UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**
KELLY CASTILLO, NICHOLE BROWN, BRENDA ALEXIS DIGIAN DOMENICO, VALERIE EVANS, BARBARA ALLEN, STANLEY OZAROWSKI, AND DONNA SANTI,	:	**Adv. Proc. No. 09-00509**
Plaintiffs,	:	
v.	:	
GENERAL MOTORS COMPANY, f/k/a NEW GENERAL MOTORS COMPANY, INC.,	:	
Defendant.	:	
GENERAL MOTORS LLC,	:	
Counterclaimant,	:	
v.	:	
KELLY CASTILLO, NICHOLE BROWN, BRENDA ALEXIS DIGIAN DOMENICO, VALERIE EVANS, BARBARA ALLEN, STANLEY OZAROWSKI, DONNA SANTI, LAKINCHAPMAN LLC, ROBERT W. SCHMIEDER, II, AND MARK L. BROWN,	:	
Counterdefendants.	:	

SEPARATE STATEMENT OF UNDISPUTED FACTS

Defendant and counterclaimant General Motors LLC ("**New GM**"), formerly known as General Motors Company, pursuant to Local Rule 7056-1(b), submits this separate statement of undisputed facts in support of New GM's motion for summary judgment.

1. Plaintiffs here are also the plaintiffs and certified class representatives in a class action in the United States District Court for the Eastern District of California, No. 2-07-CV-02142 WBS GGH (the "**Class Action**"). First Amended Complaint, ¶¶ 1-2, 5-11. The defendant in the Class Action is Motors Liquidation Company ("**MLC**"), formerly known as General Motors Corporation. Plaintiffs alleged in the Class Action that the continuously variable "Variable Transmission with intelligence" ("**VTi**") transmissions in model year 2002 through 2005 Saturn VUEs and model year 2003 and 2004 Saturn IONs were defective; their complaints asserted claims for violation of state law consumer protection statutes, breach of express warranty, breach of implied warranty and unjust enrichment. Copies of plaintiffs' complaints filed in the Class Action are attached to the First Amended Complaint as Exhibits D, E and F.

2. MLC denied plaintiffs' allegations in the Class Action and filed a motion to dismiss under Rule 12(b)(6), Fed.R.Civ.P. Copies of MLC's moving papers are attached to the First Amended Complaint as Exhibit H.

3. Following private mediation, and before any ruling on MLC's motion to dismiss, the parties negotiated a proposed settlement of the Class Action. Pursuant to a court-approved Stipulation of Settlement, the United States District Court for the Eastern District of California (Hon. William B. Shubb) entered Final Judgment in the Class Action on April 14, 2009. Copies of the Final Judgment and Stipulation of Settlement are attached to the First Amended Complaint as Exhibits A and B, respectively. A copy of the District Court's order preliminarily approving the Settlement is attached to the First Amended Complaint as Exhibit J.

4. Under the Stipulation of Settlement and Final Judgment (the "**Settlement**"), MLC agreed to reimburse class members (current and prior owners of the affected Saturn vehicles) for varying percentages of transmission repair costs, if any, which they have incurred or which they might incur during a specified future period ending on December 31, 2010, December 31, 2011 or December 31, 2012, depending on the model year of the affected vehicle. MLC also agreed to reimburse class members under certain circumstances if they traded-in their vehicles instead of

having malfunctioning VTi transmissions repaired. First Amended Complaint, ¶ 25 & Exh. B, pp. 7-10.

5. Under paragraph II-6 of the Stipulation of Settlement, the earliest "Effective Date" of the settlement would have been ten business days after the time for filing a direct appeal from the Final Judgment had expired. This date would have been June 2, 2009 at the earliest. On June 1, 2009, MLC filed for Chapter 11 protection in this Court. As a result, the Class Action and implementation of the Settlement were stayed, and remain stayed, under section 362 of the Bankruptcy Code.

6. If MLC had not filed for bankruptcy protection, it would have been required to mail claim forms to class members and class members would have been required to complete and return these forms with appropriate documentation in order to claim benefits under the Settlement. First Amended Complaint, Exh. B, ¶¶ 1-4, pp. 7-10. MLC then would have been required to evaluate the claim forms, make determinations concerning class members' eligibility for benefits under the Settlement, and resolve any disputes over eligibility with plaintiffs and their counsel. MLC then would have been required to reimburse eligible class members or authorize repairs to their vehicles pursuant to the terms of the Settlement. *Id.*, ¶ 5, pp. 10-11.

7. On July 5, 2009, this Court approved a sale of MLC's assets to New GM under section 363 of the Bankruptcy Code pursuant to an Amended and Restated Master Sale and Purchase Agreement between MLC and GM (the "**ARMSPA**") which is attached to the order approving the sale ("**Sale Approval Order**"). Docket No. 2968. *See In re General Motors Corp.*, 407 B.R. 463 (Bankr.S.D.N.Y.2009) (opinion re sale approval). The Sale Approval Order became final, and the sale was consummated, on July 10, 2009. A copy of the ARMSPA is attached to the First Amended Complaint as Exhibit C.

8. The assumption and rejection of MLC's Executory Contracts is governed by ARMSPA § 6.6 and the Court's "Order Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006 (I) Approving Procedures for Sale of Debtors' Assets Pursuant to Master Sale and Purchase Agreement, etc., (II) Scheduling Bid Deadline and Sale Hearing

Date; (III) Establishing Assumption and Assignment Procedures; and (IV) Fixing Notice Procedures and Approving Form of Notice" entered on June 2, 2009 ("**Sale Procedures Order**"). Docket No. 274.

9. MLC and New GM did not follow the procedures for assumption and assignment of the Settlement that are set forth in ARMSPA § 6.6(a) and the Sale Procedures Order. Declaration of L. Joseph Lines, III, ¶ 5.

10. On June 30, 2009, the Settlement was designated for "reject[ion] later" and it retained that designation thereafter. Declaration of L. Joseph Lines, III, ¶¶ 4-5 & Exh.

11. On November 16, 2009, MLC filed a formal motion to reject the Settlement under section 365(a) of the Bankruptcy Code and plaintiffs herein stipulated that the motion could be granted, which it was on December 18, 2009. Docket Nos. 4458, 4680.

12. Under ARMSPA § 2.3(a)(vii)(A), "Assumed Liabilities" include "all Liabilities arising under express written warranties of [Saturn] that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by [Saturn] prior to or after the [Sale] Closing…."

13. Saturn's standard limited new vehicle warranty covering 2002 through 2005 model year Saturn VUEs and 2003 and 2004 model year Saturn IONs provides in pertinent part as follows:

> "This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD. Needed repairs will be performed using new or remanufactured parts." First Amended Complaint, Exh. G, p. 5.

Under the terms of the warranty, the customer to obtain repairs must present the vehicle to an authorized Saturn Retailer within the warranty period. *Id.*, p. 6. The warranty further provides that "[p]erformance of repairs and needed adjustments is the exclusive remedy under this written warranty." *Id.*, p. 7.

14. Before the class action was filed, MLC voluntarily extended the warranty period for VTi transmissions from three years or 36,000 miles, whichever comes first, to five years or 75,000 miles, whichever comes first. A copy of Bulletin 04020 which announced this extension of the warranty period is attached to the First Amended Complaint as Exhibit V.

15. Paragraph 56 of the Sale Approval Order provides as follows:

> "[New GM] is assuming the obligations of [Old GM and co-debtors Saturn Corporation and Saturn Distribution Corporation] pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to Closing of the 363 Transaction and specifically identified as a 'warranty.'"

16. Paragraph 3 of the Sale Approval Order provides in pertinent part that "[i]f there is any conflict between the [ARMSPA], the Sale Procedures Order, and this Order, this Order shall govern."

17. Paragraph 12 of the Final Judgment provides in pertinent part as follows:

> "Neither this Judgment nor the Agreement (nor any document referred to herein or any action taken to carry out this Final Judgment) is, may be construed as, or may be used as an admission by [MLC] of the validity of any claim, of actual or potential fault, wrongdoing or liability whatsoever."

Paragraph 5 of the Stipulation of Settlement provides in pertinent part as follows:

> "[MLC] expressly denies any wrongdoing and does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against it in the Action, and [MLC] denies that plaintiffs or any Class Members have suffered damage or were harmed by the conduct alleged."

18. Section 9.11 of the ARMSPA provides in pertinent part as follows:

> "This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective permitted successors and assigns; provided, that (a) for all purposes each of Sponsor, the New VEBA, and Canada shall be express third-party beneficiaries of the Agreement and (b) for purposes of [specified sections of the Agreement], the UAW shall be an express third-party beneficiary of this Agreement. Subject to the preceding sentence, nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to any Person, other than the Parties, their Affiliates and their respective permitted successors or assigns, any legal or equitable Claims, benefits, rights or remedies of any nature whatsoever under or by reason of this Agreement."

19. Paragraph 8 of the Sale Approval Order provides in pertinent part as follows:

> "Except as expressly permitted or otherwise specifically provided by the [ARMSPA] or this Order, all persons and entities, including, but not limited to, all … litigation

claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against or in [MLC] or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, [MLC], the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined … from asserting against [New GM], its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

20. Paragraph 47 of the Sale Approval Order provides in pertinent part as follows:

"Effective upon the Closing …all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial … proceeding against [new GM] …with respect to any (i) claim against the Debtors other than Assumed Liabilities…, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against [MLC] as against [New GM]…, (b) enforcing … any judgment against [MLC] as against [New GM]…, [or] (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order.…"

21. Attached as Exhibit A to New GM's Answer with Counterclaim is a true and correct copy of a letter which New GM's counsel sent to plaintiffs' counsel on or about September 10, 2009.

22. Attached as Exhibit B to New GM's Answer with Counterclaim is a true and correct copy of a letter which New GM's counsel sent to plaintiffs' counsel on or about November 12, 2009.

New York, New York
Dated: December 18, 2009

[s] Gregory R. Oxford

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