

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

In re:
MOTORS LIQUIDATION COMPANY, *et al.*,
f/k/a general motors corp., *et al.*,

Debtors.

Chapter 11
Case No. 09-50026 (MG)

(Jointly Administered)

**PLAINTIFFS' AND THE PARTICIPATING UNITHOLDERS' NOTICE OF FILING
DIRECT TESTIMONY OF TRIAL WITNESSES**

Pursuant to the *Pre-Trial Stipulation and Scheduling Order*, dated October 11, 2017 [ECF No. 14130] at ¶5, the Ignition Switch Plaintiffs, certain Non-Ignition Switch Plaintiffs, and certain Pre-Closing Accident Plaintiffs (collectively, "Plaintiffs") and the Participating Unitholders hereby submit, in written narrative form, the direct testimony of trial witnesses Edward S. Weisfelner, Howard S. Steel, William P. Weintraub, and Danny H. Golden, which is attached hereto as Exhibits 1-4, respectively. Plaintiffs and the Participating Unitholders submit this direct trial testimony in support of the *Motion to Enforce the Settlement Agreement By and Among the Signatory Plaintiffs and the GUC Trust*, dated September 11, 2017 [ECF No. 14092] and the *Joinder of the Participating Unitholders in the Motion to Enforce*, dated November 13, 2017 [filed in unredacted form at ECF No. 14175].

Dated: December 5, 2017
New York, New York

Respectfully submitted,
/s/ Edward S. Weisfelner
Edward S. Weisfelner
Howard S. Steel
BROWN RUDNICK LLP
Seven Times Square
New York, New York 10036
Tel: 212-209-4800
eweisfelner@brownrudnick.com
hsteel@brownrudnick.com

Sander L. Esserman
STUTZMAN, BROMBERG, ESSERMAN &
PLIFKA, A PROFESSIONAL
CORPORATION
2323 Bryan Street, Ste. 2200
Dallas, Texas 75201
Tel: 214-969-4900
esserman@sbep-law.com

*Designated Counsel for the Ignition Switch
Plaintiffs and Certain Non-Ignition Switch
Plaintiffs in the Bankruptcy Court*

Steve W. Berman (admitted *pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Tel: 206-623-7292
steve@hbsslaw.com

Elizabeth J. Cabraser
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, California 94111
Tel: 414-956-1000
ecabraser@lchb.com

*Co-Lead Counsel for the Ignition Switch
Plaintiffs and Certain Non-Ignition Switch
Plaintiffs in the MDL Court*

William P. Weintraub
Gregory W. Fox
GOODWIN PROCTER LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018
Tel: 212-813-8800
wweintraub@goodwinlaw.com
gfox@goodwinlaw.com

*Counsel to Those Certain Pre-Closing
Accident Plaintiffs Represented By Hilliard
Muñoz Gonzales L.L.P. and the Law Offices
of Thomas J. Henry*

Robert Hilliard, Esq.
HILLIARD MUÑOZ GONZALES LLP
719 South Shoreline
Suite 500
Corpus Christi, TX 78401
Tel: 361-882-1612
bobh@hmglawfirm.com

*Counsel to certain Pre-Closing Accident
Plaintiffs*

Thomas J. Henry, Esq.
THE LAW OFFICES OF THOMAS J.
HENRY
4715 Fredricksburg, Suite 507
San Antonio, TX 78229

*Counsel to Certain Pre-Closing Accident
Plaintiffs*

Lisa M. Norman (admitted *pro hac vice*)
ANDREWS MYERS, P.C.
1885 St. James Place, 15th Floor
Houston, Texas 77056
Tel: 713-850-4200
Lnorman@andrewsmyers.com

Counsel to Certain Pre-Closing Accident

Plaintiffs

Daniel H. Golden
Deborah J. Newman
AKIN GUMP STRAUSS
HAUER & FELD LLP
One Bryant Park
New York, NY 10036
Tel: 212-871-1002
dgolden@akingump.com
djnewman@akingump.com

Counsel to Participating Unitholders

EXHIBIT 1

**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		

DIRECT TESTIMONY OF EDWARD S. WEISFELNER

I, Edward S. Weisfelner, under penalty of perjury, testify as follows:

1. I am a partner at the law firm of Brown Rudnick LLP, with offices at 7 Times Square, New York, New York 10036. Our firm serves as Designated Counsel for the Ignition Switch Plaintiffs¹ and certain Non-Ignition Switch Plaintiffs² (collectively, the “**Economic Loss Plaintiffs**”) in the Bankruptcy Court. I respectfully submit this witness statement as my direct testimony in support of the *Motion to Enforce the Settlement Agreement By and Among the Signatory Plaintiffs and the GUC Trust*, dated Sept. 11, 2017 [ECF No. 14092].³

2. The facts set forth herein are based on my personal knowledge, except as to certain matters that I believe to be true based on my review of documents produced in discovery or from other sources that I consider to be reliable.

¹ The term “**Ignition Switch Plaintiffs**” refers to those plaintiffs asserting economic loss claims or persons suffering economic losses who, as of July 10, 2009, owned or leased a vehicle with an ignition switch defect included in Recall No. 14V-047 (the “**Ignition Switch Defect**”).

² The term “**Non-Ignition Switch Plaintiffs**” refers to those plaintiffs asserting economic loss claims or persons suffering economic losses who, as of July 10, 2009, owned or leased a vehicle with defects in ignition switches, side airbags or power steering included in Recall Nos. 14V-355, 14V-394, 14V-400, 14V-346, 14V-118 and 14V-153.

³ Except where otherwise indicated, references to “ECF No. _” are to docket entries in the Bankruptcy Court proceedings: In re Motors Liquidation Co., Case No. 09-50026 (MG).

I. Initial Proceedings In The Bankruptcy Court And Second Circuit.

3. Throughout 2014, New GM issued a multitude of recalls for safety defects, including, among others, recalls related to the Ignition Switch Defect and other defective ignition switches, side airbags and power steering. After the issuance of these recalls, numerous owners and lessees of defective Old GM and New GM vehicles filed lawsuits against New GM.

4. Many of the cases commenced against New GM were consolidated in a multi-district litigation in the United States District Court for the Southern District of New York before Judge Furman (the “**MDL**”). Steve W. Berman of Hagens Berman Sobol Shapiro LLP, Elizabeth Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP, and Robert C. Hilliard of Hilliard Martinez Gonzalez, LLP were individually and collectively appointed as Co-Lead Counsel in the MDL on August 15, 2014.⁴ Mr. Berman and Ms. Cabraser were instructed to focus on Economic Loss Plaintiffs and Mr. Hilliard was instructed to focus on personal injury and wrongful death claimants.⁵

5. New GM sought to enjoin these lawsuits by filing various motions to enforce the Sale Order in the Bankruptcy Court.⁶ Co-Lead Counsel retained Brown Rudnick LLP and Stutzman, Bromberg, Esserman & Plifka, a Professional Corporation (“**Designated Counsel**”) to respond to issues raised in the Bankruptcy Court. For efficiency purposes, Designated Counsel focused on issues related to the Economic Loss Plaintiffs.

⁴ See Order No. 8, dated Aug. 15, 2014 [MDL ECF No. 249].

⁵ See Order No. 13, dated Sept. 16, 2014 [MDL ECF No. 304].

⁶ See *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction*, dated April 21, 2014 [ECF No. 12620]; *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits*, dated April 21, 2014 [ECF No. 12807]. New GM also filed a motion to enforce the sale order with respect to the Non-Ignition Switch Plaintiffs, but adjudication of this motion was deferred pending resolution of the motions to enforce with respect to the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs. *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction (Monetary Relief Actions, Other Than Ignition Switch Actions)*, dated Aug. 1, 2014 [ECF No. 12808]; *In re Motors Liquidation Co.*, 529 B.R. at 523.

6. To resolve the motions to enforce the Sale Order, the Bankruptcy Court first identified four threshold issues to be determined, including whether any of the claims asserted against New GM were claims against the Motors Liquidation Company GUC Trust (the “**GUC Trust**”) and, if so, whether such claims should “nevertheless be disallowed/dismissed on grounds of equitable mootness” In re Motors Liquidation Co., 529 B.R. 510, 539-40 (Bankr. S.D.N.Y. 2015) (the “**April 2015 Decision**”). The Bankruptcy Court tolled the Ignition Switch Plaintiffs’ time to file late claims against the GUC Trust until final resolution of the four threshold issues, including appeals.⁷

7. In April and June 2015, the Bankruptcy Court issued its decision and related judgment on these four threshold issues. See In re Motors Liquidation Co., 529 B.R. 510; *Judgment*, dated June 1, 2015 [ECF No. 13177] (the “**June 2015 Judgment**”).

8. Among other things, the Bankruptcy Court held that the Ignition Switch Plaintiffs’ and Ignition Switch Pre-Closing Accident Plaintiffs’⁸ due process rights were violated because Old GM failed to provide them with constitutionally adequate notice of the November 30, 2009 bar date and that that failure prejudiced them in filing timely claims. See In re Motors Liquidation Co., 529 B.R. at 525, 574. The Bankruptcy Court recognized that the “obvious” remedy for this due process violation was permitting the Ignition Switch Plaintiffs and Ignition

⁷ See Scheduling Order Regarding (I) Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 To Enforce the Court’s July 5, 2009 Sale Order and Injunction, (II) Objection Filed by Certain Plaintiffs in Respect thereto, and (III) Adversary Proceeding No. 14-01929, dated May 16, 2014 [ECF No. 12697] at 3.

⁸ The term “**Pre-Closing Accident Plaintiffs**” means those plaintiffs asserting personal injury or wrongful death claims or persons who suffered a personal injury or wrongful death arising from an accident involving an Old GM vehicle that occurred prior to the closing of the Section 363 Sale. The Pre-Closing Accident Plaintiffs are comprised of a subset of plaintiffs asserting claims or who suffered an injury or death involving an Old GM vehicle with an Ignition Switch Defect (the “**Ignition Switch Pre-Closing Accident Plaintiffs**”). Collectively, the Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs and Pre-Closing Accident Plaintiffs are the “**Plaintiffs**.”

Switch Pre-Closing Accident Plaintiffs to file late claims. See id. at 583. These bar date rulings were not appealed.

9. However, the Bankruptcy Court further held that while “late claims filed by the Plaintiffs might still be allowed, assets transferred to the GUC Trust under the Plan could not now be tapped to pay them” pursuant to the doctrine of equitable mootness. See id. at 528-29. According to the Bankruptcy Court, the GUC Trust was “funded by discrete bundles of assets—that had been reserved for identified claims under Old GM’s reorganization plan—with no unallocated assets left for additional claims.” Id. at 592. According to the Court, permitting Plaintiffs’ claims against the GUC Trust would frustrate unitholders’ “legitimate expectations” that the universe of claims could not increase. See id.

10. The Bankruptcy Court certified the April 2015 Decision and June 2015 Judgment for direct appeal to the Second Circuit.⁹ Among the issues raised on appeal was whether “the Bankruptcy Court err[ed] in applying the doctrine of equitable mootness to the claims of the Ignition Switch Plaintiffs”¹⁰

11. Prior to and following the issuance of the April 2015 Decision and June 2015 Judgment, Designated Counsel and Co-Lead Counsel focused attention on issues related to the Ignition Switch Plaintiffs’ and Non-Ignition Switch Plaintiffs’ late claims against the GUC Trust, including (i) the allowance of late claims under the Plan,¹¹ the GUC Trust Agreement,¹² and the

⁹ See Order Pursuant to 28 U.S.C. § 158(d), Fed. R. Bankr. P. 8006(e), Certifying Judgment for Direct Appeal to Second Circuit, dated June 1, 2015 [ECF No. 13178].

¹⁰ Appellants’ Statement of Issues on Appeal and Amended Designation of Items to be Included in the Record on Appeal, dated July 14, 2015 [ECF No. 13299].

¹¹ See Second Amended Joint Chapter 11 Plan, filed Mar. 18, 2011 [ECF No. 9836].

¹² See Second Amended and Restated Motors Liquidation Company GUC Trust Agreement, dated as of July 30, 2015, by and among Wilmington Trust Company, as trust administrator and trustee of the GUC Trust and FTI Consulting, Inc., as trust monitor of the GUC Trust, dated as of July 30, 2015 (the “**GUC Trust Agreement**”).

Late Filed Claims Order;¹³ and (ii) the structure of Section 3.2 of the Sale Agreement (the “**Accordion Feature**”).¹⁴

12. The Accordion Feature obligates New GM to issue additional shares of New GM common stock (the “**Adjustment Shares**”) if the Bankruptcy Court enters an order estimating the aggregate allowed general unsecured claims against the Old GM estate (a “**Claims Estimate Order**”) at an amount exceeding \$35 billion, with a maximum requirement of issuing 30 million shares if the claims estimation is equal to or exceeds \$42 billion. See Sale Agreement § 3.2(c).

13. Recognizing this potential source of recovery for Plaintiffs’ claims, with the approval of Co-Lead Counsel in the MDL, Designated Counsel began preliminary settlement discussions with the GUC Trust and Participating Unitholders¹⁵ and I informed the Bankruptcy Court of these discussions at a hearing on July 16, 2015. See July 16, 2015 Hr’g Tr. 30:6-9. As I explained to the Bankruptcy Court, we were contemplating a mechanism by which, if Plaintiffs’ claims were of a sufficient amount to trigger the Accordion Feature, Plaintiffs would obtain exclusive rights to the Adjustment Shares and would release all claims to current GUC Trust Assets and past distributions of GUC Trust Assets. See id. 38:19-39:13. We were also considering whether to wait to address class issues until after the Accordion Feature was triggered or pursue class certification for settlement purposes. See 44:23-46:6. Ultimately, these discussions in 2015 ended without a settlement.

¹³ See *Order Approving Motion Pursuant to Bankruptcy Rule 3003 and Section 105(a) of the Bankruptcy Code for an Order Disallowing Certain Late Filed Claims*, dated Feb. 8, 2012 [ECF No. 11394] (the “**Late Filed Claims Order**”).

¹⁴ See Second Amended and Restated Master Sale and Purchase Agreement, by and among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation and Chevrolet-Saturn of Harlem, Inc., as Sellers, and NGMCO, Inc., as Purchaser, dated as of June 26, 2009 (the “**Sale Agreement**”).

¹⁵ The “**Participating Unitholders**” are holders of approximately 65% of the GUC Trust Units outstanding.

14. In June 2015, in an effort to preserve GUC Trust Assets for potential late claims, certain Plaintiffs sought to stay distributions of the GUC Trust's assets pending the appeal of the April 2015 Decision and June 2015 Judgment.¹⁶ Following an evidentiary hearing, the Bankruptcy Court ultimately granted the request for a stay, subject to the posting of a \$10.6 million bond. *See Decision and Order on Request for Stay*, dated Oct. 14, 2015 [ECF No. 13501]. However, because the Plaintiffs could not post the requisite bond, the stay was never effectuated.

15. In July 2016, the Second Circuit issued its opinion on the appeal of the April 2015 Decision and June 2015 Judgment. *See Elliott v. General Motors LLC (In re Motors Liquidation Co.)*, 829 F.3d 135, 166 (2d Cir. 2016). Among other things, the Second Circuit vacated the Bankruptcy Court's equitable mootness ruling as advisory. *Id.* at 169.

II. Proceedings In The Bankruptcy Court On Remand.

16. Thereafter, the Bankruptcy Court entered an Order to Show Cause setting forth issues to be addressed by the Bankruptcy Court on remand (the "**2016 Threshold Issues**") and the procedures for resolving the 2016 Threshold Issues.¹⁷ One 2016 Threshold Issue is whether Ignition Switch Plaintiffs and/or Non-Ignition Switch Plaintiffs could satisfy the requirements

¹⁶ *See The Ignition Switch Plaintiffs' and Certain Non-Ignition Switch Plaintiffs' Request for a Stay of Distributions of GUC Trust Assets and Response to Motion of Wilmington Trust Company, as GUC Trust Administrator and Trustee, for an Order Granting Authority (A) to Exercise New GM Warrants and Liquidate New GM Common Stock and (B) to Make Corresponding Amendments to the GUC Trust Agreement*, dated June 24, 2015 [ECF No. 13246]; *Joinder of the Ignition Switch Pre-Closing Accident Plaintiffs to the Ignition Switch Plaintiffs' and Certain Non-Ignition Switch Plaintiffs' Request for a Stay of Distributions of GUC Trust Assets and Response to Motion of Wilmington Trust Company, as GUC Trust Administrator and Trustee, for an Order Granting Authority (A) to Exercise New GM Warrants and Liquidate New GM Common Stock and (B) to Make Corresponding Amendments to the GUC Trust Agreement and Request for Stay of Distributions of GUC Trust Assets*, dated June 24, 2015 [ECF No. 13248].

¹⁷ *Order to Show Cause Regarding Certain Issues Arising from Lawsuits with Claims Asserted Against General Motors LLC ("New GM") that Involve Vehicles Manufactured by General Motors Corporation ("Old GM")*, dated Dec. 13, 2016 [ECF No. 13802] (the "**Order to Show Cause**").

for authorization to file late proof(s) of claim against the GUC Trust and whether such claims are equitably moot (the “**Late Proof of Claim Issue**”).

17. With respect to the Late Proof of Claim Issue, the Bankruptcy Court ordered Brown Rudnick LLP and Goodwin Procter LLP, on behalf of their respective clients, to file motions seeking authority to file late proof(s) of claim (collectively, the “**Late Claim Motions**”) with draft proofs of claim by December 22, 2016. *See Order to Show Cause* at 5 ¶ 1. The Bankruptcy Court instructed that the Late Claim Motions should only address the authority to file late proof(s) of claim and should not address other issues, such as whether a class proof of claim can be filed, class certification, discovery, or the merits of any late proof(s) of claim. *See id.* The Bankruptcy Court further instructed that briefing on the adjudication of any Late Claim Motions filed by Non-Ignition Switch Plaintiffs would be stayed pending resolution of the other 2016 Threshold Issues. *See id.* at 5 ¶ 2.

18. As directed by the Bankruptcy Court, Brown Rudnick assisted Co-Lead Counsel, on behalf of the Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs, in filing a Late Claim Motion on December 22, 2016, attaching proposed class proofs of claim asserted on behalf of proposed class representatives for the Ignition Switch Plaintiffs and Non-Ignition Switch Plaintiffs (the “**Proposed Class Claims**”).¹⁸

19. The Proposed Class Claims allege that Old GM knew of the Ignition Switch Defect, other ignition switch defects, defects in side airbags, and defects in power steering for

¹⁸ *See Motion for an Order Granting Authority to File Late Class Proofs of Claim*, dated Dec. 22, 2016 [ECF No. 13806] (“**Plaintiffs’ Late Claim Motion**”). Goodwin Procter also filed a Late Claim Motion on behalf of certain Ignition Switch Pre-Closing Accident Plaintiffs. *See Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths*, dated December 22, 2016 [ECF No. 13807] (“**Pre-Closing Accident Plaintiffs’ Late Claim Motion**”). The Groman Plaintiffs and certain other plaintiffs represented by Gary Peller filed joinders to the late claims motions. In July and August 2017, certain Ignition Switch Pre-Closing Accident Plaintiffs represented by Andrews Myers, P.C. filed late claims motions.

years prior to the bar date and concealed the existence of these defects, causing Economic Loss Plaintiffs to overpay for defective vehicles and bear the costs of repairs while Old GM reaped the benefit of selling defective vehicles at inflated prices and avoiding the costs of recall.¹⁹ Based on these allegations, the Ignition Switch Plaintiffs and Non-Ignition Switch Plaintiffs assert claims against the GUC Trust/Old GM estate under the laws of each of the 50 states and the District of Columbia for: (i) fraudulent concealment; (ii) unjust enrichment; (iii) consumer protection claims; (iv) breach of implied warranty of merchantability; and (v) negligence.²⁰

20. Thereafter, the parties participated in two status conferences before the Bankruptcy Court, engaged in preliminary discovery, and filed briefs addressing two preliminary issues raised in the Late Claim Motions: (i) whether relief can be granted absent a showing of excusable neglect under the so-called Pioneer factors; and (ii) the applicability of any purported agreements with the GUC Trust or other tolling arrangements to toll timeliness objections (the **“Initial Late Claim Motions Issues”**).²¹

21. In connection with the filing of the Late Claim Motions and the briefing on the Initial Late Claim Motions Issues, discussions to settle Plaintiffs’ claims against the GUC Trust were renewed. Accordingly, at the May 17, 2017 hearing on the other 2016 Threshold Issues, I conveyed to the Court that there were active settlement discussions between certain Plaintiffs,

¹⁹ Exhibit A to Plaintiffs’ Late Claim Motion ¶¶ 9-258, 332; Exhibit B to Plaintiffs’ Late Claim Motion ¶¶ 9-146, 249.

²⁰ Proposed Ignition Switch Class Claim ¶¶ 316-418; Proposed Non-Ignition Switch Class Claim ¶¶ 233-337.

²¹ *See Order Establishing, Inter Alia, Briefing Schedule for Certain issues Arising from Late Claim Motions Filed by Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs and Certain Ignition Switch Pre-Closing Accident Plaintiffs*, dated Mar. 2, 2017 [ECF No. 13869]; *Opening Brief by General Motors LLC with Respect to Initial Late Claim Motions Issues*, dated Mar. 6, 2017 [ECF No. 13871]; *The Ignition Switch Plaintiffs’ Brief on the Initial Late Claim Motions Issues*, dated Mar. 6, 2017 [ECF No. 13872]; *Opening Brief of GUC Trust Administrator and Participating Unitholders on the Applicability of Pioneer and Tolling to Plaintiffs’ Motions to File Late Claims*, dated Mar. 6, 2017 [ECF No. 13873]; *Brief on Applicability of Pioneer and Tolling Issues in Connection with Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths*, dated Mar. 6, 2017 [ECF No. 13874].

the GUC Trust, and the Participating Unitholders that might obviate the need for oral argument on the Initial Late Claim Motions Issues. See Hr’g Tr. 266:12-19.²² After this hearing, Matt Williams of Gibson Dunn sent me an email objecting to my disclosure of settlement discussions.²³ A hearing on these issues had not been scheduled.

III. Settlement Negotiations.

22. Settlement discussions began between Designated Counsel and Co-Lead Counsel on behalf of the Economic Loss Plaintiffs, on the one hand, and Akin Gump Strauss Hauer & Feld LLP on behalf of Participating Unitholders, on the other. After we created the general settlement structure, Gibson Dunn & Crutcher LLP, on behalf of the GUC Trust, and Hilliard Martinez Gonzalez, LLP, the Law Offices of Thomas J. Henry and Goodwin Procter LLP, on behalf of certain Pre-Closing Accident Plaintiffs represented by those firms (the “**Initial Pre-Closing Accident Plaintiffs**”), were brought into the settlement discussions.²⁴ In the course of negotiations, I never dealt directly with anyone from Wilmington Trust Company, the trustee and trust administrator of the GUC Trust, or from FTI Consulting, Inc., the GUC Trust Monitor.

²² Letters conveying that settlement discussions were on-going and that a hearing on the Initial Late Claims Motions Issue should not be scheduled were filed on June 16, June 30, and August 4, 2017. See *Letter re: Status of Settlement Discussions*, dated June 16, 2017 [ECF No. 13962]; *Letter re: Status of Settlement Discussions*, dated June 30, 2017 [ECF No. 13981]; *Letter re: Status of Settlement Discussions*, dated Aug. 4, 2017 [ECF No. 14027].

²³ PX-004 at BR002322.

²⁴ In August 2017, following discussions with the GUC Trust, certain Pre-Closing Accident Plaintiffs represented by Andrews Myers (the “**Additional Pre-Closing Accident Plaintiffs**”) agreed to become signatories to the Settlement Agreement as written.

23. In creating a settlement structure, we relied upon the GUC Trust's exclusive authority to object to, resolve and seek estimation of Plaintiffs' claims.²⁵ In addition, we relied upon the GUC Trust's exclusive responsibility to request that New GM fulfill its obligation under the Sale Agreement to issue Adjustment Shares if the Accordion Feature were triggered.²⁶

24. The basic structure of the contemplated settlement to resolve contested issues between the Plaintiffs and the GUC Trust was for the Plaintiffs to waive their ability to: (i) stay distributions from the GUC Trust; (ii) obtain priority on future distributions from the GUC Trust; and (iii) claw-back prior distributions to Unitholders. In exchange, the GUC Trust would pay a "Settlement Amount," pay reasonable costs and expenses for providing extensive notice of the settlement, and support entry of a Claims Estimate Order that would trigger New GM's obligation to issue the maximum amount of Adjustment Shares. The Settlement Amount and Adjustment Shares would be placed in a Settlement Fund for the exclusive benefit of Plaintiffs.

25. After reaching a consensus regarding the basic structure of the contemplated settlement, on June 6, 2017, Howard Steel of Brown Rudnick sent Naomi Moss of Akin Gump an initial draft of the Settlement Agreement.²⁷ Between June 6, 2017 (when the initial draft of the Settlement Agreement was sent to the GUC Trust) and August 14, 2017 (when the final Settlement Agreement was provided to New GM), the parties exchanged versions of the Settlement Agreement approximately twenty-one times.

²⁵ See Plan § 7.3 ("[T]he GUC Trust Administrator . . . may at any time request that the Bankruptcy Court estimate any contingent, unliquidated or Disputed Claims pursuant to section 502(c) of the Bankruptcy Code . . ."); GUC Trust Agreement § 5.1(a) ("[O]bjections to, and requests for estimation of Disputed General Unsecured Claims against the Debtors may be interposed and prosecuted only by the GUC Trust Administrator."); GUC Trust Agreement § 5.1(d) ("[T]he GUC Trust Administrator shall have the authority to compromise, settle, otherwise resolve or withdraw any objections to Disputed General Unsecured Claims against the Debtors . . ."); GUC Trust Agreement § 5.1(e) ("The GUC Trust Administrator may at any time request that the Bankruptcy Court estimate any contingent claim, unliquidated claim or Disputed General Unsecured Claim pursuant to Section 502(c) of the Bankruptcy Code . . .").

²⁶ See GUC Trust Agreement § 2.3(d).

²⁷ See PX-005 at BR007564.

26. In the course of settlement negotiations, I was focused on certain key issues, discussed below. At no point during the negotiation of the settlement documents did the GUC Trust or its counsel discuss with me or, to my knowledge, any other Plaintiffs' attorney that the GUC Trust's approval of the settlement would not be final or binding until the Settlement Agreement was physically signed or previewed with the Bankruptcy Court at a settlement conference.

A. The Settlement Amount.

27. One point of discussion was the Settlement Amount to be paid by the GUC Trust. The initial June 6 draft of the Settlement Agreement by Brown Rudnick proposed a Settlement Amount of \$15 million.²⁸ The July 5, 2017 version of the Settlement Agreement drafted by the GUC Trust and Participating Unitholders kept the \$15 million proposal, but added brackets around the \$15 million.²⁹ The brackets were removed in the July 20, 2017 version of the Settlement Agreement drafted by the GUC Trust and Participating Unitholders.³⁰

B. Evidence In Support Of The Claims Estimate Order.

28. A second point of discussion concerned the Claims Estimate Order. To enable the GUC Trust to support entry of the Claims Estimate Order, the Economic Loss Plaintiffs and Initial Pre-Closing Accident Plaintiffs provided the GUC Trust with separate proffers of evidence and expert reports describing in detail the alleged viability of the asserted claims, the alleged violation of due process rights in connection with the bar date and the alleged amount of damages.

²⁸ See PX-005 at BR007564-7578.

²⁹ See PX-013 at BR004491.

³⁰ See PX-026 at BR003004.

29. Howard Steel of Brown Rudnick provided an initial proffer of evidence and an expert report on the Economic Loss Plaintiffs' claims to Akin Gump to be shared with Gibson Dunn on May 9, 2017 and an updated version of the proffer of evidence to Akin Gump and Gibson Dunn on July 13, 2017.³¹ The proffer of evidence sets forth the factual background for the Economic Loss Plaintiffs' claims and the amount of damages alleged. The report by Stephen Boedeker, an expert on surveys and statistical sampling, analyzes the Plaintiffs' damages claims based on a conjoint analysis conducted by Mr. Boedeker as managing director of Berkley Research Group.

30. On July 11, 2017, Bob Hilliard of Hilliard Martinez Gonzalez, LLP provided materials describing the personal injury and wrongful death claims of the Initial Pre-Closing Accident Plaintiffs and demonstrating the alleged value of these claims based on exemplar verdict amounts.³² The valuation of damages was assessed and approved by W. Mark Lanier, an experienced trial attorney recognized as a leader in the field.

31. The valuation of the Economic Loss Plaintiffs' and Initial Pre-Closing Accident Plaintiffs' claims set forth in the proffered evidence is well in excess of the amount necessary to trigger New GM's obligation to issue the maximum amount of Adjustment Shares under the Accordion Feature of the AMSPA.

32. As set forth in the Settlement Agreement, the GUC Trust's independent review of this evidence formed the basis of its agreement to support entry of the Claims Estimate Order.³³

³¹ See PX-002 at BR001936; PX-018 at BR002373.

³² See PX-015 at BR000359.

³³ See PX-001 § 2.4 at BR005727-28.

C. Pursuing A Staged Settlement And Binding Absentee Claimants.

33. A third point of discussion concerned two related open issues raised by Akin Gump and Gibson Dunn that were resolved in the course of negotiations—creating a staged settlement process and binding absentee claimants.

34. The Settlement Agreement requires the parties to file a Settlement Motion seeking: (i) a Settlement Order approving the Settlement, directing the GUC Trust to pay a Settlement Amount, and waiving Plaintiffs' claims to current GUC Trust Assets and past distributions of GUC Trust Assets (the "**Waiver Provision**"); and (ii) a Claims Estimate Order.³⁴ We agreed early in negotiations that the payment of the Settlement Amount and the Waiver Provision would not be dependent on the outcome of the Claims Estimate Order. This would enable a two-step process whereby the Settlement Order could be entered first and a Claims Estimate Order could be entered later following further proceedings.

35. We also agreed that the attorneys who were signatories to the Settlement Agreement on behalf of certain Plaintiffs (the "**Signatory Plaintiffs**") would subsequently determine procedures for the administration and allocation of the Settlement Fund, subject to notice and an opportunity for all Plaintiffs to be heard. This would enable issues related to eligibility and allocation to be deferred until after the Accordion Feature was triggered and there was a significant *res* available to be allocated.

36. In connection with this staged settlement process, early in the negotiation process, the Participating Unitholders and the GUC Trust raised concerns about how to bind absentee claimants to the Settlement Order, in particular the Waiver Provision, and whether class certification for settlement purposes was necessary. On May 9, 2017, Daniel Golden of Akin

³⁴ See PX-001 §§ 2.2, 2.3, 2.4 at BR005726-5728.

Gump sent me an e-mail asking “whether you had further thoughts on how to include all plaintiff groups in the proposed settlement with the GUC Trust.”³⁵

37. Designated Counsel and Co-Lead Counsel considered pursuing certification for a settlement class, but determined that class certification issues should not be dealt with until after the Accordion Feature had been triggered. At that time, when there was a significant *res* to be distributed, the Signatory Plaintiffs could work with a magistrate judge to determine the details of the criteria for eligibility and allocation of the Settlement Fund.

38. Throughout the negotiations, we consistently took the position that class certification was not necessary and that notice under Bankruptcy Rule 9019 would suffice, and made this position well known to the GUC Trust and Participating Unitholders. The GUC Trust and Participating Unitholders both continued to negotiate the settlement despite knowing and ultimately conceding that certification of a settlement class was not necessary or contemplated. None of the twenty-one versions of the Settlement Agreement circulated among the parties over the course of more than two months provide for class certification.

39. Instead, the parties focused on how to provide extensive notice of the Settlement Motion to Plaintiffs in order to bind them to the Settlement Order and the cost of such notice. The GUC Trust agreed to pay for extensive notice to Plaintiffs and other parties impacted by the Settlement Agreement, but negotiated for a cap on notice costs, with the Signatory Plaintiffs to pay for notice costs, if any, above the cap.³⁶

40. To determine the cost of notice and create a fulsome notice program, Co-Lead Counsel obtained bids for a notice program and engaged a notice provider, Cameron R. Azari, Esq., the Director of Legal Notice for Hilsoft Notifications, a business unit of Epiq Systems

³⁵ See PX-002 at BR001936.

³⁶ See, e.g., PX-006 at BR004613; PX-001 at BR005729.

Class Action and Claims Solutions.³⁷ Based on the bids received, the estimated cost of the contemplated notice ranged from \$4 to \$6 million. On August 9, 2017, Howard Steel of Brown Rudnick provided Naomi Moss of Akin Gump and Keith Martorana of Gibson Dunn with notice proposals to support its offer to set the notice cost cap at \$6 million.³⁸ After several back and forth exchanges, Gibson Dunn ultimately agreed to this amount in August.³⁹

41. The parties decided to seek court approval of the proposed notice procedures in advance of incurring the cost of notice. Accordingly, on July 25, 2017, Howard Steel of Brown Rudnick circulated initial drafts of a motion seeking approval of the notice procedures and forms of notice for Plaintiffs⁴⁰ and, on August 7, 2017, a declaration in support of the motion by the notice provider.⁴¹ The parties planned to discuss notice issues at a conference with the Court before filing the motion seeking approval of notice procedures, as discussed further below.

42. At no point during negotiations or the finalization of the Settlement documentation did the GUC Trust or its counsel indicate that neither the GUC Trust nor its counsel would sign the Settlement Agreement or any of its ancillary documents prior to previewing the proposed notice procedures or any of the Settlement terms with the Bankruptcy Court.

IV. Finalizing The Settlement Agreement, Informing New GM, And The GUC Trust's Subsequent Abandonment.

43. By no later than early August 2017, all of the material terms of the Settlement Agreement had been agreed to, the forms reflecting the same were substantially finalized,

³⁷ See PX-045 at BR006635

³⁸ See *id.*

³⁹ See PX-001 at BR005729.

⁴⁰ See PX-029 at BR003073.

⁴¹ See PX-044 at BR006376.

including the notices to those who would be bound by the Settlement, and the parties were working to schedule a conference with the Bankruptcy Court to present the Settlement and preliminarily discuss notice issues.

44. On August 2, 2017, Naomi Moss of Akin Gump informed Howard Steel of Brown Rudnick and Keith Martorana of Gibson Dunn that Judge Glenn was out the following week but would be in the week of August 14.⁴²

45. Around this time, I was informed by Gibson Dunn that we had its consent to contact Arthur Steinberg, counsel for New GM, to discuss the Settlement and the planned Bankruptcy Court conference. Accordingly, on August 9, 2017, with the full knowledge and consent of the GUC Trust, Daniel Golden, counsel to the Participating Unitholders, and I called Arthur Steinberg and Andrew Bloomer, counsel to New GM, to inform New GM of the plan to present the Settlement papers to the Bankruptcy Court at a conference, determine New GM's availability for such a conference the following week, and inform New GM of the basic structure of the Settlement, including that the parties would seek a Claims Estimate Order as part of the Settlement. We also committed to provide Mr. Steinberg and Mr. Bloomer a final set of pleadings in advance of such a conference. Mr. Steinberg confirmed that he would be available for the planned conference.

46. Following this call, Mr. Golden circulated an email to the parties to "schedule an all hands call . . . to finalize all of the settlement documentation and motions" and requested that "[a]t this call please have the requisite people necessary to bind your respective clients."⁴³ This call was ultimately scheduled for August 11, following the MDL status conference before Judge Furman.

⁴² See PX-037 at BR006091.

⁴³ See PX-047 at BR007012.

47. On August 11, 2017, Co-Lead Counsel Steve Berman previewed certain terms of the Settlement in open court at the MDL status conference.⁴⁴ Gibson Dunn attended the MDL status conference telephonically and did not object to the preview of the Settlement during or after the status conference. To my knowledge, no one from Gibson Dunn contacted Mr. Berman objecting to his statement to Judge Furman that a Settlement would be presented to the Bankruptcy Court the following week. New GM attended the MDL status conference and let Judge Furman know that New GM thought the Settlement was collusive and that New GM planned to seek to withdraw the reference to the Bankruptcy Court.⁴⁵ Numerous news outlets carried stories regarding the settlement following this conference.

48. Following the conference, the parties had the previously scheduled all hands call to finalize the documents. On that call, Gibson Dunn conveyed that they were done with comments to the documents.

49. Later that day, Howard Steel of Brown Rudnick circulated updated documents per the all hands call.⁴⁶ In response, on August 12, Keith Martorana of Gibson Dunn conveyed that “[f]rom the GUC Trust perspective, all of the documents sent over by Howie (subject to one item we are discussing with Akin in the Settlement Agreement) are fine.”⁴⁷

50. Keith Martorana of Gibson Dunn confirmed that resolution of that item occurred on the morning of August 14. That morning, Howard Steel of Brown Rudnick circulated final execution versions of the settlement documentation.⁴⁸

⁴⁴ See Aug. 11 Hr’g Tr. 37:13-39:1.

⁴⁵ See *id.* 41:4-17.

⁴⁶ See PX-056 at BR005064.

⁴⁷ See PX-063 at BR005468.

⁴⁸ See PX-073 at BR005760.

51. By August 14, 2017, the parties had secured a conference with the Bankruptcy Court for August 17, 2017.⁴⁹

52. On August 14, Mr. Golden of Akin Gump sent an email to the parties asking “who will be in position to send the final documentation” to Mr. Steinberg.⁵⁰ Howard Steel of Brown Rudnick offered to “send to him when everyone is signed off”⁵¹

53. Each party to the Settlement Agreement provided authorization to provide the final documents to New GM over email, including Keith Martorana of Gibson Dunn who stated that we were “authorized to send current versions to New GM this evening.”⁵² Accordingly, at 9:14 p.m., Howard Steel of Brown Rudnick sent the final versions of the Settlement documents to New GM’s counsel, cc’ing counsel for the GUC Trust.⁵³

54. The next day, on August 15, New GM filed a letter with the Bankruptcy Court requesting that the August 17 conference be cancelled, stating, among other things, that “the proposed settlement is legally improper, collusive and in bad faith.”⁵⁴ Before the parties had a chance to file responsive letters, on August 16, the Bankruptcy Court entered an order keeping the August 17th date for the conference, to be held in open court on the record.⁵⁵

55. Unbeknownst to the Plaintiffs’ counsel, also on August 15, 2017, Gibson Dunn had a meeting with New GM, to which meeting counsel for the Participating Unitholders was precluded from attending. According to the GUC Trust, this meeting lasted two hours “at most,”

⁴⁹ See PX-067 at BR005770.

⁵⁰ See PX-078 at BR006024.

⁵¹ See id.

⁵² See PX-089 at BR005545.

⁵³ See PX-094 at BR005613.

⁵⁴ See *New GM’s Position on Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m. Regarding Proposed Settlement of Late Claim Motions*, dated Aug. 15, 2017 [ECF No. 14053].

⁵⁵ See *Order re August 17, 2017 Court Conference*, dated Aug. 16, 2017 [ECF No. 14056].

consisting in large part of New GM reciting “execution risks” that the GUC Trust “already knew,” including binding absentee claimants absent class certification.⁵⁶

56. On the afternoon of August 16, 2017, the day before the August 17th status conference before the Bankruptcy Court, I received a call from Gibson Dunn informing us that the GUC Trust was pulling out of the Settlement Agreement.

57. Also on August 16, 2017, New GM and the GUC Trust submitted a joint letter to the Bankruptcy Court explaining that the GUC Trust was backing out of the Settlement and decided to enter into “a proposed settlement agreement with New GM that will be subject to this Court’s approval.”⁵⁷

58. In response, that same day, Brown Rudnick filed the final Settlement documentation with the Bankruptcy Court.⁵⁸ The next day (August 17, 2017), Brown Rudnick filed a supplemental letter attaching relevant communications with the GUC Trust demonstrating the binding nature of the Settlement Agreement.⁵⁹

I declare under penalty of perjury that to the best of my knowledge, information, and belief, the foregoing is true and correct.

Dated: December 5, 2017
New York, New York

/s/ Edward S. Weisfelner
Edward S. Weisfelner

⁵⁶ See Aug. 17, 2017 Hr’g Tr. 16:14-21:14.

⁵⁷ See *Update on Matters Related to the Late Claim Motions and the Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m.*, dated August 16, 2017 [ECF No. 14060].

⁵⁸ See *Letter to Judge Glenn in Response to GM’s Letter Update on Matters Related to the Late Claim Motions and the Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m.*, dated August 16, 2017 [ECF No. 14061].

⁵⁹ See *Letter to Judge Glenn Supplementing Plaintiffs’ Letter*, dated Aug. 17, 2017 [ECF No. 14062].

EXHIBIT 2

**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

DIRECT TESTIMONY OF HOWARD S. STEEL

I, Howard S. Steel, under penalty of perjury, testify as follows:

1. I am a partner at the law firm of Brown Rudnick LLP, with offices at 7 Times Square, New York, New York 10036. Our firm serves as Designated Counsel for the Ignition Switch Plaintiffs¹ and certain Non-Ignition Switch Plaintiffs² (collectively, the “**Economic Loss Plaintiffs**”) in the Bankruptcy Court. I respectfully submit this witness statement as my direct testimony in support of the *Motion to Enforce the Settlement Agreement By and Among the Signatory Plaintiffs and the GUC Trust*, dated Sept. 11, 2017 [ECF No. 14092].³

2. The facts set forth herein are based on my personal knowledge, except as to certain matters that I believe to be true based on my review of documents produced in discovery or from other sources that I consider to be reliable.

¹ The term “**Ignition Switch Plaintiffs**” refers to those plaintiffs asserting economic loss claims or persons suffering economic losses who, as of July 10, 2009, owned or leased a vehicle with an ignition switch defect included in Recall No. 14V-047 (the “**Ignition Switch Defect**”).

² The term “**Non-Ignition Switch Plaintiffs**” refers to those plaintiffs asserting economic loss claims or persons suffering economic losses who, as of July 10, 2009, owned or leased a vehicle with defects in ignition switches, side airbags or power steering included in Recall Nos. 14V-355, 14V-394, 14V-400, 14V-346, 14V-118 and 14V-153.

³ Except where otherwise indicated, references to “ECF No. _” are to docket entries in the Bankruptcy Court proceedings: In re Motors Liquidation Co., Case No. 09-50026 (MG).

I. Preliminary Discussions To Create The Settlement Structure.

3. Pursuant to the Order to Show Cause issued by the Bankruptcy Court,⁴ Co-Lead Counsel⁵ and Designated Counsel⁶ on behalf of the Economic Loss Plaintiffs and Goodwin Procter LLP on behalf of certain Pre-Closing Accident Plaintiffs⁷ filed motions seeking authority to file late proofs of claim (collectively, the “**Late Claim Motions**”), attaching draft proofs of claim, on December 22, 2016.⁸ Thereafter, the parties participated in two status conferences before the Bankruptcy Court, engaged in preliminary discovery, and filed briefs addressing two preliminary issues raised in the Late Claim Motions.⁹

4. In connection with the Late Claim Motions, settlement discussions began between Co-Lead Counsel and Designated Counsel on behalf of the Economic Loss Plaintiffs, on the one

⁴ *Order to Show Cause Regarding Certain Issues Arising from Lawsuits with Claims Asserted Against General Motors LLC (“New GM”) that Involve Vehicles Manufactured by General Motors Corporation (“Old GM”),* dated Dec. 13, 2016 [ECF No. 13802] (the “**Order to Show Cause**”).

⁵ Steve W. Berman of Hagens Berman Sobol Shapiro LLP, Elizabeth Cabraser of Lief, Cabraser, Heimann & Bernstein, LLP, and Robert C. Hilliard of Hilliard Martinez Gonzalez, LLP were individually and collectively appointed as Co-Lead Counsel in the MDL on August 15, 2014. *See* Order No. 8, dated Aug. 15, 2014 [MDL ECF No. 249]. Mr. Berman and Ms. Cabraser were instructed to focus on Economic Loss Plaintiffs and Mr. Hilliard was instructed to focus on personal injury and wrongful death claimants. *See* Order No. 13, dated Sept. 16, 2014 [MDL ECF No. 304].

⁶ Co-Lead Counsel retained Brown Rudnick LLP and Stutzman, Bromberg, Esserman & Plifka, a Professional Corporation as Designated Counsel to brief issues in the Bankruptcy Court.

⁷ The term “**Pre-Closing Accident Plaintiffs**” means those plaintiffs asserting personal injury or wrongful death claims or persons who suffered a personal injury or wrongful death arising from an accident involving an Old GM vehicle that occurred prior to the closing of the Section 363 Sale. Collectively, the Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs and Pre-Closing Accident Plaintiffs are the “**Plaintiffs**.”

⁸ *See Motion for an Order Granting Authority to File Late Class Proofs of Claim*, dated Dec. 22, 2016 [ECF No. 13806] (“**Plaintiffs’ Late Claim Motion**”). Goodwin Procter also filed a Late Claim Motion on behalf of certain Ignition Switch Pre-Closing Accident Plaintiffs. *See Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths*, dated December 22, 2016 [ECF No. 13807] (“**Pre-Closing Accident Plaintiffs’ Late Claim Motion**”). The Groman Plaintiffs and certain other plaintiffs represented by Gary Peller filed joinders to the late claims motions. In July and August 2017, certain Ignition Switch Pre-Closing Accident Plaintiffs represented by Andrews Myers, P.C. filed late claims motions.

⁹ *See, e.g., Order Establishing, Inter Alia, Briefing Schedule for Certain issues Arising from Late Claim Motions Filed by Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs and Certain Ignition Switch Pre-Closing Accident Plaintiffs*, dated Mar. 2, 2017 [ECF No. 13869].

hand, and Akin Gump Strauss Hauer & Feld LLP on behalf of Participating Unitholders,¹⁰ on the other. After we created the general settlement structure, Gibson Dunn & Crutcher LLP, on behalf of the Motors Liquidation Company GUC Trust (the “**GUC Trust**”), and Hilliard Martinez Gonzalez, LLP, the Law Offices of Thomas J. Henry and Goodwin Procter LLP, on behalf of certain Pre-Closing Accident Plaintiffs represented by those firms (the “**Initial Pre-Closing Accident Plaintiffs**”), were brought into the settlement discussions.¹¹

5. In the course of negotiations, I never dealt directly with anyone from Wilmington Trust Company, the trustee and trust administrator of the GUC Trust, or FTI Consulting, Inc., the GUC Trust Monitor.

6. The basic structure of the contemplated settlement was for the GUC Trust to: (i) support entry of a Claims Estimate Order that would trigger New GM’s obligation to issue the maximum amount of Adjustment Shares;¹² (ii) pay a “Settlement Amount;” and (iii) pay reasonable costs and expenses for providing notice of the settlement. The Settlement Amount and Adjustment Shares would be placed in a Settlement Fund for the exclusive benefit of Plaintiffs. In exchange, the Plaintiffs would waive their ability to: (i) stay distributions from the GUC Trust; (ii) obtain priority on future distributions from the GUC Trust; and (iii) claw-back prior distributions to Unitholders (the “**Waiver Provision**”).

¹⁰ The “**Participating Unitholders**” are holders of approximately 65% of the GUC Trust Units outstanding.

¹¹ In August 2017, following discussions with the GUC Trust, certain Pre-Closing Accident Plaintiffs represented by Andrews Myers (the “**Additional Pre-Closing Accident Plaintiffs**”) agreed to become signatories to the Settlement Agreement as written.

¹² Pursuant to Section 3.2 of the Sale Agreement, New GM is obligated to issue additional shares of New GM common stock (the “**Adjustment Shares**”) if the Bankruptcy Court enters an order estimating the aggregate allowed general unsecured claims against the Old GM estate (a “**Claims Estimate Order**”) at an amount exceeding \$35 billion, with a maximum of issuing 30 million shares if the claims estimation is equal to or exceeds \$42 billion. *See Second Amended and Restated Master Sale and Purchase Agreement, by and among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation and Chevrolet-Saturn of Harlem, Inc., as Sellers, and NGMCO, Inc., as Purchaser, dated as of June 26, 2009, § 3.2(c).*

7. On May 9, 2017, I provided an initial proffer of evidence and an expert report on the Economic Loss Plaintiffs' claims and the amount of damages alleged to Akin Gump to be shared with Gibson Dunn.¹³ On July 13, 2017, I sent an updated proffer of evidence to Akin Gump and Gibson Dunn "providing more background and updated information."¹⁴ These proffers contained a detailed analysis of the claims that the Economic Loss Plaintiffs could assert in the Bankruptcy Court as well as an explanation of damages.

8. On July 11, 2017, Bob Hilliard of Hilliard Martinez Gonzalez, LLP provided materials describing the personal injury and wrongful death claims of the Initial Pre-Closing Accident Plaintiffs and the amount of damages alleged.¹⁵

9. The combined valuation of the Economic Loss Plaintiffs' claims and the Initial Pre-Closing Accident Plaintiffs' claims set forth in the proffers and expert reports is well in excess of the amount necessary to trigger New GM's obligation to issue the maximum amount of Adjustment Shares.

10. An issue discussed early in the negotiation process was the concern raised by the Participating Unitholders and the GUC Trust about how to bind absentee claimants to the Settlement (in particular the Waiver Provision), and whether class certification for settlement purposes was necessary.

11. Throughout the negotiations, Designated Counsel and Co-Lead Counsel consistently took the position that class certification was not necessary and made that position known to the GUC Trust and the Participating Unitholders. The GUC Trust and Participating

¹³ See PX-002 at BR001936.

¹⁴ See PX-018 at BR002373.

¹⁵ See PX-015 at BR000359.

Unitholders both continued to negotiate the settlement despite knowing and ultimately conceding that certification of a settlement class was not necessary.

12. Instead of discussing class certification for settlement purposes, we focused on how to provide extensive notice of the Settlement Motion seeking approval of the Settlement Agreement and Claims Estimate Order under Bankruptcy Rule 9019 in order to bind absentee claimants and the cost of such notice.

II. Settlement Negotiations Begin In Earnest And Agreement Is Reached On Certain Core Terms.

13. After reaching consensus regarding the basic structure of the contemplated settlement, on June 6, 2017, I sent Naomi Moss of Akin Gump an initial draft of the Settlement Agreement.¹⁶ Between June 6, 2017 (when the initial draft was sent to the GUC Trust) and August 14, 2017 (when the final draft was provided to New GM), the parties exchanged versions of the Settlement Agreement approximately twenty-one times.

14. On June 9, 2017, Naomi Moss of Akin Gump provided Brown Rudnick with the collective comments of Akin Gump and Gibson Dunn to the initial draft of the Settlement Agreement.¹⁷ This draft maintained the general structure of the Settlement. The main revisions included editing the definition of Plaintiffs to ensure the Waiver Provision would cover absentee claimants, adding the concept of a notice cost cap over which Plaintiffs would cover the cost of notice of the Settlement Motion, and expanding the Waiver Provision to include a waiver of any claims to assets of the Motors Liquidation Company Avoidance Action Trust.

¹⁶ PX-005 at BR007564.

¹⁷ PX-006 at BR004584.

15. In this draft, Akin Gump and Gibson Dunn added boilerplate language that the Settlement Agreement “shall become effective and binding on the Parties on the date on which this Agreement is fully executed by each of the Parties.”¹⁸

16. This language was never discussed by the parties and Gibson Dunn never discussed with us any reservation, express or otherwise, that the Settlement Agreement could not be binding until signatures were placed on the document.

17. Over the next month, up to and including July 18, 2017, the parties exchanged approximately eight mark-ups of the Settlement Agreement attached to emails containing boilerplate reservations that the drafts were subject to the ongoing review of co-counsel and/or clients.¹⁹ None of the emails specified that signatures were required before the Settlement would be binding.

18. At this point, there was “a call to discuss some of the points that seem stalled so we can discuss our respective concerns.”²⁰ That call took place the next day, July 19, 2017, after which, on July 20, 2017, Keith Martorana of Gibson Dunn circulated “revised versions of the

¹⁸ See id.

¹⁹ See PX-008 at BR004675 (June 15 email from Brown Rudnick circulating Brown Rudnick comments, “subject to further review and revision in all respects, including by Lead Counsel and Hilliard / Weintraub”); PX-009 at BR004761 (June 23 email from Gibson Dunn circulating collective comments from Gibson Dunn and Akin Gump “subject to the ongoing review of GDC, AG and the Trust Administrator”); PX-011 at BR003749 (July 3 email from Brown Rudnick circulating collective Brown Rudnick and Goodwin Procter comments “[s]ubject to ongoing review of BR / GP / Berman, Cabraser, Hilliard”); PX-013 at BR004460 (July 6 email from Gibson Dunn circulating collective comments of Gibson Dunn and Akin Gump “subject to the ongoing review and comment of GDC, Akin Gump and the GUC Trust”); PX-017 at BR002330 (July 12 email from Gibson Dunn “intended to reflect our conversation from yesterday,” “this document is being sent simultaneously to our clients and remains subject to ongoing review and comment”); PX-019 at BR002573 (July 14 Goodwin Procter email circulating collective Goodwin Procter and Brown Rudnick comments “subject to review and comment by Goodwin’s and Brown Rudnick’s respective clients and co-counsel”); PX-020 at BR002622 (July 17 Gibson Dunn email circulating collective Gibson Dunn and Akin Gump comments, “being sent simultaneously to our clients and thus remains subject to ongoing review and comment”); PX-021 at BR002669 (July 18 Goodwin Procter email circulating collective Goodwin Procter and Brown Rudnick comments; “Our respective clients and co-counsel are still reviewing these changes and the draft remains subject to further comments and changes.”).

²⁰ PX-021 at BR002669; PX-022 at BR002868.

settlement agreement which reflects the group's discussion yesterday" "being sent contemporaneously to our clients and remains subject to their ongoing review and comment."²¹

19. By July 20, 2017, several key issues had been resolved. One key issue resolved was the Settlement Amount. The initial June 6 draft of the Settlement Agreement by Brown Rudnick proposed a Settlement Amount of \$15 million.²² The July 5, 2017 version of the Settlement Agreement drafted by the GUC Trust and Participating Unitholders kept the \$15 million proposal, but added brackets around the \$15 million figure.²³ The brackets were removed in the July 20, 2017 version of the Settlement Agreement drafted by the GUC Trust and Participating Unitholders.²⁴

20. Another issue resolved was whether to require side letters from Gary Peller and Golenbock, Wolf, Holdestein stating that they would not object to the settlement. By July 20, 2017, the parties had decided not to include a side letter requirement.²⁵

21. An additional issue discussed was the timing of the waivers in the Settlement Agreement.²⁶ By the July 20, 2017 version of the Settlement Agreement drafted by the GUC Trust and Participating Unitholders, the parties had agreed that the Plaintiffs' waiver of rights to current and past distributions of GUC Trust Assets and the GUC Trust's and related parties' waiver of rights to the Settlement Amount would be effective upon the Settlement Order becoming a final order and payment of the Settlement Amount. The GUC Trust's and related

²¹ PX-026 at BR002969.

²² See PX-005 at BR007564-7578.

²³ See PX-013 at BR004491.

²⁴ See PX-026 at BR003004.

²⁵ See, e.g., PX-021 at BR002669; PX-026 at BR003004.

²⁶ See, e.g., PX-013 at BR004460; PX-017 at BR002330; PX-019 at BR002573; PX-021 at BR002669.

parties' waiver of rights to the Adjustment Shares would be effective upon the Settlement Order becoming a final order, payment of the Settlement Amount, and entry of the Claims Estimate Order. In addition, the GUC Trust had the ability to waive the final order requirement in these waivers.²⁷

22. The parties also discussed the amount of the notice cost cap (with proposals ranging from \$15 million to \$5 million) and whether amounts over the cap would be deducted from the Settlement Amount or covered by the Signatory Plaintiffs.²⁸ In connection with these discussions, on June 11, 2017, I sent Akin Gump an email detailing preliminary views on the cost of sending postcard notice to Plaintiffs to be shared with Gibson Dunn.²⁹ About a month later, on July 12, 2017, I sent Akin Gump and Gibson Dunn illustrative notice plans with projected costs.³⁰ On July 20, 2017, the notice cost cap amount was set at \$5 million;³¹ however, this amount was increased to \$6 million in the August 7, 2017 version of the Settlement Agreement.

23. Around this time, the parties began making progress on drafting: (i) the two orders to be attached the Settlement Agreement—the Settlement Order and Claims Estimate Order; and (ii) the two motions referenced in and required to implement the Settlement Agreement—the Settlement Motion and the motion seeking approval of notice procedures. On June 27, 2017, Keith Martorana of Gibson Dunn circulated the initial draft of the Settlement

²⁷ See PX-026 at BR003004; PX-029 at BR003073.

²⁸ See, e.g., PX-008 at BR004675; PX-013 at BR004460; PX-019 at BR002573; PX-020 at BR002622.

²⁹ See PX-007 at BR004622.

³⁰ See PX-016 at BR002323.

³¹ See PX-026 at BR003004.

Order.³² On July 19, 2017, Jill Forster of Brown Rudnick circulated initial drafts of the Claims Estimate Order and Settlement Motion.³³ A few days later, on July 25, 2017, I circulated initial drafts of the motion seeking approval of notice procedures and accompanying proposed long- and short-form of notice to Plaintiffs.³⁴

24. On July 25, 2017, I circulated a draft of the Settlement Agreement revising the notice provision to provide notice to individuals who owned or leased recalled vehicles on or before November 30, 2009 (the bar date), rather than July 10, 2009 (the closing date),³⁵ and on July 26, 2017, I circulated “light comments” to the Settlement Order and Claims Estimate Order.³⁶

25. In response, on July 27, 2017, Keith Martorana of Gibson Dunn conveyed that the “Settlement Agreement, Settlement Order and Claims estimate order generally look fine from a GDC perspective (and client sign-off is pending),” but inquired why the notice date was switched from the closing date to the bar date.³⁷ I agreed to Gibson Dunn’s one edit, responding, “Please use 7/10,” and asked whether Keith Martorana had obtained “client sign off.”³⁸ Keith Martorana circulated the Settlement Agreement “incorporating that change” of using 7/10 and answered that:

I had a lengthy conversation with our client today, and they are discussing internally. Sign-off, with respect to the three documents (Settlement Agreement,

³² See PX-010 at BR004718.

³³ See PX-025 at BR002908.

³⁴ See PX-029 at BR003073.

³⁵ See *id.*

³⁶ See PX-030 at BR003211.

³⁷ Ex. PX-032 at BR003277.

³⁸ *Id.*

Settlement Order, Claims Estimate Order) will likely come tomorrow. We'll keep you posted. Note, however, that sign-off on the settlement itself is subject to the finalization of all other document in a satisfactory manner and receipt of final approvals.³⁹

26. The following day, on July 28, 2017, Keith Martorana of Gibson Dunn recirculated the Settlement Agreement with “one change requested by [Brown Rudnick]” and clarified a factual issue in the preamble. Keith Martorana also circulated the Settlement Order adding one sentence requested by Goodwin Procter reiterating that the Settlement was not intended to impair claims that Plaintiffs may have against New GM. This email contained no reservation of rights.⁴⁰

27. After Bill Weintraub requested “a minor edit” to the definition of “PIWD Plaintiffs” in the Settlement Agreement, on August 2, 2017, Keith Martorana of Gibson Dunn agreed that “[t]his change is fine” and circulate a revised version of the Settlement Agreement with this change, again with no reservation of rights.⁴¹

III. The Parties Finalize The Settlement Documentation, Inform New GM About The Settlement, And Schedule The Court Conference.

28. On August 3, 2017, in response to my inquiry regarding Judge Glenn's availability in connection with scheduling a conference to present the Settlement to the Bankruptcy Court and preliminarily discuss notice issues, Naomi Moss of Akin Gump informed me and Keith Martorana of Gibson Dunn that the Judge is “out next week. He is in the week after,” *i.e.*, the week of August 14th.⁴²

³⁹ PX-032 at BR003277.

⁴⁰ See PX-034 at BR003354.

⁴¹ Ex.PX-038 at BR006092.

⁴² PX-037 at BR006091.

29. Accordingly, on August 3, 2017, when I circulated a draft letter providing the Bankruptcy Court with a status update regarding settlement discussions to Akin Gump and Gibson Dunn, I asked whether we should include that the parties “hope to be before the court week of 14th.” Keith Martorana of Gibson Dunn responded that we should not make the anticipated conference public “prior to speaking to New GM. They will understandably go crazy.”⁴³ The letter was filed without any reference to the anticipated conference.⁴⁴

30. Also on August 3, 2017, Keith Martorana of Gibson Dunn circulated the Settlement documentation and described its edits as “minor clean-ups” or “slight changes,” with the exception of Settlement Motion.⁴⁵

31. On August 7, 2017, I sent combined Brown Rudnick and Goodwin Procter comments to all Settlement documents and asked “Please let us know where we are final, and any comments / anything you would like to discuss.”⁴⁶ The edits included a proposal to increase the notice cost cap amount in the Settlement Agreement from \$5 million to \$6 million. In addition, language was added to the Settlement Order and Claims Estimate Order clarifying that the Settlement was not intended to impact Plaintiffs’ claims against New GM and several edits to the Settlement Motion were made.⁴⁷ Among the documents circulated was a draft of the joint declaration of Co-Lead Counsel in support of the Settlement Motion.

⁴³ PX-042 at BR006162.

⁴⁴ See Letter re: Status of Settlement Discussions Between the Ignition Switch Plaintiffs, Certain Non-Ignition Switch Plaintiffs, Certain Pre-Closing Accident Plaintiffs, and the GUC Trust, dated Aug. 4, 2017 [ECF No. 14027].

⁴⁵ See PX-041 at BR006164 (noting that the documents “remain[] subject to ongoing review and comment of our clients”).

⁴⁶ PX-044 at BR006376.

⁴⁷ See id.

32. To substantiate the \$6 million notice cost cap amount proposal, on August 8, 2017, I sent Gibson Dunn and Akin Gump a notice proposal from Epiq.⁴⁸ Matt Williams of Gibson Dunn responded that “[a]nything over the ([\$]5/6 [million]) cap needs to be paid directly by the plaintiffs, not out of the 15mm” Settlement Amount.⁴⁹

33. Also on August 8, 2017, Keith Martorana informed us that Gibson Dunn was in discussions with Lisa Norman (who had filed a motion seeking authority to file late proofs of claim on behalf of certain Pre-Closing Accident Plaintiffs on July 28, 2017), and that Lisa Norman was amenable to becoming a signatory to the Settlement Agreement.⁵⁰ Lisa Norman became a signatory without proposing any changes to the terms of the Settlement Agreement.

34. Keith Martorana of Gibson Dunn attached to this email the combined Gibson Dunn and Akin Gump comments to the Settlement documentation.⁵¹ The edits to the Settlement Agreement included adding brackets around the proposed \$6 million notice cost cap amount (which were removed in the August 11, 2017 version of the Settlement Agreement accepted by Gibson Dunn) and adding that the failure to obtain the Notice Order approving the notice procedures contemplated in the Settlement Agreement would be an automatic termination event. Edits to the other documents largely concerned adding clarifying language that Plaintiffs would have no further rights to payment from the GUC Trust other than the Settlement Amount and Adjustment Shares once the waiver was effective.

35. Given that the Settlement Agreement was substantially finalized at this time, on August 9, 2017, Ed Weisfelner of Brown Rudnick and Danny Golden of Akin Gump called

⁴⁸ See PX-045 at BR006635.

⁴⁹ PX-049 at BR006977.

⁵⁰ See PX-046 at BR006651.

⁵¹ Id. (noting that the documents are “subject to the ongoing review and comment of our clients”).

Arthur Steinberg of King & Spalding and Andrew Bloomer of Kirkland & Ellis, counsel to New GM. On the call, Ed Weisfelner and Danny Golden gave New GM “a heads up on the proposed settlement and our desire to have a chambers conference with Judge Glenn for some day next week” and committed to providing New GM “a final set of pleadings sufficiently in advance of a to be scheduled chambers conference.”⁵²

36. In his August 9 email, Danny Golden of Akin Gump asked the parties to “schedule an all hands call for tomorrow to finalize all of the settlement documentation and motions. . . . It seems to me we need a final call to finalize the documents so we can schedule that chambers conference. At this call please have the requisite people necessary to bind your respective clients.”⁵³ The call was eventually scheduled to take place on Friday, August 11, 2017 following a status conference in the MDL.

37. In advance of the all hands call, on August 10, 2017, I sent Naomi Moss of Akin Gump, cc’ing Bill Weintraub of Goodwin Procter, an email with light wordsmithing and clarifying edits to the Settlement Motion, Settlement Agreement, and Claims Estimate Order, explaining “with hopes for an easy Friday for all – here are BR / GP final comments w/ commentary . . . We pledge to use great efforts that if these are taken, no more ink to be shed from plaintiffs’ side on the docs.”⁵⁴

⁵² PX-047 at BR007012.

⁵³ Id. Emphasizing the goal of finality, Naomi Moss of Akin Gump reiterated this point on August 10 in an email to me and Bill Weintraub of Goodwin Procter, stating that “[t]he objective here is to have this be the final call on all outstanding issues. We would like everyone on the phone so we can close everything out.” PX-050 at BR007420. Danny Golden of Akin Gump further noted that “there will be no reservation of rights saying you need to check with your clients.” Id.

⁵⁴ PX-052 at BR007488.

38. On August 11, 2017, Co-Lead Counsel Steve Berman previewed certain terms of the settlement in open court at the status conference before Judge Furman in the MDL.⁵⁵ Gibson Dunn attended the MDL status conference telephonically and subsequently did not object to the preview of the Settlement during or after the status conference. At the conference, New GM made its objections to the Settlement clear and unmistakable, stating that “[t]his has got all the indicia of a collusive settlement.”⁵⁶ Several news outlets carried stories regarding the settlement following this conference.

39. Following the conference, on August 11, 2017, the parties had the all hands call to finalize the documents. On that call, Gibson Dunn conveyed that they were done with comments to the documents. Also on that call, Steve Berman of Hagens Berman conveyed that he had announced the Settlement at the MDL status conference. Gibson Dunn made no objection to the fact that Mr. Berman had told Judge Furman that a settlement had been reached.

40. After the status conference and associated news reports, neither Brown Rudnick nor Co-Lead Counsel received any complaint from Gibson Dunn that a settlement had been announced at the status conference.

41. That same afternoon of August 11, 2017, I circulated “[u]pdated docs per today’s all-hands. Hoping these are final and we can schedule signatures.”⁵⁷ In addition to various clean-up and wordsmithing edits in the Settlement documentation, I removed the brackets around the \$6 million notice cost cap amount in the Settlement Agreement and clarified that the

⁵⁵ See Aug. 11 Hr’g Tr. 37:13-39:1.

⁵⁶ Aug. 11 Hr’g Tr. 41:16-17.

⁵⁷ PX-056 at BR005064.

Settlement Agreement would not automatically terminate if the Bankruptcy Court entered a Notice Order that was reasonably acceptable to the Parties.

42. On August 11, 2017 and August 12, 2017 initial drafts of Bob Hilliard's and Lisa Norman's declaration in support of the Settlement Motion were circulated.⁵⁸

43. On August 12, 2017, Keith Martorana of Gibson Dunn confirmed that "[f]rom the GUC Trust perspective, all of the documents sent over by Howie [Steel] (subject to one item we are discussing with Akin in the Settlement Agreement) are fine."⁵⁹ This email did not include any reservation that counsel's comments were subject to client review of approval.

44. In this same email, Keith Martorana of Gibson Dunn attached initial drafts of the notice to Unitholders and the Andrews Declaration. The Andrews Declaration stated, *inter alia*, that "the Settlement is a prudent and reasonable exercise of business judgment because it presents the best option for the GUC Trust to maximize recovery for the benefit of the GUC Trust Beneficiaries while minimizing the substantial risk posed by the Late Claims Motions."⁶⁰

45. On August 12, 2017, I asked Keith Martorana "what's [the] open item" that he was discussing with Akin Gump. In response, he explained that Akin Gump – not the GUC Trust – had questions about which court (the Bankruptcy Court or the District Court) would hear allocation proceedings regarding the Settlement Fund and that he "suspected they will get over this issue, but since it was their comment i can't sign-off for them."⁶¹

⁵⁸ See PX-058 at BR005329; PX-062 at BR005373.

⁵⁹ PX-063 at BR005468.

⁶⁰ PX-063 at BR005477 ¶ 28.

⁶¹ PX-073 at BR005760.

46. On Monday, August 14, 2017 I learned that the chambers conference was confirmed for Thursday, August 17, 2017.⁶²

47. Also on August 14, 2017, Keith Martorana of Gibson Dunn confirmed resolution of the one open item they were discussing with Akin, stating that “I spoke to Akin, and we are ok with this.”⁶³ The GUC Trust’s “last point” was to edit the declarations in support of the Settlement Motion to “read that ‘counsel to the Participating Unitholders’ participated in negotiations,” rather than stating that the Participating Unitholders participated in negotiations.⁶⁴

48. I responded that “We will updated accordingly and send execution drafts as soon as possible.”⁶⁵ I then circulated “proposed final execution versions of all of the documents. . . . Please let us know any comments or questions and confirm when you are signed off.”⁶⁶ These versions had all “draft” and “privileged and confidential” headings removed. The remaining changes were: (i) light edits by Brown Rudnick and Goodwin Procter to the Andrews Declaration and notice to Unitholders that had been circulated over the weekend; (ii) updating citations to the supporting declarations in the Settlement Motion; and (iii) Gibson Dunn’s requested edit to clarify in the supporting declarations that counsel to the Participating Unitholders participated in negotiations.

49. In response, Keith Martorana of Gibson Dunn requested one change to the notice to Unitholders regarding the percentage of GUC Trust Units held by the Participating

⁶² See PX-067 at BR005770.

⁶³ PX-073 at BR005760.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ PX-075 at BR005804.

Unitholders and stated that “[a]t this point we do not have any further comments, but are obtaining final sign-off from our client.”⁶⁷

50. Next, Daniel Golden of Akin Gump asked, “Can someone please advise me who will be in a position to send the final documentation to Arthur [Steinberg] by cob today.” I responded that “[w]e can send to him when everyone signed off – please advise if you have not already.”⁶⁸

51. I received confirmation that each party was signed off, specifically, confirmation from: (i) Co-Lead Counsel and Designated Counsel on behalf of the Economic Loss Plaintiffs; (ii) Hilliard Martinez Gonzalez, the Law Offices of Thomas J. Henry, and Goodwin Procter on behalf of the Initial Pre-Closing Accident Plaintiffs; (iii) Andrews Myers on behalf of the Additional Pre-Closing Accident Plaintiffs; (iv) Akin Gump on behalf of the Participating Unitholders; and (v) Gibson Dunn on behalf of the GUC Trust.⁶⁹

52. Keith Martorana of Gibson Dunn wrote that “[w]e are waiting for final approval from client, but unlikely to come tonight. You are, however, authorized to send current versions to New GM this evening.”⁷⁰ When I responded “want me to send now or wait? Want any language added to the note to Arthur,” he wrote that “[y]ou can send now. Nothing to add in the note.”⁷¹

⁶⁷ PX-078 at BR006024.

⁶⁸ Id.

⁶⁹ See PX-077 at BR006006 (sign-off from Esserman); PX-081 at BR005593 (sign-off from Hillard/Henry; sign-off from Goodwin; sign-off from Hagens Berman); PX-085 at BR005790 (sign-off from Norman; sign-off from Lieff Cabraser; PX-089 at BR005545 (sign-off from Participating Unitholders “subject to guc trust being signed off”); id. (sign-off from GUC Trust).

⁷⁰ Id.

⁷¹ Id.

53. After receiving this response from Keith Martorana, I emailed the group and confirmed that I “[h]ave heard from everyone and going to send over to Arthur now, thanks.”⁷² In response, Danny Golden of Akin Gump asked that I “[s]end it but say it’s confidential until it is filed; we are sending as a courtesy.”⁷³

54. Accordingly, on August 14, 2017, at 9:14 p.m., I sent the final versions of the settlement documents to New GM’s counsel, cc’ing counsel for the GUC Trust.⁷⁴

55. In sum, by August 14, 2017, all of the material terms of the Settlement Agreement had been agreed to by all of the parties, all of the parties had signed-off on the form of the Settlement Agreement and all related documentation, the parties had scheduled a conference with the Bankruptcy Court to present the Settlement and preliminarily discuss notice issues, and the parties had circulated the Settlement documentation to New GM.

56. At no point during the negotiation of the settlement documents did the GUC Trust or its counsel discuss with me or, to my knowledge, any other Plaintiffs’ attorney that the GUC Trust’s approval of the settlement would not be final until the Settlement Agreement was signed or previewed with the Bankruptcy Court.

IV. The GUC Trust Abandons The Settlement.

57. In the afternoon of August 16, 2017, I learned on a call from Gibson Dunn that the GUC Trust was abandoning the Settlement.

58. I later learned at the August 17 conference before the Bankruptcy Court that this decision was made after an August 15, 2017 meeting between the Gibson Dunn and New GM

⁷² PX-091 at BR005550.

⁷³ PX-090 at BR005601.

⁷⁴ See PX-094 at BR005613.

that did not include the Participating Unitholders. I also learned at the August 17 conference that, according to Keith Martorana of Gibson Dunn, the meeting lasted two hours “at most,” consisting in large part of New GM reciting “execution risks” that the GUC Trust “already knew,” including binding absentee claimants absent class certification.⁷⁵

59. On August 15, 2017, the same day as the meeting with New GM, Gabi Gillett of Gibson Dunn sent me an email asking whether we had “thought more about” “the interplay between settlement and seeking class certification.”⁷⁶ Without knowledge of the GUC Trust meeting with New GM, I believed this email related to preparing to respond to New GM’s objection to our Settlement Agreement, announced by New GM at the August 11, 2017 MDL status conference and in an August 15, 2017 letter filed with the Bankruptcy Court, based on class certification issues. I did not speak to Gabi Gillett that day.

60. Also on August 15, 2017, New GM filed a letter with the Bankruptcy Court requesting that the August 17 conference be cancelled, stating, among other things, that “the proposed settlement is legally improper, collusive and in bad faith” and issues related to the settlement should be heard by Judge Furman in the MDL because “issues that underlie the [Plaintiffs’] claims . . . are scheduled to be determined in the MDL,” including “Rule 23 class-related issues”⁷⁷

61. Later that day, August 15, 2017, Naomi Moss of Akin Gump circulated to Brown Rudnick a draft letter in response to New GM’s letter for the GUC Trust to file stating that:

⁷⁵ See Aug. 17, 2017 Hr’g Tr. 16:14-21:14.

⁷⁶ PX-100 at BR006032.

⁷⁷ See *New GM’s Position on Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m. Regarding Proposed Settlement of Late Claim Motions*, dated Aug. 15, 2017 [ECF No. 14053].

The purpose of scheduling the Conference was to apprise the Court of the existence of the Proposed Settlement, which, if ultimately approved, would resolve the outstanding disputes between the GUC Trust and Unitholders, on the one hand, and the Economic Loss Plaintiffs and Pre-Closing Accident Plaintiffs, on the other, and to discuss with the Court the contours of the proposed noticing procedures for the motion seeking approval of the Proposed Settlement.⁷⁸

The draft letter further explains that the GUC Trust did not object to having the conference in open court and had no intention of seeking substantive relief at the conference.⁷⁹ The Settlement is described as “proposed” because, until the Settlement Agreement is approved by the Court under Bankruptcy Rule 9019, it must be a “proposed” agreement.

62. Early the next morning, at 3:37 a.m. on August 16, 2017, and after the August 15, 2017 meeting with New GM, Matt Williams of Gibson Dunn also sent me a draft letter, cc’ing Keith Martorana and Gabi Gillett of Gibson Dunn, stating, *inter alia*, that:

The GUC Trust has no objection to the Conference proceeding on the record in open Court, rather than Chambers. The purpose of scheduling the Conference was to update the Court on the status of a potential settlement between the GUC Trust, the Economic Loss Plaintiffs and the Pre-Closing Accident Plaintiffs (the “Proposed Settlement”), which Proposed Settlement is nearly final, but has not yet been executed by the parties and is non-binding. There was never any intention of having a substantive discussion of the merits of the Proposed Settlement at the Conference, or seeking any substantive relief.⁸⁰

63. I quickly read this draft on my iphone, saw that it captured the key points from the prior Akin Gump draft (that the conference should go forward in open court and no substantive relief was being sought), and did not focus on the language regarding the Proposed Settlement being purportedly non-binding. I responded at 8:16 a.m. on August 16, 2017 that “will send you

⁷⁸ PX-105 at BR006034.

⁷⁹ See id.

⁸⁰ PX-106 at BR006081.

our draft shortly – says a lot of the same,”⁸¹ meaning no objection to proceeding in open court and no substantive relief was being sought. Before sending the draft, the Bankruptcy Court entered an order keeping the August 17th date for the conference, to be held in open court on the record.⁸² Thus, I never circulated our draft and the draft letters were never finalized or filed.

64. Later that day, on August 16, 2017, I asked Naomi Moss of Akin Gump and Keith Martorana of Gibson Dunn when we would complete the administrative step of “actually signing agreement / would think before conference.”⁸³

65. Subsequently, on August 16, 2017, New GM and the GUC Trust submitted a joint letter to the Bankruptcy Court explaining that the GUC Trust was backing out of the Settlement and had decided to enter into “a proposed settlement agreement with New GM that will be subject to this Court’s approval.”⁸⁴

66. In response, that same day (August 16, 2017), Brown Rudnick filed the final Settlement documentation with the Bankruptcy Court.⁸⁵ The next day (August 17, 2017), Brown Rudnick filed a supplemental letter attaching relevant communications with the GUC Trust demonstrating the binding nature of the Settlement Agreement.⁸⁶

⁸¹ PX-111 at BR006071.

⁸² See *Order re August 17, 2017 Court Conference*, dated Aug. 16, 2017 [ECF No. 14056].

⁸³ PX-112 at BR006083.

⁸⁴ See *Update on Matters Related to the Late Claim Motions and the Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m.*, dated August 16, 2017 [ECF No. 14060].

⁸⁵ See *Letter to Judge Glenn in Response to GM’s Letter Update on Matters Related to the Late Claim Motions and the Chambers Conference Scheduled for August 17, 2017 at 3:00 p.m.*, dated August 16, 2017 [ECF No. 14061].

⁸⁶ See *Letter to Judge Glenn Supplementing Plaintiffs’ Letter*, dated Aug. 17, 2017 [ECF No. 14062].

I declare under penalty of perjury that to the best of my knowledge, information, and belief, the foregoing is true and correct.

Dated: December 5, 2017
New York, New York



Howard S. Steel
Howard S. Steel

EXHIBIT 3

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

In re:
MOTORS LIQUIDATION COMPANY, *et al.*,
f/k/a general motors corp., *et al.*,

Debtors.

Chapter 11
Case No. 09-50026 (MG)

(Jointly Administered)

DIRECT TESTIMONY OF WILLIAM P. WEINTRAUB

I, William P. Weintraub, under penalty of perjury, testify as follows:

1. I am a partner with the law firm of Goodwin Procter LLP, Counsel to Those Certain Pre-Closing Accident Plaintiffs¹ Represented by Hilliard Martinez Gonzales LLP and the Law Offices of Thomas J. Henry. I am the co-chair of Goodwin Procter's Financial Restructuring Group and have thirty-eight years of experience representing debtors and significant creditors in connection with bankruptcy proceedings and other restructuring matters.

2. I submit this direct testimony in support of the *Motion to Enforce the Settlement Agreement By and Among the Signatory Plaintiffs and the GUC Trust*, dated September 11, 2017 [ECF No. 14092]. This direct testimony is based on my own personal knowledge, except as to certain documents and testimony that I have reviewed which were produced in connection with this dispute.

¹ "**Pre-Closing Accident Plaintiffs**" means those plaintiffs asserting personal injury or wrongful death claims or persons who suffered a personal injury or wrongful death arising from an accident involving an Old GM vehicle that occurred prior to the closing of the Section 363 Sale.

3. On December 22, 2016, pursuant to the Order to Show Cause issued by this Court,² I filed on behalf of certain Pre-Closing Accident Plaintiffs Represented by Hilliard Martinez Gonzales LLP and the Law Offices of Thomas J. Henry a motion seeking authority to file late proofs of claim and attaching late proofs of claim for the 175 Pre-Closing Accident Plaintiffs listed on Exhibit A to the motion.³ The parties subsequently engaged in briefing and preliminary discovery with respect to the legal and factual issues raised by the Late Claims Motions.

4. During May 2017, I learned that settlement discussions had resumed with respect to the Late Claims Motions.⁴ I first became actively involved in the negotiation of the Settlement Agreement by and among the Signatory Plaintiffs and the GUC Trust (the “Agreement”) during June 2017. By the time I became actively involved, a draft Settlement Agreement had already been prepared which reflected the negotiating parties’ agreement on the basic structure of the Agreement and certain core terms, including, but not limited to, a settlement payment by the GUC Trust, the release of certain claims, and agreement concerning a

² See *Order to Show Cause Regarding Certain Issues Arising from Lawsuits with Claims Asserted Against General Motors LLC (“New GM”) that Involve Vehicles Manufactured by General Motors Corporation (“Old GM”)*, dated Dec. 13, 2016 [ECF No. 13802] (the “Order to Show Cause”).

³ See *Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths*, dated December 22, 2016 [ECF No. 13807] (“Pre-Closing Accident Plaintiffs’ Late Claim Motion”). On December 4, 2017, Goodwin Procter filed a *Notice of Withdrawal of Counsel of Record for Certain Movants Under Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths* [ECF No. 14179], which informed the Court that Goodwin Procter no longer serves as counsel of record for certain former clients of Hilliard Martinez Gonzales LLP and the Law Offices of Thomas J. Henry and will no longer be pursuing the Pre-Closing Accident Plaintiffs’ Late Claims Motion on their behalf. Counsel for the Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs (collectively, the “Economic Loss Plaintiffs”) also filed a motion seeking authority to file late claims. Collectively, they are the “Late Claims Motions.”

⁴ There had been tentative settlement discussions approximately one year earlier, but these discussions ceased without the parties reaching an agreement.

procedure to trigger issuance of the Adjustment Shares by New GM.⁵ See PX-005, BR007564-7578.

5. During July 2017, the parties exchanged numerous red-line drafts and worked hard to finalize the Agreement and related documentation. Every comment and concern I expressed to the contracting parties during the negotiations was eventually resolved to my satisfaction.

6. By no later than early August 2017, the parties had agreed to all material terms of the Agreement, and also reached agreement on the form and language of multiple ancillary documents, pleadings, and orders that were in substantially final form.

7. On August 3, 2017, Gibson Dunn attorney Keith Martorana, counsel for the GUC Trust, circulated updated versions of the Settlement Agreement, Settlement Order, Claims Estimate Order, Long-form Notice, Short-form Notice, and Settlement Motion. See PX-040, GP002042-2223. Mr. Martorana characterized all changes (except for those relating to the Settlement Motion) as “slight” and “minor clean-ups.” Id. at GP002042-43. In addition, Mr. Martorana had deleted the phrases “DRAFT,” “SUBJECT TO FRE 408,” and “GDC/AG COMMENTS 8/2” from the top of the Settlement Agreement and replaced them with the phrase “EXECUTION VERSION.” Id. at GP002130.

⁵ Pursuant to Section 3.2 of the Sale Agreement, New GM is obligated to issue additional shares of New GM common stock (the “Adjustment Shares”) if the Bankruptcy Court enters an order estimating the aggregate allowed general unsecured claims against the Old GM estate (a “Claims Estimate Order”) at an amount exceeding \$35 billion, with a maximum of issuing 30 million shares if the claims estimation is equal to or exceeds \$42 billion. See Second Amended and Restated Master Sale and Purchase Agreement, by and among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation and Chevrolet-Saturn of Harlem, Inc., as Sellers, and NGMCO, Inc., as Purchaser, dated as of June 26, 2009, § 3.2(c).

8. On August 9, 2017, Akin Gump attorney Daniel Golden, counsel to the Participating Unitholders,⁶ proposed that the parties have an “all hands” conference call “to finalize all of the settlement documentation and motions.” PX-048, GP001540. Mr. Golden reported that earlier that day, Mr. Golden and Brown Rudnick attorney Ed Weisfelner, counsel for the Economic Loss Plaintiffs, had informed New GM’s attorneys about the existence of the Agreement and the parties’—including the GUC Trust’s—“desire to have a chambers conference with Judge Glenn for some day next week.” *Id.* Mr. Golden and Mr. Weisfelner had committed to giving New GM’s attorneys “a final set of the pleadings sufficiently in advance of a to be scheduled chambers conference” *Id.* Mr. Golden concluded: “It seems to me we need a final call to finalize the documents so we can schedule that chambers conference. At this call please have the requisite people necessary to bind your respective clients.” *Id.* I understood that the parties wanted to finalize the documents quickly in order to provide New GM with the final documentation of the Agreement and to apprise the Court of the existence of the Agreement. Counsel for the GUC Trust was copied on this email and assented to the Agreement being provided to New GM in advance of the Court conference.

9. The “all-hands” call occurred on August 11, 2017, after the MDL status conference. I participated in this call, along with counsel for the GUC Trust, the Participating Unitholders, and other counsel for Plaintiffs. During the August 11, 2017 call, the parties conducted a page-by-page review to resolve any final wording issues, and all counsel, including counsel for the GUC Trust, conveyed that they were done with the documents. Counsel for the GUC Trust never said that he lacked authority to bind the GUC Trust in any way nor did counsel for the GUC Trust or anyone else state that there were any open issues or reserve any rights with

⁶ The “Participating Unitholders” are holders of approximately 65% of the GUC Trust Units outstanding.

respect to client review or approval. Counsel for the GUC Trust also did not object to the fact that Hagens Berman attorney Steve Berman, MDL Co-Counsel and counsel for the Economic Loss Plaintiffs, previewed certain terms of the Agreement to Judge Furman during the MDL status conference that morning.

10. Later in the day on August 11, 2017, following the “all hands” call, Brown Rudnick attorney Howard Steel, counsel for the Economic Loss Plaintiffs, circulated revised and updated documents to all parties stating: “Hoping these are final and we can schedule signatures. Please let us know if we missed anything.” PX-057, GP000692-93.

11. On August 12, 2017, in response to updated drafts circulated after the “all hands” call, counsel for the GUC Trust, Mr. Martorana, stated that “[f]rom the GUC Trust perspective, all of the documents sent over by Howie [Steel] (subject to one item we are discussing with Akin in the Settlement Agreement) are fine.” PX-064, GP00535-554. This email contained no reservation that the Agreement remained subject to client review or approval.

12. Pursuant to this same August 12, 2017 email, Mr. Martorana also transmitted for the first time the initial draft of the Declaration of Beth Andrews in support of the joint motion to approve the Agreement. See id. at GP00547-554; see also PX-065, GP000059-66 (final execution version of Andrews Declaration). It is my understanding based on her declaration that Ms. Andrews is a Vice President of Wilmington Trust Company (“WTC”) and serves as the “lead representative of WTC in its capacity as trustee for and administrator of the GUC Trust.” PX-065, GP000059 at 60. In her Declaration in support of Court approval of the Agreement, which was provided to me by counsel for the GUC Trust, Ms. Andrews stated, among other things, that: (a) she was “duly authorized to submit this declaration . . . on behalf of WTC in its capacity as trustee for and administrator of the Motors Liquidation Company GUC Trust (the

“GUC Trust”) (id. at 59); (b) “the Settlement is a prudent and reasonable exercise of business judgment because it presents the best option for the GUC Trust to maximize recovery for the benefit of the GUC Trust Beneficiaries while minimizing the substantial risk posed by the Late Claims Motions” (id. at 65); (c) “The Settlement is in the best interests of the GUC Trust, the Old GM estates and the GUC Trust Beneficiaries because it provides the such parties with substantial benefits.” (id.); and (d) the Settlement “provides the best outcome for the GUC Trust Beneficiaries” (id. at 66). I provided no comments or suggested changes to the content of Ms. Andrews’ Declaration.

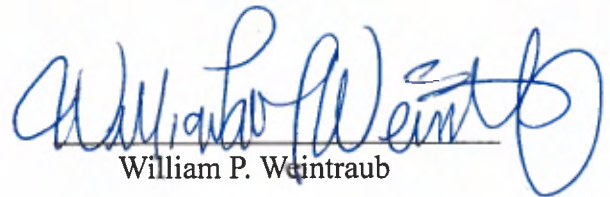
13. On August 14, 2017, Mr. Steel, counsel for the Economic Loss Plaintiffs, circulated the “proposed final execution versions of all of the [Settlement] documents” and requested that the parties “confirm when you are signed off.” PX-075, BR005804-6003. By this point, a Court conference had been scheduled for August 17, 2017. I understood that the purpose of the Court conference was to inform the Court of the existence of the Agreement and discuss the mechanics of seeking Court approval of the Agreement. I further understood that the parties intended to confirm (and did confirm) that the Agreement was final before the settlement papers were sent to New GM’s attorneys in advance of the conference. See PX-079, GP000013-16 (Mr. Steel telling Mr. Golden that he would send the Agreement and accompanying documentation to New GM “when everyone signed off”).

14. All parties to the Agreement “signed off.” See, e.g., PX-092, GP000617 (Mr. Steel saying that he had “heard from everyone” and was sending the Agreement to New GM’s attorney, Arthur Steinberg); PX-082, GP001298-1302 (e-mail stringing containing “sign off” from me, Robert Hilliard, and Steve Berman on behalf of Signatory Plaintiffs).

15. At no point prior to informing us that the GUC Trust did not intend to go forward with the Agreement did the GUC Trust or its counsel discuss with me, or to my knowledge, any other Plaintiffs' attorney, that the Agreement would not be binding absent formal signatures or that, despite universal "sign-offs," the GUC Trust might decide to withhold its representative's signature. Nor did counsel for the GUC Trust ever communicate any purported intention to withhold signing the Agreement until after the August 17, 2017 conference with the Court. From my perspective, it was important that the documents be final and the Agreement be in place ahead of the Court conference so that we would not be wasting the Court's time concerning an unfinished settlement that "might" go forward.

I declare under penalty of perjury that to the best of my knowledge, information, and belief, the foregoing is true and correct.

Dated: December 5, 2017
New York, New York



William P. Weintraub

EXHIBIT 4

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

In re:

**MOTORS LIQUIDATION COMPANY, *et al.*,
f/k/a General Motors Corp., *et al.*,**

Debtors.

Chapter 11

Case No. 09-50026 (MG)

(Jointly Administered)

DIRECT TESTIMONY OF DANIEL H. GOLDEN

I, Daniel H. Golden, under penalty of perjury, testify as follows:

1. I am a partner at the law firm Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”), counsel for certain unaffiliated holders (the “Participating Unitholders”) holding in excess of 65 percent of the beneficial units of the Motors Liquidation Company GUC Trust (the “GUC Trust”).

2. I respectfully submit this witness statement as my direct testimony in support of the *Motion to Enforce the Settlement Agreement by and Among the Signatory Plaintiffs and the GUC Trust*, dated September 11, 2017 [ECF No. 14092] and the *Joinder of the Participating Unitholders in the Motion to Enforce*, dated November 13, 2017 [filed in unredacted form at ECF No. 14175].

3. The facts set forth herein are based on my personal knowledge, except as to certain matters that I believe to be true based on my review of documents produced in discovery or from other sources that I consider to be reliable.

4. In 2014, General Motors LLC (“New GM”) recalled 2.1 million vehicles worldwide for a defective ignition switch. Shortly after the announcement of the initial wave of recalls, an ad hoc group of unaffiliated holders of the beneficial units of the GUC Trust, now

referred to as the Participating Unitholders, retained Akin Gump as counsel to represent their interests before the Bankruptcy Court with respect to matters relating to the recalls. Akin Gump and the Participating Unitholders have been intimately involved with these matters from their inception, first appearing before the Bankruptcy Court on May 2, 2014 at the initial status conference scheduled following New GM's request to enforce the Sale Order against the Ignition Switch Plaintiffs,¹ the Non-Ignition Switch Plaintiffs,² and the Pre-Closing Accident Plaintiffs³ (collectively, the "Plaintiffs").

5. From the beginning of the Participating Unitholders' involvement in this matter, Akin Gump, as counsel to the Participating Unitholders, has worked hand-in-glove with Gibson Dunn & Crutcher LLP ("Gibson Dunn"), counsel to Wilmington Trust Company ("Wilmington Trust"), as trustee for and administrator of the GUC Trust, toward their common goal of protecting the interests of all Unitholders and effectuating timely, optimal distributions of the GUC Trust corpus to those holders. To that end, Akin Gump engaged in regular dialogue with Gibson Dunn to discuss strategy, assess the merits of legal arguments and file joint pleadings on behalf of the Participating Unitholders and Wilmington Trust.

6. In spring 2017, Edward Weisfelner of Brown Rudnick LLP ("Brown Rudnick"), designated counsel for the Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs, and I began discussing a potential settlement of motions filed by the Plaintiffs seeking authority

¹ The term "Ignition Switch Plaintiffs" refers to those plaintiffs asserting economic loss claims or persons suffering economic losses who, as of July 10, 2009, owned or leased a vehicle with an ignition switch defect included in Recall No. 14V-047 (the "Ignition Switch Defect").

² The term "Non-Ignition Switch Plaintiffs" refers to those plaintiffs asserting economic loss claims or persons suffering economic losses who, as of July 10, 2009, owned or leased a vehicle with defects in ignition switches, side airbags or power steering included in Recall Nos. 14V-355, 14V-394, 14V-400, 14V-346, 14V-118 and 14V-153.

³ The term "Pre-Closing Accident Plaintiffs" means those plaintiffs asserting personal injury or wrongful death claims or persons who suffered a personal injury or wrongful death arising from an accident involving an Old GM vehicle that occurred prior to the closing of the Section 363 Sale.

to file late proofs of claim against the GUC Trust and similar claims that could be brought against the GUC Trust by similarly situated potential claimants (the “Late Claims Motions”).⁴ I kept the attorneys at Gibson Dunn, counsel to Wilmington Trust, apprised of these discussions.

7. In or around May 2017, Gibson Dunn became actively involved in the negotiations with Brown Rudnick regarding a potential settlement of the Late Claims Motions.

8. By early June 2017, Gibson Dunn, on behalf of Wilmington Trust, Akin Gump, on behalf of the Participating Unitholders, and Brown Rudnick, on behalf of the Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs, reached an agreement on the general structure for a settlement of the Late Claims Motions (the “Plaintiff Settlement”), and the parties began to exchange drafts of the agreement memorializing the settlement (the “Settlement Agreement”).⁵

9. Shortly thereafter, in or around June 2017, William Weintraub of Goodwin Procter LLP, counsel to certain Pre-Closing Accident Plaintiffs represented by Hilliard Munoz Gonzales LLP and the Law Offices of Thomas J. Henry, also became involved in these negotiations.

10. Negotiations between the parties continued in earnest throughout June and July 2017. By late July 2017, the parties agreed upon all of the material terms of the Plaintiff Settlement, and were close to finalizing the Settlement Agreement evidencing the Plaintiff Settlement, as well as ancillary documentation that would be necessary to seek the Court’s approval of the Plaintiff Settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.⁶

⁴ Mr. Weisfelner and I had also briefly discussed the potential for a settlement between Plaintiffs and the GUC Trust in 2016, before the Late Claims Motions were filed.

⁵ See e.g., PX-006 BR004584.

⁶ See e.g., PX-032 BR003277–3348; PX-34 BR003354–3423, and PX-38 BR006092–6137.

11. The salient terms of the Plaintiff Settlement that were ultimately agreed upon were:
- a. the GUC Trust would fund up to \$6 million in noticing costs (the “Noticing Costs”) to ensure that, among other things, all parties subject to the recalls issued by New GM in 2014 received notice of the Plaintiff Settlement;
 - b. those Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs, and Pre-Closing Accident Plaintiffs who were signatories to the Settlement Agreement (the “Signatory Plaintiffs”) and the GUC Trust would support the entry of a Settlement Order pursuant to which the GUC Trust would pay \$15 million (the “Settlement Fund”) to an account designated by the Signatory Plaintiffs, in exchange for a release by all Plaintiffs (as that term is defined in the Settlement Agreement) of any and all claims against assets currently held or previously distributed by the GUC Trust;
 - c. the GUC Trust would support the entry of a Claims Estimate Order pursuant to which the Court would estimate Plaintiffs’ claims against the GUC Trust at an amount equal to or in excess of \$10 billion, which would trigger New GM’s obligation to issue shares of New GM stock (the “Additional Shares”) to the GUC Trust. Such Additional Shares, and the Settlement Fund, would be used solely to fund Plaintiffs’ claims.

Under the terms of the Plaintiff Settlement, entry of the Settlement Order was not conditioned in any way upon entry of the Claims Estimate Order.⁷

12. The basis for the Participating Unitholders’ desire to enter into the Plaintiff Settlement is straightforward. Plaintiffs’ late claims against the GUC Trust could total tens of billions of dollars. While the Participating Unitholders believe that the GUC Trust has meritorious defenses against such claims, the GUC Trust cannot make final distributions until such claims are rejected pursuant to a final order or, if granted, finally adjudicated, each of which could take years. The Plaintiff Settlement offered significant benefits to the Participating Unitholders and other GUC Trust unitholders in that it capped the GUC Trust’s total liability in connection with Plaintiffs’ claims at \$21 million (inclusive of noticing costs), avoided what could be years of litigation with Plaintiffs and the associated costs of such litigation, and

⁷ PX-001 Settlement Agreement BR005717-5740.

significantly increased the likelihood that the GUC Trust would be able to make final distributions once the litigation between the Motors Liquidation Company Avoidance Action Trust and JPMorgan Chase (the “Avoidance Action”) concluded.

13. At this point, the negotiating parties agreed that Mr. Weisfelner and I would contact Arthur Steinberg of King and Spalding LLP, counsel for New GM, to apprise New GM of the Plaintiff Settlement, and to inquire as to dates on which New GM’s counsel would be available for a conference with the Court to inform the Court of the Plaintiff Settlement. That call took place on August 9, 2017.⁸

14. At the time that Mr. Weisfelner and I contacted Mr. Steinberg, it was my understanding that the Signatory Plaintiffs and the GUC Trust had reached an agreement on the Plaintiff Settlement. I would not have notified Mr. Steinberg of the Plaintiff Settlement had that not been my understanding.

15. Also on August 9, 2017, I emailed counsel for Wilmington Trust and counsel for the Signatory Plaintiffs to inform them that, consistent with our prior discussions, Mr. Weisfelner and I had given Mr. Steinberg “a heads up on the proposed settlement and our desire to have a chambers conference with Judge Glenn for some day next week,” and had committed to providing New GM with “a final set of pleadings sufficiently in advance of a to be scheduled chambers conference.”⁹

16. In that same email, I requested that the negotiating parties schedule an “all hands call ... to finalize all of the settlement documentation and motions.”¹⁰ I further requested that

⁸ PX-047 BR007012–7017.

⁹ *Id.* at BR007012.

¹⁰ *Id.*

each negotiating party “have the requisite people necessary to bind your respective clients.”¹¹

Neither counsel to Wilmington Trust nor any other party objected to my request that they be prepared to bind their clients to the final settlement documentation on this “all hands call” or any time thereafter.

17. Shortly thereafter, Akin Gump , acting on behalf and with the consent of Wilmington Trust and the Signatory Plaintiffs, reached out to chambers to schedule a conference. As discussed with counsel for the parties to the Plaintiff Settlement, the purpose of scheduling this court conference was to apprise the Court of the Plaintiff Settlement, to discuss the noticing procedures proposed in connection therewith, and to enlist the Court’s aid in obtaining the names and addresses of the parties that were subject to New GM recalls or had pre-Sale accident and death claims, so that such parties could be provided with notice of the Plaintiff Settlement. That conference was ultimately scheduled for August 17, 2017.

18. The “all hands call” I requested on August 9 took place on the morning of August 11, 2017. I participated in the call, along with counsel to Wilmington Trust and counsel to the Signatory Plaintiffs. The call lasted approximately one hour, during which the negotiating parties relayed some last-minute ministerial changes to the documentation supporting the Settlement Agreement. My understanding at the conclusion of the “all hands call” was that the parties had signed off on the Plaintiff Settlement and that the final Settlement Agreement and supporting documentation, consistent with the changes requested on the call, would be circulated to the parties for approval prior to circulating the documents to Mr. Steinberg.

¹¹ *Id.*

19. At 3:09 p.m., Howard Steel of Brown Rudnick circulated among counsel to the Signatory Plaintiffs, the Participating Unitholders, and Wilmington Trust “updated doc[ument]s per today’s all-hands.”¹²

20. The following day, August 12, 2017, in response to Mr. Steel’s email, Keith Martorana of Gibson Dunn responded, “[f]rom the GUC Trust perspective, all of the documents sent over by Howie (subject to one item we are discussing with Akin in the Settlement Agreement) are fine.”¹³ Mr. Martorana’s email also attached a draft declaration in support of the Plaintiff Settlement by Beth Andrews, a Vice President at Wilmington Trust and the Wilmington Trust representative leading Wilmington Trust’s engagement as trustee of and administrator for the GUC Trust.¹⁴ That declaration opines that “[t]he Settlement Agreement is in the best interests of the GUC Trust, the Old GM estates and the GUC Trust Beneficiaries.”¹⁵

21. The “one open item” referenced in Mr. Martorana’s email was whether the bankruptcy court or the bankruptcy court and the district court would have the ability to review the ultimate allocation of the settlement proceeds. Shortly thereafter, we resolved this issue.

22. The following Monday, August 14, at 10:09 a.m., Mr. Martorana followed up on his August 12 email to Mr. Steel about the “one item we are discussing with Akin.”¹⁶ Mr. Martorana wrote: “Howie – I spoke to Akin and we are ok with this. So I think the last point is in the declarations it should read that ‘counsel to the Participating Unitholders’ participated in negotiations.”¹⁷

¹² PX-056 BR005064–5293.

¹³ PX-063 BR005468–5484.

¹⁴ *Id.* at BR005477-5484.

¹⁵ *Id.* at BR005483.

¹⁶ PX-072 GUC_0007042.

¹⁷ *Id.*

23. My understanding was that by the time of Mr. Martorana's email on August 12, Wilmington Trust had not only approved the Plaintiff Settlement but also the Settlement Agreement.

24. At 10:12 a.m. on August 14, I emailed Mr. Steinberg, counsel to New GM, informing him that a conference with the Court had been scheduled for 3:00 p.m. on August 17, 2017, and letting him know that the parties to the Settlement Agreement intended to send him "the final draft of the settlement documents at some point today."¹⁸

25. At 1:32 p.m. on August 14, Mr. Steel sent counsel for the Participating Unitholders, Wilmington Trust, and the Signatory Plaintiffs "proposed final execution versions of all of the documents."¹⁹

26. At 2:55 p.m. on August 14, before counsel for Wilmington Trust had responded to Mr. Steel's email attaching final execution versions of the Settlement Agreement, Gabriel Gillett of Gibson Dunn notified me that New GM's counsel had called him "a bit ago" asking for "one more opportunity to persuade us not to sign the settlement agreement."²⁰ Mr. Gillett informed me that counsel to Wilmington Trust would be meeting with counsel to New GM on August 15, and invited Akin Gump to join the meeting.²¹

27. Shortly thereafter, at 3:46 p.m., notwithstanding that Wilmington Trust had already signed off on the settlement documents (including the Settlement Agreement) without reservation, Mr. Martorana responded to Mr. Steel's email attaching final execution versions of

¹⁸ PX-071 AG0000592.

¹⁹ PX-075 BR005804.

²⁰ PX-093 AG0006849.

²¹ *Id.*

the documents by stating “[a]t this point we do not have any further comments, but are obtaining final sign-off from our client.”²²

28. At 7:18 p.m. that same day, Matthew Williams of Gibson Dunn disinvited counsel to the Participating Unitholders from the August 15 meeting with New GM, stating that “we just heard from ARTHUR [Steinberg] that he apparently just wants to speak with the guck [sic] trust representatives.”²³ I now know, however, that it was actually Gibson Dunn that suggested to New GM that the Participating Unitholders not attend the meeting.²⁴

29. At 7:26 p.m. on August 14, Mr. Martorana responded to Mr. Steel’s email attaching final execution versions of the documents by writing, “We are waiting for final approval from client, but unlikely to come tonight. You are, however, authorized to send current versions to New GM this evening.”²⁵ I also now know that 9 minutes earlier, Mr. Martorana had received sign off from Wilmington Trust to send the final settlement documents to New GM.²⁶ I do not know why Mr. Martorana stated that he did not have final sign off from his client when he had already received it.

30. On August 14, at 9:14 p.m., Mr. Steel sent the final execution versions of the settlement documents to New GM’s counsel, copying counsel to Wilmington Trust, the Signatory Plaintiffs and the Participating Unitholders.²⁷

31. The following day, August 15, in a series of emails and a brief call late that afternoon, Mr. Williams told me that nothing much had happened at the meeting with New GM earlier that day. In addition, Mr. Martorana informed me that Mr. Steinberg, counsel to New GM,

²² PX-087 GUC_0005648.

²³ PX-093 AG0006847 (capitalization in original).

²⁴ PX-084 GUC_0010399.

²⁵ PX-089 BR005545.

²⁶ PX-088 GUC_0013928.

²⁷ PX-094 BR005613.

would be opposing the scheduling of a chambers conference before the Court.²⁸ The lawyers from Gibson Dunn did not tell me or anyone else at Akin Gump that New GM had proposed that the GUC Trust enter into an alternative settlement with New GM, or that Gibson Dunn was considering doing so.

32. Nevertheless, at 9:40 a.m. the next day, August 16, 2017, Mr. Martorana of Gibson Dunn requested a call with Akin Gump that occurred at 11:30 am that day.²⁹ On that call, Mr. Williams first asked me if I was sitting down, and then told me that Wilmington Trust did not intend to move forward with the Plaintiff Settlement, and had agreed instead to enter into an agreement with New GM (the “Forbearance Agreement”).³⁰ The Forbearance Agreement provides that:

- a. the GUC Trust will not seek a claims estimation order or any distribution of the Adjustment Shares until final orders are entered respectively resolving (x) whether Plaintiffs may file late proofs of claims, and (y) all class-certification issues in connection with the multi-district litigation pending against New GM;
- b. New GM will reimburse Wilmington Trust for all professional fees and expenses incurred in connection with prosecuting the Forbearance Agreement and opposing the Late Claims Motions and related proofs of claim; and
- c. upon the resolution of the Avoidance Action, New GM and Wilmington Trust will engage in good faith discussions about whether New GM will pay a reasonable rate of return in the event that the GUC Trust is prepared to make a distribution to unitholders but cannot do so on account of litigation related to the Late Claims Motions (the “Delayed Distribution”).

33. Representatives from Wilmington Trust and Gibson Dunn have testified that they decided to back out of the Plaintiff Settlement and enter into the Forbearance Agreement because

²⁸ PX-139 AG0006840; *see also* PX-140 AG0006843.

²⁹ PX-116 AG0006844.

³⁰ To this day, I remain astounded by Wilmington Trust’s hairpin turn to abandon the Plaintiff Settlement in favor of the far less favorable Forbearance Agreement. *See* PX-128 BR006078.

the Forbearance Agreement is more favorable to the GUC Trust than the Plaintiff Settlement.³¹ I find this explanation impossible to believe, as the Forbearance Agreement is far less favorable for the GUC Trust and its beneficiaries than the Plaintiff Settlement. Specifically, the Plaintiff Settlement caps the GUC Trust's potential liability in connection with Plaintiffs' claims at \$21 million (inclusive of noticing costs), while the Forbearance Agreement leaves the GUC Trust fully exposed to Plaintiffs' claims, which Plaintiffs allege to exceed \$10 billion, and requires the GUC Trust to proceed with what could be years of litigation with Plaintiffs. Additionally, although the Forbearance Agreement requires New GM to agree to engage in good faith discussions about whether New GM will pay a reasonable rate of return if the Avoidance Action is resolved and the Late Claims Motions are the only impediment to the GUC Trust making final distributions, counsel to the GUC Trust has acknowledged that in the event that the GUC Trust corpus is not significantly reduced by the Avoidance Action, it is highly unlikely that New GM will agree to pay any meaningful rate of return.³² Thus, the only concrete benefit provided to the GUC Trust by the Forbearance Agreement is New GM's agreement to pay the GUC Trust's fees and expenses in defending against the Late Claims Motions, which counsel to Wilmington Trust testified could be "as low as \$1 million" per year.³³ This benefit pales in comparison to the benefits provided by the Plaintiff Settlement.

34. Despite repeated questioning from the Participating Unitholders and their counsel in the days and weeks that followed, neither Wilmington Trust nor Gibson Dunn has been able to provide a cogent explanation as to why it suddenly chose to abandon the carefully negotiated

³¹ Williams Dep. Tr., 190:21-24 (Nov. 13, 2017) ("Well, we decided before the hearing because we got what we viewed as a better deal with New GM"); Andrews Dep. Tr., 140:21-23 (Nov. 15, 2017) ("We felt it was a better settlement agreement and we made that decision quickly.").

³² Martorana Dep. Tr., 184:4-11 (Nov. 20, 2017) ("Well, New GM isn't necessarily going to be – my view is that New GM isn't necessarily going to be willing to pay a significant dollar value of interest on an incredibly large corpus. It may be more than they are willing to or can bear.").

³³ Williams Dep. Tr., 232:2-6 (Nov. 20, 2017).

Plaintiff Settlement to which it had already agreed in lieu of the far less favorable Forbearance Agreement, or why it concealed its negotiations with New GM over the Forbearance Agreement from the Participating Unitholders before acquiescing to this agreement.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: December 5, 2017
New York, New York

/s/ Daniel H. Golden
Daniel H. Golden