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November 30, 2015

**VIA E-MAIL AND ECF**

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)**

**Plaintiffs' Letter Brief in Support of Form of Proposed Judgment**

Dear Judge Gerber:

The Ignition Switch Plaintiffs,<sup>1</sup> Non-Ignition Switch Plaintiffs, Post-Closing Accident Plaintiffs, and the States of Arizona and California ("**Plaintiffs**") submit this letter in support of their Proposed Judgment for this Court's November 9, 2015 *Decision on Imputation, Punitive Damages, and Other No-Strike and No-Dismissal Pleadings Issues* ("**Decision**") (ECF #13533).<sup>2</sup> Despite good faith efforts, Plaintiffs and New GM are unable to agree on the content of the Proposed Judgment.

**1. Plaintiffs' Proposed Judgment.**

Plaintiffs' approach is simply to follow both the ordering and the *actual language* of the Decision as closely as possible. Specifically, Plaintiffs' Proposed Judgment begins with general principles relating to imputation and punitive damages, addresses the four general contexts (personal injuries in Post-Sale accidents involving Old GM-manufactured vehicles, personal injuries in Post-Sale accidents involving New GM-manufactured vehicles, non-Products Liabilities claims, and Retained Liabilities), and then expressly addresses particular allegations in marked pleadings.

This approach ensures the faithful rendition of the precise rulings contained in the Decision and facilitates the ability of litigants and courts around the country to review the Decision and judgment in tandem, permitting a full and accurate review. In addition to following the specific structure of the Decision, Plaintiffs' Proposed Judgment implements each of the Decision's rulings. For example, if a paragraph in a particular complaint was determined by this Court to be in violation of the April 2015

<sup>1</sup> Capitalized terms have the same meanings as those assigned to them in the Decision.

<sup>2</sup> Plaintiffs' Proposed Judgment annotated with references to the Decision is attached hereto as **Exhibit A**.

Decision and June 1, 2015 Judgment, but other paragraphs of that same complaint expressly were determined not to be in violation, both are included, rather than only what is in violation (or only what is permissible). Likewise, Plaintiffs' Proposed Judgment does not go outside the four corners of the Decision to include discussions or selective interpretations of this Court's prior rulings.

Finally, unlike New GM's proposed form of judgment, Plaintiffs Proposed Judgment accurately captures this Court's conclusion that it had fulfilled its necessary gatekeeper role resulting in the Decision, and it is now the job of non-bankruptcy courts to apply the Judgment. See Decision at 14 ("The Court believes that it is sufficient that this Court state the principles under which imputation is permissible . . . and that there is nothing wrong with another court applying those principles to particular allegations in individualized contexts."); see also id. at 17, 43. Thus, Plaintiffs' Proposed Judgment makes clear that "complaints amended in compliance with this Judgment may be filed in the non-bankruptcy courts with jurisdiction over them, without violating any automatic stay or injunction or necessitating further Bankruptcy Court approval to file same." Plaintiffs' Proposed Judgment at ¶ 69.

This approach is also consistent with general principles of preclusion, and avoids the massive inefficiency and delay New GM seems to invite in its proposed judgment by seeking to have this Court retain (or assume) jurisdiction beyond its already-fulfilled gatekeeper role. This is discussed more below, along with Plaintiffs' additional specific objections to New GM's proposed judgment.

## **2. New GM's Proposed Judgment.**

New GM's proposed judgment contains three basic infirmities that are contrary to the Decision. First, New GM introduces language and concepts that are absent from the Decision. Second, it purports to tell (or suggest to) other courts how they should rule on important issues within their province.<sup>3</sup> Third, it sets forth an improper process by taking post-gatekeeping functions away from non-bankruptcy courts. These points are exemplified by the following objectionable paragraphs:

- Paragraph 3: This paragraph is misleading as it suggests imputation is limited to Product Liability Claims. It should be stricken (or replaced with an actual discussion of what this Court ruled, such as in the second sentence of Plaintiffs' Proposed Judgment at paragraph 1). Specifically, imputation has little to do with Assumed Liabilities, because they were contractually assumed. By conflating concepts New GM's proposed paragraph makes little sense.
- Paragraph 4: This paragraph adds language and concepts that are nowhere found in the Decision (e.g. "*relevant to viable Independent Claims*"; "imputation . . . can occur *only if..*"). This language suggests that this Court has said more than it has as to the *sort* of knowledge an New GM (former Old GM) employee must have as a predicate for imputation, and/or that this Court set forth a process for how non-bankruptcy courts should apply the imputation rulings whereas no such process is

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<sup>3</sup> The first and second infirmities are reflected in New GM's choice not to follow the ordering of the Decision and to combine various rulings. This leads to imprecision and makes it harder to review the Judgment and Decision together.

contained in the Decision. Instead, the Decision makes clear that it is for “nonbankruptcy courts [to] determin[e]” whether Plaintiffs’ allegations “warrant findings of imputation.” Decision at 3.

- Paragraph 5: This paragraph does not precisely track language from the Decision and provides the wrong impression that the Judgment is supposed to detail precise instructions to non-bankruptcy courts about how to impute knowledge to New GM, or how or when to admit evidence concerning imputed or inherited knowledge, when in fact the contrary is true. The Decision makes clear that imputation is very fact-specific, and in some cases could even be automatic.
- Paragraph 6: This paragraph is problematic insofar as it references the preceding paragraphs. This Court did not instruct other courts about how to decide imputation issues. The paragraph should be replaced with actual language of the Decision: “[This Court] has ruled simply that allegations of imputation to New GM premised on the knowledge of New GM employees, or documents in New GM’s files, get through the bankruptcy court gate. After that, issues as to the propriety of imputation in particular contexts in particular cases are up to the judges hearing those cases.” Decision at 38.
- Paragraph 7: The first sentence of this paragraph is incorrect as nothing in the Decision provides that assumed Product Liabilities are limited only to compensatory damages. The Decision excludes only claims for punitive damages from the assumed Product Liability claims. The third sentence inaccurately suggests that, if a Plaintiff has an Assumed Product Liability claim against New GM, that Plaintiff may not *also* have an Independent Claim for punitive damages against New GM. Hence, the third sentence is contrary to the Court’s holdings about Independent Claims.
- Paragraph 8: By referring to “viable Independent Claims” repeatedly in this paragraph, New GM misleadingly suggests that “viability” is a threshold issue, rather than something squarely in the province of non-bankruptcy courts.
- Paragraph 9: Plaintiffs submit that this entire paragraph should be stricken because it is not part of the Judgment, and mischaracterizes the Court’s holdings. Moreover, the paragraph is confusing insofar as the first sentence uses capitalized terms that are not found in and were not part of the Decision. Specifically, there is no definition in the Decision for Non-Ignition Switch Plaintiffs or Pre-Closing Accident Plaintiffs.
- Paragraph 10: Neither the second sentence nor anything similar appears anywhere in the Decision and should be stricken.
- Paragraph 11: The vague reference to “similar phrases” should be stricken, as it does not appear in the Decision. Also, the Decision does not reference the MDL or State Complaints here, and the MDL and State Complaints do not use the referenced terminology. The inclusion of the MDL and State Complaints in the list of complaints in this paragraph is confusing and misleading.

- Paragraph 12: New GM's characterization of how and when the terms "GM" or "GM-branded vehicles" may be used distorts the Decision. It would be more accurate to quote the Decision's discussion that reference to GM-branded vehicles is appropriate "when the context is clear that they can refer only to New GM – and where they do not, by words or implication, blend periods during which vehicles were manufactured by Old GM, on the one hand, and New GM, on the other." Decision at 45.
- Paragraph 14: Paragraph 14 misstates the Decision in two ways. First, while the Decision mentions fraud and consumer protection claims by name as not among the Assumed Liabilities, Decision at 39, it does not mention constructive fraud, fraudulent concealment, fraudulent misrepresentation, and negligent misrepresentation. Further, Paragraph 14 omits the Court's key distinction that fraud and consumer protection claims "are not for 'death' or 'personal injury,'" *id.*, in contrast to a claim under Restatement §402B—"Misrepresentation by Seller" which this Court held *is* a Products Liability claim and therefore an Assumed Liability. *Id.* at 64. Second, Paragraph 14 wrongfully omits that the Decision states that claims based on fraud or consumer protection statutes are permissible bases for Independent Claims.
- Paragraph 17: The second sentence is *dicta* that does not belong in a Judgment, and is also plainly inaccurate insofar as the Decision noted disagreements between certain Plaintiffs and New GM over the subjects in that sentence, and did not adopt as holdings New GM's positions. Decision at 52. Moreover, the Decision is silent about the claims of other Plaintiffs.
- Paragraph 18: The lead-in "unless otherwise set forth herein" is misleading and confusing given the earlier paragraphs about imputation in which New GM's proposed Judgment improperly suggests that this Court has set forth the standards governing non-bankruptcy courts' determination of whether imputation is made out under non-bankruptcy law.
- Paragraph 19: Paragraph 19 incorrectly seeks to compel the dismissal of the entire Adams Complaint, although the allegations in the Adams Complaint are not limited to fraud claims or claims of fraudulent concealment. Further, New GM appears to blur the distinction between, on the one hand, a duty to notify the plaintiffs of the bar date, a duty that this Court determined that New GM did not have, and, on the other hand, any claims for damages flowing from New GM's alleged failure to promptly recall vehicles with the Ignition Switch Defect. The Decision does not compel dismissal or prevent the Adams plaintiffs from filing amended complaints that, among other things, assert claims for damages resulting from missing the bar date.
- Paragraph 20: The last sentence misleadingly suggests that no claims may arise from the sale of vehicles that were Certified Pre-Owned by New GM. The claim that New GM falsely or misleadingly "certified" that a given vehicle was free from known defects and/or in good working order is a paradigmatic Independent Claim.

- Paragraph 21-22: These paragraphs fail to address the paragraphs that were deemed permissible under the Decision. Further, Paragraph 22 mischaracterizes paragraph 19 of the Arizona complaint which the Decision found as partially proper.
- Paragraphs 24, 26 and 28: The language “New GM is not the successor to Old GM” does not appear in the Decision in this context, and is misleading and should be stricken.
- Paragraph 25: Here, and in other places (such as Paragraph 27), New GM’s proposed judgment adds language prefaced with “for the avoidance of doubt,” which is not found in the Decision. In fact, the language following the preface in Paragraph 25 (which reads “[f]or the avoidance of doubt, claims referred to in this section shall not be asserted by Plaintiffs in Old GM vehicles without the Ignition Switch Defect and/or Pre-Closing Accident Plaintiffs against New GM”) illustrates New GM’s imprecision: there is not even a definition of Pre-Closing Accident Plaintiffs in the Decision.
- Paragraphs 32 and 33: New GM seeks to add to the Judgment a finding that this Court has continuing “exclusive” jurisdiction to construe or enforce the Judgment and Decision. Notably, though, this Court did *not* reserve exclusive jurisdiction. Rather, it squarely and repeatedly put the ball (appropriately) in the court of non-bankruptcy judges to evaluate the merits of the complaints under the principles set forth in the Decision; at best, the paragraph is needlessly ambiguous. The second sentence of Paragraph 33 should be stricken because the Decision did not purport to dictate the procedures under which amended complaints could be filed in Article III or state courts (e.g., after permission from the court, or automatically). .

Overall, New GM’s proposed judgment fails to faithfully track the Decision and risks confusion and misinterpretation in its application. By contrast, Plaintiffs’ Proposed Judgment adheres faithfully to this Court’s Decision and should be entered by this Court.

Respectfully submitted,

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# Exhibit A

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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

**JUDGMENT ON IMPUTATION,  
PUNITIVE DAMAGES, AND OTHER  
NO-STRIKE AND NO-DISMISSAL  
PLEADINGS ISSUES**

For the reasons set forth in the Court’s *Decision on Imputation, Punitive Damages, and Other No-Strike and No-Dismissal Pleadings Issues*, entered on November 9, 2015 (“**Decision**”),<sup>1</sup> it is hereby ADJUDGED as follows:

1. Knowledge of New GM personnel, whenever acquired, may be imputed to New GM consistent with nonbankruptcy law. See Decision at 2. But knowledge of Old GM personnel may not be imputed to New GM except on assumed Product Liabilities Claims or to the extent that it can be shown (*e.g.*, because it is the knowledge of the same employee or because it was communicated to a New GM employee) that New GM had such knowledge too. See Decision at 2-3; 15-16. Documents in New GM’s files may be utilized as a predicate for such knowledge, even if they first came into being before the sale from Old GM to New GM. See Decision at 3, 65. Allegations of that knowledge or notice, even if alleged in general terms, can be asserted by the plaintiffs with nonbankruptcy courts determining the extent to which such allegations have been alleged sufficiently specifically to warrant findings of imputation. See

<sup>1</sup> Unless otherwise defined herein, capitalized terms shall have the meanings assigned to them in the Decision.



Decision at 3.

2. Any acts by New GM personnel, or knowledge of New GM personnel (including knowledge that any of them might have acquired while previously working at Old GM) may, consistent with the April Decision and Judgment, be imputed to New GM to the extent such is appropriate under applicable nonbankruptcy law. See Decision at 65. Likewise, to the extent, as a matter of nonbankruptcy law, knowledge may be imputed as a consequence of documents in a company's files, documents in New GM's files may be utilized as a predicate for such knowledge, even if they first came into existence before the sale from Old GM to New GM. See Decision at 65. Those general principles may be applied in courts other than this one in the context of particular allegations that rely on those principles—without the need for the bankruptcy court to engage in further examination of particular allegations beyond the extent to which it has done so in the Decision. See Decision at 65.

3. The propriety of imputation turns on the specifics of the situation. See Decision at 15. Imputation must be found in the context of the imputation of identified individuals or identified documents, for particular purposes. See Decision at 15. New GM may not be saddled with imputation of Old GM knowledge by successorship alone as a substitute for showing that a fact was actually known to a New GM employee or could be ascertained from New GM's files. See Decision at 15-16. In actions alleging Product Liabilities Claims and Independent Claims, New GM's knowledge may be imputed to it starting with the first day of its existence. Plaintiffs asserting such Claims may make allegations starting with “New GM knew . . .” or “New GM was on notice that . . .” See Decision at 16.

4. Punitive damages with respect to Product Liabilities Claims or Economic Loss claims involving Old GM manufactured vehicles may be sought against New GM to the extent—

but only to the extent—they rely solely on New GM knowledge or conduct. [See Decision at 65.](#) Those claims may not be based on Old GM knowledge or conduct. [See Decision at 65, 29, 32.](#) But they may be based on knowledge of New GM employees that was “inherited” from their tenure at Old GM (or documents inherited from Old GM), and may be based on knowledge acquired after the 363 Sale by New GM. [See Decision at 65-66, 29, 32-34.](#)

5. New GM may be held liable for compensatory damages on Product Liabilities Claims based on Old GM conduct, New GM conduct or both. [See Decision at 27.](#) However, Post-Closing Accident Plaintiffs can base their claims for punitive damages only on New GM conduct or knowledge. [See Decision at 27.](#)

6. Independent Claims against New GM cannot be based, for either compensatory or punitive damages purposes, on Old GM knowledge and conduct. Damages of any character on Independent Claims must be based solely on New GM’s knowledge and conduct. [See Decision at 27.](#)

7. In actions alleging Product Liabilities Claims and Independent Claims, New GM may be held responsible, on claims for both compensatory and punitive damages, for its own knowledge and conduct. [See Decision at 27.](#) New GM might have acquired relevant knowledge when former Old GM employees came over to New GM or New GM took custody of what previously were Old GM records. [See Decision at 27.](#) Reliance on that, for punitive damages purposes, is permissible.<sup>2</sup> [See Decision at 27.](#)

8. To the extent New GM employees actually had knowledge relevant to post-Sale accident claims or Independent Claims (even if it was inherited) that was acquired in fact rather than by operation of law (such as any kind of successorship theory), plaintiffs in actions

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<sup>2</sup> Knowledge New GM might have acquired in this manner is referred to herein as “inherited” information.

asserting such Claims are free to base punitive damages claims on evidence of such knowledge to the extent nonbankruptcy law permits. [See Decision at 28.](#)

9. Information obtained by New GM after the Sale may be used for punitive damages purposes as well. [See Decision at 28.](#) The extent to which such after-acquired information is relevant to punitive damages claims is a matter of nonbankruptcy law, as to which the Court expresses no view. [See Decision at 28.](#) Evidence of information obtained by New GM after the sale may be relied upon, for punitive damages purposes, to the extent otherwise appropriate in the underlying actions. [See Decision at 28.](#)

10. To the extent Economic Loss plaintiffs (or, for that matter, State Cases Plaintiffs) make allegations based upon inherited information or information obtained by New GM after the Sale, evidence introduced using those pathways is permissible, but it is up to the judges hearing those cases to decide the propriety of reliance on such evidence to punitive damages claims. [See Decision at 28 n.56.](#)

#### New GM's Four Contexts

1) *Personal Injuries in Post-Sale Accidents Involving Vehicles Manufactured by Old GM*

11. Product Liabilities compensatory damages claims involving vehicles manufactured by Old GM were contractually assumed by New GM (and thus are permissible under the Sale Order, April Decision, and Judgment); punitive damages claims were not assumed by New GM. [See Decision at 29.](#) Thus punitive damages in such actions may not be premised on anything Old GM knew or did. [See Decision at 29.](#)

12. Nevertheless, punitive damages may still be sought in actions based on post-Sale accidents involving vehicles manufactured by Old GM to the extent the punitive damages claims are premised on New GM action or inaction after it was on notice of information

“inherited” by New GM or information developed by New GM post-Sale. [See Decision at 29.](#)

2) *Personal Injuries in Post-Sale Accidents Involving Vehicles Manufactured by New GM*

13. Personal injury compensatory damages claims against New GM involving vehicles manufactured by New GM never were foreclosed under the Sale Order and remain permissible under the April Decision and Judgment. [See Decision at 29.](#)

14. Claims against New GM for punitive damages involving New GM manufactured vehicles likewise were never foreclosed under the Sale Order, and likewise remain permissible under the April Decision and Judgment. [See Decision at 29.](#)

15. The underlying allegations and evidence used to support punitive damages claims involving New GM manufactured cars can be anything appropriate under nonbankruptcy law—including, if otherwise appropriate, not just information “inherited” by New GM or developed by New GM post-Sale, but also evidence of Old GM’s pre-Sale knowledge and conduct. [See Decision at 30.](#) The Sale Order never professed to affect claims against New GM with respect to New GM manufactured cars in any way. [See Decision at 30.](#)

3) *Non-Product Liabilities Claims (in both personal injury and economic loss complaints) Involving Vehicles Manufactured by Old GM “and/or” New GM*

(a)(i) *Personal Injury Actions-Old GM Manufactured Vehicles*

16. Because only Product Liabilities claims were assumed by New GM, other claims involving Old GM manufactured vehicles—including claims for compensatory damages on other causes of action and, as discussed above, for punitive damages—are Retained Liabilities. [See Decision at 31.](#) New GM is not responsible for them except to the extent that they are premised solely on its own conduct. [See Decision at 31.](#)

17. With respect to post-Sale Non-Product Liabilities claims asserted in actions

involving personal injuries suffered in vehicles manufactured by Old GM, punitive damages may be assessed to the extent, but only the extent, they are premised on New GM knowledge and conduct. [See Decision at 31.](#) Plaintiffs may refer to inherited knowledge and to knowledge acquired after the 363 Sale with respect to post-Sale Non-Product Liabilities claims. [See Decision at 31.](#) But punitive damages sought as an adjunct to claims in this category may not rely on the conduct of Old GM and this is true, as always, with respect to both allegations in pleadings and any evidence of such. [See Decision at 31.](#)

*(a)(ii) Personal Injury Actions-New GM Manufactured Vehicles*

18. For claims involving vehicles manufactured by New GM, plaintiffs do not need the Court's permission to assert claims for Non-Product Liabilities compensatory damages claims any more than they need the Court's permission to assert claims for Product Liabilities compensatory damages claims. [See Decision at 31.](#) The Sale Order did not foreclose claims against New GM involving New GM manufactured vehicles, and compensatory damage claims (on whatever theory) with respect to New GM manufactured vehicles may proceed against New GM without interference from this Court. [See Decision at 31-32.](#) Nor, do plaintiffs need the Court's permission to assert punitive damages claims incident to Non-Product Liabilities Claims involving New GM manufactured vehicles. [See Decision at 32.](#)

19. With respect to the evidence used to support punitive damages claims in actions involving New GM manufactured vehicles, evidence of inherited knowledge and knowledge acquired after the 363 Sale may be asserted and used; that is simply knowledge New GM had before the accident took place. [See Decision at 19.](#) Relevant evidence of Old GM knowledge and conduct may be asserted and used, as well. [See Decision at 18-19.](#)

*(b)(i) Economic Loss Actions-Old GM Manufactured Vehicles*

20. Because claims only for Product Liabilities were assumed by New GM, other

claims involving Old GM manufactured vehicles are Retained Liabilities. [See Decision at 31.](#) New GM is not responsible for those other claims except to the extent that they are premised solely on New GM's own conduct, and hence may be regarded as Independent Claims. [See Decision at 32.](#) The same is true for punitive damages claims just as it is for compensatory damages claims—and for both the assertion of claims for punitive damages and the evidence that might support them. [Id.](#)

21. Thus claims for punitive damages arising from Economic Loss actions involving Old GM manufactured vehicles cannot be asserted except for any that might be recoverable in connection with Independent Claims, and then based only on New GM knowledge and conduct. [See Decision at 31.](#) The same is true with respect to the evidence that might be offered to support those punitive damages claims. [Id.](#)

22. For vehicles already manufactured and sold before New GM came into existence, whether Independent Claims for Economic Loss can be asserted against New GM is matter of nonbankruptcy law, and not for this Court to decide. [See Decision at 31.](#) This question is better decided by the judge(s) hearing the nonbankruptcy claims that have passed through the bankruptcy court gate. [See Decision at 32.](#)

*(b)(ii) Economic Loss Actions-New GM Manufactured Vehicles*

23. Economic Loss Claims with respect to New GM manufactured vehicles—which by definition were manufactured after New GM came into being—are not proscribed by the Sale Order. [See Decision at 33.](#) Nor does the Sale Order proscribe punitive damages claims sought in actions against New GM for Economic Loss involving New GM vehicles. [Id.](#)

24. The evidence used to support such punitive damages claims may include evidence of inherited knowledge; of knowledge acquired after the 363 Sale; and, if nonbankruptcy courts regard such as appropriate, any relevant Old GM knowledge and conduct

as well. [See Decision at 33.](#) With respect to any punitive damages claims in Economic Loss actions involving New GM vehicles, those claims may be asserted against New GM. [See Decision at 33-34.](#)

4) *Assertedly Independent Claims that Are In Reality Retained Liabilities of Old GM*

25. To the extent that any claims against New GM involving Old GM manufactured vehicles are for Product Liabilities Claims or genuinely Independent Claims, claims for punitive damages against New GM may be sought in connection with them, but the evidence supporting such claims can be based only on New GM's knowledge and acts. [See Decision at 34.](#) That evidence can include inherited knowledge and knowledge acquired after the 363 Sale, but not any acts, or non-inherited knowledge, of Old GM. *Id.* This issue does not arise in connection with claims against New GM involving vehicles New GM itself manufactured. *Id.*

26. Plaintiffs cannot proceed with "purportedly Independent Claims" that really are "Retained Liabilities of Old GM." [See Decision at 34.](#) To the extent particular claims or allegations have not yet been brought to this Court's attention, but New GM wishes objections to such to be heard, those objections can be heard by the judges hearing the nonbankruptcy cases. [See Decision at 35.](#)

Particular Allegations in Marked Pleadings

A. *The Bellwether Actions Complaints*

27. New GM identified five categories of allegations in the Bellwether Marked Complaints, highlighted by color, that New GM contended were violative of the Sale Order, the April Decision, the Judgment, or some combination of them. [See Decision at 35.](#) Taking them by color and by New GM's stated objection to them, the Court rules as follows:

1) *Pink*—“Allegations that wrongly assert New GM is the successor of Old GM”

28. Allegations referring to New GM as “successor” and, especially, as a “mere continuation,” must be stricken or removed, and the affected complaints remain stayed unless and until they are amended consistent with this Court’s rulings. [See Decision at 36.](#)

29. Likewise, allegations that do not distinguish between Old GM and New GM, and that continue to refer to “General Motors” or “GM” must be stricken or revised so that it is clear whether the reference is to Old GM or New GM. [See Decision at 36.](#) Complaints using that generic formulation of “General Motors” or “GM” will remain stayed unless and until they are amended to cure violations of that character. [Id.](#)

30. Allegations that New GM engaged in activities before the closing of the 363 Sale (*i.e.*, that New GM designed a vehicle that was manufactured and sold by Old GM) must be stricken or revised, and complaints that contain this type of allegation will remain stayed unless and until they are amended to cure violations of that character. [See Decision at 36.](#)

31. As noted in the April Decision, plaintiffs’ complaints may say, *inter alia*, that New GM purchased the assets of Old GM; that New GM assumed product liability claims from Old GM; and that New GM acquired specified knowledge from Old GM. [See Decision at 37.](#)

2) *Orange*—“Allegations related to punitive damages, which were not assumed by New GM”

32. Claims against New GM for punitive damages with respect to Old GM manufactured vehicles—even where compensatory damages might legitimately be sought for Product Liabilities Claims—were not assumed. [See Decision at 37.](#) Thus, punitive damages in such cases cannot be based on pre-Sale Old GM conduct, or evidence of such. [Id.](#)

33. But New GM may still be liable for punitive damages based on knowledge it inherited from Old GM, and any knowledge it developed after the 363 Sale. Punitive damages



may be sought against New GM for post-closing accident cases involving Old GM manufactured vehicles to the extent the factual allegations and evidence supporting the punitive damages claims are consistent with this Court's rulings herein and in the Decision. [See Decision at 37.](#)

3) *Blue*—“[A]llegations seeking to impute wholesale Old GM's knowledge to New GM”

34. Imputation is context specific, but this Court assumes that under the nonbankruptcy law which will be applied in the actions pending against New GM, the acts and knowledge of employees will often be imputed to the principal. [See Decision at 38.](#) This Court also assumes that likewise to be true with respect to notice of documents within a company's files. [Id.](#) But these nonbankruptcy law issues are inappropriate for this Court's determination. [Id.](#)

35. This Court also holds that allegations of imputation to New GM premised on the knowledge of New GM employees, or documents in New GM's files, may be asserted against New GM. After that, issues as to the propriety of imputation in particular contexts in particular cases are up to the judges hearing those cases. [See Decision at 38.](#)

4) *Green*—“[A]llegations involving Claims that are Old GM Retained Liabilities”

36. With respect to claims involving vehicles manufactured by Old GM other than Product Liabilities claims, such as fraud, negligent representation, duty to warn after the vehicle's sale, and violation of consumer protection statutes at the time of sale, insofar as Old GM manufactured vehicles are concerned, New GM is liable for Product Liabilities only. [See Decision at 38.](#)

37. However, if Old GM had a duty, under nonbankruptcy law, to warn of the danger of driving a motor vehicle with a known defect, the violation of that duty to warn, when coupled

with subsequent death or injury, might reasonably be argued to have had a causal effect on any death or personal injury that could have been avoided by the warning. [See Decision at 39.](#) Violations of any duty to warn by Old GM could be said to provide further support for any claims for death or personal injury that would be actionable even as classic Product Liabilities Claims. [See Decision at 40.](#) This Court expresses no view as to whether, as a matter of nonbankruptcy law, failures to warn are actionable, or whether the requisite duties exist. But these allegations may be asserted against New GM as an assumed Product Liability Claim, and it will be up to the Judge hearing the case to determine whether it is a viable claim. *Id.*

38. In addition, some allegations highlighted in green are not subject to the above analysis because they charge New GM with violations of alleged duties that they assert New GM had to purchasers of earlier purchased vehicles. New GM can argue before other courts that such duties do not exist (or assert any other merits-based defenses to these allegations), but claims of this character that are based on New GM's own conduct and knowledge may be asserted against New GM and it will be up to the Judge hearing the case to determine whether it is a viable claim. [See Decision at 40.](#)

- 5) *Yellow—“[A]llegations based on New GM’s conduct relating to a supposed failure to warn after the vehicle sale”*

39. Here, the allegations concern alleged failures to warn by New GM prior to any accidents, as contrasted to alleged failures by Old GM. [See Decision at 40.](#) The Court does not need to determine whether such claims were assumed, as they rest on conduct allegedly on the part of New GM itself. [See Decision at 41.](#) This issue is one of nonbankruptcy law—whether New GM, as an entity that did not manufacture or sell the vehicle, had a duty, enforceable in damages to vehicle owners, to notify people who had previously purchased Old GM vehicles of the Ignition Switch Defect. *Id.* The Court does not decide this issue of nonbankruptcy law

either, and does not block the claim based on predictions as to how another court might decide it. *Id.* This Court leaves the issue to the court hearing the Bellwether actions. *Id.*

40. New GM agreed to comply with the Motor Vehicle Safety Act under Section 6.15(a) of the Sale Agreement. New GM notes properly that this covenant was not an Assumed Liability, and that vehicle owners were not third party beneficiaries of the Sale Agreement. But Plaintiffs nevertheless argue that they have a state law right of action for conduct of that character. Here too the Court leaves this issue to the judge or judges hearing the underlying claims. [See Decision at 41 & n.67.](#)

*B. The MDL Complaint*

1) *Blue*—“[N]amed plaintiffs and plaintiff classes/subclasses asserting claims based on Old GM vehicles”

41. The Economic Loss Claims in the MDL Complaint asserted by the Ignition Switch Plaintiffs that once appeared in the Pre-Sale Consolidated Complaint may be asserted against New GM so long as they are genuinely Independent Claims<sup>3</sup>—and where they then will be subject, of course, to determinations in the MDL as to the nature and extent of New GM duties to purchasers of Old GM manufactured vehicles, and whether MDL plaintiffs state causes of action under applicable nonbankruptcy law. [See Decision at 42-43.](#)

42. With respect to vehicles manufactured by Old GM, the Ignition Switch Plaintiffs recognize that they cannot premise their claims on anything done by Old GM. Plaintiffs allege claims crafted on the premise that New GM still had duties to owners of cars manufactured by Old GM. To the extent New GM had the requisite duties, the Claims are in fact Independent Claims. This Court does not rule on this issue and defers on such nonbankruptcy matters to the

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<sup>3</sup> Independent Claims include, but may not be limited to, claims against New GM for violations of the Safety Act; of other statutory or common law requirements imposing a duty to recall; of consumer protection statutes; for fraud; for breach of implied warranties of merchantability and violations of the Magnuson Moss Warranty Act; and for unjust enrichment. [See Decision at 44 n. 72.](#)

MDL Court. [See Decision at 44.](#)

- 2) *Yellow*—“[A]llegations based on Old GM conduct that supported claims for Retained Liabilities”

43. The claims and allegations asserted in the MDL Complaint containing references to “GM” alone that merge references to Old GM and New GM are not permitted. [See Decision at 45.](#) However, the MDL Complaint may refer to “GM-branded vehicles” when the context is clear that they can refer only to New GM—and where they do not, by words or implication, blend the periods during which vehicles were manufactured by Old GM, on the one hand, and New GM, on the other. [See Decision at 45.](#)

44. New GM’s objection to allegations by which conduct of Old GM employees is imputed, “automatically and wholesale,” into the MDL Complaint is overruled from a bankruptcy perspective. The Court agrees with New GM that imputation matters must be determined in context, and if imputation is to be found, it must be found in the context of the imputation of identified individuals or identified documents for particular purposes. [See Decision at 45-46.](#) But the Court decided that there is nothing wrong with another court deciding imputation matters, and that other courts will have a better sense of imputation’s propriety in context than this Court would. [See Decision at 46.](#)

45. Plaintiffs’ claims in the MDL Complaint may include allegations of Old GM conduct prefaced by words like “New GM knew that . . .” because those four words are of critical importance, and, if proven, transform the basis for imposing liability from successorship to knowledge that is one of the predicates to imposition of liability. [See Decision at 46.](#) Those four words, which now require a showing of New GM knowledge, are essential to establishing New GM’s culpability—all apart, of course, from establishing any necessary duties, private rights of action, and any other requirements for stating causes of action against New GM for cars

manufactured by Old GM. [See Decision at 46-47.](#)

- 3) *Pink*—“[C]laims alleging that New GM committed fraud in connection with Old GM’s bankruptcy”

46. The claims in the MDL and Adams Complaints seeking to hold New GM responsible for Old GM’s failure to give plaintiffs notice in the Old GM chapter 11 case cannot proceed under the April Decision and Injunction because they seek to impose liability based, in material part, on Old GM conduct, and assert forbidden successor liability claims dressed up to look like something else. And they rest on duties that do not exist under bankruptcy law. [See Decision at 47 & n.76.](#)

47. As stated in the April Decision, plaintiffs could assert otherwise viable claims against New GM for any causes of action that might exist “arising solely out of New GM’s own, independent, post-Closing acts, so long as those plaintiffs’ claims do not in any way rely on any acts or conduct by Old GM.” [See Decision at 48.](#)

48. The prohibited claims and allegations are deemed stricken and/or inoperative so the prosecution of the affected actions may continue. [Cf. Decision at 4, 66.](#)

- 4) *Orange*—“[C]laims alleging plaintiffs are entitled to contractual damages as third-party beneficiaries of the Sale Agreement.”

49. The plaintiffs’ potential claims under the Safety Act may proceed against New GM in the MDL Complaint. [See Decision at 52-53.](#) The basis of such causes of action calls for a determination of nonbankruptcy law and this Court does not rule on the extent to which claims of this character are actionable as a matter of nonbankruptcy law. [See Decision at 52-53.](#) However, the asserted rights of action under the Safety Act are Independent Claims and may proceed for determination by the MDL Court. [See Decision at 53.](#)

C. *The State Complaints*

1) *Yellow—Allegations based on Old GM conduct*

50. Allegations in the State Complaints may impute to New GM knowledge inherited from Old GM and knowledge developed by New GM, to New GM to the extent permissible under nonbankruptcy law. [See Decision at 54.](#) The Court’s rulings as to Imputation in other actions apply to the States Cases, as well. [See Decision at 53-54.](#)

51. New GM’s objection to allegations of pre-Sale conduct in the State Complaints, blending allegations relating to both Old GM and New GM without distinction, and referring to “GM-branded vehicles” are sustained. [See Decision at 53-55, 54 n. 93](#)

52. In the California complaint, the use of the catch-all “GM-branded vehicles” is impermissible. [See Decision at 54.](#) The allegations contained in the following paragraphs impermissibly allege Old GM conduct: paragraphs 46 (speaking of acts in 2001), 47 (speaking of DeGiorgio’s alleged concealment “while working for Old GM”), 48-54, 58-60, 71, 95-96, 112-114, 189-190, and 200-202. [See Decision at 54.](#) Additionally the following paragraphs contain impermissible blending of Old GM and New GM conduct, and must be clarified; they will pass through the bankruptcy gate only to the extent they intended to make reference to New GM: paragraphs 192, 195, 196, 198, 199, 203-206, and 211. [See Decision at 54 n. 93.](#) However, the following paragraphs which allege that New GM knew of safety issues (even if from the time of its inception), acquired inherited knowledge of such, or gained new knowledge of such, are benign and thus permissible: paragraphs 9, 11, 16, 18, 22, 32, 43, 44, and 45. [See Decision at 54.](#)

53. In the Arizona complaint, which includes many identical allegations to those contained in the California complaint, allegations which make reference to plainly Old GM conduct are not permissible. [See Decision at 54.](#) The following paragraphs which include

allegations of Old GM conduct are not permissible: paragraphs 92, 93, and 357; [see Decision at 54-55](#); as are the paragraphs which make it impossible to tell whether it is Old GM or New GM conduct which is alleged: paragraphs 136, 139-180 and 289-310. [See Decision at 55 n. 95](#). However, the Arizona complaint's allegations that New GM knew of matters (even if from the date of its inception) are benign and thus permissible, including paragraphs: 19, 81, 135, 137, 138, 139, 335, and 499. [See Decision at 54](#).

54. Thus the State Complaints may proceed if, but only if, they are amended to fix the deficiencies in the Yellow Category noted above; but remain stayed only until such amendments occur. [See Decision at 55](#).

2) *Blue—Allegations relating to vehicles manufactured by Old GM*

55. The claims in the State Complaints regarding vehicles manufactured by Old GM may proceed to the extent to which New GM can be held liable under nonbankruptcy law for acts or omissions after the 363 Sale—*i.e.*, after sales of vehicles to consumers. [See Decision at 56](#). Although this Court defers this determination to the courts hearing such cases, to the extent nonbankruptcy law imposes duties at the time of a vehicle's sale only, and the relevant vehicle sales took place when New GM had not yet been formed and only Old GM was in existence, claims premised on any breaches of such duties are barred by the Sale Order, the April Decision, and the Judgment. [See Decision at 56](#).

D. *The Elliott, Sesay and Bledsoe Complaints*

1) *Blue—Allegations Involving Old GM manufactured vehicles*

56. The economic loss claims asserted in the *Elliott, Sesay, and Bledsoe* Complaints are Independent Claims. [See Decision at 58](#). New GM's objections are overruled with respect to ignition switch claims and sustained with respect to non-ignition switch claims. [See Decision at 59](#).

2) *Green—Claims Premised on Old GM conduct*

57. The successor liability claim in the *Bledsoe* complaint violates the Sale Order and may not proceed. [See Decision at 59.](#)

58. References to conduct by Old GM, and references to “New GM” as “GM” violate the Sale Order. [See Decision at 59-60.](#)

3) *Yellow—Claims Seeking “to automatically impute” Old GM’s knowledge to New GM*

59. Allegations in *Elliott*, *Sesay* and *Bledsoe* Complaints may impute to New GM knowledge inherited from Old GM and knowledge developed by New GM, to the extent permissible under nonbankruptcy law. [See Decision at 54, 60.](#) The Court’s rulings as to imputation in other actions apply to these cases, as well. [See Decision at 60.](#)

4) *Pink—Claims Seeking Punitive Damages from New GM with respect to Old GM manufactured vehicles.*

60. Allegations in *Elliott* and *Sesay* Complaints for punitive damages are permissible to the extent that they are asserted in connection with Independent or retained Product Liability claims. [See Decision 29-34, 60.](#) Such allegations related to non-ignition switch claims violate the Sale Order. [See Decision at 42 n.70, 59, 60.](#)

5) *Other claims*

61. Allegations in the *Elliott*, *Sesay* and *Bledsoe* Complaints relating to Independent Claims against New GM for negligent infliction of economic loss, negligent infliction of increased risk of personal injury, breach of duty to warn, civil conspiracy, and joint action depend on whether New GM had such duties under nonbankruptcy law and the Court leaves such issues to the nonbankruptcy court hearing these cases. [See Decision at 58, 62-63.](#)

62. The *Elliott*, *Sesay* and *Bledsoe* Complaints will remain stayed until they are amended in accordance with this Order. [See Decision at 59, 60.](#)



E. *Other Complaints*

1) *“Failure to Recall/Retrofit Vehicles”*

63. Obligations, if any, that New GM had to recall or retrofit Old GM vehicles were not Assumed Liabilities, and New GM is not responsible for any failures of Old GM to do so.

See Decision at 61. But whether New GM had a duty to recall or retrofit previously sold Old GM vehicles that New GM did not manufacture is a question of nonbankruptcy law. Id. The Court does not decide whether there is the requisite duty under nonbankruptcy law, but allows this claim to be asserted by the plaintiffs, as it has been asserted by the plaintiff in Moore v. Ross, leaving determination of the duty issue to the court hearing this action. Id.

2) *“Negligent Failure to Identify Defects or Respond to Notice of a Defect”*

64. Whether New GM had a duty to identify or respond to defects in previously sold Old GM vehicles that New GM did not manufacture is a question of nonbankruptcy law. See Decision at 62. The Court does not decide whether there is the requisite duty under nonbankruptcy law, and allows this claim to be asserted by plaintiffs, leaving that issue to the court hearing that action. See Decision at 62.

3) *“Negligent Infliction of Economic Loss and Increased Risk”*

65. Claims that New GM had a duty to warn consumers owning Old GM manufactured vehicles of the Ignition Switch Defect but instead concealed it, and by doing so, the economic value of the plaintiffs’ vehicles was diminished are permissible to the extent, but only the extent, that New GM had an independent “duty to warn” owners of Old GM manufactured cars of the defect, as relevant to situations in which no one is alleged to have been injured by that failure, but where the vehicles involved are alleged to have lost value as a result.

See Decision at 62. This is a question of nonbankruptcy law, which the Court leaves to the nonbankruptcy court(s) hearing the underlying actions. Id.

4) “Civil Conspiracy”

66. *De Los Santos v. Ortega*, in Texas state court, and the Peller Complaints in the District of Columbia, involve claims that New GM was involved “in a civil conspiracy with others to conceal the alleged ignition switch defect.” [See Decision at 62-63.](#) Claims of this character were not Assumed Liabilities. [See Decision at 63.](#) The extent to which they might constitute Independent Claims requires a determination of nonbankruptcy law, beyond that, the Court leaves the determination of the nonbankruptcy issue as to whether claims of this sort are actionable, with respect to vehicles previously manufactured and sold by a different entity, to the nonbankruptcy court hearing the underlying action. [Id.](#)

5) “Section 402B—Misrepresentation by Seller”

67. Claims based on “Section 402B-Misrepresentation by Seller” fall within the definition of assumed Product Liabilities, and such claims may be asserted against New GM, *provided however*, whether New GM is liable for such claims shall be determined by the nonbankruptcy courts overseeing such lawsuits. [See Decision at 64.](#)

6) *Claims Based on Pre-Sale Accidents*

68. Claims based on *pre-Sale* accidents, like the Coleman action in the Eastern District of Louisiana, involving, by definition, Old GM manufactured vehicles should be dismissed, or should at least be stayed pending the resolution of the appeal of the April Decision and Judgment. [See Decision at 64-65.](#) These cases are currently impermissible under the Sale Order, April Decision and Judgment, and cannot proceed. [See Decision at 65.](#)

7) *Amended Complaints*

69. For the avoidance of any doubt, complaints amended in compliance with this Judgment may be filed in the non-bankruptcy courts with jurisdiction over them, without

violating any automatic stay or injunction or necessitating further Bankruptcy Court approval to  
file same. [See e.g., Decision at 14, 17 and 43.](#)

Dated: New York, New York  
December \_\_, 2015

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UNITED STATES BANKRUPTCY JUDGE