. That is correct.
Q. And at this point in time are you aware of any environmental liabilities that exist with respect to the plants that are being retained by OldCo?
A. Yes, we are.
Q. And have those been included in any estimates of the wind down liabilities that are expected to be the responsibility of OldCo?
A. Yes, they have.

Q. And do you have any estimate as to what those amounts are?
A. We estimate presently approximately 530 million dollars.
Q. And have those liabilities been included in the 950 million dollars that is being left with OldCo in order to satisfy the wind down responsibilities?
A. We're having ongoing discussions with General Motors as well as with the U.S. Treasury as to what the wind down budget needs to be. And so we're working with draft -- with a draft budget. And to the extent that either new liabilities or we learn of liabilities that are going to be left in OldCo that either we were unaware of or that we thought -- did not realize were to be settled in cash, then we needed to increase the budget for that.

Similarly, as we have learned more from environmental consultants that we retained, we've adjusted the estimated cost to reflect what we've learned from our environmental consultants.

Q. Other than the environmental liabilities that you just addressed, are there any other categories of liabilities associated with the plants that will be leased to NewCo that are not being assumed by NewCo under the master lease agreement?
A. May I ask you to repeat that, please?
Q. Other than the environmental liabilities that you just referred to, are you aware of any other category of liability

that is not being assumed by NewCo in connection with these plants that are being leased to NewCo post closing?
A. Yes. Plant decommissioning cost and holding cost of the property after GM exists, after NewCo exits, property taxes, insurance, security, those costs will remain with OldCo.
Q. And are these costs -- have they been included in the wind down budget that you've prepared in connection with what it will cost to wind down OldCo?
A. We have.
Q. And you believe that there are sufficient reserves to deal with the costs you've just described?
A. We do.
Q. Are you familiar with the categories of liabilities, prepetition liabilities, that are being retained by OldCo?
A. I believe I'm generally familiar, yes.
Q. Sitting here today, do you have an estimate of what those liabilities will aggregate?
A. No.
Q. Have you prepared any analyses that would set forth what those liabilities would aggregate?
A. No.
Q. Is it fair for me to assume that this is an exercise that will need to be undertaken post closing?
A. Yes, sir.
Q. Do you have any sense of how long that exercise is likely

to take?

A. We think that it will probably be first quarter 2010 to second quarter 2010 before we'll be in a position to file a liquidating plan at the earliest. And we'll need to set a bar date so I think it'll probably be early in 2010 that we'll be in a position to estimate liabilities.

Q. Mr. Koch, in your capacity as CRO and your future capacity as the CEO of OldCo, is it your expectation that the -- that OldCo will have sufficient assets to satisfy the administrative and priority obligations being incurred by General Motors?

A. To the extent that claims such as cure claims are not assumed by NewCo, we have had ongoing discussions with the Treasury. They have more diligence work to do on the budget but it has been reaffirmed that it is their intention to leave behind adequate assets to satisfy the liabilities. And so I have comfort that the answer to your question is yes.

Q. Thank you, sir.

MR. ECKSTEIN: No further questions.

THE COURT: Before you come up, Mr. Kennedy, just give me a second, please.

(Pause)

THE COURT: Okay. Mr. Kennedy, whenever you're ready.

(Pause)

CROSS-EXAMINATION

BY MR. KENNEDY:

Q. Good evening, Mr. Koch. My name is Tom Kennedy. I'm acting on behalf of the IUE-CWA, the steel workers and the operating engineers in this proceeding. I just have a couple of questions.

How long do you expect the wind up of General Motors to take if the 363 sale transaction is approved?

A. I think the heavy lifting we'll move as quickly as we can. I think the heavy lifting will be finished in two to three years. And there undoubtedly will be some aspects that may drag on a couple of years longer than that.

Q. Are you aware that Old GM has a book value obligation of 3.7 billion dollars to its non UAW unions for post retirement life and health?

A. Yes, sir.

Q. And you indicated a moment ago that Treasury has committed to provide enough money to Old GM to satisfy its wind down obligations, is that correct?

A. That's correct.

Q. Is any part of that 950 million dollar wind down budget, or whatever it ends up being, intended to satisfy the claims of non-UAW union retirees for their health and welfare?

A. There is a portion that is anticipated. We do anticipate a contract rejection procedure. And so there is a portion that is estimated that will be an administrative expense prior to

the consummation of that contract rejection action.

Q. Are you familiar with the phrase Section 1113 of the Bankruptcy Code?

A. Yes, sir.

Q. And is that what you refer to when you used the words contract rejection a moment ago?

A. Yes, sir.

Q. Are you also familiar with the term Section 1114 of the Bankruptcy Code?

A. Yes, sir.

Q. And you're aware that that's a section that deals with post retirement health obligations?

A. Yes, sir.

Q. And is it your anticipation, as we sit here today, that if the 363 sale's process is approved, Old GM will begin a Section 1114 process to cancel the health and welfare owed to non-UAW union members?

A. Yes, sir.

Q. And when would you anticipate doing that?

A. Next week.

MR. KENNEDY: All right. I have no other questions, Your Honor.

THE COURT: Okay. Thank you, Mr. Kennedy.

CROSS-EXAMINATION

BY MR. BRESSLER:

Q. Good evening, Mr. Koch. My name is Barry Bressler, I represent the Ad Hoc Committee of Consumer Victims, product liability tort claimants and I just have a couple of questions.

Have you contemplated a procedure yet for liquidating the existing product liability tort claims?

A. Not in detail but we have contemplated that we would look to put in place a mediation process.

Q. And has the cost of handling that procedure been included in the wind down budget?

A. Yes, sir.

Q. Are you contemplating a binding mediation process or mediation process with some sort of appeals?

A. We have not gotten that far.

MR. BRESSLER: Thank you, sir.

THE COURT: Okay. Mr. Esserman?

MR. ESSERMAN: Just a few questions, Your Honor.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. ESSERMAN:

Q. Good evening, Mr. Koch. My name is Sandy Esserman. I'm counsel to the Ad Hoc Asbestos Committee. I just have a few questions for you on your testimony. As it stands now, the wind down budget is set at 950 million, is that correct?

A. That number has been referred to, that would not be the amount that we're currently anticipating.

Q. And what amount are you anticipating?

A. We currently believe that wind down will be something slightly in excess of 1.25 billion dollars.

THE COURT: Pause, please, Mr. Esserman. Did you say 1.25 billion, Mr. Koch?

THE WITNESS: Yes, Your Honor.

Q. Has the United States Treasury committed to leave 1.25 billion dollars behind in this estate to liquidate it?

A. What the treasury has committed to us is that they will meet with us, we'll work through -- they need to do some more diligence on the wind down budget. But it is their stated intention to leave us with sufficient cash to satisfy the costs estimated in the wind down budget that is ultimately agreed to.

Q. Well, what happens if the Treasury Department disagrees with you on how much it's going to wind down this estate and this Court has approved a sale?

A. I expect that we will have reached agreement with the U.S. Treasury before that occurs.

Q. Well, this Court may rule tomorrow or the next day, are you anticipating an agreement between tonight as we sit here today and tomorrow morning such that that agreement will be in writing and circulated to the creditors?

A. I don't know that it would be in writing but it will be documented.

Q. You mean not in writing, I always thought documented was

in writing.
A. Sir, you asking me to speculate as to how long it's going to take to generate a legal agreement. What I'm telling you is that I'm relying on what the Treasury folks have said. They've been very straightforward to work with so far, I anticipate they will continue to be straightforward to work with. And I believe that we will have, in ample time, what is needed to document the agreement.
Q. You know, Mr. Koch, you're right it is speculation. Because as you sit here today you don't know whether the treasury department will agree to a budget that will adequately fund a wind down of this estate, do you? You're hopeful. I understand that.
A. Well --
Q. But you don't know that, do you?
A. Well, I know it -- I believe I do know it because yesterday my partner and I talked with one of the treasury people who reaffirmed that that is the intention of the Treasury to do that.
Q. But you have nothing in writing from the U.S. Treasury on this subject, do you?
A. I do not today, no.
Q. Okay. And yet you're here asking the Court to approve a sale which may leave inadequate funds for a wind down budget if you and the Treasury don't agree, isn't that what you're asking

this Court to do?

A. Sir, I'm not asking the Court to approve a sale.

Q. You're not? Okay. You're not asking the Court to approve the sale? Okay. Would you like this Court to deny the sale?

A. No.

Q. Okay. As it sits today, if there are no further agreements with the United States Treasury, what is the amount of money that the United States Treasury has allowed as a wind down budget of this estate?

A. I believe the number is 950 million.

Q. And it's your view that that number is inadequate?

MR. SCHWARTZ: I'm sorry; I think documents were filed last night that say at least 950 million dollars.

MR. ESSERMAN: I don't know what they filed last night but --

THE COURT: Well --

MR. ESSERMAN: My point simply, Your Honor --

THE COURT: No, Mr. Esserman.

MR. ESSERMAN: I apologize.

THE COURT: Thank you. On the one hand I can understand why you might not know what something that was filed last night says. But on the other hand, once you've been told that there's a document out there that may be inconsistent with the premise of your question, I'm not going to permit you to ask a question premised upon a fact that's in doubt until it's

clarified. And frankly, if a lawyer, any lawyer on any side of this case makes a representation to me, until he or she has shown to me that that lawyer's own reliability is unreliable, I think a representation from a lawyer in this courtroom is good enough for me.

Now there's a problem with a premise so you can ask a question that doesn't have that premise. Or if you think it's so important, I'll give you the opportunity to ask more questions of Mr. Koch tomorrow after you can see if Mr. Schwartz is lying to you and lying to me when that representation was made.

MR. ESSERMAN: Your Honor, I would have no further questions and, frankly, would withdraw every question I asked if Mr. Schwartz would stand up and say we're committed to fund the estate for a wind up budget of --

THE COURT: No. We're not going to make let's make a deal here. What we will do is you're entitled to test Mr. Schwartz' credibility in making a representation to me, if you want to.

MR. ESSERMAN: Okay. Your Honor, it's -- there's nothing nefarious here. I'm just concerned, from the estate's standpoint, that there's enough money being left behind. And I get concerned --

THE COURT: Mr. Esserman, you made that point to me between five and ten minutes ago. I understood it when Mr.

Eckstein made it.

MR. ESSERMAN: Okay.

THE COURT: I understood it when you made the first five or ten questions of your further examination and I understand when you asked the question, in words or in substance, there isn't anything in writing yet and Mr. Koch pretty much agreed with you. Not pretty much, totally agreed with you. You made your point at that point in time.

MR. ESSERMAN: I'm done and I apologize to the Court.

THE COURT: All right. Thank you. Thank you. Other objectors? Okay, Mr. Parker, you're up, please.

(Pause)

CROSS-EXAMINATION

BY MR. PARKER:

Q. Mr. Koch. Hi. I'm Oliver Parker. I've got a couple of questions for you. The -- your liquidation value that you did, as part of the liquidation value, did you make a calculation of what the net operating losses might be worth to an acquiring company in a liquidation?

A. Sir, in a Chapter 7 liquidation, net operating losses would have zero value.

Q. Okay. In a Chapter 7 liquidation, a -- the corporate shell could not be sold independently of the assets?

A. The -- I believe, sir, that the rules surrounding survivability of net operating losses would really preclude

that from occurring.

Q. Okay. You're going to be the chief restructuring officer of the new -- I'm sorry, of the old company, correct? Sorry, the new CEO?

A. Yes, sir.

Q. When -- are there any other liabilities that are going to be administrative expenses besides the environmental liability and, of course, the cost of administration and the cost of the mediation process that you're talking about?

MR. MILLER: In Mr. Parker's question, he said the cost of administration. That includes everything that relates to the administration. So I don't know what he's talking about.

THE COURT: Sustained as to form. But you can rephrase, Mr. Parker.

MR. PARKER: Okay.

Q. Besides the cost of actually hiring some people like yourself and others to wind up OldCo, you indicated that there were some other costs of administration; there was environmental costs of -- I think you said something like 530 million dollars; there were costs of mediation for the tort claimants to try to settle with them. Are there any other costs, administrative or priority costs, that you anticipate?

A. Well, there will be some priority tax claims. We don't have an estimate of their amount, but all of the expenses that

we incur, whether it be wind-down costs or holding costs for plants that are being decommissioned, all of those would be, in my view, costs of administration that are included in as administrative expenses.

Q. Are those plants going to have any value?

A. Well, we hope so, but they're going to be -- they're going to be very difficult to -- they're going to be very difficult to either sell or dispose of. Many, if not most, have some form of environmental contamination that will need to be dealt with. So we'll have a very difficult time. We'll do the best that we can.

Q. Do you know, is the Treasury Department willing to amend the contract with General Motors to provide that if the costs of administration exceed their estimate that there will be a -- that they will bring additional money to the table?

MR. SCHWARTZ: Objection.

THE COURT: Asked and answered?

MR. SCHWARTZ: Asked and answered.

THE COURT: Sustained.

Q. Okay. The 950 million, or whatever it turns out to be, the money that's given to wind down the estate to pay the cost of administration, will that have a lien or claim on the ten percent stock and fifteen percent warrants that are supposed to be distributed?

A. I believe that as -- that it will not have a lien on

the -- it will not have a lien on the stock, but the -- it will be a nonrecourse loan to the Treasury. So the stock of New GM will be held free and clear in OldCo until we're in a position to make a distribution to the creditors.

Q. And the U.S. Treasury will not be one of the creditors that gets a distribution?

A. That is my understanding, sir, unless --

MR. SCHWARTZ: Objection. To clarify, that's on account of the LSA and the DIP.

THE COURT: All right, time out here, because I think, in essence, you were trying to correct Mr. Parker. I don't have the ability to make an evidentiary ruling on whether this question is objectionable or not. I think what we need to do is I have to temporarily sustain that objection. You have to lay a foundation, Mr. Parker. And that's the way we would have to do it by the book, by conditional use of evidence. Maybe if you want to take eight seconds to talk to Mr. Schwartz about how you can ask the question so he won't object to it, that would save us a lot of time, more time than going by the book.

(Pause)

Q. What I'm trying to find out is, is the government going to be getting some of the ten percent stock and fifteen percent warrants that's going to Old Company because of the 950 million dollars?

A. No, sir.

Q. Okay, so Treasury isn't looking for reimbursement from the stock and the warrants for the 950, or whatever it is?

MR. MILLER: Answered, Your Honor.

THE COURT: Sustained.

MR. PARKER: Okay.

Q. How much does it cost to decommission a plant?

A. It varies by plant, but I believe it's probably on the order of five or six million dollars to drain the fluids and basically do the above-ground environmental that will make the plant safe.

Q. And how many plants are we decommissioning?

A. Well, there's a total, I believe, of about sixty-nine million dollars in the budget. So that probably sounds like about a dozen.

Q. Okay. The -- I realize that the cost of the 513 and 514 procedures, from your testimony, is going to be an administrative cost, but whatever the --

THE COURT: What? What sections do those include, did you say?

MR. PARKER: 1113 and 1114.

THE COURT: Oh, okay.

MR. MILLER: I'm sorry.

Q. But once it's determined whatever the outstanding claim is of the non-UAW unions, that's not an administrative cost, is

it?

A. No, sir.

Q. And while the cost of mediation is an administrative cost, that is, a cost of mediation for the tort claimants, their underlying claims would not be administrative costs, correct?

A. That is correct.

Q. Do you have any idea what you expect the total claims to range, the nonadministrative claims to range?

MR. MILLER: Objection, Your Honor. Asked and answered.

THE COURT: It's in exhibits we have in the record, Mr. Parker.

MR. PARKER: Yeah, but I don't think he's testified to it, Your Honor.

THE COURT: If you think that his knowledge trumps what's in the exhibits and is relevant for that purpose, you may answer. Go ahead, Mr. Koch. If you have an understanding, I'll let you answer.

A. I did answer earlier that we do not have an estimate of total claims at this time.

Q. Any ballpark?

A. No, sir.

Q. Okay.

MR. PARKER: Is it possible for us to get a copy of the document that was filed yesterday, Your Honor -- I mean,

this morning, Your Honor?

THE COURT: Forgive me, Mr. Parker. I've cut you an awful lot of slack about coming to the Court unprepared, and I don't think it's fair to ask the other parties, or the Court, to fetch for you.

MR. PARKER: No, Your Honor --

THE COURT: Make your presentation. Are you talking about seeing a document that's in evidence?

MR. PARKER: No, sir, I'm talking about seeing a document that the government represents was filed this morning. None of us has seen it.

THE COURT: Mr. Schwartz, is it on the electronic filing system?

MR. SCHWARTZ: Yes, it's, to be clear, not a document that the government filed. It's a motion the debtors filed. But as to timing, actually, this has been on the docket for some time. In the final DIP order that Your Honor signed on the 25th of this month, it provides for a wind-down facility, quote, "in an amount not less than 950 million dollars".

THE COURT: All right. You want to let Mr. Parker look over your shoulder so he can see what you were reading from?

MR. PARKER: Your Honor, I'm a little confused because I understood when the previous person asked -- was asking questions, he wanted to know whether or not there was

anything in writing that said the government would give 1.25 billion for the --

THE COURT: No, he asked two separate questions, Mr. Parker.

MR. PARKER: And he was then informed that something was filed this morning with that regard. That's what I thought I heard.

THE COURT: No. What I heard -- I guess what I hear probably counts as much as anything -- I heard that management, Mr. Koch, believed that it'd probably take in the ballpark of about 1.2 billion to cover the administrative costs. And I heard Mr. Schwartz say -- and I also heard Mr. Koch say, and this is a paraphrase, that he understood the government would do that which was necessary. The exact words were the exact words, and if there's a difference between my memory, the exact words trump what my memory is.

Now, apart from that, I think Mr. Schwartz represented that a document had been filed in court that said -- and, Mr. Schwartz, you can read it again now because I don't think my memory should trump the words you've read. But I think we have those three separate things that were transmitted to me. Now, if anybody thinks that's wrong, I won't be so pig-headed as to insist that my memory is correct. And I certainly want to hear the exact words Mr. Schwartz read once again, even though I know it's repetitious.

MR. SCHWARTZ: I think that you captured exactly what I said, which was a response, I think, to the suggestion in Mr. Esserman's questioning that it was precisely a 950 million dollar budget. And I rose to say that there was a document filed which says it turns out to be the final DIP order, that there is a wind-down facility, quote, "in an amount not less than 950 million dollars".

THE COURT: All right.

MR. PARKER: But, Your Honor, not less than does not necessarily mean they're going to go more than.

THE COURT: I understand that.

MR. PARKER: And I thought the line of questioning was that how do we know that there'll be sufficient funds? And I had thought that we were being told that the government is -- Treasury is representing that there will be sufficient funds, that they won't --

THE COURT: Well, we haven't heard that from the Treasury yet.

MR. PARKER: Okay.

THE COURT: I think Mr. Koch has told you his understanding, which is, frankly, all you can get out of Mr. Koch.

MR. PARKER: Thank you, Your Honor.

THE COURT: Okay.

MR. PARKER: I have no further questions.

THE COURT: Okay. All right, any other objectors up for Mr. Koch? Redirect, Mr. Miller?

REDIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Koch, you heard Mr. Worth's testimony as to the value of the equity and warrants that will be the property of the estate of OldCo?

A. I did.

Q. And do you recall what that value was?

A. 3.9 to 4.9 billion dollars.

Q. Did you take into account the value of the warrants?

MR. RICHMAN: Objection, Your Honor. The question went to Mr. Worth's testimony and what Mr. Koch recalls. So --

THE COURT: Sustained.

Why don't you rephrase, please, Mr. Miller?

MR. MILLER: If I may, Your Honor, may I show the witness -- I think it's Exhibit 3, Mr. Worth's --

THE COURT: Yes, you may.

MR. MILLER: -- declaration.

Q. I draw your attention to page 14. Do you see the value that Mr. Worth beforehand put down, the equity value and the common stock going to OldCo?

A. I do.

Q. And that value's how much?

A. 7.4 billion to 9.8 billion dollars.

Q. So that the estate -- if that value is correct, the estate of OldCo will have over 7 billion dollars of value, not counting the 950 million dollars?

A. That is correct.

Q. At least the 950 million dollars, is that correct?

A. Yes, sir.

Q. In your opinion, is there any possibility of the administrator -- the estate of OldCo being administratively insolvent?

A. No, sir.

MR. MILLER: Thank you.

THE COURT: All right. Any recross?

MR. RICHMAN: One second, Your Honor.

THE COURT: Sure.

(Pause)

MR. RICHMAN: Just a few, Your Honor.

RECROSS-EXAMINATION

BY MR. RICHMAN:

Q. Mr. Koch, are you familiar with the widely reported agreement of GM's bondholders with Treasury that was reported just prior to the bankruptcy filing as to what consideration they would be receiving from NewCo?

A. I know only what I read in the newspaper.

Q. Was that ten percent of the equity of NewCo and warrants to acquire another fifteen percent were going to be what

bondholders, indeed what all unsecured creditors, could expect to receive from NewCo in these Chapter 11 cases?

MR. MILLER: Objection, Your Honor. If Mr. Richman has such a document, if he could show it to the witness. All Mr. Koch said is what he read in the newspaper.

Q. Do you have knowledge that there is an agreement that has been reported that unsecured creditors will receive ten percent of the equity of NewCo and warrants to acquire another fifteen percent?

MR. MILLER: That assumes facts that are not in the record, Your Honor, and goes beyond redirect.

MR. RICHMAN: I believe it is in the record in a number documents, including briefs.

THE COURT: I think it does not exceed redirect, and I'm going to overrule the objection with the understanding that if you -- that you don't have to accept his premises if you don't want to, Mr. Koch. You can answer the question as best you can.

A. I have only a very general understanding. So to make a -- some -- to give you a specific answer as to what my understanding of the specific deal that's been reached, I don't know the specific deal that's been reached.

Q. Well, if there was a specific deal reached of the type I just described that would provide ten percent of the equity of NewCo and warrants to acquire another fifteen percent for the

benefit of all unsecured creditors, would I be correct that your testimony in response to Mr. Miller's last question is that unsecured creditors could not, under any reasonable scenario, expect to receive those distributions?

A. It is possible that we would need to sell some of the new stock. It is -- we would -- if we had 950 million dollars to work with, we'll do our very best to wind down the estate at minimum cost. Any excess monies will be returned to the Treasury. I think it would be unlikely that we would get it done for 950; I wouldn't rule it out entirely. And so if we were unable to get it done for 950, then it is possible we would need to sell some of the stock.

Q. So I would be correct in saying, then, that the -- any distribution that has been set aside for unsecured creditors would likely have to be invaded and diminished in order to handle wind-down and other administrative costs that are not being covered by Treasury --

A. It is --

Q. -- correct?

A. That is possible.

MR. RICHMAN: Thank you.

THE COURT: Okay. Mr. Eckstein?

RECROSS-EXAMINATION

BY MR. ECKSTEIN:

Q. Mr. Koch, let me just clarify a couple of items that I

believe were the subject of your testimony. Did I understand you to testify that in your view this estate will have sufficient assets outside of the stock that is being retained by OldCo, the stock and the warrants; that this estate will have sufficient liquid assets, either the 950 or some additional amount of cash being provided by Treasury, to satisfy the wind-down obligations of this estate?

MR. MILLER: Objection, Your Honor.

THE COURT: Sustained. And here's the problem, folks. I understand the point that both of you folks are making. Mr. Miller, you made the point that there's aggregate assets so that there's no way that I or another judge could find the case administratively insolvent. Mr. Eckstein is making quite a different point, which is that a good chunk, let's call it between 7.4 and 9.8 billion bucks' worth of stock, is going to be illiquid until it's converted to cash and before it's registered with the SEC without an 1145 exemption. It's going to be hard to unload. In the meantime, the estate's going to be short on liquidity.

I understand the points that you're trying to make, Mr. Epstein, but you got to ask questions that are focused on liquidity as contrasted to administrative insolvency in the technical sense, unless you're trying to show me something different.

MR. ECKSTEIN: Your Honor, and I'll save it for --

the argument I'll save for later in the hearing, but I am making a somewhat different point, and that is that -- and I understood Mr. Koch to testify that he expects that the amount of cash that is being left in the estate by the United States Treasury will be sufficient to satisfy the wind-down obligations separate and apart from the stock and the warrants. And it was that issue that I was going to, which subsumes the liquidity issue, Your Honor. But --

THE COURT: Okay, but then if you've got further nuances, I'm not keeping up with you on that. So if you have further questions that you want to develop, go ahead and do it; just make them a little clearer in terms of whether you're talking about assets, liquidity or something possibly --

MR. ECKSTEIN: I will do so, Your Honor. Thank you.

THE COURT: Okay. Thanks.

BY MR. ECKSTEIN:

Q. Mr. Koch, are you familiar with negotiations that took place, prior to the commencement of this case, between representatives of an ad hoc committee for bondholders and the United States Treasury regarding the amount of equity and warrants that will be left for the benefit of unsecured creditors of this estate?

A. I have secondhand knowledge of those discussions.

Q. And what did -- what was your understanding as to what was agreed to, to be left for unsecured creditors of this estate?

MR. MILLER: Objection, Your Honor. It's hearsay.

THE COURT: It is hearsay. So unless it's not for the truth of the matter asserted, I have to sustain Mr. Miller's objection.

MR. ECKSTEIN: Just a few more questions, if I may.

THE COURT: Sure. Of course.

Q. Mr. Koch, did you ever see a term sheet that summarized the understanding reached between the bondholders and the U.S. Treasury?

MR. MILLER: Object to the question, Your Honor. It assumes there was an agreement between the bondholders and somebody. I don't know who he's talking about.

THE COURT: Sustained as to form for lack of foundation. But if you can lay the foundation, Mr. Eckstein, you can try.

Q. Mr. Koch, are you familiar with a term sheet that reflected any discussions that took place between U.S. Treasury and an ad hoc committee of bondholders?

A. I don't recall if I ever saw a term sheet or not.

MR. ECKSTEIN: Your Honor, may I approach the witness for a moment?

THE COURT: Sure. You can go ahead and see it now. But before you ask the question --

MR. ECKSTEIN: I will, Your Honor.

THE COURT: -- give Mr. Miller a copy, and anybody

else who needs to see it.

(Pause)

Q. Mr. Koch, have you ever seen this term sheet?

A. No, sir.

Q. So you're not familiar with it?

A. That is correct.

Q. Okay.

MR. ECKSTEIN: Thank you, You Honor. I'll save the question.

THE COURT: Okay. Any other objectors for Mr. Koch? All right, Mr. Miller, anything further?

MR. MILLER: No, sir.

THE COURT: All right, Mr. Koch, you're excused. Thank you.

THE WITNESS: Thank you.

THE COURT: Okay, folks, it's now twenty-five to 8. I'd like to get a sense as to how long Mr. Repko's expected to be. If he's more than a very modest period of time, I inclined to go tomorrow.

MR. RICHMAN: Your Honor?

THE COURT: Mr. Richman?

MR. RICHMAN: With your permission, I would prefer that we do that tomorrow. I think it would be more efficient. I don't know who else has questions. There's -- I think we can benefit from a break as well.

MR. MILLER: Your Honor, can we get some idea as to what Mr. Richman -- how many -- what time he expects --

THE COURT: You can get an idea, but I'll tell you that I'm not going to bind him to his representation. Mr. Richman, do you have a sense as to how long you're going to be?

MR. RICHMAN: I'm thinking in the nature of thirty to forty-five minutes. It may be less.

THE COURT: Okay. Are there other folks who think they may -- other objectors who think they want to question Mr. Repko too? All right, Mr. Parker raised his hand. I will start -- we'll do Mr. Repko tomorrow. But, Mr. Richman, who do you want to take first so that people can plan?

MR. RICHMAN: Mr. Repko.

THE COURT: All right. Fair enough. Okay then, folks --

MR. MILLER: Your Honor, if I might interrupt.

THE COURT: Yes, Mr. Miller?

MR. MILLER: There are some other matters on the calendar which I think we could clear up very quickly.

THE COURT: All right. Any objection to that?

UNIDENTIFIED SPEAKER: Couldn't hear. What?

MR. MILLER: There are other matters on the -- that were set on the calendar for today which we could clear up very quickly, including some uncontested matters.

THE COURT: Okay. Yeah, I think you have to tell

people what you have in mind so that -- because if I ask if they object without them knowing, it makes it a little hard for them to respond.

MR. MILLER: I tried, Your Honor. Mr. Smolinsky will handle that, Your Honor.

THE COURT: Okay.

MR. SMOLINSKY: Good evening, Your Honor. Joe Smolinsky from Weil, Gotshal & Manges, for the debtors. On the calendar today we have a lease rejection motion that Your Honor alluded to earlier. We're rejecting thirty-nine leases and six subleases. The rejection is effective today. There was one objection, Your Honor, Environmental Testing Corporation, which was a lease, a thirty-eight year lease. It expires on its terms December 2009. ETC had objected to the sale based on 105 of the Bankruptcy Code; Your Honor had made a comment about that earlier. And in speaking with counsel for ETC, they were willing to rest on their papers and have Your Honor decide as to whether or not Your Honor would defer to the business judgment of the company in rejecting that lease.

THE COURT: All right. Charlie, do you have my file on that?

MR. SMOLINSKY: Your Honor, we did file a reply yesterday. I'm not sure if Your Honor has it.

THE COURT: All right. I'm granting the motion vis-a-vis the nonobjectors, and I'm also granting it vis-a-vis the

objector, in reliance, in part, on my 2004 decision in Ames Department Stores, 306 B.R. 43. In that case we had a very similar situation in which a debtor wanted to reject the lease and leave his mess behind. And the landlord contended that the debtor couldn't reject the lease until it left the leased premises in the condition that they were supposed to have been left in under the lease.

And I ruled that the very purpose of the rejection aimed to relieve the estate of burdensome obligations. The failures to meet lease obligations could not themselves be impediments to the ability of a debtor to enforce those rights or to apply its rights to reject for the benefit of the creditors of the estate.

And I stated at page 51, "The Court necessarily must reject the landlord's implicit contention that the debtor's statutory right to reject can be qualified by requirements not in the Bankruptcy Code itself and especially by an implied requirement in compliance with lease covenants that are burdensome to the debtor, that they form part of the rationale for rejection in the first place." I'm not going to read the totality of that language, but I think it's directly on point here.

I fully recognize that any rejection can be a hardship to the lease counterparty, but there are a lot of people suffering in this case and I simply can't help everybody

who appears before me.

I refer everybody to the Ames decision in greater length for a more extensive discussion of that. But the motion is granted even vis-a-vis the objector.

And, Mr. Smolinsky, I would appreciate it if you or your designee would provide a copy of this portion of the transcript to your counterparty and, with that, then settle an order granting relief vis-a-vis that entity as well as the remainder, the ruling being nunc pro tunc to the time of the filing of the motion.

MR. SMOLINSKY: Thank you, Your Honor. Actually, the effective date of the rejection is today.

THE COURT: Oh, okay. That's less controversial.

MR. SMOLINSKY: Thank you, Your Honor.

THE COURT: Okay.

MR. SMOLINSKY: To clean up the docket, Your Honor, there were two utility objections that were carried over from the 25th. We have now resolved those objections and we can mark those matters off calendar.

THE COURT: Okay.

MR. SMOLINSKY: We can notify chambers. Your Honor, the last matter is an ordinary-course professional motion. It seeks to allow us to use streamlined procedures for the engagement of ordinary-course professionals, which are limited to lawyers and limited to those that bill less than 150,000

dollars a month with a two million dollar overall cap for each professional. The motion also contains a 20,000 dollar a month cap on de minimis professionals which don't need to go through the procedures of filing declarations and affidavits with the Court.

We've been in discussions -- we've had discussions with the U.S. trustee, with the creditors' committee; they have no objection. Your Honor, the U.S. trustee had asked us to make a representation on the record with respect to the de minimis professionals, that those professionals will not be engaged in activities related to the debtors' core restructuring activities. And while we don't necessarily object to the general premise of that representation, we do have certain concerns about misrepresenting the facts. So if I could just spend a minute to explain how the company engages professionals. We have approximately 70 ordinary-course professionals, which is between the 20,000 and 150,000. We have hundreds of professionals that would fall below the 20,000 dollars. These professionals are engaged -- these lawyers are engaged by the hundred-plus in-house lawyers that work for General Motors. So it's hard to coordinate the efforts of understanding what every de minimis professional is doing at every moment.

These de minimis professionals are engaged in providing legal opinions in the ordinary course, assisting on

international aspects of transactions, lemon law litigation, product liability litigation, environmental litigation, labor law, franchise law issues.

So these professionals are not engaged, are not hired for the bankruptcy, but the concern is that they may do certain aspects that relate indirectly to the bankruptcy efforts, such as getting legal opinions in connection with mortgages, and the like. So we can make the representation that these de minimis professionals are not engaged specifically but have long-standing relationships with the company for the aspects of the work that they're going to be engaged in.

THE COURT: Okay. Mr. Masumoto, Ms. Davis, are you okay with what he had to say? Just come to the microphone, if you would.

MR. MASUMOTO: Yes, Your Honor. The representations made satisfy the requirements that we set -- agreed to with counsel.

THE COURT: Okay. Okay, Mr. Eckstein, do you guys want to be heard now?

MR. ECKSTEIN: Your Honor, we're satisfied with the relief being sought.

THE COURT: Okay. Thank you.

MR. SMOLINSKY: Yes, Your Honor, with respect to the rejection of leases, there are two leases that are going to be handled by co-counsel because of conflict issues.

THE COURT: Sure. Come on up, please.

MR. MURRAY: Your Honor, Dan Murray for Jenner & Block, special counsel for the debtor. Your Honor, this is the second -- this is the debtor's second omnibus motion to reject certain unexpired leases of nonresidential real property. It's on the agenda for today. Your Honor, the landlord has no objections to the entry of an order that's been slightly modified by us, a draft order, to make a correction on an address. And it's not objected to by the landlord, Your Honor. We would submit --

THE COURT: Okay. Is the order that I've already received in the form that the landlords have had a chance to see it?

MR. MURRAY: They have seen the revised version, Your Honor, and I have it with me to give it to your clerk at the conclusion of the hearing.

THE COURT: Okay. Do that as soon as we're done, Mr. Murray.

MR. MURRAY: I will, Your Honor. Thank you.

THE COURT: It's approved.

MR. MURRAY: Thank you, Your Honor.

THE COURT: Okay. Anything else? Mr. Miller?

MR. MILLER: Yes, Your Honor. Mr. Eckstein's --

THE COURT: Sure. Come on up, please, Mr. Eckstein.

MR. ECKSTEIN: Thank you, Mr. Miller. Thank you,

Your Honor. Your Honor, item number 3 on the agenda in the uncontested section is the application of the official committee to retain my firm, Kramer Levin, as counsel for the official committee. I am told by my partner, Mr. Schmidt, that this application has been discussed extensively with the United States trustee. And I believe all of the issues have been resolved to the satisfaction of the United States Trustee, and there are no objections that have been filed. So we would respectfully ask --

THE COURT: Okay. Yeah, why don't you just stand in place for a second? Mr. Masumoto, can you join Mr. Eckstein at the lectern, please?

MR. MASUMOTO: Yes, Your Honor. That's correct. We have no further objections to the retention.

THE COURT: Okay.

MR. MASUMOTO: Your Honor, if I may, just as a housekeeping matter, with respect to the ordinary-course professionals, I just did want to indicate that it was also an agreement with our office that the debtors would modify the language of the order to indicate that if they intended to seek a raising of the limit of the ordinary-course professional cap, that they would apply to the Court.

THE COURT: Okay. Let me just try to stay organized here. I want to give Mr. Eckstein a chance to sit down and to give his partner some comfort. Mr. Eckstein, you're motion's

granted.

MR. ECKSTEIN: Thank you, Your Honor.

THE COURT: Now, Mr. Smolinsky, if you can come on up and just confirm that you're okay with what Mr. Masumoto's saying.

MR. ECKSTEIN: Your Honor --

MR. SMOLINSKY: Yes, Your Honor.

MR. ECKSTEIN: Sorry. We'll submit an order.

THE COURT: Sure.

MR. SMOLINSKY: Yes, Your Honor. We will comply with that and we'll add language to the order. And we'll get in touch with Brian to make sure that he's okay with the language.

And I also stand because I -- while I don't want to prejudge the outcome, I don't believe Your Honor has approved the motion yet.

THE COURT: I haven't approved which motion?

MR. SMOLINSKY: The ordinary-course professional.

THE COURT: This is why we need to take a recess tonight. Yes, your ordinary-course professionals motion is granted.

MR. SMOLINSKY: Thank you, Your Honor.

MR. MILLER: Thank you, Your Honor.

THE COURT: Okay, Mr. Miller.

MR. MILLER: Your Honor, there is one other matter on the calendar, Greater New York Automobile Dealers Association's

motion for consideration of amicus curiae statement, an amicus curiae statement regarding the 363 transaction.

THE COURT: Can you think of any reason why I should tell them they can't file a brief?

MR. MILLER: No, sir.

THE COURT: It's granted.

MR. MILLER: Thank you, Your Honor.

THE COURT: Okay. All right. We're adjourned until tomorrow, 8:00 for the relief from stay motion. I assume that that will be lightly attended, one lawyer, or whatever, on behalf of the estate, or whatever it takes, should be here at 8:00 for the movant. And he or she should tell security, if there's a problem in getting in early, that that person's needed for an 8:00 hearing. I'll tell the marshals to let people in starting at 7:30, unless we need to get things -- people going through security even earlier than that. And I'll expect the rest of you folks at 9. Those folks who have staked out positions at the counsel table or, for that matter, in this courtroom, should tell the marshals, if you have a problem, that I said you can have your seats back. Okay, we're adjourned until tomorrow.

ALL: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 7:51 p.m.)

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
DN: cn=Lisa Bar-Leib, c=US
Reason: I am the author of this document
Date: 2009.07.08 13:03:32 -04'00'

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Exhibit X

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Keith R. Martorana

Attorneys for the Motors Liquidation Company GUC Trust

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	**09-50026 (REG)**
	(Jointly Administered)
Debtors.	

MOTORS LIQUIDATION COMPANY GUC TRUST
QUARTERLY GUC TRUST REPORTS AS OF JUNE 30, 2014

The Motors Liquidation Company GUC Trust (the "**GUC Trust**"), by its undersigned counsel, pursuant to the Amended and Restated Motors Liquidation Company GUC Trust Agreement dated June 11, 2012 and between the parties thereto (as amended, the "**GUC Trust Agreement**") and in accordance with Paragraph 31 of the order of this Court dated March 29, 2011 confirming the Debtors' Second Amended Joint Chapter 11 Plan of liquidation dated March 18, 2011 of Motors Liquidation Company and its affiliated post-effective date debtors (the "**Confirmation Order**"), hereby files the following for the most recently ended fiscal quarter of the GUC Trust.

Financial statements required under Section 6.2(b) of the GUC Trust Agreement for the fiscal quarter ended June 30, 2014 are annexed hereto as Exhibit A (the "**GUC Trust Reports**").

The GUC Trust has no officers, directors or employees. The GUC Trust and Wilmington Trust Company, solely in its capacity as trustee and trust administrator (the "**GUC Trust Administrator**"), rely solely on receiving accurate information, reports and other representations from GUC Trust professionals and other service providers to the GUC Trust. In submitting the GUC Trust Reports and executing any related documentation on behalf of the GUC Trust, the GUC Trust Administrator has relied upon the accuracy of such reports, information and representations.

Dated: New York, New York
August 13, 2014

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Matthew J. Williams

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EXHIBIT A

Motors Liquidation Company GUC Trust

Condensed Financial Statements

Quarter Ended June 30, 2014

Motors Liquidation Company GUC Trust

Condensed Financial Statements

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Motors Liquidation Company GUC Trust
CONDENSED STATEMENTS OF NET ASSETS IN LIQUIDATION (LIQUIDATION BASIS)
(Dollars in thousands)

	June 30, 2014	March 31, 2014
	Unaudited	
ASSETS		
Cash and Cash Equivalents	$ 21,463	$ 14,932
Marketable Securities	39,306	44,382
Accrued Dividends on Holdings of New GM Common Stock	4,580	—
Holdings of New GM Securities (Note 5)	1,179,715	1,114,078
Other Assets and Deposits	1,598	1,502
TOTAL ASSETS	1,246,662	1,174,894
LIABILITIES		
Accounts Payable and Other Liabilities	3,933	3,105
Liquidating Distributions Payable (Note 4)	48,978	42,111
Reserves for Residual Wind-Down Claims (Note 7)	28,335	28,698
Reserves for Expected Costs of Liquidation (Note 7)	34,680	36,486
TOTAL LIABILITIES	115,926	110,400
NET ASSETS IN LIQUIDATION (Note 3)	$1,130,736	$1,064,494

See Accompanying Notes to Condensed Financial Statements.

Motors Liquidation Company GUC Trust
CONDENSED STATEMENTS OF CHANGES IN NET ASSETS IN LIQUIDATION (LIQUIDATION BASIS) (UNAUDITED)
(Dollars in thousands)

	Three Months Ended June 30, 2014	Three Months Ended June 30, 2013
Net Assets in Liquidation, beginning of period	$1,064,494	$1,390,181
Increase (decrease) in net assets in liquidation:		
Net (additions to) reductions in reserves for Expected Costs of Liquidation	(1,844)	1,678
Liquidating distributions (Note 4)	(10,278)	(18,923)
Net change in fair value of holdings of New GM Securities	69,030	417,924
Dividends and interest income	9,334	27
Income tax provision	—	(166,170)
Net increase in net assets in liquidation	66,242	234,536
Net Assets in Liquidation, end of period	$1,130,736	$1,624,717

See Accompanying Notes to Condensed Financial Statements.

Motors Liquidation Company GUC Trust
CONDENSED STATEMENTS OF CASH FLOWS (LIQUIDATION BASIS) (UNAUDITED)
(Dollars in thousands)

	Three Months Ended June 30, 2014	Three Months Ended June 30, 2013
Cash flows from (used in) operating activities		
Cash receipts from dividends and interest	$ 4,606	$ 25
Cash paid for professional fees, governance costs and other administrative costs	(2,623)	(5,476)
Cash paid for Residual Wind-Down Claims	(510)	(1,168)
Cash paid for distributions	(84)	(16)
Net cash flows from (used in) operating activities	1,389	(6,635)
Cash flows from (used in) investing activities		
Cash used to purchase marketable securities	(30,529)	(21,750)
Cash from maturities and sales of marketable securities	35,605	28,856
Net cash flows from investing activities	5,076	7,106
Cash flows from financing activities		
Cash from sale of New GM Securities for distribution	66	17
Net cash flows from financing activities	66	17
Net increase in cash and cash equivalents	6,531	488
Cash and cash equivalents, beginning of period	14,932	1,010
Cash and cash equivalents, end of period	$ 21,463	$ 1,498

The GUC Trust has not presented a reconciliation from net income to cash flow from operations. As an entity in liquidation, the GUC Trust does not have continuing operations that result in the measurement of net income as that term is used by generally accepted accounting principles to measure results of operations.

See Accompanying Notes to Condensed Financial Statements.

Motors Liquidation Company GUC Trust
Notes to Condensed Financial Statements
June 30, 2014

1. Description of Trust and Reporting Policies

The Motors Liquidation Company GUC Trust ("GUC Trust") is a successor to Motors Liquidation Company (formerly known as General Motors Corp.) ("MLC") for the purposes of Section 1145 of the United States Bankruptcy Code ("Bankruptcy Code"). The GUC Trust holds, administers and directs the distribution of certain assets pursuant to the terms and conditions of the Amended and Restated Motors Liquidation Company GUC Trust Agreement (the "GUC Trust Agreement"), dated as of June 11, 2012 and as amended from time to time, and pursuant to the Second Amended Joint Chapter 11 Plan (the "Plan"), dated March 18, 2011, of MLC and its debtor affiliates (collectively, along with MLC, the "Debtors"), for the benefit of holders of allowed general unsecured claims against the Debtors ("Allowed General Unsecured Claims").

The GUC Trust was formed on March 30, 2011, as a statutory trust under the Delaware Statutory Trust Act, for the purposes of implementing the Plan and distributing the GUC Trust's distributable assets. The Plan generally provides for the distribution of certain shares of common stock ("New GM Common Stock") of the new General Motors Company, formerly known as NGMCO, Inc. ("New GM"), and certain warrants for the purchase of shares of such stock (the "New GM Warrants," and, together with the New GM Common Stock, the "New GM Securities") to holders of Allowed General Unsecured Claims pro rata by the amount of such claims. In addition, the Plan provides that each holder of an Allowed General Unsecured Claim will obtain, in the form of GUC Trust Units (as defined below), a contingent right to receive, on a pro rata basis, additional shares of New GM Common Stock and New GM Warrants (if and to the extent such New GM Common Stock and New GM Warrants are not required for the satisfaction of previously Disputed General Unsecured Claims (as defined in Note 2) or liquidation for the payment of the expenses and liabilities of the GUC Trust) and certain cash, if any, remaining at the dissolution of the GUC Trust.

The GUC Trust exists solely for the purpose of resolving claims, distributing New GM Securities (and associated Dividend Cash (as defined below)) and winding down the affairs of MLC, all in accordance with a plan of liquidation of MLC approved by the Bankruptcy Court. Accordingly, the GUC Trust has prepared the accompanying financial statements on the liquidation basis of accounting in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). Under the liquidation basis of accounting as prescribed by the Financial Accounting Standards Board (FASB) Accounting Standards Codification, assets are stated at their estimated net realizable value, which is the non-discounted amount of cash into which an asset is expected to be converted during the liquidation period, while liabilities continue to be recognized at the amount required by other U.S. GAAP, and are not remeasured to reflect any anticipation that an entity will be legally released from an obligation. Additionally, under the liquidation basis of accounting, a reserve is established for estimated costs expected to be incurred during the liquidation period. Such costs are accrued when there is a reasonable basis for estimation. As described below, beginning in the quarter ended June 30, 2014, an accrual is made for estimated income or cash expected to be received over the liquidation period to the extent that a reasonable basis for estimation exists. These estimates are periodically reviewed and adjusted as appropriate. The valuation of assets at net realizable value, the accrual for dividends on the GUC Trust's holdings of New GM Common Stock expected to be received over the liquidation period, reserves for residual wind-down claims and reserves for expected liquidation costs represent estimates, are based on present facts and circumstances known to the GUC Trust Administrator, and are subject to change.

As described above, the beneficiaries of the GUC Trust are future holders and, to the extent their liquidating distributions have not yet been paid to them, current holders of Allowed General Unsecured Claims and future and current holders of GUC Trust Units ("Trust Beneficiaries"). As Disputed General Unsecured Claims are resolved and allowed and thereby become Allowed General Unsecured Claims, the holders thereof become entitled to receive liquidating distributions of New GM Securities (and the related Dividend Cash) and GUC Trust Units pro rata by the amount of such Claims and, upon such occurrence, the GUC Trust incurs an obligation to distribute such securities. Accordingly, liquidating distributions payable are recorded (at the fair value of such New GM Securities and the related Dividend Cash) as of the end of the period in which the Disputed General Unsecured Claims are resolved as Allowed General Unsecured Claims. Similarly, to the extent potential Term Loan Avoidance Action Claims (as defined in Note 2) were to arise (and would become allowed) in the manner described in Note 2, liquidating distributions payable would be recorded for the New GM Securities and the related Dividend Cash (at fair value) that would become distributable to holders of Term Loan Avoidance Action Claims upon such occurrence. Prior to the resolution and allowance of Disputed General Unsecured Claims (or potential Term Loan Avoidance Action Claims), liabilities are not recorded for the conditional obligations associated with Disputed General Unsecured Claims. Rather, the beneficial interests of Trust Beneficiaries in the residual assets of the GUC Trust are reflected in Net Assets in Liquidation of the GUC Trust in the accompanying financial statements.

The accompanying (a) condensed statement of net assets in liquidation at March 31, 2014, which has been derived from audited financial statements, and (b) the unaudited interim condensed financial statements have been prepared in accordance with the instructions to Form 10-Q and, therefore, do not include all information and footnotes required by U.S. GAAP for complete financial statements. The GUC Trust believes all adjustments, normal and recurring in nature, considered necessary for a fair presentation have

been included. The changes in net assets in liquidation for the three months ended June 30, 2014 are not necessarily indicative of the changes in net assets that may be expected for the full year. The GUC Trust believes that, although the disclosures contained herein are adequate to prevent the information presented from being misleading, the accompanying interim condensed financial statements should be read in conjunction with the GUC Trust's financial statements for the year ended March 31, 2014 included in Form 10-K filed by the GUC Trust with the Securities and Exchange Commission on May 22, 2014.

The preparation of condensed financial statements in conformity with U.S. GAAP requires the GUC Trust Administrator to make estimates and assumptions that affect the reported amounts of assets and liabilities and are subject to change.

Changes to U.S. GAAP are made by the FASB in the form of accounting standards updates (ASU's) to the FASB's Accounting Standards Codification. The GUC Trust considers the applicability and impact of all ASU's. ASU's not noted herein were assessed and determined to be not applicable. During the quarter ended June 30, 2014, the GUC Trust adopted Accounting Standards Update No. 2013-07, "Liquidation Basis of Accounting". Such standard requires that income or cash expected to be received over the liquidation period be estimated and accrued to the extent that a reasonable basis for estimation exists. The effect of adoption of such standard was not material to the GUC Trust's financial statements for the quarter ended June 30, 2014. As of June 30, 2014, the GUC Trust has accrued approximately $4.7 million for (a) dividends of $4.6 million expected to be received by the GUC Trust on its holdings of New GM Common Stock and (b) interest income of approximately $155,000 expected to be earned on marketable securities over the estimated remaining liquidation period of the GUC Trust. Such accrued dividends consist of dividends of $0.30 per share declared by New GM in August 2014 payable to common stockholders of record on September 10, 2014. No accrual has been made with respect to any additional dividends that may be declared by New GM in the future, because the GUC Trust believes that a reasonable basis for estimation of such potential dividends does not exist at this time.

2. Plan of Liquidation

On March 31, 2011, the date the Plan became effective (the "Effective Date"), there were approximately $29,771 million in Allowed General Unsecured Claims. In addition, as of the Effective Date, there were approximately $8,154 million in disputed general unsecured claims which reflects liquidated disputed claims and a Bankruptcy Court ordered distribution reserve for unliquidated disputed claims ("Disputed General Unsecured Claims"), but does not reflect potential Term Loan Avoidance Action Claims. The total aggregate amount of general unsecured claims, both allowed and disputed, asserted against the Debtors, inclusive of the potential Term Loan Avoidance Action Claims, was approximately $39,425 million as of the Effective Date.

Pursuant to the GUC Trust Agreement, holders of Disputed General Unsecured Claims become entitled to receive a distribution of New GM Securities from the GUC Trust if, and to the extent that, such Disputed General Unsecured Claims become Allowed General Unsecured Claims. Under the GUC Trust Agreement, the GUC Trust Administrator has the authority to file objections to such Disputed General Unsecured Claims and the Bankruptcy Court has extended the time by which the GUC Trust may object to Disputed General Unsecured Claims and Administrative Expenses as defined in the Plan to September 16, 2014 (which date may be further extended by application to the Bankruptcy Court). Such claims may be prosecuted through alternative dispute resolution proceedings, including mediation and arbitration ("ADR Proceedings"), if appropriate. As of June 30, 2014, there were approximately $79.5 million in Disputed General Unsecured Claims, which amount has been significantly reduced from approximately $8,154 million as of the Effective Date. See "—Allowed and Disputed Claims" below.

To the extent that all or a portion of a Disputed General Unsecured Claim is deemed invalid—or "disallowed"—by order of the Bankruptcy Court, by order of the tribunal presiding over the ADR Proceeding (if applicable), or by settlement with the GUC Trust, such portion of the Disputed General Unsecured Claim that is disallowed is not entitled to a distribution from the GUC Trust (subject to any appeal rights of the claimant). However, to the extent that a Disputed General Unsecured Claim is fully resolved, and such resolution results in all or a portion of the original Disputed General Unsecured Claim being deemed valid—or "allowed"—by order of the Bankruptcy Court, by order of the tribunal presiding over the ADR Proceeding (if applicable), or by settlement with the GUC Trust, such portion of the Disputed General Unsecured Claim that is allowed will be considered an Allowed General Unsecured Claim on the Effective Date (such claims, "Resolved Disputed Claims").

Only one avoidance action, captioned Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. et al., Adv. Pro. No. 09-00504 (Bankr. S.D.N.Y. July 31, 2009) (the "Term Loan Avoidance Action"), was commenced prior to the statutory deadline for commencing such actions. The Term Loan Avoidance Action was commenced by the Official Committee of Unsecured Creditors of Motors Liquidation Company (the "Committee"), and seeks the return of approximately $1.5 billion that had been transferred by the Debtors (with funds advanced after the commencement of the Debtors' chapter 11 cases by the United States Treasury and Export Development Canada (together, the "DIP Lenders")) to a consortium of prepetition lenders pursuant to the terms of the order of the Bankruptcy Court. On December 15, 2011, in accordance with the Plan, upon the dissolution of MLC, the Term Loan Avoidance Action was transferred to the Avoidance Action Trust (as defined below). To the extent that Wilmington Trust Company, not in its individual capacity but solely in its capacity as the trustee and trust administrator of the Avoidance Action Trust (the "Avoidance Action Trust Administrator"), is successful in obtaining a judgment against the defendant(s)

to the Term Loan Avoidance Action, Allowed General Unsecured Claims will arise in the amount of any transfers actually avoided (that is, disgorged) pursuant thereto (such general unsecured claims "Term Loan Avoidance Action Claims," and together with Resolved Disputed Claims, the "Resolved Allowed Claims").

It is still unclear whether any amounts actually avoided pursuant to the Term Loan Avoidance Action would be for the benefit of holders of Allowed General Unsecured Claims. The Committee has taken the position that (a) the DIP Lenders are not entitled to any proceeds of the Term Loan Avoidance Action and have no interests in the trust established for the action under the Plan (the "Avoidance Action Trust") and (b) the holders of Allowed General Unsecured Claims have the exclusive right to receive any and all proceeds of the Term Loan Avoidance Action, and are the exclusive beneficiaries of the Avoidance Action Trust with respect thereto.

Litigation with respect to these issues is ongoing (with the Term Loan Avoidance Action currently pending before the U.S. Court of Appeals for the Second Circuit), and the rights to any recoveries on the Term Loan Avoidance Action are still disputed. In no event, however, will any funds reclaimed from the pre-petition lenders be transferred to or otherwise benefit the GUC Trust or be distributed to holders of GUC Trust Units.

GUC Trust Distributable Assets

Pursuant to the terms of the Plan, the Bankruptcy Court authorized the distribution of 150 million shares of New GM Common Stock issued by New GM, warrants to acquire 136,363,635 newly issued shares of New GM Stock with an exercise price set at $10.00 per share ("New GM Series A Warrants"), and warrants to acquire 136,363,635 newly issued shares of New GM Stock with an exercise price set at $18.33 per share ("New GM Series B Warrants"). Record ownership of the New GM Securities was held by MLC for the benefit of the GUC Trust until the dissolution of MLC on December 15, 2011, at which time record ownership was transferred to the GUC Trust.

The GUC Trust received dividends on the New GM Common Stock it held in March and June 2014 aggregating $9.2 million. New GM has also declared a dividend of $0.30 per share to holders of New GM Common Stock of record as of September 10, 2014. Such dividends and any future declared dividends on New GM Common Stock are required to be applied to the same purpose as the New GM Common Stock to which such dividends relate. If shares of New GM Common Stock are distributed to holders of subsequently Resolved Allowed Claims and GUC Trust Units, then the dividends relating to those shares will also be distributed to such holders. If, however, shares of New GM Common Stock are sold by the GUC Trust in accordance with the GUC Trust Agreement to fund the costs and liabilities of the GUC Trust, then, in that case, the dividends relating to those shares will be applied to such costs and liabilities of the GUC Trust and (just like the cash proceeds from the sale of the shares of New GM Common Stock) will be maintained in Other Administrative Cash. Because such dividends are applied to the same purpose as the New GM Common Stock, references in this Form 10-Q to New GM Common Stock and New GM Securities that have been set aside from distribution, reserved or sold should be understood to include the dividends (if any) relating to such New GM Common Stock, unless expressly indicated otherwise. The amount of cash and cash equivalents held by the GUC Trust that relates to dividends received by the GUC Trust on New GM Common Stock held by the GUC Trust is referred to as Dividend Cash.

Funding for GUC Trust Costs of Liquidation

The GUC Trust has incurred and will continue to incur certain costs to liquidate the trust assets and implement the Plan. On or about the Effective Date, pursuant to the Plan, MLC contributed approximately $52.7 million to the GUC Trust to be held and maintained by the GUC Trust Administrator (the "Administrative Fund") for the purpose of paying certain fees and expenses (including certain tax obligations) incurred by the GUC Trust (including fees of the GUC Trust Administrator and the GUC Trust Monitor and the fees and expenses for professionals retained by the GUC Trust), other than the Reporting Costs, as defined below ("Wind-Down Costs"). As of June 30, 2014, the remaining Administrative Fund aggregated $10.7 million (consisting of cash and cash equivalents and marketable securities aggregating $9.8 million and prepaid expenses of $0.9 million). Of that amount, approximately $8.0 million has been separately designated for the satisfaction of certain costs and liabilities of the GUC Trust (other than Reporting Costs (as defined below)) and $2.7 million is available for other Wind-Down Costs, which funds must be exhausted prior to the use of any Other Administrative Cash (as defined below) for such purposes. Cash or investments from the Administrative Fund, if any, which remain at the winding up and conclusion of the GUC Trust must be returned to the DIP Lenders.

The GUC Trust Agreement authorized the GUC Trust to liquidate approximately $5.7 million of New GM Securities (the "Initial Reporting Cash") shortly after the Effective Date for the purposes of funding certain fees and expenses of the GUC Trust (the "Reporting Costs"), including those directly or indirectly relating to (i) reports to be prepared and filed by the GUC Trust pursuant to applicable rules, regulations and interpretations of the Securities and Exchange Commission, (ii) the transfer, registration for transfer and certification of GUC Trust Units, and (iii) the application by the Committee to the Internal Revenue Service for a private letter ruling regarding the tax treatment of the GUC Trust and the holders of Allowed General Unsecured Claims in respect to the distribution of New GM Securities. The GUC Trust Agreement provides that the Administrative Fund may not be utilized to satisfy any Reporting Costs.

The GUC Trust Agreement provides that, if the GUC Trust Administrator determines that the Administrative Fund is not sufficient to satisfy the current or projected Wind-Down Costs or the Initial Reporting Cash is not sufficient to satisfy the current or projected Reporting Costs, the GUC Trust Administrator, with the approval of the GUC Trust Monitor, is authorized to set aside New GM Securities from distribution for these purposes. The GUC Trust Administrator may then liquidate such "set aside" New GM Securities to fund the Wind-Down Costs and/or Reporting Costs with the required approval of the Bankruptcy Court. New GM Securities that are set aside and/or sold in this manner will not be available for distribution to the beneficiaries of GUC Trust Units, and the cash proceeds of any such sale (including related Dividend Cash) will be classified as "Other Administrative Cash" under the GUC Trust Agreement. Although any such liquidation of set aside New GM Securities will be reflected in the financial statements of the GUC Trust at the time of liquidation, the setting aside of New GM Securities, including Dividend Cash, itself is not reflected in the Statement of Net Assets in Liquidation or any of the other financial statements of the GUC Trust. Separate from this process of setting aside New GM Securities to satisfy unfunded projected costs and expenses of the GUC Trust, as a matter of financial reporting, the GUC Trust records a reserve in its Statement of Net Assets in Liquidation (the source of funding of which is not addressed therein) for all expected costs of liquidation for which there is a reasonable basis for estimation. For this reason, among others, there is not a direct relationship between the amount of such reserve reflected in the Statement of Net Assets in Liquidation and the value of any New GM Securities that are set aside for current or projected costs and expenses of the GUC Trust. Adjustments to the Reserve for Expected Costs of Liquidation as reported in the Statement of Net Assets in Liquidation are recorded only when there is a reasonable basis for estimation of the expected incurrence of additional costs or a reduction in expected costs. For more information regarding the Reserves for Expected Costs of Liquidation reflected in the Statement of Net Assets in Liquidation, see Note 7.

The Bankruptcy Court previously approved in March 2012, and December 2012, the sale of New GM Securities to fund the then current and projected costs and expenses of the GUC Trust. In March 2012, the Bankruptcy Court order also authorized the sale of further New GM Securities for the purpose of funding certain fees, costs and expenses of the Avoidance Action Trust (as described below under the heading "—Funding for Avoidance Action Trust"). Through March 31, 2013, sales of New GM Securities to fund projected Reporting Costs and Wind-Down Costs aggregated approximately $50.2 million, including the Initial Reporting Cash (which amounts comprised part of the GUC Trust's Other Administrative Cash). Such securities sold aggregated 902,228 shares of New GM Common Stock, 820,205 New GM Series A Warrants and 820,205 New GM Series B Warrants. There have been no subsequent sales of securities to fund Wind-Down Costs and Reporting Costs.

As of June 30, 2014, Other Administrative Cash aggregated $11.5 million. To the extent that any of the Other Administrative Cash is not ultimately required and is held by the GUC Trust at the time of its dissolution, such remaining Other Administrative Cash will be distributed by the GUC Trust to holders of the GUC Trust Units.

As of June 30, 2014, New GM Securities with an aggregate fair market value as of that date of $64.3 million and related Dividend Cash of $0.5 million have been set aside for projected GUC Trust fees, costs and expenses to be incurred beyond 2014, including $5.4 million set aside for projected income taxes on dividends received on holdings of New GM common Stock as described below in "Funding for Potential Tax Liabilities on Dispositions of New GM Securities and Dividends on New GM Common Stock". Accordingly, such New GM Securities are currently not available for distribution to the beneficiaries of the GUC Trust Units.

Funding for Potential Tax Liabilities on Dispositions of New GM Securities and Dividends on New GM Common Stock

The GUC Trust is subject to U.S. federal income tax on realized net gains from the distribution and sale of shares of New GM Common Stock and New GM Warrants (such taxes, "Taxes on Distribution"). The GUC Trust is also subject to U.S. federal income tax on dividends received on New GM Common Stock held by the GUC Trust (such taxes, "Dividend Taxes"). The GUC Trust Agreement provides that the Administrative Fund may not be utilized to satisfy any Taxes on Distribution or Dividend Taxes. As such, the GUC Trust Administrator is authorized, with the approval of the GUC Trust Monitor, to set aside from distribution certain numbers of New GM Securities, the liquidated proceeds of which, along with the related Dividend Cash, would be sufficient to satisfy any potential Taxes on Distribution or Dividend Taxes. The New GM Securities that are set aside for Dividend Taxes are included in the set-aside for Wind-Down Costs described above in "Funding for GUC Trust Costs of Liquidation". The GUC Trust Administrator may then liquidate such "set aside" New GM Securities to fund the Taxes on Distribution or Dividend Taxes, with the approval of the GUC Trust Monitor, but, with respect to Taxes on Distributions, without the necessity of obtaining approval of the Bankruptcy Court. New GM Securities that are set aside and subsequently sold in this manner will not be available for distribution to the beneficiaries of GUC Trust Units, and the cash proceeds of any such sale, along with the related Dividend Cash, will be classified as "Other Administrative Cash" under the GUC Trust Agreement. New GM Securities that have been so set aside are included in Holdings of New GM Securities in the accompanying Statement of Net Assets in Liquidation. In the event such set-aside New GM Securities were sold to fund Taxes on Distribution or Dividend Taxes, the proceeds of such sale would be reflected in Cash and Cash Equivalents

and/or Marketable Securities until expended to pay Taxes on Distribution or Dividend Taxes. While the set-aside New GM Securities and the related Dividend Cash are not available for distribution, there is no corresponding liability or reserve related to such set aside assets reflected in the Statement of Net Assets in Liquidation or any of the other financial statements of the GUC Trust.

During the quarter ended June 30, 2014, the GUC Trust Administrator reviewed the current and potential Taxes on Distribution. As a result of such review, the GUC Trust Administrator determined that New GM Securities with an aggregate fair market value (as of June 30, 2014) of $552.0 million and related Dividend Cash of $4.3 million should be set aside for potential Taxes on Distribution based on (1) the GUC Trust's method for calculating potential net gains on distributions or sales of New GM Securities (reduced by carryforward net operating and capital losses and future deductible expenses at June 30, 2014) and (2) the GUC Trust's method for converting the potential tax liability to the number of securities to be set aside. Such New GM Securities are not currently available for distribution to the beneficiaries of GUC Trust Units. The GUC Trust Administrator intends to continue to reevaluate the numbers of New GM Securities set aside on a quarterly basis.

As previously disclosed, during the quarter ended September 30, 2013, the GUC Trust made a determination to file its U.S. federal income tax returns taking the position that beneficial ownership for a substantial majority of New GM Securities was transferred from MLC to the GUC Trust on March 31, 2011, and that the tax basis of such New GM Securities should be determined with reference to the value of such securities on such date, instead of December 15, 2011, when record ownership of the remaining New GM Securities still held by MLC was transferred from MLC to the GUC Trust. For the remaining substantial minority of New GM Securities transferred from MLC to the GUC Trust, the GUC Trust determined that the transfer of beneficial ownership occurred on other dates for which the tax basis should be determined by reference to the value of such securities on such dates. Subsequently, the GUC Trust filed its U.S. federal income tax return for the years ended March 31, 2014 and 2013 with the Internal Revenue Service using the new tax position described above. This new tax position resulted in an increased tax basis of the New GM Securities from the prior tax position and, therefore, reduced taxable gains and increased taxable losses on distributions and sales of New GM Securities since March 31, 2011. The new tax position has not been sustained on examination by the Internal Revenue Service as of the date hereof. However, the GUC Trust believes, based on the available evidence and consultation with GUC Trust professionals, that it is more likely than not that the new tax position will be sustained on examination by the Internal Revenue Service based on the technical merits of the position. Accordingly, this new tax position has been recognized in the current and deferred income tax liabilities and the income tax provision in the GUC Trust's financial statements since the quarter ended September 30, 2013. By contrast, as a conservative measure, the calculation of the "set aside" of New GM Securities for potential Taxes on Distribution utilizes the prior tax position rather than the new tax position. The calculation of the "set aside" of New GM Securities for potential Taxes on Distribution will not reflect the new tax position unless and until the new tax position has been sustained on examination by the Internal Revenue Service, or the liability of the GUC Trust for Taxes on Distribution otherwise has been finally determined in accordance with Section 505(b) of the Bankruptcy Code, for all applicable income tax returns, including the GUC Trust's U.S. federal income tax returns for the year ended March 31, 2014 and subsequent years. The GUC Trust's U.S. federal income tax return for the year ended March 31, 2014 was filed with the Internal Revenue Service on June 12, 2014, and a prompt determination of tax liability pursuant to Section 505(b) of the Bankruptcy Code was requested that same day. As of the date of this Form 10-Q, the GUC Trust has not received notification from the Internal Revenue Service whether or not its income tax return for the year ended March 31, 2014 has been selected for examination. In the event that the GUC Trust subsequently receives such notification from the Internal Revenue Service, it intends to file a current report on Form 8-K disclosing whether or not the tax return will be audited by the Internal Revenue Service.

Residual Wind-Down Claims and Costs

Upon the dissolution of the Debtors, which occurred on December 15, 2011, the GUC Trust became responsible for resolving and satisfying (to the extent allowed) all remaining disputed administrative expenses, priority tax claims, priority non-tax claims and secured claims (the "Residual Wind-Down Claims"). On December 15, 2011, under the Plan, the Debtors transferred to the GUC Trust an amount of cash necessary (the "Residual Wind-Down Assets") to satisfy the ultimate allowed amount of such Residual Wind-Down Claims (including certain litigation defense costs related to the Term Loan Avoidance Action (the "Avoidance Action Defense Costs")), as estimated by the Debtors, and the costs, fees and expenses relating to satisfying and resolving the Residual Wind-Down Claims (the "Residual Wind-Down Costs"). The Residual Wind-Down Assets initially aggregated approximately $42.8 million (which amount consisted of approximately $40.0 million in cash, including approximately $1.4 million for the payment of Avoidance Action Defense Costs, and the transferred benefit of approximately $2.8 million in prepaid expenses). Should the Residual Wind-Down Costs and the Residual Wind-Down Claims be less than the Residual Wind-Down Assets, any excess funds will be returned to the DIP Lenders. If at any time the GUC Trust Administrator determines that the Residual Wind-Down Assets are not adequate to satisfy the Residual Wind-Down Claims (including the actual amount of Avoidance Action Defense Costs) and Residual Wind-Down Costs, such costs will be satisfied by Other Administrative Cash. If there is no remaining Other Administrative Cash, the GUC Trust Administrator is authorized to, with GUC Trust Monitor approval, set aside and, with Bankruptcy Court approval, sell New GM Securities to cover the shortfall. To the extent that New GM Securities are set aside and sold to obtain funding to complete the wind-down of the Debtors, such securities will not be available for distribution to the beneficiaries of the GUC Trust. Therefore, the amount

of Residual Wind-Down Claims and Residual Wind-Down Costs could reduce the assets of the GUC Trust available for distribution. Although any such sale of set aside New GM Securities would be reflected in the financial statements of the GUC Trust in the period of sale, the setting aside of New GM Securities and related Dividend Cash itself would not be reflected in the Statement of Net Assets in Liquidation or any of the other financial statements of the GUC Trust. After the GUC Trust has concluded its affairs, any funds remaining that were obtained from the sale of New GM Securities to fund the wind-down process or the resolution and satisfaction of the Residual Wind-Down Claims will be distributed to the holders of the GUC Trust Units.

The amount of Avoidance Action Defense Costs incurred to date exceeds the corresponding cash of $1.4 million received by the GUC Trust from MLC on the Dissolution Date by approximately $1.1 million. As a result, new Residual Wind-Down Claims have arisen in the amount of such excess. It is expected that additional Avoidance Action Defense Costs will be incurred for which additional Residual Wind-Down Claims will arise to be paid from the other remaining Residual Wind-Down Assets and, following the depletion of such assets, the Administrative Fund (to the extent of any excess amounts remaining in the Administrative Fund from the funds separately designated for the satisfaction of certain costs and liabilities of the GUC Trust), Other Administrative Cash or the sale of New GM Securities. As of June 30, 2014, $30.0 million in Residual Wind-Down Assets were held by the GUC Trust, which are recorded in cash and cash equivalents and marketable securities (aggregating approximately $29.9 million) and other assets and deposits (approximately $0.1 million) in the accompanying Condensed Statement of Net Assets in Liquidation. By comparison, there were approximately $1.3 million in Residual Wind-Down Claims against such assets as of June 30, 2014, subject to increase for new Residual Wind-Down Claims that are expected to arise for Avoidance Action Defense Costs.

In addition to the Residual Wind-Down Assets, the GUC Trust also received on the Dissolution Date approximately $3.4 million in cash from MLC for the purposes of funding (1) $1.4 million in respect of certain costs, fees and expenses payable under the Plan to the indenture trustees and fiscal and paying agents for the previously outstanding debt of MLC, or the Indenture Trustee / Fiscal and Paying Agent Costs, and (2) $2.0 million in respect of Reporting Costs. The funds received were credited to the reserve for expected costs of liquidation. Any unused portion of the funds designated for the Indenture Trustee / Fiscal and Paying Agent Costs must be returned to the DIP Lenders and will not be available for distribution to the holders of GUC Trust Units at the winding up and conclusion of the GUC Trust. As of June 30, 2014, funds designated for the Indenture Trustee / Fiscal and Paying Agents Costs held by the GUC Trust approximated $0.5 million and are recorded in cash and cash equivalents in the accompanying Condensed Statement of Net Assets in Liquidation.

3. Net Assets in Liquidation

Description

Under the GUC Trust Agreement and the Plan, as described more fully in Note 1, the beneficiaries of the GUC Trust are future and, to the extent their liquidating distributions have not yet been paid to them, current holders of Allowed General Unsecured Claims and future and current holders of GUC Trust Units. Certain assets of the GUC Trust are reserved for funding the expected costs of liquidation and potential tax liabilities and are currently not available to the Trust Beneficiaries. Other assets of the GUC Trust, primarily Holdings of New GM Securities, as described in Notes 1 and 5, are available to be distributed to the Trust Beneficiaries ("GUC Trust Distributable Assets") in accordance with the Plan and the GUC Trust Agreement. The amounts of net assets in liquidation presented in the accompanying Condensed Statements of Net Assets in Liquidation at June 30, 2014 and March 31, 2014 correspond to the amounts of GUC Trust Distributable Assets as of June 30, 2014 and March 31, 2014.

Trust Units

As described in Note 1, each holder of an Allowed General Unsecured Claim will retain a contingent right to receive, on a pro rata basis, additional shares of New GM Common Stock and New GM Warrants (if and to the extent such shares of New GM Common Stock and New GM Warrants are not required for the satisfaction of previously Disputed General Unsecured Claims or liquidation for the payment of the expenses or tax liabilities of the GUC Trust) and certain cash, if any, remaining at the dissolution of the GUC Trust. The GUC Trust issues units representing such contingent rights ("GUC Trust Units") at the rate of one GUC Trust Unit per $1,000 of Allowed General Unsecured Claims to each holder of an Allowed General Unsecured Claim, subject to rounding pursuant to the GUC Trust Agreement, in connection with the initial recognition of each Allowed General Unsecured Claim.

The GUC Trust makes quarterly liquidating distributions to holders of GUC Trust Units to the extent that certain previously Disputed General Unsecured Claims asserted against the Debtors' estates are either disallowed or are otherwise resolved favorably to the GUC Trust (thereby reducing the amount of GUC Trust assets reserved for distribution in respect of such asserted claims) and the amount of Excess GUC Trust Distributable Assets (as defined in the GUC Trust Agreement) as of the end of the relevant quarter exceeds thresholds set forth in the GUC Trust Agreement.

The following presents the changes during the three months ended June 30, 2014 in the number of GUC Trust Units outstanding or for which the GUC Trust was obligated to issue:

	Trust Units
Outstanding or issuable at March 31, 2014	31,853,702
Issued during the period	10,326
Less: Issuable at beginning of period (1)	(10,326)
Add: Issuable at end of period (1)	—
Outstanding or issuable at June 30, 2014 (2)	31,853,702

(1) The number of GUC Trust Units issuable at any time represents GUC Trust Units issuable in respect of Allowed General Unsecured Claims that were newly allowed during the fiscal quarter.

(2) The number of GUC Trust Units outstanding at any time represents GUC Trust Units issued in respect of Allowed General Unsecured Claims that were allowed in prior periods, including GUC Trust Units held by the GUC Trust for the benefit of (a) holders of Allowed General Unsecured Claims who had not yet supplied information required by the GUC Trust in order to effect the initial distribution to which they are entitled and (b) governmental entities that are precluded by applicable law from receiving distributions of GUC Trust Units and New GM Securities.

Allowed and Disputed Claims

The total cumulative pro rata liquidating distributions ultimately received by Trust Beneficiaries is dependent upon the current amount of Allowed General Unsecured Claims and final resolution of outstanding Disputed General Unsecured Claims and potential Term Loan Avoidance Action Claims (as described in Note 2). Disputed General Unsecured Claims at June 30, 2014 reflect claim amounts at their originally filed amounts, a court ordered distribution "set aside" for certain claims filed without a claim amount and other adjustments as ordered by the court or permitted by the Plan. The Disputed General Unsecured Claims may settle at amounts that differ significantly from these amounts and at amounts that differ significantly from the historical pattern at which claims have been settled and allowed in proportion to claims resolved and disallowed. As described in Note 1, prior to the resolution and allowance of Disputed General Unsecured Claims (or potential Term Loan Avoidance Action Claims), liabilities are not recorded for the conditional obligations associated with Disputed General Unsecured Claims. Liquidating distributions payable are recorded (at the fair value of New GM Securities to be distributed) as of the end of the period in which the Disputed General Unsecured Claims are resolved as Allowed General Unsecured Claims. Similarly, to the extent potential Term Loan Avoidance Action Claims were to arise (and would become allowed) in the manner described in Note 2, liquidating distributions payable would be recorded for the New GM Securities (at fair value) that would become distributable to holders of Term Loan Avoidance Action Claims upon such occurrence.

The following table presents a summary of the Allowed and Disputed General Unsecured Claims and potential Term Loan Avoidance Action Claims for the three months ended June 30, 2014:

(in thousands)	Allowed General Unsecured Claims	Disputed General Unsecured Claims	Term Loan Avoidance Action Claims	Maximum Amount of Unresolved Claims (1)	Total Claim Amount (2)
Total, March 31, 2014	$ 31,853,630	$ 79,500	$1,500,000	$1,579,500	$33,433,130
New Allowed General Unsecured Claims, net	—	—	—	—	—
Disputed General Unsecured Claims resolved or disallowed	—	—	—	—	—
Total, June 30, 2014	$ 31,853,630	$ 79,500	$1,500,000	$1,579,500	$33,433,130

(1) Maximum Amount of Unresolved Claims represents the sum of Disputed General Unsecured Claims and Term Loan Avoidance Action Claims.

(2) Total Claim Amount represents the sum of Allowed General Unsecured Claims and Maximum Amount of Unresolved Claims.

4. Liquidating Distributions

Liquidating distributions in the three months ended June 30, 2014 consisted of the following:

(in thousands)	Fair Value
Distributions during the period	$ 3,411
Less: Liquidating distributions payable at March 31, 2014	(42,111)
Add: Liquidating distributions payable at June 30, 2014	48,978
Total	$ 10,278

The distributions during the three months ended June 30, 2014 consisted of distributions to (1) holders of Resolved Disputed Claims and (2) holders of Allowed General Unsecured Claims who previously failed to fulfill informational requirements for distribution established in accordance with the GUC Trust Agreement, but subsequently successfully fulfilled such information requirements.

The GUC Trust was obligated at June 30, 2014 to distribute 627,650 shares of New GM Stock, 570,485 of New GM Series A Warrants, and 570,485 of New GM Series B Warrants in the aggregate to the following: (1) holders of GUC Trust Units for excess distributions payable and (2) certain holders of Allowed General Unsecured Claims who had not then satisfied certain informational requirements necessary to receive these securities. In addition, as of June 30, 2014, cash of $0.4 million was then distributable to (a) governmental entities which are precluded by applicable law from receiving distributions of New GM Securities, (b) for distributions in lieu of fractional shares and warrants, and (c) for Dividend Cash associated with the New GM Common Stock that the GUC Trust was obligated to distribute at June 30, 2014.

5. Holdings of New GM Securities

At June 30, 2014, the Holdings of New GM Securities, at fair value, consisted of the following:

	Number	Fair Value (in thousands)
New GM Common Stock	15,249,101	$ 553,542
New GM Series A Warrants	13,862,577	368,883
New GM Series B Warrants	13,862,577	257,290
Total		$1,179,715

As described in Note 4, as of June 30, 2014, the GUC Trust had accrued liquidating distributions payable aggregating $49.0 million, consisting of $48.6 million in respect of New GM Securities and cash of $0.4 million then distributable. As a result, the numbers of New GM Securities reflected above include shares and warrants for which liquidating distributions were then pending. As of June 30, 2014, these securities for which distributions were then pending aggregated 627,650 shares of New GM Common Stock, 570,485 Series A Warrants and 570,485 Series B Warrants.

As of June 30, 2014, the number of common stock shares and warrants in the table above also includes New GM Securities aggregating $64.3 million (excluding related Dividend Cash) reserved, or set aside, for projected GUC Trust fees, costs and expenses to be incurred beyond 2014 (including $5.4 million for projected Dividend Taxes) and $552.0 million (excluding related Dividend Cash) of New GM Securities reserved, or set aside, for potential Taxes on Distribution. As a result, as of June 30, 2014, the numbers of New GM Securities in the table above include an aggregate of 7,966,477 shares of New GM Common Stock, 7,242,226 New GM Series A Warrants, and 7,242,226 New GM Series B Warrants which have been so set aside.

Set forth below are the aggregate number and fair value of all such shares and warrants which are pending distribution or are reserved, or set aside, and are not available for distribution at June 30, 2014.

	Number	Fair Value (in thousands)
New GM Common Stock	8,594,127	$ 311,967
New GM Series A Warrants	7,812,711	207,896
New GM Series B Warrants	7,812,711	145,004
Total		$ 664,867

6. Fair Value Measurements

Accounting standards require certain assets and liabilities be reported at fair value in the financial statements and provide a framework for establishing that fair value. The framework for determining fair value is based on a hierarchy that prioritizes the inputs and valuation techniques used to measure fair value. The GUC Trust's Cash Equivalents, Marketable Securities, Holdings of New GM Securities and Liquidating Distributions Payable are presented as provided by this hierarchy.

Level 1—In general, fair values determined by Level 1 inputs use quoted prices in active markets for identical assets and liabilities that the GUC Trust has the ability to access.

Level 2—Fair values determined by Level 2 inputs use other inputs that are observable, either directly or indirectly. These Level 2 inputs include quoted prices for similar assets or liabilities in active markets, and other inputs such as interest rates and yield curves that are observable at commonly quoted intervals.

Level 3—Level 3 inputs are unobservable inputs, including inputs that are available in situations where there is little, if any, market activity for the related asset or liability. These Level 3 fair value measurements are based primarily on management's own estimates using pricing models, discounted cash flow methodologies, or similar techniques taking into account the characteristics of the asset or liability. The GUC Trust had no assets or liabilities that are measured with Level 3 inputs at June 30, 2014 and March 31, 2014.

In instances where inputs used to measure fair value fall into different levels in the above fair value hierarchy, fair value measurements in their entirety are categorized based on the lowest level input that is significant to the valuation. The GUC Trust's assessment of the significance of particular inputs to these fair value measurements requires judgment and considers factors specific to each asset or liability.

The GUC Trust also holds other financial instruments not measured at fair value on a recurring basis, including Accounts Payable and Other Liabilities. The fair value of these liabilities approximates the carrying amounts in the accompanying financial statements due to the short maturity of such instruments.

The following table presents information about the GUC Trust's assets and liabilities measured at fair value on a recurring basis at June 30, 2014 and March 31, 2014, and the valuation techniques used by the GUC Trust to determine those fair values.

	June 30, 2014			
(in thousands)	Level 1	Level 2	Level 3	Total
Assets:				
Cash equivalents:				
Money market funds	$ 10,780	$ —	$ —	$ 10,780
Marketable Securities:				
Municipal commercial paper and demand notes	—	13,631	—	13,631
Corporate commercial paper	—	25,675	—	25,675
Holdings of New GM Securities:				
New GM Common Stock	553,542	—	—	553,542
New GM Warrants	626,173	—	—	626,173
Total Assets	$1,190,495	$39,306	$ —	$1,229,801
Liabilities:				
Liquidating distributions payable	$ 48,978	$ —	$ —	$ 48,978

	March 31, 2014			
(in thousands)	Level 1	Level 2	Level 3	Total
Assets:				
Cash equivalents:				
Money market funds	$ 8,953	$ —	$ —	$ 8,953
Marketable Securities:				
Municipal commercial paper and demand notes	—	18,005	—	18,005
Corporate commercial paper	—	26,377	—	26,377
Holdings of New GM Securities:				
New GM Common Stock	526,533	—	—	526,533
New GM Warrants	587,545	—	—	587,545
Total Assets	$1,123,031	$44,382	$ —	$1,167,413
Liabilities:				
Liquidating distributions payable	$ 42,111	$ —	$ —	$ 42,111

The following are descriptions of the valuation methodologies used for assets and liabilities measured at fair value:

- Due to its short-term, liquid nature, the fair value of cash equivalents approximates its carrying value.
- Holdings of New GM Securities are valued at closing prices reported on the active market on which the securities are traded.
- Marketable securities include municipal commercial paper and variable demand notes and corporate commercial paper. Municipal variable demand notes trade daily at par value and, therefore, their fair value is equal to par value. Due to their short term maturities, the fair value of municipal and corporate commercial paper approximates their carrying value.
- Liquidating distributions payable are valued at closing prices of New GM Securities reported on the active market on which the securities are traded.

The GUC Trust's policy is to recognize transfers between levels of the fair value hierarchy as of the actual date of the event of change in circumstances that caused the transfer. There were no such transfers during the three months ended June 30, 2014 and the year ended March 31, 2014.

7. Reserves for Expected Costs of Liquidation and Residual Wind-Down Claims

The following is a summary of the activity in the reserves for expected costs of liquidation for the three months ended June 30, 2014 and 2013:

	Three months ended June 30, 2014					
(in thousands)	Reserve for Expected Wind-Down Costs	Reserve for Expected Reporting Costs	Reserve for Indenture Trustee/Fiscal and Paying Agent Costs	Reserve for Avoidance Action Defense Costs	Reserve for Residual Wind-Down Costs	Total Reserves for Expected Costs of Liquidation
Balance, March 31, 2014	$ 22,529	$ 12,235	$ 464	$ —	$ 1,258	$ 36,486
Plus additions to (reductions in) reserves	2,437	(593)	—	—	—	1,844
Less liquidation costs incurred:						
Trust Professionals	(1,526)	(585)	—	—	(20)	(2,131)
Trust Governance	(917)	(453)	(18)	—	—	(1,388)
Other Administrative Expenses	(10)	(121)	—	—	—	(131)
Balance, June 30, 2014	$ 22,513	$ 10,483	$ 446	$ —	$ 1,238	$ 34,680

	Three months ended June 30, 2013					
(in thousands)	Reserve for Expected Wind-Down Costs	Reserve for Expected Reporting Costs	Reserve for Indenture Trustee/Fiscal and Paying Agent Costs	Reserve for Avoidance Action Defense Costs	Reserve for Residual Wind-Down Costs	Total Reserves for Expected Costs of Liquidation
Balance, March 31, 2013	$ 38,043	$ 20,442	$ 499	$ 898	$ 1,631	$ 61,513
Plus additions to (reductions in) reserves	141	(1,819)	—	—	—	(1,678)
Less liquidation costs incurred:						
Trust Professionals	(3,604)	(685)	—	(138)	(237)	(4,664)
Trust Governance	(973)	(449)	(8)	—	—	(1,430)
Other Administrative Expenses	(13)	(127)	—	—	—	(140)
Balance, June 30, 2013	$ 33,594	$ 17,362	$ 491	$ 760	$ 1,394	$ 53,601

During the three months ended June 30, 2014, estimates of expected Wind-Down Costs and estimates of expected Reporting Costs (for which there is a reasonable basis for estimation) increased by $2.4 million and decreased by $0.6 million, respectively. During the three months ended June 30, 2013, estimates of expected Wind-Down Costs and estimates of expected Reporting Costs (for which there is a reasonable basis for estimation) increased by $0.1 million and decreased by $1.8 million, respectively. Such revisions in the estimates were recorded as additions to (reductions in) the reserves for expected costs of liquidation in such periods. The GUC Trust has recorded reserves for expected costs of liquidation that represent amounts expected to be incurred over the estimated remaining liquidation period of the GUC Trust for which there was a reasonable basis for estimation as of June 30, 2014.

The amount of liquidation costs that will ultimately be incurred depends both on that time period and on the extent of activities required for the GUC Trust to complete its functions and responsibilities under the Plan and the GUC Trust Agreement. Significant uncertainty remains both as to that time period and as to the extent of those activities. As of June 30, 2014, the recorded reserves for expected costs of liquidation reflect estimated costs for a remaining liquidation period extending through October 31, 2016, which has been estimated predominantly on a probability-weighted basis as permitted under U.S. GAAP and which the GUC Trust believes is the most appropriate measurement basis in the circumstances. Where an outcome is estimated to be likely, the likely outcome has been used as the best estimate and no weight has been given to the unlikely outcome. The remaining liquidation period is dependent predominantly on the estimate of the remaining period of time for resolution of the Term Loan Avoidance Action, as well as certain additional estimated time as necessary to wind down the GUC Trust. In addition, certain liquidation costs that are expected to be prepaid by the GUC Trust upon its dissolution have also been estimated and accrued. It is reasonably possible that the GUC Trust's estimates regarding the costs and remaining liquidation period could change in the near term.

The following is a summary of the activity in the reserves for Residual Wind-Down Claims for the three months ended June 30, 2014 and 2013:

(in thousands)	2014	2013
Balance, beginning of period	$28,698	$30,855
Less claims allowed during the period	(363)	(1,163)
Balance, end of period	$28,335	$29,692

8. Income Tax Provision

The income tax provision in the Condensed Statements of Changes in Net Assets in Liquidation for the three months ended June 30, 2014 and 2013 was determined by computing the current and deferred tax provisions for the interim period using the GUC Trust's statutory tax rate of 39.6% that became effective on April 1, 2013. There was no current tax benefit or provision in any of such periods due to cumulative net operating and capital losses, and no income taxes have been paid by the GUC Trust.

The components of the income tax provision in the Condensed Statements of Changes in Net Assets in Liquidation for three months ended June 30, 2014 and 2013 are as follows:

(in thousands)	2014	2013
Current	$—	$ —
Deferred	—	166,170
Total	$—	$166,170

Deferred taxes in the accompanying condensed statement of net assets in liquidation at June 30, 2014 are comprised of the following components:

Deferred tax assets:	
Reserves for expected costs of liquidation	$ 12,555
Net operating and capital loss carryovers	106,526
Gross deferred tax assets	119,081
Less: Valuation allowance	(40,895)
Deferred tax asset, net of valuation allowance	78,186
Deferred tax liabilities:	
Fair value in excess of tax basis of holdings of New GM Securities	(76,311)
Other	(1,875)
Gross deferred tax liabilities	(78,186)
Net deferred tax liability	$ —

For the years ended March 31, 2013 and 2014, the GUC Trust has filed its U.S. federal income tax returns taking the position that beneficial ownership for a substantial majority of New GM Securities transferred from MLC to the GUC Trust on March 31, 2011, and that the tax basis of such New GM Securities should be determined with reference to the value of such securities on such date instead of December 15, 2011, when record ownership of the remaining New GM Securities still held by MLC was transferred from

MLC to the GUC Trust. For the remaining substantial minority of New GM Securities transferred from MLC to the GUC Trust, the GUC Trust determined that transfer of beneficial ownership occurred on other dates for which the tax basis should be determined by reference to the value of such securities on such dates. This new tax position resulted in an increased tax basis of the New GM Securities from the prior tax position and, therefore, reduced taxable gains and increased taxable losses on distributions and sales of New GM Securities since March 31, 2011. The GUC Trust believes, based on the available evidence and consultation with GUC Trust professionals, that it is more likely than not that the new tax position in the amounts reflected in the GUC Trust's income tax returns, will be sustained on examination by the Internal Revenue Service, based on the technical merits of the position. Although the GUC Trust's federal income tax returns for the years ended March 31, 2012 and 2013 are no longer subject to examination by the Internal Revenue Service as a result of the application of Section 505(b) of the Bankruptcy Code, this new tax position, as of the date hereof, has not been sustained on examination by the Internal Revenue Service. Accordingly, capital loss carryovers generated in the years ended March 31, 2012 and 2013, from the new tax position, could be subject to examination by the Internal Revenue Service in subsequent years when those losses are utilized. On June 12, 2014, the GUC Trust filed its U.S. federal income tax return for the year ended March 31, 2014 with the Internal Revenue Service, and requested a prompt determination of tax liability pursuant to Section 505(b) of the Bankruptcy Code that same day. As of the date of this Form 10-Q, the GUC Trust has not received notification from the Internal Revenue Service whether or not its income tax return for the year ended March 31, 2014 has been selected for examination.

A full valuation allowance against net deferred tax assets aggregating $40.9 million was established as of June 30, 2014 due to uncertainty as to whether the deferred tax assets are realizable. Such valuation allowance was reduced by $30.3 million from the full valuation allowance against net deferred tax assets established as of March 31, 2014. Realization of the net deferred tax assets is dependent upon the generation of taxable gains upon the distribution or sale of New GM Securities in the future, which is not determinable prior to occurrence, or the receipt of future dividends on New GM Common Stock held by the GUC Trust for which a reasonable basis for estimation does not exist at this time.

As of June 30, 2014, the GUC Trust has net operating loss carryforwards of $83.9 million and capital loss carryforwards of $185.1 million (resulting in a deferred tax asset of $106.5 million) after giving effect to the new tax position with respect to the tax basis of New GM Securities described above.

9. Related Party Transactions

In addition to serving as GUC Trust Administrator, Wilmington Trust Company continues to serve as trustee pursuant to the indentures for certain series of previously outstanding debt of MLC. Wilmington Trust Company has received and will continue to receive certain customary fees in amounts consistent with Wilmington Trust Company's standard rates for such service. The Bankruptcy Court previously approved the creation of a segregated fund for the purposes of funding such fees for Wilmington Trust Company, as well as the other indenture trustees and fiscal and paying agents for previously outstanding debt of MLC. There were no such fees for Wilmington Trust Company in the three months ended June 30, 2014 and 2013.

In addition, Wilmington Trust Company has also entered into certain arrangements with the GUC Trust pursuant to which it or its affiliates have previously received, and may in the future receive, reasonable and customary fees and commissions for services other than services in the capacity of GUC Trust Administrator. Such arrangements include the provision of custodial, investment advisory and brokerage services to the GUC Trust. The fees and commissions charged by Wilmington Trust Company and its affiliates pursuant to these arrangements are consistent with the standard fees and commissions charged by Wilmington Trust Company to unrelated third-parties in negotiated transactions. During the three months ended June 30, 2014 and 2013, the total amount of such fees and commissions was approximately $6,000 and $18,000, respectively.

Exhibit Y

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Attorneys for the Motors Liquidation Company GUC Trust

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	**09-50026 (REG)**
	(Jointly Administered)
Debtors.	

MOTORS LIQUIDATION COMPANY GUC TRUST
QUARTERLY SECTION 6.2(C) REPORT AND
BUDGET VARIANCE REPORT AS OF SEPTEMBER 30, 2014

The Motors Liquidation Company GUC Trust (the "**GUC Trust**"), by its undersigned counsel, pursuant to the Amended and Restated Motors Liquidation Company GUC Trust Agreement dated June 11, 2012 and between the parties thereto (as amended, the "**GUC Trust Agreement**") and in accordance with Paragraph 31 of the order of this Court dated March 29, 2011 confirming the Debtors' Second Amended Joint Chapter 11 Plan of liquidation dated March 18, 2011 of Motors Liquidation Company and its affiliated post-effective date debtors (the "**Confirmation Order**"), hereby files the following for the most recently ended fiscal quarter of the GUC Trust.

Reporting required under Section 6.2(c)(i) of the GUC Trust Agreement is annexed hereto as Exhibit A (the "**6.2(c) Report**").

The quarterly variance report as described in the third sentence of Section 6.4 of the GUC Trust Agreement for the fiscal quarter ended September 30, 2014, in accordance with the *Order Authorizing the GUC Trust Administrator to Liquidate New GM Securities for the Purpose of Funding Fees, Costs and Expenses of the GUC Trust and the Avoidance Action Trust*, dated March 8, 2012, is annexed hereto as Exhibit B (the "**Budget Variance Report**").

The 6.2(c) Report is not intended to constitute, and should not be construed as, investment advice. The 6.2(c) Report has been provided to comply with the GUC Trust Agreement and the Confirmation Order and for informational purposes only and may not be relied upon to evaluate the merits of investing in any securities or interests referred to herein.

The GUC Trust has no officers, directors or employees. The GUC Trust and Wilmington Trust Company, solely in its capacity as trustee and trust administrator (the "**GUC Trust Administrator**"), rely solely on receiving accurate information, reports and other representations from GUC Trust professionals and other service providers to the GUC Trust. In submitting the 6.2(c) Report, the Budget Variance Report and executing any related documentation on behalf of the GUC Trust, the GUC Trust Administrator has relied upon the accuracy of such reports, information and representations.

Dated: New York, New York
October 24, 2014

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Matthew J. Williams

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EXHIBIT A

Motors Liquidation Company GUC Trust

Claims and Distribution Summary

		Per section 6.2 (c)(i)								Supplemental		
		As of Effective Date	As of June 30, 2013	As of September 30, 2013	As of December 31, 2013	As of March 31, 2014	As of June 30, 2014	As of September 30, 2014	Cumulative as of September 30, 2014	In respect of the November 2014 Distribution	Cumulative total including amounts in respect of the November 2014 Distribution	Notes
A.	Number of Units Outstanding	0	30,227,314	30,282,801	31,843,376	31,843,376	31,853,702	31,853,702	31,853,702	-	31,853,702	(3)
B.	**GUC Trust Distributable Assets**											(2)(4)
	GUC Trust Common Stock Assets	150,000,000	20,334,066	19,534,609	6,853,001	6,839,990	7,138,543	7,244,108	7,244,108	(3,712,897)	6,809,870	
	GUC Trust Warrant Assets "A"	136,363,635	18,485,406	17,758,626	6,229,889	6,218,061	6,489,475	6,585,443	6,585,443	(3,375,361)	6,190,680	
	GUC Trust Warrant Assets "B"	136,363,635	18,485,406	17,758,626	6,229,889	6,218,061	6,489,475	6,585,443	6,585,443	(3,375,361)	6,190,680	
	GUC Trust Dividend Assets	$ 0	$ 0	$ 0	$ 0	$ 0	$ 2,141,563	$ 4,346,465	$ 4,346,465	$ (3,341,607)	$ 6,128,883	
	other GUC Trust Distributable Cash (whether held by MLC or the GUC Trust)	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	
C.	**Claims Summary**											(5)
	Total Allowed Amount (i.e., all currently Allowed General Unsecured Claims as of date specified)	$ 29,770,812,132	$ 30,282,730,294	$ 30,293,305,294	$ 31,843,305,294	$ 31,853,630,294	$ 31,853,630,294	$ 31,853,630,294	$ 31,853,630,294			
	Maximum Amount of all Disputed General Unsecured Claims (in the aggregate)	$ 8,153,859,851	$ 3,404,165,625	$ 3,191,392,334	$ 130,570,978	$ 79,500,000	$ 79,500,000	$ 79,500,000	$ 79,500,000			
	Maximum Amount of all Unresolved Term Loan Avoidance Action Claims (in the aggregate)	$ 1,500,000,000	$ 1,500,000,000	$ 1,500,000,000	$ 1,500,000,000	$ 1,500,000,000	$ 1,500,000,000	$ 1,500,000,000	$ 1,500,000,000			
	Maximum Amount of all Unresolved Other Avoidance Action Claims (in the aggregate)	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0			
	Aggregate Maximum Amount (i.e., Maximum Amount of all Disputed General Unsecured Claims, Term Loan Avoidance Action Claims and Unresolved Other Avoidance Action Claim	$ 9,653,859,851	$ 4,904,165,625	$ 4,691,392,334	$ 1,630,570,978	$ 1,579,500,000	$ 1,579,500,000	$ 1,579,500,000	$ 1,579,500,000			
	Current Total Amount	$ 39,424,671,983	$ 35,186,895,919	$ 34,984,697,628	$ 33,473,876,272	$ 33,433,130,294	$ 33,433,130,294	$ 33,433,130,294	$ 33,433,130,294			
D.	**Holdback**											(6)(7)
	Protective Holdback - GUC Common Stock Assets	0	0	0	0	0	0	0	0			
	Additional Holdback - GUC Common Stock Assets	0	223,514	467,194	349,659	367,116	482,379	548,639	548,639			
	Reporting and Transfer Holdback - GUC Common Stock Assets	95,060	141,883	414,293	368,613	341,785	348,395	352,650	352,650			
	Taxes on Distribution Holdback - GUC Common Stock Assets	0	8,305,096	7,447,810	7,695,633	7,363,141	7,135,703	3,786,529	3,786,529			
	Protective Holdback - GUC Trust Warrant Assets "A"	0	0	0	0	0	0	0	0			
	Additional Holdback - GUC Trust Warrant Assets "A"	0	203,165	424,697	317,846	333,716	438,502	498,738	498,738			
	Reporting and Transfer Holdback - GUC Trust Warrant Assets "A"	86,414	128,985	376,630	335,103	310,714	316,722	320,591	320,591			
	Taxes on Distribution Holdback - GUC Trust Warrant Assets "A"	0	7,550,087	6,770,737	6,996,030	6,693,764	6,487,002	3,442,299	3,442,299			
	Protective Holdback - GUC Trust Warrant Assets "B"	0	0	0	0	0	0	0	0			
	Additional Holdback - GUC Trust Warrant Assets "B"	0	203,165	424,697	317,846	333,716	438,502	498,738	498,738			
	Reporting and Transfer Holdback - GUC Trust Warrant Assets "B"	86,414	128,985	376,630	335,103	310,714	316,722	320,591	320,591			
	Taxes on Distribution Holdback - GUC Trust Warrant Assets "B"	0	7,550,087	6,770,737	6,996,030	6,693,764	6,487,002	3,442,299	3,442,299			
	Protective Holdback - GUC Trust Dividend Assets	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0			
	Additional Holdback - GUC Trust Dividend Assets	$ 0	$ 0	$ 0	$ 0	$ 110,135	$ 289,427	$ 493,775	$ 493,775			
	Reporting and Transfer Holdback - GUC Trust Dividend Assets	$ 0	$ 0	$ 0	$ 0	$ 102,536	$ 209,037	$ 317,385	$ 317,385			
	Taxes on Distribution Holdback - GUC Trust Dividend Assets	$ 0	$ 0	$ 0	$ 0	$ 2,208,942	$ 4,281,422	$ 3,407,876	$ 3,407,876			

Motors Liquidation Company GUC Trust

Claims and Distribution Summary

		Per section 6.2 (c)(i)								Supplemental		
		As of Effective Date	As of June 30, 2013	As of September 30, 2013	As of December 31, 2013	As of March 31, 2014	As of June 30, 2014	As of September 30, 2014	Cumulative as of September 30, 2014	In respect of the November 2014 Distribution	Cumulative total including amounts in respect of the November 2014 Distribution	*Notes*
E.	**Claim Disposition**											
	Resolved Allowed General Unsecured Claims allowed	Not applicable	$ 55,486,416	$ 10,575,000	$ 1,550,000,000	$ 10,325,000	$ -	$ -	$ 2,081,514,477			(5)
	Disputed General Unsecured Claims disallowed	Not applicable	$ 145,219,007	$ 202,198,291	$ 1,510,821,356	$ 40,745,978	$ -	$ -	$ 5,992,845,374			
	Unresolved Term Loan Avoidance Action Claims resolved in favor of the respective defendants	Not applicable	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0			
	Other Avoidance Action Claims, resolved in favor of the respective defendants	Not applicable	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0			
F.	**Distributions in respect of Resolved Allowed General Unsecured Claims of -**											(1)(8)
	GUC Common Stock Assets	0	115,029	221,014	6,216,137	0	43,310	0	121,477,839	0	121,477,695	
	GUC Trust Warrant Assets "A"	0	104,570	200,924	5,651,034	0	39,371	0	110,434,452	0	110,434,410	
	GUC Trust Warrant Assets "B"	0	104,570	200,924	5,651,034	0	39,371	0	110,434,452	0	110,434,410	
	GUC Trust Dividend Assets	$ 0	$ 0	$ 0	$ 0	$ 0	$ 12,993	$ 0	$ 12,993	$ 0	$ 12,993	
	other GUC Trust Distributable Cash	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	
G.	**Distributions in respect of Units of -**											(1)
	GUC Common Stock Assets	0	0	0	6,735,070	0	0	0	12,139,889	3,712,897	15,852,786	
	GUC Trust Warrant Assets "A"	0	0	0	6,122,789	0	0	0	11,036,258	3,375,361	14,411,619	
	GUC Trust Warrant Assets "B"	0	0	0	6,122,789	0	0	0	11,036,258	3,375,361	14,411,619	
	GUC Trust Dividend Assets	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 3,341,607	$ 3,341,607	
	other GUC Trust Distributable Cash	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	
H.	**Excess GUC Trust Distributable Assets reserved for distribution to holders of Units of -**											(9)
	GUC Common Stock Assets	0	0	0	0	0	0	0	0	0		
	GUC Trust Warrant Assets "A"	0	0	0	0	0	0	0	0	0		
	GUC Trust Warrant Assets "B"	0	0	0	0	0	0	0	0	0		
	GUC Trust Dividend Assets	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0		
	other GUC Trust Distributable Cash (whether held by MLC or the GUC Trust)	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0		
I.	Additional Shares received (whether held by MLC or the GUC Trust)	0	0	0	0	0	0	0	0			
Memo	**Supplemental Information - In respect of distributions to newly Resolved Allowed General Unsecured Claims at next quarterly distribution**											
	Number of Units to Resolved Allowed General Unsecured Claims									0		
	Distributions in respect of Resolved Allowed General Unsecured Claims of -											
	GUC Common Stock Assets									0		
	GUC Trust Warrant Assets "A"									0		
	GUC Trust Warrant Assets "B"									0		
	Excess GUC Trust Distributable Assets											
	GUC Common Stock Assets									3,712,897		
	GUC Trust Warrant Assets "A"									3,375,361		
	GUC Trust Warrant Assets "B"									3,375,361		

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Claims and Distribution Summary

		Per section 6.2 (c)(i)								Supplemental		
		As of Effective Date	As of June 30, 2013	As of September 30, 2013	As of December 31, 2013	As of March 31, 2014	As of June 30, 2014	As of September 30, 2014	Cumulative as of September 30, 2014	In respect of the November 2014 Distribution	Cumulative total including amounts in respect of the November 2014 Distribution	*Notes*
Memo	**Supplemental Information - Claims Summary**											(10)
	Total filed claims		$ 214,874,842,925	$ 214,876,321,549	$ 216,518,007,182	$ 216,520,509,182	$ 216,720,509,182	$ 216,720,509,182				
	Total scheduled only, liquidated claims		$ 3,771,756,210	$ 3,771,299,409	$ 3,771,299,409	$ 3,771,299,409	$ 3,771,299,409	$ 3,771,299,409				
	Total filed and scheduled claims		$ 218,646,599,135	$ 218,647,620,958	$ 220,289,306,591	$ 220,291,808,591	$ 220,491,808,591	$ 220,491,808,591				
	Claims as currently ordered		$ 33,686,895,919	$ 33,484,697,628	$ 31,973,876,272	$ 31,933,130,294	$ 31,933,130,294	$ 31,933,130,294				
	Term Loan Avoidance Action		$ 1,500,000,000	$ 1,500,000,000	$ 1,500,000,000	$ 1,500,000,000	$ 1,500,000,000	$ 1,500,000,000				
	Current Total Amount		$ 35,186,895,919	$ 34,984,697,628	$ 33,473,876,272	$ 33,433,130,294	$ 33,433,130,294	$ 33,433,130,294				
	Claims summary by category (as currently ordered)											
	Accounts Payable and Executory Contracts		$ 924,218,307	$ 857,210,700	$ 857,091,528	$ 857,091,528	$ 857,091,528	$ 857,091,528				
	Asbestos		$ 625,000,000	$ 625,000,000	$ 625,000,000	$ 625,000,000	$ 625,000,000	$ 625,000,000				
	Debt		$ 30,325,392,487	$ 30,325,391,246	$ 28,817,289,061	$ 28,817,289,061	$ 28,817,289,061	$ 28,817,289,061				
	Employee		$ 1,004,339,274	$ 1,004,339,274	$ 1,004,339,274	$ 1,004,339,274	$ 1,004,339,274	$ 1,004,339,274				
	Environmental		$ 239,537,417	$ 239,537,417	$ 239,537,417	$ 239,537,417	$ 239,537,417	$ 239,537,417				
	Litigation		$ 396,054,310	$ 379,338,310	$ 376,738,310	$ 335,992,333	$ 335,992,333	$ 335,992,333				
	Workers Compensation		$ 3,732,393	$ 3,732,393	$ 3,732,393	$ 3,732,393	$ 3,732,393	$ 3,732,393				
	Other		$ 168,621,732	$ 50,148,289	$ 50,148,289	$ 50,148,289	$ 50,148,289	$ 50,148,289				
	Claims summary by category (allowed amounts)											
	Accounts Payable and Executory Contracts		$ 847,091,528	$ 857,091,528	$ 857,091,528	$ 857,091,528	$ 857,091,528	$ 857,091,528				
	Asbestos		$ 625,000,000	$ 625,000,000	$ 625,000,000	$ 625,000,000	$ 625,000,000	$ 625,000,000				
	Debt		$ 27,267,289,061	$ 27,267,289,061	$ 28,817,289,061	$ 28,817,289,061	$ 28,817,289,061	$ 28,817,289,061				
	Employee		$ 1,004,339,274	$ 1,004,339,274	$ 1,004,339,274	$ 1,004,339,274	$ 1,004,339,274	$ 1,004,339,274				
	Environmental		$ 239,537,417	$ 239,537,417	$ 239,537,417	$ 239,537,417	$ 239,537,417	$ 239,537,417				
	Litigation		$ 295,592,333	$ 296,167,333	$ 296,167,333	$ 306,492,333	$ 306,492,333	$ 306,492,333				
	Workers Compensation		$ 3,732,393	$ 3,732,393	$ 3,732,393	$ 3,732,393	$ 3,732,393	$ 3,732,393				
	Other		$ 148,289	$ 148,289	$ 148,289	$ 148,289	$ 148,289	$ 148,289				

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(1) The Initial Distribution Date took place on or about April 21, 2011 (with a secondary distribution on or about May 26, 2011 to certain holders of allowed claims as of the Initial Distribution Date who did not receive the April 21, 2011 distribution). The second quarter distribution took place on or about July 28, 2011. The third quarter distribution took place on or about October 28, 2011. The Section 2.3(a) Distribution, as defined below, took place on or about January 13, 2012. As described further below, the GUC Trust was not required to make, and did not make, a fourth quarter distribution in respect of the quarter ended December 31, 2011. The fifth quarter distribution took place on or about April 27, 2012. The sixth quarter distribution took place on or about August 3, 2012. The seventh quarter distribution took place on or about November 5, 2012. The eighth quarter distribution took place on or about February 8, 2013. The ninth quarter distribution took place on or about May 10, 2013. The tenth quarter distribution took place on or about August 9, 2013. The eleventh quarter distribution took place on or about October 31, 2013. The Special Nova Scotia Distribution, as defined below, took place on or about December 2, 2013, and the Special Excess Distribution, as defined below, took place on or about December 23, 2013. As described further below, the GUC Trust was not required to make, and did not make, a twelfth quarter distribution in respect of the quarter ended December 31, 2013. The thirteenth quarter distribution took place on or about May 9, 2014. As described further below, the GUC Trust was not required to make, and did not make, a fourteenth quarter distribution in respect of the quarter ended June 30, 2014. As described further below, the fifteenth quarter distribution is expected to take place on or about November 12, 2014.

Pursuant to Section 2.3(a) of the GUC Trust Agreement, the GUC Trust was required to distribute, within thirty (30) days of the "GUC Trust Funding Date," as such term is defined in the GUC Trust Agreement, any New GM Securities that would have been distributed on the next quarterly distribution date to holders of Resolved Allowed General Unsecured Claims and holders of Units as of the GUC Trust Funding Date (the "Section 2.3(a) Distribution"). The GUC Trust Funding Date was December 15, 2011 and, as such, the record date for the Section 2.3(a) Distribution was December 15, 2011. The Section 2.3(a) Distribution took place on or about January 13, 2012, and consisted solely of a distribution to holders of such Resolved Allowed General Unsecured Claims, and holders of Allowed General Unsecured Claims who previously failed to fulfill informational requirements for distribution established in accordance with the GUC Trust Agreement, but successfully fulfilled such informational requirements for the Section 2.3(a) Distribution. Because the amount of Excess GUC Trust Distributable Assets did not exceed the Distribution Threshold, no distribution to holders of Units was made in connection with the Section 2.3(a) Distribution.

The fourth quarter distribution was scheduled to take place on or as promptly as practicable following January 1, 2012, based upon the GUC Trust's books and records as of December 31, 2011. However, as no Disputed General Unsecured Claims were allowed between the GUC Trust Funding Date and the December 31, 2011 record date for the fourth quarter distribution, no distribution was required to be made to holders of Resolved Allowed General Unsecured Claims. In addition, as the amount of Excess GUC Trust Distributable Assets did not exceed the Distribution Threshold, no distribution to holders of Units was required. As such, no quarterly distribution (other than the Section 2.3(a) Distribution referenced herein) was made during January 2012.

The fifth, sixth, seventh, eighth, ninth, tenth and eleventh quarter distributions consisted solely of distributions to holders of Resolved Allowed General Unsecured Claims since the end of the previous fiscal quarter, and holders of Allowed General Unsecured Claims who previously failed to fulfill informational requirements for distribution established in accordance with the GUC Trust Agreement, but successfully fulfilled such informational requirements for the distribution that quarter. Because the amount of Excess GUC Trust Distributable Assets did not exceed the Distribution Threshold for each quarter, no distribution to holders of Units was made in connection with such distributions.

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The GUC Trust made a distribution on or about December 2, 2013 (the "Special Nova Scotia Distribution") solely to holders of claims arising from the 8.375% guaranteed notes due December 7, 2015 and the 8.875% guaranteed notes due July 10, 2023, in each case issued in 2003 by General Motors Nova Scotia Finance Company (the "Nova Scotia Claims"), which claims were allowed, in an aggregate amount of $1.55 billion, pursuant to a settlement agreement (the "Nova Scotia Settlement") which was approved by an order of the Bankruptcy Court dated October 21, 2013 (the "Nova Scotia Order").

In accordance with the Nova Scotia Settlement and the Nova Scotia Order, a special distribution of excess distributable assets of the GUC Trust was made to holders of Units on or about December 23, 2013 (the "Special Excess Distribution"), consisting of 6,735,070 shares of New GM Common Stock, 6,122,789 New GM Series A Warrants, and 6,122,789 New GM Series B Warrants.

The twelfth quarter distribution was scheduled to take place on or as promptly as practicable following January 1, 2014, based upon the GUC Trust's books and records as of December 31, 2013. However, as no Disputed General Unsecured Claims were allowed during the quarter ended December 31, 2013, other than claims with respect to which distributions were made in the Special Nova Scotia Distribution, no further distribution was required to be made in respect of that quarter to holders of Resolved Allowed General Unsecured Claims. In addition, as the amount of Excess GUC Trust Distributable Assets did not exceed the Distribution Threshold at December 31, 2013, no distribution to holders of Units was required. As such, the GUC Trust was not required to make, and did not make, a twelfth quarter distribution in respect of the quarter ended December 31, 2013.

The thirteenth quarter distribution consisted solely of distributions to holders of Resolved Allowed General Unsecured Claims since the end of the previous fiscal quarter, and holders of Allowed General Unsecured Claims who previously failed to fulfill informational requirements for distribution established in accordance with the GUC Trust Agreement, but successfully fulfilled such informational requirements for the thirteenth quarter distribution. Because the amount of Excess GUC Trust Distributable Assets did not exceed the Distribution Threshold for the thirteenth quarter distribution, no distribution to holders of Units was made in connection with such distribution.

The fourteenth quarter distribution was scheduled take place on or as promptly as practicable following July 1, 2014, based upon the GUC Trust's books and records as of June 30, 2014. However, as no Disputed General Unsecured Claims were allowed during the quarter ended June 30, 2014, no distribution was required to be made in respect of the quarter ended June 30, 2014 to holders of Resolved Allowed General Unsecured Claims. In addition, as the amount of Excess GUC Trust Distributable Assets did not exceed the Distribution Threshold at June 30, 2014, no distribution to holders of Units was required. As such, the GUC Trust was not required to make, and did not make, a fourteenth quarter distribution in respect of the quarter ended June 30, 2014.

The fifteenth quarter distribution is scheduled take place on or as promptly as practicable following October 1, 2014, based upon the GUC Trust's books and records as of September 30, 2014. As no Disputed General Unsecured Claims were allowed during the quarter ended September 30, 2014, no distribution is required to be made to holders of Resolved Allowed General Unsecured Claims. However, as of September 30, 2014, the amount of Excess GUC Trust Distributable Assets exceeded the Distribution Threshold, primarily as a result of a release of distributable assets of the GUC Trust that were previously set aside in respect of potential Taxes on Distribution. Accordingly, the GUC Trust currently anticipates making a distribution of Excess GUC Trust Distributable Assets to holders of Units on or about November 12, 2014, consisting of 3,712,897 shares of New GM Common Stock, 3,375,361 New GM Series A Warrants, 3,375,361 New GM Series B Warrants, and $3,341,607 in cash received by the GUC Trust in the form of dividends on New GM Common Stock ("Dividend Assets").

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(2) On January 14, 2014, New GM declared a dividend of $0.30 per share on the shares of New GM Common Stock and paid such dividend on March 28, 2014 (the "March 2014 Dividend"). On April 8, 2014, New GM declared a second quarterly dividend of $0.30 per share on the shares of New GM Common Stock and paid such dividend on June 26, 2014 (the "June 2014 Dividend"). On August 12, 2014, New GM declared a third quarterly dividend of $.30 per share on the shares of New GM Common Stock and paid such dividend on September 26, 2014 (the "September 2014 Dividend"). On October 8, 2014, New GM declared a fourth quarterly dividend of $0.30 per share on the shares of New GM Common Stock, with such dividend payable on December 23, 2014 to holders of record of New GM Common Stock as of December 10, 2014 (the "Declared December 2014 Dividend," and, together with the March 2014 Dividend, the June 2014 Dividend and the September Dividend, the "Current Dividends"). Although New GM has disclosed in its 2013 Annual Report on Form 10-K its intention to continue to pay quarterly dividends on the New GM Common Stock, any such future dividends on the New GM Common Stock (the "Potential Future Dividends") will only be paid if and as declared by New GM and will depend on a variety of other factors beyond the control of the GUC Trust.

The following table summarizes the changes in the New GM Securities and Dividend Assets that comprise the GUC Trust's "Distributable Assets as of September 30, 2014" to the "Cumulative total including amounts in respect of the November 2014 Distribution":

	Number of Securities			
	New GM Common Stock	New GM Series A Warrants	New GM Series B Warrants	GUC Trust Dividend Assets
Distributable assets as of September 30, 2014	7,244,108	6,585,443	6,585,443	$ 4,346,465
Adjustments to "set aside" new GM securities and dividend assets	3,278,659	2,980,598	2,980,598	560,850
Expected November 2014 excess distribution	(3,712,897)	(3,375,361)	(3,375,361)	(3,341,607)
Dividend assets received September 26, 2014				4,563,175
Cumulative distributable assets as of September 30, 2014	6,809,870	6,190,680	6,190,680	$ 6,128,883

(3) Units represent the contingent right to receive, on a *pro rata* basis as provided in the Plan, Excess GUC Trust Distributable Assets (as described in greater detail in Sections G and H hereof). As a result of the no-action relief received from the SEC in May, 2012 (which provided that the SEC would not recommend enforcement if the Units were issued in a global transferable form but were not registered under Section 12(g) of the Securities Exchange Act of 1934, as amended), each holder of an Allowed General Unsecured Claim is issued Units issued in global form only, registered in the name of and held only through the participants of DTC, as depositary. Previous to the receipt of such no-action relief, the Units were evidenced by appropriate notation on the books and records of the GUC Trust only and were not held through DTC.

Units are issued at a ratio of one Unit for each $1,000 in amount of allowed general unsecured claim, such that if all Disputed General Unsecured Claims as of September 30, 2014 were subsequently allowed, the GUC Trust would issue approximately 33.43 million Units (inclusive of all Units previously distributed). Units in respect of general unsecured claims allowed as of the Initial Distribution were not issued until after the Effective Date. Hence, for purposes of this presentation only, Units outstanding as of the Effective Date are deemed to be zero. The 31,853,702 Units outstanding as of September

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30, 2014 correlate to the $31.85 billion in allowed claims as of June 30, 2014. The Number of Units outstanding as of September 30, 2014 does not directly correspond to allowed claims as of June 30, 2014 on a 1 to 1,000 basis because 71 additional Units were issued due to rounding.

(4) The amounts reported as GUC Trust Distributable Assets are net of liquidating distributions payable in respect of Allowed General Unsecured Claims as further described in Notes 4, 5 and 6 of the Notes to the Financial Statements of the GUC Trust for the quarter ended June 30, 2014, as previously filed.

(5) The categories presented under Sections C and E hereof correspond to terms defined in the GUC Trust Agreement and further described in Notes 1, 3 and 4 of the Notes to the Financial Statements of the GUC Trust for the quarter ended June 30, 2014, as previously filed.

(6) Section 2.3(e)(i) of the GUC Trust Agreement required MLC, on behalf of the GUC Trust, to sell New GM Securities in the approximate amount of $5.75 million on, or as soon as reasonably practical after, the Effective Date of the Plan. The proceeds of this sale were required to be used to provide the initial funding for certain reporting costs of the GUC Trust ("Reporting and Transfer Costs"). In respect thereof, on May 24, 2011, MLC, on behalf of the GUC Trust, sold 87,182 shares of New GM Common Stock and 79,256 warrants of each class of warrants, resulting in cash proceeds of $5,649,328 (the "Reporting and Transfer Cash"), which proceeds were held by MLC on behalf of the GUC Trust until MLC's dissolution on December 15, 2011. On December 15, 2011, MLC transferred, net of payments already made on account of such Reporting and Transfer Costs, $2,049,608 of these funds to the GUC Trust and $500,000 to the Avoidance Action Trust in accordance with Section 2.3 of the GUC Trust Agreement.

In addition to the initial funding of the Reporting and Transfer Costs as described above, the GUC Trust Agreement affords the GUC Trust Administrator, with the approval of the GUC Trust Monitor, the discretion and authority to set aside from distribution New GM Securities and Dividend Assets in numbers sufficient to satisfy (i) any current or projected fees, costs and expenses (including certain tax obligations and administrative costs) of the GUC Trust (the "Wind-Down Costs") that were not budgeted or exceed the amounts budgeted for use from the funds contributed by MLC on the Effective Date of the Plan for purposes of satisfying such Wind-Down Costs, (ii) any current or projected Reporting and Transfer Costs that exceed the then currently available funds, or (iii) any current or projected income tax liabilities of the GUC Trust arising from the disposition of New GM Securities ("Taxes on Distribution"). This process is not related to, and is separate from, the process of recognizing current and deferred income tax liabilities, as well as reserves for expected costs of liquidation in the Statement of Net Assets in Liquidation, as a matter of financial reporting. Such liabilities and reserves must be determined in accordance with generally accepted accounting principles applicable to the GUC Trust. By contrast, the estimates of projected costs and potential liabilities for which the GUC Trust may set aside New GM Securities and Dividend Assets are generally made on a more conservative (i.e., more inclusive) basis over the duration of the GUC Trust and include contingencies and amounts of potential income tax liabilities that are not permitted to be recognized under applicable accounting standards. The GUC Trust Administrator may liquidate New GM Securities and use Dividend Assets that have been set aside from distribution to fund (with the required approval of the Bankruptcy Court) the current or projected Wind-Down Costs or Reporting and Transfer Costs of the GUC Trust and (with the required approval of the GUC Trust Monitor) current and potential Taxes on Distribution.

Beginning in the fiscal quarter ended December 2011, the GUC Trust Administrator set aside from distribution, in accordance with Sections 6.1(b), 6.1(c), and 6.1(d) of the GUC Trust Agreement and with the approval of the GUC Trust Monitor, New GM Securities in numbers that the GUC Trust Administrator determined was necessary to satisfy then current and projected Wind-Down Costs and Reporting and Transfer Costs and potential Taxes on Distribution of the GUC Trust (collectively, the "Set Aside Securities"). Because the GUC Trust Administrator reevaluates the projected Wind-Down Costs and Reporting and Transfer Costs and the potential Taxes on Distribution of the GUC Trust on a quarterly basis, and because fluctuations in the

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market values of the Set Aside Securities also impact the calculations of the numbers of such securities needed to be set aside to satisfy such estimated costs and liabilities, the numbers of the Set Aside Securities necessarily fluctuate over time.

On two separate occasions, once in March 2012 and again in December 2012, the GUC Trust Administrator sought and received authority from the Bankruptcy Court to liquidate Set Aside Securities for the purposes of funding then current and projected Wind-Down Costs and Reporting and Transfer Costs for the calendar years 2011 through 2013, as well as certain fees, costs and expenses of the Avoidance Action Trust ("Avoidance Action Trust Administrative Costs") estimated for the calendar years 2012, 2013 and 2014 (collectively, the "Liquidation Orders"). In the aggregate, pursuant to the Liquidation Orders, the GUC Trust liquidated (i) 538,222 shares of New GM Common Stock and 489,292 warrants of each class of warrant for the aggregate proceeds of $29,305,877 in respect of Wind-Down Costs; (ii) 276,824 shares of New GM Common Stock and 251,657 warrants of each class of warrant for the aggregate proceeds of $15,181,061 in respect of Reporting and Transfer Costs; and (iii) 269,422 shares of New GM Common Stock and 244,929 warrants of each class of warrant for the aggregate proceeds of $13,715,264 in respect of Avoidance Action Trust Administrative Costs (which amount was subsequently transferred to the Avoidance Action Trust). Copies of the Liquidation Orders are available at the Motors Liquidation Company GUC Trust website at https://www.mlcguctrust.com/.

The numbers of New GM Securities and Dividend Assets available to be set aside to fund such projected costs and potential liabilities are subject to inherent limitation because of fixed total numbers of New GM Securities and Dividend Assets administered by the GUC Trust and the requirement also to set aside sufficient New GM Securities and Dividend Assets to satisfy all potential Allowed General Unsecured Claims. As disclosed in the GUC Trust's prior SEC filings and Section 6.2(c) Reports, as part of the GUC Trust's evaluations for each of the quarters ended March 31, 2013 and June 30, 2013, the numbers of New GM Securities set aside to fund projected Wind-Down Costs and Reporting and Transfer Costs were reduced from the GUC Trust's then-current estimates of potential future requirements to fund such costs, as a result of such limitations. In addition, during the quarter ended June 30, 2013, the numbers of New GM Securities set aside to fund potential Taxes on Distribution were similarly reduced from the GUC Trust's then-current estimates of potential future requirements to fund such liabilities, as a result of such limitations. Consequently, for the quarters ended March 31, 2013 and June 30, 2013, the number of New GM Securities set aside in respect of then projected Wind-Down Costs and Reporting and Transfer Costs was insufficient to cover the GUC Trust's estimates of such potential costs. Similarly, for the quarter ended June 30, 2013, the number of New GM Securities set aside in respect of then potential Taxes on Distribution was insufficient to cover the GUC Trust's estimates of such potential liabilities.

Commencing with the quarter ended September 30, 2013, the GUC Trust revised the methodology for calculating the set asides associated with Wind-Down Costs and Reporting and Transfer Costs (the "Administrative Costs Set Aside Methodology"). Previously, such calculation converted estimates of projected Wind-Down Costs and Reporting and Transfer Costs into the number of New GM Securities to be set aside from distribution by dividing such estimates by the lowest closing prices for the New GM Securities since December 15, 2011 (the date record ownership of the New GM Securities was transferred to the GUC Trust from MLC). Commencing with the quarter ended September 30, 2013, however, the conversion calculation was revised so that the GUC Trust's estimates of such projected costs were instead divided by the trailing twelve month average closing prices for the New GM Securities instead of the lowest closing prices since December 15, 2011. Commencing with the quarter ended September 30, 2013, the GUC Trust also revised its methodology for calculating the set asides associated with potential Taxes on Distribution (the "Taxes on Distribution Set Aside Methodology"). Previously, this set aside calculation methodology estimated potential Taxes on Distribution by applying the applicable U.S. federal income tax rate to estimates of potential capital gains, which were arrived at by comparing the highest closing price for the New GM Securities since December 15, 2011, against the tax basis of the New GM Securities on December 15, 2011 (as determined based on the date of transfer of record ownership of the New GM Securities). The set aside calculation methodology then converted the estimate of potential Taxes on Distribution into the numbers of New GM Securities

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to be set aside from distribution by dividing such estimate by the lowest closing market price for such securities since December 15, 2011. Just as under the prior methodology, the revised set aside calculation methodology uses the highest closing prices for the New GM Securities since December 15, 2011 in estimating the potential Taxes on Distribution. However, commencing with the quarter ended September 30, 2013, the conversion calculation was revised so that such estimates of potential Taxes on Distribution were divided by the trailing twelve month average closing prices for the New GM Securities, instead of by the lowest closing price since December 15, 2011.

As of September 30, 2013, and following the change in methodology described above, the numbers of New GM Securities set aside from distribution to fund Wind-Down Costs, Reporting and Transfer Costs and Taxes on Distribution were sufficient to satisfy such projected costs and potential liabilities as estimated by the GUC Trust. As of September 30, 2013, the GUC Trust had set aside from distribution, in the aggregate, 881,487 shares of New GM Common Stock and 801,327 warrants of each class of warrants to fund projected Wind-Down Costs and Reporting and Transfer Costs. In addition, as of September 30, 2013, the GUC Trust had set aside from distribution, in the aggregate, 7,447,810 shares of New GM Common Stock and 6,770,737 warrants of each class of warrants to fund potential Taxes on Distribution.

As of December 31, 2013, the number of New GM Securities set aside from distribution to fund projected Wind-Down Costs and Reporting and Transfer Costs of the GUC Trust remained sufficient to satisfy projected Wind-Down Costs and Reporting and Transfer Costs as estimated by the GUC Trust. As of December 31, 2013, the GUC Trust had set aside from distribution, in the aggregate, 718,272 shares of New GM Common Stock and 652,949 warrants of each class of warrants to fund projected Wind-Down Costs and Reporting and Transfer Costs. As of December 31, 2013, the GUC Trust Administrator determined that the Taxes on Distribution Set Aside Methodology described above would require the GUC Trust to set aside 7,944,979 shares of New GM Common Stock and 7,222,708 warrants of each class of warrants. However, as a result of limitations on the numbers of New GM Securities available to be set aside for such purposes, similar to the limitations described above for the quarters ended March 31, 2013, and June 30, 2013, the number of New GM Securities available to be set aside from distribution to fund such potential Taxes on Distribution as of December 31, 2013 was only 7,695,633 shares of New GM Common Stock and 6,996,030 warrants of each class of warrants, for a net shortfall of 249,346 shares of New GM Common Stock and 226,678 warrants of each class of warrants. Accordingly, as of December 31, 2013, the set asides for potential Taxes on Distribution were insufficient to satisfy in full the Taxes on Distribution Set Aside Methodology.

As of March 31, 2014, the numbers of New GM Securities and Dividend Assets set aside from distribution to fund Wind-Down Costs and Reporting and Transfer Costs remained sufficient to satisfy such projected costs as estimated by the GUC Trust in accordance with the above detailed Administrative Costs Set Aside Methodology (provided, however, as described further in Footnote 7 below, the set asides for Wind-Down Costs and Reporting and Transfer Costs did not include any New GM Securities or Dividend Assets set aside for tax liabilities in respect of Potential Future Dividends, should future dividends be declared by New GM). Also as of March 31, 2014, the numbers of New GM Securities and Dividend Assets set aside from distribution to fund potential Taxes on Distribution regained a level of sufficiency to satisfy such potential liabilities as estimated by the GUC Trust in accordance with the above detailed Taxes on Distribution Set Aside Methodology (provided, however, as described further in Footnote 7 below, the set aside for Taxes on Distribution did not include any New GM Securities or Dividend Assets set aside for tax liabilities in respect of Potential Future Dividends, should future dividends be declared by New GM). As of March 31, 2014, the GUC Trust had set aside from distribution, in the aggregate, 708,901 shares of New GM Common Stock, 644,430 warrants of each class of warrants and $212,671 in Dividend Assets to fund projected Wind-Down Costs and Reporting and Transfer Costs. In addition, as of March 31, 2014, the GUC Trust had set aside from distribution, in the aggregate, 7,363,141 shares of New GM Common Stock, 6,693,764 warrants of each class of warrants and $2,208,942 in Dividend Assets to fund potential Taxes on Distribution.

Motors Liquidation Company GUC Trust

Notes to Claims and Distribution Summary – Section 6.2 (c) Report

September 30, 2014

As of June 30, 2014, the numbers of New GM Securities and Dividend Assets set aside from distribution to fund Wind-Down Costs and Reporting and Transfer Costs remained sufficient to satisfy such projected costs as estimated by the GUC Trust in accordance with the above detailed Administrative Costs Set Aside Methodology (provided, however, as described further in Footnote 7 below, the set asides for Wind-Down Costs and Reporting and Transfer Costs did not include any New GM Securities or Dividend Assets set aside for tax liabilities in respect of Potential Future Dividends, should future dividends be declared by New GM). Also as of June 30, 2014, the numbers of New GM Securities and Dividend Assets set aside from distribution to fund potential Taxes on Distribution remained sufficient to satisfy such potential liabilities as estimated by the GUC Trust in accordance with the above detailed Taxes on Distribution Set Aside Methodology (provided, however, as described further in Footnote 7 below, the set aside for Taxes on Distribution did not include any New GM Securities or Dividend Assets set aside for tax liabilities in respect of Potential Future Dividends, should future dividends be declared by New GM). As of June 30, 2014, the GUC Trust had set aside from distribution, in the aggregate, 830,774 shares of New GM Common Stock, 755,224 warrants of each class of warrants, and $498,464 in Dividend Assets to fund projected Wind-Down Costs and Reporting and Transfer Costs. In addition, as of June 30, 2014, the GUC Trust had set aside from distribution, in the aggregate, 7,135,703 shares of New GM Common Stock, 6,487,002 warrants of each class of warrants, and $4,281,422 in Dividend Assets to fund potential Taxes on Distribution.

During the three months ended September 30, 2014, the number of New GM Securities and Dividend Assets set aside from distribution to fund projected Wind-Down Costs and Reporting and Transfer Costs of the GUC Trust increased by 70,515 shares of New GM Common Stock, 64,105 warrants of each class of warrants and $312,696 in Dividend Assets from those previously set aside as of June 30, 2014, with the total number of such set aside New GM Securities and Dividend Assets consisting of 901,289 shares of New GM Common Stock, 819,329 warrants of each class of warrants and $811,160 in Dividend Assets as of September 30, 2014. Such overall increases were primarily related to increases in the estimated future costs of the GUC Trust. As of September 30, 2014, such set aside amounts were sufficient to satisfy projected Wind-Down Costs and Reporting and Transfer Costs as estimated by the GUC Trust in accordance with the above detailed Administrative Costs Set Aside Methodology. As described further in Footnote 7 below, however, the set asides for Wind-Down Costs and Reporting and Transfer Costs do not include any New GM Securities or Dividend Assets set aside for tax liabilities in respect of Potential Future Dividends, should future dividends be declared by New GM.

During the three months ended September 30, 2014, the number of New GM Securities and Dividend Assets set aside from distribution to fund potential Taxes on Distribution of the GUC Trust was reduced by 3,349,174 shares of New GM Common Stock, 3,044,703 warrants of each class of warrants, and $873,546 in Dividend Assets from those previously set aside as of June 30, 2014, with the total number of such set aside New GM Securities and Dividend Assets consisting of 3,786,529 shares of New GM Common Stock, 3,442,299 warrants of each class of warrants, and $3,407,876 in Dividend Assets as of September 30, 2014. Such overall decreases were primarily related to (i) the GUC Trust's filing of a prompt determination of tax liability pursuant to 11 U.S.C. § 505(b) for the GUC Trust's tax year ended March 31, 2014, and the passage of the related statutory time period without receipt of notification of an audit from the Internal Revenue Service, and (ii) an adjustment to the Taxes on Distribution Set Aside Methodology, solely with respect to certain New GM Securities anticipated to be distributed as part of the fifteenth quarter distribution, as more fully described in the GUC Trust's Form 8-K filed with the Securities and Exchange Commission on October 24, 2014. As of September 30, 2014, such set aside amounts were sufficient to satisfy potential Taxes on Distribution as estimated by the GUC Trust in accordance with the above detailed Taxes on Distribution Set Aside Methodology. As described further in Footnote 7 below, however, the set aside for Taxes on Distribution does not include any New GM Securities or Dividend Assets set aside for tax liabilities in respect of Potential Future Dividends, should future dividends be declared by New GM.

Motors Liquidation Company GUC Trust

Notes to Claims and Distribution Summary – Section 6.2 (c) Report

September 30, 2014

It is the view of the Trust Administrator, after consultation with the GUC Trust Monitor and Trust Professionals, that the Administrative Costs Set Aside Methodology and the Taxes on Distribution Set Aside Methodology are generally conservative methodologies for calculating the projected administrative costs and potential tax obligations of the GUC Trust. Accordingly, it is the view of the GUC Trust Administrator and the GUC Trust Monitor that the New GM Securities and Dividend Assets currently held in the set asides for Wind-Down Costs, Reporting and Transfer Costs, and potential Taxes on Distribution would be sufficient, upon liquidation, to satisfy the administrative and tax obligations of the GUC Trust as of the date of this report. However, there can be no assurance that the numbers of New GM Securities and Dividend Assets set aside to fund projected Wind-Down Costs and Reporting and Transfer Costs and potential Taxes on Distribution will be sufficient to fund such costs and liabilities as they are actually incurred, in particular if the market price of the New GM Securities falls below the trailing twelve month average closing prices used to convert the GUC Trust's estimates of such projected costs and potential liabilities into numbers of GUC Trust Securities to be set aside, as described above. In addition, there can be no assurance that, as a result of future evaluations, additional numbers of New GM Securities and Dividend Assets will not need to be set aside or sold to fund additional costs and liabilities, beyond those that are currently included in the GUC Trust's estimates, in particular as a result of fluctuations in the market price of the New GM Securities or changes in the GUC Trust's estimates of projected costs and potential liabilities.

(7) The GUC Trust incurs a federal income tax liability at a rate of 39.6% on all cash dividends received in respect of New GM Common Stock held by the GUC Trust ("Dividend Taxes"). Pursuant to the GUC Trust Agreement, Dividend Taxes (like certain other taxes) must be paid by the GUC Trust from the proceeds of sale of Excess GUC Trust Distributable Assets and not from the cash proceeds from the dividend itself. However, the cash dividends received on New GM Common Stock which ultimately comprise Excess GUC Trust Distributable Assets will be distributed, *pro rata*, to holders of Units when such New GM Common Stock is included in a distribution of Excess GUC Trust Distributable Assets.

In the period ended September 30, 2014, the GUC Trust Administrator, in consultation with Trust Professionals, included in the set aside for Wind-Down Costs 87,653 shares of New GM Common Stock, 79,686 warrants of each class of warrants and $78,888 in Dividend Assets, for Dividend Taxes relating to the Current Dividends. With respect to any liability for Dividend Taxes on any Potential Future Dividends, however, the GUC Trust Administrator, in consultation with Trust Professionals, determined not to increase the set aside for Wind-Down Costs as at September 30, 2014 due to the uncertainty associated with a number of variables, including but not limited to (i) the likelihood of the payment of, and the timing of, any Potential Future Dividends, (ii) the amount per share of any Potential Future Dividends, and (iii) the numbers of shares of New GM Common Stock that will be held by the GUC Trust as of the record date of any Potential Future Dividend.

To the extent that the GUC Trust Administrator determines that the level of uncertainty associated with any of the aforementioned variables has sufficiently decreased, the GUC Trust Administrator reserves the right to, at its discretion and without advance notice, increase or decrease the set aside for Wind-Down Costs in an amount sufficient to cover all estimated Dividend Taxes associated with all then anticipated Potential Future Dividends. In such event, and assuming that, for the remainder of the estimated life of the GUC Trust (as estimated for other set aside purposes), New GM continues to pay quarterly dividends at the current rate per share and the number of shares of New GM Common Stock held by the GUC Trust as at September 30, 2014 (after reduction for the expected November 2014 excess distribution) does not decrease, and based upon the GUC Trust's current applicable income tax rate and the market value of New GM Securities at September 30, 2014, there could be up to a further $31.9 million of New GM Securities and Dividend Assets required to be set aside. The dollar value of New GM Securities and Dividend Assets comprising such additional set aside would vary if, for example, no dividend is paid by New GM for one or more future quarters, the rate per share of any dividend that is actually paid by New GM in future periods increases or decreases, the applicable income tax rate changes, the life of the GUC Trust is longer or shorter than that assumed, or if (as is likely)

Motors Liquidation Company GUC Trust

Notes to Claims and Distribution Summary – Section 6.2 (c) Report

September 30, 2014

the number of shares of New GM Common Stock held by the GUC Trust declines over its remaining life and the market value of the New GM Securities increases or decreases.

(8) Distributions to holders of Resolved Allowed General Unsecured Claims include (a) distributions such claimants would have received had their claims been allowed as of the Initial Distribution and (b) to the extent Excess GUC Trust Distributable Assets have previously been made available to Unit holders and/or are being made available at the time of the relevant distribution, additional assets in the form of New GM Securities and/or cash in respect of their being beneficiaries of certain numbers of Units.

(9) Pursuant to the Plan, no portion of the initial distribution to claimants was made "in respect of Units". Only subsequent distributions of Excess GUC Trust Distributable Assets are made "in respect of Units".

As described in footnote (1) above, no distributions to holders of Units were made in connection with the Section 2.3(a) Distribution (as defined in footnote (1) above), the fourth quarter distribution, the fifth quarter distribution, the sixth quarter distribution, the seventh quarter distribution, the eighth quarter distribution, the ninth quarter distribution, the tenth quarter distribution, the eleventh quarter distribution, the twelfth quarter distribution, the thirteenth quarter distribution, or the fourteenth quarter distribution as the amount of Excess GUC Trust Distributable Assets did not exceed the Distribution Threshold. As described in footnote (1) above, the GUC trust anticipates making a distribution of Excess GUC Trust Distributable Assets to holder of Units on or about November 12, 2014, consisting of consisting of 3,712,897 shares of New GM Common Stock, 3,375,361 New GM Series A Warrants, 3,375,361 New GM Series B Warrants, and $3,341,607 in Dividend Assets.

(10) Categorizations represent a subjective assessment by the GUC Trust as to the nature of the underlying claims based on information provided by the claimant and/or contained in the books and records of the GUC Trust. Such categorizations are subject to change at the sole discretion of the GUC Trust and without notice to any party. Amounts represented herein represent Class 3 General Unsecured Claims (as defined in the Plan). The amounts as currently ordered represent unsecured claims at either, as applicable, (i) original amounts as filed, (ii) amounts as currently reclassified or reduced by court order, or (iii) amounts as allowed per executed or ordered settlement. The amounts as allowed represent Allowed Class 3 General Unsecured Claims (as defined in the Plan). The amounts as currently ordered contains a category denoted as "other" which, as of the quarter ended September 30, 2014, reflects an aggregate claim amount of approximately $50 million. This "other" category consists of approximately (i) $12,024,405 in claim amount of Disputed General Unsecured Claims that were previously disallowed by the Bankruptcy Court, but are currently subject to appeals, and (ii) $37,975,595 in claim amount of Disputed General Unsecured Claims that is not associated with any particular claim but which has been set aside by the GUC Trust Administrator as a general claim contingency.

EXHIBIT B

MLC GUC Trust
Wind-Down
Actual vs. Approved Budget Report
($ in thousands)

		Jul - Sep 2014 Actual (1)	Jul - Sep 2014 Budget (2)	Actual o(u) Budget $	Actual o(u) Budget %	Notes
1	AlixPartners	$ 345.0	$ 345.0	$ -	0%	
2	Lead Counsel	133.7	107.5	26.2	24%	Some activities budgeted for Q2 were incurred in Q3.
3	ADR	1.3	50.0	(48.7)	(97%)	Under budget as a result of little movement on the remaining claims during the quarter.
4	**Total Professional Fees**	**$ 480.0**	**$ 502.5**	**$ (22.5)**	**(4%)**	
5	Garden City Group	$ 22.0	$ 64.5	$ (42.5)	(66%)	Work related to Bankruptcy court activities lower than anticipated.
6	GUC Trustee Fees - Wilmington	597.3	616.9	(19.6)	(3%)	
7	GUC Trustee Legal-Gibson	242.5	312.5	(70.0)	(22%)	Work related to wind down activities lower than anticipated.
8	Trust Counsel (Gibson Dunn) (Recall Matters)	939.6	0.0	939.6	N/A	Unanticipated expenses associated with GM recall matter that were not budgeted for 2014.
9	Monitoring Fees	302.0	326.8	(24.8)	(8%)	
10	Acctg & Tax Advisors	24.4	45.0	(20.6)	(46%)	Timing issue. Some activities budgeted for Q3 are expected to be incurred in Q4.
11	US Trustee Expense	10.4	10.4	0.0	0%	
12	**Total Other Costs**	**$ 2,138.2**	**$ 1,376.1**	**$ 762.1**	**55%**	
13	**Total GUC Trust Expenses**	**$2,618.2**	**$1,878.6**	**$739.6**	**39%**	

(1) Reflective of expenses incurred and accrued for work performed during the 3 months ended September 30, 2014. Excludes any true-up from reversal of prior quarter accruals.
(2) As submitted to DIP Lenders and GUC Trust Monitor on November 7, 2013

MLC GUC Trust
Wind-Down
Actual vs. Updated Budget Report
($ in thousands)

		Jul - Sep 2014 Actual (1)	Jul - Sep 2014 Budget (2)	Actual o(u) Budget $	Actual o(u) Budget %	Notes
1	AlixPartners	$ 345.0	$ 345.0	$ -	0%	
2	Lead Counsel	133.7	107.5	26.2	24%	Some activities budgeted for Q2 were incurred in Q3.
3	ADR	1.3	50.0	(48.7)	(97%)	Under budget as a result of little movement on the remaining claims during the quarter.
4	**Total Professional Fees**	**$ 480.0**	**$ 502.5**	**$ (22.5)**	**(4%)**	
5	Garden City Group	$ 22.0	$ 64.5	$ (42.5)	(66%)	Work related to Bankruptcy court activities lower than anticipated.
6	GUC Trustee Fees - Wilmington	597.3	616.9	(19.6)	(3%)	
7	GUC Trustee Legal-Gibson	242.5	312.5	(70.0)	(22%)	Work related to wind down activities lower than anticipated.
8	Trust Counsel (Gibson Dunn) (Recall Matters)	939.6	1,000.0	(60.4)	(6%)	Timing issue. Some activities budgeted for Q3 are expected to be incurred in Q4.
9	Monitoring Fees	302.0	326.8	(24.8)	(8%)	
10	Acctg & Tax Advisors	24.4	45.0	(20.6)	(46%)	Timing issue. Some activities budgeted for Q3 are expected to be incurred in Q4.
11	US Trustee Expense	10.4	10.4	0.0	0%	
12	**Total Other Costs**	**$ 2,138.2**	**$ 2,376.1**	**$ (237.9)**	**(10%)**	
13	**Total GUC Trust Expenses**	**$2,618.2**	**$2,878.6**	**($260.4)**	**(9%)**	

(1) Reflective of expenses incurred and accrued for work performed during the 3 months ended September 30, 2014. Excludes any true-up from reversal of prior quarter accruals.
(2) As submitted to DIP Lenders and GUC Trust Monitor on October 24, 2014.

Exhibit Z

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, **f/k/a General Motors Corp., *et al.***	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN

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Attorneys for Debtors and
Debtors in Possession

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN

Motors Liquidation Company (f/k/a General Motors Corporation); MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.); MLCS, LLC (f/k/a Saturn, LLC); MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation); Remediation and Liability Management Company, Inc.; and Environmental Corporate Remediation Company, Inc., the above-captioned debtors, propose the following chapter 11 plan pursuant to section 1121(a) of title 11 of the United States Code:

ARTICLE I.

DEFINITIONS AND INTERPRETATION

DEFINITIONS. The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and plural):

1.1 363 Transaction means the sale of substantially all the assets of General Motors Corporation and certain of its Debtor subsidiaries, and the assumption of certain executory contracts and unexpired leases of personal property and nonresidential real property, to a U.S. Treasury-sponsored purchaser pursuant to section 363 of the Bankruptcy Code, as embodied in the MSPA.

1.2 Administrative Expenses means costs or expenses of administration of any of the Chapter 11 Cases allowed under sections 503(b), 507(a)(1), and 1114(e) of the Bankruptcy Code that have not already been paid by the Debtors, including, without limitation, any actual and necessary costs and expenses of preserving the Debtors' estates, any actual and necessary costs and expenses of operating the Debtors' businesses, any indebtedness or obligations incurred or assumed by the Debtors, as debtors in possession, during the Chapter 11 Cases, including, without limitation, for the acquisition or lease of property or an interest in property or the rendition of services, any compensation and reimbursement of expenses to the extent allowed by Final Order under sections 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the

1.106 Plan S□pplement means the forms of documents, in a form reasonably acceptable to the U.S .Treasury, the Creditors' Committee, the Asbestos Claimants' Committee, and the Future Claimants' Representative, to the extent such documents affect the respective party, effectuating the transactions contemplated by this Plan, which documents shall be filed with the Clerk of the Bankruptcy Court no later than ten (10) days prior to the Confirmation Hearing. Upon its filing with the Bankruptcy Court, the Plan Supplement may be inspected at the Office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims and Equity Interests may obtain a copy of the Plan Supplement upon written request to the undersigned counsel. Copies of the Plan Supplement also are available on the Voting Agent's website, www.motorsliquidationdocket.com.

1.10□ Post-Effective Date MLC means MLC on and after the Effective Date.

1.10□ Priority Non-Tax Claim means any Claim, other than an Administrative Expense or a Priority Tax Claim, entitled to priority in payment as specified in section 507(a)(3), (4), (5), (6), (7), or (9) of the Bankruptcy Code.

1.109 Priority Order Sites means the non-owned sites, as set forth on Exhibit □E□hereto, that are sub□ect to an order requiring performance of an Environmental Action.

1.110 Priority Order Sites Consent Decrees and Settlement A□reements means the Consent Decrees and Settlement Agreements to be filed with the Bankruptcy Court in respect of the Priority Order Sites.

1.111 Priority Tax Claim means any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(□) of the Bankruptcy Code other than Priority Tax Claims that □ew GM is liable for under the MSPA.

1.112 Pro Rata Share means the ratio (expressed as a percentage) of (i) the amount of any Allowed Claim in a particular Class to (ii) the sum of (x) the aggregate amount of Allowed Claims in such Class and (y) the aggregate amount of Disputed Claims in such Class. Solely for purposes of determining the Pro Rata Share with respect to any distribution from (a) the Debtors with respect to the Term Loan Avoidance Action, (b) the GUC Trust, or (c) the Avoidance Action Trust, the aggregate amount of Disputed Claims shall include (x) Disputed General Unsecured Claims, (y) the Asbestos Trust Claim in the amount set forth in the Confirmation Order until such time as the amount of the Asbestos Trust Claim is finally determined as set forth in Section 1.15 hereof, and (□) the □Maximum Amount□(as defined in the GUC Trust Agreement) of the potential General Unsecured Claims arising from any successful recovery of proceeds from the Term Loan Avoidance Action or other Avoidance Actions. The Debtors may seek a determination by the Bankruptcy Court of the amount that should be reserved in determining the Pro Rata Share on account of Disputed Claims on an individual or aggregate basis.

1.113 Property or Properties means the Environmental Response Trust Properties and the Priority Order Sites.

1.11 Property Environmental Claim means any civil Claim or Cause of Action by the Governmental Authorities against the Debtors under Environmental Laws with respect to the Properties except for any General Unsecured Claim reserved in Paragraph 100 of the Environmental Response Trust Consent Decree and Settlement Agreement or the Priority Order Sites Consent Decrees and Settlement Agreements.

1.115 Protected Party means (i) the Debtors, (ii) any Entity that, pursuant to the Plan or after the Effective Date, becomes a direct or indirect transferee of, or successor to, any assets of the Debtors (including, without limitation, the GUC Trust, the Environmental Response Trust, the Avoidance Action Trust, the GUC Trust Administrator, the Environmental Response Trust Administrative Trustee, the Avoidance Action Trust Administrator, the GUC Trust Monitor, the Avoidance Action Trust Monitor, and their respective professionals) or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of its becoming such a transferee or successor), (iii) the holders of DIP Credit Agreement Claims, (iv) any Entity that, pursuant to the Plan or after the Effective Date, makes a loan to the Debtors, Post-Effective Date MLC, or the Asbestos Trust, or to a successor to, or transferee of, any assets of the Debtors or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of such Entity's becoming such a lender or to the extent any pledge of assets made in connection with such a loan is sought to be upset or impaired), (v) an officer, director, or employee of the Debtors, of any past or present affiliate of the Debtors, of any predecessor in interest of the Debtors, or of any Entity that owns or at any time has owned a financial interest in the Debtors, in any past or present affiliate of the Debtors, or in any predecessor in interest of the Debtors, but only to the extent that he or she is alleged to be directly or indirectly liable for the conduct of, Claims against, or Demands on the Debtors or the Asbestos Trust on account of Asbestos Personal In ury Claims, (vi) any Entity to the extent he, she, or it is alleged to be directly or indirectly liable for the conduct of, Claims against, or Demands on the Debtors or the Asbestos Trust on account of Asbestos Personal In ury Claims by reason of such Entity's provision of insurance to the Debtors, to any past or present affiliate of the Debtors, to any predecessor in interest of the Debtors, or to any Entity that owns or at any time has owned a financial interest in (I) the Debtors, (II) any past or present affiliate of the Debtors, or (III) any predecessor in interest of the Debtors, but only to the extent that the Debtors or the Asbestos Trust enters into a settlement with such Entity that is approved by the Bankruptcy Court and expressly provides that such Entity shall be a Protected Party under the Plan, or (vii) with the consent of the Asbestos Claimants' Committee and the Future Claimants' Representative, or the Asbestos Trust Administrator, as applicable, any other Entity that, pursuant to an agreement approved by Final Order, has been determined to be providing appropriate consideration to the Debtors' estates or the Trusts (including, by way of example, by waiving the Entity's claim(s) against the Debtors or any of the Trusts) in exchange for being included in the definition of a Protected Party herein (including, without limitation, Remy International, Inc. (f/k/a Delco Remy International, Inc. and DR International, Inc.

and its wholly-owned subsidiary Remy Inc. (f/k/a Delco Remy America, Inc. and DRA Inc.)) (□**Remy**□), for whom no further consent from the Asbestos Claimants' Committee and the Future Claimants' Representative, or the Asbestos Trust Administrator, as applicable, is required), to the extent he, she, or it is alleged to be directly or indirectly liable for the conduct of, Claims against, or Demands on the Debtors or the Asbestos Trust on account of Asbestos Personal In□ury Claims by reason of one or more of the following: (a) without in any way limiting clause (v) above, such Entity's involvement in the management of the Debtors or of any predecessor in interest of the Debtors, (b) such Entity's ownership of a financial interest in the Debtors, in any past or present affiliate of the Debtors, or in any predecessor in interest of the Debtors, (c) such Entity's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the Debtors, of any past or present affiliate of the Debtors, of any predecessor in interest of the Debtors, or of any Entity that owns or at any time has owned a financial interest in the Debtors, in any past or present affiliate of the Debtors, or in any predecessor in interest of the Debtors, (d) such Entity's current ownership of the assets of a former division of the Debtors or of a former division of the Debtors, or (e) such Entity's lease of real property owned or formerly owned by the Debtors. □otwithstanding the foregoing, □ew GM shall neither be included in the definition of Protected Party herein nor shall Section 4.5 hereof govern or en□oin claims against □ew GM; *provided, however*, that nothing contained in the Plan shall in any way modify or limit any protections or rights afforded to □ew GM under or in connection with the Bankruptcy Court order approving the 363 Transaction.

1.116 REALM means Remediation and Liability Management Company, Inc., a Michigan corporation, as debtor or debtor in possession, as the context requires.

1.11□ Re□istered Holder means the registered holders (or bearers, if applicable) of the securities issued pursuant to the Indentures or the Fiscal and Paying Agency Agreements.

1.11□ Resid□al Wind-Do□n Assets means the Cash necessary to fund the resolution of Administrative Expenses, Priority Tax Claims, Priority □on-Tax Claims, and Secured Claims, and the Cash reserved to pay such Administrative Expenses and Claims. If the Debtors have not resolved and paid all of the foregoing Claims and Administrative Expenses by the date of MLC's dissolution, then the Residual □ ind-Down Assets (including the power to ob□ect, settle, and or satisfy such Claims and Administrative Expenses) shall be transferred to the GUC Trust.

1.119 Sched□les means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules as such schedules and statements have been or may be supplemented or amended through the Confirmation Date.

1.120 Sec□red Claim means a Claim (i) secured by Collateral, to the extent of the value of such Collateral (A) as set forth in the Plan, (B) as agreed to by the holder of

Exhibit AA

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended March 31, 2014

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File No. 001-00043

Motors Liquidation Company GUC Trust
(Exact name of registrant as specified in its charter)

Delaware	**45-6194071**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**
c/o Wilmington Trust Company, as trust administrator and trustee Attn: David A. Vanaskey Jr., Vice President Rodney Square North 1100 North Market Street Wilmington, Delaware	**19890-1615**
(Address of principal executive offices)	**(Zip Code)**

(302) 636-6019
(Registrant's telephone number, including area code)

(Former Name or Former Address, if Changed Since Last Report)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☒ No ☐

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☐ No ☒ *

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☐

Non-accelerated filer ☒ (Do not check if a smaller reporting company) Smaller Reporting Company ☐

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes ☐ No ☒

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.
Yes ☐ No ☒ *

* The registrant is not required to file reports pursuant to Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934, but has filed all reports required pursuant to the relief granted to the registrant in a No Action Letter from the Division of Corporation Finance of the Securities and Exchange Commission to the registrant dated May 23, 2012.

MOTORS LIQUIDATION COMPANY GUC TRUST
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FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (the "Form 10-K") contains forward-looking statements about the assets, financial condition and prospects of the Motors Liquidation Company GUC Trust, or the GUC Trust. Actual results could differ materially from those indicated by the forward-looking statements because of various risks and uncertainties, including, without limitation, the resolution of the Disputed General Unsecured Claims (as defined below), the outcome of and the ultimate recovery on the Term Loan Avoidance Action (as defined below), any related incurrence of Allowed General Unsecured Claims (as defined below), the GUC Trust's incurrence of professional fees, tax liabilities and other expenses in connection with administration of the GUC Trust, economic conditions, changes in tax and other governmental rules and regulations applicable to the GUC Trust, fluctuations in the market price of the New GM Securities (as defined below) and other risks, as well as various risks and uncertainties associated with New GM (as defined below), as described in New GM's periodic and current reports filed under the Securities Exchange Act of 1934, as amended. Some of these risks and uncertainties are beyond the ability of the GUC Trust to control, and in many cases, risks and uncertainties that could cause actual results to differ materially from those indicated by the forward-looking statements cannot be predicted. When used in this Form 10-K, the words "believes," "estimates," "plans," "expects," "intends," and "anticipates" and similar expressions are intended to identify forward-looking statements.

GLOSSARY

A glossary of defined terms used in this Form 10-K is provided beginning on page 14.

PART I

Item 1. Business.

The GUC Trust was formed on March 30, 2011 as a statutory trust under the Delaware Statutory Trust Act, as amended, or the Delaware Act, upon the execution of the Motors Liquidation Company GUC Trust Agreement, or the GUC Trust Agreement (a copy of which, as amended, is filed as Exhibit 3.1 hereto), by Motors Liquidation Company, or MLC, MLC of Harlem, Inc., MLCS, LLC, MLCS Distribution Corporation, Remediation and Liability Management Company, Inc. and Environmental Corporate Remediation Company, Inc., Wilmington Trust Company, not in its individual capacity but solely in its capacity as trust administrator and trustee of the GUC Trust, or the GUC Trust Administrator, and FTI Consulting, Inc., solely in its capacity as trust monitor of the GUC Trust, or the GUC Trust Monitor, and upon the filing of the Certificate of Trust of Motors Liquidation Company GUC Trust with the Office of the Secretary of State of the State of Delaware.

The GUC Trust has no officers, directors or employees. The GUC Trust is administered by the GUC Trust Administrator, which is authorized by the GUC Trust Agreement to engage professionals, or GUC Trust professionals, to assist the GUC Trust Administrator in the administration of the GUC Trust. Accordingly, the GUC Trust and GUC Trust Administrator rely on receiving accurate information, reports and other representations from (i) the GUC Trust professionals, (ii) the GUC Trust Monitor, and (iii) other service providers to the GUC Trust. Notwithstanding such reliance, the GUC Trust Administrator is ultimately responsible for the disclosure provided in this Form 10-K. Among other rights and duties, pursuant and subject to the GUC Trust Agreement, the GUC Trust Administrator has the powers and authority as set forth in the GUC Trust Agreement, including, without limitation, the power and authority to hold, manage, sell, invest and distribute the assets comprising the corpus of the GUC Trust, prosecute and resolve objections to Disputed General Unsecured Claims (as defined below), take all necessary actions to administer the wind-down of the affairs of the Debtors (as defined below), and resolve and satisfy (to the extent allowed) any administrative expenses, priority tax claims, priority non-tax claims and secured claims, or collectively the Residual Wind-Down Claims. The activities of the GUC Trust Administrator are overseen by the GUC Trust Monitor. As further described below, the GUC Trust was formed for the purposes of implementing the Plan (as defined below) as a post-confirmation successor to MLC and resolving Disputed General Unsecured Claims against MLC and its affiliated debtors and debtors-in-possession, or the Debtors, and winding-down the Debtors' affairs, with no objective to engage in the conduct of a trade or business. The GUC Trust is a post-confirmation successor to MLC within the meaning of Section 1145 of title 11 of the United States Code, or the Bankruptcy Code.

Background: The General Motors Corporation Bankruptcy

General Motors Corporation, or Old GM, which is also known as MLC, and certain of its direct and indirect subsidiaries Chevrolet-Saturn of Harlem, Inc., n/k/a MLC of Harlem, Inc., Saturn, LLC, n/k/a MLCS, LLC and Saturn Distribution Corporation, n/k/a MLCS Distribution Corporation filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court for the Southern District of New York, or the Bankruptcy Court, on June 1, 2009. On October 9, 2009, Remediation and Liability Management Company, Inc. and Environmental Corporate Remediation Company, Inc. filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court.

On July 5, 2009, the Bankruptcy Court authorized the sale of substantially all of the assets of the Debtors to an acquisition vehicle principally formed by the United States Department of the Treasury, or the U.S. Treasury. On July 10, 2009, the acquisition vehicle, NGMCO, Inc., acquired substantially all of the assets and assumed certain liabilities of the Debtors pursuant to a Master Sale and Purchase Agreement, or, as amended, the MSPA, among Old GM and certain of its debtor subsidiaries and NGMCO, Inc., in a transaction under Section 363 of the Bankruptcy Code, or the 363 Transaction. In connection with the 363 Transaction, Old GM changed its name to Motors Liquidation Company and the acquisition vehicle pursuant to a holding company reorganization became General Motors Company, or (together with its consolidated subsidiaries) New GM.

The primary consideration provided by New GM to the Debtors under the MSPA was 150 million shares of common stock of New GM, or the New GM Common Stock, issued by New GM, amounting to approximately 10% of the outstanding New GM Common Stock at the time of the closing of the 363 Transaction, a series of warrants to acquire 136,363,635 newly issued shares of New GM Common Stock with an exercise price set at $10.00 per share, expiring July 10, 2016, or the New GM Series A Warrants, and another series of warrants to acquire 136,363,635 newly issued shares of New GM Common Stock with an exercise price set at $18.33 per share, expiring July 10, 2019, or the New GM Series B Warrants, and, collectively, the New GM Warrants. Together, the New GM Warrants constituted approximately 15% of the New GM Common Stock on a fully-diluted basis at the time of their issuance. Both the New GM Series A Warrants and the New GM Series B Warrants are subject to customary anti-dilution adjustments. The New GM Common Stock and both series of New GM Warrants are currently listed on the New York Stock Exchange, or the NYSE.

Additional consideration was also provided in the form of (i) the assumption of certain liabilities by New GM, (ii) a credit bid of certain outstanding obligations under (a) certain prepetition debt held by the U.S. Treasury and (b) a debtor-in-possession credit agreement, or the DIP Credit Agreement, held by, as lenders thereunder, the U.S. Treasury and the Governments of Canada and Ontario (through Export Development Canada), and together with the U.S. Treasury, the DIP Lenders, and (iii) the cancellation of certain warrant notes issued to the U.S. Treasury.

On March 18, 2011, the Debtors filed the Debtors' Second Amended Joint Chapter 11 Plan, or the Plan, with the Bankruptcy Court, and on March 29, 2011, or the Confirmation Date, the Bankruptcy Court entered an order confirming the Plan, or the Confirmation Order. The Plan became effective on March 31, 2011, or the Effective Date. On December 15, 2011, or the Dissolution Date, as required by the Plan, MLC filed a Certificate of Dissolution with the Secretary of State of the State of Delaware and MLC was dissolved as of such date. On April 18, 2013, the Bankruptcy Court entered an order granting the GUC Trust's request for entry of a final decree administratively closing each of the Debtors' chapter 11 cases other than that of MLC.

The Plan and the Formation of the GUC Trust

The Plan treats all creditors and equity interest holders in accordance with their relative priorities under the Bankruptcy Code, and designates 6 distinct classes of claims or equity interests: secured claims, priority non-tax claims, general unsecured claims, property environmental claims, asbestos personal injury claims and equity interests in MLC. The GUC Trust is primarily tasked with the resolution and satisfaction of general unsecured claims. Under the terms of the Plan and following the Special Excess Distribution (as defined below), for each $1,000 in amount of allowed general unsecured claims against the Debtors, or the Allowed General Unsecured Claims, the holders of such claims are entitled to receive (upon delivery of any information required by the GUC Trust) approximately 4.19 shares of New GM Common Stock and approximately 3.81 warrants of each series of New GM Warrants, as well as one unit of beneficial interest in the GUC Trust, or a GUC Trust Unit, subject in each case to rounding under the Plan, the GUC Trust Agreement and/or the rules of any applicable clearing system, and exclusive of any securities received, or to be received, in respect of GUC Trust Units. Holders of disputed general unsecured claims against the Debtors, or the Disputed General Unsecured Claims, will receive subsequent distributions of New GM Common Stock and New GM Warrants (which are collectively called the New GM Securities) and GUC Trust Units, in respect of such claims, only if and to the extent that their Disputed General Unsecured Claims are subsequently allowed, or Resolved Disputed Claims.

The Plan provides for the formation of the GUC Trust to, among other duties, administer the prosecution, resolution and satisfaction of general unsecured claims and Residual Wind-Down Claims against the Debtors. As further described below, the GUC Trust is responsible for implementing the Plan, including distributing the New GM Securities and GUC Trust Units to holders of Allowed General Unsecured Claims in satisfaction of their claims, resolving (that is, seeking allowance or disallowance of all or part of such claims) Disputed General Unsecured Claims that were outstanding as of the Effective Date and distributing New GM Securities and GUC Trust Units in satisfaction of the Resolved Allowed Claims (as defined below).

Under the Plan, the Debtors were required to be dissolved no later than the Dissolution Date. Upon the dissolution of MLC, the GUC Trust assumed responsibility for the winding down of the affairs of the Debtors and resolving and satisfying the Residual Wind-Down Claims.

The GUC Trust had an initial stated term of three years from the Effective Date. On February 6, 2014, the Bankruptcy Court entered an order extending the duration of the GUC Trust to March 31, 2015. The duration of the GUC Trust may in the future be shortened or further extended upon application to and approval by the Bankruptcy Court as necessary to complete the claims resolution process and the wind-down of the Debtors' affairs. The GUC Trust will remain under the jurisdiction of the Bankruptcy Court throughout the term of its existence.

The GUC Trust Assets

As of the Effective Date, the corpus of the GUC Trust consisted solely of approximately $52.7 million in cash contributed by the Debtors to fund the administrative fees and expenses (including certain tax obligations), or the Wind-Down Costs, incurred by the GUC Trust in administering its duties pursuant to the Plan and the GUC Trust Agreement, or the Administrative Fund. The cash comprising the Administrative Fund was obtained by MLC from the DIP Lenders and is subject to a lien held by the DIP Lenders pursuant to the DIP Credit Agreement, with any excess funds remaining in the Administrative Fund required to be returned to the DIP Lenders after (i) the satisfaction in full of all Wind-Down Costs and other liabilities of the GUC Trust (subject to the terms of the GUC Trust Agreement) and (ii) the winding up of the GUC Trust's affairs. As such, the Administrative Fund cannot be utilized for distributions to holders of Allowed General Unsecured Claims.

Moreover, the usage of the Administrative Fund for the payment of fees and expenses of the GUC Trust is subject to a budget, (the "Budget"), which must be submitted on an annual basis to the GUC Trust Monitor and the DIP Lenders for their approval and is updated quarterly as needed. The GUC Trust Agreement provides that any Wind-Down Costs incurred by the GUC Trust that exceed or are not covered by the Budget cannot be paid from the Administrative Fund, except with written consent of the DIP Lenders or Bankruptcy Court approval, in limited circumstances.

The GUC Trust Agreement provides that the Administrative Fund may not be utilized to fund certain specified costs, fees and expenses, which are referred to as Reporting Costs, including those directly or indirectly relating to (i) reports to be prepared and filed by the GUC Trust pursuant to applicable rules, regulations and interpretations of the Securities and Exchange Commission (the "SEC"), (ii) the transfer, registration for transfer and certification of GUC Trust Units, (iii) the application by the Committee (as defined below) to the Internal Revenue Service for a private letter ruling regarding the tax treatment of the GUC Trust and the holders of Allowed General Unsecured Claims in respect to the distribution of New GM Securities, which is discussed in more detail below under the heading "Income Tax Liabilities for Certain Capital Gains and Dividends on New GM Common Stock," and (iv) certain legal proceedings relating to the Term Loan Avoidance Action. In addition, the Administrative Fund cannot be used to fund any current or projected tax liabilities of the GUC Trust, other than those included in the Budget. However, the GUC Trust Agreement provides the GUC Trust Administrator with the authority to set aside from distribution and sell New GM Securities to fund such Reporting Costs (the proceeds of such sales, the "Reporting and Transfer Cash") and projected tax liabilities (other than those included in the Budget), with the approval of the Bankruptcy Court and/or the GUC Trust Monitor, in each case as described below.

The GUC Trust Agreement affords the GUC Trust Administrator, with the approval of the GUC Trust Monitor, the authority to set aside from distribution New GM Securities in numbers sufficient to satisfy (i) any current or projected Wind-Down Costs of the GUC Trust that exceed the amounts budgeted or were not budgeted in the Administrative Fund, including federal income taxes incurred in respect of dividends received by the GUC Trust on New GM Common Stock held by the GUC Trust ("Dividend Taxes"), (ii) any current or projected Reporting Costs that exceed the then current Reporting and Transfer Cash, or (iii) any current or projected Taxes on Distribution (as defined below). This process is not related to, and is separate from, the process of recording current and deferred income tax liabilities, as well as reserves for expected costs of liquidation in the Statement of Net Assets in Liquidation as a matter of financial reporting, which is only required for expected costs of liquidation for which there is a reasonable basis for estimation under applicable accounting standards. See "Critical Accounting Policies and Estimates—Reserves for Expected Costs of Liquidation" and "—Income Taxes" in Item 7 ("Management's Discussion and Analysis of Financial Condition and Results of Operations") below. The GUC Trust Administrator reevaluates, on a quarterly basis, the amount of New GM Securities needed to be set aside from distribution for purposes of funding projected liquidation and administrative costs (including projected Dividend Taxes) and potential Taxes on Distribution. The calculation converts estimates of projected liquidation and administrative costs and potential Taxes on Distributions into the number of New GM Securities to be set aside from distribution, using the trailing twelve month average closing prices for the New GM Securities since the Dissolution Date (the date record ownership of the New GM Securities was transferred to the GUC Trust from MLC). For additional information, see "Net Assets in Liquidation—New GM Securities Set Aside from Distribution" in Item 7 ("Management's Discussion and Analysis of Financial Condition and Results of Operations") below.

The GUC Trust Administrator may liquidate New GM Securities that have been set aside from distribution to fund (with the required approval of the Bankruptcy Court) the current or projected Wind-Down Costs (including Dividend Taxes) or Reporting Costs of the GUC Trust and (with the required approval of only the GUC Trust Monitor) current and projected Taxes on Distribution of the GUC Trust. The cash proceeds of such sales, and the marketable securities in which such cash proceeds are invested, are referred to as Other Administrative Cash. Pursuant to the GUC Trust Agreement, any cash or marketable securities constituting Other Administrative Cash which remain at the winding up and conclusion of the GUC Trust will be distributed to the holders of GUC Trust Units. The Bankruptcy Court has previously, in March 2012, and again in December 2012, approved the sale of New GM Securities to fund certain accrued and projected Wind-Down Costs which were in excess of the amounts budgeted in the Administrative Fund for such costs, and certain projected Reporting Costs which were in excess of the Reporting and Transfer Cash. Through March 31, 2014, sales of New GM Securities to fund projected Reporting Costs and Wind-Down Costs aggregated approximately $50.2 million. As of March 31, 2014, approximately $13.2 million remained in Other Administrative Cash and was recorded in cash and cash equivalents and marketable securities in the Statement of Net Assets in Liquidation as of March 31, 2014.

Prior to the dissolution of MLC, certain designated assets and the New GM Securities were maintained at MLC (the latter was retained by MLC to avoid federal income taxes that might have been payable by the GUC Trust upon distribution of the New GM Securities with respect to any appreciation of the securities while in possession of the GUC Trust, or Taxes on Distribution; see discussion below). As required by the Plan, MLC transferred to the GUC Trust on the Dissolution Date (i) record ownership of all remaining undistributed New GM Securities, which consisted of 30,967,561 shares of New GM Common Stock, 28,152,186 New GM Series A Warrants and 28,152,186 New GM Series B Warrants, (ii) approximately $2.0 million designated for Reporting Costs, (iii) approximately $1.4 million designated for reimbursing the indenture trustees and the fiscal and paying agents under the Debtors' prepetition debt issuances for costs associated with, among other things, administering distributions to registered holders of the Debtors' prepetition debt issuances, and (iv) certain rights and obligations. Separately, on the Dissolution Date, MLC transferred $500,000 to the Avoidance Action Trust (as defined below) for the purposes of funding any potential public reporting requirements of the Avoidance Action Trust, in which funds the GUC Trust holds a residual interest to the extent unused by the Avoidance Action Trust.

Further, upon the dissolution of MLC, the GUC Trust assumed responsibility for the winding down of the affairs of the Debtors and resolving and satisfying the Residual Wind-Down Claims. Under the Plan, upon the dissolution of MLC, the Debtors were directed to transfer to the GUC Trust, Residual Wind-Down Assets (as defined below) in an amount sufficient, based upon the Debtors' reasonable estimate, to satisfy the Residual Wind-Down Claims and the Residual Wind-Down Costs (as defined below). On the Dissolution Date, MLC transferred

Exhibit BB

EXECUTION VERSION

AMENDED AND RESTATED MOTORS LIQUIDATION COMPANY GUC TRUST AGREEMENT

This AMENDED AND RESTATED MOTORS LIQUIDATION COMPANY GUC TRUST AGREEMENT, dated as of June 11, 2012 (as it may be amended from time to time, this "Trust Agreement"), by and among Wilmington Trust Company, as trust administrator and trustee (together with any successor appointed under the terms hereof, the "GUC Trust Administrator") of the Motors Liquidation Company GUC Trust (the "GUC Trust") for the benefit of the general unsecured creditors of the Debtors (as defined below), and FTI Consulting, Inc., as trust monitor (together with any successor appointed under the terms hereof, the "GUC Trust Monitor") of the GUC Trust, amends and restates in its entirety the Second Amended Trust Agreement (as defined below). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Debtors' Second Amended Joint Chapter 11 Plan of liquidation pursuant to chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code") dated March 18, 2011, as confirmed (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the "Plan").

W I T N E S S E T H:

WHEREAS, the GUC Trust Administrator and the GUC Trust Monitor are party to the Motors Liquidation Company GUC Trust Agreement, dated as of March 30, 2011, by and among Motors Liquidation Company ("MLC"), MLC of Harlem, Inc., MLCS, LLC, MLCS Distribution Corporation, Remediation and Liability Management Company, Inc., and Environmental Corporate Remediation Company, Inc. (collectively, the "Debtors"), as debtors and debtors-in-possession, Wilmington Trust Company, as GUC Trust Administrator, and FTI Consulting, Inc., as GUC Trust Monitor (the "Original Trust Agreement"); and

WHEREAS, the Original Trust Agreement was amended pursuant to that certain amendment dated as of July 8, 2011 by and between the Debtors, the GUC Trust Administrator and the GUC Trust Monitor (the "First Amendment," and the Original Trust Agreement as amended, the "First Amended Trust Agreement"), and such First Amendment was approved by the Bankruptcy Court (as defined below) on July 6, 2011; and

WHEREAS, each of the Debtors has, on or prior to December 15, 2011, ceased to operate and dissolved; and

WHEREAS, the First Amended Trust Agreement was amended pursuant to that certain second amendment, dated as of January 3, 2012 by and between the GUC Trust Administrator and the GUC Trust Monitor (the "Second Amendment," and the First Amended Trust Agreement as amended, the "Second Amended Trust Agreement"), and such Second Amendment, because it served to rectify a defective and inconsistent provision of the First Amended Trust Agreement did not require the approval of the Bankruptcy Court; and

WHEREAS, the Second Amended Trust Agreement contemplates that the GUC Trust may issue Units (as defined below) in global form, provided that (i) the GUC Trust receives a favorable ruling from the Division of Corporation Finance of the SEC (as defined below), in a form acceptable to the GUC Trust Administrator in its sole discretion, which provides that, among other matters, the Division of Corporation Finance of the SEC would not recommend enforcement action if such Units are not registered under Section 12(g) of the Securities Exchange Act of 1934, and (ii) in addition to such favorable ruling from the Division of Corporation Finance of the SEC, the Divisions of Investment Management and Trading and Markets of the SEC formally or informally communicate that they have no objection to the issuance of Units and the establishment of the GUC Trust (collectively, the "No-Action Relief"); and

WHEREAS, on May 23, 2012 the GUC Trust received the No-Action Relief and the GUC Trust is prepared to issue Units in global form; and

WHEREAS, the definition of "Excess Distribution Record Date" as contained in the Second Amended Trust Agreement, following the receipt of the No-Action Relief, is defective in that the record date for distributions to holders of Units does not conform to certain regulatory requirements which may be applicable to the Units following their issuance in global form; and

WHEREAS, Section 3.4(a) and Section 5.6(b) of the Second Amended Trust Agreement, following the receipt of the No-Action Relief, are defective in that participants of DTC (as defined below) may round or sell fractional Units and/or fractional New GM Securities (as defined below) in accordance with their own client policies and procedures, which policies and procedures may conflict with the procedures governing fractional Units and fractional New GM Securities as set forth herein; and

WHEREAS, Section 5.4(b) of the Second Amended Trust Agreement is defective in that it fails to take into account all factors which may impact assets available for distribution in respect of the Units and, if not corrected, may impact the pro rata receipt of GUC Trust Distributable Assets (as defined below) in respect of the Units; and

WHEREAS, it is the intent of the parties hereto that this Trust Agreement amends and restates in its entirety the Second Amended Trust Agreement; and

WHEREAS, pursuant to Section 13.13(a) of the Second Amended Trust Agreement, the GUC Trust Administrator, with the approval of the GUC Trust Monitor, may amend the Second Amended Trust Agreement without notice to or consent of the Bankruptcy Court or any GUC Trust Beneficiary (as defined below) for the purpose of (in pertinent part) curing any inconsistency or correcting any defective provision; and

WHEREAS, the GUC Trust Monitor has approved this amendment and restatement of the Second Amended Trust Agreement as evidenced by its signature below; and

WHEREAS, this Trust Agreement, as it amends and restates the Second Amended Trust Agreement, shall become effective upon execution by the appropriate signatories to this amended and restated Trust Agreement.

NOW, THEREFORE, in accordance with Section 13.13(a) of the Second Amended Trust Agreement, the Second Amended Trust Agreement is hereby amended and restated as follows:

Background

A. Beginning on June 1, 2009, the Debtors filed in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") voluntary petitions for relief under chapter 11 of Title 11 of the Bankruptcy Code (the "Chapter 11 Cases").

B. On or about August 31, 2010, the Debtors filed their Plan and Disclosure Statement in the Bankruptcy Court. The Debtors filed an amended Plan and Disclosure Statement on December 7, 2010. The Debtors filed a second amended Plan on March 18, 2011.

C. The Disclosure Statement was approved by the Bankruptcy Court on December 8, 2010.

D. On or about March 29, 2011, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Plan.

E. The Plan provides for the creation of the GUC Trust as a post-confirmation successor to MLC within the meaning of Section 1145(a) of the Bankruptcy Code, to hold and administer:

(i) the common stock of General Motors Company ("New GM Common Stock") to be contributed to the GUC Trust under the Plan, including (x) any dividends declared thereon in the form of New GM Common Stock, whether prior to or on or after the Effective Date, (y) any additional shares of New GM Common Stock (the "Additional Shares") to be issued in respect of General Unsecured Claims pursuant to the MSPA, together with any dividends declared thereon in the form of New GM Common Stock, whether prior to or on or after the Effective Date, and (z) any capital stock or other property or assets into which such New GM Common Stock may be converted or for which it may be exchanged (including by way of recapitalization, merger, consolidation, reorganization or otherwise) (the "GUC Trust Common Stock Assets");

(ii) the two series of warrants, each entitling the holder to acquire one share of New GM Common Stock, one series with an exercise price of $10.00 per share (subject to adjustment) and an expiration date of July 10, 2016 (the "New GM $10.00 Warrants") and the other with an exercise price of $18.33 per share (subject to adjustment) and an expiration date of July 10, 2019, (the "New GM $18.33 Warrants" and together with the New GM $10.00 Warrants, the "New GM Warrants" and, together with the New GM Common Stock, the "New GM Securities") to be contributed to the GUC Trust under the Plan, as such warrants may from time to time be modified or adjusted in accordance with their terms (the "GUC Trust Warrant Assets" and, together with the GUC Trust Common Stock Assets, the "GUC Trust Securities Assets");

(iii) any dividends on the GUC Trust Common Stock Assets, whether in the form of Cash, securities or other property other than New GM Common Stock, declared prior to the Effective Date (the "Initial GUC Trust Dividend Assets") and any such dividends,

	Assets reserved for distribution to holders of Units (but not yet distributed or withheld from distribution) of— GUC Common Stock Assets GUC Trust Warrant Assets GUC Trust Dividend Assets other GUC Trust Distributable Cash (whether held by MLC or the GUC Trust)	year.
I.	Additional Shares received (whether held by MLC or the GUC Trust)	During (i) the relevant fiscal quarter or fiscal year; and (ii) the period beginning on the Effective Date and ending on the last day of the relevant fiscal quarter or fiscal year.

(ii) The GUC Trust Reports shall also disclose such other information as the GUC Trust Administrator, in consultation with the Trust Professionals deems advisable or as the GUC Trust Monitor or DIP Lenders may reasonably request from time to time or as may be required by the Bankruptcy Court.

(d) The GUC Trust Administrator shall also timely prepare and file and/or distribute such additional statements, reports and submissions as may be necessary to cause the GUC Trust and the GUC Trust Administrator to be in compliance with applicable law, and shall prepare and deliver to the GUC Trust Monitor such statements, reports and other information as may be otherwise reasonably requested from time to time by the GUC Trust Monitor.

(e) The GUC Trust Administrator shall also provide quarterly reports to the DIP Lenders specifying the balance of the Residual Wind-Down Assets as of the last day of such quarter and as of the last day of the prior quarter.

6.3. SEC Reporting. The GUC Trust will file such reports as shall be required by the rules and regulations of the SEC, including pursuant to any no-action guidance issued to the GUC Trust by the staff of the SEC.

6.4. Budget. The GUC Trust Administrator shall prepare and submit to the GUC Trust Monitor and DIP Lenders for approval a reasonably detailed annual plan and budget (the "Budget") at least thirty (30) days prior to the commencement of each calendar year; *provided, however*, that the first such Budget shall be agreed to as of the Effective Date. Such annual plan and Budget shall set forth (on a quarterly basis) in reasonable detail: (A) the GUC Trust Administrator's anticipated actions to administer the GUC Trust Assets; and (B) the anticipated fees and expenses, including professional fees, associated with the administration of the GUC Trust, a separate amount representing the anticipated

fees and expenses of the GUC Trust Monitor and detail as to how the GUC Trust will budget and spend the Wind-Down Budget Cash. Such Budget shall be updated and submitted to the GUC Trust Monitor and DIP Lenders for review on a quarterly basis, and each such quarterly update shall reflect the variances (with explanations) between (x) the Budget, (y) any updated Budget, and (z) the actual results for the same period. For the avoidance of doubt, the DIP Lenders may object in the Bankruptcy Court with respect to any quarterly update that materially changes the Budget and the Bankruptcy Court shall resolve such dispute. All actions by the GUC Trust Administrator shall be consistent with the Budget, (as updated). The GUC Trust Administrator may obtain any required approval of the Budget on reasonable negative notice (which shall be not less than 15 days after receipt of the Budget) and approval of the Budget shall not be unreasonably withheld. In the event of any dispute concerning the Budget (or the taking of actions consistent with the Budget), the GUC Trust Administrator, the GUC Trust Monitor or the DIP Lenders may petition the Bankruptcy Court to resolve such dispute. For the avoidance of doubt, the Reporting and Transfer Costs shall not be set forth in the Budget and shall not be paid for with the Wind-Down Budget Cash.

6.5. Setoff. The GUC Trust Administrator may, but shall not be required to, setoff against or recoup from any payments to be made pursuant to the Plan in respect of any Allowed General Unsecured Claim, including in respect of any Units, any claims of any nature whatsoever that the GUC Trust, as successor to the Debtors, may have against the claimant, but neither the failure to do so nor the allowance of any General Unsecured Claim hereunder shall constitute a waiver or release by the Debtors or the GUC Trust Administrator of any such claim they may have against such claimant.

6.6. Compliance with Laws. Any and all distributions of GUC Trust Assets shall be in compliance with applicable laws, including applicable federal and state tax and securities laws.

6.7. Fiscal Year. Except for the first and last years of the GUC Trust, the fiscal year of the GUC Trust shall commence on April 1 and end on March 31 of the succeeding year. The first year of the GUC Trust shall commence on March 31, 2011 and end on March 31, 2012. For the last year of the GUC Trust, the fiscal year of the GUC Trust shall be such portion of the calendar year that the GUC Trust is in existence.

6.8. Books and Records.

(a) The GUC Trust Administrator shall maintain and preserve the Debtors' books, records and files that shall have been delivered to or created by the GUC Trust Administrator.

(b) The GUC Trust Administrator shall maintain books and records relating to the assets, liabilities, income and expense of the GUC Trust, all distributions made by the GUC Trust and the payment of fees and expenses of, and satisfaction of claims against or assumed by, the GUC Trust and the GUC Trust Administrator, in such detail and for such period of time as may be necessary to enable it to make full and proper

reports in respect thereof in accordance with the provisions of this Trust Agreement and otherwise to comply with applicable provisions of law, including tax law.

6.9. Cash Payments. All distributions of GUC Trust Cash required to be made by the GUC Trust Administrator may be made in Cash denominated in U.S. dollars by checks drawn on a United States domestic bank selected by the GUC Trust Administrator or, at the option of the GUC Trust Administrator, by wire transfer from a United States domestic bank selected by the GUC Trust Administrator or as otherwise required or provided in applicable agreements; *provided*, *however*, that cash payments to foreign persons may be made, at the option of the GUC Trust Administrator, in such funds as and by such means as are necessary or customary in a particular foreign jurisdiction.

6.10. Insurance. The GUC Trust shall maintain customary insurance coverage for the protection of the GUC Trust Administrator, the GUC Trust Monitor and any such other persons serving as administrators and overseers of the GUC Trust on and after the Effective Date, in all cases in accordance with the Budget. The GUC Trust Administrator may also obtain such insurance coverage as it deems necessary and appropriate with respect to real and personal property which may become GUC Trust Assets, if any, in accordance with such Budget.

6.11. Cooperation with and Indemnification of the Administrator of the Avoidance Action Trust.

(a) The GUC Trust Administrator shall timely provide the Avoidance Action Trust Administrator with such information as the Avoidance Action Trust Administrator shall reasonably request. Without limiting the foregoing, the GUC Trust Administrator shall provide to the Avoidance Action Trust Administrator copies of the GUC Trust Reports as soon as they become available, under appropriate arrangements of confidentiality to the extent the reports have at the time not yet been publicly disclosed. The GUC Trust Administrator will also from time to time, upon reasonable request of the Avoidance Action Trust Administrator, provide the Avoidance Action Trust Administrator with the GUC Trust Administrator's most recent determination of all Resolved Allowed General Unsecured Claims, the Disputed General Unsecured Claims, the Maximum Amounts, the Aggregate Maximum Amount and the Current Total Amount, and any other information within the custody and control of the GUC Trust Administrator as the Avoidance Action Trust Administrator shall reasonably request to make any calculation or determination or otherwise to fulfill its responsibilities under the agreement governing the Avoidance Action Trust. The provision of any such information shall be made under appropriate arrangements of confidentiality to the extent such information has at the time not been publicly disclosed. In addition, neither the GUC Trust Administrator nor the GUC Trust Monitor shall be required to provide access to or disclose any information where such access or disclosure would give rise to a material risk of waiving any attorney-client privilege. In the event that the GUC Trust Administrator or the GUC Trust Monitor does not provide access or information to the Avoidance Action Trust Administrator in reliance on the preceding sentence, the GUC Trust Administrator and/or the GUC Trust Monitor shall use its reasonable best efforts to communicate the applicable information to the Avoidance Action Trust Administrator in a way that would not violate such privilege.

Exhibit CC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN MORGENSTEIN, MICHAEL JACOB, as Executor of the Estate of Doris Jacob, and ALANTE CARPENTER individually and on behalf of others similarly situated,

Appellants,

-v-

MOTORS LIQUIDATION COMPANY f/k/a/ GENERAL MOTORS CORPORATION A Delaware Corporation,

Appellee.

12 Civ. 01746 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

Plaintiff-appellants appeal the decision and order entered by Bankruptcy Judge Gerber on January 18, 2012, dismissing their claim.

Plaintiffs seek to represent a putative class of Chevrolet Impala owners whose 2007 and 2008 model Impalas allegedly contained defective rear spindle rods, costing them each $450 in repairs. Plaintiffs contend that, pursuant to 11 U.S.C. § 1144, they are entitled to a "limited" revocation of the confirmation order in the General Motors bankruptcy because, Plaintiffs allege, the order was procured by fraud. Plaintiffs allege that General Motors' failure to list the putative class of creditors in General Motors' Section 521 disclosures to the Bankruptcy Court during Chapter 11 proceeding constituted a fraud on the court. Plaintiffs further allege that General Motors' failure to provide Plaintiffs direct notice as required for all "known creditors" rendered fraudulent General Motors' representations to the Bankruptcy Court that it had satisfied all of its notification obligations.

In a Decision and Order dated January 18, 2012, Bankruptcy Judge Gerber rejected Plaintiffs' claims, holding that the Complaint failed to plead fraud with sufficient particularity

and that the requested remedy of partial revocation of a confirmation order does not exist. This Court affirms the decision of the Bankruptcy Court in its entirety.

I. BACKGROUND

The posture of this case derives from Appellants' inability to file and recover a proof of claim either individually or on a class wide basis prior to the entry of the confirmation order in the General Motors bankruptcy proceedings.

As background, General Motors Corporation ("Old GM") filed for Chapter 11 protection on June 1, 2009, and thereafter changed its name to Motors Liquidation Corporation ("MLC"). (09-BR-50026 Docket # 1). On July 5, 2009, the Bankruptcy Court granted Old GM's request for an order authorizing the sale of most of Old GM's assets to a new entity ("New GM") pursuant to 11 U.S.C. § 363. ("Sale Order") (*Id.* at Docket # 2968). The Sale Order provided that New GM would assume all of Old GM's obligations under express warranties. An Order was issued on September 16, 2009, setting November 30, 2009, as the Bar Date, i.e. the last date by which to file a proof of claim. (*Id.* at Docket # 4079).

A Confirmation Order of the Debtor's reorganization plan was entered by the Bankruptcy Court on March 29, 2011. (*Id.* Docket # 9941). The confirmation plan allows general unsecured creditors to receive *pro rata* distributions of shares of common stock in New GM and warrants for the purchase of common stock paid out of a General Unsecured Creditor Trust ("GUC Trust"). Defendant represents, and Plaintiffs do not contest, that approximately 70,000 claims were filed by unsecured creditors prior to the Bar Date. (Opp. Br. at 5). As of December 31, 2011, the GUC Trust contained approximately $1.1 billion in remaining net assets to provide *pari passu* distributions to all remaining disputed claims, which number approximately 1,700. Plaintiffs represented to Judge Gerber at oral argument that they seek funds from this "pot;"

awarding Plaintiffs an award from this "pot" would obviate the need for any claw backs. (A. 364–65; 1/10/12 Tr. at 51–52).

Plaintiffs allege that in July of 2011 they learned of the Impala's rear spindle rod defect from an unrelated lawsuit against New GM in the Eastern District of Michigan. (Compl. ¶ 16; Pl. Br. at 6). Appellants filed a "Complaint for Revocation of Discharge" pursuant to 11 U.S.C. § 1144 on September 26, 2011. Section 1144 allows for revocation of a confirmation order when such order was procured by fraud. Complaints seeking revocation of a confirmation order create adversary proceedings conducted in the bankruptcy court. Fed. R. Bankr. P. 7001(5).

On December 12, 2011, Defendant MLC filed its Motion to Dismiss the Complaint. Defendant argued that (1) plaintiffs were seeking a "partial" or "limited" revocation of a confirmation order, which is not allowed under 11 U.S.C. § 1144, (2) Plaintiffs failed to allege fraud with sufficient particularity to satisfy Rule 9(b), (3) the doctrine of equitable mootness barred the relief requested, (4) Plaintiffs failed to demonstrate excusable neglect regarding their failure to file a timely proof of claim, and (5) Plaintiffs failed to present a viable class pursuant to Fed. R. Civ. P. 23 and Fed. R. Bankr. 7023.

The Bankruptcy Court held oral argument on January 10, 2012, at the end of which it indicated that it would rule against Plaintiffs. (A. 369–71). On January 18, 2012, the Bankruptcy Court issued a written opinion granting Defendant's Motion to Dismiss on the grounds that there is no "partial" revocation permitted under Section 1144 and that Plaintiffs' Complaint failed to satisfy Rule 9(b)'s heightened pleading standard for allegations of fraud. (11-BR-9409 Docket # 42). Because the Bankruptcy Court found dismissal appropriate on these grounds, it did not address Defendant's remaining arguments.

On March 9, 2012, Plaintiffs filed an appeal of Judge Gerber's ruling.

II. STANDARD OF REVIEW

A district court "may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree." Fed. R. Bankr. P. 8013. On appeal, the legal conclusions of the bankruptcy court are reviewed *de novo*, but the findings of fact are reversed only when they are "clearly erroneous." *Kuhl v. United States,* 467 F.3d 145, 147 (2d Cir. 2006) (citation omitted) (*per curiam*). If a case is appealed to the Second Circuit, the panel will "look through" the district court's opinion and "review the bankruptcy court's opinion independent of the district court's review." *In re Coudert Bros. LLP*, 673 F.3d 180, 186 (2d Cir. 2012).

III. THE COMPLAINT FAILS TO MEET RULE 9(B)'S HEIGHTENED STANDARD FOR PLEADING FRAUD WITH PARTICULARITY

Plaintiffs argue that the Bankruptcy Court was incorrect in applying a "strong inference of fraud" pleading requirement and in holding that Plaintiffs claims fail to meet the pleading standard of Rule 9(b). The Court finds no error in the Bankruptcy Court's ruling.

A. Pleading Standard

Defendant's motion to dismiss is governed by Rule 12(b)(6), which is made applicable to adversary proceedings in bankruptcy courts by Fed. R. Bankr. P. 7012(b). "Factual allegations must be enough to raise a right to relief above the speculative level," and a complaint must present facts that "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). When alleging fraud in an adversarial bankruptcy proceeding, the plaintiff must meet the heightened pleading standard of Rule 9(b). *In re Delta Air Lines, Inc.*, 386 B.R. 518, 531–32 (Bankr. S.D.N.Y. 2008).

B. The Bankruptcy Court Correctly Applied the "Strong Inference" Standard

Section 1144 requires allegations of fraudulent intent. *In re Longardner & Assoc., Inc.*, 855 F.2d 455, 461–62 (7th Cir. 1988); *In re Michelson*, 141 B.R. 715, 725 (Bankr. E.D. Cal.

1991); *Skulsky v. Nyack Autopartstores Holding Co., Inc. (In re Nyack Autopartstores Holding Co., Inc.)*, 98 B.R. 659, 662 (Bankr. S.D.N.Y. 1989) ("[I]ntent to defraud the court is a specific prerequisite for revoking a confirmation order pursuant to 11 U.S.C. § 1144.").

Long-standing case law in the Second Circuit requires plaintiffs to "allege facts that give rise to a strong inference of fraudulent intent." *Acito v. IMCERA Group, Inc.,* 47 F.3d 47, 52 (2d Cir. 1995); *Cosmas v. Hassett*, 886 F.2d 8, 12–13 (2d Cir. 1989) ("Although under Rule 9(b) a complaint need only aver intent generally, it must nonetheless allege facts which give rise to a strong inference that the defendants possessed the requisite fraudulent intent."); *see also Shields v. Citytrust Bancorp, Inc.,* 25 F.3d 1124, 1128 (2d Cir. 1994) ("[T]he relaxation of Rule 9(b)'s specificity requirement for scienter must not be mistaken for license to base claims of fraud on speculation and conclusory allegations.") (internal quotation marks omitted). "The requisite 'strong inference' of fraud may be established either by (a) alleging facts to show that defendants had both motive and opportunity to commit fraud, or (b) alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness." *Shields, Inc.,* 25 F.3d at 1128..

The strong inference standard has been applied to common law fraud, securities fraud, and RICO claims. *Capital Mgt. Select Fund Ltd. v. Bennetti*, 680 F.3d 214, 225 (2d Cir. 2012) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 314 (2007)); *S.Q.K.F.C., Inc. v. Bell Atl. TriCon Leasoning Corp.*, 84 F.3d 629, 633–34 (2d Cir. 1996); *Harborview Value Masterfund, L.P. Freeline Sports, Inc.*, 2012 WL 612358, at *8 (S.D.N.Y. Feb. 23, 2012). Plaintiffs acknowledge that the strong inference standard "has now been applied in a variety of settings." (Pl. Br. at 26).

Nevertheless, Plaintiffs argue that Judge Gerber was mistaken in applying the "strong inference" test and should instead have assessed whether a "fraud on the court" was "of great moment to the public," language that Plaintiffs take from *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238 (1944). This formulation does nothing to alter or displace the plaintiffs' obligation to plead a strong inference of fraudulent intent. *Hazel-Atlas*' "great moment to the public" language was the Supreme Court's response to the Third Circuit's holding that a fraudulent expert report introduced in a patent proceeding did not reach levels significant enough to obtain equitable relief. *Id.* at 246. The "great moment" language has nothing to do with the standard for pleading intent and it cannot be used to supplant the long-established "strong inference" standard when pleading fraud in the Second Circuit.

Plaintiffs cite two cases supposedly applying its version of the "*Hazel-Atlas* test," (Opp. Br. at 27), neither of which involved Section 1144 or addressed the scienter requirement for pleading fraud. *Gazes v. Delprete ("In re Clinton St. Food Corp.")*, 254 B.R. 523, 533 (Bankr. S.D.N.Y. 2000); *Tese-Milner v. TPAC, LLC ("In re Ticketplanet.com")*, 313 B.R. 46, 64-65 (Bankr. S.D.N.Y. 2004). These cases are inapposite.

Plaintiffs cite two additional cases in urging that the Court reject the "strong inference" standard for pleading fraud for purposes of Section 1144. (Opp. Br. 28–29, 34–35). Plaintiffs urge the Court to adopt what it purports to be the test for fraud adopted by a bankruptcy court in the Eastern District of California in *In re Michelson*, 141 B.R. 715, 725 (Bankr. E.D. Cal. 1991), specifically that the intent requirement of Section 1144 is met when a person "(1) is obliged to disclose, (2) knows the existence of material information, and (3) does not disclose it." (Pl. Br. at 34). But even assuming *arguendo* the correctness of this analytic framework, it does not rebut the need in this Circuit to plead facts creating a strong inference of such intent, either by showing

a motive and opportunity or strong circumstantial evidence of recklessness or conscious wrongdoing. In conjunction with *Michelson*, Plaintiffs cite *Grubin v. Rattet ("In re Food Mgmt. Grp., LLC")*, 380 B.R. 677, 714–15 (Bankr. S.D.N.Y. 2008), a case involving the common law tort of fraud on the court. Yet fraud for purposes of Section 1144 has different elements from common law fraud claims. *See* 8 *Collier's on Bankruptcy* § 1144.05. *Grubin* does not stand for the proposition that there is no intent requirement for claims arising under Section 1144 or that the "strong inference" pleading standard should not apply.

In short, the Bankruptcy Court correctly applied the well-established rule in this Circuit that, pursuant to Rule 9(b), a pleading must contain "a strong inference of fraudulent intent," *Shields*, 25 F.3d at 1128. Plaintiffs' arguments to the contrary are without merit.

C. The Bankruptcy Court Correctly Held that the Allegations in the Complaint Fail to Meet the Heightened Pleading Requirement of Rule 9(b)

Plaintiffs' allegations of fraud appear to rest on two pillars: (1) Defendants had a duty to list Plaintiffs' putative class as a scheduled creditor pursuant to 11 U.S.C. § 521 but did not (Compl. ¶ 44–46; Pl. Br. at 29) and (2) Plaintiffs were "known creditors" entitled to notice of the proceedings who did not receive such notice and, as a result, Defendants' representations to the bankruptcy court that they had served a Notice of Bar Date and copies of the Notice Package on all persons with potential claims against the Old GM estate were therefore fraudulent and not in good faith (Pl. Br. at 11–13, 29–30). Plaintiffs insist that their putative class' members were "known creditors" because Old GM issued a Product Service Bulletin to Authorized Chevrolet Dealerships, and initiated a recall as to "Police Package" Impalas ("Police Impalas") for 2007 and 2008 models, (Comp. ¶¶ 6–9), which, Plaintiffs contend, *implies* that Old GM was aware of the defect in consumer Impalas. (Comp. ¶¶ 11–14). Plaintiffs allege that not notifying them directly and not listing them in Old GM's § 521(c) filings constituted "failures in disclosure

which were central to the Plan process" and that "[f]ull disclosure would have precluded confirmation due to lack of good faith, discriminatory treatment of similarly-situated creditors, and breach of fiduciary duties." (Comp. ¶ 48; Pl. Br. at 30).

As discussed below, these allegations are insufficient to plead either motive and opportunity or strong circumstantial evidence of conscious misbehavior or recklessness, and therefore fail to satisfy the standard for pleading a strong inference of fraudulent intent. *Shields*, 25 F.3d at 1128.

1. Plaintiffs Failed to Plead Motive and Opportunity

When alleging intent based on motive and opportunity, "[m]otive would entail concrete benefits that could be realized by one or more of the false statements and wrongful nondisclosures alleged. Opportunity would entail the means and likely prospect of achieving concrete benefits by the means alleged." *Shields*, 25 F.3d at 1130.

Plaintiffs' allegations of motive with regard to a fraud on the Bankruptcy Court appear to rely on its assertion that "the Confirmation Order affords broad releases to Old GM's pre- and post-petition officer [*sic*], directors, consultants and professionals." (Pl. Br. at 13). Plaintiffs assert that "some of those parties **may** have breached their respective fiduciary duties to Plaintiffs . . . . As a result of these broad releases, Plaintiffs have no right to seek damages from those fiduciaries." (*Id.*) (emphasis added). It is noteworthy that Plaintiffs do not allege that any of these individuals actually did breach fiduciary duties and do not allege that they needed these exculpation provisions vis-à-vis Plaintiffs' putative class. Nor do Plaintiffs contend with the legitimate and "salutary" reasons for including exculpation provisions in a confirmation order.[1]

[1] Exculpation Provisions "have a salutary purpose" and "are frequently included in chapter 11 plans, because stakeholders all too often blame others for failures to get the recoveries they desire; seek vengeance against other parties; or simply wish to second guess the decision makers in the chapter 11 case." *In re DBSD North Am., Inc.*, 419 B.R. 179, 217 (Bankr. S.D.N.Y. 2009) (Gerber, J.). Such releases "are permissible under some circumstances

Plaintiffs' averments with regards to exculpation provisions are vague and fail to allege even inferentially any motive or opportunity for the alleged fraud.

Plaintiffs allege that GM's motivations to hide the need for a partial recall were: (1) "minimizing the costs of recalls, (2) inducing purchases of defective vehicles, and (3) mollifying the National Highway Safety Administration." (Pl. Br. at 23). But as the Bankruptcy Court noted, Old GM gained nothing from concealing this putative class from the bankruptcy court. *In re Motors Liquidation Co.*, 462 B.R. 494, 506–07 (Bankr. S.D.N.Y. 2012). Old GM was liquidated and those assets that were not transferred to New GM were distributed *pari passu* to creditors. *See id.* The Court fails to ascertain what motive Old GM could have had—or how it could have mattered to Old GM at all—to exclude Plaintiffs' putative class from the group of unsecured creditors receiving payments of approximately twenty-five percent of the amount owed in warrants and stocks in New GM.

In short, just as the Bankruptcy Court, this "Court can find no motive." *In re Motors Liquidation Co.*, 462 B.R. at 494.

2. Plaintiffs Failed to Plead Facts Creating Strong Circumstantial Evidence of Conscious Misbehavior or Recklessness

Nor have Plaintiffs pleaded "facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness." *Acito v. IMCERA Grp, Inc.*, 47 F.3d 47, 52 (2d Cir. 1995). The Bankruptcy Court noted that there are no "facts alleged evidencing a decision by the Debtors to deny notice to any of the named plaintiffs . . . ." *In re Motors Liquidation Co.*, 462

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but not as a routine matter." *In re Chemtura Corp.*, 439 B.R. 561, 611 (Bankr. S.D.N.Y. 2010) (citing *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 142 (2d Cir. 2005)). They are to be used "where the provisions are important to a debtor's plan; where the claims are 'channeled' to a settlement fund rather than extinguished; where the enjoined claims would indirectly impact the debtor's reorganization by way of indemnity or contribution; where the released party provides substantial consideration; where the plan otherwise provides for the full payment of the enjoined claims; or where creditors consent." *Id.* Judge Gerber permitted these releases in the GM bankruptcy, and did not mention anywhere in his opinion in the present case an inkling of concern that these releases would not have been obtained had the omitted "liabilities" at issue been known.

B.R. at 506. Plaintiffs state in their moving papers that Defendant's knowledge of Plaintiffs' putative class, and by extension its knowledge that it was committing a fraud on the bankruptcy court, "follows inferentially from its pre-petition conduct," i.e. alleged "partial recalls" "secret warranties" favoring only a small number of Impala owners and lessees designed to avoid the costs of reimbursing all Impala owners affected by the defective rear spindle-rods. (Pl. Br. at 19–20). This Court agrees with the Bankruptcy Court that this is at best a weak inference based on weak circumstantial evidence where a "strong inference" and strong circumstantial evidence of conscious misbehavior or recklessness are required. *In re Motors Liquidation Co.*, 462 B.R. at 505. Plaintiffs' allegations are insufficient to constitute strong circumstantial evidence of conscious misbehavior or recklessness for purposes of Rule 9(b).

Plaintiffs cite *George v. Celotex Corp.*, 914 F.2d 26, 28 (2d Cir. 1990) and *Caruolo v. A C & S, Inc.*, No. 93-CV-3752, 1999 WL 147740 (S.D.N.Y. Mar. 18, 1999) for the proposition that "a manufacturer is presumed to have the knowledge of an expert concerning its products." (Pl. Br. at 12). But *Celotex* and *Caruolo* were product liability actions where the issue was whether the manufactures "knew or should have known" of the dangers of the product. *Caruolo*, 1999 WL 147740, at *10. For purposes of that inquiry, "a manufacturer is held to knowledge of an expert in the field." *Celotex*, 914 F.2d at 28. The standard for what a manufacturer "knew or *should have known*" for purposes of a product liability case cannot create a presumption as to what Old GM *did* know when it made representations in the bankruptcy court.

Similarly inapposite is Plaintiffs' citation to *In re Equitable Office Building Corp.*, 83 F. Supp. 531, 554 (S.D.N.Y. 1949), which held that the debtor, which was a relatively small company, "may be presumed to have had a more or less intimate knowledge of its financial affairs." *In re Equitable Office Building Corp.* does not, as Plaintiffs contend, stand for the

proposition that a debtor that is a giant multinational corporation is presumed to have knowledge of a relatively minor defect in one of its numerous products when preparing a list of known creditors for the bankruptcy court.

In short, the Bankruptcy Court correctly held that the Complaint fails to meet Rule 9(b)'s heightened pleading standard for fraud. While Plaintiffs would ordinarily be granted leave to amend their Complaint in light of this ruling, such an amendment will be futile because, as discussed below, the Court finds that the remedy of "partial revocation" requested by Plaintiffs does not exist.

IV. SECTION 1144 REVOCATION

Plaintiffs alternately contend (a) that Section 1144 may be "partially" revoked and amended and (b) that the Court should completely revoke the confirmation order without restoring all interested parties to the *status quo ante*, and modify the confirmation plan solely to add Plaintiffs' putative class as an unsecured creditor. (*Compare* Reply at 3–4 *with* Reply at 5–8). Neither of these remedies is provided for by Section 1144. At base, Plaintiffs seek a partial revision or a modification of the confirmation order. This Court agrees with Judge Gerber that, subsequent to the entry of a confirmation order, a plan cannot be partially revoked or modified, but instead only completely revoked and rescinded.

A. There is no "Partial Revocation" of a Confirmation Order

The Bankruptcy Court was correct in holding that any revocation under Section 1144 must be entire and complete. *In re Motors Liquidation Co.*, 462 B.R. at 501. Plaintiffs appear to have argued in the Bankruptcy Court and in sections of their briefs on this appeal that Section 1144 allows for a confirmation order to be revoked in part.[2] As discussed below, both a textual

[2] *See* Pl. Br. at 2 ("Plaintiffs bring this action for a limited, carefully crafted plan revocation"); Reply at 3 ("Revocation, as authorized by Section 1144, need not be 'total, and absolute.'").

analysis and a survey of case law indicate that that Section 1144 does not allow for partial revocations or modifications.

The Court starts by analyzing the text of the statute. Title 11, Section 1144 reads in its entirety:

> On request of a party in interest at any time before 180 days after the date of the entry of the order of confirmation, and after notice and a hearing, the court may revoke such order if and only if such order was procured by fraud. An order under this section revoking an order of confirmation shall—
>
> > **(1)** contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation; and
> >
> > **(2)** revoke the discharge of the debtor.

11 U.S.C. § 1144.

The Bankruptcy Court correctly observed that the use of the word "revoke" is by its nature complete and absolute. *See Black's Law Dictionary* 1322 (6th ed. 1990) ("To annul or make void by recalling or taking back. To cancel, rescind, repeal or reverse, as to revoke a license or will."); *Merriam-Webster's Collegiate Dictionary* 1068 (11th ed. 2003) ("to annul by recalling or taking back . . . .").

"When the language of the statue is unambiguous, judicial inquiry is complete." *Hess v. Cohen & Slamowitz LLP*, 637 F.3d 117, 120 (2d Cir. 2011) (quoting *Marvel Characters, Inc. v. Simon*, 310 F.2d 280, 290 (2d Cir. 2002)). Section 1144 does not refer to "modifying," "amending," or "revising;" it refers to "revoking." Nothing in the language of Section 1144 speaks to "partial" or "limited" revocation; the provision simply states that "the court may revoke *such* order . . . ." The statute is clear in providing only for complete revocation, and not for partial revocations or any other kinds of modifications.

Viewing Section 1144 in the context of the Bankruptcy Code as a whole further indicates that Section 1144 does not provide for partial revocations or modifications as remedies when a confirmation order is shown to have been procured by fraud. While Section 1144 provides the remedy of a "revocation," other provisions in the Bankruptcy Code allow for "modifications," *see* 11 U.S.C. § 1127 (modifications of plans permitted under certain circumstances *before confirmation*), indicating that Congress did not intend to include modifications as a remedy when a plan is procured by fraud. *See Duncan v. Walker*, 533 U.S. 167, 173 (2001) ("It is well settled that where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal citations and quotation marks omitted); *McInerney v. Rensselaer Polytechnic Inst.*, 505 F.3d 135, 138 (2d Cir. 2007) ("[I]t is a general principle of statutory construction that when Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is . . . presumed that Congress acts intentionally and purposely.").

Beyond the textual analysis, case law addressing this issue further indicates that Section 1144 does not permit a partial revocation of a confirmation order. *See, e.g.*, *In re Innovative Clinical Solutions, Ltd.*, 302 B.R. 136, 143 (Bankr. D. Del. 2003) (dismissing a fraud claim based on the doctrine of equitable mootness) ("[W]hat Plaintiffs seek here is to modify the release and exculpation provisions of the Plan. This is obviously not a form of relief contemplated by § 1144."); *see also In re East Shoshone Hosp. Dist.*, No. 98–20934–9, 2000 WL 33712301 (D. Idaho April 27, 2000) (applying § 1144 to a Chapter 9 bankruptcy) ("There is nothing in the statute, nor has there been authority provided by the debtor, which recognizes or

validates a theory of selective or partial revocation . . . Either an order of confirmation is revoked or it is not.").

The Court is not persuaded by Plaintiffs' argument that *Seedman v. Friedman*, 132 F.2d 290 (2d Cir. 1942), holds that confirmation orders may be partially revoked or modified when they are shown to have been procured by fraud. (Opp. Br. at 17). In *Seedman*, the Second Circuit addressed the rescission of a confirmation order that was procured by a fraud on the court. *Seedman*, 132 F.2d at 292. Control of the debtor in *Seedman* had been turned over to a creditors' committee for the purposes of liquidation, and the creditors' committee withheld material information about the state of the debtor prior to the entry of the confirmation order. *Seedman*, 132 F.2d at 292. The plaintiff was a third party who contracted with the debtor to purchase a substantial amount of the debtor's assets subsequent to the entry of the confirmation order. *Id.* After the fraud was uncovered, the referee rescinded the confirmation order and, to return the parties to the *status quo ante*, rescinded Seedman's post-confirmation order contract as well. *Id.* Seedman objected to the rescission of his contract, which Seedman entered into in reliance on the confirmation order and without any knowledge of the fraud.

The Second Circuit agreed with Seedman, noting that "[i]f contracts formed in the interval between the confirmation of an arrangement and the subsequent setting aside of that confirmation for fraud are to be . . . automatically cancelled, the policy of Chapter XI to re-establish temporarily embarrassed debtors to their former standing in the business world would be substantially nullified, for third parties would wisely refuse to do business with the reorganized debtors subject to such risks." *Id.* at 295. The Second Circuit further wrote:

> "[E]xpress provisions of the Bankruptcy Act support the view that the setting aside of a confirmation order is without prejudice to rights which arise from bona fide transactions theretofore entered into in reliance upon the original order. Thus, Sec. 64 . . . gives priority to debts contracted 'after the confirmation

> of an arrangement' over debts provable in the arrangement, in the event the arrangement is set aside, while Sec. 386(3), providing **for the modifying or altering** of an arrangement procured by fraud, expressly **protects those not participating in the fraud**, or acquiring rights innocently and for value subsequent to the confirmation of the arrangement."

Seedman, 132 F.2d at 295 (emphasis added).

While Plaintiffs seize on *Seedman's* use of the word "modifying," (Pl. Br. at 17), the language in *Seedman* regarding "modifying or altering" a confirmation order derived from then-governing Section 386(3) of the Bankruptcy Act of 1898, as amended in 1938 ("Bankruptcy Act"), Pub. L. No. 75-696, 52 Stat. 840 (1938), which itself used the words "modify or alter," a phrase that was stricken from Section 1144 when Congress adopted the Bankruptcy Code in 1978. Pub. L. No. 95-598, 92 Stat. 2549 (1978)). The "modifying" dicta in *Seedman* was premised on a provision in the Bankruptcy Act that no longer exists in the Bankruptcy Code.[3]

Plaintiffs also cite *In re Michelson*, 141 B.R. 715, 725 (Bankr. E.D. Cal. 1991) as a case in which the "court's revocation was not 'entire.'" (Pl. Br. at 16). This is a mischaracterization of *Michelson*. *Michelson* held that because a serious fraud had been purveyed on the court in that case, Section 1144 applied and that "the order confirming the plan of reorganization must be revoked." *Michelson*, 141 B.R. at 730. The *Michelson* court went on to write that the "the order revoking confirmation must also revoke the discharge of the debtor. The revocation of the discharge does not necessarily preclude a later discharge, rather **it restores the status quo immediately before confirmation**." *Id.* (emphasis added and internal citations omitted). In other words, *Michelson* stands for the opposite proposition for which Plaintiffs cite it. *Michelson* holds that when Section 1144 is applied by a bankruptcy court, the confirmation order must be

[3] On June 14, 2012, Plaintiffs filed a motion to present the court with "new authority." This "new authority" consisted of a two-paragraph Second Circuit opinion from 1941, *Levenson v. B & M Furniture Co.*, 120 F.2d 1009 (2d Cir. 1941), which construed Section 386(3) of the Bankruptcy Act. *Levenson* allowed the bankruptcy court to modify a claim and add in a new creditor following a fraud. But then-governing Section 386(3) explicitly allowed alterations and modifications, whereas presently-governing Section 1144 does not.

revoked in its entirety and the parties must be returned to the *status quo ante*.[4] There is nothing "partial" about such a revocation.

The Bankruptcy Court was correct in finding that Section 1144 does not allow for partial revocations by its own terms and no case law supports such a proposition.

B. Subsection (1) of Section 1144 Does not Permit a Court to Modify a Plan or Order a Tailored Revocation

Plaintiffs argue that, "subsection (1) of Section 1144 expressly directs the Bankruptcy Court to modify the plan where conditions so warrant." (Pl. Br. at 17 n.29). In their Reply Brief, Plaintiffs "clarify" this point, stating that they seek "revocation of the confirmation order and, thereafter, permission to file their claims and, in due course, a dividend in *pari passu* with similarly situated unsecured creditors." (*Id.*). Put differently, Plaintiffs assert that it is possible to mechanically and non-disruptively revoke the confirmation order—in reliance upon which millions of shares of stock in New GM have been issued and publicly traded (Opp Br. at 7)—add in Plaintiffs' claims, and re-confirm the order.

Plaintiffs mischaracterize Subsection (1). Subsection (1) requires that an order revoking a plan "contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation." This subsection evinces recognition by Congress of the major consequences of the revocation of a confirmation order on anyone who might have acquired rights in good faith reliance upon it. *In re Motors Liquidation Co.*, 462 B.R. at 502. But it does not provide protections for plan participants, such as unsecured creditors who have received distributions in satisfaction of their claims pursuant to the confirmed plan. While Subsection (1) requires protections for individuals who have acquired rights in reliance on that

[4] Such an outcome in this case, where over a hundred million shares in New GM have been distributed to general unsecured creditors, would revive Defendant's equitable mootness argument, which the Bankruptcy Court did not see the need to rule on.

order (e.g. someone who purchased New GM common stock from a plan participant), any provision which "tailors" that revocation to avoid rescinding the distributions made to creditors pursuant to the confirmed plan—or to protect those creditors in any way—is beyond the scope of what is provided for in Subsection (1). The requirement of protections for some groups affected by rescission of a plan without any explicit protections for others indicates that Subsection (1) is not a provision that allows for modifications—and does not, as Plaintiffs argue, encompass the flexibility of the "modify or alter" language previously found in Section 386 of the Bankruptcy Act (Reply at 4)—but rather anticipates a disruptive revocation and provides protections for one group of those who will be affected by the revocation, those acquiring rights in reliance on the order, but not others.

Additionally, Plaintiffs' request for a revocation solely to allow for inclusion of their claim is, at base, a request for a *de facto* modification of the confirmation plan, and modifications are not provided for under Section 1144, as discussed in Section IV.A above.

CONCLUSION

For the foregoing reasons, the Bankruptcy Court's Order dismissing this case with prejudice is AFFIRMED. The Clerk of Court is instructed to close this case.

SO ORDERED.

Dated: August 9, 2012
New York, New York

ALISON J. NATHAN
United States District Judge

Exhibit DD

Hearing Date: April 4, 2013 at 10:00 a.m. (Eastern)

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
OLD CARCO LLC, *et al.*,	:	Case No. 09-50002 (SMB)
Debtors.	:	(Jointly Administered)
AUTUMN BURTON, *et al.*	:	
Plaintiffs,	:	Adv. Proc. No. 13-01109 (SMB)
v.	:	
CHRYSLER GROUP, LLC	:	
Defendant.	:	

PLAINTIFFS' OPPOSITION TO CHRYSLER GROUP, LLC'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

Plaintiffs, by and through their undersigned counsel, by way of opposition to Chrysler Group, LLC's ("Chrysler Group") Motion to Dismiss Second Amended Complaint (the "Motion"), hereby state:

BACKGROUND

A. Chrysler Group's Assumption of Warranty Claims and Lemon Law Liabilities.

1. On April 30, 2009, Chrysler, LLC (n/k/a Old Carco LLC) and 24 of its affiliated debtors (the "Debtors") filed voluntary petitions for relief under Chapter 11 in the United States Bankruptcy Code (11 U.S.C. § 101, *et seq*.) in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

2. On June 1, 2009, the Bankruptcy Court entered an order approving the sale of substantially all of the Debtors' assets to Chrysler Group (the "Sale Order") [Docket No. 3232] pursuant to the terms and conditions of a Master Transaction Agreement dated as of April 30, 2009 (the "MTA") [Docket No. 3071-1].

3. Pursuant to Section 2.08 of the MTA, Chrysler Group assumed, effective as of closing, the obligation to "timely perform and discharge in accordance with their respective terms" certain liabilities of the Debtors.

4. Among the Debtors' obligations assumed by Chrysler Group were "**all Liabilities pursuant to product warranties, product returns and rebates on vehicles sold by Sellers prior to the Closing**." MTA § 2.08(g) (emphasis added).

5. "Liabilities," as used in § 2.08(g), are defined to include "all debts, liabilities and obligations of any kind whatsoever, whether asserted or unasserted, accrued or fixed, contingent or absolute, determined or determinable, or otherwise including those arising under any Law, Action or Government Order and those arising under any contract." Definitions Addendum to MTA.

6. Not only did Chrysler Group assume all of the Debtors' Liabilities pursuant to product warranties, but the Sale Order separately obligated Chrysler Group to make payment of

liabilities under "Lemon Laws" on vehicles manufactured by the Debtors in the five years prior to the sale closing. Sale Order ¶ 19.

7. Chrysler Group also expressly agreed to assume "**any Liabilities arising as a result of the operation of the Company Business after the Closing.**" MTA § 2.08(l) (emphasis added)

8. The sale closed on June 10, 2009.

9. The United States Court of Appeals for the Second Circuit affirmed the Sale Order. *Ind. State Police Pension Trust v. Chrysler LLC (In re Chrysler LLC)*, 576 F.3d 108 (2d Cir. 2009).

10. The Sale Order, *inter alia*, extinguished successor liability claims for personal injuries against Chrysler Group arising from motor vehicle accidents occurring both before and after the sale involving Chrysler vehicles manufactured before the closing.

11. Appellants, *inter alia*, challenged the provisions of the Sale Order which would have precluded claims against Chrysler Group for accidents not occurring until after the sale on due process and other grounds. *Id*. at 127.

12. In its opinion, the Second Circuit stated that "we decline to delineate the scope of the bankruptcy court's authority to extinguish future claims, until such time as we are presented with an actual claim for an injury that is caused by Old Chrysler that occurs after the Sale and is cognizable under state successor liability law." *Id.*

13. On November 19, 2009, the Bankruptcy Court entered an order approving an amendment to the MTA providing for Chrysler Group's assumption of products liability claims arising from motor vehicle accidents occurring after the sale involving Chrysler vehicles manufactured before the closing. [Docket No. 5988]

14. On December 14, 2009, the Supreme Court of the United States issued an opinion granting a petition for writ of certiorari, vacating the judgment on the Sale Order and remanding the case to the Second Circuit with instructions to dismiss the appeal as moot. *Ind. State Police Pension Trust v. Chrysler LLC (In re Chrysler LLC)*, 558 U.S. 1087 (2009).

B. Plaintiffs' Class Action.

15. On November 29, 2011, Plaintiffs filed this action in the Superior Court of the State of Delaware for the County of New Castle.

16. On January 3, 2012, Chrysler Group removed this case to the United States District Court for the District of Delaware (the "Delaware Court").

17. On August 21, 2012, Plaintiffs filed their Second Amended Complaint, a true and copy of which is attached as Exhibit A.

18. On August 28, 2012, the Delaware Court entered an Order transferring this case to the United States District Court for the Southern District of New York, for referral to the Bankruptcy Court for a determination as to whether the claims set forth in the Second Amended Complaint are barred by the Sale Order (the "Transfer Order"). A true and correct copy of the Transfer Order is attached as Exhibit B.

19. The Transfer Order provides that if the Bankruptcy Court determines that any of the claims asserted in Plaintiffs' Second Amended Complaint are not barred by the Sale Order, all remaining claims will be remanded to the Delaware Court. Transfer Order ¶ 3.

20. This is a class action arising from Chrysler Group's failure to fulfill its obligations, including, but not limited to, warranty obligations, to remediate a dangerous and defective condition in Chrysler vehicles.

21. Each of the named Plaintiffs owns a Chrysler vehicle which has a flaw that causes fuel to spill out of the filler tube during refueling. This defect is known as a "fuel spit-back" problem.

22. Plaintiffs seek: (a) an injunction requiring Chrysler Group to correct the fuel spit-back problem in Jeep Wrangler vehicles, model years 2005 through 2010, and Dodge Durango vehicles, model years 2005 through 2008; and (b) to recover the cost of the repair and replacement of necessary components in each Jeep Wrangler and Dodge Durango. The Plaintiffs do not assert any claims for personal injury damages.

23. The Second Amended Complaint contains breach of express and implied warranty claims, as well as negligence claims predicated upon from Chrysler Group's post-closing failure to properly notify consumers and remediate the fuel spit-back problem.

24. In September, 2009, Chrysler Group issued a Technical Service Bulletin ("TSB") advising Chrysler dealers that customers were experiencing fuel spit-back problems and advising the dealers on various repair steps. Second Amended Complaint ¶ 7.

25. On February 11, 2011, Chrysler Group issued a TSB granting a lifetime warranty to the owners of 2007 and 2008 Jeep Wrangler vehicles. The warranty covered the repair and replacement of certain components if and when a customer complained of a fuel spit-back problem. A true and correct copy of the February 11, 2011 TSB is attached as Exhibit C.

26. Although the U.S. Department of Transportation, National Highway Traffic Safety Administration (the "NTSA") found that the rate of fuel spit-back complaints on Jeep Wrangler vehicles "is higher than or similar to the rate experienced in previous investigations where safety recalls were conducted," it closed its investigation relying upon the lifetime warranty issued by Chrysler Group:

> In addition, Chrysler is initiating a lifetime warranty program, at no cost to the consumer, to address the fuel spit back problem in approximately 135,000 model year 2007-2008 Jeep Wrangler vehicles built from March 1, 2007 to March 31, 2008. Chrysler will notify all affected vehicle owners of this action. Consumers should refer to the warranty and service bulletins and sample owner notification letter available in the investigative file. The vehicle build date can be found on the certification label located on the driver door or door jamb.

See NTSA ODI Resume, a true and correct copy of which is attached as Exhibit D.

27. On January 20, 2012, Chrysler Group issued a TSB granting owners of 2006 through 2008 Dodge Durango vehicles a lifetime warranty due to the fuel spit-back problem. A true and correct copy of the January 20, 2012 TSB is attached as Exhibit E.

28. In the Second Amended Complaint, Plaintiffs allege that, *inter alia*, Chrysler Group failed to live up to the promises it made and obligations it assumed, when it issued these lifetime warranties in 2011 and 2012.

29. The Second Amended Complaint alleges that in each of the TSBs referenced above, the defendant failed to reasonably and safely notify current owners to allow for the prompt repair of all Chrysler products in the Class.

ARGUMENT

30. When deciding a motion to dismiss a complaint, the court views all facts and inferences to be drawn from the pleadings in favor of the party against whom the motion is sought. *Harris v. City of New York*, 186 F.3d 243, 247 (2d Cir. 1999). Indeed, "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (citation omitted). Asking for plausible grounds to infer that something has occurred as alleged does not impose a probability requirement at the pleading stage. *Twombly*, 550 U.S. at 556 (footnote omitted). When there are well-pleaded factual allegations, a court should assume their veracity and then

determine whether they plausibly give rise to an entitlement to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1950 (2009) (citations omitted).

31. Chrysler Group contends that Plaintiffs' Second Amended Complaint should be dismissed because all of Plaintiffs' claims are barred by the Sale Order. The only issue to be addressed on Chrysler Group's Motion is whether the Sale Order prevents Plaintiffs from maintaining this action, not whether Plaintiffs will ultimately prevail on their claims. For the reasons set forth below, Chrysler Group's Motion should be denied and this case should be remanded to the Delaware Court.

A. The Sale Order Does Not Preclude Plaintiff's Claims Under the Lifetime Warranties Chrysler Group Issued in 2011 and 2012.

32. In the Second Amended Complaint, Plaintiffs allege that Chrysler Group has failed to live up to its obligations under the lifetime warranties it issued in 2011 and 2012. There is nothing in the Sale Order which would relieve Chrysler Group from liability for failing to fulfill the lifetime warranty commitments it made **after** the sale was concluded. To the contrary, Chrysler Group expressly assumed "any Liabilities arising as a result of the operation of the Company Business after the Closing." MTA § 2.08(1). As a result, Plaintiffs should be permitted to seek to enforce Chrysler Group's post-closing promises to Jeep Wrangler and Dodge Durango vehicle owners.

B. The Sale Order Does Not Bar Plaintiffs' Negligence Claims Based Upon Chrysler Group's Post-Closing Conduct.

33. Plaintiffs' Second Amended Complaint also contains negligence claims arising from Chrysler Group's post-sale conduct. Having issued the lifetime warranties in 2011 and 2012, Chrysler Group undertook the post-sale obligation to properly repair the fuel spit-back problem in the Jeep Wrangler and Dodge Durango vehicles. *See Circle Land & Cattle Corp. v.*

Amoco Oil, 232 Kan. 482, 657 P.2d 532, 537 (1983) ("The law imposes an obligation upon everyone who attempts to do anything, even gratuitously, for another, to exercise some degree of care and skill in the performance of what he has undertaken, for nonperformance of which an action lies"); *Standifer v. Pate*, 291 Ala. 434, 282 So. 2d 261, 263 (Ala. 1973) ("where one undertakes a duty requiring skill and care, reasonable care must be exercised in the performance thereof even though there may be no consideration given therefor"); *H.R. Moch Co. v. Rensselaer Water Co.*, 247 N.Y. 160, 167 (1928) ("It is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully"); Restatement (Second) of Torts §§ 323 and 324A.

34. Further, a manufacturer has a duty to warn consumers of risks brought to the attention of the manufacturer after the product is sold. *Cover v. Cohen*, 61 N.Y.2d 261, 473 N.Y.S.2d 378 (1984) (finding triable question of fact as to duty to warn where GM issued TSB acknowledging that vehicles may exhibit erratic idle speed and slow return to idle).

35. "The responsibility to warn of known defects cannot be satisfied merely by alerting participating service centers. Because of the likelihood that a purchaser will have a product serviced by its own technicians or by an unaffiliated service center, or possibly not serviced at all, sellers must make reasonable attempts to warn the user or consumer directly." *Walton v. Avco Corp.*, 530 Pa. 568, 610 A.2d 454, 459 (1992).

36. An asset purchaser has an independent duty to warn when it has a continuing relationship with customers of the seller. *Patton v. TIC United Corp.*, 77 F.3d 1235, 1240 (10th Cir. 1996), *cert. denied* 578 U.S. 1005 (1996); *Florom v. Elliott Mfg*, 867 F.2d 570, 577 (10th Cir. 1989); Restatement (Third) of Torts: Products Liability, § 13.

37. The asset purchaser's "liability stems not from its status as a successor, but from the establishment of a relationship with the customer that imposes certain duties and responsibilities." *Polius v. Clark Equipment Co.*, 802 F.2d 75, 84 (3d Cir. 1986).

38. By issuing the TSBs relating to the fuel spit-back problem and the lifetime warranties in 2011 and 2012, and through its prior assumption of the product warranties for Chrysler vehicles in the MTA, Chrysler Group established its own post-closing relationship with the owners of Chrysler vehicles. As a result, Chrysler Group had a post-sale duty to warn Chrysler vehicle owners of the fuel spit-back problem. Since Chrysler Group's duty arose **after** the closing, the Sale Order does not preclude Plaintiffs' claims that Chrysler Group did not reasonably alert customers to the safety defect at issue and did not properly instruct owners to have their vehicles repaired. Second Amended Complaint ¶¶ 16 and 71.

39. Chrysler Group contends that Plaintiffs' negligence claims are precluded by the Sale Order because they are based on purported defects in vehicles manufactured and sold by the Debtors prior to the closing date.

40. Chrysler Group's argument fails because the negligence claims arise from the post-closing operation of the business, the Liabilities for which were expressly assumed by Chrysler Group. MTA § 2.08(l).

41. In addition, Chrysler Group's assertion should be rejected because a Section 363 "free and clear" sale order may not extinguish a claim against a purchaser relating to a product manufactured by the debtor before the sale if the plaintiff's injury was not suffered until after the closing. *In re Grumman Olson Industries, Inc.*, 467 B.R. 694 (S.D.N.Y. 2012). To do otherwise would deny Plaintiffs "due process and violate the Bankruptcy Code's requirements of notice and opportunity to be heard for those affected by a bankruptcy court's rulings." *Id.* at 711.

Plaintiffs could not have known, before the sale was approved, that Chrysler Group would after the closing negligently fail to warn Chrysler vehicle owners of the fuel spit-back problem and negligently fail to remediate the fuel spit-back problem. Consequently, Chrysler Group's Motion should be denied.

C. Chrysler Group Assumed the Debtors' Warranty Obligations.

42. Even if Chrysler Group had not issued its own lifetime warranties promising to fix the fuel spit-back problem, Chrysler Group would not be permitted to escape from its assumption of the Debtors' warranty obligations for Chrysler vehicles.

43. Under the Sale Order and MTA, Chrysler Group clearly and unequivocally agreed to assume "all Liabilities pursuant to product warranties, product returns and rebates on vehicles sold by Sellers prior to the Closing." MTA § 2.08(g).

44. Chrysler Group's specific assumption of the Debtors' warranty obligations was a critical part of the transaction.

45. When it filed for bankruptcy protection, the Debtors represented that "to preserve goodwill and the value of Chrysler's brands that are central to any going concern sale, Chrysler must continue to honor warranties and related obligations that directly impact the purchasers of Chrysler, Dodge and Jeep vehicles." Declaration of Ronald E. Kolka [Docket No. 23] ¶ 90. The Debtors advised the Court that "[a]ny indication that Chrysler will not honor its warranty and service contract obligations will cause a loss in consumer loyalty that would negatively and perhaps irreparably impact Chrysler's ability to consummate a Sale Transaction, to the significant detriment of its estates." *Id*. at ¶2 0.

46. As a result, when Chrysler announced the sale, Bob Nardelli, the Debtors' Chairman and CEO, assured the public in an open letter to customers that "The company will

seamlessly honor all warranty claims." A true and correct copy of the open letter is attached as Exhibit F.

47. In the motion seeking approval of the sale (the "Sale Motion") [Docket No. 190], the Debtors showcased that Chrysler Group was assuming:

- Liabilities for product warranties, product returns and rebates on vehicles sold pre-closing
- Warranty obligations and product recall liabilities related to vehicles sold pre-closing

Sale Motion at 26-27.

48. The Debtors' CFO (and later President) Ronald Kolka testified during the sale hearing that Chrysler Group "plans on paying the warranty claims." May 29, 2009 Hearing Transcript 160:10-13; true and correct copies of the pertinent pages of the May 29, 2009 Hearing Transcript are attached as Exhibit G.

49. After the sale closed, Chrysler Group touted to Senator Richard Durbin that it had assumed liability for warranty and lemon law claims:

> Today, Chrysler Group has a much better appreciation of the viability of our business than it did on June 10. As a result, we will announce today that the company will accept product liability claims on vehicles manufactured by Old Carco before June 10 that are involved in accidents on or after that date. **This is in addition to our previous commitment to honor warranty claims, lemon law claims and safety recalls regarding these vehicles**.

Chrysler Group letter to Senator Richard Durbin dated August 27, 2009 (emphasis added), a true and correct copy of which is attached as Exhibit H.

50. When he testified before Congress, Ronald Bloom of President Obama's Task Force on the Automotive Industry explained that Chrysler Group assumed the warranty claims to allow it to preserve its relationship with Chrysler customers:

> **The companies also decided to honor the warranty claims of prior owners of their cars. Why, because on a commercial basis, the last buyer of a GM or Chrysler car is the most likely candidate to be the next buyer.**

Transcript of July 21, 2009 the Hearing before the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary of the House of Representatives at 31 (emphasis added); true and correct copies of the pertinent pages of the transcript are attached as Exhibit I.

51. Under these circumstances, and given the clear language of § 2.08(g) of the MTA, it would be unjust and inequitable to permit Chrysler Group to now seek to evade the warranty obligations it specifically assumed.

52. Chrysler Group's reliance on the Bankruptcy Court's unreported Opinion in *Tulacro v. Chrysler Group, LLC,* Adv. No. 11-09401 (AJG), is misplaced. In that case, the plaintiffs asserted claims under California's Lemon Law for a vehicle that was purchased more than five years prior to the closing date and, therefore, outside of the Sale Order provision regarding Chrysler Group's assumption of Lemon Law claims. In the *Tulacro* Opinion, although the Bankruptcy Court determined that Chrysler Group was not responsible for the claims under California's Lemon Law, the Bankruptcy Court noted that under Section 2.08(g) of the MTA, Chrysler Group assumed the obligation to cover the costs of all parts and labor needed to repair defective items in connection with the warranty issued for the vehicle. *Tularco* Opinion at 6.

53. Chrysler Group's citation to the Bankruptcy Court's oral opinion in *Tatum v. Chrysler Group, LLC,* United States Bankruptcy Court for the Southern District of New York, Adv. No. 11-09411(AJG), is equally misguided. In that case, the Bankruptcy Court concluded that the plaintiff's New Jersey Consumer Fraud Act claim was barred by the Sale Order. However, in its oral ruling, the Bankruptcy Court explained that that Chrysler Group had

assumed the responsibility for parts and labor costs for repairing vehicles in connection with the vehicle warranties. Tr. at 26-27. True and correct copies of the pertinent pages of the February 14, 2012, 2009 Hearing Transcript are attached as Exhibit J.

54. Indeed, in *Tatum*, Chrysler Group acknowledged that the plaintiffs' breach of warranty claims with regard to a braking defect in model-year 2009 and 2010 Dodge Journey vehicles were not precluded by the Sale Order. Although the plaintiffs' New Jersey Consumer Fraud Act claims were transferred to the Bankruptcy Court for a determination as to whether they were barred by the Sale Order, the United States District Court for the District of New Jersey denied Chrysler Group's venue transfer motion as to the plaintiffs' breach of warranty claims. In her Report and Recommendation on the venue transfer motion, which was adopted by the district court, the Magistrate Judge explained:

> The Court does not believe it appropriate to transfer Counts II-IV to the Bankruptcy Court because the remaining claims do not relate to the pending bankruptcy proceeding…These claims implicate no assumed liability issues. Instead, these claims focus exclusively on breach of warranty claims or rely entirely on allegations related to Chrysler's post-bankruptcy conduct. To that end, Chrysler conceded and stipulated on the record that it assumed the liabilities associated with breach of warranty claims arising out of the alleged defects in the vehicles at issue.

Tatum v. Chrysler Group, LLC, 2011 U.S. Dist. LEXIS 113503 at * 15 (D.N.J. Oct. 3, 2011), *adopted by Tatum v. Chrysler Group*, LLC, 2011 U.S. Dist. LEXIS 144831 (D.N.J. Dec. 16, 2011).

55. In this case, Plaintiffs are seeking to enforce Chrysler Group's warranty obligations. This is not a products liability action. Plaintiffs do not seek to recover for personal injury damages. Rather, Plaintiffs seek injunctive relief and recovery of repair costs for violation of express and implied warranties applicable to Chrysler vehicles owned by Plaintiffs. Since

Chrysler Group assumed the Debtors' warranty obligations, Chrysler Group's motion to dismiss should be denied.

D. Chrysler Group Is Responsible For Payment of Lemon Law Claims.

56. Plaintiffs' breach of express and implied warranty claims, and the facts set forth in the Second Amended Complaint, also constitute "Lemon Law" claims, the responsibility for payment for which Chrysler Group assumed in ¶ 19 of the Sale Order.

57. Chrysler Group contends that Plaintiffs' claims for breach of express and implied warranties are not protected by ¶ 19 of the Sale Order because Plaintiffs do not identify any federal or state statutes in the Second Amended Complaint. Chrysler Group's argument is belied by its previous admissions.

58. In *Burton v. Chrysler Group, LLC*, United States District Court for the District of South Carolina, Civil Action No. 8:10-CV-00209-JMC, Chrysler Group acknowledged that: (a) breach of express and implied warranty claims were assumed by Chrysler Group in ¶ 19 of the Sale Order; and (b) such claims are not dependent upon proving a violation of any particular statute. In that case, the plaintiffs, individually and on behalf of a putative class, asserted that there are certain defects in model-year 2007 through 2009 Dodge Ram vehicles and pled claims against Chrysler Group for breach of express and implied warranties. Chrysler Group stipulated as follows:

> Chrysler Group acknowledges and agrees that, under Paragraph 19 of the Sale Order, it assumed the liabilities associated with claims for breach of express warranty and breach of implied warranty for model-year 2007 through 2009 Dodge Ram vehicles equipped with a 6.7 liter Cummins engine, ***except for those liabilities associated with personal injuries and/or punitive, exemplary, special, consequential or multiple damages or penalties***. Chrysler Group acknowledges that its assumption of these liabilities associated with breach of express warranty claims and breach of implied warranty claims is not dependent on a plaintiff/claimant alleging or

> proving facts which would meet the standards of any applicable "Lemon Law."

Consent Motion and Stipulation of Parties Regarding Filing of Second Amended Complaint and Assumed Liabilities dated May 11, 2011 ¶ 2, a true and correct copy of which is attached as Exhibit K (emphasis in original).

59. Furthermore, "[d]ismissal without leave to amend is improper unless it is clear that the complaint could not be saved by further amendment." *See O'Brien v. U.S.*, 73 Fed. Appx. 958, 959 (9th Cir. 2003).

60. Accordingly, to the extent that the Court determines that Plaintiffs are required to identify each state statute violated by Chrysler Group, Plaintiffs should be afforded an opportunity to amend their pleadings to do so. *Baptiste v. Cavendish Club, Inc.*, 670 F.Supp. 108 (S.D.N.Y. 1987) (denying motion to dismiss and granting motion to file amended complaint to state claim under 42 U.S.C. § 1981).[1]

61. Chrysler Group also now asserts that Plaintiffs' breach of express and implied warranty claims should be dismissed because Plaintiffs seek to recover consequential damages, which are not permitted under ¶ 19 of the Sale Order. The only "consequential damages" that Plaintiffs seek are damages for the loss of use of the vehicles while they are being repaired. To the extent that such damages are not covered by ¶ 19 of the Sale Order or otherwise recoverable, only the consequential damages claims would be subject to dismissal, not Plaintiffs' claims for repair and component part replacement costs or injunctive relief.

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[1] There would be no prejudice to Chrysler Group from permitting Plaintiffs to amend their pleading because the Transfer Order already contemplates Plaintiffs filing a Third Amended Complaint after the case is transferred back to the Delaware Court. Transfer Order ¶ 4.

E. The Sale Order Does Not Impact Claims Relating to Vehicles Manufactured After the Sale.

62. Even if the provisions of the Sale Order and MTA relating to products liability claims, rather than Chrysler Group's clear and unequivocal assumption of Debtors' warranty obligations, were applicable, the Second Amended Complaint includes claims which would not be precluded. For example, the Second Amended Complaint also includes claims relating to model year 2009 and 2010 Jeep Wrangler vehicles which would not have even been manufactured until after the closing date.[2]

F. The Sale Order Does Not Extinguish Future Claims

63. The Sale Order would also not bar claims with respect to fuel spit-back problems, not manifesting themselves until after the sale closing.

64. As set forth above, the MTA was modified to cover "future" claims arising from post-closing accidents involving vehicles manufactured before the closing date.

65. A sale free and clear under 11 U.S.C. § 363(f) does not bar the claims arising after the sale by defective product manufactured prior to the sale under a successor liability or other

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[2] Chrysler Group asserts that the named Plaintiffs do not have standing to bring claims for model year 2009 and 2010 vehicles because they do not own model year 2009 or 2010 vehicles. This is an argument on the merits of Plaintiffs' request for class certification which is not to be adjudicated in the context of this Motion. Nevertheless, Chrysler Group is wrong. The Plaintiffs have standing because the vehicles all have the same fuel spit-back problem. There is no requirement that there be at least one named plaintiff owner for each model vehicle. *See Wolin v. Jaguar Land Rover North America*, LLC, 617 F.3d 1168 (9th Cir. 2010) (class certification granted where named plaintiffs owned model year 2005 Land Rover LR3s and class included owners and lessees of 2004, 2005 or 2006 Land Rover LR3s); *Daffin v. Ford Motor Co.*, 458 F.3d 549 (6th Cir. 2006) (named plaintiff owned 1999 Mercury Villager minivan and certified class included all 1999 or 2000 Mercury Villager owners and lessees).

theory. *In re Grumman Olson Industries, Inc.*, 445 B.R. 243 (Bankr. S.D.N.Y. 2011), *affirmed* 467 B.R. 694 (S.D.N.Y. 2012). As the Bankruptcy Court explained in *Grumman*:

> [The plaintiffs] could not have identified as potential creditors prior to the sale or received adequate notice of the case, the sale, the confirmation or the deadline for filing a proof of claim. Even if the [plaintiffs] knew about the case, the knowledge would be meaningless and it would be nothing for them to do. They could not file a claim based on an accident that occurred years later.

Id. at 254.

66. Consequently, the Sale Order does not bar the claims of any class member against Chrysler Group, based upon a successor liability theory or otherwise, where the fuel spit-back problem did not manifest itself until after the closing date or the class member did not receive adequate notice of the bankruptcy.

CONCLUSION

67. For these reasons, Plaintiffs respectfully request that the Court enter an Order denying Chrysler Group's Motion and for such other and further relief as the Court deems just and equitable.

Dated: March 21, 2013
New York, New York

SCHNADER HARRISON SEGAL & LEWIS LLP

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AUTUMN BURTON, MATTHEW COX, RODNEY LaFLEUR, DAN GULICK JAMES SPITLER, MIKE BURKE, MIKE GASMAN, ERIC MALLOY and RYAN GILLETTE individually and in their representative capacity for all others similarly situated,	:	CLASS ACTION
Plaintiffs,	:	Case No. 12-cv-00005 LPS
vs.	:	
CHRYSLER GROUP LLC,	:	
Defendant.	:	

CLASS ACTION SECOND AMENDED COMPLAINT

The Plaintiffs, Autumn Burton, Matthew Cox, Rodney LaFleur, Dan Gulick, James Spitler, Mike Burke, Mike Gasman, Eric Malloy and Ryan Gillette individually and on behalf of all others similarly situated, sue the Defendant Chrysler Group, LLC (referred to as Chrysler) and state as follows:

NATURE OF THE ACTION

1. This is an action seeking compensation and injunctive relief requiring the repair ~~remedial repairs~~ of a dangerous and defective condition in Plaintiffs' Chrysler vehicles. This action seeks remedial repairs of all vehicle models similarly situated, thus requesting that the case be certified as a Class Action.

2. Each of the named Plaintiffs own a Chrysler product which has a design flaw that causes fuel to spill out of the filler tube during refueling. This problem has been referenced as a "fuel spit-back problem."

3. Based upon information and belief, it is alleged that beginning in the fall of 2001, the ~~defendant~~ owners of some Chrysler products began ~~receiving field reports of customers~~ complaining of fuel spit back in certain ~~Chrysler products~~ vehicle models. As a result of these complaints, ~~Chrysler admitted that this problem constituted~~ a safety defect ~~and agreed to a product~~ recall occurred in 2002.

4. In 2005, ~~the defendant conducted~~ a second safety recall of Chrysler vehicles ~~for the same type "fuel spit back problem"~~ took place for 2005 MY Durango vehicles having "fuel spit back problems".

5. Based upon information and belief, in February of 2007, ~~Chrysler began receiving~~ a rising number of ~~field complaints of~~ customers' complaints about "fuel spit back problems" in other ~~products, including the~~ model year Jeep ~~Wrangler, that were experiencing "fuel spit back problems"~~ Wranglers.

6. In January 2009, ~~the Defendant conducted~~ a further safety recall ~~of~~ was issued involving other Durango model vehicles because of ~~the safety problem created in 2005 MY Durangos with~~ "fuel spit back problems".

7. In September, 2009, defendant Chrysler published and sent a Technical Service Bulletin ~~sent~~ to its dealership network advising them that consumers were continuing to experience "fuel spit back problems", and ~~voicing complaints about refueling, and advising~~ the defendant advised dealerships on various repair steps that may be required if a customer brings in his or her Chrysler product with this ~~type~~ complaint.

8. In August, 2010, the National Highway Traffic Safety Administration opened an investigation regarding complaints of "fuel spit back problems" in 2007 and 2008 Jeep Wranglers. In communications with the Defendant, ~~the~~ NHTSA advised Chrysler that the same "fuel spit back problems" currently being investigated for 2007-2008 MY Wranglers were previously ~~received by the owners of~~ found in 2005 and 2006 Jeep Wranglers.

9. In response to the NHTSA communications in August, 2010, the Chrysler defendant admitted that the 2005 through 2010 Jeep Wrangler model vehicles ~~include~~ included the same or similar fuel system components, including the fuel tank assembly and inlet check valve. Additionally, the Chrysler defendant admitted that the 2005 through 2008 Durango model vehicles were appropriate peer vehicles with the same or similar fuel tank assembly and inlet check valve.

10. In its response to the NHTSA inquiry of August 2010, the Chrysler defendant admitted that there were 542,650 Jeep Wranglers with the same or similar fuel system assembly and inlet check valve. ~~Further, in this same response,~~ And, the defendant Chrysler admitted there were 266,315 Durangos with the same or similar fuel system assembly and inlet check valve.

11. On February 11, 2011, the defendant issued and then delivered to its dealership network a Technical Service Bulletin granting a lifetime warranty to the owners of (approximately 135,000 vehicles) 2007 to 2008 Jeep Wranglers ~~only~~. This warranty allowed for the repair and replacement of certain components if and when a customer complained of a "fuel spit-back problem". This TSB (referenced as Chrysler TSB 140001-11) was not a safety recall, it did not advise the owners of these vehicles that their vehicles contained a flaw or safety defect, and it did not appropriately notify current owners of the aforesaid hazard. This TSB

merely authorized Chrysler dealerships to inspect and repair ~~a limited number of~~ these Jeep Wranglers ~~that are brought~~ if an owner should happen to bring the vehicle into a dealership ~~with~~ complaining of "fuel spit back problems".

12. Despite the Defendant's awareness that the "fuel spit back problem" continued to exist in Jeep Wranglers for model years 2005 through 2010 and Durangos for model years 2005-2008, and despite the ~~Defendant's~~ earlier ~~admission~~ recognition that this refueling problem constituted a safety defect, the defendant ~~turned a blind eye~~ failed to ~~this issue. The Defendant, recognizing its duty~~ take necessary steps to rectify this ~~hazard, carelessly and wrongfully decided on February 11, 2011 to issue a silent recall (herein referenced as a TSB) for a limited number of the Wranglers and no Durango vehicles which contain this hazard. This negligent misconduct constituted an inadequate response to a continuing safety issue.~~ problem.

13. On February 11, 2011, the Defendant initiated a woefully inadequate procedure for the repair of ~~all~~ certain Jeep Wranglers ~~and Durangos~~ containing the same or similar hazards as those which were the subject of the aforementioned TSB.

14. ~~The~~ In 2011, the Defendant failed to conduct a proper ~~recall~~ and/~~or~~ necessary remedial program to remedy all Jeep Wranglers and Durangos containing the defective design that is responsible for the "fuel spit back problem".

15. In January 2012, the defendant sent a letter to the owners of certain Dodge Durangos advising them that because of the "fuel spit-back problem" these vehicles would now have a lifetime warranty for certain fuel system parts. And, in the event that their vehicle developed the problem, a Chrysler dealership would repair it.

16. The January, 2012 letter did not reasonably alert customers to the safety defect at issue and did not properly and reasonably instruct owners to have their vehicles repaired.

17. The Defendant is liable to the Plaintiffs and all other similarly situated Plaintiffs for the ~~defective design that causes~~ "fuel spit back problems" and because of its negligence, carelessness and other misconduct in initiating inadequate remedial action in 2011 and 2012 to rectify this hazard. This liability is not predicated upon the assumption of any legal duty that arose in the Bankruptcy Court.

18. The vehicle models identified below contain safety hazards, which result in the breach of applicable warranties.

19. The 2005 through 2010 Jeep Wranglers and 2005 through 2008 Dodge Durangos all have, according to the Defendant, and upon information and belief, the same or similar design defect that produces "fuel spit back problems."

20. The defendant Chrysler has sold 2009 and 2010 Jeep Wranglers after the Bankruptcy closing date that contain a design flaw that produces "fuel spit back problems". The design flaw in these vehicles is the same or similar to those Wranglers that are the subject of the aforementioned TSB. This design flaw has caused property damage or the loss of property, as well as the loss of value bargained for by the Plaintiffs.

21. The aforementioned defect has manifested itself in each of the Plaintiffs' vehicles, causing fuel to spill out while refueling. This spillage causes a monetary loss and it poses a potential health and safety hazard.

22. In the Bankruptcy proceedings, the defendant Chrysler did assume responsibility for the breach of product warranties (including but not limited to breach of implied warranties of merchantability, implied warranty of fitness for a particular purpose, and violation of other

consumer state laws for the marketing of unsafe products) extending back to vehicles sold five years prior to the Bankruptcy Closing date (e.g., 2004 model year vehicles) for products manufactured and sold by its predecessor.

23. The product models for which breach of warranty claims are asserted are identified below.

JURISDICTION AND VENUE

24. This Court has jurisdiction over this action predicated upon CAFA, because the ~~defendant is incorporated in~~ parties are diverse and the ~~State~~ plaintiffs number more than 100 and the claim for damages exceeds $5,000,000.00 exclusive of ~~Delaware. Defendant Chrysler's registered agent is Corporation Trust Company located at 1209 Orange Street, Wilmington, Delaware, 19801.~~ costs and attorneys fees and interest.

25. The Defendant has marketed and sold Jeep Wranglers and Dodge Durangos in the State of Delaware and the County of New Castle.

PARTIES

26. Plaintiff Autumn Burton resides in Memphis, Tennessee. In October, 2008, she purchased and currently owns a 2006 Dodge Durango [VIN 1D4HB48N86F164206]. Plaintiff has in the past and she continues to experience "fuel spit back problems" with this vehicle. This problem has caused the loss of fuel and it poses a potential health and safety risk. Plaintiff Burton was given/received express and/or implied warranties when she purchased the Durango. In January, 2012, Plaintiff Burton received from the defendant Chrysler an extended life time warranty regarding the components at issue. The defects in her vehicle and resulting "fuel spit-back problems" constitute a breach of warranties as described below.

27. Plaintiff Matthew Cox resides in Westminster, Colorado. In March, 2011, he purchased and currently owns a 2005 Jeep Wrangler [VIN 1JFA64S25P357114]. Plaintiff has in the past

and he continues to experience "fuel spit back problems" with this vehicle. This problem has caused the loss of fuel and it poses a potential health and safety risk. On March 30, 2011, Plaintiff Cox sent a notice to the National Highway Traffic Safety Administration and/or the defendant Chrysler notifying them of the defect in question. This defect in the product constitutes a breach of applicable warranties as set forth below.

28. Plaintiff Dan Gulick resides in Penn Yan, New York. In October, 2009, Mr. Gulick purchased and he currently owns a 2005 Jeep Wrangler [VIN 1JFA49S150342567]. Plaintiff has in the past and he continues to experience "fuel spit back problems" with this vehicle. This problem has caused the loss of fuel and it poses a potential health and safety risk. Plaintiff Gulick sent a notice to the National Highway Traffic Safety Administration and/or the defendant Chrysler notifying them of the defect in question. This defect in the product constitutes a breach of applicable warranties as set forth below.

29. Plaintiff Rodney LaFleur resides in Chicago, Illinois. In 2009, Mr. LaFleur purchased and currently owns a 2005 Jeep Wrangler [VIN 1J4FA44S25P320052]. The Plaintiff has in the past and he continues to experience "fuel spit back problems" with this vehicle. This problem has caused the loss of fuel and it poses a potential health and safety risk. Plaintiff LaFleur sent a notice to the National Highway Traffic Safety Administration and/or the defendant Chrysler notifying them of the defect in question. This defect in the product constitutes a breach of applicable warranties as set forth below.

30. Plaintiff James Spitler resides in Camden, North Carolina. In 2009, Mr. Spitler purchased and continues to own a 2006 Jeep Wrangler [VIN 1J4FA64SX6P762994]. The Plaintiff has in the past and he continues to experience "fuel spit back problems" with this vehicle. This problem has caused the loss of fuel and it poses a potential health and safety risk. This

defect in the product constitutes a breach of applicable warranties as set forth below. Plaintiff Spitler notified the defendant of this defect before filing this lawsuit.

31. Plaintiff Mike Burke resides in Wesley Chapel, Florida. Mr. Burke purchased and continues to own a 2007 Jeep Wrangler [VIN 1JFA49S46P750210]. The Plaintiff has in the past and he continues to experience "fuel spit back problems" with this vehicle. This problem has caused the loss of fuel and it poses a potential health and safety risk. This vehicle and the parts at issue have a lifetime warranty. This defect constitutes a breach of warranties as described below. The 2007 Wrangler has the same design flaws as the 2008 through 2010 Jeep Wranglers.

32. Plaintiff Eric Malloy resides in Fort Hood, Texas. Mr. Malloy purchased and continues to own a 2005 Dodge Durango [VIN 1J4FA64595P386741]. The Plaintiff has in the past and he continues to experience "fuel spit back problems" with this vehicle. This problem has caused the loss of fuel and it poses a potential health and safety risk. Plaintiff Malloy provided notice to Chrysler of the defects in his vehicle. These defects constitute a breach of applicable warranties as described below.

33. Plaintiff Mike Gasman resides in Appleton, Wisconsin. Mr. Gasman purchased and continues to own a 2005 Jeep Wrangler [VIN 1D4HB58D85F592207]. The Plaintiff has in the past and he continues to experience "fuel spit back problems" with this vehicle. This problem has caused the loss of fuel and it poses a potential health and safety risk. Plaintiff Gasman notified NHTSA/Chrysler of the defects in his vehicle. These defects constitute a breach of applicable warranties as described below.

34. Plaintiff Ryan Gillette resides in Robertsville, Missouri. Mr. Gillette purchased and continues to own a 2005 Jeep Wrangler [VIN 1J4FA39S15P376518]. The Plaintiff has in

the past and he continues to experience "fuel spit back problems" with this vehicle. This problem has caused the loss of fuel and it poses a potential health and safety risk. The defendant Chrysler was fully aware of the defect in this model vehicle. These defects constitute a breach of applicable warranties as described below.

35. Defendant Chrysler Group LLC is a limited liability company incorporated in the ~~state~~ State of Delaware.

CLASS ACTION ALLEGATIONS

36. This action seeks to establish a nationwide class against the named Defendant for negligence and breaches of warranties ~~other wrongful conduct~~ alleged in this Complaint.

37. Certification under Rule 23(b) of the ~~Del. Super. Ct. R. Civ. P.~~ Federal Rules of Civil Procedure is proper.

38. The Plaintiffs and the Class seek injunctive relief, and compensatory and incidental damages in ~~the~~ an amount determined that is for the cost/value of the repair and replacement of necessary components in each Jeep Wrangler and Dodge Durango, and any loss of the use of the vehicle, and if the condition cannot be rectified then a loss of the value of the vehicle due to the continuing loss of fuel for each class member for the Defendant's wrongful conduct as alleged herein.

39. Plaintiffs seek certification of a nationwide class against the named Defendant with the class consisting of the following:

a. "All current owners of Jeep Wranglers, model years 2005 through 2010 which include the design features responsible for the "fuel spit back problem" and which have not been corrected ~~recalled~~ or repaired in the past".

b. "All current owners of Dodge Durangos, model years 2005 through 2008 which include the design features responsible for the "fuel spit back problem" and which have not been corrected ~~recalled~~ or repaired in the past."

40. The class is further defined as follows: "The person does not have a pending action against the Defendant, on the Date of the Court's certification order, any individual action where in the recovery sought is based in whole or in part on the type of claims asserted herein, or has previously had his or her vehicle recalled or otherwise repaired to correct the safety hazard described herein." Further, "the class members do not include those who own vehicles sold before the Bankrutpcy Sale Order date that are not subject to the assumption of warranty liabilities set forth in Paragraph 19 of the Sale Order".

41. The class is further defined into the following sub-classes:

a. All Jeep Wrangler products marketed by the defendant after the Closing Date of the Bankruptcy and which contain the defect that has or will cause the "fuel spit back problem" and have not been repaired (e.g., 2009 and 2010 model year vehicles).

b. All Jeep Wrangler products containing the defect in question and to which warranties described below were existent on the Closing Date of the Bankruptcy (eg., 2005 to 2009 model year vehicles), exclusive of those referenced in ¶ 42 a.)

c. All Dodge Durango products containing the defect described and to which warranties described below were existent on the Closing date of the Bankruptcy (2005 to 2009 models), exclusive of those 2006-2008 models that were the subject of the aforementioned TSB.

d. All Dodge Durango vehicles that obtained a lifetime warranty via the January 20, 2012 letter issued by the defendant and which contain the defect described and which have not been remedied.

e. All 2007-2008 Jeep Wranglers that obtained a lifetime warranty via the February 2011 TSB issued by the defendant to repair these model vehicles which contain defects causing the "fuel spit-back problem" and which have not been remedied.

f. All Dodge Durango 2005 to 2008 model years that include the same or similar fuel system which has led to the "fuel spit-back problem" and which have not been repaired and which no longer have viable warranties, but have the defect in question, exclusive of those models that are the subject of the aforementioned TSB;

g. All Jeep Wranglers 2005 to 2010 model years that include the same or similar fuel system which has led to the "fuel spit-back problem" and which have not been repaired and which no longer have viable warranties, but have the defect in question, exclusive of those model years that are the subject of the aforementioned TSB.

42. Rule 23(a) and Rule 23(b), requirements are met because:

a. Plaintiffs estimate that the proposed class ~~consists~~ and sub-classes consist of hundreds of thousands of Jeep Wrangler and Dodge Durango owners throughout the United States, and joinder of all members in this action is impracticable.

b. There are questions of law and fact common to the class.

c. The common questions predominate over any questions affecting only individual members.

d. The named Plaintiffs are adequate representatives of the class and sub-classes. The claims of the Plaintiffs as class representative are typical of those of the class

members in that they were subjected to the same unlawful treatment, and the named Plaintiffs suffered the same type harm as suffered by other members of the class. The class representatives will vigorously pursue the claims on behalf of the class, and will fairly and adequately protect the interests of the class. Plaintiffs' counsel is experienced and professionally able to properly represent the class.

e. The claims of the representative parties are typical of the claims of each member of the class, and are based on or arise out of similar facts constituting the wrongful conduct of the Defendant.

f. A class action is far superior to any other available method for the fair and efficient adjudication of this controversy.

43. Prerequisites to a Class Action – ~~Del~~ Fed. R. Civ. P. 23(a) and Fed. R. Civ. P.23(b)(2). The prerequisites to maintaining this action as a Class action are satisfied in this case as alleged below.

a. Numerosity, on information and belief, there are hundreds of thousands of Jeep Wranglers and Dodge Durangos with the aforementioned safety defect that has not been repaired.

b. Because Defendant has exclusive control of such information, the Plaintiffs reserve the right to amend their allegations following completion of discovery. Given the scope of the Defendant's business, it is clear that the members of the Class are so numerous that joinder is impracticable and the disposition of their claims in a Class action will provide substantial benefits to the parties and the Court.

c. Commonality – Since the Plaintiffs and other members of the Class all own 2005 through 2010 Jeep Wranglers or 2005 through 2008 Dodge Durangos that include

the same or similar fuel system design, and they all suffer from the same hazardous "fuel spit back problem," there are questions of law and fact common to the Class. Such common questions of law and fact predominate over any individual questions affecting Class members.

d. Typicality – Named Plaintiffs have the same interests in this matter as all the other members of the Class, and their claims are typical of all members of the Class. The named Plaintiffs' claims are typical of the claims of all Class members because the claims originate from the same design features.

e. Adequacy of Representation – Plaintiffs' claims are aligned with the interests of the absent members of the Class such that the Class claims will be prosecuted with diligence and care by Plaintiffs as representatives of the Class. Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in the prosecution and successful resolution of Class litigation. Plaintiffs will fairly and adequately represent the interests of the Class and do not have interests adverse to the Class. Plaintiffs' interests are antagonistic to the interests of the Defendant and Plaintiffs will vigorously pursue the claims of the Class.

f. Class Actions Maintainable –Class action status is also appropriate because the common question of law and fact identified above predominate over questions affecting only individual members. A Class action is superior to other available methods for the fair and efficient adjudication of this litigation. It is desirable to concentrate the litigation of the claims in this Court. Plaintiffs and their counsel do not anticipate encountering any unique difficulties in the management of this action as a Class action.

g. Injunctive relief is necessitated because of the defendant's refusal to act in accordance with the allegations set forth herein.

COUNT I ~~: NEGLIGENCE~~

NEGLIGENCE REGARDING POST-CLOSING DATE PRODUCTS.

44. Plaintiffs adopt and incorporate by reference all prior paragraphs of this Complaint as if fully set forth herein.

45. The Defendant has in the past acknowledged the inherent dangers associated with "fuel spit back" in its Jeep Wranglers and Dodge Durangos.

46. The Defendant accepted its duty to rectify the "fuel spit back" problem ~~on several occasions in the past by conducting safety recalls.~~ by issuing Technical Service Bulletins.

47. On February 11, 2011, the Defendant ~~again acknowledged the hazards associated with "fuel spit back" and~~ initiated a silent recall known as a Technical Service Bulletin (TSB) for a limited number of Jeep Wranglers ~~that were at that time past the warranty period for repairs and none of the relevant Dodge Durangos.~~, but that action did not include Wranglers sold after the Closing date and which contain the defect in question. These 2009-2010 products contain the defect in question and the failure to remedy this defect in those vehicles constitutes actionable negligence.

48. The defendant Chrysler's action on February 11, 2011 was a careless and negligent effort to rectify known hazards in Jeep Wrangler ~~and Dodge Durango model~~ vehicles.

49. The defendant's action on February 11, 2011 failed to rectify known defects in Jeep Wranglers it sold in calendar years 2009 and 2010. The TSB issued on February 11, 2011 did not provide reasonable notice to the owners of these vehicles. These products remain unsafe and/or have defects constituting a breach of warranty as described below.

50. As a result of this negligence, the defendant is liable to those owners of Jeep Wranglers sold in 2009 and 2010 by the defendant and containing the defect in question and which have not been repaired.

COUNT II

NEGLIGENCE REGARDING JEEP WRANGLERS THAT THE DEFENDANT CHOSE TO REPAIR BUT FAILED TO DO SO CAREFULLY

51. The TSB issued by the defendant on February 11, 2011 was intended to repair some Jeep Wrangler model vehicles (2007-2008) that were sold by its predecessor. In doing so, the defendant assumed a duty toward the owners of these vehicles. Nevertheless, the defendant's action did not reasonably notify the ~~public~~ owners of the aforementioned Wranglers of the "fuel spit back problem" nor did it reasonably and carefully advise that the repair of this problem should promptly take place.

52. The Defendant's ~~actions~~ action on February 11, 2011 occurred because of ~~its~~ a duty to rectify known dangers associated with these vehicles.

53. The Defendant was negligent in its ~~vehicles~~ voluntary undertaking to repair the Jeep Wrangler models in question.

54. ~~The TSB was~~ The Defendant's negligent undertaking has failed to rectify a known defect and these Jeep Wranglers remain defective as described above. This conduct has caused the harm as described above.

COUNT III

NEGLIGENCE RELATED TO A GRATUITOUS UNDERTAKING AS TO ALL DODGE DURANGOS SUBJECT TO THE TECHNICAL SERVICE BULLETIN ISSUED IN JANUARY 20, 2012.

55. The Plaintiffs incorporate by reference all of the foregoing paragraphs as if they were set forth at length herein.

56. On January 20, 2012, the defendant issued a TSB and then on January 25, 2012, the defendant sent a letter to the owners of Dodge Durangos, model years 2006 to 2008, advising that these vehicles may require the replacement of portions of their fuel system because of a defect causing "fuel spit-back problems", and providing these owners with a life-time warranty to obtain certain repairs for this defect. That letter, which constituted an admission, did not provide for appropriate and necessary measures to remedy the defect or provide for the reimbursement of costs associated with this breach.

57. Further this notification in January, 2012 was an inadequate remedial measure, constituting negligence on the part of the defendant in failing to take appropriate action to correct flaws in these vehicles.

58. These omissions constitute negligence which is the proximate cause of damages suffered by the owners of these Dodge Durangos.

COUNT IV

NEGLIGENCE AS TO ALL APPLICABLE JEEP WRANGLERS SUBJECT TO THE FEBRUARY 11, 2011 TECHNICAL SERVICE BULLETIN

59. The plaintiffs incorporate by reference all the paragraphs set forth above as though they were fully set forth herein.

60. On February 11, 2011, the defendant issued a TSB extending to the owners of 2007-2008 Jeep Wranglers a lifetime warranty to remedy the defect causing fuel spit back, but it failed to reasonably and effectively notify all owners or to provide for effective remedies of this safety defect. This TSB was inadequate to remedy the defect and constitutes negligence on the part of the defendant in failing to take appropriate action to correct flaws in these vehicles.

61. Further this TSB was an inadequate remedial measure, constituting negligence on the part of the defendant in failing to take appropriate action to correct flaws in these vehicles.

62. That TSB, which constituted an admission, did not provide for appropriate and necessary measures to remedy the defect or provide for the reimbursement of costs associated with this breach.

63. These omissions constitute negligence and the proximate cause of damages suffered by the owners of these Jeep Wranglers.

COUNT V

GENERAL NEGLIGENCE CLAIM BASED UPON THE DEFENDANT'S GRATUITOUS/VOLUNTARY EXTENSION OF WARRANTIES TO SOME BUT NOT ALL APPLICABLE JEEP WRANGLERS AND DODGE DURANGOS

64. The Plaintiffs incorporate by reference herein all of the foregoing relevant allegations as if they were set forth at length herein.

65. The several referenced TSBs were limited in scope and did not ~~attempt to~~ notify all owners of the inherent ~~flaw~~ flaws in the fuel system of all Jeep Wranglers marketed between 2005 and 2010 and Dodge Durangos marketed between 2005 and 2008.

66. This Count of negligence relates to those Jeep Wrangler and Dodge Durango model years that are not the subject of the Technical Service bulletins issued by the defendant on February 11, 2011 and January 20, 2012.

67. Because the Defendant did, on February 11, 2011 and January 20, 2012, gratuitously elect to rectify a hazardous condition ~~in certain model Jeep Wranglers~~ that it knew existed in some but not all 2005 through 2010 Jeep Wranglers and 2005 through 2008 Dodge Durangos, ~~its failure to carefully undertake this task~~ this omission constitutes actionable negligence and

established establishes the accrual of a cause of action — i.e., the running of the negligence statute of limitations as to these vehicles began on February 11, 2011.

68. The 2005 through 2010 Jeep Wranglers and 2005 through 2008 Dodge Durangos all have, according to the Defendant and upon information and belief, the same design defect that produces "fuel spit back problems." This defect has manifested itself by causing fuel to spill out while refueling. This spillage causes a monetary loss and it continues to pose a potential health and safety hazard. The Defendant has, in its prior action, acknowledged the appropriate repairs that are needed to eliminate the defect and the "fuel spit back problem."

69. The Defendant assumedThe Defendant has a duty to the owners of Jeep Wranglers and Dodge Durangos to keep abreast of performance problems that arise in association with the use of all relevant Jeep Wranglers and Dodge Durangos.

70. The Defendant assumed a duty to take necessary action to repair or otherwise correct flaws that materialize in its vehicles have materialized in the model year Jeep Wranglers and Dodge Durangos identified above, but then it negligently selected to limit its extension of warranties and limit its notification to the owners of these vehicle models to obtain remedial repairs to eliminate the defect in question.

71. The Defendant was generally careless and negligent in breaching the duty of due care it assumed for owed to the benefit owners of the Plaintiffs and class members, all relevant vehicle models both generally and in the following particular respects:

a. Failing to properly and adequately warn of the hazards associated with "fuel spit back problems;"

b. Failing to conduct a full and complete repair of all Jeep Wranglers and Dodge Durangos ~~that~~ which were designed and included the same features that are the cause of "fuel spit back problems;"

c. Conducting a silent recall without alerting all owners of 2005 to 2010 Jeep Wranglers and all owners of 2005 through 2008 Dodge Durangos of the "fuel spit back problems" and failing to provide corrective action for all such vehicles;

d. Conducting an inadequate and incomplete notification to owners of the need to repair all 2005 to 2010 Jeep Wranglers and 2005 through 2008 Dodge Durangos to eliminate the "fuel spit back problem;"

e. Failing to carefully carry out proper and reasonable remedial remedies to eliminate the hazards and safety issues and loss of fuel associated with "fuel spit back problems" in the 2005 through 2010 Jeep Wranglers and 2005 through 2008 Dodge Durangos; and,

f. Other acts of negligence and carelessness that may materialize during the pendency of this action.

COUNT VI

BREACH OF WARRANTIES REGARDING ALL APPLICABLE VEHICLES

72. The Plaintiffs incorporate by reference all the foregoing paragraphs as set forth herein at length.

73. The defendant Chrysler assumed liabilities associated with claims for breach of express and implied warranties for model year 2005 through 2009 Jeep Wranglers and 2005 through 2008 Dodge Durangos except for those liabilities associated with personal injuries or other damage claims that are not asserted herein.

74. The vehicles in question were sold and delivered with implied warranties of merchantability.

75. As described below, these vehicles have defects that constitute material breaches of these implied warranties of merchantability.

76. The defendant has received reasonable notice of the breach of warranties described herein.

77. The vehicles in question were sold with implied warranties of merchantability that included, but are not limited to,

a. a promise that the vehicle will operate safely;

b. a promise that it can be used in a safe condition;

c. a promise that it will be free of defects; and,

d. a promise that the vehicle's components will function as intended.

78. The vehicles in question contain defects as described above and failed to safely store fuel for usage as intended by its design.

79. The "fuel spit-back problems" constitute a breach of implied warranties of merchantability.

80. This breach has caused damages both direct and indirect including consequential damages.

81. The vehicle models in question were sold with an implied warranty of fitness for a particular purpose.

82. As described below, these vehicles have defects that constitute material breaches of this implied warranty of fitness of a particular purpose.

83. The defendant has received reasonable notice of the breach of warranty described herein.

84. The vehicles in question were sold with implied warranty of fitness for a particular purpose that included, but is not limited to,

a. a promise that the vehicle will operate safely;

b. a promise that it can be used in a safe condition;

c. a promise that it will be free of defects; and,

d. a promise that the vehicle's fuel system components would function as intended and provide a safe storage facility for fuel.

85. The vehicles in question contain defects as described above and failed to safely store fuel for usage as intended by its design.

86. The "fuel spit-back problems" constitute a breach of implied warranty of fairness for a particular purpose.

87. This breach has caused damages both direct and indirect including consequential damages.

COUNT VII

BREACH OF WARRANTIES REGARDING JEEP WRANGLERS 2009-2010 MODEL YEARS

88. The plaintiffs incorporate by reference here all the foregoing paragraphs as if they were set forth herein.

89. The vehicles in question were sold and delivered with implied warranties of merchantability.

90. As described herein, these vehicles have defects that constitute material breaches of these implied warranties of merchantability.

91. The defendant has received reasonable notice of the breach of warranties described herein.

92. The vehicles in question were sold with implied warranties of merchantability that included, but are not limited to,

a. a promise that the vehicle will operate safely;

b. a promise that it can be used in a safe condition;

c. a promise that it will be free of defects; and,

d. a promise that the vehicle's components will function as intended.

93. The vehicles in question contain defects as described above and failed to safely store fuel for usage as intended by its design.

94. The "fuel spit-back problems" constitute a breach of implied warranties of merchantability.

95. This breach has caused damages both direct and indirect including consequential damages.

96. The vehicle models in question were sold with an implied warranty of fitness for a particular purpose.

97. As described below, these vehicles have defects that constitute material breaches of this implied warranty of fitness of a particular purpose, and this breach accrued within less than 4 years before the date this action was commenced.

98. The defendant has received reasonable notice of the breach of warranty described herein.

99. The vehicles in question were sold with implied warranty of fitness for a particular purpose that included, but is not limited to,

a. a promise that the vehicle will operate safely;

b. a promise that it can be used in a safe condition;

c. a promise that it will be free of defects; and,

d. a promise that the vehicle's fuel system components would function as intended and provide a safe storage facility for fuel.

100. The vehicles in question contain defects as described above and failed to safely store fuel for usage as intended by its design.

101. The "fuel spit-back problems" constitute a breach of implied warranty of fitness for a particular purpose.

102. This breach has caused damages both direct and indirect including consequential damages.

COUNT VIII

BREACH OF WARRANTIES REGARDING JEEP WRANGLERS MODEL YEARS 2007-2008 AND DODGE DURANGOS MODEL YEARS 2006-2008

103. Plaintiffs incorporate by reference all the paragraphs set forth above as if they were set forth at length herein.

104. The vehicles in question were sold and delivered with implied warranties of merchantability.

105. As described herein, these vehicles have defects that constitute material breaches of these implied warranties of merchantability.

106. The defendant has received reasonable notice of the breach of warranties described herein.

107. The vehicles in question were sold with implied warranties of merchantability that included, but are not limited to,

a. a promise that the vehicle will operate safely;

b. a promise that it can be used in a safe condition;

c. a promise that it will be free of defects; and,

d. a promise that the vehicle's components will function as intended.

108. The vehicles in question contain defects as described above and failed to safely store fuel for usage as intended by its design.

109. The "fuel spit-back problems" constitute a breach of implied warranties of merchantability.

110. This breach has caused damages both direct and indirect including consequential damages.

111. The vehicle models in question were sold with an implied warranty of fitness for a particular purpose.

112. As described below, these vehicles have defects that constitute material breaches of this implied warranty of fitness of a particular purpose, and this breach accrued within less than 4 years before the date this action was commenced.

113. The defendant has received reasonable notice of the breach of warranties described herein.

114. The vehicles in question were sold with implied warranties of fitness for a particular purpose that included, but is not limited to,

a. a promise that the vehicle will operate safely;

b. a promise that it can be used in a safe condition;

c. a promise that it will be free of defects; and,

d. a promise that the vehicle's fuel system components would function as intended and provide a safe storage facility for fuel.

115. The vehicles in question contain defects as described above and failed to safely store fuel for usage as intended by its design.

116. The "fuel spit-back problems" constitute a breach of implied warranty of fitness for a particular purpose.

DAMAGES

117. Plaintiffs adopt and incorporate by reference all prior paragraphs of this Complaint as if fully set forth herein.

118. The Plaintiffs individually and the Class members have in the past and/or will in the future suffer the loss of fuel and/or be exposed to potential health and safety hazards as a result of the Defendant's careless and negligent decision to conduct a woefully inadequate offer to repair a limited number of Jeep Wranglers and Dodge Durangos that all have the design flaws that cause "fuel spit-back problems."

119. Plaintiffs individually and the Class members have suffered damages because of the breach of warranties described above and they are entitled to recover damages recognized at law including repair and replacement costs plus consequential damages.

120. The Plaintiffs individually and the Class members are each entitled to the repair and replacement of all component parts that cause the "fuel spit back problems". These repairs and replacements must be made at the expense of the Defendant.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs individually and on behalf of the proposed Class, pray for judgment as follows:

a. Certification of the proposed Class pursuant to the Delaware Rules of Civil Procedure Rule 23(a), (b)(2) and (b)(3);

b. Designation of Plaintiffs as representatives of the proposed Class and designation of Plaintiffs' counsel as Class counsel;

c. An award of compensatory damages, the amount of which is to be determined at trial;

d. An award to the Plaintiffs and Class prejudgment interest, costs and attorneys fees;

e. An award to the Plaintiffs and Class of such other and further relief as the Court deems just and proper.

/s/ Bartholomew J. Dalton
Bartholomew J. Dalton (ID #808)
Laura J. Simon (ID #3644)
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DATED: August 21, 2012

JS 44 (Rev. 12/12) Case 1:12-cv-00005-LPS Document 2-3 Filed 01/03/12 Page 1 of 2 PageID #: 93 CIVIL COVER SHEET Exhibit A

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
AUTUMN BURTON, MATTHEW COX, RODNEY LaFLEUR, DAN GULICK, JAMES SPITLER, MIKE BURKE, MIKE GASMAN, ERIC MALLOY, RYAN GILLETTE, and all others similarly situated.

(b) County of Residence of First Listed Plaintiff Shelby County, TN
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Dalton & Associates, Laura J. Simon and Bartholomew J. Dalton, 1106 West 10th Street, Wilmington, DE 19806

DEFENDANTS
CHRYSLER GROUP LLC, a Delaware Corporation

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☒ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:
Class Action Product Liability filed in Superior Court, removed by Defendant.

VII. REQUESTED IN COMPLAINT: ☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $ CHECK YES only if demanded in complaint: JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 08/21/2012 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

AUTUMN BURTON, MATTHEW COX, DAN GULICK RODNEY LaFLEUR, AND JAMES SPITLER, individually and in their representative capacity for all other similarly situated, Plaintiffs, v. CHRYSLER GROUP LLC, Defendant.	CLASS ACTION C.A. No. 12-cv-00005-LPS

~~[PROPOSED]~~ ORDER TO TRANSFER

Before the Court is Defendant Chrysler Group LLC's Motion to Transfer. Having reviewed the motion and related briefing and the arguments of counsel at the August 20, 2012, hearing, the Court finds good cause exists to grant the motion. Accordingly, IT IS HEREBY ORDERED THAT:

1. Defendant Chrysler Group LLC's Motion to Transfer is GRANTED, and this matter is hereby transferred to the United States District Court for the Southern District of New York, for referral to the bankruptcy court.

2. Chrysler Group LLC's time to respond to Plaintiffs' Second Amended Complaint filed on August 21, 2012, is hereby stayed. After transfer, the parties shall meet and confer with respect to a briefing schedule on the issue of whether the claims asserted in Plaintiffs' Second Amended Complaint are barred by the Sale Order, and shall work toward an agreement on the

timing for briefing. [Such agreement shall be made within twenty (20) days of when this action is transferred].[1]

3. If the bankruptcy court determines that any of the claims asserted in Plaintiffs' Second Amended Complaint are not barred by the Sale Order, Chrysler Group LLC shall abide by its representations made in this Court and stipulate that any remaining claims be remanded back to this Court for further proceedings.

4. No later than fourteen (14) days after this case is referred back to this Court, the parties shall provide the Court with a Joint Status Report. The Joint Status Report shall provide the timing of the filing of Plaintiffs' Third Amended Complaint and Chrysler Group LLC's response to the Third Amended Complaint.

5. Plaintiffs' Third Amended Complaint shall conform to the directions given by the Court at the August 20, 2012, hearing as well as any order of the bankruptcy court.

Date: August 28, 2012

United States District Judge

[1] Chrysler Group's position: Plaintiffs demanded that this Proposed Order contain the bracketed language. Chrysler Group believes the bracketed language is not proper because counsel for Chrysler Group in this Court will not be representing Chrysler Group in the bankruptcy court. Similarly, it is uncertain who will be representing Plaintiffs in the bankruptcy court. And, obviously, the parties cannot control the timing of the bankruptcy court's docket. Accordingly, while Chrysler Group is willing to agree to a briefing schedule after transfer, it believes that the timing of a meet-and-confer on briefing, and the ultimate briefing scheduling, should be left to the bankruptcy court and the counsel of record in that Court. Plaintiffs' position: The Plaintiffs disagree with the inclusion of this editorial comment and feel certain that providing the parties with a prompt time period to submit a scheduling order to the Bankruptcy Court is a feature that this Honorable Court would consider appropriate.

Exhibit C

SERVICE BULLETIN

NUMBER: 14-001-11

GROUP: Fuel System

DATE: February 11, 2011

SUBJECT:
Fuel Spit Back During Refueling (Unlimited Time And Mileage Warranty Extension)

OVERVIEW:
This bulletin involves replacing the fuel tank if the condition occurs.

MODELS:

2007 - 2008	(JK)	Wrangler

NOTE: This Extended Warranty Bulletin applies to vehicles equipped with a 3.8L engine (sales code EGT) built between March 1, 2007 (MDH0301XX) and March 31, 2008 (MDH 0331XX).

SYMPTOM/CONDITION:
Some customers may experience a fuel spit back condition during a refueling event.

DIAGNOSIS:
If the customer experiences the symptom/condition, proceed to the repair procedure.

PARTS REQUIRED:

Qty.	Part No.	Description
AR (1)	52059729AG	Tank, Fuel (23 gallon)
AR (1)	52059718AH	Tank, Fuel (18.6 gallon)
(1)	55366298AA	O-ring, Fuel Pump and Level Unit

REPAIR PROCEDURE:
1. Replace the fuel tank, following the procedures in available in DealerCONNECT > TechCONNECT Service Info > 14 - Fuel System> Fuel Delivery > Tank, Fuel removal and installation procedures.

NOTE: Be sure to install the new Fuel Pump and Level Unit O-ring.

POLICY:
Reimbursable within the provisions of the warranty.

NOTE: Vehicles included in this Service Bulletin have a lifetime coverage - Unlimited Time and Mileage warranty for this repair. See Warranty Bulletins; U.S. D-11-05, Canada SAB-2011-03 or International ID-11-01 for details associated with the extended warranty.

TIME ALLOWANCE:

Labor Operation No:	Description	Amount
14-60-01-90	Tank, Fuel Replace (C)	1.1 Hrs.

FAILURE CODE:

ZZ	Service Action

Exhibit D

U.S. Department of Transportation
National Highway Traffic Safety Administration

ODI RESUME

OFFICE OF DEFECTS INVESTIGATION
NHTSA

Investigation:	PE 10-032		
Date Opened:	08/23/2010	**Date Closed:**	02/16/2011
Investigator:	Michael Lee	**Reviewer:**	Scott Yon
Approver:	Frank Borris		
Subject:	Fuel Spill During Refueling		

MANUFACTURER & PRODUCT INFORMATION

Manufacturer:	CHRYSLER GROUP LLC
Products:	2007-2008 Jeep Wrangler
Population:	223,036
Problem Description:	Fuel spills out or spits back from the filler port during refueling.

FAILURE REPORT SUMMARY

	ODI	Manufacturer	Total
Complaints:	473	142	615
Crashes/Fires:	0	0	0
Injury Incidents:	0	0	0
Number of Injuries:	3	0	3
Fatality Incidents:	0	0	0
Other*:	0	895	895

***Description of Other:** Warranty Claims

ACTION / SUMMARY INFORMATION

Action: Close this Preliminary Evaluation.

Summary:

ODI found the rate of warranty claims related to fuel spit back on the subject vehicles is lower than other vehicles previously recalled to correct defects related to fuel spit back. Although the rate of complaints reported to the agency on the subject vehicles is higher than or similar to the rates experienced in previous investigations where safety recalls were conducted, ODI suspects that the NHTSA safety complaints submitted by subject vehicles owners may have been influenced by internet related publicity both before and during this investigation.

A safety-related defect trend has not been identified at this time and further use of agency resources does not appear to be warranted. Accordingly, this investigation is closed. The closing of this investigation does not constitute a finding by NHTSA that no safety-related defect exists. The agency will monitor the issue and reserves the right to take future action if warranted by the circumstances. See attached report for additional information.

in addition, Chrysler is initiating a lifetime warranty program, at no cost to the consumer, to address the fuel spit back problem in approximately 135,000 model year 2007-2008 Jeep Wrangler vehicles built from March 1, 2007 to March 31, 2008. Chrysler will notify all affected vehicle owners of this action. Consumers should refer to the warranty and service bulletins and sample owner notification letter available in the investigative file. The vehicle build date can be found on the certification label located on the driver door or door jamb.

Additional Information:

The complaints allege that while refueling the vehicle, fuel can spill out or spit back from the filler port. Some of the complaints also allege the fuel can splash on the person fueling the vehicle. Three complaints reported minor injuries when fuel got in the eyes causing irritation or when fuel splashed on the foot causing a "gas burn," a form of skin irritation.

Chrysler states the fuel tank's inlet check valve, which is designed to close at the completion of refueling process, can stick in the open position and allow fuel to spit back from the filler port. According to Chrysler, testing showed the use of fuels with ethanol content greater than that found in E10 (10% ethanol) fuel can cause the inlet check valve's poppet to expand resulting in inadequate clearance between the valve's poppet and housing. According to Chrysler, the subject vehicles are designed for fuels such as E10 or regular unleaded and not for flexible fuel E85 (85% ethanol) or other ethanol blends. The types of fuel that are being used in the vehicles experiencing fuel spit back conditions in the field are not known.

Chrysler did not identify any specific root cause of fuel spit back nor any relevant design or manufacturing issues on model year 2005 through 2010 Jeep Wrangler vehicles. Nevertheless, ODI has identified a subset of the Wrangler vehicles – approximately 135,000 vehicles built between March 2007 and March 2008 – having higher rates of complaints and warranty claims than the model year 2007-2008 Wranglers built outside of the production period, as well as other model year Wranglers (2005-2006 and 2009-2010). ODI found the warranty claim rate of the suspect population is about 0.5 percent of vehicles, or a time exposure-adjusted rate of less than 0.2 percent per year, which is lower than the warranty rates experienced in previous investigations where safety recalls were conducted to correct defects related to fuel spit back.

NHTSA has received a high number of complaints (473) on model year 2007-2008 Jeep Wrangler vehicles. Significant reporting of complaints began on October 11, 2009 – the date that a Wrangler owner posted the internet link to the agency's safety complaint form on an internet forum (jk-forum.com), titled "The Ultimate Jeep JK Wrangler Bulletin Board." The complaint link was posted with a message urging other owners to file complaints with NHTSA. Several other Wrangler owners reposted the complaint link with similar messages. ODI found that many owners filed the complaints after seeing the internet messages. ODI believes the increased reporting of the complaints is the result of the internet related publicity, making the number of complaints artificially high.

Exhibit E

SERVICE BULLETIN

NUMBER: 14-001-12

GROUP: Fuel System

DATE: January 20, 2012

SUBJECT:
Fuel Spit Back During Refueling Due To Faulty Inlet Check Valve X39 (Unlimited Time And Mileage Warranty Extension)

OVERVIEW:
This bulletin involves replacing the fuel filler tube if the condition occurs.

MODELS:

2006 - 2008	(HB)	Durango
2007 - 2008	(HG)	Aspen

NOTE: This Extended Warranty Bulletin applies to vehicles equipped with a naturally aspirated gasoline engines.

SYMPTOM/CONDITION:
Some customers may experience a fuel spit back condition during a refueling event.

DIAGNOSIS:
If the customer experiences the symptom/condition, proceed to the repair procedure.

PARTS REQUIRED:

Qty.	Part No.	Description
AR (1)	CNNZX390AA	Tube, Fuel Filler
(4)	6500911	Rivet, Splash Shield Attaching

REPAIR PROCEDURE:
1. Hoist vehicle.
2. Remove Left rear wheel.
3. Remove the left quarter panel splash shield. There are 4 plastic retaining rivets.

CAUTION: Protect Paint and Quarter panel medal during removal and installation.

4. Replace the fuel filler tube, Following the detailed procedures found in DealerCONNECT>TechCONNECT Service Info > 14 - Fuel System> Fuel Delivery > Tube, Fuel Filler removal and installation procedures.
5. Install the left quarter panel splash shield. There are 4 plastic retaining rivets.
6. Install left rear wheel.

POLICY:
Reimbursable within the provisions of the warranty.

NOTE: Vehicles included in this Service Bulletin have a lifetime coverage - Unlimited Time and Mileage warranty for this repair. See Warranty Bulletins; U.S. D-12-07, Canada SAB 2012-03, International ID-12-02 or Mexico BG-01-12 for details associated with the extended warranty.

TIME ALLOWANCE:

Labor Operation No:	Description	Amount
14-60-15-92	Tube, Fuel Filler Replace (C) (Skill Level = B; Training Level = 3)	0.6 Hrs.

FAILURE CODE:

ZZ	Service Action

Exhibit F

Printed from AutoWeek.com

Chrysler statement from Chairman and CEO Bob Nardelli

12:44 pm, March 30, 2009

Today marks an important milestone for Chrysler LLC. We are encouraged by the commitments of the Administration, U.S. Treasury and President's Auto Task Force to the American automobile industry and Chrysler's viability, with a Fiat alliance.

We are pleased that Chrysler, Fiat and Cerberus have reached agreement on a global alliance, supported by the U.S. Treasury. Chrysler has consistently said that the alliance with Fiat enhances its business model that expands its global competitiveness. We appreciate the willingness of the Task Force, along with industry and financial experts, to consult closely with us in order to achieve this significant step.

By providing Chrysler with product and platforms, technology cooperation and global distribution, Fiat strengthens Chrysler's ability to create and preserve U.S. jobs; gives U.S. consumers more choices for environmentally advanced vehicles; gives its dealers more of the products they need to be successful; helps stabilize the supplier base; and allows Chrysler to pay back government loans sooner.

Chrysler has had a series of very constructive discussions since our plan was submitted February 17, including weekly face-to-face meetings with the Task Force. We have been impressed by their speed, diligence, good faith and strong grasp of the difficult issues our industry faces in this financial crisis. This is evidenced by the U.S. government's initiatives to support consumer warranties and suppliers, as well as their appointment of Dr. Edward Montgomery, Director of Auto Recovery.

I want to personally assure all of our customers, dealers, suppliers and employees that Chrysler will operate 'business as usual' over the next 30 days. While we recognize that we still have substantial hurdles to resolve, Chrysler is committed to working closely with Fiat, the Administration, U.S. Treasury and the Task Force to secure the support of necessary stakeholders. If successful, the government will consider investing up to the additional $6 billion requested by Chrysler to help this partnership succeed.

Exhibit G

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50002

- -x

In the Matter of:

CHRYSLER LLC, et al.

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 29, 2009

9:03 AM

B E F O R E:

HON. ARTHUR J. GONZALEZ

U.S. BANKRUPTCY JUDGE

HEARING re Motion of Debtors and Debtors in Possession, Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, for (I) An Order (A)Approving Bidding Procedures and Bidder Protections for the Sale of Substantially All of the Debtors' Assets; and (B)Scheduling a Final Sale Hearing and Approving the Form and Manner of Notice Thereof; and (II) an Order (A)Authorizing the Sale of Substantially All of the Debtors' Assets, Free and Clear of Liens, Claims, Interests and Encumbrances; (B)Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures; and (C)Granting Certain Related Relief

HEARING re Motion of Debtor Alpha Holding LP, Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, for an Order (A) Authorizing the Sale of Substantially All of Alpha Holding LP's Assets, Free and Clear of Liens, Claims, Interests and Encumbrances; and (B) Granting Certain Related Relief

HEARING re Motion of the Debtors for Entry of Agreed Interim and Final Orders: (I)Authorizing Use of Cash Collateral; (II)Granting Adequate Protection; and (III) Granting Related Relief

HEARING re Motion of Debtors and Debtors in Possession for Entry of an Order Authorizing Debtor Chrysler LLC to Enter Into a Settlement on the Terms Set Forth in the Binding Term Sheet Among Chrysler LLC, Chrysler Holding LLC, Daimler AG, Cerberus, the DC Contributors, and the Pension Benefit Guaranty Corporation Pursuant to Rule 9019 of Federal Rules of Bankruptcy Procedure

HEARING re Motion of Debtors and Debtors in Possession for Entry of an Order (A)Authorizing the Debtors to Implement Post Closing Modifications to Chrysler LLC's Governance Structure; (B)Approving the Release of Officers and Directors; and (C)Authorizing the Debtors to Obtain Replacement Directors and Officers Liability Insurance

HEARING re Motion of Debtors and Debtors in Possession for Entry of an Order Approving the Tax Settlement Agreement Among the DC Contributors, the CG Investment Group, LLC, Daimler, Chrysler Holding, Chrysler and CCI Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure

Transcribed by: Lisa Bar-Leib

A. It's the way you look at it, yes.
Q. A stakeholder?
A. Yes.
Q. Yes. And you owe fiduciaries to those creditors and stakeholders, correct?
A. Yes.
Q. And your fiduciary duties require you to try to maximize value for them, correct?
A. Yes.
Q. So, let me ask you again. Have you given any thought to what the warranty creditors are going to get under the transaction currently before the Court?
A. I believe that NewCo plans on paying the warranty claims.
Q. Were you interested in that?
A. I would like, just from a personal standpoint I like to see our customers taken care of for, yeah, so yes.
Q. But you didn't really care?
A. No, I do care.
Q. You do care. Like, as a fiduciary you care?
A. I would say from a customer care perspective I care.
Q. But as a fiduciary you didn't negotiate for that provision to be in the agreement.
A. NewCo will make the decision on who they pay warranty claims.
Q. Well, do you know who -- is OldCo a party to this

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
DN: cn=Lisa Bar-Leib, c=US
Reason: I am the author of this document
Date: 2009.06.03 09:06:18 -04'00'

LISA BAR-LEIB

AAERT Certified Transcriber (CET**D-486)

Veritext LLC

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: June 2, 2009

Exhibit H

CHRYSLER

August 27, 2009

John T Bozzella

The Honorable Richard Durbin
United States Senate
Washington, DC 20510

Dear Senator Durbin:

We very much appreciate the support you have given to the new Chrysler Group LLC, and we understand the concerns you have raised about Chrysler Group's commitments on product liability claims.

As you know, on June 10, 2009, Chrysler Group purchased substantially all of the assets of the former Chrysler LLC (now known as "Old Carco LLC"). As part of the bankruptcy court-approved sale transaction, Chrysler Group assumed product liability claims relating solely to vehicles sold by Chrysler Group to its dealers. Chrysler Group did not assume product liability claims arising out of vehicles sold before June 10, 2009 (except to the extent required by our sales and service agreements with sustained dealers).

Today, Chrysler Group has a much better appreciation of the viability of our business than it did on June 10. As a result, we will announce today that the company will accept product liability claims on vehicles manufactured by Old Carco before June 10 that are involved in accidents on or after that date. This is in addition to our previous commitment to honor warranty claims, lemon law claims and safety recalls regarding these vehicles. As a result of today's announcement, Chrysler Group's approach is consistent with that taken by General Motors as part of its bankruptcy process.

While Chrysler Group still faces challenges, we are confident today that the future viability of the company will not be threatened if we assume these obligations. We want our customers to feel comfortable and confident buying, driving and enjoying one of our vehicles. Chrysler Group vehicles meet or exceed all applicable federal safety standards and have excellent safety records.

We appreciate your dedication to exploring this issue with us through hearings and conversations with our key executives. We hope this decision alleviates your concerns and assures you that we stand behind our products, our customers and our dealers.

Sincerely,

Cc: Chairman Patrick Leahy
Senator Arlen Specter
Senator Herb Kohl

Exhibit I

RAMIFICATIONS OF AUTO INDUSTRY BANKRUPTCIES (PART II)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JULY 21, 2009

Serial No. 111–54

Printed for the use of the Committee on the Judiciary

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DANIEL FLORES, *Minority Counsel*

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JULY 21, 2009

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APPENDIX

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going out of business. They were desperate. They came and fortunately this Administration took a whole lot of concern, and they realized that to let the automobiles, two of the largest go under would not be worth it. It would be better for them to work out this agreement of creating new companies.

Now, maybe these other two dealers that were saved should have done what the Ford Motor Company did. They refused. They declined. They didn't want any part of it and so everybody had an opportunity to do that. They came to us on bended knee literally trying to stay in business.

And sure it was tough and sure they had to give up a lot of things but what about the workers that gave up their jobs? What about the plants that closed down? And I am investigating whether some of those factories moved overseas, which is going to leave me thinking about the North American Free Trade Agreement in a new light. So I just want you to feel as well as you can as a valuable Member of this Committee.

Mr. FRANKS. Would the gentleman yield for 1 minute?

Mr. CONYERS. Sure.

Mr. FRANKS. I just, I guess, because I take the gentleman's points and I appreciate the sincerity of it, but you still remain in a situation here where secured lenders got 29 cents on the dollar, unsecured lenders, in the case of, or unsecured creditors in the case of UAW were 55 cents on the dollar.

I realize everybody lost things and a lot of jobs were lost, but if this becomes the norm, secured lending will disappear and jobs will disappear far more than what has happened here, and it is a precedent Mr. Chairman.

So that is—I thank you for yielding.

Mr. CONYERS. Mr. Bloom, how should I answer that to make him feel better?

Mr. BLOOM. I am not sure I can him feel better but I can try to answer it again. It is in fact quite common for secured lenders to not be fully paid out in a bankruptcy. That is, unfortunately, there are many companies whose wherewithal is simply smaller than their secured loan, number one.

Number two, the idea that unsecured creditors of one sort of another receive a different treatment, again, is very common in a bankruptcy. For example, in the Chrysler bankruptcy is it true that the UAW had their health care benefits dramatically modified but not completely eliminated.

But the suppliers to these companies had their debts paid in the ordinary course. Why, because it was a commercial decision by the company to maintain relationships with their supply base because you can't make cars without having steering wheels.

The companies also decided to continue to honor the warranty claims of prior owners of their cars. Why, because on a commercial basis, the last buyer of a GM or Chrysler car is the most likely candidate to be the next buyer.

So the companies made a whole series of commercial decisions and their relationship with the UAW, which as people who know about it know is based on a very, while professional, a very arm's length, sophisticated relationship. They extracted all from the UAW that they felt possible.

And that was the basis on which that deal was done, and likewise their treatment of the secured lenders. So I believe, again, and I think the courts have affirmed this that this was in fact while it was much larger, while it was done under a microscope, this was, in fact, ordinary course treatment.

Mr. COHEN. Mr. Conyers, do you yield?

Mr. CONYERS. Yes sir, I return.

Mr. COHEN. Thank you, Senator.

Mr. CONYERS. Thank you for your generosity.

Mr. COHEN. All right, Mr. Jordan, do you seek recognition?

Mr. JORDAN. Yes.

Mr. COHEN. You are recognized for 5 minutes.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. Bloom in your opening statement you said that GM and Chrysler are operating as independent companies. You said that you were instructed as a member of the auto task force to refrain from intervening in the day-to-day decisions of these companies. Do you really believe those two statements?

Mr. BLOOM. Yes.

Mr. JORDAN. Well, let me ask you this. How do those statements square with the series of events and facts that we have seen play out in the last several months? How do they square with the fact that President Obama fired Rick Wagoner?

How do they square with the fact that the government task force, the taxpayers, have a 60 percent equity stake in GM, control the majority of the board? How do they square with the fact that 2 weeks ago in an interview Fritz Henderson said he is on a "short leash" when it comes to running General Motors?

How do those statements square with the fact that Barney Frank, as reported in the Wall Street Journal, can call up Mr. Henderson and get special treatment for a facility in his State? How do they square with the facts that Mr. Franks brought up where you have Mr. Lauria an attorney, a Democrat attorney, who stated publicly that he is willing to testify to threatening treatment his client got from the White House?

Let me put it in this context as well. Over the last 6 weeks, I have sat through hearings that question Mr. Ken Lewis, that question Mr. Ben Bernanke, questioned Mr. Hank Paulson about the treatments Ken Lewis and Bank of America got in their acquisition of Merrill Lynch, the threats and the intimidation and, frankly, in my judgment, the deception they received from members of our government in that dealing.

So to me it just—when you walk through these series of events and I will even say this, I remember the Sunday night before General Motors was going to announce, file for bankruptcy. We were on a conference call. Maybe some of the Members of this Committee, I assume Mr. Conyers was on that same conference, or maybe our Chairman.

In the intro to that conference call, Mr. Sperling, made this statement, he said, "We will only get involved in decisions with General Motors if they are a, quote, 'major event'." And so Mr. Rattner spoke, Mr. Sperling spoke, and it was time for questions and several Members got on and this and that, in fact the speaker

Exhibit J

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50002-ajg; Adv. Proc. No. 11-09411-ajg

- -x

In the Matter of:

OLD CARCO LLC, f/k/a CHRYSLER LLC, ET AL.,

Debtors.

- -x

TATUM, ET AL.,

Plaintiffs,

- against -

CHRYSLER GROUP LLC,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

February 14, 2012

3:35 PM

B E F O R E:

HON. ARTHUR J. GONZALEZ

CHIEF U.S. BANKRUPTCY JUDGE

Motion by Chrysler Group to dismiss Count 1 of the second amended complaint. Opposition filed.

Transcribed by: David Rutt

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5 Becker Farm Road

Roseland, NJ 07068

BY: LINDSEY H. TAYLOR, ESQ.

whether the vehicle purchase date was on or prior to the closing date or after the closing date.

Thereafter, certain amendments were made that extended Chrysler Group's liability for vehicles purchased by consumers prior to the closing date within certain circumscribed parameters. Those liabilities related to certain types of accident claims pursuant to Section 2.09(h)(2)(i) of the MTA and liabilities under lemon laws pursuant to paragraph 19 of the sale order.

Count I of the complaint alleges violations of the New Jersey Consumer Fraud Act; therefore, Count I of the complaint does not relate to accidents or to lemon law claims. The plaintiffs argue that the fraud act is a mechanism to enforce lemon law claims. That statute, however, does not conform to the definition in the sale order of lemon law statutes that were being assumed, which were statutes requiring a manufacturer to provide a consumer remedy where the manufacturer is unable to conform the vehicle to the warranty after a reasonable number of attempts as defined in the applicable statute.

With respect to vehicles sold to consumers prior to the closing date, pursuant to Section 2.08(g), the Chrysler Group's liability under the written warranties is limited to the costs of repairing with parts and labor. It does not include any warranty-related cause of action. In the Tulacro

decision, the Court set forth its interpretation of the interplay of the various provisions of the MTA and the sale order.

In addition to the written limited warranties under Section 2.08(g) of the MTA, as noted, certain lemon law liabilities were assumed under paragraph 19 of the sale order. The Chrysler Group did not assume other warranty-related liabilities. The liability assumed was limited to the repair costs, and the Chrysler cause (ph.) did not assume any other breach of warranty for the vehicles. To the extent that any repair is not effective, that liability was not assumed. Thus, Chrysler Group did not assume liability for breach of warranty claims. Section 2.09(i) bars claims for breach of product warranty.

Beyond labor and parts, the agreements were carefully crafted to limit Chrysler Group's exposure to any product liability causes of action that might be asserted, especially included any effects to obtain punitive, exemplary, special, consequential, or multiple damages or penalties or other consequences. Therefore, the Court grants the defendant's motion with respect to Count I, and that count is dismissed, and Chrysler Group should set an order consistent with this Court's ruling.

Thank you.

MR. COWDEN: Thank you, Your Honor.

THE COURT: You're welcome. Good night.

(Whereupon these proceedings were concluded at 5:23 PM)

I N D E X

RULINGS

	Page	Line
Pro hac vice motion for William Cowden, Esq. granted.	7	9
Motion for dismissal of Count I of the amended complaint granted	27	20

C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript is a true and accurate record of the proceedings.

David Rutt

Digitally signed by David Rutt
DN: cn=David Rutt, o=Veritext, ou, email=digital@veritext.com, c=US
Date: 2012.03.07 16:33:36 -05'00'

DAVID RUTT

AAERT Certified Electronic Transcriber CET**D-635

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: March 6, 2012

Exhibit K

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

BRYCE BURTON, *et al.*, on behalf of themselves and all others similarly situated,	)	C.A. No.: 8:10-CV-00209-JMC
Plaintiffs,	)	**CONSENT MOTION AND STIPULATION OF PARTIES REGARDING FILING OF SECOND AMENDED COMPLAINT AND ASSUMED LIABILITIES**
v.	)	
CHRYSLER GROUP LLC,	)	
Defendant.	)	

Defendant Chrysler Group LLC ("Chrysler Group") and Plaintiffs Bryce Burton, Gioacchino DeBenedetto, Larry Easterly, Steve Faulkner, Eric Fisher, Edward Halvorson, John Hether, Lloyd Kay, Thomas Kelly, Jr., Thomas Koester, Louis Luckett, Humberto Ochoa, Lana Selby, Lange Thomas, Edward Vivian, and Joseph Wardlow ("Plaintiffs"), hereby move and stipulate, subject to the Court's approval, as follows:

WHEREAS Plaintiffs, individually and on behalf of a putative class, have filed their First Amended Class Action Complaint, wherein they allege that there are certain defects in model-year 2007 through 2009 Dodge Ram vehicles equipped with a 6.7 liter Cummins engine; and

WHEREAS Plaintiffs pleaded claims for: breach of express warranty (Count I); breach of implied warranty of merchantability (Count II); breach of implied warranty of fitness for a particular purpose (Count III); violation of the Magnuson-Moss Warranty Act (Count IV); and violation of consumer protection statutes (Count V); and

WHEREAS Plaintiffs have pleaded in the Complaint that Chrysler Group assumed the liabilities at issue under Paragraph 2.08 of a Master Transaction Agreement identified in the Complaint; and

WHEREAS Chrysler Group contends that it did not assume any of the liabilities at issue under Paragraph 2.08 of the Master Transaction Agreement; and

WHEREAS Chrysler Group has contemplated filing a motion seeking to transfer this case to United States District Court for the Southern District of New York, for referral to the Bankruptcy Court in that District; and

WHEREAS, at the present time, the parties desire to avoid the expenses associated with litigating the issues associated with any dispute over which liabilities were assumed by Chrysler Group and which were not;

THE PARTIES HEREBY STIPULATE AND AGREE AS SET FORTH BELOW

1. Plaintiffs will file a second amended complaint within 15 days of the Court's approval of this Stipulation, wherein they will allege that Chrysler Group assumed the liabilities associated with their warranty-based claims under Paragraph 19 of the "Order (I) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures and (III) Granting Related Relief," which was entered on June 1, 2009 in the case of In re Old Carco LLC (f/k/a Chrysler LLC), No. 09-50002 (Bankr. S.D.N.Y.) ("the Sale Order"). In their second amended complaint, Plaintiffs will withdraw their references to the assumption of any liabilities under Section 2.08 of the Master Transaction Agreement.

2. Chrysler Group acknowledges and agrees that, under Paragraph 19 of the Sale Order, it assumed the liabilities associated with claims for breach of express warranty and breach of implied warranty for model-year 2007 through 2009 Dodge Ram vehicles equipped with a 6.7 liter Cummins engine, ***except for those liabilities associated with personal injuries and/or***

punitive, exemplary, special, consequential or multiple damages or penalties. Chrysler Group acknowledges that its assumption of these liabilities associated with breach of express warranty claims and breach of implied warranty claims is not dependent on a plaintiff/claimant alleging or proving facts which would meet the standards of any applicable "Lemon Law".

3. Plaintiffs acknowledge and agree that any consumer protection or fraud-based claims that they plead are intended to be based on the alleged acts and omissions of Chrysler Group only, and are not intended to be based on any assumed liability theory.

4. Chrysler Group agrees that it will not seek to transfer this case to the Bankruptcy Court if: (a) the warranty claims made in Plaintiffs' second amended complaint are limited to alleged defects in model-year 2007 through 2009 Dodge Ram vehicles equipped with a 6.7 liter Cummins engine; and (b) Plaintiffs do not seek damages for personal injuries and/or punitive, exemplary, special, consequential or multiple damages or penalties; and (c) the basis of any consumer protection statute or fraud claims are limited to acts and omissions committed by Chrysler Group after June 10, 2009 (the closing date of the transaction under the Sale Order) and are not based on any "assumed liability" theory.

5. Nothing in this Stipulation is intended to prohibit or limit: (a) Plaintiffs' right to plead any non-warranty based claims now or in the future; (b) Chrysler Group's right to seek dismissal of, or to plead affirmative defenses to, any claims set forth in any amended complaint; (c) Chrysler Group's right to contest its assumption of liabilities for any non-warranty claims and/or claims for personal injuries or punitive, exemplary, special, consequential or multiple damages or penalties; (d) Chrysler Group's right to contest its liabilities for any and all consumer protection and fraud-based claims pleaded by Plaintiffs which involve vehicles manufactured and sold by Old Carco LLC; and/or (d) Chrysler Group's right to seek transfer of this case to the

Bankruptcy Court in the event any fraud-based claim implicates fraudulent acts or omissions allegedly attributable to Old Carco and/or which involve allegations that Chrysler Group assumed any type of fraud liabilities.

6. The parties agree that the time for Chrysler Group to respond to Plaintiffs' First Amended Complaint shall be tolled. If this Stipulation is approved by the Court, Chrysler Group will not answer the First Amended Complaint, but will answer, move, or otherwise respond to the Second Amended Complaint within 14 days of being served with it. If the Court does not approve this Stipulation, Chrysler Group will answer, move, or otherwise respond to the First Amended Complaint within 14 days of the Court's rejection of the Stipulation.

Dated: May 11, 2011

Respectfully submitted,

/s/ Michael S. Cashman
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
OLD CARCO LLC, *et al.*,	:	Case No. 09-50002 (SMB)
Debtors.	:	(Jointly Administered)
AUTUMN BURTON, *et al.*	:	
Plaintiffs,	:	Adv. Proc. No. 13-01109 (SMB)
v.	:	
CHRYSLER GROUP, LLC	:	
Defendant.	:	

ORDER DENYING PLAINTIFFS' OPPOSITION TO CHRYSLER GROUP, LLC'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

AND NOW, this _____ day of _____, 2013, upon consideration of Chrysler Group, LLC's Motion to Dismiss Second the Amended Complaint [Docket No. 6] (the "Motion") and Plaintiffs' opposition to the Motion; and the Court finding that: (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and after due deliberation thereon, it is hereby:

ORDERED, that the Motion is **DENIED**.

New York, New York

Dated: _____, 2013

Honorable Stuart M. Bernstein, U.S.B.J.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
OLD CARCO LLC, *et al.*,	:	Case No. 09-50002 (SMB)
Debtors.	:	(Jointly Administered)
AUTUMN BURTON, *et al.*	:	
Plaintiffs,	:	Adv. Proc. No. 13-01109 (SMB)
v.	:	
CHRYSLER GROUP, LLC	:	
Defendant.	:	

CERTIFICATE OF SERVICE OF PLAINTIFFS' OPPOSITION TO CHRYSLER GROUP, LLC'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

I, Kenneth R. Puhala, hereby certify that on March 21, 2013, I caused the foregoing Opposition of Plaintiffs to Chrysler Group, LLC's Motion to Dismiss Second Amended Complaint to be served via first-class mail, postage prepaid, upon the following:

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Dated: March 21, 2013
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Attorneys for the Plaintiffs

Exhibit EE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
Motors Liquidation Company., *et al.*, f/k/a General Motors Corp., *et al.*	)	Case No. 09-50026(REG)
Debtors.	)	Jointly Administered

DECISION ON NEW GM'S MOTION TO ENFORCE SECTION 363 ORDER WITH RESPECT TO PRODUCT LIABILITY CLAIM OF ESTATE OF BEVERLY DEUTSCH

APPEARANCES:

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NORRIS MCLAUGHLIN & MARCUS, PA
Local Counsel for Sanford Deutsch
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By: Melissa Peña, Esq.

ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

In this contested matter in the chapter 11 case of Motors Liquidation Company (formerly, General Motors Corp., and referred to here as "**Old GM**") and its affiliates, General Motors LLC ("**New GM**") seeks a determination from this Court that New GM did not assume the liabilities associated with a tort action in which a car accident took place before the date ("**Closing Date**") upon which New GM acquired the business of Old GM, but the accident victim died thereafter.[1] The issue turns on the construction of the documents under which New GM agreed to assume liabilities from Old GM—which provided that New GM would assume liabilities relating to "accidents or incidents" "first occurring on or after the Closing Date"—and in that connection, whether a liability of this character is or is not one of the types of liabilities that New GM thereby agreed to assume.

Upon consideration of those documents, the Court concludes that the liability in question was not assumed by New GM. However, if a proof of claim was not previously filed against Old GM with respect to the accident in question, the Court will permit one to be filed within 30 days of the entry of the order implementing this Decision, without prejudice to rights to appeal this determination.

The Court's Findings of Fact and Conclusions of Law in connection with this determination follow.

[1] Technically speaking, the motion is denominated as one to Enforce the 363 Sale Order, which protects New GM from liabilities it did not assume. The Court here speaks to the motion's substance.

Findings of Fact

In June 2007, Beverly Deutsch was severely injured in an accident while she was driving a 2006 Cadillac sedan. She survived the car accident, but in August 2009, she died from the injuries that she previously had sustained.[2]

In January 2010, the Estate of Beverly Deutsch, the Heirs of Beverly Deutsch, and Sanford Deutsch (collectively "**Deutsch Estate**") filed a Third Amended Complaint against New GM (and others) in a state court lawsuit in California (the "**Deutsch Estate Action**"), claiming damages arising from the accident, the injuries which Beverly sustained, and her wrongful death. The current complaint superseded the original complaint in the Deutsch Estate Action, which was filed in April 2008, before the filing of Old GM's chapter 11 case.

In July 2009, this Court entered its order (the "**363 Sale Order**") approving the sale of Old GM's assets, under section 363 of the Bankruptcy Code, to the entity now known as New GM. The 363 Sale Order, among other things, approved an agreement that was called an Amended and Restated Master Sale and Purchase Agreement (the "**MSPA**").

The MSPA detailed which liabilities would be assumed by New GM, and provided that all other liabilities would be retained by Old GM. The MSPA provided, in its § 2.3(a)(ix), that New GM would not assume any claims with respect to product liabilities (as such term was defined in the MSPA, "**Product Liability Claims**") of the Debtors except those that "arise directly out of death, personal injury or other injury to Persons or damage to property caused by *accidents or incidents* first occurring on or after

[2] There is no contention by either side that her death resulted from anything other than the earlier accident.

the Closing Date [July 10, 2009] … "[3] Thus, those Product Liability Claims that arose from "accidents or incidents" occurring before July 10, 2009 would not be assumed by New GM, but claims arising from "accidents or incidents" occurring on or after July 10, 2009 would be.

Language in an earlier version of the MSPA differed somewhat from its final language, as approved by the Court. Before its amendment, the MSPA provided for New GM to assume liabilities except those caused by "accidents, incidents, *or other distinct and discrete occurrence*s."[4]

The 363 Sale Order provides that "[t]his Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order" and the MSPA, including "to protect the Purchaser [New GM] against any of the Retained Liabilities or the assertion of any … claim … of any kind or nature whatsoever, against the Purchased Assets."[5]

Discussion

The issue here is one of contractual construction. As used in the MSPA, when defining the liabilities that New GM would assume, what do the words "accidents or incidents," that appear before "first occurring on or after the Closing Date," mean? It is undisputed that the accident that caused Beverly Deutsch's death took place in June 2007, more than two years prior to the closing. But her death took place after the closing. New GM argues that Beverly Deutsch's injuries arose from an "accident" and an "incident"

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[3] Amended Master Sale and Purchase Agreement, at § 2.3(a)(ix) (as modified by First Amendment) (emphasis added).

[4] Amended Master Sale and Purchase Agreement, at § 2.3(a)(ix) (prior to modification by First Amendment) (emphasis added) (typographical error corrected).

[5] 363 Sale Order ¶ 71.

that took place in 2007, and that her death did likewise. But the Deutsch Estate argues that while the "accident" took place in 2007, her death was a separate "incident"—and that the latter took place only in August 2009, after the closing of the sale to New GM had taken place.

Ultimately, while the Court respects the skill and fervor with which the point was argued, it cannot agree with the Deutsch Estate. Beverly Deutsch's death in 2009 was the *consequence* of an event that took place in 2007, which undisputedly, was an accident and which also was an incident, which is a broader word, but fundamentally of a similar type. The resulting death in 2009 was not, however, an "incident[] first occurring on or after the Closing Date," as that term was used in the MSPA.

As usual, the Court starts with textual analysis. The key provision of the MSPA, § 2.3(a)(ix), set forth the extent to which Product Liability Claims were assumed by New GM. Under that provision, New GM assumed:

> (ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities"), *which arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date and arising from such motor vehicles' operation or performance* (for avoidance of doubt, Purchaser shall not assume or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including

> asbestos, silicates or fluids, regardless of when such alleged exposure occurs).[6]

The key words, of course, are "accidents" and "incidents," neither of which are defined anywhere else in the MSPA, and whose interpretation, accordingly, must turn on their common meaning and any understandings expressed by one side to the other in the course of contractual negotiations. Also important are the words "first occurring on or after the Closing Date," which modify the words "accidents" and "incidents," and shed light on the former words' meaning.

The word "accidents," of course, is not ambiguous. "Accidents" has sufficiently clear meaning on its own, and in any event its interpretation is not subject to debate, as both sides agree that Beverly Deutsch's death resulted from an accident that took place in 2007, at a time when, if "accidents" were the only controlling word, liability for the resulting death would not be assumed by New GM. The ambiguity, if any, is instead in the word "incidents," which is a word that by its nature is more inclusive and less precise.

But while "incidents" may be deemed to be somewhat ambiguous, neither side asked for an evidentiary hearing to put forward parol evidence as to its meaning. Though it is undisputed that "incidents" remained in the MSPA after additional words "or other distinct and discrete occurrences," were deleted, neither side was able, or chose, to explain, by evidence, why the latter words were dropped, and what, if any relevance the dropping of the additional words might have as to the meaning of the word "incidents" that remained. The words "or other distinct and discrete occurrences" could have been deleted as redundant, to narrow the universe of claims that were assumed, or for some

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[6] Amended Master Sale and Purchase Agreement, at § 2.3(a)(ix) (as modified by First Amendment) (emphasis added).

other reason. Ultimately, the Court is unable to derive sufficient indication of the parties' intent as to the significance, if any, of deleting the extra words.

So the Court is left with the task of deriving the meaning of the remaining words "accidents or incidents" from their ordinary meaning, the words that surround them, canons of construction, and the Court's understanding when it approved the 363 Sale as to how the MSPA would deal with prepetition claims against Old GM. Ultimately these considerations, particularly in the aggregate, point in a single direction—that a death resulting from an earlier "accident[] or incident[]" was not an "incident[] first occurring" after the closing.

Starting first with ordinary meaning, definitions of "incident" from multiple sources are quite similar. They include, as relevant here,[7] "an occurrence of an action or situation felt as a separate unit of experience";[8] "an occurrence of an action or situation that is a separate unit of experience";[9] "[a] discrete occurrence or happening";[10] "something that happens, especially a single event";[11] "a definite and separate occurrence; an event";[12] or, as proffered by the Deutsch Estate, "[a] separate and definite occurrence: EVENT."[13] In ways that vary only in immaterial respects, all of the

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7 The word "incident" has other meanings, in other contexts, which most commonly follow definitions of the type quoted here. Particularly since the definition proffered by the Deutsch Estate is so similar to the others, the Court does not understand either side to contend that definitions of "incident" in other contexts are relevant here.

8 Webster's Third New International Dictionary Unabridged (1993) at 1142.

9 Merriam-Webster's Collegiate Dictionary (11th ed. 2003) at 629.

10 Black's Law Dictionary (8th ed. 2004) at 777.

11 Encarta Dictionary: English (North America), http://encarta.msn.com/encnet/features/dictionary/dictionaryhome.aspx (query word "incident" in search field).

12 American Heritage College Dictionary (4th ed. 2004) at 700.

13 Deutsch Estate Reply Br. at 4 (quoting Webster's II New College Dictionary (1999) at 559).

definitions articulate the concept of a separate and identifiable event. And, and of course, from words that follow, "arising from such motor vehicles' operation or performance," the event must be understood to relate to be one that that involves a motor vehicle. Accidents, explosions or fires all fit comfortably within that description. Deaths or other consequences that result from earlier accidents, explosions or fires technically might fit as well, but such a reading is much less natural and much more strained.

Turning next to words that surround the words "accidents or incidents," these words provide an interpretive aid to the words they modify. The word "incident[]" is followed by the words "first occurring." In addition to defining the relevant time at which the incident must take place (*i.e.*, after the closing), that clause inserts the word "first" before "occurring." That suggests, rather strongly, that it was envisioned that some types of incidents could take place over time or have separate sub-occurrences, or that one incident might relate to an earlier incident, with the earliest incident being the one that matters. Otherwise it would be sufficient to simply say "occurring," without adding the word "first." This too suggests that the consequences of an incident should not be regarded as a separate incident, or that even if they are, the incident that first occurs is the one that controls.

Canons of construction tend to cut in opposite directions, though on balance they favor New GM. The Deutsch Estate appropriately points to the canon of construction against "mere surplusage," which requires different words of a contract or statute to be construed in a fashion that gives them separate meanings, so that no word is superfluous.[14] The Court would not go as far as to say that the words "accident" and

[14] *See, e.g., Sprietsman v. Mercury Marine*, 537 U.S. 51, 63 (2003) (a statute's preemption clause, which applied to ''a [state or local] law or regulation'' did not preempt common law tort claims,

"incident" cannot *ever* cover the same thing—or, putting it another way, that they *always* must be different.[15] But the Court agrees with the Deutsch Estate that they cannot *always* mean the same thing. "Incidents" must have been put there for a reason, and should be construed to add something in at least some circumstances.

But how different the two words "accidents" and "incidents" can properly be understood to be —and in particular, whether "incidents" can be deemed to separately exist[16] when they are a foreseeable consequence, or are the resulting injury, from the accidents or incidents that cause them—is quite a different matter. A second canon of construction, "*noscitur a sociis,"* provides that "words grouped in a list should be given related meaning."[17] Colloquially, "a word is known by the company it keeps …"[18] For instance, in *Dole*, in interpreting a phrase of the Paper Work Reduction Act, the Supreme Court invoked *noscitur a sociis* to hold that words in a list, while meaning different things, should nevertheless be read to place limits on how broadly some of those words might be construed. The *Dole* court stated:

> [t]hat a more limited reading of the phrase "reporting and recordkeeping requirements" was intended derives some further support from the words surrounding it. The traditional canon of

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because if "law" were read that broadly, it might also be interpreted to include regulations, which would render the express reference to "regulation" in the preemption clause superfluous). *See also* Gustafson v. Alloyd Co., 513 U.S. 561, 574 (1995) ("***Alloyd***") (in statutory construction context, "the Court will avoid a reading which renders some words altogether redundant.").

15 As previously noted, "incident" is a word that is inherently broader than "accident." Every accident could fairly be described as an incident. But not every incident could fairly be described as an accident.

16 It is important to note that to prevail on this motion, the Deutsch Estate must show that the alleged "incident" that is the resulting death was a wholly separate "incident." Even if the death took place after the Closing Date, if the death was an incident that was part of an earlier incident, it could not be said to be "*first* occurring" after the Closing Date.

17 *Dole v. United Steelworkers of America*, 494 U.S. 26, 36 (1990).

18 *Alloyd*, 513 U.S. at 575 (applying *noscitur a sociis* in context of statutory interpretation).

> construction, *noscitur a sociis*, dictates that words grouped in a list should be given related meaning.[19]

Here application of the canon against surplusage makes clear, as the Deutsch Estate argues, that "incidents" must at least sometimes mean something different than "accidents"—but application of that canon does not tell us when and how. The second canon, *noscitur a sociis*, does that, and effectively trumps the doctrine of surplusage because it tells us that "accidents" and "incidents" should be given related meaning.

The Deutsch Estate argues that the Court should construe a death resulting from an earlier "accident" or "incident" to be a separate and new "incident" that took place at a later time. But ultimately, the Court concludes that it cannot do so. While it is easy to conclude that "accidents" and "incidents," as used in the MSPA, will not necessarily be the same in all cases, they must still be somewhat similar. "Incidents" cannot be construed so broadly as to cover what are simply the consequences of earlier "accidents" or other "incidents."

Applying *noscitur a sociis* in conjunction with the canon against "mere surplusage" tells us that the two words "accidents" and "incidents" must be understood as having separate meanings in at least some cases, but that these meanings should be conceptually related. At oral argument, the Court asked counsel for New GM an important question: if an "incident" would not necessarily be an "accident," what would it be? What would it cover? Counsel for New GM came back with a crisp and very

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[19] *Dole*, at 36. (internal quotations and citations omitted) (emphasis in original). *See also Massachusetts v. Morash*, 490 U.S. 107, 114-15 (1989) (quoting *Schreiber v. Burlington Northern Inc.*, 472 U.S. 1, 8 (1985)); *Alloyd*, 513 U.S. at 575 ("This rule we rely upon to avoid ascribing to one word a *meaning so broad that it is inconsistent with its accompanying words*, thus giving unintended breadth to the Acts of Congress." (emphasis added) (internal quotation marks deleted)).

logical answer; he said that "incident" would cover a situation where a car caught fire or had blown up, or some problem had arisen by means other than a collision.[20]

Conversely, the interpretation for which the Deutsch Estate argues—that "incidents" refers to *consequences* of earlier accidents or incidents—is itself violative or potentially violative, of the two interpretive canons discussed above. It is violative of *noscitur a sociis*, since a death or other particular injury is by its nature distinct from the circumstance—collision, explosion, fire, or other accident or incident—that causes the resulting injury in the first place. The Deutsch Estate interpretation also tends to run counter to the doctrine against mere surplusage upon which the Deutsch Estate otherwise relies, making meaningless the words "first occurring" which follow the words "accidents or incidents," in any cases where death or other particular injury is the consequence of an explosion, fire, or other non-collision incident that causes the resulting injury.

The simple interpretation, and the one this Court ultimately provides, is that "incidents," while covering more than just "accidents," are similar; they relate to fires, explosions, or other definite events that *cause* injuries and *result* in the right to sue, as contrasted to describing the *consequences* of those earlier events, or that relate to the resulting damages.

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[20] Counsel for New GM answered:

> Now, what's the difference between an accident or an incident, if it were relevant with respect to product liability claims? And I think there's an easy answer. You could have a car accident. Or you could have a car catching on fire; that's not necessarily an accident; that's an incident. Or a car could blow up with someone in the car. Or something else could happen; some other malfunction could cause a fire or injury to someone, not an accident with another vehicle necessarily; or an accident where you ran off the road. So I think that's easily explained.

Transcript, at 31.

Finally, this Court's earlier understanding of the purposes of New GM's willingness to assume certain liabilities of Old GM is consistent with the Court's conclusion at this time as well. When the Court approved GM's 363 Sale, this Court noted, in its opinion, that New GM had chosen to broaden its assumption of product liabilities.[21] The MSPA was amended to provide for the assumption of liabilities not just for product liability claims for motor vehicles and parts delivered after the Closing Date (as in the original formulation), but also, for "all product liability claims arising from *accidents or other discrete incidents* arising from operation of GM vehicles occurring subsequent to the closing of the 363 Transaction, regardless of when the product was purchased."[22] As reflected in the Court's decision at the time, the Court understood that New GM was undertaking to assume the liabilities for "accidents or other discrete incidents" that hadn't yet taken place.

Finally, the Deutsch Estate notes another interpretative canon, that ambiguities in a contract must be read against the drafter.[23] If the matter were closer, the Court might consider doing so.[24] But the language in question is not

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21 *See In Re General Motors Corp.*, 407 B.R. 463, 481-82 (Bankr. S.D.N.Y. 2009). *appeal dismissed and aff'd*, 428 B.R. 43 (S.D.N.Y. 2010), and 430 B.R. 65 (S.D.N.Y. 2010).

22 *Id.* (emphasis added and original emphasis deleted)

23 *See Jacobson v. Sassower*, 66 N.Y.2d 991, 993 (N.Y. 1985) ("In cases of doubt or ambiguity, a contract must be construed most strongly against the party who prepared it, and favorably to a party who had no voice in the selection of its language"); *Cf. Aetna Casualty & Surety Co. v. General Time Corp.*, 704 F.2d 80, 85 (2d Cir. 1983) ("Since the insurer is assumed to have control over drafting the contract provisions, it is fair to hold it responsible for ambiguous terms, and accord the insured the benefit of uncertainties which the insurer could have, but failed to clarify").

24 In that event, the Court would then have to consider the specifics of the negotiating environment at the time. The Deutsch Estate was of course not a party to those negotiations at all. But there was little in the record at the time of the 363 Sale, and there is nothing in the record now, as to who, if anybody, had control over the drafting of any MSPA terms.

that ambiguous, and the relevant considerations, fairly decisively, all tip in the same direction. While it cannot be said that the Deutsch Estate's position is a frivolous one, the issues are not close enough to require reading the language against the drafter.

Conclusion

The Deutsch Estate's interpretation of "accident or incident" is not supportable. Thus, the Debtor's motion is granted, and the Deutsch Estate may not pursue this claim against New GM.[25] New GM is to settle an order consistent with this opinion. The time to appeal from this determination will run from the time of the resulting order, and not from the date of filing of this Decision.

Dated: New York, New York
January 5, 2011

s/Robert E. Gerber
United States Bankruptcy Judge

[25] Under the circumstances, however, since the Deutsch Estate's issues were fairly debatable and plainly raised in good faith, the Court will provide the Deutsch Estate with 30 days from the resulting order to file a claim against Old GM if it has not already done so, without prejudice to its underlying position and any rights of appeal.