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September 25, 2015

**VIA E-MAIL TRANSMISSION
AND ECF FILING**

The Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004

**Re: In re Motors Liquidation Company, et al.
Case No. 09-50026 (REG)**

Letter Regarding Update on Related Proceedings

Dear Judge Gerber:

King & Spalding LLP is co-counsel with Kirkland & Ellis LLP for General Motors LLC (“**New GM**”) in the above-referenced matter. Pursuant to Your Honor’s Endorsed Order dated May 5, 2015 [Dkt. No. 13131], we write to update the Court regarding developments in proceedings relating to New GM’s Motions to Enforce. Specifically,

1. On or before September 23, 2015, New GM, the Ignition Switch Plaintiffs, certain plaintiffs’ represented by Gary Peller, the GUC Trust, the Ignition Switch Pre-Closing Accident Plaintiffs, the State of Arizona and the People of the State of California each filed “Form Cs” with the Court of Appeals for the Second Circuit in connection with the direct appeal captioned *In re Motors Liquidation Company*, Case No. 15-2844. Relevant excerpts¹ of some² parties’ “Form Cs”, are attached hereto as **Exhibits “A”** through **“C”**.

¹ Addendum “A” to Form C calls for the inclusion of certain documents previously filed with the Bankruptcy Court (*i.e.*, notices of appeal, the Judgment dated June 1, 2015, and others) and the docket for Old GM’s bankruptcy case. Due to the voluminous nature of these documents, they were not included in the Exhibits annexed hereto.

² Form Cs filed by certain parties were deemed deficient by the Court of Appeals for the Second Circuit, and are unavailable to download at this time.

Honorable Robert E. Gerber
September 25, 2015
Page 2

2. On September 24, 2015, Judge Furman entered *Order No. 81 [Regarding Amendment of Certain Personal Injury/Wrongful Death Complaints]* in MDL 2543 pending in the United States District Court for the Southern District of New York. A copy of the Order is attached hereto as **Exhibit “D”**; and
3. Today, September 25, 2015, counsel to New GM and Lead and Liaison Counsel filed a joint letter (“**Joint Letter**”) addressed to Judge Furman to advise on matters of possible significance in proceedings related to MDL 2543, which includes an update on the status of this bankruptcy case. A copy of the Joint Letter, without exhibits,³ is attached hereto as **Exhibit “E”**.

Respectfully submitted,

/s/ Scott Davidson

Scott Davidson

SD/ja
Encl.

cc: Edward S. Weisfelner
Howard Steel
Sander L. Esserman
Jonathan L. Flaxer
S. Preston Ricardo
Matthew J. Williams
Lisa H. Rubin
Keith Martorana
Daniel Golden
Deborah J. Newman
Jamison Diehl
William Weintraub
Steve W. Berman
Elizabeth J. Cabraser
Robert C. Hilliard
Gary Peller

³ There are 31 exhibits annexed to the Joint Letter, many of which are documents that have previously been filed with this Court; the other documents do not appear relevant to this bankruptcy case. To the extent the Court believes the exhibits should be filed, New GM will do so promptly.

Exhibit A

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES

Case Caption: In the Matter of: Motors Liquidation Company. Celestine Elliott, Lawrence Elliott, Berenice Summerville, v. General Motors LLC; Wilmington Trust Company; Participating Unitholders; Ignition Switch Plaintiffs, Ignition Switch Pre-Closing Accident Plaintiffs, Groman Plaintiffs.	District Court or Agency:	Judge:
	USDC Bankr. SDNY	Robert Gerber
	Date the Order or Judgment Appealed from was Entered on the Docket:	District Court Docket No.:
	09/09/2015	09-50026
	Date the Notice of Appeal was Filed:	Is this a Cross Appeal?
	09/09/2015	<input checked="" type="checkbox"/> Yes No

Attorney(s) for Appellant(s): Plaintiff Defendant	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	See attached.				

Attorney(s) for Appellee(s): Plaintiff Defendant	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	(1) Arthur Steinberg, Esq., King & Spalding, LLP, 1185 Avenue of the Americas, New York, New York 10036; 212-556-2100; Fax-212-556-2222; asteinberg@kslaw.com; and (2) Richard Godfrey, P.C., and Andrew Bloomer, P.C., Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, IL 60654; 312-862-2000; Fax-312-862.2200; rgodfrey@kirkland.com; abloomer@kirkland.com See attached for other appellees/cross-appellants				

Has Transcript Been Prepared?	Approx. Number of Transcript Pages:	Number of Exhibits Appended to Transcript:	Has this matter been before this Circuit previously?	Yes	<input checked="" type="checkbox"/> No
Yes	330	0	If Yes, provide the following:		
			Case Name:		
			2d Cir. Docket No.:	Reporter Citation: (i.e., F.3d or Fed. App.)	

ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.

ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.

PART A: JURISDICTION

1. <u>Federal Jurisdiction</u> U.S. a party Diversity <input checked="" type="checkbox"/> Federal question (U.S. not a party) Other (specify): _____		2. <u>Appellate Jurisdiction</u> Final Decision Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b)) Interlocutory Decision Appealable As of Right <input checked="" type="checkbox"/> Other (specify): <u>28 USC 158(d)(2)(A)</u>	
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IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: DISTRICT COURT DISPOSITION (Check as many as apply)

1. <u>Stage of Proceedings</u>	2. <u>Type of Judgment/Order Appealed</u>	3. <u>Relief</u>
<input type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input checked="" type="checkbox"/> After trial	<input type="checkbox"/> Default judgment <input type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subj. matter juris. <input type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	<input type="checkbox"/> Dismissal/other jurisdiction <input type="checkbox"/> Dismissal/merit <input checked="" type="checkbox"/> Judgment / Decision of the Court <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify):
		Damages: <input type="checkbox"/> Injunctions: <input checked="" type="checkbox"/> <input type="checkbox"/> Sought: \$ _____ <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Granted: \$ _____ <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Denied: \$ _____ <input type="checkbox"/> Denied

PART C: NATURE OF SUIT (Check as many as apply)

1. <u>Federal Statutes</u>	2. <u>Torts</u>	3. <u>Contracts</u>	4. <u>Prisoner Petitions</u>
<input checked="" type="checkbox"/> Antitrust <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Banks/Banking <input type="checkbox"/> Civil Rights <input type="checkbox"/> Commerce, <input type="checkbox"/> Energy <input type="checkbox"/> Commodities <input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> Communications <input type="checkbox"/> Consumer Protection <input type="checkbox"/> Copyright <input type="checkbox"/> Patent <input type="checkbox"/> Trademark <input type="checkbox"/> Election <input type="checkbox"/> Soc. Security <input type="checkbox"/> Environmental	<input type="checkbox"/> Freedom of Information Act <input type="checkbox"/> Immigration <input type="checkbox"/> Labor <input type="checkbox"/> OSHA <input type="checkbox"/> Securities <input type="checkbox"/> Tax	<input type="checkbox"/> Admiralty/ <input type="checkbox"/> Maritime <input type="checkbox"/> Assault / <input type="checkbox"/> Defamation <input type="checkbox"/> FELA <input type="checkbox"/> Products Liability <input type="checkbox"/> Other (Specify):
		<input type="checkbox"/> Admiralty/ <input type="checkbox"/> Maritime <input type="checkbox"/> Arbitration <input type="checkbox"/> Commercial <input type="checkbox"/> Employment <input type="checkbox"/> Insurance <input type="checkbox"/> Negotiable <input type="checkbox"/> Instruments <input type="checkbox"/> Other Specify	<input type="checkbox"/> Civil Rights <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Mandamus <input type="checkbox"/> Parole <input type="checkbox"/> Vacate Sentence <input type="checkbox"/> Other
5. <u>Other</u> <input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input type="checkbox"/> Other (specify): _____	6. <u>General</u> <input type="checkbox"/> Arbitration <input type="checkbox"/> Attorney Disqualification <input type="checkbox"/> Class Action <input type="checkbox"/> Counsel Fees <input type="checkbox"/> Shareholder Derivative <input type="checkbox"/> Transfer	7. Will appeal raise constitutional issue(s)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Will appeal raise a matter of first impression? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

1. Is any matter relative to this appeal still pending below? Yes, specify: Issues Identified in Attached Scheduling Order No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

(A) Arises from substantially the same case or controversy as this appeal? Yes No

(B) Involves an issue that is substantially similar or related to an issue in this appeal? Yes No

If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name: In re Motors Liquidation Co.	Docket No. 15-2847; 15-2848	Citation:	Court or Agency: 2d Circuit
Name of Appellant: (Cross Appellants) General Motors LLC; Wilmington Trust Company			

Date: 09/22/2015	Signature of Counsel of Record: /s/ Arthur J. Steinberg
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NOTICE TO COUNSEL

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$505 docketing fee to the United States District Court or the \$500 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.

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<p>Gary Peller GARY PELLER, ESQ. 600 New Jersey Avenue, NW Washington, DC 20001 T: 202-662-9122 peller@law.georgetown.edu</p> <p><i>Counsel for the Petitioners Elliott Plaintiffs and Sesay Plaintiffs</i></p>	<p>Alexander Schmidt Malcolm T. Brown WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP 270 Madison Avenue New York, NY 10016 T: 212-545-4600 schmidt@whafh.com brown@whafh.com</p> <p><i>Counsel for ABC Flooring, Inc., et al.</i></p>	<p>William Weintraub Gregory Fox GOODWIN PROCTER LLP The New York Times Building 620 Eighth Avenue New York, NY 10018 T: 212-813-8800 wweintraub@goodwinprocter.com eohagan@goodwinprocter.com gfox@goodwinprocter.com</p> <p><i>Designated Counsel for Pre-Sale Accident Plaintiffs</i></p>
<p>Sander L. Esserman STUTZMAN, BROMBERG, ESSERMAN & PLIFKA 2323 Bryan Street, Suite 2200 Dallas, TX 75201 T: 214-969-4900 esserman@sbep-law.com</p> <p><i>Designated Counsel for Economic Loss Plaintiffs</i></p>	<p>Jonathan L. Flaxer Preston Ricardo GOLENBOCK EISENMAN ASSOR BELL & PESKOE LLP 437 Madison Avenue New York, NY 10022 T: 212-907-7300 jflaxer@golenbock.com pricardo@golenbock.com</p> <p><i>Counsel for Groman Plaintiffs</i></p>	<p>Steve W. Berman HAGENS BERMAN SOBOL SHAPIRO LLP 1918 Eighth Avenue, Suite 3300 Seattle, WN 98101 T: 206-623-7292 steve@hbsslaw.com</p> <p><i>Counsel for the People of the State of California, acting by and through Orange County District Attorney Tony Rackauckas and the State of Arizona</i></p> <p><i>Lead Counsel</i></p>

<p>Mark P. Robinson, Jr. ROBINSON CALCAGNIE ROBINSON SHAPIRO DAVIS, INC. 19 Corporate Plaza Drive Newport Beach, CA 92660 T: 949-720-1288 mrobinson@rcrlaw.net</p> <p><i>Counsel for the People of the State of California, acting by and through Orange County District Attorney Tony Rackauckas</i></p>	<p>Elizabeth J. Cabraser LIEFF, CABRASER, HEIMANN & BERNSTEIN, L.L.P. 275 Battery Street Embarcadero Center W. San Francisco, CA 94111 T: 415- 956-1000 ecabraser@lchb.com</p> <p><i>Lead Counsel</i></p>	<p>Robert Hilliard HILLIARD MUNOZ GONZALES LLP 719 South Shoreline Suite 500 Corpus Christi, TX 78401 T: 361-882-1612 bobh@hmgllawfirm.com</p> <p><i>Lead Counsel</i></p>
<p>Mark Brnovich Attorney General Office of the Attorney General 1275 West Washington Street Phoenix, AZ 85007 T: 602-542-5025</p> <p><i>Attorney General for the State of Arizona</i></p>	<p>Joshua P. Davis JOSH DAVIS LAW FIRM 1010 Lamar, Suite 200 Houston, TX 77002 T: 713-337-4100 josh@thejdfirm.com</p> <p><i>Counsel for Doris Phillips</i></p>	<p>Gary Peller GARY PELLER, ESQ. 600 New Jersey Avenue, NW Washington, DC 20001 T: 202-662-9122 peller@law.georgetown.edu</p> <p><i>Counsel for Bledsoe Plaintiffs</i></p>

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X
 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)
 -----X

**SCHEDULING ORDER REGARDING CASE MANAGEMENT ORDER
 RE: NO-STRIKE, NO STAY, OBJECTION, AND GUC TRUST ASSET PLEADING**

Upon the Court’s Case Management Order, dated August 19, 2015 (“**August 19 Order**”), regarding issues related to No-Strike, No Stay, Objection and GUC Trust Asset Pleadings (each as defined in the Court’s Judgment, dated June 1, 2015 (“**Judgment**”)); and upon responses thereto being filed on August 26, 2015 by certain parties in connection with the issues raised in the August 19 Order; and upon the record of the Case Management Conference held before the Court on August 31, 2015 (“**August 31 Conference**”); and due and proper notice of the August 31 Conference having been provided; and the Court having issued directives from the bench at the August 31 Conference in connection with the issues raised thereat which are memorialized in this Order. Accordingly, it is hereby

ORDERED that the following procedures shall apply:

1. The briefing schedule with respect to the issue (“**Punitive Damages Issue**”) in complaints filed against General Motors LLC (“**New GM**”) that request punitive/special/exemplary damages against New GM based in any way on the conduct of Motors Liquidation Co. (f/k/a General Motors Corporation) (“**Old GM**”), shall be as follows: (i) simultaneous opening briefs shall be filed by Sunday, September 13, 2015 at 12:00 noon (Eastern Time), and shall be no longer than 25 pages; and (ii) simultaneous reply briefs shall be filed by no later than Tuesday, September 22, 2015 at 12:00 noon (Eastern Time), and shall be no longer than 10 pages.¹ Designated Counsel for the Bellwether Cases (as herein

¹ Hard copies of the briefs referred to in this paragraph may be delivered to Chambers the next business day.

defined) and Designated Counsel for the Economic Loss Claims asserted in MDL 2543 shall try to coordinate the responses from various plaintiffs in order to minimize the number of briefs filed on this issue.

2. The briefing schedule with respect to whether causes of action in complaints filed against New GM relating to Old GM vehicles/parts based on the knowledge Old GM employees gained while working for Old GM and/or as reflected in Old GM's books and records transferred to New GM can be imputed to New GM ("**Imputation Issue**"), shall be as follows: (i) simultaneous opening briefs shall be filed by Friday, September 18 2015, and shall be no longer than 20 pages; and (ii) simultaneous reply briefs shall be filed by no later than Wednesday September 30, 2015, and shall be no longer than 10 pages.
3. With respect to the complaints in the six bellwether cases (collectively, the "**Bellwether Cases**") identified in MDL 2543 pending in the United States District Court for the Southern District Of New York:²
 - a. On or before September 21, 2015, New GM shall file with the Court and serve on counsel of record in such cases (i) marked complaints ("**Bellwether Marked Complaints**") with respect to the Bellwether Cases, showing which portions thereof New GM contends violate the Judgment, this Court's *Decision on Motion to Enforce Sale Order*, dated April 15, 2015 ("**Decision**"),³ and/or the Order of this Court dated July 5, 2009 ("**Sale Order and Injunction**") and (ii) a letter, not to exceed three (3) single-spaced pages for all the Bellwether Cases, setting forth New GM's position with respect to the Bellwether Marked Complaints ("**New GM Bellwether Letter**"); and
 - b. On or before September 28, 2015, the plaintiffs in the Bellwether Cases shall file with the Court and serve on counsel of record in such cases their commentary next to the comments made by New GM with regard to the Bellwether Marked Complaints, together with a letter, not to exceed three (3) single-spaced pages for all the Bellwether Cases, responding to the Bellwether Marked Complaints and the New GM Bellwether Letter.

² The plaintiffs in the Bellwether Cases are (i) Scheuer, (ii) Barthelemy and Spain, (iii) Reid, (iv) Cockram, (v) Norville, and (vi) Yingling. Each of the plaintiffs in the Bellwether Cases are seeking, among other damages, compensation for property damage to their respective vehicles that occurred or was sustained in the applicable incident ("**Property Damage**"). The plaintiffs acknowledge that they are not seeking to recover damages for devaluation of their respective vehicles that is independent of Property Damage ("**Vehicle Devaluation Damages**"). To the extent that any of the requests for damages in the complaints in the Bellwether Cases can be construed to include Vehicle Devaluation Damages, the complaints are deemed to be amended to exclude Vehicle Devaluation Damages. In particular (i) paragraphs 367-369 of the complaint in *Norville v. General Motors, LLC* (Case No. 14-cv-08176) (S.D.N.Y.) and (ii) paragraphs 415-417 of the complaint in *Cockram v. General Motors, LLC* (Case No. 14-cv-08176) (S.D.N.Y.), shall be deemed amended to exclude any request for Vehicle Devaluation Damages. New GM will submit the Bellwether Marked Complaints with the assumption that such amendments were made.

³ *In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y. 2015).

4. With respect to the Second Amended Consolidated Complaint filed in MDL 2543 (“SACC”):
 - a. On or before September 23, 2015, New GM shall file with the Court and serve as appropriate (i) a marked-up version of the Second Amended Consolidated Complaint (“**Marked SACC**”), showing which portions thereof New GM contends violate the Judgment, the Decision and/or the Sale Order and Injunction, and (ii) a letter, not to exceed five (5) single-spaced pages, setting forth New GM’s position with respect to the Marked SACC (“**New GM Marked SACC Letter**”); and
 - b. On or before September 30, 2015, the Designated Counsel for the plaintiffs named in the Second Amended Consolidated Complaint shall file with the Court and serve on counsel of record in such cases their commentary next to the comments made by New GM with regard to the Marked SACC, together with a letter, not to exceed five (5) single-spaced pages, responding to the Marked SACC and New GM Marked SACC Letter.
 - c. Due to the length of the SACC, New GM and Designated Counsel are directed to consult with each other to see if there is an agreed-upon procedure such that the Marked SACC, and the response thereto, can be stream-lined, so that the relevant, representative issues are efficiently presented to this Court for resolution.

5. With respect to the complaints filed in *People of California v. General Motors LLC, et al.*, No. 30-2014-00731038-CUBT-CXC (Orange County, Cal.) and *State of Arizona v. General Motors LLC*, No. CV2014-014090 (Maricopa County, Ariz.) (collectively, the “**State Complaints**”):
 - a. On or before September 23, 2015, New GM shall file with the Court and serve on counsel of record in such cases (i) a marked-up version of the State Complaints (“**Marked State Complaints**”), marked to show which portions thereof New GM contends violate the Judgment, the Decision and/or the Sale Order and Injunction, and (ii) a letter, not to exceed five (5) single-spaced pages for the States’ Complaints, setting forth New GM’s position with respect to the Marked State Complaints (“**New GM Marked State Complaint Letter**”); and
 - b. On or before September 30, 2015, the plaintiffs named in the State Complaints shall file with the Court and serve on counsel of record in such cases their commentary next to the comments made by New GM with regard to the Marked State Complaints, together with a letter, not to exceed five (5) single-spaced pages for the States’ Complaints, responding

to the Marked State Complaints and New GM Marked State Complaints Letter.

6. The Court has scheduled oral argument for the matters covered by paragraphs 1-5 for October 14, 2015 at 9:45 a.m.
7. The parties agree that no further pleadings relating to the GUC Trust Asset Pleading need be submitted and no side has requested oral argument with respect to such Pleading.
8. Counsel for the plaintiffs in *Bavlsik v. General Motors LLC* ("**Bavlsik Lawsuit**") pending in the United States District Court for the Eastern District of Missouri has notified New GM that they will withdraw their claim for punitive damages in order to promptly proceed to trial in the *Bavlsik* Lawsuit. Accordingly, there is no need for this Court to deal with the *Bavlsik* Lawsuit at this time.

ORDERED that within two (2) business days of the entry of this Scheduling Order, New GM shall serve, by either e-mail, facsimile, overnight mail or, if none of the foregoing are available, regular mail, a copy of this Scheduling Order on plaintiffs in any lawsuit where New GM has previously sent a demand letter as authorized by the Judgment, with a cover note that states as follows:

General Motors LLC ("**New GM**") previously served on you a demand letter ("**Demand Letter**") in connection with a lawsuit commenced by you against New GM which set forth certain deadlines for filings pleadings with the Bankruptcy Court (as defined in the Demand Letter). The attachment is a Scheduling Order entered by the Bankruptcy Court on September 3, 2015 ("**Scheduling Order**"). Please review the Scheduling Order as it modifies the time periods set forth in the Demand Letter for filing certain pleadings with the Bankruptcy Court, including without limitation, the 17 business days to respond to the Demand Letter.

If you have any objection to the procedures set forth in the Scheduling Order, you must file such objection in writing with the Bankruptcy Court within three (3) business days of receipt of this notice ("**Objection**"). Otherwise, you will be bound by the terms of the Scheduling Order and the determinations made pursuant thereto. If you believe there are issues that should be presented to the Court relating to your lawsuit that will not otherwise be briefed and argued in accordance with the Scheduling Order, you must set forth that position, with specificity in your Objection. The Court will decide whether a hearing is required with respect to any Objection timely filed and, if so, will, promptly notify the parties involved.

and it is further

ORDERED that in the event New GM believe there are issues to be decided by the Court in actions that received a demand letter that are not covered in paragraphs 1-5 above, New GM shall file with the Court and serve on counsel of record in such representative case(s) on or before September 23, 2015 (i) a marked-up version of their complaints (“**Other Plaintiffs’ Complaints**”), showing which portions thereof New GM contends violate the Judgment, the Decision and/or the Sale Order and Injunction, and (ii) a letter, not to exceed three (3) single-spaced pages for the Other Plaintiffs’ Complaints, setting forth New GM’s position with respect to the Marked Other Plaintiffs’ Complaints (“**New GM Marked Other Plaintiffs’ Complaints Letter**”); and it is further

ORDERED that on or before September 30, 2015, the plaintiffs named in the Other Plaintiffs’ Complaints shall file with the Court and serve on counsel of record in such cases their commentary next to the comments made by New GM with regard to the Other Plaintiffs’ Complaints, together with a letter, not to exceed three (3) single-spaced pages for the Other Plaintiffs’ Complaints, responding to the Marked Other Plaintiffs’ Complaints and the New GM Marked Other Plaintiffs’ Complaints Letter; and it is further

ORDERED that nothing in this Order is intended to nor shall preclude any other plaintiff’s counsel (or *pro se* plaintiff), affected by the issues being resolved by this Court, from taking a position in connection with any such matters; *provided, however*, that such affected other plaintiffs’ counsel who wishes to file a separate pleading with respect such matter(s) shall timely file a letter with the Court seeking permission to do so. Such letter shall specify (a) which issue is to be covered, (b) the length of the pleading sought to be filed, and (c) why such issue is not otherwise covered by the pleading to be filed by Designated Counsel. Prior to such time, such counsel shall consult with the Designated Counsel for the Bellwether Cases and Designated

Counsel for the Plaintiffs in MDL 2543 so as to avoid duplicative arguments and in an effort to limit the number of responsive briefs on the same issue(s); and it is further

ORDERED that, as stated on the record of the August 31 Conference, for all plaintiffs that have received a demand letter from New GM where the time period to file a No Strike, No Stay, and No Dismissal Pleading as set forth in the Judgment (“**Judgment Pleading**”) had not expired as of the August 31 Conference, the briefing schedule set forth herein shall supersede the requirement to file such Judgment Pleadings; and it is further

ORDERED that this Court shall retain exclusive jurisdiction to interpret and enforce this Order.

Dated: September 3, 2015
New York, New York

s/ Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE



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September 2, 2015

VIA E-MAIL

The Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004

**RE: In re Motors Liquidation Company, et al.
Case No. 09-50026 (REG)**

**Proposed Scheduling Order Regarding Case Management Order
re: No-Strike, No Stay, Objection, And GUC Trust Asset Pleadings.**

Dear Judge Gerber:

We write on behalf of Co-Lead and Designated Counsel for the Economic Loss Claims asserted in MDL 2543, the People of California and the State of Arizona, and General Motors LLC (“**New GM**”) with respect to the agreed proposed Scheduling Order Regarding Case Management Order re: No-Strike, No Stay, Objection, and GUC Trust Asset Pleadings, filed contemporaneously herewith (the “**Proposed Scheduling Order**”), and specifically with respect to the time for New GM to file and serve the Marked SACC, New GM Marked SACC Letter, Marked State Complaints and New GM Marked State Complaint Letter (each as defined in the Proposed Scheduling Order) and the amount of time Designated Counsel and the States shall have to file and serve their responsive commentary and letters under the Proposed Scheduling Order. The parties understand Your Honor’s comments at the Case Management Conference on August 31, 2015 to have the marked pleadings and responses all done by September 30, 2015, but each of the parties believes that more time is necessary given the other matters to be addressed under the Proposed Scheduling Order, and the tasks involved in marking and commenting on these lengthy pleadings. We note that the pleadings for which additional time is sought do not affect the Bellwether Cases, which are the most time-sensitive cases before Judge Furman. As a consequence, the parties respectfully request that Your Honor so order the following proposed amendment to the Proposed Scheduling Order:

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- (i) New GM’s Marked SACC, the New GM Marked SACC Letter, New GM’s Marked State Complaints and the New GM Marked State Complaint Letter shall be filed and served on or before Friday, September 25, 2015; and
- (ii) Designated Counsel’s and the States’ responsive commentary and letters under the Proposed Scheduling Order shall be filed and served on or before 14 days thereafter.

For the avoidance of doubt, all other terms of the Proposed Scheduling Order remain unmodified. We thank the Court in advance for its consideration.

Respectfully submitted,

/s/ Steve W. Berman
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*Designated Counsel for the
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Counsel for New GM

cc: Honorable Jesse M. Furman (via overnight mail)
 Scott Davidson
 John G. Simon
 Kevin M. Carnie, Jr.
 Richard C. Godfrey, P.C.
 Andrew B. Bloomer, P.C.
 Robert Hilliard



Jonathan Flaxer
Matt Williams
Lisa Rubin
Daniel Golden
Deborah Newman
William P. Weintraub
Greg Fox

Endorsed Order:

Approved. To the extent dates in this letter are inconsistent with the Proposed Scheduling Order, the dates in this letter will trump them.

Dated: New York, New York
September 3, 2015

s/ Robert E. Gerber
United States Bankruptcy Judge

ADDENDUM "A"

1. NATURE OF THE ACTION

The appeals and cross-appeals arise from the bankruptcy case of General Motors Corporation (n/k/a Motors Liquidation Company) ("Old GM"), and the Sale Order and Injunction, entered by the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") on July 5, 2009. The Sale Order and Injunction approved an agreement transferring substantially all of the assets of Old GM to General Motors LLC ("New GM") free and clear of all liens, claims and interests, except for certain, expressly-defined assumed liabilities pursuant to 11 U.S.C. § 363 ("363 Sale"). This Court previously affirmed the 363 Sale when it dismissed an appeal challenging the Sale Order and Injunction. *See Parker v. Motors Liquidation Co.*, 10-4882-bk (2d Cir. July 28, 2011).

This matter is a direct appeal from the Bankruptcy Court, and the issue in this litigation is whether the Sale Order and Injunction should be enforced according to its plain terms to bar: (1) personal injury claims brought by Appellants against New GM arising from motor vehicle accidents that took place prior to entry of the Sale Order and Injunction; and (2) economic-loss claims arising from vehicles manufactured by Old GM containing a purported ignition-switch defect and resulting from Retained Liabilities of Old GM under the Sale Agreement.

Many of the Appellants' lawsuits contained allegations, claims and/or causes of action that violate the Sale Order and Injunction, and accordingly New GM filed a series of motions in the Bankruptcy Court in 2014 to enforce the Sale Order and Injunction. The Bankruptcy Court generally granted New GM's motions, but did not afford New GM complete relief.

This is now a consolidated appeal and cross-appeal arising from the Bankruptcy Court's final Judgment on the motions to enforce entered on June 1, 2015. On September 9, 2015, this Court granted several petitions and cross-petitions for a direct appeal to this Court. The appeal is a complex one, involving multiple separately-represented parties. The Appellants are certain individual plaintiffs, as well as groups of plaintiffs represented by certain designated counsel. The Appellees are New GM, a trust ("GUC Trust") created under Old GM's bankruptcy plan of liquidation, and certain beneficiaries of the GUC Trust. New GM is also the Appellee/Cross-Appellant, and it completes this Form C in so far as it relates to the issues New GM will raise on its cross appeal.

2. RESULT BELOW

After extensive briefing and lengthy oral argument on the issues raised by New GM's motions to enforce the Sale Order and Injunction, the Bankruptcy Court rendered a 138-page decision ("Decision") largely in New GM's favor on

April 15, 2015. *See In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y. 2015).

First, the Bankruptcy Court found the 363 Sale publication notice used in Old GM's bankruptcy, which the Bankruptcy Court had previously approved, did not comport with due process for certain plaintiffs whom the Bankruptcy Court were known creditors of Old GM. Although the Bankruptcy Court recognized that publication notice in a Bankruptcy Code section 363 sale is ordinarily satisfactory, such notice "was not [in this case] enough for those whose cars had Ignition Switch Defects—because from Old GM's perspective, the facts that gave rise to its recall obligation resulted in 'known' claims." *Decision*, 529 B.R. at 525. According to the Bankruptcy Court, "[b]ecause owners of cars with Ignition Switch Defects received neither the notice required under the Safety Act [*i.e.*, the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. § 30101, *et seq.*] nor any reasonable substitute (either of which, if given before Old GM's chapter 11 filing, could have been followed by the otherwise satisfactory post-filing notice by publication), they were denied the notice that due process requires." *Id.*

The Bankruptcy Court next held that to establish a due process violation, Plaintiffs must demonstrate they sustained prejudice as a result of the insufficient notice. With one exception, the Bankruptcy Court found Plaintiffs had not been "prejudiced with respect to the Sale Order's Free and Clear Provisions." *Id.* at 526.

In particular, while Plaintiffs contend they had no opportunity to advance certain arguments relating to the 363 Sale, the Bankruptcy Court held that those arguments had been made by others in 2009 at the time of the extensive briefing and evidentiary hearing that considered the approval of the 363 Sale. Accordingly, the Bankruptcy Court found that its' prior rulings rejecting such arguments applied to and barred Plaintiffs' claims. *Id.* The one exception where the Bankruptcy Court did find prejudice was to the extent that certain plaintiffs alleging the ignition switch defect for Old GM vehicles/parts for economic losses had "Independent Claims" against New GM based solely on New GM's own, independent conduct.

With respect to remedies, the Bankruptcy Court concluded that remedying a constitutional violation trumps the property rights of the purchaser, as well as the public interest in the finality of bankruptcy sales. *Id.* at 527. Accordingly, the Bankruptcy Court held that the Sale Order and Injunction would be modified almost six years later to allow the assertion of "Independent Claims," defined as "claims or causes of action asserted by Ignition Switch Plaintiffs against New GM (whether or not involving Old GM vehicles or parts) that are based solely on New GM's own, independent, post-Closing acts or conduct." Judgment ¶ 4. The Bankruptcy Court made clear, however, that it would continue to enforce the prohibitions against successor liability and New GM would not be liable for Old GM conduct. Decision, 529 B.R. at 528.

ADDENDUM “B”

In its cross-appeal, New GM intends to raise (and reserves the right to modify, supplement or revise) the following issues:

1. Whether the Bankruptcy Court erred in finding that the Ignition Switch Plaintiffs and the Ignition Switch Pre-Closing Accident Plaintiffs were “known” creditors of Old GM for purposes of determining the notice required by due process for the 363 Sale, where (i) no claims had been brought by such individuals prior to the 363 Sale, (ii) the stipulated record did not support the Bankruptcy Court’s conclusion that Old GM knew prior to the 363 Sale that there was a safety defect that warranted a recall, and (iii) Plaintiffs did not dispute that they were aware of the 363 Sale, and the Bankruptcy Court had approved the form of the 363 Sale notice?

The Court’s review of this issue, which presents a question of law on stipulated facts, is plenary and *de novo*. See *In re CBI Holding Co., Inc.*, 529 F.3d 432, 448-49 (2d Cir. 2008).

2. Whether the Bankruptcy Court erred in finding that the Ignition Switch Plaintiffs were prejudiced by the purported failure to give the notice required by due process with respect to Independent Claims, and that the Sale Order and Injunction could and should be modified almost six years

after it was entered, where (i) the Sale Agreement expressly defined the specific liabilities assumed by New GM with respect to Old GM vehicles/parts and there was no exception for Independent Claims, (ii) the allegedly defective 363 Sale notice was sent by Old GM and not New GM, and thus any remedy necessarily could only be levied against Old GM's bankruptcy estate and its successor, the GUC Trust, (iii) appeals of the Sale Order and Injunction were dismissed years ago as being equitably moot, (iv) the Sale Order and Injunction expressly provides that it cannot be modified, and (v) the Sale Order and Injunction holds that New GM acquired the assets from Old GM in good faith and for fair value?

This issue also involves questions of law that the Court should review *de novo* (see *CBI Holding Co.*, 529 F.3d at 448-49), except to the extent the Bankruptcy Court's equitable authority is implicated, which is reviewed for an abuse of discretion. See *Adelphia Business Solutions, Inc. v. Abnos*, 482 F.3d 602, 607 (2d Cir. 2007).

Exhibit B

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES

Case Caption: Elliott et al., v. General Motors, LLC In re: Motors Liquidation Company, F/K/A/ General Motors Corporation, Debtors	District Court or Agency: U.S. Bankruptcy Court Southern District of New York	Judge: Robert E. Gerber
	Date the Order or Judgment Appealed from was Entered on the Docket: June 1, 2015	District Court Docket No.: 1:09-bk-50026
	Date the Notice of Appeal was Filed: June 1, 2015; leave to appeal September 9, 2015	Is this a Cross Appeal? Yes <input checked="" type="checkbox"/> No

Attorney(s) for Appellant(s):	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	<input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	Gary Peller, 600 New Jersey Avenue, NW Washington, DC 20001, Telephone: 202-662-9122 peller@law.georgetown.edu			

Attorney(s) for Appellee(s):	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	<input checked="" type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant	Arthur Jay Steinberg, King & Spalding LLP, 1185 Avenue of the Americas New York, NY 10036 Phone: 212-556-2158 Edward S. Weisfelner, Brown Rudnick LLP, 7 Time Square New York, NY 10036 Phone:212-209-4800 William Weintraub, Goodwin Procter LLP, 620 8th Ave New York, NY 10018 Phone: 212-813-8839 Alexander H. Schmidt, Wolf Haldenstein Adler Freeman & Herz LLP, 270 Madison Ave New York, NY 10016 Phone: 212- 545-4600 Daniel H. Golden, Akin Gump Strauss Haver & Feld LLP, 1 Bryant Park New York, NY 10036 Phone: 212-872-1000 Lisa H. Rubin, Gibson Dunn & Crutcher LLP, 200 Park Ave New York, NY 10166 Phone: 917-608-2038			

Has Transcript Been Prepared?	Approx. Number of Transcript Pages:	Number of Exhibits Appended to Transcript:	Has this matter been before this Circuit previously?	Yes	<input checked="" type="checkbox"/> No
yes	600	0	If Yes, provide the following: Case Name: 2d Cir. Docket No.:		Reporter Citation: (i.e., F.3d or Fed. App.)

ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.

ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.

PART A: JURISDICTION					
1. <u>Federal Jurisdiction</u>			2. <u>Appellate Jurisdiction</u>		
U.S. a party	Diversity		Final Decision	Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b))	
<input checked="" type="checkbox"/> Federal question (U.S. not a party)	Other (specify): _____		Interlocutory Decision Appealable As of Right	Other (specify): <u>Petition for FRAP 6 Direct Appeal</u>	

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: DISTRICT COURT DECISIONS (Check as many as apply)

1. <u>Stage of Proceedings</u>	2. <u>Type of Judgment/Order Appealed</u>	3. <u>Relief</u>		
<input type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input checked="" type="checkbox"/> After trial	<input type="checkbox"/> Default judgment <input type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subj. matter juris. <input type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	Dismissal/other jurisdiction Dismissal/merit <input checked="" type="checkbox"/> Judgment / Decision of the Court <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify):		
		Damages: <table style="width:100%; border:none;"> <tr> <td style="width:50%; border:none;"> <input type="checkbox"/> Sought: \$ _____ <input type="checkbox"/> Granted: \$ _____ <input type="checkbox"/> Denied: \$ _____ </td> <td style="width:50%; border:none;"> Injunctions: <input checked="" type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Denied </td> </tr> </table>	<input type="checkbox"/> Sought: \$ _____ <input type="checkbox"/> Granted: \$ _____ <input type="checkbox"/> Denied: \$ _____	Injunctions: <input checked="" type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Denied
<input type="checkbox"/> Sought: \$ _____ <input type="checkbox"/> Granted: \$ _____ <input type="checkbox"/> Denied: \$ _____	Injunctions: <input checked="" type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Denied			

PART C: NATURE OF SUIT (Check as many as apply)

1. <u>Federal Statutes</u>	2. <u>Torts</u>	3. <u>Contracts</u>	4. <u>Prisoner Petitions</u>
<input checked="" type="checkbox"/> Antitrust <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Banks/Banking <input type="checkbox"/> Civil Rights <input type="checkbox"/> Commerce, <input type="checkbox"/> Energy <input type="checkbox"/> Commodities <input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> Admiralty/ <input type="checkbox"/> Maritime <input type="checkbox"/> Assault / <input type="checkbox"/> Defamation <input type="checkbox"/> FELA <input type="checkbox"/> Products Liability <input type="checkbox"/> Other (Specify):	<input type="checkbox"/> Admiralty/ <input type="checkbox"/> Maritime <input type="checkbox"/> Arbitration <input type="checkbox"/> Commercial <input type="checkbox"/> Employment <input type="checkbox"/> Insurance <input type="checkbox"/> Negotiable <input type="checkbox"/> Instruments <input type="checkbox"/> Other Specify	<input type="checkbox"/> Civil Rights <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Mandamus <input type="checkbox"/> Parole <input type="checkbox"/> Vacate Sentence <input type="checkbox"/> Other
5. <u>Other</u> <input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input type="checkbox"/> Other (specify): _____	6. <u>General</u> <input type="checkbox"/> Arbitration <input type="checkbox"/> Attorney Disqualification <input type="checkbox"/> Class Action <input type="checkbox"/> Counsel Fees <input type="checkbox"/> Shareholder Derivative <input type="checkbox"/> Transfer	7. Will appeal raise constitutional issue(s)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Will appeal raise a matter of first impression? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

1. Is any matter relative to this appeal still pending below? Yes, specify: Post Judgment Motions in S.D.N.Y. Bankruptcy Court No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

(A) Arises from substantially the same case or controversy as this appeal? Yes No

(B) Involves an issue that is substantially similar or related to an issue in this appeal? Yes No

If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name: SEE ATTACHED ADDENDUM C	Docket No.	Citation:	Court or Agency:
Name of Appellant:			

Date: Sept. 20, 2015	Signature of Counsel of Record: /s/ Gary Peller
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NOTICE TO COUNSEL

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$505 docketing fee to the United States District Court or the \$500 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.

ADDENDUM A

(1), (2) *Brief Description of Nature of the Action and Result Below*

On July 10, 2009, General Motors LLC (“New GM”) acquired substantially all the assets of General Motors Corporation (“Old GM”) in a “free and clear” sale authorized by the Bankruptcy Court under 11 U.S.C. §363 of the Bankruptcy Code. In connection with the sale, the Bankruptcy Court issued a Sale Order and Injunction (“the 2009 Order”), which authorized the sale of assets “free and clear” of liabilities to be retained by Old GM.¹

The 2009 Order enjoins the assertion of any claim asserting “successor or transferee liability” against New GM unless the claim is otherwise assumed. The 2009 Order does not address direct, non-derivative claims that might be asserted against New GM based on *its own conduct* after the sale, the only types of claims asserted by the *Elliott Parties*. The *Elliott Parties* were not notified of the 2009 proceedings and they had no opportunity to participate in them prior to the Order’s entry, as their claims against New GM had not yet arisen.

Starting in February 2014, and in piecemeal fashion ever since, New GM has publicly admitted that *its* employees and lawyers knew about various safety-related defects in millions of vehicles, including the vehicle models owned by the

¹ *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 of UAW Retiree Settlement Agreement*, [Dkt. No. 2967].

Elliott Parties, and that *New GM* failed to disclose those defects as *it* was required to do by law.

The *Elliott* parties are Plaintiffs and putative class representatives in *Elliott et al. v. General Motors, LLC*, et al., a lawsuit pending before the United States District Court for the Southern District of New York (Furman, J.) and consolidated in the multidistrict litigation styled *In re GM Ignition Switch*, 14-md-2543-JMF . The Elliotts filed their lawsuit on April 1, 2014. They jointly own a 2006 Chevrolet Cobalt, one of the vehicles that New GM admits contained a dangerous ignition switch hazard that has caused the death or injury of thousands of people. Ms. Summerville, who joined the lawsuit when the Elliotts amended their complaint in July 2014, owns a 2010 Chevrolet Cobalt, a model that New GM recalled because of the risk that it may have had the hazardous ignition switch installed during a repair. In addition to their ignition switch related claims for relief, the *Elliott* parties also allege that their vehicles contain a fuel pump hazard that, they allege, New GM continues to deny and/or minimize.

The *Elliott* parties assert solely direct claims against New GM, a non-debtor, based on alleged breaches of independent, non-derivative duties that New GM owed them, claims bearing no conceivable relationship to the *res* of debtor General Motors Corporation (“Old GM”), whose Bankruptcy case is long over. The *Elliott*

parties' First Amended Complaint explicitly disclaims reliance on any successor, transferee or derivative theories of liability.

On April 21, 2014, New GM initiated a series of “contested matters” in the Bankruptcy Court² against the *Elliott* parties and scores of other “ignition switch lawsuits” that had been filed against New GM. New GM moved the Bankruptcy Court to enforce its 2009 Order by restraining the various parties New GM listed on a bulk schedule, including the *Elliott* parties, from suing New GM for claims related to “ignition switch defects” insofar as such claims were based on liability that Old GM retained under the 2009 Order.³ New GM later filed two parallel motions to enforce the 2009 Order, one against Pre-Closing Accident Plaintiffs and a second directed at Other Monetary Plaintiffs asserting non-ignition switch hazards in vehicles made by Old GM.⁴

On August 5, 2014, the Bankruptcy Court preliminarily enjoined the *Elliott* parties from prosecuting their lawsuit and denied their motion to dismiss for lack of subject matter jurisdiction and their “No Stay Pleading.” On November 10, 2014, the Bankruptcy Court denied the *Elliott* parties' motion for reconsideration, in which they had contended that enjoining them from pursuing their independent,

² F. R. Bank. P. 9014.

³ *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*, [Dkt. No. 12620], at 3.

⁴ *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Courts July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits*, [Dkt. No. 12807]; *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Courts July 5, 2009 Sale Order and Injunction (Monetary Relief Actions, Other Than Ignition Switch Actions)*, [Dkt. No. 12808].

non-derivative claims against New GM violated their Due Process rights, as they had no notice or opportunity to be heard prior to the entry of the 2009 Order.

On April 15, 2015, the Bankruptcy Court issued its decision, and on June 1, 2015, the Bankruptcy Court entered its Judgment, on New GM's Motion to Enforce the 2009 Sale Order and Injunction, construing the 2009 Order to bar the *Elliott* Plaintiffs from proceeding with their claims against New GM for its own wrongdoing. The Court enforced the 2009 Order through the issuance of a successive injunction that bars the *Elliott* Plaintiffs from asserting some of their (non-ignition switch) claims entirely and censors the allegations they may make in support of the (ignition switch related) claims they are permitted to assert. The Court found that the "ignition switch" Plaintiffs had established that their due process notice rights had been violated and that they were prejudiced by not being able to argue to limit the scope of the 2009 Sale Order and Injunction to exclude independent claims against New GM for its own wrongdoing. The Bankruptcy Court permitted "ignition switch" claims relating to vehicles or parts manufactured by Old GM to proceed, so long as they removed allegations involving Old GM wrongdoing. It categorically enjoined Plaintiffs from asserting against New GM "non-ignition switch" claims, such as the fuel pump claims of the *Elliott* Plaintiffs, relating to vehicles or parts manufactured by Old GM.

The Bankruptcy Court certified its decision for this Court's review, and this Court granted the Elliott Plaintiffs' petition for permission to appeal on September 9, 2015.

(3) Copy of Notice of Appeal and Lower Court Docket Sheet

Attached hereto as appendix 1

(4) Copy of Relevant Opinions/Orders Forming the Bases of Appeal

Attached hereto as appendix 2

List of Issues Proposed to be Raised on Appeal

Addendum B

List of Cases Pending or about to be Brought Before this Court

Addendum C

ADDENDUM B

Issues on Appeal

- 1) Did the Bankruptcy Court err in concluding that it had subject matter jurisdiction to enjoin the prosecution of the *Elliott* appellants' lawsuit against non-debtor New GM, when appellants assert direct, non-successor liability claims for injuries caused by breaches of independent, non-derivative duties New GM owed appellants, claims having no conceivable impact on the res of debtor Old GM?
- 2) Did the Bankruptcy Court err in enforcing the 2009 Sale Order and Injunction to bar the *Elliott* appellants from pursuing claims involving non-ignition switch hazards, even though they did not have the notice and opportunity to be heard required by the Due Process Clause before they may be precluded from asserting wholly in personam and non-successor liability claims against New GM based on its alleged breaches of independent, non-derivative duties?
- 3) Did the Bankruptcy Court err in requiring that the *Elliott* appellants demonstrate prejudice, in addition to a denial of Constitutionally required notice and opportunity to be heard, in order to be free from preclusion by the 2009 Sale Order and Injunction barring them from pursuing independent, non-derivative claims about which they had no notice or opportunity to be heard prior to the entry of the Order?

- 4) Did the Bankruptcy Court err in applying its Judgment to the *Elliott* appellants in violation of their Due Process rights, by not according them an opportunity to be heard in the proceedings regarding the issues resolved by the Judgment?
- 5) Did the Bankruptcy court err by treating counsel representing other parties as representatives of the *Elliott* appellants, and thereby denying appellants their right to be heard under the Due Process Clause?
- 6) Did the Bankruptcy Court err in construing the 2009 Sale Order and Injunction to encompass the *Elliott* appellants' independent, non-derivative claims against New GM for its own wrongdoing in light of textual and contextual interpretative evidence dictating a contrary reading?
- 7) Was the Bankruptcy Court's construction of the 2009 Sale Order and Injunction to encompass independent, non-derivative claims against New GM for its own wrongdoing so unexpected, that even those who received notice of the proceedings would not have had reasonable notice that such claims were to be barred?
- 8) Did the Bankruptcy Court err in issuing a successive injunction in a contested matter to enforce its earlier injunction?
- 9) Was New GM's exclusive remedy for enforcing its earlier injunction to seek contempt proceedings against the *Elliott* appellants?

10) Did the Bankruptcy court err by censoring what the *Elliott* Parties may say in support of claims that are not barred by the 2009 Sale Order and Injunction?

12) Did the Bankruptcy Court err by applying its 2009 Sale Order and Injunction barring Ms. Summerville's claims based on New GM's unsupported assertion that her 2010 model car may contain parts made by Old GM?

Standard of Review

Each issue presents questions of law. This Court reviews the Bankruptcy Court's legal conclusions *de novo*. *Krist v. Kolombos Rest. Inc.*, 688 F.3d 89, 95 (2d Cir. 2012) (citing *Henry v. Champlain Enterprises, Inc.*, 445, F.3d 610, 617-18, 623 (2d Cir. 2006)).

ADDENDUM C

Supplemental response to Question 2. Cases about to be brought to before this Court that,

- (A) Arise from substantially the same case as this appeal, and
- (B) Involve an issue that is substantially similar or related to an issue in this appeal

Appellants in the following cases have appealed from the same Judgment in In re: Motors Liquidation Company, Bankruptcy Court Docket No., 1:09-bk-50026 that forms the basis of this appeal.

Case Name	Docket No.	Citation	Court or Agency	Name of Appellant
In re: General Motors LLC Ignition Switch Litig.	1:14-md-02543-JMF	In re: General Motors LLC Ignition Switch Litig., 1:14-md-02543-JMF (S.D.N.Y., July 9, 2015).	U.S. District Court for the Southern District of New York	Ignition Switch Plaintiffs
In re: General Motors LLC Ignition Switch Litig.	1:14-md-02543-JMF		U.S. Bankruptcy Court for the Southern District of New York	Ignition Switch Pre-Closing Accident Plaintiffs
Groman et al v. General Motors LLC	Adv. Proc. No. 14-01929-REG	Groman et al v. General Motors LLC, Adv. Proc. No. 14-01929 (Bankr.S.D.N.Y., Apr. 21, 2014).	U.S. District Court for the Southern District of New York	Dr. Steven Groman, et al.
State of Arizona v. General Motors LLC	CV2014-014090	State of Arizona v. General Motors LLC, No. CV2014-014090 (Super. Ct. Ariz., Nov. 19, 2014).	Superior Court of Arizona	State of Arizona
The People of the State of California v. General Motors, LLC	8:14-cv-01238-JVS	People of California v. General Motors LLC, 8:14-cv-01238-JVS (C.D. Cal., Aug. 5, 2014).	U.S. District Court for the Central District of California	The People of the State of California

Phillips-Powledge v. General Motors Corporation	3:14-cv-00192	Phillips-Powledge v. General Motors LLC, 3:14-cv-00192 (S.D. Tex., June 9, 2014).	U.S. District Court for the Southern District of Texas	Doris Phillips.
Bledsoe, et al. v. General Motors LLC	1:14-cv-07631-JMF	Bledsoe, et al. v. General Motors LLC, MDL No. 1:14-cv-07631 (S.D.N.Y., Sept. 19, 2014).	U.S. District Court for the Southern District of New York	Sharon Bledsoe, et al.
Sesay, et al. v. General Motors LLC, et al.	1:14-cv-06018-JMF	Sesay, et al. v. General Motors LLC, et al., 1:14-cv-06018-JMF (S.D.N.Y., Aug., 1, 2014).	U.S. District Court for the Southern District of New York	Ishamil Sesay, et al.

Exhibit C

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES

Case Caption: In the Matter of: Motors Liquidation Company. Celestine Elliott, Lawrence Elliott, Berenice Summerville, v. General Motors LLC; Wilmington Trust Company; Participating Unitholders; Ignition Switch Plaintiffs, Ignition Switch Pre-Closing Accident Plaintiffs, Groman Plaintiffs.	District Court or Agency:	Judge:
	Bankr. S.D.N.Y.	Robert E. Gerber
	Date the Order or Judgment Appealed from was Entered on the Docket:	District Court Docket No.:
	June 01, 2015	09-50026 (REG)
	Date the Notice of Appeal was Filed:	Is this a Cross Appeal?
	September 9, 2015	<input checked="" type="checkbox"/> Yes No

Attorney(s) for Appellant(s): Plaintiff Defendant	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	Lisa Rubin, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, (T) 212-351-2390, (F) 212-716-0790, lrubin@gibsondunn.com				

Attorney(s) for Appellee(s): Plaintiff Defendant	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	See attached				

Has Transcript Been Prepared?	Approx. Number of Transcript Pages:	Number of Exhibits Appended to Transcript:	Has this matter been before this Circuit previously?	Yes	<input checked="" type="checkbox"/> No
Yes	328	0	If Yes, provide the following:		
			Case Name:		
			2d Cir. Docket No.:	Reporter Citation: (i.e., F.3d or Fed. App.)	

ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.

ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.

PART A: JURISDICTION			
1. <u>Federal Jurisdiction</u>		2. <u>Appellate Jurisdiction</u>	
U.S. a party	Diversity	Final Decision	Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b))
<input checked="" type="checkbox"/> Federal question (U.S. not a party)	Other (specify): _____	Interlocutory Decision Appealable As of Right	<input checked="" type="checkbox"/> Other (specify): <u>28 U.S.C. § 158(d)(2)(A)</u>

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: DISTRICT COURT DISPOSITION (Check as many as apply)

1. <u>Stage of Proceedings</u>	2. <u>Type of Judgment/Order Appealed</u>	3. <u>Relief</u>
<input type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input checked="" type="checkbox"/> After trial	<input type="checkbox"/> Default judgment <input type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subj. matter juris. <input type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	<input type="checkbox"/> Dismissal/other jurisdiction <input type="checkbox"/> Dismissal/merit <input checked="" type="checkbox"/> Judgment / Decision of the Court <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify):
		Damages: <input type="checkbox"/> Injunctions: <input checked="" type="checkbox"/> <input type="checkbox"/> Sought: \$ _____ <input type="checkbox"/> Granted: \$ _____ <input type="checkbox"/> Denied: \$ _____ <input checked="" type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Denied

PART C: NATURE OF SUIT (Check as many as apply)

1. <u>Federal Statutes</u>	2. <u>Torts</u>	3. <u>Contracts</u>	4. <u>Prisoner Petitions</u>
<input checked="" type="checkbox"/> Antitrust <input checked="" type="checkbox"/> Bankruptcy <input type="checkbox"/> Banks/Banking <input type="checkbox"/> Civil Rights <input type="checkbox"/> Commerce, <input type="checkbox"/> Energy <input type="checkbox"/> Commodities <input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> Communications <input type="checkbox"/> Consumer Protection <input type="checkbox"/> Copyright <input type="checkbox"/> Patent <input type="checkbox"/> Trademark <input type="checkbox"/> Election <input type="checkbox"/> Soc. Security <input type="checkbox"/> Environmental	<input type="checkbox"/> Freedom of Information Act <input type="checkbox"/> Immigration <input type="checkbox"/> Labor <input type="checkbox"/> OSHA <input type="checkbox"/> Securities <input type="checkbox"/> Tax	<input type="checkbox"/> Admiralty/ <input type="checkbox"/> Maritime <input type="checkbox"/> Assault / <input type="checkbox"/> Defamation <input type="checkbox"/> FELA <input type="checkbox"/> Products Liability <input type="checkbox"/> Other (Specify):
<input type="checkbox"/> Admiralty/ <input type="checkbox"/> Maritime <input type="checkbox"/> Arbitration <input type="checkbox"/> Commercial <input type="checkbox"/> Employment <input type="checkbox"/> Insurance <input type="checkbox"/> Negotiable <input type="checkbox"/> Instruments <input type="checkbox"/> Other Specify	<input type="checkbox"/> Civil Rights <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Mandamus <input type="checkbox"/> Parole <input type="checkbox"/> Vacate Sentence <input type="checkbox"/> Other		
5. <u>Other</u> <input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input type="checkbox"/> Other (specify): _____	6. <u>General</u> <input type="checkbox"/> Arbitration <input type="checkbox"/> Attorney Disqualification <input type="checkbox"/> Class Action <input type="checkbox"/> Counsel Fees <input type="checkbox"/> Shareholder Derivative <input type="checkbox"/> Transfer	7. Will appeal raise constitutional issue(s)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Will appeal raise a matter of first impression? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

1. Is any matter relative to this appeal still pending below? Yes, specify: Bankruptcy proceedings ongoing. No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

(A) Arises from substantially the same case or controversy as this appeal? Yes No

(B) Involves an issue that is substantially similar or related to an issue in this appeal? Yes No

If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name: In re Motors Liquidation Co.	Docket No. 15-2844; 15-2847	Citation:	Court or Agency: 2d Circuit
--	--------------------------------	-----------	--------------------------------

Name of Appellant: Elliott et. al.; (Cross Appellant) General Motors LLC

Date: <u>9/23/15</u>	Signature of Counsel of Record: <u>/s/ Lisa H. Rubin</u>
-------------------------	---

NOTICE TO COUNSEL

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$505 docketing fee to the United States District Court or the \$500 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.

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<p>ROBINSON CALCAGNIE ROBINSON SHAPIRO DAVIS, INC. Mark P. Robinson, Jr. 19 Corporate Plaza Drive Newport Beach, CA 92660 Telephone: 949-720-1288 Email: mrobinson@rcrlaw.net</p> <p><i>Counsel for the People of the State of California, acting by and through Orange County District Attorney Tony Rackauckas</i></p>	<p>WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP Alexander Schmidt Malcolm T. Brown 270 Madison Avenue New York, NY 10016 Telephone: 212-545-4600 Email: schmidt@whafh.com Email: brown@whafh.com</p> <p><i>Counsel for ABC Flooring, Inc., et al.</i></p>
<p>LIEFF, CABRASER, HEIMANN & BERNSTEIN, L.L.P. Elizabeth J. Cabraser 275 Battery Street Embarcadero Center W. San Francisco, CA 94111 Telephone: 415- 956-1000 Email: ecabraser@lchb.com</p> <p><i>Lead Counsel</i></p>	<p>HILLIARD MUNOZ GONZALES LLP Robert Hilliard 719 South Shoreline Suite 500 Corpus Christi, TX 78401 Telephone: 361-882-1612 Email: bobh@hmglawfirm.com</p> <p><i>Lead Counsel</i></p>
<p>JOSH DAVIS LAW FIRM Joshua P. Davis 1010 Lamar, Suite 200 Houston, TX 77002 Telephone: 713-337-4100 Email: josh@thejdfirm.com</p> <p><i>Counsel for Doris Phillips</i></p>	

FORM C - ADDENDUM A

Wilmington Trust Company, as Trustee for and Administrator of the Motors Liquidation Company GUC Trust (the “GUC Trust”), seeks affirmance of the portion of the bankruptcy court’s judgment entered in this action on June 1, 2015 (D.E. 13177) (the “Judgment”) and the corrected Decision on Motion to Enforce Sale Order entered in this action on April 15, 2015 (D.E. 13290 Ex. A) (the “Decision on the Threshold Issues”), holding that, under the doctrine of equitable mootness, “assets transferred to the GUC Trust under the Plan could not now be tapped to pay” claims filed by Plaintiffs. *In re Motors Liquidation Co.*, 529 B.R. 510, 529 (Bankr. S.D.N.Y. 2015). Should this Court reverse, vacate, or modify the bankruptcy court’s equitable mootness holding in any manner adverse to the GUC Trust, the GUC Trust seeks reversal or vacatur of the Judgment and Decision on the Threshold Issues on the four bases articulated in Addendum B.

1. Nature of the Action

A. Background

On June 1, 2009, General Motors Corporation (“Old GM”) and certain of its subsidiaries filed a petition in the United States Bankruptcy Court for the Southern District of New York to sell substantially all of its assets, pursuant to 11 U.S.C. § 363 (the “Sale”), to a company now known as General Motors LLC (“New GM”). The bankruptcy court adopted procedures for the Sale and objecting to it, ordered

direct mail and publication notice to creditors, and held a hearing. The notices did not disclose that certain Old GM vehicles contained an ignition switch or any other defect that could cause personal injury, death, economic loss, or other injuries to persons or property.

On July 5, 2009, the bankruptcy court issued a Sale Order and Injunction approving the Sale (D.E. 2968), pursuant to the terms in the Amended and Restated Master Sale and Purchase Agreement (the “Sale Agreement”). Under that Agreement, New GM acquired substantially all of Old GM’s assets in exchange for about \$45 billion, and New GM assumed certain of Old GM’s liabilities, but purchased the assets “free and clear” of all other liabilities. The Sale closed on July 10, 2009.

Thereafter, Old GM changed its name to Motors Liquidation Company (“MLC”). On March 18, 2011, MLC and the remaining debtors filed their second amended Chapter 11 plan. The bankruptcy court confirmed that Plan on March 29, 2011, and the Plan became effective two days later. The Plan has been substantially consummated. *See In re Motors Liquidation Co.*, 529 B.R. at 585.

The GUC Trust was formed as part of the Plan on March 30, 2011. It is a statutory trust under the Delaware Statutory Trust Act. As relevant for this action, the GUC Trust is responsible for resolving disputed general unsecured claims and distributing New GM stocks and warrants (or the proceeds thereof) and GUC Trust

Units to the GUC Trust Beneficiaries. Those beneficiaries, as relevant here, are limited to holders of allowed general unsecured claims against the debtors and holders of units of beneficial interest in the GUC Trust. “The GUC Trust Units are freely tradable. As reported by Bloomberg Finance, as of October 21, 2014, approximately 100 million GUC Trust Units had been bought and sold since June 14, 2012, and the aggregate value of those GUC Trust Units (based on daily closing prices) totaled approximately \$2.1 billion.” *Id.* at 536 n.51.

“[B]y September 30, 2014, the GUC Trust had distributed more than 89% of the New GM Securities and nearly 32 million GUC Trust Units.” *Id.* at 537. As of March 31, 2015, the GUC Trust had successfully resolved claims representing over 99% of the dollar amount of initial disputed general unsecured claims. *See Motors Liquidation Company GUC Trust Quarterly Section 6.2(c) Report and Budget Variance Report as of March 31, 2015*, D.E. 13118 at 4 (Bankr. S.D.N.Y. April 22, 2015).

B. New GM’s 2014 Recalls and Subsequent Litigation

In 2014, New GM issued 80 recalls affecting 13.5 million vehicles worldwide for various defects, including the ignition switch defect. The recalls, which covered model years 1997 to 2015, have triggered over 270 lawsuits. *See General Motors Company, Quarterly Report 14 (Form 10-Q) (July 23, 2015)*.

Most of those suits are now part of a multi-district litigation in the Southern District of New York, and consolidated in an omnibus complaint.

In response, New GM moved the bankruptcy court to enjoin those lawsuits as subject to the injunction provision of the Sale Agreement, which limited New GM's liability to certain claims. New GM suggested that plaintiffs explore causes of action against the GUC Trust.

The bankruptcy court ordered the parties to proceed on a stipulated factual record, and to address four so-called "Threshold Issues":

- **The Due Process Issue:** First, whether the plaintiffs' procedural due process rights were violated in connection with the entry of the Sale Order and Injunction or its enforcement;
- **The Remedies Issue:** Second, assuming plaintiffs' due process rights were violated, whether a remedy could be fashioned and against whom;
- **The Assumed Versus Retained Liabilities Issue:** Third, whether claims asserted against New GM could be asserted against the Old GM bankruptcy estate and/or the GUC Trust;
- **The Equitable Mootness Issue:** Fourth, whether any claims asserted against the Old GM bankruptcy estate and/or the GUC Trust would be equitably moot.

2. Result Below

Following briefing and two days of oral argument, the bankruptcy court issued its Decision on the Threshold Issues.

On the first threshold issue, the court found that Old GM knew enough about the ignition switch defect in 2009 to make “owners of cars with Ignition Switch Defects ... ‘known’” creditors, and that because only publication notice was given, “Plaintiffs were denied the notice due process requires.” *In re Motors Liquidation Co.*, 529 B.R. at 559. Nonetheless, the court found that Economic Loss Plaintiffs, used-car purchasers, and Pre-Closing Accident Plaintiffs had not established a due process violation stemming from the Sale Order’s “free and clear” provision because they could not demonstrate that they were prejudiced by the deficient notice. *Id.* at 565, 572-73. However, the court found that the Economic Loss Plaintiffs had suffered a due process violation and were prejudiced by the overbreadth of the Sale Order that barred them from pursuing claims against New GM based solely on New GM’s independent misconduct. *Id.* at 565; *see id.* at 573.

On the second threshold issue, the court found that the appropriate remedy for the Economic Loss Plaintiffs, who suffered a due process violation and were prejudiced by the overbreadth of the Sale Order as to claims based on New GM’s independent misconduct, was to deny enforcement of the Sale Order as against

those plaintiffs, without invalidating the entire Sale Order or finding it void as to all claimants. *Id.* at 527-28.

On the third threshold issue, the court found that, under the Sale Agreement, New GM did not assume liability for claims based on Old GM's conduct. *Id.* at 528.

On the fourth threshold issue, the court found that any claims by the Ignition Switch Plaintiffs against Old GM or the GUC Trust would be equitably moot, because allowing recourse against the GUC Trust assets would require modification of the order confirming the Plan, impair the rights of the Unitholders, and be unjust to unitholders who acquired GUC Trust Units in post-confirmation trading with the understanding that the universe of claims against the GUC Trust could not expand. *Id.* at 528-29. The court noted the plaintiffs did not "pursue[] with diligence all available remedies" because of their "tactical choice" not to seek a stay of the GUC Trust's November 2014 distribution to its beneficiaries. *Id.* at 590-91.

On June 1, 2015, the bankruptcy court issued its Judgment implementing the Decision on the Threshold Issues (D.E. 13177), and entered an order certifying the Judgment for direct appeal to this Court (D.E. 13178). After notices of appeal were filed by others, the GUC Trust timely filed its notice of cross-appeal (D.E. 13204) to preserve its rights. After certain plaintiffs who indicated that they were

challenging the bankruptcy court's equitable mootness holding filed a petition for permission to appeal with this Court, the GUC Trust cross-petitioned for permission to take its cross-appeal directly to this Court. *See* GUC Trust Response and Cross-Petition for Permission for Direct Cross-Appeal, No. 15-1958, ECF No. 33 (2d Cir. July 2, 2015). This Court granted the petitions and cross-petitions for direct appeal on September 9, 2015. Order, No. 15-1958, ECF No. 107 (2d Cir. Sept. 9, 2015).

3. Notice of Appeal and Lower Court Docket Sheet

Attached as Exhibit A is the GUC Trust's Notice of Cross-Appeal, *In re Motors Liquidation Corp.*, No. 09-50026 (REG), D.E. 13204 (Bankr. S.D.N.Y. June 15, 2015).

Attached as Exhibit B is a copy of the current docket sheet in the lower court, in *In re Motors Liquidation Corp.*, No. 09-50026 (REG) (Bankr. S.D.N.Y.).

4. Other Opinions and Orders that Form the Basis for this Appeal

Attached as Exhibit C is the bankruptcy court's 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,

In re Motors Liquidation Corp., No. 09-50026 (REG), D.E. 2968 (Bankr. S.D.N.Y. July 5, 2009).

Attached as Exhibit D is the bankruptcy court's corrected Decision on Motion to Enforce Sale Order, *In re Motors Liquidation Corp.*, No. 09-50026 (REG), D.E. 13290 (Bankr. S.D.N.Y. April 15, 2015).

Attached as Exhibit E is the bankruptcy court's Judgment, *In re Motors Liquidation Corp.*, No. 09-50026 (REG), D.E. 13177 (Bankr. S.D.N.Y. June 1, 2015).

FORM C - ADDENDUM B

Issues To Be Raised On Cross-Appeal

1. Did the Bankruptcy Court err in holding that some or all of the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs had claims under 11 U.S.C. § 101(5)(A) in July 2009, when they could not have contemplated their causes of action at that time and, in some cases, did not own or lease a GM vehicle until after entry of the Sale Order?

2. Did the Bankruptcy Court err in holding that in order to establish a due process violation in connection with entry of the Sale Order, the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs must demonstrate in a “non-speculative fashion” that they were prejudiced by their lack of a full and fair opportunity to be heard prior to entry of the Sale Order?

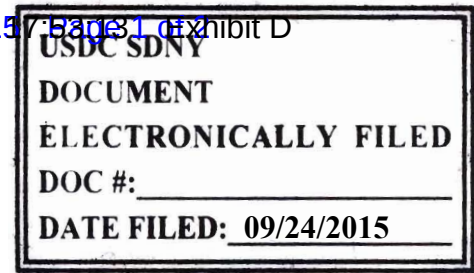
3. Did the Bankruptcy Court err in holding that, with the exception of the Ignition Switch Plaintiffs’ Independent Claims, the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs failed to demonstrate prejudice in connection with entry of the Sale Order?

4. Did the Bankruptcy Court err in holding that the Ignition Switch Plaintiffs’ alleged economic losses from New GM’s recalls and New GM’s violation of federal recall laws do not constitute Assumed Liabilities or otherwise

implicate New GM's obligations under the Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009?

Each of the foregoing issues rests on conclusions of law that this Court should review *de novo*. *In re Bernard L. Madoff Inv. Sec. LLC*, 740 F.3d 81, 87 (2d Cir. 2014). To the extent the issues also rest on findings of fact, this Court should apply the clearly erroneous standard. *Id.*

Exhibit D



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)
14-MC-2543 (JMF)

This Document Relates To All Actions
-----X

ORDER NO. 81

JESSE M. FURMAN, United States District Judge:

[Regarding Amendment of Certain Personal Injury/Wrongful Death Complaints]

In the last week, several Plaintiffs have filed motions for leave to amend their complaints alleging personal injury or wrongful death claims to comply with rulings of the Bankruptcy Court. (See, e.g., 14-MD-2543, Docket No. 1376; 15-CV-4768, Docket No. 37). In order to streamline the amendment process without conflicting with the procedures that have been established by the Bankruptcy Court to adjudicate whether pleadings are consistent with its prior rulings, the parties shall — unless and until the Court orders otherwise — adhere to the following procedures for any such motion to amend. (The parties are invited to confer and propose modifications to these procedures if they believe there is a preferable way to proceed.)

1. Any Plaintiff moving for leave to file an amended complaint shall file the motion on **both** the MDL docket and the docket of the individual member case and, for ease of review, shall **attach as an exhibit** to that motion a redline indicating all changes between the current complaint and the proposed amended complaint. Any filings relating to the motion, including but not limited to the letters required by this Order, shall also be filed on both the MDL docket and the docket of the individual member case.

2. Within **one week** of any such motion (or one week from the date of this Order with respect to motions already filed), New GM shall file a letter stating whether: (a) it consents to the motion without reservation; (b) it consents to the motion, with a reservation of rights to litigate any

issues (to be identified with particularity) before the Bankruptcy Court; (c) it believes that the motion should be stayed pending adjudication of issues (to be identified with particularity) before the Bankruptcy Court; or (d) it opposes the motion.

3. Should New GM choose options (b) or (c), the relevant Plaintiff(s) may, **within two days** of New GM's letter, file a letter in response.

4. Should New GM choose option (c), it shall — unless the Court orders otherwise — file a letter **within one week** of the Bankruptcy Court's resolution of the relevant issue(s) advising this Court of that resolution and proposing how to proceed. The relevant Plaintiff(s) may, **within two days** of New GM's letter, file a letter in response.

5. Should New GM choose option (d), then its opposition to the motion to amend shall be filed within **two weeks** of when the motion for leave to amend was filed (or two weeks from the date of this Order with respect to motions already filed). Any reply shall be filed within **one week** thereafter.

6. Plaintiffs in member cases *Hoskins*, 15-CV-0409; *Dowling*, 15-CV-2033; *Smith*, 15-CV-2493; *Leloneck*, 15-CV-3641; *Fobbs*, 15-CV-4182; *Rowe*, 15-CV-4768; *Modeste*, 15-CV-5995; *Keeler*, 15-CV-6233; *Brown*, 15-CV-6452; and *Gregory*, 15-CV-6591 shall file or refile, as appropriate, their motions to amend on the MDL docket, 14-MD-2543, in accordance with the procedures set forth above (among other things, including a redline indicating all changes between the current complaint and the proposed amended complaint), by **September 30, 2015**.

SO ORDERED.

Dated: September 24, 2015
New York, New York



JESSE M. FURMAN
United States District Judge

Exhibit E

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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September 25, 2015

The Honorable Jesse M. Furman
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *In re: General Motors LLC Ignition Switch Litigation,*
14-MD-2543 (JMF)

Dear Judge Furman:

Pursuant to this Court's Order No. 8 § V, Lead and Liaison Counsel and counsel for General Motors LLC ("New GM") submit this joint written update to advise the Court of matters of possible significance in proceedings related to MDL 2543.

First, on September 18, 2015, plaintiff filed a motion to compel production of the Valukas Report, including any and all documents referenced therein, in *Davidson v. Gen. Motors LLC, et al.*, No. CT-003414-14 (Shelby County, Tenn.), a Category III wrongful death action alleging driver's seat defects in a 2012 Chevrolet Impala. (*See* Order No. 16, Doc. No. 316 (defining Category III actions as "'unrelated' actions seeking ignition switch-related discovery").) Plaintiff cites New GM's Deferred Prosecution Agreement with the U.S. Department of Justice, S.D.N.Y., as a basis for vitiating New GM's assertion of privilege concerning the redacted Report. A copy of the motion is attached hereto as Exhibit 1. The Honorable Felicia Corbin Johnson will hear argument on the motion on **October 9, 2015**. Additionally, earlier today, plaintiff cross-noticed the upcoming deposition of New GM CEO Mary Barra. A copy of the notice is attached hereto as Exhibit 2. In light of the threat to MDL coordination efforts posed by plaintiff's motion, the parties respectfully request that the Court utilize the tools at its disposal—including communication with Judge Corbin Johnson—to promote and facilitate coordination in *Davidson*.

Second, on September 22, 2015, plaintiff served an amended notice for the deposition of a New GM corporate representative in *Mathes v. Gen. Motors LLC*, No. CL12001623-00 (Augusta County, Va.), a wrongful death action alleging airbag and seat belt defects in a 2002 Chevrolet Impala. Plaintiff's notice also requests the depositions of 13 people, including certain MDL deponents, regarding ignition-switch-related topics. A copy of the notice is attached hereto as Exhibit 3. New GM intends shortly to move to quash plaintiff's request and for a

KIRKLAND & ELLIS LLP

The Honorable Jesse M. Furman
September 25, 2015
Page 2

protective order. New GM's motion for protective order is due by October 12, 2015. In light of the threat to MDL coordination efforts posed by plaintiff's requested discovery, the parties respectfully request that the Court utilize the tools at its disposal—including communication with the Honorable Victor Ludwig—to promote and facilitate coordination in *Mathes*.

Third, on September 3, 2015, the MDL 2543 Coordination Order (the "Coordination Order") was entered in *Linder v. Jim Taylor Chevrolet, LLC, et al.*, No. 43,703c (Franklin Parish, La.), a personal injury action alleging electrical system defects in a 2011 Chevrolet Silverado. A copy of the order is attached hereto as Exhibit 4.

Fourth, the Honorable Fred Pierantoni will be conducting a scheduling conference on a date to be determined in *Szatkowski, et al. v. Gen. Motors LLC, et al.*, No. 2014-08274-0 (Luzerne County, Pa.), a personal injury action alleging ignition switch defects in a 2006 Pontiac Solstice. The scheduling conference originally set for today has been continued at plaintiffs' request.

Fifth, on September 17, 2015, the parties appeared before the Honorable David Dowd for a hearing on plaintiffs' renewed motion for sanctions in *Felix, et al. v. Gen. Motors LLC*, No. 1422-CC09472 (City of St. Louis, Mo.), which was a subject of the parties' September 11, 2015 joint letter to the Court (*see* Doc. No. 1360). New GM filed its response to plaintiffs' motion on September 15, 2015. A copy of New GM's response is attached hereto as Exhibit 5. At plaintiffs' request, oral argument will be reset at a later date if necessary after the Missouri appellate court rules on the merits of New GM's writ of prohibition regarding its previously denied motions to transfer venue.

Sixth, on September 17, 2015, the Honorable David Dowd heard argument on New GM's motions for entry of the Coordination Order in *Alden, et al. v. Gen. Motors LLC*, No. 1522-CC09842 (City of St. Louis, Mo.), and in *Shell, et al. v. Gen. Motors LLC*, No. 1522-CC00346 (City of St. Louis, Mo.), wrongful death and personal injury actions each alleging ignition switch defects in multiple accidents, which were subjects of the parties' August 14, 2015 joint letter to the Court (*see* Doc. No. 1252). On September 15, 2015, the *Shell* plaintiffs filed a response to the motion, and on September 16, 2015, New GM filed a reply. Copies of the *Shell* plaintiffs' response and New GM's reply are attached hereto as Exhibits 6–7, respectively. At the hearing, Judge Dowd indicated his intention to deny New GM's motions while encouraging the parties to coordinate informally. The *Alden* and *Shell* plaintiffs agreed to entry of the MDL Protective Order, which was subsequently entered in both cases. Copies of the orders entered in *Alden* and *Shell* are attached hereto as Exhibits 8–9, respectively.

Seventh, on September 18, 2015, the Honorable Robert Schaffer denied plaintiffs' motion for sanctions against New GM in *Stevens, et al. v. Gen. Motors LLC, et al.*, No. 2015-04442

KIRKLAND & ELLIS LLP

The Honorable Jesse M. Furman
September 25, 2015
Page 3

(Texas MDL), a wrongful death and personal injury action alleging ignition switch defects in a 2007 Saturn Sky, which was a subject of the parties' August 27, 2015 joint letter to the Court (*see* Doc. No. 1252). A copy of the order denying the motion is attached hereto as Exhibit 10.

Eighth, on September 18, 2015, plaintiffs filed responses to New GM's motions for entry of the Coordination Order in *Colarossi v. Gen. Motors LLC, et al.*, No. 14-22445 (Suffolk County, N.Y.), and *Petrocelli v. Gen. Motors LLC, et al.*, No. 14-17405 (Suffolk County, N.Y.) which were subjects of the parties' July 17, 2015 joint letter to the Court (*see* Doc. No. 1194). Copies of plaintiff's responses are attached hereto as Exhibits 11–12, respectively. Return dates on the motions have been set for October 6, 2015 in *Colarossi* and for October 7, 2015 in *Petrocelli*.

Ninth, the following filings were made and orders entered in the Bankruptcy Court proceedings since the parties' September 11, 2015 joint letter to the Court (*see* Doc. No. 1360):

- September 11, 2015: The Bankruptcy Court entered an agreed order concerning the *Walton* plaintiff's No Strike Pleading. New GM filed a letter with the Bankruptcy Court advising it of proceedings in this Court related to the bankruptcy proceedings.
- September 13, 2015: New GM, the Ignition Switch Defect (ISD) and Non-ISD Plaintiffs, and the Post-Closing Accident Plaintiffs filed their Opening Briefs or Joinders concerning the Punitive Damages Issue. The *Bledsoe*, *Elliott*, and *Sesay* plaintiffs also filed a letter concerning this issue.
- September 17, 2015: In connection with plaintiffs' request for a stay of GUC Trust distributions, the following documents were filed: (i) Stipulations of Fact Regarding Request for Stay, and (ii) Declaration of Andrew Scruton in Support of the GUC Trust Administrator and Trustee's Opposition to the Plaintiffs' Stay Request Pending the Threshold Issues Appeal. Also, New GM filed a letter with the Bankruptcy Court advising it of proceedings in this Court related to the bankruptcy proceedings.
- September 18, 2015: New GM and Plaintiffs filed their Opening Briefs concerning the Imputation Issue. The *Bledsoe*, *Elliott*, and *Sesay* plaintiffs filed a letter concerning the Imputation Issue.
- September 21, 2015: New GM filed a letter brief identifying claims and allegations barred by the Sale Order in the Bellwether Complaints.
- September 22, 2015: New GM, the ISD and Non-ISD Plaintiffs, and the Post-Closing Accident Plaintiffs filed their Reply Briefs concerning the Punitive Damages Issue. Also,

KIRKLAND & ELLIS LLP

The Honorable Jesse M. Furman
September 25, 2015
Page 4

New GM filed a Notice of Appeal regarding the Bankruptcy Court's July 29, 2015 Order regarding the *Pillars* plaintiff's No Dismissal Pleading and that Court's September 9, 2015 Decision and Order denying New GM's motion for reconsideration of same.

- September 23, 2015: New GM filed a letter brief identifying claims barred by the Sale Order contained in complaints not separately addressed in letter briefs concerning the Bellwether Complaints, State Complaints, and Second Amended Consolidated Complaint.

Copies of the foregoing documents are attached hereto as Exhibits 13–30, respectively.

Tenth, pursuant to Order No. 1 § X.8, the Defendants' July 21, 2014 Status Letter (Doc. No. 73) included an Exhibit A listing cases consolidated to date in MDL 2543, as well as an Exhibit B listing related cases pending in state and federal court, together with their current status. For the Court's convenience, updated versions of Exhibits A and B are attached hereto as Exhibit 31.

Finally, the parties continue to work to ensure that the Court is provided with current and correct contact information for presiding judges in actions listed in the aforementioned Exhibit B. To that end, the Federal/State Liaison Counsel today submitted to the Court updates to the e-mail addresses of the presiding judges in Related Actions.

Respectfully submitted,

/s/ Richard C. Godfrey, P.C.

/s/ Andrew B. Bloomer, P.C.

Counsel for Defendant General Motors LLC

cc: The Honorable Robert E. Gerber
MDL Counsel of Record