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

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

**REPLY BY GENERAL MOTORS LLC TO OBJECTION AND
RESPONSE TO MOTION BY GENERAL MOTORS LLC
PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE
BANKRUPTCY COURT’S JULY 5, 2009 SALE ORDER AND
INJUNCTION, AND THE RULINGS IN CONNECTION THEREWITH**

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General Motors LLC (“**New GM**”), by its undersigned counsel, submits this reply (“**Reply**”) to the *Objection By State Court Plaintiffs To Motion By General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Bankruptcy Court’s July 5, 2009 Sale Order And Injunction, And The Rulings In Connection Therewith* [Dkt. No. 13642] (“**State Court Plaintiffs Objection**”), filed by the State Court Plaintiffs¹ on June 20, 2016.² In support of this Reply, New GM states as follows:

PRELIMINARY STATEMENT

The State Court Plaintiffs (who are Post-Closing Accident Plaintiffs without the Ignition Switch Defect) are intentionally violating the Bankruptcy Court’s November 2015 Decision and December 2015 Judgment, which expressly provide that “plaintiffs whose claims rise in connection with vehicles without the Ignition Switch Defect”³ cannot assert Independent Claims⁴ against New GM (with respect to an Old GM Vehicle), and punitive damages for such Claims.

¹ Capitalized terms not otherwise defined herein shall have the meanings scribed to them in the *Motion By General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Bankruptcy Court’s July 5, 2009 Sale Order And Injunction, And The Rulings In Connection Therewith*, filed by New GM on June 1, 2016 [Dkt No. 13634-1] (“**Motion to Enforce**”).

² In addition to the State Court Plaintiffs Objection, there was also a filed response entitled *Lead And Designated Counsel’s Response To Motion By General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Bankruptcy Court’s July 5, 2009 Sale Order And Injunction, And The Rulings In Connection Therewith* [Dkt. No. 13643]. This Response was filed solely to reiterate a legal position that New GM has already rebutted in pleadings before the Second Circuit in the pending appeal of the April 2015 Decision and the June 2015 Judgment. In short, the MDL Class Plaintiffs (as defined in the Lead Counsel Response) never appealed the April 2015 Decision and the June 2015 Judgment on behalf of Non-Ignition Switch Plaintiffs. The MDL Class Plaintiffs’ *Notice of Appeal*, dated June 2, 2016 [Dkt. No. 13185], and *Appellants’ Statement of Issues on Appeal and Designation of Items to be Included in the Record on Appeal*, dated June 16, 2016 [Dkt. No. 13219] were made on behalf of the Ignition Switch Plaintiffs only. The briefs filed by MDL Class Plaintiffs were captioned and submitted on behalf of the Ignition Switch Plaintiffs only. The only Non-Ignition Switch Plaintiffs who appealed the April 2015 Decision and the June 2015 Judgment were the handful of plaintiffs represented by counsel Gary Peller, Esq., who did so on their behalf only.

³ December 2015 Judgment, ¶14. To be clear, for purposes of the Motion to Enforce and this Reply, “Post-Closing Accident Plaintiffs” includes plaintiffs, like the State Court Plaintiffs, that commenced lawsuits against New GM asserting claims for personal injury arising from accidents involving Old GM vehicles that took place after the closing of the 363 Sale. Contrary to the State Court Plaintiffs’ assertion, their claims have already been decided by the Bankruptcy Court, as discussed herein.

The State Court Plaintiffs' belated excuses for their willful violation of the Bankruptcy Court's rulings fall flat.⁵ As shown in *Part I*, the Bankruptcy Court intended to rule on the issues raised by the State Court Plaintiffs in connection with the November 2015 Decision and December 2015 Judgment. In *Part II*, we show that the Bankruptcy Court intended that its rulings would be binding on Post Closing Accident Plaintiffs such as the State Court Plaintiffs. In *Part III*, we demonstrate that the State Court Plaintiffs cannot willfully violate the November 2015 Decision and December 2015 Judgment because they unilaterally decide (as if they were an appellate court) that the Bankruptcy Court was wrong in not providing them with the same relief that the Ignition Switch Plaintiffs were given. The burden was on the State Court Plaintiffs to file a motion in the Bankruptcy Court pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure for a modification of the Sale Order and Injunction if they reasonably believed there was a basis to do so (on due process grounds or otherwise). They have not done so (let alone establish that there was a due process violation as to them). And, since they never appealed the December 2015 Judgment which was binding on them, it is too late for them now to raise due process issues. In *Part IV*, we show that *Grumman Olson* is distinguishable since, among other things, Product Liabilities were assumed under the Sale Agreement so the State Court Plaintiffs have a remedy. And, in *Part V*, we demonstrate that *Manville IV*, a subject matter jurisdiction case, is inapplicable to the enforcement of New GM's rights under the Sale Order and Injunction. The Bankruptcy Court and the District Court have already so ruled. In any event, as a result of

⁴ Whether the Bankruptcy Court had the authority to create in the June 2015 Judgment the concept of "Independent Claims"—a new category of liabilities associated with Old GM vehicles—is one of the issues that New GM has raised on appeal in the Second Circuit.

⁵ The State Court Plaintiffs Objection states that the Fox Plaintiff "offered to file a Second Recast & Amended Complaint" (State Court Plaintiffs Objection, at 1 n.2). This afternoon, a Second Recast & Amended Complaint was filed, wherein the punitive damages request was deleted. The Fox Plaintiff also offered to strike its Independent Claim (duty to warn), subject to a condition that has not been agreed to at this point.

the December 2015 Judgment which is binding on the State Court Plaintiffs, it is now too late for the State Court Plaintiffs to raise a jurisdiction defense.

It is well-established by this Court, in the context of interpreting and enforcing the Sale Order and Injunction, that parties like the State Court Plaintiffs cannot prosecute their state court actions in violation of existing rulings of the Bankruptcy Court. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995) (“persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order); *see also In re Motors Liquidation Co.*, 513 B.R. 467, 478 (Bankr. S.D.N.Y. 2014) (citing *Celotex*). That is especially true where, as here, the State Court Plaintiffs had notice of, and the right to participate in, the proceedings leading to the November 2015 Decision and the December 2015 Judgment, and never appealed those Bankruptcy Court rulings. To be clear, New GM’s position is that all of these issues have been fully litigated, the State Court Plaintiffs are bound by principles of collateral estoppel to those rulings, and this is not an opportunity for the State Court Plaintiffs to have a “second bite of the apple,” or to use their violation of the November 2015 Decision and the December 2015 Judgment as a back door opportunity to re-litigate issues, or to create new appeal opportunities, for matters that have been already been finally determined by this Court.

REPLY

I. The Bankruptcy Court Ruled On the State Court Plaintiffs’ Issues in Connection with the November 2015 Decision and December 2015 Judgment.

The Bankruptcy Court’s Case Management Order dated August 19, 2015 [Dkt. No. 13383] (“**August CMO**”),⁶ explicitly asked the parties to inform the Court if “any other matters . . . need to be addressed by this Court” in connection with the pleadings filed after the entry of the June 2015 Judgment. August CMO, ¶ 1(g). Importantly, the Bankruptcy Court stated that it was “in particular need of information with respect to the *Non-Ignition Switch Plaintiffs’ claims (whether for injury or death or economic loss)*, and pending and future matters affecting them, but so long as such claims are satisfactorily covered in the letter(s) to come, they can be addressed in connection with other claims to the extent appropriate.” *Id.* ¶ 2 (emphasis added).⁷ It is thus abundantly evident that, as part of the proceedings leading to the November 2015 Decision and the December 2015 Judgment, the Bankruptcy Court intended to resolve all bankruptcy-related issues associated with the lawsuits filed by Post-Closing Accident Plaintiffs asserting personal injury claims relating to Old GM Vehicles (like the State Court Plaintiffs).⁸

An issue identified by New GM to be addressed by the Bankruptcy Court was whether “requests for punitive/special damages against New GM based in any way on Old GM conduct,

⁶ A copy of the August CMO is contained in the compendium of exhibits filed with the Motion to Enforce as Exhibit “H.”

⁷ After the June 2015 Judgment, plaintiff Dolly Walton filed a No Strike Motion [Dkt. 13228] in connection with a post-363 Sale accident involving her Old GM vehicle without the Ignition Switch Defect, seeking the right to assert punitive damages against New GM. Ultimately, Ms. Walton withdraw her punitive damage request, but this underlying *Walton* controversy was extant at the time of the August CMO.

⁸ The State Court Plaintiffs incorrectly argue that the April 2015 Decision and June 2015 Judgment only applied to Ignition Switch Plaintiffs, and not Non-Ignition Switch Plaintiffs. They build on that false premise and argue incorrectly that the November 2015 Decision and the December 2015 Judgment similarly did not deal with Old GM Vehicle Owners without the Ignition Switch Defect. As demonstrated by their own brief at page 6, the original premise about the April 2015 Decision and June 2015 Judgment was wrong, and, as demonstrated in this section, the State Court Plaintiffs were equally wrong about Post-Closing Accident Plaintiffs without the Ignition Switch Defect not being covered by the November 2015 Decision and the December 2015 Judgment.

including but not limited to post-363 Sale accidents of Old GM vehicles” were barred by the Bankruptcy Court’s rulings. *See* Letter by New GM to Bankruptcy Court, dated August 26, 2016 [Dkt. No. 13390] (“New GM August 26 Letter”),⁹ at 4. The identified punitive damage issue specifically referred to post-363 Sale accidents; there was no distinction between Old GM Vehicles with the Ignition Switch Defect, and those, like the State Court Plaintiffs, without the Ignition Switch Defect. In the end, the Bankruptcy Court resolved the punitive damage issue in the November 2015 Decision and the December 2015 Judgment on behalf of all Post-Closing Accident Plaintiffs, including plaintiffs like the State Court Plaintiffs.

Another issue identified in the New GM August 26 Letter to be addressed by the Bankruptcy Court was whether certain causes of action asserted by plaintiffs (including the State Court Plaintiffs) were assumed by New GM when it assumed Product Liabilities under the Sale Agreement. The Bankruptcy Court agreed with New GM’s request to rule on certain reoccurring claims, and the November 2015 Decision and the December 2015 Judgment made numerous rulings in this regard, some of which are relevant and dispositive of issues in dispute herein.

To facilitate the review and consideration of improper claims and allegations that were being asserted against New GM by plaintiffs (including plaintiffs like the State Court Plaintiffs), the Bankruptcy Court requested that marked pleadings be filed to illustrate the issues in dispute. New GM, in turn, suggested that representative complaints be filed, and issues categorized, because the MDL complaint itself was over 1,000 pages, and the aggregate number of pages involved in all of the pertinent complaints was a high multiple of that page number. New GM’s approach was adopted by the Bankruptcy Court in the September 3 Scheduling Order.¹⁰

⁹ A copy of the New GM August 26 Letter is annexed hereto as **Exhibit “A.”**

¹⁰ The State Court Plaintiffs assertion that the September 3 Scheduling Order *required* that New GM mark-up *all* of the complaints of *all* Post-Closing Accident Plaintiffs to show how such complaints violated the Bankruptcy Court’s ruling is wrong. The September 3 Scheduling Order provided:

At the hearing held in connection with the August CMO, Edward Weisfelner from Brown Rudnick, Lead Bankruptcy Counsel for the plaintiffs asserting claims against New GM, raised certain issues where there was not agreement among the parties, including those concerning plaintiffs without the Ignition Switch Defect. He stated:

if a non-ignition switch defect claimant, whether would start an independent claim against New GM, would that non-ignition switch plaintiff be successful, vis-a-vis Your Honor as a gatekeeper. New GM's contention is that, aha, wait a second, the non-ignition switch plaintiff cannot assert an independent claim against New GM unless and until that non-ignition switch plaintiff demonstrates that back in '09, its due process rights were violated. Because Your Honor only determined that independent claims were permissible having first determined that the ignition switch plaintiffs' due process rights were violated with prejudice because they didn't have an opportunity to argue over breadth of the injunction.

Transcript of Hearing held August 31, 2015 ("8/31/15 Hr'g Tr."), at 27:12-23.¹¹ After raising this issue, the Bankruptcy Court asked if Mr. Weisfelner was "now going to be kind of designated counsel for non-ignition switch plaintiffs" *Id.*, at 38:9-10. The following colloquy then took place:

MR. WEISFELNER: ". . . yes, we perceive ourselves as having taken the mantel of preserving and protecting the rights of non-ignition switch plaintiffs in this court."

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"); September 3 Scheduling Order, at 5 (emphasis added).

In the New GM Marked Other Plaintiffs' Complaint Letter, dated September 23, 2015 [Dkt. No. 13466] (a copy of which, without exhibits, is annexed hereto as **Exhibit "B"**), New GM specifically stated that "[t]he issues raised by the Other Plaintiffs' Complaints are found in multiple cases filed against New GM. Pursuant to the Scheduling Order, New GM was permitted to identify 'representative cases' that raise these issues. New GM's arguments are applicable to all such cases, and any rulings by the Court should be binding on all plaintiffs in such cases." The State Court Plaintiffs were served with the New GM Marked Other Plaintiffs' Complaint Letter. *See* Motion to Enforce, Compendium of Exhibits, Exh. "M."

¹¹ A copy of the relevant portions of the August 31, 2015 Transcript is annexed hereto as **Exhibit "C."**

THE COURT: So I don't have to worry about them not having been heard if I listen to you.

MR. WEISFELNER: I think that's a correct conclusion, especially in light of Your Honor's procedures in the judgment itself.

Id. at 38:17-24.

Later on at the hearing, the Bankruptcy Court noted that “the non-ignition switch plaintiffs’ inability or inaction to have yet established a due process violation to give them the benefits that the remainder of your constituency got is, in my view, a big issue.” 8/31/15 Hr’g Tr., at 80:21-25. While the Bankruptcy Court noted that he had not decided this issue, it was nonetheless an issue that needed to be addressed with finality. Mr. Weisfelner responded, saying that “[t]o the extent that that remains an issue, then in term of triaging things, it seems to me that we need to get that issue teed up quickly because to the extent that people, either New GM or us, depending on who loses, needs to appeal that decision, they ought to get started.” *Id.* at 81:22-82:2.¹²

In addition to the participation of Lead Bankruptcy Counsel, as part of the proceedings leading to the November 2015 Decision and the December 2015 Judgment, the claims of plaintiffs with Old GM Vehicles without the Ignition Switch Defect (which included Post-Closing Accident Plaintiffs) were addressed by the Bankruptcy Court in connection with pleadings filed by counsel Gary Peller.¹³

Moreover, in the New GM Marked Other Plaintiffs’ Complaint Letter, New GM specifically identified as representative samples of barred claims, certain complaints filed by

¹² The concern raised by Mr. Weisfelner about teeing up an appeal related to coordinating the already pending appeal of the April 2015 Decision and the June 2015 Judgment; briefs were yet to be filed in the Second Circuit when that statement was made.

¹³ See *New GM Peller Clients Marked Complaints Letter*, dated October 30, 2015 [Dkt. No. 13523], at 2 n.3. Two of these plaintiffs (Kanu and Mitchell) were involved in post-363 sale accidents of Old GM Vehicles without the Ignition Switch Defect (*i.e.*, Chevrolet Impalas). A copy of the New GM Peller Clients Marked Complaints Letter, without exhibits, is annexed hereto as **Exhibit “D.”**

plaintiffs involved in post-363 Sale accidents that concerned Old GM Vehicles without the Ignition Switch Defect. For example, the New GM Marked Other Plaintiffs' Complaint Letter requested that the Bankruptcy Court find that (i) claims based on a failure to recall or retrofit a vehicle are not Assumed Liabilities, using a representative complaint that concerned a post-363 accident involving a 1996 GMC pick-up truck, (ii) claims based on a failure to identify defects or respond to a notice of defect are not Assumed Liabilities, using a representative complaint that concerned a post-363 accident involving a 2005 Chevrolet Malibu, and (iii) claims based on Section 402B – Misrepresentation by Seller, using a representative complaint that concerned a post-363 accident involving a 2002 Chevrolet S-10 pickup truck.

In sum, the Bankruptcy Court clearly stated its intention to rule on Post-Closing Accident Plaintiff (both Old GM vehicles with the Ignition Switch Defect, and those without the Ignition Switch Defect) issues as part of the November 2015 Decision and the December 2015 Judgment, and their interests were represented by Lead Bankruptcy Counsel and other plaintiffs' counsel. As shown in the next section, State Court Plaintiffs were notified of the proceedings leading to the November 2015 Decision and the December 2015 Judgment, and were given standing to participate therein (which they chose not to do).

II. The Bankruptcy Court Intended that Its Rulings Would be Binding on the State Court Plaintiffs.

The State Court Plaintiffs acknowledge that they were on notice of the proceedings leading to the entry of the November 2015 Decision and the December 2015, but chose not to participate. *See* State Court Plaintiffs Objection, at 13-14. Their explanation as to why they did not feel compelled to participate does not withstand scrutiny.

As part of the New GM August 26 Letter, New GM informed the Bankruptcy Court that it recently sent out demand letters to plaintiffs involved in other lawsuits pursuant to the

procedures set forth in the June 2015 Judgment. Attached to the New GM August 26 Letter was an exhibit which listed the lawsuits where a demand letter had been sent. One of those lawsuits was the Tibbetts Lawsuit, which is subject of the Motion to Enforce. Counsel for the Tibbetts Plaintiff also represents the Chapman Plaintiff in the Chapman Lawsuit, another case that is subject to the Motion to Enforce.¹⁴ A demand letter was also sent to counsel for the Chapman Plaintiffs on September 1, 2015, before the entry of the September 3 Scheduling Order.

In the New GM August 26 Letter, New GM specifically stated that it

believes that the issues raised by these lawsuits can be resolved at one time in the context of the procedures described herein. It should be noted that many of the demand letters were recently sent out by New GM so that affected parties would be bound by Your Honor's rulings on the issues to be determined as set forth in this letter. In other words, affected parties would be subject to principles of collateral estoppel for these issues and not simply stare decisis.

Id. at 2. New GM also reserved “the right to send out demand letters on any lawsuit (currently pending against New GM or that will be filed in the future) if it believes such lawsuit violates the Judgment, April 15 Decision (as herein defined) or the Sale Order and Injunction.” *Id.* at 2 n. 2.

The Bankruptcy Court ultimately entered the September 3 Scheduling Order, which authorized New GM to serve that Order on parties who previously received demand letters with the following Court-approved cover note:

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

¹⁴ As noted in the State Court Plaintiffs Objection, a settlement was reached in the Lemus Lawsuit and, therefore, that lawsuit is no longer subject to the Motion to Enforce.

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.

September 3 Scheduling Order, at 4 (emphasis added).

Prior to entry of the September 3 Scheduling Order, this Court-approved note was discussed at the August 31 hearing; and the Bankruptcy Court noted that such process “sound[ed] sensible” 8/31/15 Hr’g Tr., at 118:13. Counsel for the parties at the August 31 hearing (including Goodwin Procter, counsel now for the State Court Plaintiffs) reviewed and approved the form of the September 3 Scheduling Order.

As noted in the Motion to Enforce, New GM timely served counsel for the Tibbetts Plaintiff and the Chapman Plaintiff with the September 3 Scheduling Order, and the Court-approved note (as well as pleadings filed by New GM in connection therewith). While the Tibbetts Plaintiff and Chapman Plaintiff were not *required* to participate in the proceedings leading up to the November 2015 Decision and the December 2015 Judgment, they were put on notice that if they did not, they would be bound by the Bankruptcy Court’s rulings.

Moreover, the September 3 Scheduling Order provided:

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.

Id. at 5.

The Fox Plaintiff received her demand letter and a copy of the September 3 Scheduling Order a few days after entry of the September 3 Scheduling Order. Accordingly, the Fox Plaintiff

was in the exact same position as the Tibbetts Plaintiff and the Chapman Plaintiff. Since New GM reserved the right to send out additional demand letters, and the September 3 Scheduling Order allowed all plaintiffs to participate in the proceedings, the Fox Plaintiff should be bound on collateral estoppel grounds by the Bankruptcy Court's rulings in the same way that the Tibbetts Plaintiff and the Chapman Plaintiff are bound.¹⁵

Collateral estoppel applies when the following requirements are met: “(1) the identical issue was raised in a previous proceeding; (2) the issue was actually litigated and decided in the previous proceeding; (3) the part[ies] had a full and fair opportunity to litigate the issue; and (4) the resolution of the issue was necessary to support a valid and final judgment on the merits.” *Marvel Characters, Inc. v. Simon*, 310 F.3d 280, 288–89 (2d Cir. 2002). Here, all of the collateral estoppel requirements are met to bind the State Court Plaintiffs to the November 2015 Decision and the December 2015 Judgment.

In sum, the Bankruptcy Court intended that the November 2015 Decision and December 2015 Judgment would be binding on all Post-Closing Accident Plaintiffs without the Ignition Switch Defect, such as the State Court Plaintiffs.¹⁶ They are bound on collateral estoppel grounds to those rulings.

¹⁵ The Fox Plaintiff asserts that the filing of the Motion to Enforce is a “litigation tactic aimed at delaying the trial in the Georgia State Court.” State Court Plaintiffs Objection, at 14 n.17. That obviously is not the case. New GM filed the Motion to Enforce at this time to give the Court an appropriate amount of time to resolve the issues raised therein so as to not interfere with the trial scheduled in September 2016. As noted in the Motion to Enforce, New GM is currently working with other plaintiffs’ counsel in connection with pleadings in other lawsuits. Ideally, New GM would have preferred to wait to file the Motion to Enforce to include other plaintiffs that are not complying with the Bankruptcy Court rulings. However, given the upcoming September 2016 trial date in the Fox Lawsuit, New GM was compelled to file the Motion to Enforce earlier than it would have otherwise.

¹⁶ As noted in the Lead Counsel Response, MDL Class Plaintiffs have recognized that based on the November 2015 Decision and the December 2015 Judgment, Non-Ignition Switch Plaintiffs were required to amend their complaints to strike Independent Claims against New GM (which they have done). *See* Lead Counsel Response, ¶ 1.

III. The State Court Plaintiffs Cannot Willfully Violate the Bankruptcy Court Rulings Regarding Independent Claims Simply Because They Disagree With Those Rulings

The State Court Plaintiffs have never filed a motion in this Court, let alone proven, that the Sale Order and Injunction should be modified for them to assert Independent Claims based on an alleged due process violation. In essence, they are proceeding in State Court as if they won a motion they never filed. The reality is that the State Court Plaintiffs are willfully violating the November 2015 Decision and the 2015 December Judgment, which are binding on them.¹⁷ According to those Bankruptcy Court rulings, the State Court Plaintiffs are prohibited from asserting Independent Claims and punitive damages against New GM.

The State Court Plaintiffs' argument that Post-Closing Accident Plaintiffs without the Ignition Switch Defect have not been given an opportunity to prove a due process violation is meritless. Bankruptcy enforcement proceedings on these issues commenced in 2014, over two years ago. The State Court Plaintiffs could have teed up the due process issue in the Bankruptcy Court during such time. Moreover, the State Court Plaintiffs were forewarned that they would be barred from asserting Independent Claims by the April 2015 Decision and the June 2015 Judgment. In those rulings, the Bankruptcy Court held that only Ignitions Switch Plaintiffs (and not Non-Ignition Switch Plaintiffs) could assert Independent Claims against New GM. The State Court Plaintiffs did nothing after the April 2015 Decision and the June 2015 Judgment, or before the November 2015 Decision and the December 2015 Judgment, to raise a due process issue in the Bankruptcy Court. This failure to act is glaring, considering the Bankruptcy Court told Post-Closing Accident Plaintiffs without the Ignition Switch Defect that if they wanted to raise a due

¹⁷ The only appeal filed in connection with the November 2015 Decision and the December 2015 Judgment relates to whether New GM is responsible for plaintiffs' failure to file proofs of claim against Old GM. It has nothing to do with the ability of Post-Closing Accident Plaintiffs without the Ignition Switch Defect to assert Independent Claims.

process issue, they should do so in connection with the proceedings relating to the November 2015 Decision and the December 2015 Judgment.

In the November 2015 Decision, in holding that Non-Ignition Switch Plaintiffs could not assert Independent Claims against New GM, the Bankruptcy Court noted that Non-Ignition Switch Plaintiffs:

could have tried to show the Court that they had “known claims” and were denied due process back in 2009, but they have not done so. The Court ruled on this expressly in the Form of Judgment Decision [relating to the June Judgment]. It then held:

The Non-Ignition Switch Plaintiffs’ claims remain stayed, and properly so; those Plaintiffs have not shown yet, if they ever will, that they were known claimants at the time of the 363 Sale, and that there was any kind of a due process violation with respect to them. And unless and until they do so, the provisions of the Sale Order, including its injunctive provisions, remain in effect.

531 B.R. at 360. That ruling stands. In the April Decision and resulting Judgment, the Court modified a Sale Order under which the buyer had a justifiable right to rely because a higher priority—a denial of due process, which was of Constitutional dimension—necessitated that. But without a showing of a denial of due process—and the Non-Ignition Switch Plaintiffs have not shown that they were victims of a denial of due process—the critically important interests of finality (in each of the 2009 Sale Order and the 2015 Form of Judgment Decision and Judgment) and predictability must be respected, especially now, more than 6 years after entry of the Sale Order.

In re Motors Liquidation Co., 541 B.R. 104, 130 n. 70 (Bankr. S.D.N.Y. 2015); *see also id.* at 140 (in connection with claims asserted by plaintiffs represented by Gary Peller, some of which concerned post-sale accidents involving Old GM Vehicles without the Ignition Switch Defect, the Bankruptcy Court held that the “third type of Blue Category objection concerns claims asserted on behalf of Non-Ignition Switch Plaintiffs. This objection is sustained, in full, with respect to all assertedly Independent Claims for reasons discussed in n.70 above”).

Clearly, the time to raise due process issues relating to the Sale Order and Injunction was in connection with the proceedings relating to the November 2015 Decision and the December

2015 Judgment. It is now too late for the State Court Plaintiffs to raise due process issues after the November 2015 Decision and December 2015 Judgment is final as to them.¹⁸

The State Court Plaintiffs want the same modification to the Sale Order and Injunction as provided to the Ignition Switch Plaintiffs even though they recognize that they have not sought to prove (let alone proven) that they were known creditors of Old GM as of the 363 Sale and, therefore, entitled to receive the 363 Sale notice by direct mail (instead of publication). Without a due process violation, there is no basis under the April 2015 Decision and June 2015 Judgment to modify the Sale Order and Injunction.

IV. Grumman Olson Is Not Applicable

In addition to not filing a motion to modify the Sale Order and Injunction, or actually demonstrating a due process violation and any resulting prejudice, a critical difference between the State Court Plaintiffs and the *Grumman Olson* case is that New GM *agreed* to assume Product Liabilities. Therefore, this case is *not* about a plaintiff who has *no* redress for its claims relating to an allegedly defective product manufactured by a debtor. This important distinction was noted by the bankruptcy court in *Grumman Olson*, who clearly understood that the *GM* case presented a different situation: “To the contrary, the buyer in GM assumed ‘all product liability claims arising from accidents or other discrete incidents arising from operation of GM vehicles occurring subsequent to the closing of the 363 Transaction, *regardless of when the product was purchased.*’” *In re Grumman Olson Indus., Inc.*, 445 B.R. 243, 255-56 (Bankr. S.D.N.Y. 2011),

¹⁸ See *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137, 152 (2009) (“On direct appeal of the 1986 Orders, anyone who objected was free to argue that the Bankruptcy Court had exceeded its jurisdiction, and the District Court or Court of Appeals could have raised such concerns *sua sponte*. . . . But once the 1986 Orders became final on direct review (whether or not proper exercises of bankruptcy court jurisdiction and power), they became res judicata to the ‘parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.’” (citations omitted)).

aff'd, 467 B.R. 694 (S.D.N.Y. 2012) (quoting *In re General Motors Corp.*, 407 B.R. 463, 482 (Bankr. S.D.N.Y. 2009)) (emphasis in original).

Moreover, this case is not a situation where post-363 Sale accidents were not contemplated or considered by Old GM, New GM or the Bankruptcy Court. In fact, post-363 Sale accidents were a significant focus of the parties in June 2009. Initially, New GM agreed to assume liabilities associated with accidents that occurred after the closing of the 363 Sale, but only if the vehicle was *sold* after the 363 Sale. After negotiations among various parties in June 2009, this provision of the Sale Agreement was changed such that New GM agreed to assume Product Liabilities in connection with accidents that occurred after the closing of the 363 Sale, regardless of when the vehicle was first sold. Accordingly, unlike *Grumman Olson*, this liability was specifically addressed in the Sale Agreement and the Sale Order and Injunction.

Additionally, *Grumman Olson* is construed to be an exception to the “no successor liability finding” in a 363 sale order. The underlying premise is that post-363 sale plaintiffs should be given a remedy for product liability claims, and if the debtor/seller is otherwise defunct, the asset purchaser may be liable for the debtor/seller’s liability. Here, the State Court Plaintiffs acknowledge that they are not seeking to hold New GM liable under a successor liability theory. *See* State Court Plaintiffs Response, at 23. Thus, *Grumman Olson* is distinguishable on this basis as well.

Indeed, the dispute in this case relates to the State Court Plaintiffs desire to allege an Independent Claim against New GM. By definition, Independent Claims are not predicated on an Assumed Liability or a Retained Liability. *See* December 2015 Judgment, at 1 n.2. In other words, an Independent Claim must be based solely on an independent duty that New GM acquired after the 363 Sale (unrelated to a duty that Old GM had) that is established solely by

New GM's own independent post-Closing acts or conduct. *Id.* In this regard, New GM's alleged duty relating to an Independent Claim must be assessed (a) in its capacity as a non-manufacturer and non-seller of the Old GM vehicle, (b) without regard to any obligations New GM incurred under the Sale Agreement, and (c) in its capacity as a non-successor in interest to Old GM. Those distinctions make this a different case than *Grumman Olson*. As the District Court in *Grumman Olson* noted: "This case ultimately turns on the potential reach of section 363 'free and clear' sale order to extinguish a claim against a purchaser that is based on *pre-bankruptcy conduct of the debtor*" *In re Grumman Olson Indus., Inc.*, 467 B.R. 694, 703 (S.D.N.Y. 2012) (emphasis added). In other words, the antithesis of an Independent Claim.

The reality is that the so-called Independent Claims asserted by the State Court Plaintiffs are either Assumed Liabilities or Retained Liabilities anyway. In *Tibbetts*, the plaintiff frames her Independent Claim for duty to warn as something that New GM "assumed". See *Tibbetts* First Amended Complaint, ¶ 37; see also *id.* ¶ 38 ("New GM assumed the responsibility to act reasonably and responsibly post-sale"); *id.* ¶ 39 (New GM assumed responsibility to use reasonable care in the warnings). The *Chapman* case, by the same attorney, follows the same pattern. See *Chapman* First Amended Complaint, ¶ 13 (Independent claims were based on New GM "accepting legal responsibility for certain assumed liabilities....").¹⁹ In the *Fox* case, the State Court Plaintiff alleges a New GM duty to warn which emanates from the same alleged Old GM duty to warn.

Significantly, counsel for the State Court Plaintiffs actually raised the due process/*Grumman Olson* argument at the hearing on the issues set forth in the September 3 Scheduling Order, arguing that New GM should be liable on a successor liability theory for

¹⁹ *Tibbetts* and *Chapman* both seek punitive damages for Assumed Liabilities which is proscribed by the November 2015 Decision and the December 2015 Judgment.

punitive damages. See Transcript of Hearing held October 14, 2015, at 22:2-13.²⁰ In the December 2015 Judgment, however, the Bankruptcy Court held that allegations alleging that New GM is a successor to Old GM are barred (*id.* ¶ 18), and that New GM did not assume punitive damages (*id.* ¶ 6).

In short, *Grumman Olson* is not applicable to this case.

**V. The State Court Plaintiffs' Subject Matter Jurisdiction Objection
Rehash Arguments Previously Made and Rejected by the Bankruptcy Court**

After recognizing that the Bankruptcy Court limited the assertion of Independent Claims against New GM to Ignition Switch Plaintiffs, the State Court Plaintiffs, like other plaintiffs before it, fall back on the now familiar refrain that the Bankruptcy Court lacked subject matter jurisdiction to bar claims against the purchaser of the debtor's assets arising from Old GM Vehicles. The State Court Plaintiffs (like the plaintiffs who argued, and lost, in connection with the Four Threshold Issues) attempt to draw a distinction between *in rem* claims and *in personam* claims, relying on the Second Circuit's decision in *Travelers Casualty & Surety Co. v. Chubb Indemnity Insurance Co. (In re Johns-Manville Corp.)*, 600 F.3d 135 (2d Cir. 2010), *cert. denied*, 131 S. Ct. 644 (2010).

The argument the State Court Plaintiffs now make was in fact raised by product liability claimants at the Sale Hearing (and rejected), and again in their appeal of the Sale Order and Injunction (also rejected). In particular, in the appeal of the Sale Order and Injunction, the District Court found in *Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010):

Appellants challenge the Bankruptcy Court's "colorable" jurisdiction on the grounds that the Bankruptcy Court lacked authority to enjoin their *in personam* successor liability claims under section 363(f). However, at the time the Sale

²⁰ A copy of the relevant portions of the October 14, 2015 Transcript is annexed hereto as **Exhibit "E."**

Opinion and Order were issued, the Bankruptcy Court's interpretation and exercise of its authority under section 363(f) was consistent with the opinions of at least three Second Circuit judges—whose ranks have since expanded to include a panel of three different judges who also affirmed the proposition that section 363(f) authorizes the sale of assets “free and clear” of successor tort liability, another Bankruptcy Judge in this District, as well as panels of judges in other circuits including the Third and Fourth Circuits.

Id. at 57-58. The District Court ultimately held that:

In light of the foregoing historic and immediate precedent finding bankruptcy courts possessed of such authority pursuant to section 363(f), it is clear that the Bankruptcy Court had more than “colorable” jurisdiction to issue the Sale Order's injunctive provisions providing that the Purchased Assets would be transferred “free and clear of all liens, claims, encumbrances, and other interests ... including rights or claims based on any successor or transferee liability.” Sale Order ¶ 7. Indeed, to contend otherwise is simply not a “colorable” argument.

Id. at 59.

This same issue was again raised in connection with the resolution of the Four Threshold Issues, and rejected by the Bankruptcy Court. In the April 2015 Decision and June 2015 Decision, the Bankruptcy Court found that the Sale Order and Injunction remained in full force and effect, except to the extent that it was modified by those rulings (which permitted the assertion of Independent Claims by only Ignition Switch Plaintiffs). *See* June 2015 Judgment, ¶ 5 (“Except for the modification to permit the assertion of Independent Claims by the Ignition Switch Plaintiffs, the Sale Order shall remain unmodified and in full force and effect.”).

After entry of the June 2015 Judgment, a group of plaintiffs sought re-argument in connection with the rulings set forth therein. As the Bankruptcy Court explained, this group of plaintiffs (which included plaintiffs with claims based on post-363 sale accidents involving Non-Ignition Switch Vehicles) “contend[ed] that the Court committed ‘manifest error’ by not understanding the difference between *in rem* and *in personam* jurisdiction.” *In re Motors Liquidation Co.*, 534 B.R. 538, 552 (Bankr. S.D.N.Y. 2015). In response, the Bankruptcy Court found as follows:

Finally, Peller's perception that the Court fails to understand the difference between *in rem* and *in personam* jurisdiction, aside from being incorrect in its premise, is of no moment. He devotes a full 10 pages of his brief to discussion of the distinction between *in rem* and *in personam* claims. But the reason for that lengthy discussion is unclear. If it is to argue that successor liability claims can still be asserted, notwithstanding the Court's extensive analysis and conclusions to the contrary, that is not a matter the Court overlooked; it is a matter for appeal. If, as seems to be the case, it is to suggest that genuinely Independent Claims can still be asserted, he already has won on that, so long as he limits his future claims to genuinely Independent Claims. Here too, there is no basis for reargument or reconsideration.

Id. at 552-53. Put simply, the Bankruptcy Court (and District Court) have previously addressed the Bankruptcy Court's subject matter jurisdiction to enter the Sale Order and Injunction, and have consistently enforced the provisions of that Order.

Finally, the Sale Order and Injunction has been a final order for almost seven years and it is no longer subject to attack. Thus, any argument regarding subject matter jurisdiction can no longer be asserted by the State Court Plaintiffs. *See Travelers*, 557 U.S. at 152. While the State Court Plaintiffs recognize this (*see* State Court Plaintiffs Objection, at 26-27), they again lapse into their due process argument. But whether there was a due process violation is a different question from whether the Bankruptcy Court had subject matter jurisdiction to enter the Sale Order and Injunction. As discussed, *supra*, the State Court Plaintiffs' argument regarding due process are not well founded, and should be rejected. They had the chance to appear in connection with the proceedings leading to the November 2015 Decision and the December 2015 Judgment and decided not to do so. The November 2015 Decision and the December 2015 Judgment have not been appealed by them, and they are now final as to the State Court Plaintiffs.

Accordingly, the Bankruptcy Court had subject matter jurisdiction to enjoin claims against New GM that are based on Old GM Vehicles.

WHEREFORE, for all of the foregoing reasons, and as set forth in the Motion to Enforce, New GM respectfully requests that this Court enter an order, substantially in the form contained in the compendium of exhibits filed with the Motion to Enforce as **Exhibit “X,”** granting the relief sought in the Motion to Enforce, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 23, 2016

Respectfully submitted,

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Exhibit A

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August 26, 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 In Response to Case
Management Order, dated August 19, 2015**

Dear Judge Gerber:

King & Spalding LLP is co-counsel with Kirkland & Ellis LLP for General Motors LLC (“**New GM**”) in the above-referenced matter. New GM has had two “meet and confers” with Designated Counsel and counsel for the GUC Trust/Unitholders (each of whom is copied on this correspondence) with respect to Your Honor’s *Case Management Order Re No-Strike, No Stay, Objection, and GUC Trust Asset Pleadings*, entered by the Court on August 19, 2015 [ECF No. 13383]. While we were able to reach agreement on certain issues with Designated Counsel (subject to Your Honor’s approval), we were not able to reach an agreement on all issues. We were able to reach an agreement with the GUC Trust/Unit holders on their issues. This letter will set forth where there is consensus among the parties, and New GM’s position on the disputed issues.

1. The individual complaints that already are the subject of pleadings filed with the Court pursuant to the Judgment, dated June 1, 2015 [ECF No. 13177] (“**Judgment**”), are those filed in the following lawsuits:

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- a. The Second Amended Consolidated Complaint filed in *In re General Motors LLC Ignition Switch Litigation*; Case No. 14-MD-2543 (S.D.N.Y.) (“**No Strike SACC Pleading**”);
- b. *People of California v. General Motors LLC, et al.*, No. 30-2014-00731038-CU-BT-CXC (Orange County, Cal.) (“**California No Strike Pleading**”);
- c. *State of Arizona v. General Motors LLC*, No. CV2014-014090 (Maricopa County, Ariz.) (“**Arizona No Strike Pleading**,” and with the California No Strike Pleading, the “**States No Strike Pleadings**”); and
- d. *Adams v. General Motors LLC*; Case No. 15-5528 (S.D.N.Y.).¹

New GM notes that, while formal pleadings have not yet been filed with the Court, New GM has sent demand letters to plaintiffs involved in other lawsuits—including but not limited to six bellwether personal injury complaints filed in MDL 2543, the first of which is scheduled for trial in January 2016—pursuant to the procedures set forth in the Judgment. It is anticipated that pleadings may eventually be filed in response to some (or all) of these demand letters. Attached hereto as **Exhibit “A”** is a list of lawsuits where demand letters have been sent by New GM as of the date hereof, but the deadline to amend or dismiss a complaint, or file a pleading pursuant to the Judgment has not yet occurred.² Although there are a number of lawsuits listed on Exhibit “A,” many of them can be grouped together, and raise the same common issue. New GM believes that the issues raised by these lawsuits can be resolved at one time in the context of the procedures described herein.³ It should be noted that many of the demand letters were recently sent out by New GM so that affected parties would be bound by Your Honor’s rulings on the issues to be determined as set forth in this letter. In other words, affected parties would be subject to principles of collateral estoppel for these issues and not simply *stare decisis*.

It is further noted that New GM did not send out new demand letters for lawsuits that are already listed on the Exhibits to the Judgment. Such plaintiffs already received notice of the Judgment from New GM pursuant to the procedures set forth in the Judgment. To the extent such plaintiffs (a) did not amend their complaints to be fully compliant with the Judgment (in New

¹ Mr. Peller believes that Your Honor did not address all of the issues raised in his No Stay/No Strike/No Dismissal Pleading in *Bledsoe*, but New GM believes the Court has done so.

² Lawsuits against New GM based on Old GM vehicles continue to be filed against New GM. New GM believes that there may be other pending lawsuits against New GM, or future lawsuits filed against New GM, that may also warrant a demand letter. Accordingly, New GM reserves the right to send out demand letters on any lawsuit (currently pending against New GM or that will be filed in the future) if it believes such lawsuit violates the Judgment, April 15 Decision (as herein defined) or the Sale Order and Injunction. New GM will endeavor to do so before September 21, 2015 (the suggested time for it to submit the Marked Pleadings (as defined herein)), and will timely supplement Exhibit “A” and file and serve the relevant Marked Pleadings as described in paragraph 4.

³ New GM believes that the procedures set forth herein should supplement the procedures set forth in the Judgment such that, for plaintiffs who receive a demand letter from New GM and the deadline to file a No Strike/No Dismissal Pleading has not yet expired, they should file a Supplemental Pleading in accordance with the deadlines set forth herein, in lieu of a No Strike/No Dismissal Pleading.

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GM's view), or (b) did not file No Strike/No Dismissal pleadings, the Judgment provides, among other things, for New GM to file a pleading in this Court so that such disputed issues could be determined. New GM believes that the procedures set forth in this Letter are intended to do just that—present the issues disputed by the parties (in these and other lawsuits) relating to the Judgment for this Court's determination.

2. Subject to paragraph 3 below, additional pleadings with respect to the complaints listed in paragraph 1(a) through (c) above are not expected, as all pleadings authorized by the Judgment have been filed with the Court. With respect to the complaint referenced in paragraph 1(d) above, New GM's response to the Adams No Dismissal Pleading is due to be filed on or before September 3, 2015. The Adams Omnibus Complaint concerns Pre-Sale Accident Plaintiffs who seek damages against New GM for their failure to file a proof of claim by the Bar Date.

3. The accelerated briefing schedule for the Punitive Damages Issue (as herein defined), as suggested by New GM in paragraph 5(a)(i) below, has not been agreed to by the parties.

4. New GM believes that, except for the Punitive Damages Issue, there is an agreement with Designated Counsel regarding the timing of the following pleading submissions (subject to Your Honor's approval). New GM will submit to the Court by September 21, 2015 marked pleadings ("**Marked Pleadings**") with respect to each complaint that is set forth in paragraph 1 above and representative examples of the other complaints listed on Exhibit "A" (as may be amended), that highlight the issues to be decided by the Court. In addition, the parties believe that an appropriate briefing schedule for supplemental pleadings ("**Supplemental Pleadings**") with respect to, among other things, (i) the issues identified in pleadings already filed with the Court pursuant to the Judgment ("**Current Pleadings**," and with the Supplemental Pleadings, the "**Pleadings**"), and (ii) the issues set forth in paragraph 5 below, is as follows:

- a. Simultaneously with filing the Marked Pleadings, New GM will file its supplemental brief ("**New GM Supplemental Brief**") with the Court, which will be 50 pages or less.
- b. With respect to Marked Pleadings, Designated Counsel, and any other plaintiff counsel involved in a lawsuit affected by the Marked Pleadings submitted by New GM, shall filed a response to the Marked Pleading on or before October 12, 2015.
- c. Designated Counsel and/or any other party that has filed a Current Pleading or is subject to a demand letter sent by New GM, may file a response (collectively, "**Responses**") to the New GM Supplemental Brief on or before October 19, 2015. So as to avoid duplication and, as has been the past practice, and in an effort to limit the number of Responses filed with the Court, to the extent reasonably practicable, Designated Counsel will consult and coordinate with other counsel who may wish to respond to the New GM Supplemental Brief. Assuming there will be only one Response brief, it shall be 50 pages or less. If coordination

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becomes difficult, Designated Counsel and/or other plaintiff's counsel should inform the Court who would then set a page limit for each of those parties wishing to file a Response pleading. It should be noted that Designated Counsel requested the extra week for responding to New GM's Supplemental Brief in order to coordinate their response with others to minimize the number of responding briefs to be filed with this Court.

- d. New GM shall file an omnibus reply ("**New GM Reply**") to all Responses on or before November 2, 2015, that will be 30 pages or less.
 - e. The parties agree that no further submissions or oral argument is necessary with respect to the GUC Trust Asset Pleading, and that the GUC Trust Asset Pleading may be decided separately from the other issues referenced herein.
 - f. The parties request that the Court schedule oral argument on all remaining issues raised in the Pleadings at its earliest convenience after the New GM Reply is filed.
5. New GM believes that matters that the Court should address and which are the subject of Current Pleadings, or will be the subject of the Supplemental Pleadings, are the following:
- a. Whether the following claims, causes of action or requests for damages are barred by the Judgment, April 15 Decision, Sale Order and Injunction, and/or any other rulings by the Court:
 - i. requests for punitive/special damages against New GM based in any way on Old GM conduct, including but not limited to post-363 Sale accidents of Old GM vehicles ("**Punitive Damages Issue**").

Proposed Briefing Schedule for Punitive Damages Issue: As the Punitive Damages Issue is raised in certain lawsuits that are coming up for trial in the very near term, New GM requests an expedited briefing schedule on this issue. As the Court may recall, this issue was raised in the *Walton* No Strike Pleading (which was fully briefed), and New GM believed that *Walton* would have resolved the issue. However, *Walton* agreed to voluntarily dismiss the punitive damages claim, thus leaving the issue still ripe for determination. Because of its briefing in *Walton*, New GM can promptly file the opening brief on this issue. New GM suggests the following briefing schedule be established: (A) New GM will file its opening brief on the Punitive Damages Issue (not to exceed 20 pages) on or before September 4, 2015; (B) Designated Counsel and other parties that are affected by the Punitive Damages Issue shall file any response (not to exceed 20 pages) by September 18, 2015; and (C) New GM shall file any reply (not to exceed 10 pages) by September 29, 2015. The Court

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- will schedule a hearing on the Punitive Damages Issue if it believes one is necessary.
- ii. economic loss causes of action arising in cases that concern post-363 Sale accidents/incidents of an Old GM vehicle. (These are in the Hybrid Lawsuits referred to in the Judgment.)
 - iii. causes of action based on the timing of New GM recalling Old GM vehicles which allegedly prevented plaintiffs from timely filing proofs of claim in Old GM's bankruptcy case. (This issue is raised in Designated Counsel's No Strike SACC Pleading and in the Adams No Dismissal Pleading);
 - iv. causes of action based on state law consumer protection statutes relating to Old GM vehicles/parts. (This issue is raised in the No Strike SACC Pleading, the States No Strike Pleadings, and in certain of the Hybrid Lawsuits);
 - v. causes of action based on a failure to warn/duty to recall an Old GM vehicle (This issue is raised in the No Strike SACC Pleading, and in certain of the Hybrid Lawsuits); and
 - vi. other causes of action that are based on Old GM conduct, where New GM did not assume such liabilities. (This issue is raised in, among other lawsuits, the No Strike SACC Pleading.)
- b. Whether there are proper causes of action against New GM relating to Old GM vehicles/parts that are based on the knowledge Old GM employees gained while working for Old GM? Assuming plaintiffs identify such proper causes of action, can that knowledge be imputed to New GM at the time such employees were hired by New GM? (This issue is generally raised in Designated Counsel's No Strike SACC Pleading and in the Adams No Dismissal Pleading).
 - c. Whether plaintiffs are misusing the findings in the April 15 Decision regarding the purported knowledge of 24 Old GM employees, and Old GM's knowledge as of July 2009, in violation of the terms of the Judgment, which expressly provides that "the findings of fact in the Decision shall apply only for the purpose of this Court's resolution of the Four Threshold Issues, and shall have no force or applicability in any other legal proceeding or matter, including without limitation, MDL 2543" (Judgment, ¶ 15(d))? (This issue is raised in certain lawsuits recently filed.)
 - d. Whether plaintiffs named in the Second Amended Consolidated Complaint filed in MDL 2543 who were named Plaintiffs in the Pre-Sale Consolidated Complaint (*i.e.*, those Plaintiffs that purchased Old GM vehicles either (i) new and prior to

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the closing of the 363 Sale, or (ii) used from a third party either prior to or after the closing of the 363 Sale), should be stricken and/or dismissed from the Second Amended Consolidated Complaint? (This issue is raised in the No Strike SACC Pleading.).

- e. Whether the plaintiffs in MDL 2543 can seek economic loss damages for all owners of all Old GM vehicles, including those Old GM vehicle owners that never had a vehicle recalled? (This issue is raised in the No Strike SACC Pleading.)

6. With respect to Non-Ignition Switch Plaintiffs (*i.e.*, plaintiffs that are involved in both pre-363 Sale accident cases and economic loss cases), based on the April 15 Decision and the Judgment, such plaintiffs may not assert against New GM claims based on Old GM vehicles/parts, including any claims that are allegedly based on New GM's independent conduct that would otherwise be barred by the Sale Order and Injunction, because Non-Ignition Switch Plaintiffs have not established a due process violation with respect to the 363 Sale. New GM is not certain whether any such independent claims, otherwise barred by the Sale Order and Injunction, exist, and Non-Ignition Switch Plaintiffs have never identified this category of claims. In MDL 2543, New GM already has produced over 1.7 million documents, totaling 12.5 million pages, and at least 219 depositions have been taken. Non-Ignition Switch Plaintiffs (who are also represented by Lead counsel in MDL 2543) have had the benefit of such discovery. They should set forth in their Supplemental Pleading whether they have Independent Claims that would otherwise be barred by the Sale Order and Injunction, and, if so, what they are and how and when they intend to establish any due process violation arising from the 363 Sale.

Other issues with respect to the Non-Ignition Switch Plaintiffs are (a) whether the "no prejudice" finding relating to the Due Process Threshold Issue as to Ignition Switch Plaintiffs should also be binding on them, and (b) whether the ruling on equitable mootness for Ignition Switch Plaintiffs should be binding on them. The Judgment required that the parties brief those issues, which has been done. No oral argument is requested by New GM or the GUC Trust on the issues identified in this paragraph.⁴

⁴ The Court has scheduled a hearing for September 22, 2015 on Designated Counsel's request to enjoin further distributions from the GUC Trust.

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To facilitate the implementation of the foregoing procedures, the parties request that the Court schedule a status conference at its earliest convenience so that any remaining issues can be addressed and the necessary procedures finalized.

Respectfully submitted,

/s/ Arthur Steinberg

Arthur Steinberg

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Deborah J. Newman
William P. Weintraub
Eamonn O'Hagan
Gregory W. Fox
Steve W. Berman
Elizabeth J. Cabraser
Robert C. Hilliard

Exhibit A

EXHIBIT A

Category 1: Lawsuits that Raise the Punitive Damages Issue Only

- Alexander v. General Motors LLC, et al.
Case No.: 2013-29761 (Dist. Ct., Harris County, Texas)
- Ballard v. General Motors LLC
Case No.: 14-CI-00162 (Barren Co. Cir. Ct, KY)
- Barbot v. General Motors LLC, et al.
Case No.: 2015-07436 (Dist. Ct. Parish of Orleans, LA)
- C. Grant v. General Motors LLC
Case No.: 6:14-cv-2132 (United States District Court, M.D. Fla.)
- Callahan v. General Motors LLC
Case No.: 13-CI-00387 (Carter Circuit Court, KY)
- Collins et al. v. General Motors LLC, et al
Case No.: 1322-CC09999 (Cir. Ct. St. Louis, Missouri)
- Curtis v. General Motors LLC, et al.
Case No.: CV2014-053479 (Sup. Ct. Arizona)
- Fain v. General Motors LLC, et al.
Case No.: 15BA-CV01733 (Cir. Ct. Boone Cty., MO)
- Flor Aguero-Fraire v. General Motors LLC, et al.
Case No.: 2015DCV1065
- Flores v. General Motors LLC
Case No.: BC545589 (Sup. Ct. of California)
- Howell v. General Motors LLC
Case No.: 1:15-CV-0398 (N.D. Ga.)
- Kelley et al. v. General Motors LLC et al.
Case No.: CIV26294 (411th Dist. Ct., Polk Cty., TX)
- Lai v. General Motors LLC
Case No.: CJ-14-77 (Dist. Ct. Murray Cty., OK)
- Lebron v. General Motors LLC, et al.
Case No.: 2015-25589 (Harris Cty. Dist. Ct., TX)

Category 1: Lawsuits that Raise the Punitive Damages Issue Only (Cont'd)

- Little et al. v. General Motors LLC
Case No.: 14-CI-00926 (Floyd Cty., KY)
- McGrath v. General Motors Company et al.
Case No.: BC560375 (L.A. Sup. Ct., CA)
- McNeil v. General Motors LLC, et al.
Case No.: 2014-CP-15-91 (Ct. of Common Pleas, S.C.)
- Meisel v. General Motors LLC, et al.
Case No.: BC511453 (Superior Court, California)
- Meza et al. v. General Motors LLC, et al.
Case No.: 30-2015-00786518-CU-PL-CXC (Orange Cty. Sup. Ct.)
- Michael Bavlsik and Kathleen Skelly v. General Motors LLC
Case No. 4:13-cv-00509-DDN (USDC, E.D. of Missouri, Eastern Division)
- Miller v. General Motors LLC, et al.
Case No.: 257,917-B (Dist. Ct. Bell Cty., TX)
- Minard v. General Motors LLC, et al.
Case No.: 39-2013-00298477-CU-PL-STK (Sup. Ct of California)
- Morris v. General Motors LLC, et al.
Case No.: 15-C-566 (Circuit Court for Davidson Cty, TN)
- Moss v. General Motors LLC
Case No.: 3:15-cv-00200 (U.S. Dist. Ct., E.D. Ark.)
- Neal v. General Motors LLC
Case No.: 2:14-CV-633 (U.S.D.C. N. Div. M.D. AL)
- Nunez v. General Motors LLC et al.
Case No.: 14SL-CC01787 (St. Louis Cty. MO)
- Perez v. General Motors LLC, et al.
Case No.: 1:15-cv-240 (N.D.N.Y.)
- Peterson v. General Motors LLC, et al.
Case No.: 2:15-cv-01108-SPL (D Az.)
- Phillips v. General Motors LLC, et al.
Case No.: 2014CCV-61957-3 (County Court, Nueces County, Texas)

Category 1: Lawsuits that Raise the Punitive Damages Issue Only (Cont'd)

- Pitterman et al. v. General Motors LLC
Case No.: 3:14-cv-00967 (JCH) (U.S.D.C. D. Conn.)
- Roberts v. General Motors LLC
Case No.: 4:13-cv-00541-CAS (U.S.D.C. E.D. MO)
- Rone, et al. v. General Motors LLC, et al.
Case No.: 14C1474-202 (Dist. Ct. Bowie County, Texas)
- Rooney v. General Motors LLC
Case No.: 15-2247-NP (Circuit Court for Macomb County, MI)
- Schrader v. General Motors LLC, et al.
Case No.: 15SL-CC01853 (St. Louis Cty. MO)
- Sevilla et al. v. General Motors LLC, et al.
Case No.: 34-2015-00175939 (Super. Ct. Sacramento Cty., CA)
- Sixkiller v. General Motors LLC, et al.
Case No.: CJ-15-105 (Dist Ct. Mayes County, Oklahoma)
- Smith, et al., v. General Motors LLC, et al.
Case No.: CV2015-051753 (Super. Ct. Maricopa Cty., AZ)
- Stevens et al. v. General Motors LLC, et al.
Case No.: 2015-04442 (Dist. Ct. of Harris County, Texas)
- Tafoya, et al. v. General Motors LLC, et al.
Case No.: D-412-CV-2012-00055 (4th J.D., San Miguel Cty., NM)
- Tibbetts v. General Motors LLC, et al.
Case No.: D-202-CV-2015-04918 (Dist. Ct., Bernalillo Cty., NM)
- Vaughan v. General Motors LLC, et al.
Case No.: S-1500-cv-284626 (Sup. Ct. of California)
- Vieira v. General Motors LLC
Case No.: C-14-00775 (Sup. Ct. of California)
- Wilson, et al. v. General Motors LLC, et al.
Case No.: 2014CVC01003 (Court of Common Pleas, Clermont County, Ohio)
- Worthington v. General Motors LLC, et al.
Case No.: 14-A-3063-3 (Cobb Cty. Super. Ct., GA)

**Category 2: Lawsuits that Concern Post Sale Accidents and Allege Claims
That Should Be Barred and Seek Punitive Damages**

- Alden et al. v. General Motors LLC
Case No.: 1522-CC09842 (Cir. Ct. of St. Louis, MO, Division I)
- Barragan, et al. v. General Motors LLC
Case No.: P-14-CV-093
- Barthelemy v. General Motors LLC
Case No.: 1:14-cv-05810 (S.D.N.Y.)
- Blood, at al. v. General Motors LLC¹
Case No.: 1:15-cv-06578 (S.D.N.Y.)
- Broderson v. General Motors LLC, et al.
Case No.: 49Civ11-001627 (2nd J.C., Cir. Ct., Minnehaha Cty., S.D.)
- Carl Hand v. General Motors LLC
Case No.: 2014-308 (Smith County Circuit Court, MS)
- Cockram v. General Motors LLC
Case No.: 1:14-cv-08176 (S.D.N.Y.)
- Cull, et al. v. General Motors LLC, et al.
Case No.: 10C02-1404-CT060 (Circuit Court, Clark County, Indiana)
- De Los Santos v. General Motors LLC, et al.
Case No.: 2014CCV-6078802 (County Court, Nueces County, Texas)
- Dean, et al. v. General Motors LLC, et al.
Case No.: 14-C-1693 (Cir. Ct. Kanawha Cty., WV)
- Dewalt v. General Motors LLC
Case No.: 5:15-cv-00708-EGS (E.D. Pa.)
- Dunleavy v. General Motors LLC, et al.
Case No.: 13-011278 (C.P. Allegheny Cty., PA)

¹ While the Blood Lawsuit was filed on behalf of numerous plaintiffs who were allegedly involved in accidents that occurred after the closing of the 363-Sale (“**Post-Sale Accident Plaintiffs**”), a few plaintiffs named in the Blood Lawsuit were involved in accidents that occurred prior to the closing of the 363 Sale (“**Pre-Sale Accident Plaintiffs**”). Accordingly, in addition to improperly alleging claims and seeking punitive damages on behalf of Post-Sale Accident Plaintiffs (which should be barred), the Blood Lawsuit also improperly asserts claims on behalf of Pre-Sale Accident Plaintiffs in violation of the Judgment, April 15 Decision and Sale Order and Injunction.

**Category 2: Lawsuits that Concern Post Sale Accidents and Allege Claims
That Should Be Barred and Seek Punitive Damages (Cont'd)**

- Gilbert v. General Motors LLC
Case No.: 00140 (Ct of Common Pleas, Philadelphia County)
- Green v. General Motors LLC, et al.
Case No.: 2015-24496 (Dist. Ct. Harris County, Texas)
- Grey v. General Motors LLC
Case No.: 5:15-cv-00227-KKC (E.D. KY)
- Grier v. General Motors LLC
Case No.: CV-2014-385-1 (Cir. Ct. White Cty. AK)
- Grindle v. General Motors LLC, et al.
Case No.: 15-C-83 (Circuit Court of Randolph County, WV)
- Hafen v. General Motors LLC, et al.
Case No.: A-14-696746-C (Dept. No. XIX, Dist. Ct. Clark Cty., NV)
- Hague, et al. v. General Motors Company
Case No.: CGC-11-514543 (Super. Ct., San Francisco Cty., CA)
- Jacobs v. General Motors LLC
Case No.: 7:14-cv-00257 (E.D. N.C.)
- Jarvis, et al. v. General Motors LLC, et al.
Case No.: [Pending] (Circuit Court for Macomb County, MI)
- Lowe v. General Motors LLC, et al.
Case No.: 14-A-523395 (DeKalb Cty., GA)
- Melhorn v. General Motors LLC, et al.
Case No.: GD-12-000362 (Allegheny County, PA)
- Minx v. GM Motors et al.
Cause No.: 15-04-77819-C (Dist. Ct. Victoria Cty, TX)
- Nelson et al. v. General Motors LLC, et al.
Case No.: 2-138-15 (Circuit Ct for Knox County, TN)
- Norville v. General Motors LLC
Case No.: 1:14-cv-08176 (S.D.N.Y.)
- Pelletier v. General Motors Co., et al.
Case No.: 2012-CP-10-7438 (Ct. of Common Pleas, Charleston Cty., SC)

**Category 2: Lawsuits that Concern Post Sale Accidents and Allege Claims
That Should Be Barred and Seek Punitive Damages (Cont'd)**

- Reid v. General Motors LLC
Case No.: 1:14-cv-05810 (S.D.N.Y.)
- Salazar vs. GM, LLC, et al
Case No.: BC487984 (Superior Court, Los Angeles Cty., CA)
- Scheuer v. General Motors LLC
Case No.: 1:14-cv-08176 (S.D.N.Y.)
- Solomon v. General Motors LLC, et al.
Case No.: 14-C-1694 (Cir. Ct. Kanawha Cty., WV)
- Tarver v. G.M.C. Corp. et al.
Cause No.: C-1430282 and 2014-65837 (TX MDL)
- Terrell v. General Motors LLC, et al.
Case No.: 15-CV-877 (Ct. of Common Pleas, Mahoning Cty., OH)
- Vaughn v. General Motors LLC, et al.
Case No.: S-1500-CV-284626 (Super. Ct. Kern Cty., CA)
- Williams v. General Motors LLC
Case No.: 1:15cv249 HSO-JCG (U.S. Dist. Ct., S.D. Miss.)
- Wilson v. General Motors LLC, et al.
Cause No.: 2014-51871 (Dist. Ct. Harris County, Texas)
- Yingling v. General Motors LLC
Case No.: 1:14-cv-05336 (S.D.N.Y.)

**Category 3: Lawsuits that Concern Post Sale Accidents and Allege Claims
That Should Be Barred (But Do Not Seek Punitive Damages)**

- Benbow v. General Motors LLC, et al.
Case No.: 14-789 (Superior Court, Massachusetts)
- Gore v. General Motors LLC, et al.
Case No.: 623,410 (19th J.D.C., Parsh of Baton Rouge, LA)
- J.Williams v. General Motors LLC, et al.
Case No.: 14-CI-027 (Magoffin Circuit Court, KY)
- Lowe, et al. v. General Motors LLC, et al.
Case No.: 3:15-cv-00532 (M.D. LA)
- Ratcliff v. General Motors LLC
Case No.: 21-C-13-047954 (Circuit Court for Washington Cty, MD)
- Rickard v. General Motors LLC et al.
Case No.: GD-14-020549 (Ct. of Common Pleas, Allegheny Cty., PA)
- Thacker v. General Motors LLC
Case No.: 7:15-cv-00015-ART-EBA (E.D. KY)
- Varney et al. v. General Motors LLC
Case No.: 3:15-cv-10129-MGM

Category 4: Lawsuits that Concern Economic Loss Claims That Should Be Barred

- Christenberry v. General Motors LLC
Case No.: 2014-016 (Blount County Chancery Ct., TN)
- Duba v. General Motors LLC, et al.
Case No.: 13-C-235 (Logan County Circuit Ct., WV)
- Figley, et al., v. General Motors LLC et al.
Case No.: 2015-32887 (190th Judicial Dist. Ct. of Harris County, TX)
- Medlin v. General Motors LLC
Case No.: 15SL-AC20440 (Circuit Ct. of St. Louis Co., MO)
- Roussel v. General Motors LLC, et al.
Case No.: 2008-16334-E (22nd Jud. Dist. Ct. St. Tammany Parrish, LA)
- Wright v. General Motors LLC, et al.
Case No.: SU-14-CV-627-68 (Super. Ct. Muscogee Cty., GA)
- Russell v. General Motors LLC
Case No.: 13-C-62 (Wyoming County Circuit Ct., WV)

Exhibit B

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September 23, 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)**

Dear Judge Gerber:

Pursuant to page 5 of Your Honor's September 3, 2015 *Scheduling Order* (Dkt. No. 13416), we submit this Letter regarding the claims made in Other Plaintiffs' Complaints against New GM that violate the Sale Order and Judgment, but are not raised by the Bellwether Complaints, the MDL Complaint or the States' Complaints (collectively, the "**Main Cases**").¹ Because of the large volume of papers already submitted (and to be submitted) to the Court pursuant to the Scheduling Order, for efficiency purposes, New GM is only identifying at this time the specific claims in the Other Plaintiffs' Complaints that violate the Sale Order and Judgment. New GM believes that submitting marked-up versions of the Other Plaintiffs' Complaints is not necessary for the Court to rule on the issues raised in this Letter. If the Court decides it would be helpful to have marked-up versions of the Other Plaintiffs' Complaints, we will promptly submit them.

Set forth below are claims in Other Plaintiffs' Complaints that violate the Sale Order and Judgment, with an explanation of New GM's position and references to representative cases where the issue is raised.²

¹ The issues raised by the Other Plaintiffs' Complaints are found in multiple cases filed against New GM. Pursuant to the Scheduling Order, New GM was permitted to identify "representative cases" that raise these issues. New GM's arguments are applicable to all such cases, and any rulings by the Court should be binding on all plaintiffs in such cases.

² New GM reserves the right to supplement this Letter if it becomes aware of other claims, not in the Main Cases or referenced in this Letter, that violate the Sale Order and Judgment.

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September 23, 2015
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Failure to Recall / Retrofit Vehicles (e.g. *Moore v. Ross, et al.*, No. 2011-CP-42-3625, 4th Am. Complaint at p. 3 ¶¶ f, g (S.C. 7th Cir. Ct. Com. Pl.) (**Exh. “A” hereto**)): These claims allege that New GM had a duty to recall or retrofit Old GM vehicles. But such claims, if they exist as a matter of law at all, are Retained Liabilities. Once New GM purchased Old GM’s assets free and clear of claims and obligations relating to Old GM vehicles, New GM (an entity that did not manufacture or sell the Old GM vehicles at issue) did not have any ongoing duties to Old GM vehicle owners (other than specific Assumed Liabilities). Although New GM had obligations under the Motor Vehicle Safety Act and to the U.S. Government based on a covenant in the Sale Agreement (“**Recall Covenant**”), this covenant was not an Assumed Liability. Vehicle owners were not third party beneficiaries under the Sale Agreement, and did not have a private right of action relating to any breach of the Recall Covenant. See *New GM’s Opening Brief With Respect to the Imputation Issue*, Dkt. No. 13451 at 17-18; *New GM’s Letter Brief re Bellwether Complaints*, Dkt. No. 13456, at 3. Thus, claims for failure to recall or retrofit the vehicles violate the Sale Order.

Negligent Failure to Identify Defects Or Respond To Notice of a Defect (e.g., *Benbow v. Medeiros Williams, Inc., et al.*, No. 14 789, Complaint ¶ 16 (Mass. Hampden Cty. Super. Ct.) (**Exh. “B” hereto**)): These claims purport to allege that New GM should have identified the defect earlier and taken some sort of action in response. These are Retained Liabilities for the same reasons as the claims based on an alleged failure to recall or retrofit Old GM vehicles. Such duties with respect to Old GM vehicles remained with Old GM.

Negligent Infliction of Economic Loss and Increased Risk (e.g., *Elliott v. General Motors LLC*, No. 1:14-cv-00691, 1st Am. Complaint (“**Elliott Complaint**”) ¶¶ 79-86 (D.D.C.) (**Exh. “C” hereto**)):³ This claim alleges that New GM had a duty to warn consumers about the alleged defect but instead concealed it, and by doing so, the economic value of plaintiffs’ vehicles was diminished. This claim violates the Sale Order for the reasons set forth in New GM’s Bellwether Complaints letter relating to post-vehicle failure-to-warn claims and fraud claims. Dkt. No. 13456 at 2-3; see also the forthcoming *New GM Marked MDL Letter*. Such claims are economic loss claims that relate to Old GM conduct at the time the vehicle was sold. They do not “arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents,” and are not otherwise Assumed Liabilities.

Civil Conspiracy (e.g., *De Los Santos v. Ortega, et al.*, No. 2014CCV-6078802, 1st Am. Petition ¶¶ 50-51 (Tex. Nueces Cty. Ct.) (**Exh. “D” hereto**)):⁴ These claims allege that New GM was involved in a civil conspiracy with others to conceal the alleged ignition switch defect. Such claims are based on representations, omissions, or other alleged acts relating to the supposed concealment rather than, as set forth in the Sale Agreement, being “caused by motor vehicles,” “aris[ing] directly out of” personal injury or property damages, and being “caused by accidents or incidents.” See also Dkt. No. 13451 at 18-19; Dkt. No. 13456, at 2-3. As such, these claims are not Product Liabilities, and thus not Assumed Liabilities under the Sale Agreement.

³ The same claim is asserted in *Sesay et al. v. General Motors LLC*, No. 1:14-md-02543, Complaint (“**Sesay Complaint**”) ¶¶ (69-76).

⁴ Claims for “Civil Conspiracy, Joint Action or Aiding and Abetting” are also asserted in the *Elliott Complaint* (¶¶ 114-123), *Sesay Complaint* (¶¶ 85-94), and the complaint filed in *Bledsoe v. General Motors LLC*, No. 1:14-cv-07631 (S.D.N.Y.), ¶¶ 115-121.

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Section 402B – Misrepresentation by Seller (e.g., *Rickard v. Walsh Const. Co. et al.*, No. GD-14-020549, Am. Complaint ¶¶ 73aaa-73ccc (Pa. Allegheny Cty Ct. Com. Pleas) (**Exh. “E” hereto**)):⁵ These types of claims are based on alleged representations or omissions, and do not satisfy the definition of Product Liabilities because such claims are not “caused by motor vehicles,” but are instead caused by statements or omissions. They also do not “arise directly out of” personal injuries or property damages and are not “caused by accident or incidents.” Instead, they arise from and are caused by statements, omissions or other Old GM conduct. Such representation or omission-based claims were not assumed by New GM.

Claims Based on Pre-Sale Accidents (e.g., *Coleman v. General Motors LLC, et al.*, No. 1:15-cv-03961, Complaint (E.D. La.) (**Exh. “F” hereto**)): The Judgment authorized New GM to send letters to plaintiffs who filed lawsuits asserting claims based on accidents that occurred prior to the 363 Sale, and set forth procedures with respect to such letters and potential responses. The Scheduling Order superseded certain procedures in the Judgment. As a result, New GM includes herein a representative example of complaints that assert claims based on pre-363 Sale accidents. For the reasons set forth in the Sale Agreement, the Decision and the Judgment, New GM is not liable for claims based on accidents that occurred prior to the closing of the 363 Sale. The Sale Agreement is clear that Retained Liabilities (as defined in Section 2.3(b) of the Sale Agreement) of Old GM specifically include “all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date[.]” Sale Agreement, § 2.3(b)(ix); *see also Judgment*, ¶ 7. Thus, lawsuits filed against New GM that are based on accidents or incidents occurring prior to the closing of the 363 Sale should be dismissed as provided by the Judgment.

Respectfully submitted,

/s/ Arthur Steinberg

Arthur Steinberg

AJS/sd

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

⁵ Plaintiff filed with this Court a *No Dismissal Pleading Of Carolyn Rickard, Administratrix Of The Estate Of William J. Rickard, Deceased*, dated September 4, 2015 [Dkt. No. 13423]. This letter, and New GM’s other letters and pleadings filed pursuant to the Scheduling Order should be deemed its response to the *Rickard* No Dismissal Pleading.

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September 23, 2015
Page 4

Deborah J. Newman
Jamison Diehl
William Weintraub
Steve W. Berman
Elizabeth J. Cabraser
Robert C. Hilliard
Gary Peller

Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-reg
. Chapter 11
. (Jointly administered)
MOTORS LIQUIDATION COMPANY, .
et al., f/k/a GENERAL .
MOTORS CORP., et al, . One Bowling Green
. New York, NY 10004
Debtors. .
. Monday, August 31, 2015
. 9:48 a.m.
.

TRANSCRIPT OF NOTICE OF HEARING/NOTICE OF STATUS CONFERENCE TO
BE HELD IN CONNECTION WITH THE COURT'S CASE MANAGEMENT ORDER,
DATED AUGUST 19, 2015 [Dkt. No. 13383], AND THE LETTERS FILED
IN RESPONSE THERETO (RELATED DOCUMENT(S) 13383) [13396]
BEFORE THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commence at 9:48 a.m.)

2 THE COURT: I think I know all of you. There's no
3 need for you to make appearances in advance, but when you come
4 up to the mike, the main lectern to speak, please identify
5 yourselves for the record.

6 I've read all of your letters and the attachments to
7 the extent that I haven't read them previously. I have
8 problems with both sides' positions, especially vis-a-vis
9 proposals on timing, but also vis-a-vis matters of substance.
10 It seems to me that neither side acknowledges -- and I'm
11 pushing the GUC Trust and the indentured trustee off to the
12 side for the time being. It seems to me that neither side
13 acknowledges that it is subject to the jurisdiction and rulings
14 of two separate judges and that anything Jesse Furman says
15 counts, as far as I'm concerned, and I would have thought that
16 anything that I say counts insofar as proceedings in the
17 district court is concerned. And what I need from each of you
18 is realistic proposals in terms of prioritization of matters so
19 that I can get Jesse Furman the rulings he needs so that the
20 bellwether trial or trials are not delayed.

21 It seems to me, subject to your rights to be heard,
22 that by far the most important of the matters that we need to
23 address are the matter of punitives. And I will also decide
24 preliminarily, to the extent that it's necessary, the matter of
25 imputation, but I thought I had already made my views on



1 mootness finding, which, subject to appeal, basically tells all
2 of us that we will not be able to go back and claw back, for
3 lack of a better term, against the existing GUC Trust
4 beneficiaries. So what the complaints say is, your failure to
5 give us the information that was in your exclusive possession,
6 causing us not to file proofs of claim, damaged us to the
7 extent that we were not lined up with every other plaintiff as
8 part of -- or every other claimant as part of the proof of
9 claim universe, that we were denied the opportunity to
10 participate from dollar one in the GUC Trust.

11 Now, that's a claim that Your Honor is, I guess,
12 being asked to determine, and we think it's a failure
13 straightforward question. Is that a claim against Old GM or is
14 it a claim against New GM? We assert that it's a claim against
15 New GM. We're saying that New GM's failure -- from the time it
16 became New GM up through and including the bar date is the
17 focus of our attention -- is a claim solely against New GM.
18 The beginning and the end of the allegations is New GM knew on
19 the date it came into existence that there was an ignition
20 switch defect, what its potential was, that it needed to be
21 recalled as a matter of federal law, that it failed to do so
22 and it failed to do so purposefully, thus preventing the
23 plaintiffs from filing proofs of claim. And a court can
24 determine whether or not that's a cognizable claim, and if it
25 is, what the element of damages ought to be.

1 THE COURT: Now, pause again. When you said the
2 court in that last context, you were talking about Judge Furman
3 after I have done my gatekeeping.

4 MR. WEISFELNER: Correct. Or in the case of the
5 state claims, the relevant courts that those state claims are
6 currently pending in.

7 THE COURT: And how would a state have standing to
8 assert a claim of that character?

9 MR. WEISFELNER: Well, again, to the extent that --
10 and I guess I've misspoke. To my knowledge, neither the State
11 of California nor the State of Arizona had that allegation
12 within their complaint. It's only a second amended
13 consolidated complaint.

14 THE COURT: Okay. But you're talking about in your
15 constituency, your vehicle owners, and their contention is that
16 if the recall had taken place in the gap period between the
17 sale and the bar date, your guys could have filed claims and
18 then they would have gotten the 25 or 30 cents, whatever
19 unsecureds got in the case.

20 MR. WEISFELNER: Precisely. That's exactly right.

21 THE COURT: All right.

22 MR. WEISFELNER: And again, Your Honor, to the extent
23 that New GM contends that somehow that claim isn't an
24 independent claim, is instead a disguised successor liability
25 claim, to the extent Your Honor needs briefing on that topic, I

1 guess we'll brief it. We'll comply with whatever Your Honor's
2 desires are in that regard. But it seems to me, again, a
3 gating issue is what part of the second amended consolidated
4 complaint, including this particular cause of action, do you
5 believe fails to satisfy independent claim status and why.

6 Next issue in Mr. Steinberg's letter was the
7 contention that state law consumer protection statutes related
8 to Old GM vehicles and parts are somehow improper. And Your
9 Honor, it's our contention that, again, as a gatekeeper, if you
10 determine that the claims, based on state law consumer
11 protection statutes or otherwise, relate to New GM and what New
12 GM did or failed to do as opposed to what Old GM did or failed
13 to do, that depending on the particular state consumer
14 protection statutes, they either give rise to a claim or cause
15 of action to be determined by the trial court or they don't.
16 And the role of the gatekeeper, Your Honor, is to determine
17 whether or not those particular allegations relying on state
18 consumer protection laws do or do not constitute independent
19 claims versus disguised successor liability claims.

20 Likewise, the next issue, failure to warn and duty to
21 recall an Old GM vehicle. It is New GM's position, which we
22 believe is a blatant attempt to re-litigate what Your Honor has
23 already decided, but it's New GM's apparent position now that
24 an allegation against New GM sounding in the nature of a
25 failure to warn or a breached duty to recall, if it involves an

1 itself because we believe that New GM, in fact, engaged in bad
2 faith. It's one of the issues we will pursue on appeal. It's
3 one of the reasons why we think the bar against successor
4 liability ought not be enforced.

5 But putting aside good faith or bad faith, the
6 question is if you have a purchaser in a 363 sale, may the
7 bankruptcy court that approves that sale and gives the buyer
8 free and clear protections, including successor liability,
9 nevertheless afford the buyer prospective protection for its
10 own independent tortious conduct? And we think that the clear
11 answer to that proposition is no.

12 So again, if a non-ignition switch defect claimant,
13 whether would start an independent claim against New GM, would
14 that non-ignition switch plaintiff be successful, vis-a-vis
15 Your Honor as a gatekeeper. New GM's contention is that, aha,
16 wait a second, the non-ignition switch plaintiff cannot assert
17 an independent claim against New GM unless and until that
18 non-ignition switch plaintiff demonstrates that back in '09,
19 its due process rights were violated. Because Your Honor only
20 determined that independent claims were permissible having
21 first determined that the ignition switch plaintiffs' due
22 process rights were violated with prejudice because they didn't
23 have an opportunity to argue over breadth of the injunction.

24 So that's the last issue I can think of where we have
25 a marked disagreement between Mr. Steinberg and I. It's my

1 belief that Your Honor's determination that the law in the
2 Second Circuit, that the law across this country is uniform,
3 and that is that a buyer in a 363 sale, putting aside whether
4 or not it's acting in good faith, does not obtain a
5 get-out-of-jail-free card for its own post-sale tortious
6 conduct, bad actions, fraudulent concealment.

7 THE COURT: I understand the issue. Pause. If you
8 said this before in baby talk, I don't remember it. Are you
9 now going to be kind of a designated counsel for non-ignition
10 switch plaintiffs, as well --

11 MR. WEISFELNER: Your Honor --

12 THE COURT: -- or did they have separate counsel?

13 MR. WEISFELNER: They do not have separate counsel,
14 and to the extent that their rights need to be preserved, since
15 co-lead counsel in the MDL does have actions pending on their
16 behalf, subject, of course, to subsequent certification of
17 classes and that sort of thing, yes, we perceive ourselves as
18 having taken on the mantel of preserving and protecting the
19 rights of non-ignition switch plaintiffs in this court.

20 THE COURT: So I don't have to worry about them not
21 having been heard if I listen to you.

22 MR. WEISFELNER: I think that's a correct conclusion,
23 especially in light of Your Honor's procedures in the judgment
24 itself.

25 THE COURT: Okay. Continue or were you done now?

1 MR. WEISFELNER: Your Honor, subject to whatever
2 questions or concerns you have, I'd be done. I just want to
3 make sure that neither of my overseers, Mr. Berman or Ms.
4 Cabraser, have any further comments that they'd like to make.

5 THE COURT: Is Mr. Berman on the phone?

6 MR. WEISFELNER: I believe so.

7 MR. BERMAN: (Telephonically) Yes, Your Honor. I'm
8 on the phone. I think that he did a great job covering our
9 interests here.

10 THE COURT: I'm sorry, you're not very audible. Can
11 you say it slower and louder, please?

12 MR. BERMAN: I think that he's covered everything
13 well and I have nothing to add.

14 THE COURT: Okay. Mr. Stein --

15 MS. CABRASER: (Telephonically) Your Honor,
16 Elizabeth Cabraser.

17 THE COURT: Wait, I'm sorry. Before you come up,
18 Mr. Steinberg, I thought I heard something on the phone after
19 Mr. Berman said he had nothing to add.

20 MS. CABRASER: Your Honor, Elizabeth Cabraser,
21 co-lead for the economic loss plaintiffs. You heard me. I
22 apologize for not speaking more slowly. I'm simply concurring,
23 as is Mr. Berman, subject to Your Honor's (indiscernible). I
24 have nothing to add at this point.

25 THE COURT: Okay. I asked my questions as we went

1 And courts of competent jurisdiction are amply able
2 to ultimately determine whether or not imputation, under the
3 law of whatever jurisdiction will govern -- I presume there may
4 be some differences on imputation. It's not necessarily
5 federal common law, I don't know, but it's not something that I
6 think the Bankruptcy Court rightfully ought to be focused on,
7 and I don't think it's what Judge Furman had in mind in terms
8 of triaging issues.

9 Now, the other thing that Mr. Steinberg then slipped
10 in when he talked about what he wants to triage, he talked
11 about punitives because you can't get away from what Judge
12 Furman said about that. He talked about imputation, and I
13 think, quite frankly, he's banging his head against the wall,
14 but he wants to see what happens. Maybe Your Honor will bite
15 on it.

16 The third thing he talked about is other causes of
17 action proscribed by the sale order and original injunction and
18 causes of action that are still proscribed based on Your
19 Honor's sale order and injunction. Well, that's a whole
20 another reargument again. I went through carefully a list of
21 the issues in his letter, and I think I made it clear that in
22 terms of the way we should be going forward by way of a
23 schedule and what we ought to be triaging, and in an effort to
24 make our next meet and confer reasonable, Judge, we need some
25 direction beyond the triage that Judge Furman says he needs --

1 THE COURT: Well, I can give you a little more
2 direction that may help your meet and confer, and it ties into
3 one of the very few -- well, perhaps very few is an
4 overstatement -- what I consider to be one of the closer
5 questions that you guys were arguing about, which is that when
6 people have not shown a due process violation yet, that being
7 the subset of your larger constituency with non-ignition switch
8 issues, where they have not shown that 24 people or even one
9 person at New GM had enough knowledge to make them knowing
10 plaintiffs -- or knowing claimants, excuse me -- whether they
11 should get benefits that the remainder of your constituency won
12 in the last go-around. And Mr. Steinberg's position, as I
13 understand it, is that even if it is so, that if I were ruling
14 on a clean slate with the ability to be heard back in 2009,
15 that what I ultimately ruled with respect to environmental
16 claimants and narrow view of economic loss claimants, vis-à-vis
17 ignition switches, whether they should or should not be
18 beneficiaries of that ruling, then they haven't established a
19 due process violation. That was the context in which I said
20 what I was saying.

21 Now, hopefully that's not too cryptic, but the
22 non-ignition switch plaintiffs' inability or inaction to have
23 yet established a due process violation to give them the
24 benefits that the remainder of your constituency got is, in my
25 view, a big issue.

1 MR. WEISFELNER: Okay. I mean, again, just as a
2 matter of fact, discovery with regard to the non-ignition
3 switch defects that are at issue are ongoing. And while --

4 THE COURT: I understood that, and it certainly was
5 ongoing back on April 15th --

6 MR. WEISFELNER: Right.

7 THE COURT: -- which is why the opinion didn't cover
8 them.

9 MR. WEISFELNER: Right. But, Your Honor, look, it
10 still seems to me that, you know, one could argue that whether
11 or not you're the beneficiary of a due process violation
12 because you were a known creditor, nevertheless, Your Honor's
13 sale order could not as a matter of constitutional law, Second
14 Circuit law, have provided New GM with a get out of jail free
15 card with regard to its post-sale independent acts and conduct.
16 I just don't think that the --

17 THE COURT: I understand that's the argument you're
18 going to make. You had telegraphed that before. My guess is
19 that Mr. Steinberg is going to have a different view, and
20 that's why I called it an issue rather than something that I've
21 decided.

22 MR. WEISFELNER: Okay. To the extent that that
23 remains an issue, then in terms of triaging things, it seems to
24 me that we need to get that issue teed up quickly because to
25 the extent that people, either New GM or us, depending on who

1 loses, needs to appeal that decision, they ought to get
2 started. But again, in terms of triaging the remaining issue,
3 what frustrates us on the plaintiffs' side is every opportunity
4 that New GM can take, it does take in an effort to try and
5 reinterpret, redefine, cut down on, narrow the scope of the
6 definition of independent claims.

7 And they're not all, as Mr. Steinberg indicated,
8 briefed in the no strike/no stay pleading because we didn't see
9 any of these issues emanating from New GM, frankly, until after
10 Judge Furman denied the motions to withdraw the reference. And
11 I think that emboldened New GM to try and take another bite at
12 the apple.

13 And, Your Honor, I think maybe the right thing to do
14 is, with your guidance, send us back to the drawing board. We
15 will try desperately hard again to come up with an appropriate
16 scheduling order with the right issues. But again, to the
17 extent that New GM insists on having Your Honor act as a
18 gatekeeper on issues that we believe are more properly resolved
19 in the context of trial because we don't think it impacts Your
20 Honor's role as a gatekeeper -- we think the gatekeeper role is
21 tell us if this is an independent claim or not an independent
22 claim. And Mr. Steinberg can tell you there are 60 pages of
23 allegations with regard to Old GM, and our point is you can
24 have 600 pages of allegations with regard to Old GM. Focus on
25 the claim and cause of action. Focus on what it is that you

1 want recovery for. Focus in on what it is you're asking the
2 jury to decide based on instructions from the judge.

3 And you will see that the liability we assert is New
4 GM's liability, that the allegations regarding Old GM are of
5 necessity background information. You don't start a story, if
6 you will, about New GM -- I'm sorry, GM manufacturing cars with
7 known defective components beginning in '03 and '04, going
8 through all sorts of evaluations, tests, and accumulation of
9 information that the ignition switch defect, in fact, presented
10 a known safety defect that was killing people throughout the
11 country, that it chooses not to bring to the attention of the
12 Court during its bankruptcy proceeding, that New GM remains
13 completely well aware of from the date it's born and maintains
14 that cone of silence throughout the period from 2009 through
15 2014.

16 And I'm here today to assess liability -- I'm talking
17 to a prospective jury -- against New GM because Old GM's gone
18 and Old GM isn't here and Old GM can't pay for this, and New GM
19 shouldn't be made to pay for something that was an Old GM bad
20 act or bad conduct. Now, I'm going to argue to the jury the
21 facts. I don't want to start the case by saying as of some
22 date in 2009, New GM was born.

23 THE COURT: I know that you don't want to start your
24 case that way, but you are going to start the case within the
25 constraints of what the law requires.

1 THE COURT: And I told that to Mr. Peller, and it
2 would apply to the other guys, too. Just see if you can talk
3 to them to see if they can minimize the duplication.

4 MR. WEINTRAUB: I will, Your Honor.

5 THE COURT: But I cannot and will not deny anybody
6 the right to file a brief.

7 MR. WEINTRAUB: No, I understand, Your Honor. I just
8 don't want to be constrained in a three-page letter if I'm
9 sharing it with 87 people.

10 THE COURT: Oh, you're concerned about security of
11 circulating your draft or something?

12 MR. WEINTRAUB: No, constrained in terms of space.
13 If I'm sharing three pages --

14 THE COURT: I don't expect you to make 87 guys -- I
15 assume you're mainly going to be talking concepts with some
16 discussion of how it applies to your six guys.

17 MR. WEINTRAUB: That's right, Your Honor, but I'd be
18 -- I presume I'd be responding specifically to what was marked
19 in the six specific pleadings.

20 THE COURT: You don't have a duty to anybody other
21 than your own constituency.

22 MR. WEINTRAUB: That's right, Your Honor.

23 THE COURT: I understand that. Okay.

24 Mr. Steinberg?

25 MR. STEINBERG: Your Honor, I think that perhaps the

1 most efficient way is to deal with it as we dealt with it in
2 the GUC Trust asset pleading. I would ask that we try to
3 capture that in a proposed order which would be the scheduling
4 order because I -- these people have gotten demand letters. So
5 I'd like to be able to write them a note saying that you don't
6 have to respond in 17 business days, these issues are teed up
7 in the context of the bellwether cases and will be presented
8 there.

9 This is the briefing schedule and if you believe that
10 you're entitled to or would like to, you know, file a brief,
11 you should indicate so to the Court or something to that so
12 then Your Honor could then decide, but --

13 THE COURT: What you said sounds sensible, and I'm
14 not sure if the people in the room would disagree with you.
15 What about due process for the people who aren't in the room in
16 terms of me endorsing your idea?

17 MR. STEINBERG: I think, Your Honor, I will settle
18 the order on those people. The goal is to draft an order today
19 which would be acceptable to the people in the room. And I
20 guess, Your Honor, we can then ask Your Honor to sign it, and
21 if anybody has an issue with regard to that, we can give them a
22 short window to object to it as it pertains to them. And then
23 Your Honor could see how many of them emerge from that process,
24 but they will have then had the due process to have a further
25 argument because they were not in the room right now.

1 THE COURT: Anybody in this room object to that idea?
2 Okay. That seems to make sense. Did I not give you enough
3 time to respond?

4 MR. WEINTRAUB: I'm sorry, Your Honor. I didn't hear
5 the question. I was asking --

6 THE COURT: Mr. Steinberg was talking about working
7 out something consensual with the people in this room and then
8 settling it on the much larger universe. And then giving them
9 also a couple of days to file something in case they don't like
10 what the procedures order says.

11 MR. WEINTRAUB: I think that's fine, Your Honor. I
12 thought we did work out that anyone who wanted to file their
13 own brief could. And with respect to the marked pleadings and
14 the bellwethers, I don't have to share three pages with anybody
15 else.

16 THE COURT: I think I did say that, but I didn't see
17 those as inconsistent.

18 MR. WEINTRAUB: No, I don't --

19 THE COURT: Don't be diplomatic. If you think I am
20 inconsistent, tell me that.

21 MR. WEINTRAUB: No. I said I thought we agreed to
22 that. I'm not sure what else I'm supposed to agree with --

23 MR. STEINBERG: Well, let me see --

24 THE COURT: Well, I think the main problem is
25 Mr. Steinberg thinks that if he puts in -- or I'm guessing you

Exhibit D

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October 30, 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)
Explanatory Letter With Respect to Peller Clients Complaints

Dear Judge Gerber:

Pursuant to Your Honor's October 19, 2015 Endorsed Order [Dkt. No. 13506], General Motors LLC ("**New GM**") submits this letter setting forth its position with respect to the Marked Peller Client Complaints (as defined in the Endorsed Order), attached hereto as Exhibits "A" through "C."¹ Initially, New GM notes that the *Elliott, Sesay* and *Bledsoe* lawsuits are currently stayed in MDL 2543, and the Peller Client Complaints raise substantially similar issues as those addressed by New GM in the Marked MDL Complaint and its accompanying explanatory letter. In this regard, just like the MDL Complaint, the Peller Client Complaints include parties, factual allegations and claims that violate this Court's Judgment, Decision, and Sale Order,² and are highlighted with different colors as follows: (1) blue, for named plaintiffs and plaintiff classes/subclasses asserting claims based on Old GM vehicles; (2) green, for allegations based on Old GM conduct that support claims for Retained Liabilities; (3) yellow, for allegations seeking to impute wholesale Old GM's knowledge to New GM, and (4) pink, for allegations related to punitive damages, which were not assumed by New GM.

¹ New GM incorporates by reference (i) its Opening and Reply Briefs regarding the Punitive Damages Issue, dated September 13, 2015 and September 22, 2015, respectively [Dkt. Nos. 13437 and 13460]; (ii) its Opening and Reply Briefs regarding the Imputation Issue, dated September 18, 2015 and September 30, 2015, respectively [Dkt. No. 13451 and 13482]; and (iii) its explanatory letters regarding other marked complaints (*see* Dkt. Nos. 13456, 13466, 13469 and 13470).

² Judgment, entered on June 1, 2015 ("**Judgment**"); *In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y. 2015) ("**Decision**"); and Order, dated July 5, 2009 ("**Sale Order**").

Honorable Robert E. Gerber

October 30, 2015

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If the Court agrees with New GM's arguments, all Old GM vehicle plaintiffs and all Old GM conduct allegations and corresponding causes of action will be stricken.³ *Every* cause of action in the Peller Client Complaints asserted by Old GM vehicle plaintiffs and/or arising from Old GM conduct—including but not limited to (a) violations of RICO, (b) fraud, (c) negligent infliction of economic loss and increased risk under common law, (d) violations of consumer protection statutes, (e) breach of implied warranty of merchantability, and (f) civil conspiracy and joint action or aiding and abetting—are Retained Liabilities and should be stricken. Therefore, assuming New GM's arguments prevail, the Peller Client Complaints will be properly narrowed to address only New GM vehicle plaintiffs, New GM conduct allegations, and corresponding causes of action.

Blue Coded Allegations: The Peller Client Complaints identify named plaintiffs and proposed classes of plaintiffs who purchased vehicles manufactured and sold by Old GM before the 363 Sale.⁴ Although plaintiffs assert that the Peller Client Complaints do not include successor liability claims, that is not the case. The Judgment held that “all claims and/or causes of action that the Ignition Switch Plaintiffs may have against New GM concerning an Old GM vehicle or part seeking to impose liability or damages based in whole or in part on Old GM conduct (including, without limitation, on any successor liability theory of recovery) are barred and enjoined pursuant to the Sale Order.” Judgment, ¶ 9; *see also In re Motors Liquidation Co*, 534 B.R. 542, 553 (Bankr. S.D.N.Y. 2015) (stating, in connection with the *Bledsoe* Plaintiffs' motion to amend the Judgment, “[i]f it is to argue that successor liability claims can still be asserted, notwithstanding the Court's extensive analysis and conclusions to the contrary, that is not a matter the Court overlooked; it is a matter for appeal.” (footnote omitted)).

Further, certain of the Peller Client Complaints identify named plaintiffs and portions of proposed classes who purchased used Old GM vehicles after the closing of the 363 Sale from third parties with no connection to New GM. The inclusion of such plaintiffs' claims violates the Decision, which held that “if the Sale Order and Injunction would have applied to the original owner who purchased the vehicle prior to the 363 Sale, it equally applies to the current owner who purchased the vehicle after the 363 Sale.” Decision, 529 B.R. at 572. The claims of plaintiffs who purchased Old GM vehicles from Old GM or from a third party unrelated to New GM—whether before or after the closing of the 363 Sale—should be stricken.

This is particularly true with regard to Non-Ignition Switch Plaintiffs in the Peller Client Complaints. The Court held that with respect to Non-Ignition Switch Plaintiffs, the Sale Order prohibits all claims against New GM that are not Assumed Liabilities. In other words, the Sale Order was modified to allow only Ignition Switch Plaintiffs (not Non-Ignition Switch Plaintiffs)

³ The *Bledsoe* complaint appears to assert, among others, product liability claims resulting from accidents that took place before and after the closing of the sale from Old GM to New GM. New GM assumed “Product Liabilities” (as defined in the Sale Agreement) for post-363 Sale accidents. As such, to the extent the *Bledsoe* complaint asserts assumed Product Liabilities, those claims would not be barred by the Sale Order. Note, however, that New GM disputes any and all liability for such claims.

⁴ New GM did not mark every reference to “Plaintiffs”, “Class members”, “Class members' vehicle” and the like because it would have made the marked complaints overly cumbersome to review. Nonetheless, because such terms include Old GM vehicle owners and Old GM vehicles, such terms should be deemed to be marked.

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to assert Independent Claims that would otherwise be barred by the Sale Order.⁵ In the absence of any exclusion for Independent Claims, there is no theory pursuant to which the Non-Ignition Switch Plaintiffs can pursue any claim premised on any Old GM vehicle.

Green Coded Allegations: The Peller Client Complaints identify numerous paragraphs containing improper allegations of Old GM conduct that are the basis for their Retained Liabilities claims.⁶ The Court unequivocally ruled that “[c]laims premised in any way on Old GM conduct are properly proscribed under the Sale Agreement and the Sale Order, and by reason of the Court’s other rulings, the prohibitions against the assertion of such claims stand.” Decision, 529 B.R. at 528; *see also* Judgment, ¶ 9.⁷ Furthermore, the Peller Client Complaints identify allegations containing improper references to GM—for example, “GM,” “GM vehicles” and “Class Vehicles.” Plaintiffs’ merging of Old GM and New GM in their defined terms was purposeful and violated the Court’s prior rulings. *See In re Motors Liquidation Co.*, 514 B.R. 377, 382 n.24 (Bankr. S.D.N.Y. 2014). Ambiguous references to “GM” in the Peller Client Complaints should be modified to specify the proper entity.⁸

Yellow Coded Allegations: The Peller Client Complaints seek to automatically impute Old GM’s knowledge to New GM. For the reasons described in New GM’s Opening and Reply Briefs on the Imputation Issue, plaintiffs’ attempt to impute to New GM, on a wholesale basis, knowledge of events that took place at Old GM, or information contained in Old GM’s books and records, violates the Sale Order.

Pink Coded Allegations: The Peller Client Complaints seek punitive damages from New GM. For the reasons described in New GM’s Opening and Reply Briefs on the Punitive Damages Issue, all requests for punitive damages based on Old GM conduct violate the Sale Order, and cannot be maintained against New GM.

⁵ *See In re Motors Liquidation Co.*, 531 B.R. 354, 360 (Bank. S.D.N.Y. 2015) (“The Non-Ignition Switch Plaintiffs’ claims remain stayed, and properly so; those Plaintiffs have not shown yet, if they ever will, that they were known claimants at the time of the 363 Sale, and that there was any kind of a due process violation with respect to them. **And unless and until they do so, the provisions of the Sale Order, including its injunctive provisions, remain in effect.**”) (emphasis added)).

⁶ This Court has already found that the *Elliott* and *Sesay* complaints impermissibly contain allegations of Old GM conduct. *See In re Motors Liquidation Co.*, 514 B.R. 377, 383 (Bankr. S.D.N.Y. 2015) (“And while the Elliott Plaintiffs’ brief disclaims reliance on Old GM acts, their complaint doesn’t bear that out.”); *In re Motors Liquidation Co.*, 522 B.R. 13, 19 (Bankr. S.D.N.Y. 2015) (“The Sesay Plaintiffs’ allegations concerned model years ranging from 2003 to 2011—addressing, significantly, both Old GM and New GM vehicles, and bringing their claims within the express coverage of the Sale Order.”).

⁷ *See also In re Motors Liquidation Co.*, 533 B.R. 46, 51 n. 10 (Bankr. S.D.N.Y. 2015) (“Presumably her counsel envisioned a theory based on a species of successor liability or other theory under which New GM would be responsible for Old GM’s acts. But theories of this character cannot be asserted under the Court’s recent opinions . . .”).

⁸ The Peller Client Complaints’ class definitions, and concomitant causes of action, include both plaintiffs who purchased Old GM vehicles from Old GM (or an unrelated third party), and those that purchased New GM vehicles from New GM. New GM did not mark entire causes of action that might relate to both Old GM vehicle owner plaintiffs and New GM vehicle owner plaintiffs. If it had, almost every cause of action would have been marked.

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Respectfully submitted,

/s/ Arthur Steinberg

Arthur Steinberg

AJS/sd

cc: Gary Peller
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
William Weintraub
Steve W. Berman
Elizabeth J. Cabraser
Robert C. Hilliard

Exhibit E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-reg
. Chapter 11
. (Jointly administered)
MOTORS LIQUIDATION COMPANY, .
et al., f/k/a GENERAL .
MOTORS CORP., et al, . One Bowling Green
. New York, NY 10004
Debtors. .
. Wednesday, October 14, 2015
. 9:46 a.m.
.

TRANSCRIPT OF ORAL ARGUMENT RE: SCHEDULING ORDER SIGNED ON
9/3/15 REGARDING CASE MANAGEMENT ORDER RE: NO-STRIKE, NO
STAY, OBJECTION, AND GUC TRUST ASSET PLEADING [13416];
MEMORANDUM ENDORSED ORDER SIGNED ON 9/3/15
REGARDING SCHEDULING ORDER [13417];
LETTER REGARDING PUNITIVE DAMAGES ISSUE, DATED 9/13/15, FILED
BY GARY PELLER ON BEHALF OF SHARON BLEDSOE [13432];
POST-CLOSING IGNITION SWITCH ACCIDENT PLAINTIFF'S MEMORANDUM
OF LAW WITH RESPECT TO PUNITIVE DAMAGES ISSUE, DATED 9/13/15,
FILED BY WILLIAM P. WEINTRAUB ON BEHALF OF HILLIARD MUNOZ
GONZALEZ LLP AND THOMAS J. HENRY INJURY ATTORNEY [13434];
JOINDER OF THE IGNITION SWITCH PLAINTIFFS AND NON-IGNITION
SWITCH PLAINTIFFS TO THE POST-CLOSING IGNITION SWITCH
ACCIDENT PLAINTIFFS' MEMORANDUM OF LAW WITH RESPECT TO
PUNITIVE DAMAGES, DATED SEPTEMBER 13, 2015, FILED BY STEVE
BERMAN ON BEHALF OF IGNITION SWITCH PLAINTIFFS,
NON-IGNITION SWITCH PLAINTIFFS [13436];
OPENING BRIEF BY GENERAL MOTORS LLC WITH RESPECT TO
WHETHER PLAINTIFFS MAY SEEK PUNITIVE DAMAGES FROM
GENERAL MOTORS LLC BASED ON THE CONDUCT OF GENERAL MOTORS
CORPORATION, DATED SEPTEMBER 13, 2015, FILED BY
ARTHUR JAY STEINBERG ON BEHALF OF GENERAL MOTORS LLC [13437];

(CONTINUED)
**BEFORE THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY COURT JUDGE**

APPEARANCES CONTINUED.

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TRANSCRIPT OF: (CONTINUED)

POST-CLOSING IGNITION SWITCH ACCIDENT PLAINTIFFS' REPLY WITH RESPECT TO PUNITIVE DAMAGES ISSUE, DATED 9/22/15, FILED BY WILLIAM P. WEINTRAUB ON BEHALF OF POST-CLOSING IGNITION SWITCH ACCIDENT PLAINTIFFS [13459];

REPLY BRIEF BY GENERAL MOTORS LLC WITH RESPECT TO WHETHER PLAINTIFFS MAY SEEK PUNITIVE DAMAGES FROM GENERAL MOTORS LLC BASED ON THE CONDUCT OF GENERAL MOTORS CORPORATION, DATED SEPTEMBER 22, 2015, FILED BY ARTHUR JAY STEINBERG ON BEHALF OF GENERAL MOTORS LLC [13460];

JOINDER OF THE IGNITION SWITCH PLAINTIFFS AND NON-IGNITION SWITCH PLAINTIFFS TO THE POST-CLOSING IGNITION SWITCH ACCIDENT PLAINTIFFS' REPLY WITH RESPECT TO PUNITIVE DAMAGES ISSUE, DATED SEPTEMBER 22, 2015, FILED BY STEVE BERMAN ON BEHALF OF IGNITION SWITCH PLAINTIFFS, NON-IGNITION SWITCH PLAINTIFFS [13461];

BRIEF OF MOORE PLAINTIFFS REGARDING PUNITIVE DAMAGES ISSUE, DATED 9/13/15;

LETTER ELLIOTT, SESAY, AND BLEDSOE PLAINTIFFS JOINING THE BRIEF OF OTHER PARTIES ON IMPUTATION ISSUE, DATED 9/18/15, FILED BY GARY PELLER ON BEHALF OF SHARON BLEDSOE [13448];

OPENING BRIEF BY GENERAL MOTORS LLC WITH RESPECT TO WHETHER PLAINTIFFS CAN AUTOMATICALLY IMPUTE TO NEW GM KNOWLEDGE OF THE EVENTS THAT TOOK PLACE AT OLD GM AND/OR AS REFLECTED IN OLD GM'S BOOKS AND RECORDS, DATED 9/18/15, FILED BY ARTHUR JAY STEINBERG ON BEHALF OF GENERAL MOTORS LLC [13451];

OPENING BRIEF ON IMPUTATION ISSUE, 9/18/15, FILED BY STEVE BERMAN ON BEHALF OF IGNITION SWITCH PLAINTIFFS, NON-IGNITION SWITCH PLAINTIFFS, STATE OF ARIZONA EX REL. MARK BRNOVICH, THE ATTORNEY GENERAL, THE ADAMS PLAINTIFFS, THE PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ORANGE COUNTY DISTRICT ATTORNEY TONY RACKAUCKAS, THE POST-CLOSING IGNITION SWITCH ACCIDENT PLAINTIFFS [13452];

DOCUMENT FILED UNDER SEAL OPENING BRIEF ON IMPUTATION ISSUE ON BEHALF OF THE IGNITION SWITCH PLAINTIFFS, THE NON-IGNITION SWITCH PLAINTIFFS, THE STATE OF ARIZONA, THE PEOPLE OF THE STATE OF CALIFORNIA, THE POST-CLOSING IGNITION SWITCH ACCIDENT PLAINTIFFS AND THE ADAMS PLAINTIFFS, DATED 9/21/15, FILED BY STEVE BERMAN ON BEHALF OF THE ADAMS PLAINTIFFS, THE POST-CLOSING IGNITION SWITCH ACCIDENT PLAINTIFFS, IGNITION SWITCH PLAINTIFFS, NON-IGNITION SWITCH PLAINTIFFS, STATE OF ARIZONA EX REL. MARK BRNOVICH, THE ATTORNEY GENERAL, THE PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ORANGE COUNTY DISTRICT ATTORNEY TONY RACKAUCKAS [13454];



TRANSCRIPT OF: (CONTINUED)

REPLY BRIEF BY GENERAL MOTORS LLC WITH RESPECT TO WHETHER PLAINTIFFS CAN AUTOMATICALLY IMPUTE TO NEW GM KNOWLEDGE OF THE EVENTS THAT TOOK PLACE AT OLD GM AND/OR AS REFLECTED IN OLD GM'S BOOKS AND RECORDS, DATED SEPTEMBER 30, 2015, FILED BY ARTHUR JAY STEINBERG ON BEHALF OF GENERAL MOTORS LLC [13482];
REPLY BRIEF ON IMPUTATION ISSUE ON BEHALF OF THE IGNITION SWITCH PLAINTIFFS, THE NON-IGNITION SWITCH PLAINTIFFS, THE STATE OF ARIZONA, THE PEOPLE OF THE STATE OF CALIFORNIA, THE POST-CLOSING IGNITION SWITCH ACCIDENT PLAINTIFFS AND THE ADAMS PLAINTIFFS, DATED 9/30/15, FILED BY STEVE BERMAN ON BEHALF OF IGNITION SWITCH PLAINTIFFS, NON-IGNITION SWITCH PLAINTIFFS, STATE OF ARIZONA EX REL. MARK BRNOVICH, THE ATTORNEY GENERAL, THE PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ORANGE COUNTY DISTRICT ATTORNEY TONY RACKAUCKAS [13483];
NEW GM BELLWETHER LETTER, WITH MARKED BELLWETHER COMPLAINTS, PURSUANT TO SCHEDULING ORDER DATED 9/3/15, DATED 9/21/15, FILED BY ARTHUR JAY STEINBERG ON BEHALF OF
GENERAL MOTORS LLC [13456];
LETTER FILED ON BEHALF OF GENERAL MOTORS LLC REGARDING OTHER PLAINTIFFS' COMPLAINTS, DATED 9/23/15, FILED BY ARTHUR JAY STEINBERG ON BEHALF OF GENERAL MOTORS LLC [13466];
NEW GM MDL COMPLAINT LETTER, WITH MARKED MDL COMPLAINT, PURSUANT TO SCHEDULING ORDER DATED 9/3/15, DATED 9/25/15, FILED BY ARTHUR JAY STEINBERG ON BEHALF OF
GENERAL MOTORS LLC [13469];
NEW GM STATES COMPLAINTS LETTER, WITH MARKED STATES COMPLAINTS, PURSUANT TO SCHEDULING ORDER DATED 9/3/15, DATED 9/25/15, FILED BY ARTHUR JAY STEINBERG
ON BEHALF OF GENERAL MOTORS LLC [13470];
LETTER DATED 9/28/15 TO JUDGE GERBER FROM WILLIAM P. WEINTRAUB RE: RESPONSE TO NEW GM BELLWETHER LETTER AND MARKED BELLWETHER COMPLAINTS, DATED 9/28/15, FILED BY WILLIAM P. WEINTRAUB ON
BEHALF OF HILLIARD MUNOZ GONZALES LLP AND
THOMAS J. HENRY INJURY ATTORNEY [13475];
LETTER ON BEHALF OF CAROLYN RICKARD, ADM'X. OF THE ESTATE OF WILLIAM RICKARD, DECEASED, IN RESPONSE TO GENERAL MOTORS, LLC'S LETTER REGARDING OTHER PLAINTIFFS' COMPLAINTS, DATED 9/29/15, FILED BY JULIANNE CUTRUZZULA
BEIL ON BEHALF OF CAROLYN RICKARD [13478];
LETTER ON BEHALF OF THE ELLIOTT, SESAY AND BLEDSOE PLAINTIFFS REGARDING NEW GM'S MARKED PLEADINGS LETTER, DATED 9/29/15, FILED BY GARY PELLER ON BEHALF OF SHARON BLEDSOE [13479];
RESPONSIVE LETTER FROM MOORE PLAINTIFFS REGARDING
OTHER PLAINTIFFS' COMPLAINT, DATED 9/30/15;
LETTER RESPONSE TO NEW GM MARKED STATE COMPLAINTS [13470];



TRANSCRIPT OF: (CONTINUED)
EXPLANATORY LETTER, DATED 10/9/15, FILED BY STEVE BERMAN ON
BEHALF OF STATE OF ARIZONA EX REI. MARK BRNOVICH, THE
ATTORNEY GENERAL, THE PEOPLE OF THE STATE OF CALIFORNIA,
ACTING BY AND THROUGH ORANGE COUNTY DISTRICT
ATTORNEY TONY RACKAUCKAS [13494];
LETTER RESPONSE TO NEW GM'S MARKED MDL COMPLAINT [13469];
EXPLANATORY LETTER, DATED OCTOBER 9, 2015, FILED BY STEVE
BERMAN ON BEHALF OF IGNITION SWITCH PLAINTIFFS,
NON-IGNITION SWITCH PLAINTIFFS [13495];
PEOPLE OF THE STATE OF CALIFORNIA'S "NO STRIKE" PLEADING,
DATED JUNE 16, 2015, FILED BY STEVE BERMAN ON BEHALF OF
THE PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY
AND THROUGH ORANGE COUNTY DISTRICT ATTORNEY
TONY RACKAUCKAS [13210];
STATE OF ARIZONA'S "NO STRIKE" PLEADING, DATED 6/16/15,
FILED BY STEVE BERMAN ON BEHALF OF STATE OF ARIZONA EX REL.
MARK BRNOVICH, THE ATTORNEY GENERAL [13211];
THE IGNITION SWITCH PLAINTIFFS' NO STRIKE PLEADING WITH
REGARD TO THE SECOND AMENDED CONSOLIDATED COMPLAINT; AND THE
NON-IGNITION SWITCH PLAINTIFFS' (I) OBJECTION PLEADING WITH
REGARD TO THE SECOND AMENDED CONSOLIDATED COMPLAINT
AND (II) GUC TRUST ASSET PLEADING, DATED 6/24/15, FILED BY
EDWARD WEISFELNER ON BEHALF OF DESIGNATED COUNSEL
FOR THE IGNITION SWITCH PLAINTIFFS & CERTAIN
NON-IGNITION SWITCH PLAINTIFFS [13247];
OMNIBUS RESPONSE BY GENERAL MOTORS LLC TO THE NO STRIKE
PLEADINGS FILED BY THE STATES OF ARIZONA AND CALIFORNIA,
DATED 7/10/15, FILED BY ARTHUR JAY STEINBERG
ON BEHALF OF GENERAL MOTORS LLC [13286];
RESPONSE BY GENERAL MOTORS LLC TO THE IGNITION SWITCH
PLAINTIFFS' NO STRIKE PLEADING WITH REGARD TO THE SECOND
AMENDED CONSOLIDATED COMPLAINT; AND THE NON-IGNITION SWITCH
PLAINTIFFS' OBJECTION PLEADING WITH REGARD TO THE SECOND
AMENDED CONSOLIDATED COMPLAINT, DATED 7/23/15, FILED BY
ARTHUR JAY STEINBERG ON BEHALF OF GENERAL MOTORS LLC [13316];
ADAMS PLAINTIFFS' NO DISMISSAL PLEADING, DATED 8/11/15,
FILED BY GREGORY W. FOX ON BEHALF OF HILLIARD MUNOZ GONZALES
LLP AND THOMAS J. HENRY INJURY ATTORNEY [13359];
RESPONSE BY GENERAL MOTORS LLC TO ADAMS PLAINTIFFS'
NO DISMISSAL PLEADING, DATED 9/30/15, FILED BY ARTHUR
JAY STEINBERG ON BEHALF OF GENERAL MOTORS LLC [13422];
STATEMENT OF GOOD FAITH FILING, DATED 9/4/15,
FILED BY JULIANNE CUTRUZZULA BEIL
ON BEHALF OF CAROLYN RICKARD [13423]



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1 (Proceedings commence at 9:46 a.m.)

2 THE COURT: Good morning. Have seats, please. I
3 think I know most of the people who've been speaking before.
4 If anybody else expects to be heard, I'll provide that
5 opportunity. I do have some preliminary remarks.

6 First, I heard just as I was walking in, quite to my
7 surprise, that there had been some request for breakout loans
8 and contemplation that we'd be here all day. That's not my
9 concept of what we're here for today. We're going to focus on
10 some just gradations, and I would expect that we'd be done by
11 11:30 or something in that range.

12 I want you folks to spend most of your time on
13 punitives, and in particular whether punitives are going to
14 assume liability or not. I don't need much help on imputation,
15 and although I'm not going to put a sock in your mouth on that,
16 I think the briefs are pretty clear and I understand the issues
17 on imputation.

18 On the matter of punitive damages, I want you to talk
19 principally about whether there is assumed liability for
20 punitives under the sale agreement, and if not, whether
21 plaintiffs can still rely on Old GM conduct as either a
22 predicate for punitives or for increasing punitives that are
23 otherwise awarded. I'm not sure why there might be a
24 distinction on the latter issue, but if you think there is, you
25 can tell me.

1 liability for people of the character you just described --

2 MR. WEINTRAUB: Yes.

3 THE COURT: -- who were in post-sale accidents. And
4 your point is that New GM should not be immune from punitives
5 to people who were injured or killed or the survivors of such
6 for those post-sale accidents.

7 MR. WEINTRAUB: Exactly, Your Honor.

8 THE COURT: That much I understand, but I'm less
9 clear on whether you're saying that the premise for the
10 punitives for the post-sale accident victim should be pre-sale
11 conduct as well as post-sale knowledge and conduct.

12 MR. WEINTRAUB: I think it could be both, Your Honor,
13 but with respect to this particular argument, the point of this
14 argument is if the Court rules that 2.3(a)(9) bars punitive
15 damages with respect to these post-sale accident victims, with
16 respect to this subcategory of post-sale accident victims,
17 those who owned the vehicle at the time of the sale,
18 notwithstanding the fact that 2.3(a)(9) might bar punitive
19 damages, which we dispute, this due process issue would say
20 that New GM can be a successor for purposes of punitive damages
21 based upon the pre-sale conduct of Old GM. We also think that
22 because New GM delayed the recall, as admitted, up until past
23 the time that these people were injured, that its conduct,
24 independently would give it liability for punitive damages. So
25 it's both, Your Honor, as this --

1 THE COURT: Okay.

2 MR. WEINTRAUB: Now, with respect to the second
3 category of claimant, those who did not own their vehicles at
4 the time of the sale but acquired them later, we think that
5 those are the archetypal future claimants talked about in
6 Grumman Olson. Those are the people that could not possibly
7 have been given meaningful notice because they had no
8 connection with the debtor at the time of the sale. And just
9 like in Grumman Olson, we believe that there should be
10 successor liability for these purely future claimants, and
11 there would be no bar on punitive damages by those claimants if
12 they can demonstrate that the conduct to them was
13 reprehensible.

14 THE COURT: Uh-huh, okay.

15 MR. WEINTRAUB: If I could just take a minute, Your
16 Honor. As usual, you took me right out of my presentation, and
17 I want to make sure --

18 THE COURT: Check your notes. Sure, go ahead.

19 MR. WEINTRAUB: -- make sure that I hit everything
20 that I did -- I wanted to hit. Yeah, there are a couple things
21 I -- a couple points I'd like to make, Your Honor.

22 One of the cases that we cite is the Virgilio (ph)
23 case, and we think that that's a highly instructive case. In
24 the Virgilio case, the statute enacting the 9/11 victims fund
25 provided that by opting into the fund, the claimant waived all



1 claims for recovery of damages against anyone other than the
2 terrorists. The estates of certain firefighters in that case
3 that died in the Twin Towers when they collapsed who had opted
4 into the victims' fund wanted to sue Motorola and the City of
5 New York for providing defective radios that didn't work within
6 the concrete structure of the tower, and therefore those
7 firefighters couldn't be told to evacuate the tower because it
8 was collapsing.

9 The plaintiffs argued that, per the statute, when
10 they opted into the fund, they only waived compensatory
11 damages, but could still sue for punitive damages. In other
12 words, their position was we could sue for just punitive
13 damages. The Second Circuit rejected the plaintiffs' argument
14 and affirmed the district court's ruling that the claim was
15 barred. The Second Circuit held that because of the parasitic
16 relationship between compensatory damages and punitive damages,
17 once the compensatory damages were waived, there was no path
18 for punitive damages, so those were effectively waived, too.

19 In this case, Your Honor, we've got the converse
20 which would also be true. There is no limitation in this
21 agreement to just compensatory damages. Because of the
22 parasitic relationship between compensatory damages and
23 punitive damages, if there's a claim for compensatory damages,
24 then the parasite, punitive damages travels along with it and
25 would only be barred if expressly excluded. And as we said