HEARING DATE AND TIME: June 1, 2010 at 9:30 a.m. (Eastern Time)
OBJECTION DEADLINE: May 25, 2010 at 4:00 p.m. (Eastern Time)

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Attorneys for General Motors, LLC

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)**

NOTICE OF HEARING ON MOTION OF GENERAL MOTORS, LLC FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. § 105 ENFORCING 363 SALE ORDER

PLEASE TAKE NOTICE that upon the annexed Motion, dated May 17, 2010 (the "**Motion**"),[1] of General Motors, LLC ("**New GM**"), for an order pursuant to section 105 of title 11, United States Code (the "**Bankruptcy Code**") (a) enforcing the 363 Sale Order, (b) enjoining the Accident Plaintiffs from prosecuting or otherwise attempting to enforce the claims asserted against New GM in the Accident Plaintiffs' Civil Actions (as defined below), and (c) directing the Accident Plaintiffs to dismiss New GM from each of the Accident Plaintiffs' Civil Actions, with prejudice, all as more fully set forth in the Motion, a hearing will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Room 621 of

[1] Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **June 1, 2010 at 9:30 a.m. (Eastern Time),** or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to this Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court (a) electronically in accordance with General Order M-242 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's filing system, and (b) by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with General Order M-182 (which can be found at www.nysb.uscourts.gov), and served in accordance with General Order M-242, and on (i) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (ii) the Debtors, c/o Motors Liquidation Company, 500 Renaissance Center, Suite 1400, Detroit, Michigan 48243 (Attn: Ted Stenger); (iii) General Motors, LLC, 400 Renaissance Center, Detroit, Michigan 48265 (Attn: Lawrence S. Buonomo, Esq.); (iv) Cadwalader, Wickersham & Taft LLP, attorneys for the United States Department of the Treasury, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (v) the United States Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Joseph Samarias, Esq.); (vi) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); (vii) Kramer Levin Naftalis & Frankel LLP, attorneys for the

statutory committee of unsecured creditors, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Thomas Moers Mayer, Esq., Amy Caton, Esq., Lauren Macksoud, Esq., and Jennifer Sharret, Esq.); (viii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Diana G. Adams, Esq.); (ix) the U.S. Attorney's Office, S.D.N.Y., 86 Chambers Street, Third Floor, New York, New York 10007 (Attn: David S. Jones, Esq. and Natalie Kuehler, Esq.); (x) Caplin & Drysdale, Chartered, attorneys for the official committee of unsecured creditors holding asbestos-related claims, 375 Park Avenue, 35th Floor, New York, New York 10152-3500 (Attn: Elihu Inselbuch, Esq. and Rita C. Tobin, Esq.) and One Thomas Circle, N.W., Suite 1100, Washington, DC 20005 (Attn: Trevor W. Swett III, Esq. and Kevin C. Maclay, Esq.); (xi) Stutzman, Bromberg, Esserman & Plifka, A Professional Corporation, attorneys for Dean M. Trafelet in his capacity as the legal representative for future asbestos personal injury claimants, 2323 Bryan Street, Suite 2200, Dallas, Texas 75201 (Attn: Sander L. Esserman, Esq. and Robert T. Brousseau, Esq.); (xii) The Law Offices of Barry Novack, attorneys for the Deutsches, 8383 Wilshire Blvd., Suite 830, Beverly Hills, California 90211-2407 (Attn: Barry Novack, Esq.); (xiii) Meader Bill Law Office, attorney for Griffin, P.O. Box 499, Hyden, Kentucky 41749 (Attn: Bill Meader, Esq.); (xiv) Dougherty, Leventhal & Price, L.L.P., attorneys for the McDades, 459 Wyoming Avenue, Kingston, Pennsylvania 18704 (Attn: James M. Wetter, Esq.); (xv) Enid W. Harris, Esq., attorney for RJ Burne, 400 Third Ave., Suite 111, Kingston, Pennsylvania 18704; (xvi) Murphy & Prachthauser, S.C., attorneys for the Korotkas, One Plaza East Building, 330 East Kilbourn Avenue, Suite 1200, Milwaukee, Wisconsin 53202 (Attn: Thadd J. Llaurado); (xvii) Corboy & Demetrio, attorneys for the Korotkas, 33 N. Dearborn Street, 21st Floor, Chicago, Illinois 60602 (Attn: Robert J. Bingle); (xviii) Rutledge & Rutledge, P.C., attorneys for

Robley, 1083 W. Rex Road, Suite 102, Memphis, Tennessee 38119 (Attn: Roger K. Rutledge); and (xix) Dr. Terrie Sizemore RN DVM, P.O. Box 23, Sullivan, Ohio 44880, so as to be received no later than **May 25, 2010, at 4:00 p.m. (Eastern Time)** (the "**Objection Deadline**").

PLEASE TAKE FURTHER NOTICE that if no objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

Dated: New York, New York
May 17, 2010

/s/ Stephen Karotkin
Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky

WEIL, GOTSHAL & MANGES LLP
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Attorneys for General Motors, LLC

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STATUTES/RULES

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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)**

MOTION OF GENERAL MOTORS, LLC FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. § 105 ENFORCING 363 SALE ORDER

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

General Motors, LLC ("**New GM**") respectfully represents:

Relief Requested

1. After notice and a comprehensive three-day evidentiary hearing, on July 5, 2009, this Court entered that certain Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (iii) Granting Related Relief [Docket No. 2968] (the "**363 Sale Order**"). The 363 Sale Order, *inter alia*, authorized and

approved that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (the "**MSPA**"), by and among the Debtors (as defined below) and the predecessors in interest to the Movant herein, New GM. Pursuant to the MSPA and the 363 Sale Order, New GM, on July 10, 2009, purchased substantially all of the assets of the Debtors and assumed only certain specified liabilities (as defined in the MSPA, the "**Assumed Liabilities**"). More specifically, the MSPA expressly set forth which liabilities would be assumed by New GM and that all other liabilities would be retained by the Debtors. Moreover, the 363 Sale Order and MSPA expressly provided that New GM would not assume any claims with respect to Product Liabilities (as such term is defined in the MSPA, hereinafter "**Product Liability Claims**") of the Debtors, except those arising from accidents or other discrete incidents arising from the operation of General Motors vehicles occurring *subsequent to* the closing of the 363 Transaction on July 10, 2009 (the "**Closing**"). The MSPA and the 363 Sale Order provided that all other Product Liability Claims would be retained by the Debtors and not transferred to New GM under any circumstances whatsoever.

2. Consistent with the foregoing, the 363 Sale Order specifically provides that, except for the Assumed Liabilities, (a) the assets purchased by New GM shall be transferred to New GM free and clear of all liens, claims, encumbrances, and other interests, including any rights or claims based on any successor or transferee liability; and (b) New GM shall not be liable for any claims against the Debtors, and New GM shall not have any successor, transferee, or vicarious liabilities under any theory of law with respect to the Debtors or any obligations of the Debtors prior to the Closing.

3. Moreover, the 363 Sale Order contains broad provisions prohibiting and enjoining any action or proceeding by any entity to enforce or collect any claim against New GM, other than with respect to the Assumed Liabilities.

4. By this Motion, as described more particularly below, New GM seeks to enforce the 363 Sale Order with respect to certain claims that have been asserted against New GM in direct contravention of the 363 Sale Order. Specifically, New GM has been sued by the Accident Plaintiffs (as defined below) in different jurisdictions in the United States for Product Liability Claims and causes of action that do not constitute Assumed Liabilities and which actions are expressly enjoined under the terms of the 363 Sale Order. New GM has informed the Accident Plaintiffs of the provisions of the MSPA and the 363 Sale Order that preclude them from pursuing their claims, but the Accident Plaintiffs have refused to dismiss their lawsuits against New GM, thereby necessitating this Motion.

5. Because the Accident Plaintiffs refuse to abide by the 363 Sale Order, New GM requests the entry of an order pursuant to section 105 of the Bankruptcy Code (a) enforcing the 363 Sale Order, (b) enjoining the Accident Plaintiffs from prosecuting or otherwise pursuing the claims asserted against New GM in the Accident Plaintiffs' Civil Actions, and (c) directing the Accident Plaintiffs to promptly dismiss New GM from each of the Accident Plaintiffs' Civil Actions, with prejudice.

Jurisdiction

6. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, Paragraph 71 of the 363 Sale Order, and Article IX, Section 9.13 of the MSPA. (363 Sale Order ¶ 71; MSPA Art. IX, § 9.13.) Specifically, the 363 Sale Order states that:

> This Court retains *exclusive jurisdiction to enforce and implement the terms and provisions of this Order*, the M[S]PA, all amendments thereto, . . . in all respects, including, but not limited to, retaining jurisdiction to . . . (c) resolve any disputes arising under or related to the M[S]PA, . . . (d) interpret, implement, and enforce the provisions of this Order, [and] (e) *protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets*[.]

(363 Sale Order ¶ 71 (emphasis added).) This is a core proceeding pursuant to 28 U.S.C. § 157(b).

Factual Background

The Sale of Assets to New GM Pursuant to Section 363 of the Bankruptcy Code

7. On June 26, 2009, General Motors Corporation (n/k/a/ "**Motors Liquidation Company"**) and certain of its affiliates (collectively, the "**Debtors**") entered into the MSPA with New GM. On July 5, 2009, the Court entered the 363 Sale Order, and on July 10, 2009, the Debtors consummated the sale of substantially all of their assets pursuant thereto to New GM (the "**363 Sale**"). Pursuant to the 363 Sale, New GM acquired substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code.

8. Both the MSPA and the 363 Sale Order contain specific provisions with respect to what constituted Assumed Liabilities – that is, liabilities expressly assumed by and which would be the responsibility of New GM, and with respect to what constituted "**Retained Liabilities**" (as such term is defined in the MSPA), which would remain with the Debtors and as to which New GM would have no liability or responsibility.

9. Indeed, the MSPA and the 363 Sale Order could not be clearer that New GM does not and would not have any liability for Product Liability Claims with respect to accidents or incidents occurring prior to the Closing.

10. The MSPA provides that certain categories of liabilities constitute Retained Liabilities that would not be transferred to New GM. (*See* MSPA § 2.3(b).) Defining product liabilities as "all liabilities to third parties for death, personal injury, or other injury to persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by [the Debtors] (collectively, "**Product Liabilities**")," the MSPA specifies that New GM would only assume liability for Product Liabilities "which arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents *first occurring on or after the Closing Date* and arising from such motor vehicles' operation or performance[.]" (First Amended MSPA § 2.3(a)(ix) (emphasis added).)

11. Consistent with the foregoing, the MSPA also provides that the Debtors retain liability for "all Product Liabilities arising out of products delivered to a consumer, lessee or other purchaser of products *prior to the Closing*." (MSPA § 2.3(b)(ix).) The Debtors also retain liability for "all Liabilities to third parties for Claims based upon Contract, tort or any other basis;" and "all Liabilities arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to [the Debtors]." (MSPA § 2.3(b)(xi), (xvi).) None of these liabilities constitute Assumed Liabilities under the MSPA for which New GM would have any responsibility or liability.

12. Moreover, the 363 Sale Order makes it abundantly clear that New GM has no liability with respect to any claims of the Debtors other than the claims expressly assumed as Assumed Liabilities, and that no such liabilities could be imposed on New GM, directly or indirectly, under any theory of successor liability, transferee liability, or any other theory of law.

13. The following sets forth certain of the provisions of the 363 Sale Order which plainly demonstrate that New GM and the assets it purchased pursuant to the 363 Sale are not subject to any Product Liability Claims or similar claims based on accidents or incidents that occurred prior to the Closing:

> 7. Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the [MSPA], and, upon the Closing, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever.
>
> * * *
>
> 10. The transfer of the Purchased Assets to the Purchaser pursuant to the [MSPA] constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.
>
> * * *
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> 46. Except for the Assumed Liabilities expressly set forth in the [MSPA], none of the Purchaser, its present or contemplated members or shareholders, its successors or assigns, or any of their respective affiliates or any of their respective agents, officials, personnel, representatives, or advisors shall have any liability for any claim that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser shall not be deemed, as a result of any action taken in connection with the [MSPA] or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchased Assets from and after the Closing); (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, transferee,

> derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated.
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> * * *
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> 48. Except for the Assumed Liabilities, or as expressly permitted or otherwise specifically provided for in the [MSPA] or this Order, the Purchaser shall have no liability or responsibility for any liability or other obligation of the Sellers arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided in this Order and the [MSPA], the Purchaser shall not be liable for any claims against the Sellers or any of their predecessors or Affiliates, and the Purchaser shall have no successor, transferee, or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor, or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to the Sellers or any obligations of the Sellers arising prior to the Closing.

(363 Sale Order ¶¶ 7, 10, 46, 48.)

14. Moreover, as stated, paragraphs 8 and 47 of the 363 Sale Order expressly enjoin the pursuit of all claims against New GM relating to the purchased assets or the activity or conduct of the Debtors, other than with respect to the Assumed Liabilities.

> 8. Except as expressly permitted or otherwise specifically provided by the [MSPA] or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, 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 a Seller 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, the Sellers, the Purchased Assets, the

> operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined (with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible) from asserting against the Purchaser, 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.
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> * * *
>
> 47. 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, administrative, arbitral, or other proceeding against the Purchaser, its present or contemplated members or shareholders, its successors and assigns, or the Purchased Assets, with respect to any (i) claim against the Debtors other than Assumed Liabilities, or (ii) successor or transferee liability of the Purchaser for any of the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or it successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Purchaser, its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (c) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of this Court, or the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets.

(363 Sale Order ¶¶ 8, 47.)

15. Thus, New GM did not "assume any [of the Debtors'] liabilities for injuries or illness that arose *before the 363 Transaction*[,] and New GM is not subject to successor liability for such matters, and . . . *claims against New GM of that character are enjoined*." *In re Gen. Motors Corp.*, 407 B.R. 463, 500 (Bankr. S.D.N.Y. 2009), *aff'd*, *In re Motors Liquidation Co.*, ___ B.R. ___, 2010 WL 1524763 (S.D.N.Y. Apr. 13, 2010) and *In re Motors Liquidation Co.*, ___ B.R. ___, 2010 WL 1730802 (S.D.N.Y. Apr. 28, 2010).

16. As demonstrated below, the claims asserted in the Accident Plaintiffs' Civil Actions are Product Liability Claims based on accidents or incidents that occurred prior to the Closing, are not Assumed Liabilities and, accordingly, the pursuit of those claims against New GM is prohibited and expressly enjoined.

The Accident Plaintiffs' Civil Actions Against
New GM Are in Contravention of the 363 Sale Order

17. Notwithstanding the foregoing, and in direct contravention of the 363 Sale Order, six lawsuits have been filed against New GM asserting Product Liability Claims based on accidents or incidents that occurred prior to the Closing on July 10, 2009:

- On July 31, 2009, plaintiff Leslie Griffin ("**Griffin**") filed a Complaint against General Motors Company, as defendant, in the Clay Circuit Court in the Commonwealth of Kentucky, Civil Action No. 09-CI-00212 (the "**Griffin Civil Action**"), claiming injuries and damages allegedly arising from an accident that occurred on August 1, 2008, in which the 2002 Chevrolet Blazer that Griffin was driving flipped twice. (Griffin Complaint ¶¶ 3-11.)[1]

- On November 23, 2009, plaintiff Shane J. Robley ("**Robley**") filed a Complaint for Personal Injury From A Dangerous and Defective Product against General Motors LLC; Motors Liquidation Company f/k/a General Motors Corporation; Northrop Grumman Space & Missions Systems Corp. f/k/a TRW, Inc.; TRW Automotive Holdings Corp. f/k/a TRW Automotive U.S. LLC; and TRW Vehicle Safety Systems, Inc. as defendants, in the United States District Court for the Western District of Tennessee, Case No.

[1] *Griffin v. Gen. Motors Co.*, No. 09-CI-00232 (Clay Circuit Ct., Ky., July 31, 2009) [Docket No. 1]. A true and correct copy is attached hereto as **Exhibit "A."**

2:09-cv-02767 (the "**Robley Civil Action**"), claiming injuries and damages allegedly arising from an accident that occurred on November 25, 2008, involving a 2000 GMC Jimmy sport utility vehicle driven by Robley. (*See* Robley Complaint for Personal Injury From A Dangerous and Defective Product ¶ 17.)[2] Robley also alleges that New GM "assumed liability for product liability claims arising from the sale of products by [Old GM], and the question whether such assumption of liability includes or should include claims arising prior to the June 1, 2009, Chapter 11 bankruptcy proceeding of [Old GM] is presently on appeal and undecided." (*Id.* ¶ 11 (Ex. B).)

- On January 12, 2010, plaintiffs the Estate of Beverly Deutsch, the Heirs of Beverly Deutsch, and Sanford Deutsch (collectively, the "**Deutsches**") filed a Third Amended Complaint for Damages for Wrongful Death against General Motors Corporation; Takata Corporation; TK Holdings, Inc.; Autoliv ASP, Inc.; North American Bus Industries, Inc.; Los Angeles County Metropolitan Transportation Authority; Mark Victor Donougher; Sonic Wilshire Cadillac, Inc.; General Motors Company as Doe 4; and Does 1-50 as defendants, in the Los Angeles Superior Court in the State of California, Case No. BC 389150 (the "**Deutsch Civil Action**"), claiming injuries and damages allegedly arising from an accident that occurred on June 27, 2007, involving a 2006 Cadillac DTS sedan driven by Beverly Deutsch. (*See* Deutsch Third Amended Complaint ¶¶ 3, 8 (filed Jan. 12, 2010); *see also* Deutsch Complaint for Damages and Personal Injuries ¶ 3 (filed April 17, 2008); Deutsch Third Amended Complaint Summons to General Motors Company as Doe 4 (dated January 13, 2010.))[3]

- On January 20, 2010, plaintiff Terrie Sizemore ("**Sizemore**") filed a Complaint against General Motors Company and John Does as defendants, in the Court of Common Pleas in Medina County in the State of Ohio, Case No. 10 CIV 0102 (the "**Sizemore Civil Action**"), claiming injuries and damages allegedly arising from an accident that occurred on January 22, 2008, in which the airbag in the 2004 Chevrolet Silverado truck she was driving failed to deploy. (*See* Sizemore Complaint ¶¶ 3, 7.)[4] Sizemore also alleges that "General Motors Company has assumed all liability for product manufactured by General Motors Corporation prior to the filing of Chapter 11 Bankruptcy." (Id. ¶ 5 (Ex. F).)

- On February 25, 2010, plaintiffs Brian Korotka and Sharon Korotka (collectively, the "**Korotkas**") filed an Amended Complaint, naming Aetna

[2] *Robley v. Gen. Motors LLC*, No. 2:09-cv-02767 (W.D. Tenn.) [Docket No. 1]. A true and correct copy is attached hereto as **Exhibit "B."**

[3] *Estate of Deutsche v. Gen. Motors Corp.*, No. BC 389150 (Los Angeles Cnty. Superior Ct., Cal) [Docket Dates Apr. 17, 2008; Jan. 12, 2010; Jan. 13, 2010]. True and correct copies are attached hereto as **Exhibits "C," "D," and "E."**

[4] *Sizemore v. Gen. Motors Co.*, No. 10 CIV 0102 (Medina Cnty. Ct. of Common Pleas, Ohio) [Docket No. 1]. A true and correct copy is attached hereto as **Exhibit "F."**

Health of Illinois, Inc. and the US Department of Veterans Affairs as involuntary plaintiffs, and Braeger Chevrolet, Inc.; Universal Underwriters Insurance Company; and General Motors Company d/b/a General Motors, LLC as defendants in the Milwaukee County Circuit Court in the State of Wisconsin, Case No. 08 CV 017991 (the "**Korotka Civil Action**"), claiming injuries and damages allegedly arising from an accident that occurred on March 2, 2007, in which the 2001 Chevrolet Blazer that Brian Korotka was driving rolled over. (*See* Korotka Complaint ¶ 11.)[5] The Korotkas also allege that they named Old GM as a defendant "merely to preserve their rights in [the] bankruptcy proceeding[,]" [and that New GM "is a proper party to this action pursuant to an express agreement between it and its dealer, Braeger Chevrolet, Inc., whereby it has agreed to indemnify defendant Braeger for any liability found against Braeger by the plaintiffs."] (*Id.* ¶¶ 4, 8 (Ex. G).)

- On March 8, 2010, defendant RJ Burne Cadillac ("**RJ Burne**"), filed a Complaint Against Additional Defendants against General Motors Corporation and General Motors Company, thereby interpleading Old GM and New GM into the civil action filed by plaintiffs, Michele McDade and Mark McDade (collectively, the "**McDades**"), against RJ Burne in the Court of Common Pleas of Lackawanna County in the Commonwealth of Pennsylvania, No. 2010-00585 (the "**McDade Civil Action**"), alleging that New GM, as successor corporation to Old GM, "is responsible for the liabilities of General Motors Corporation, including but not limited to liabilities under theories of strict product liability and for breaches of warranties made by General Motors Corporation, and automobiles manufactured, sold, distributed, serviced and repaired by the predecessor company, General Motors Corporation." (RJ Burne Complaint Against Additional Defendants ¶ 6.)[6] The McDades claim injury and damages allegedly arising from an accident that occurred on November 2, 2008, in which the airbag in the 2002 Cadillac that Michelle McDade was driving deployed spontaneously. (McDade Complaint ¶¶ 5-25.)[7]

18. In the Griffin Civil Action, Robley Civil Action, Deutsch Civil Action, Sizemore Civil Action, Korotka Civil Action, and McDade Civil Action (collectively, the "**Accident Plaintiffs' Civil Actions**"), each of the Griffin, Robley, Deutsches, Sizemore, Korotkas, and McDade plaintiffs, along with defendant RJ Burne (collectively, the "**Accident**

[5] *Korotka v. Braeger Chevrolet, Inc.*, No. 08 CV 017991 (Milwaukee Cnty. Circuit Ct., Wis.) [Docket No. 50]. A true and correct copy is attached hereto as **Exhibit "G."**

[6] *McDade v. RJ Burne Cadillac v. Gen. Motors Corp.*, No. 585 of 2010 (Lackawanna Cnty. Ct. of Common Pleas, Pa.) [Docket Date Mar. 8, 2010]. A true and correct copy is attached hereto as **Exhibit "H."**

[7] *McDade v. RJ Burne Cadillac v. Gen. Motors Corp.*, No. 585 of 2010 (Lackawanna Cnty. Ct. of Common Pleas, Pa.) [Docket Date Jan. 21, 2010]. A true and correct copy is attached hereto as **Exhibit "I."**

Plaintiffs"), have, in contravention of the 363 Sale Order, asserted claims against New GM for injuries arising from accidents or incidents that occurred prior to the Closing.

The Accident Plaintiffs Refuse to Dismiss the Civil Actions Against New GM

19. As stated above, New GM has requested that each of the Accident Plaintiffs dismiss New GM from each of the Accident Plaintiffs' Civil Actions, but each has refused. More specifically:

- On September 2, 2009, counsel for New GM sent a letter to counsel for Griffin describing the relevant provisions of the MSPA and 363 Sale Order, explaining why the Griffin Civil Action violated those provisions with respect to New GM, and demanding that New GM be dismissed from the Griffin Civil Action, with prejudice.[8] As of the date hereof, Griffin has not dismissed New GM from the Griffin Civil Action.

- On January 25, 2010, counsel for New GM sent a letter to counsel for Robley describing the relevant provisions of the MSPA and 363 Sale Order, explaining why the Robley Civil Action violated those provisions with respect to New GM, and demanding that New GM be dismissed from the Robley Civil Action, with prejudice.[9] As of the date hereof, Robley has not dismissed New GM from the Robley Civil Action.

- On February 5, 2010, counsel for New GM sent a letter to counsel for the Deutsches describing the relevant provisions of the MSPA and 363 Sale Order, explaining why the Deutsche Civil Action violated those provisions with respect to New GM, and demanding that New GM be dismissed from the Deutsch Civil Action, with prejudice.[10] On February 9, 2010, counsel for the Deutsches responded to the letter and refused to dismiss New GM from the Deutsche Civil Action,[11] and as of the date hereof, the Deutsches have not dismissed New GM from the Deutsche Civil Action.

- On February 19, 2010, counsel for New GM sent a letter to Sizemore describing the relevant provisions of the MSPA and 363 Sale Order, explaining why the Sizemore Civil Action violated those provisions with respect to New GM, and demanding that New GM be dismissed from the

[8] A true and correct copy is attached hereto as **Exhibit "J."**

[9] A true and correct copy is attached hereto as **Exhibit "K."**

[10] A true and correct copy is attached hereto as **Exhibit "L."**

[11] A true and correct copy is attached hereto as **Exhibit "M."**

Sizemore Civil Action, with prejudice.[12] As of the date hereof, Sizemore has not dismissed New GM from the Sizemore Civil Action.

- Given the procedural posture of the Korotka Civil Action, instead of sending a letter to counsel for the Korotkas, on February 2, 2010, defendant Braeger Chevrolet, Inc. filed an Opposition to Plaintiffs' Motion to Amend the Complaint to add New GM as a defendant, describing the relevant provisions of the MSPA and 363 Sale Order and explaining why the proposed amended complaint would violate those provisions with respect to New GM.[13] The judge overruled Braeger Chevrolet, Inc.'s objections and permitted the Korotkas to file the amended complaint naming New GM as a defendant.[14] New GM explained its position that it was not a proper party to the Korotka Civil Action in the Answer of Defendant General Motors LLC to Plaintiffs' Amended Complaint and Demand for Jury Trial, filed on April 9, 2010.[15] As of the date hereof, the Korotkas have not dismissed New GM from the Korotka Civil Action.

- On March 22, 2010, counsel for New GM sent a letter to counsel for RJ Burne describing the relevant provisions of the MSPA and 363 Sale Order, explaining why the McDade Civil Action violated those provisions with respect to New GM, and demanding that New GM be dismissed from the McDade Civil Action, with prejudice.[16] As of the date hereof, RJ Burne has not dismissed New GM from the McDade Civil Action.

The Requested Relief Should Be Approved By the Court

20. The actions of the Accident Plaintiffs in connection with the Accident Plaintiffs' Civil Actions directly violate and contravene the 363 Sale Order and the MSPA. Under these circumstances, the Court should enforce the terms of the 363 Sale Order and direct the Accident Plaintiffs to promptly dismiss New GM, with prejudice, from each of the Accident Plaintiffs' Civil Actions.

[12] A true and correct copy is attached hereto as **Exhibit "N."**

[13] *Korotka v. Braeger Chevrolet, Inc.*, No. 08 CV 017991 (Milwaukee Cnty. Circuit Ct., Wis.) [Docket No. 45]. A true and correct copy is attached hereto as **Exhibit "O."**

[14] *Korotka v. Braeger Chevrolet, Inc.*, No. 08 CV 017991 (Milwaukee Cnty. Circuit Ct., Wis.) [Docket Nos. 46, 50] (Ex. G).

[15] *Korotka v. Braeger Chevrolet, Inc.*, No. 08 CV 017991 (Milwaukee Cnty. Circuit Ct., WI) [Docket No. 54]. A true and correct copy is attached hereto as **Exhibit "P."**

[16] A true and correct copy is attached hereto as **Exhibit "Q."**

21. Bankruptcy Courts have the inherent authority to enforce their orders: "[a]ll courts, whether created pursuant to Article I or Article III, have inherent contempt power to enforce compliance with their lawful orders. The duty of any court to hear and resolve legal disputes carries with it the power to enforce the order." *U.S. Lines, Inc. v. GAC Marine Fuels, Ltd. (In re McClean Indus., Inc.)*, 68 B.R. 690, 695 (Bankr. S.D.N.Y. 1986) (Buschman, J.). Section 105 of the Bankruptcy Code also provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out" the Bankruptcy Code's provisions, and this section "codif[ies] the bankruptcy court's inherent power to enforce its own orders." *Back v. AM Gen. Corp. (In re Chateaugay Corp.)*, 213 B.R. 633, 640 (S.D.N.Y. 1997) (Lifland, J.); 11 U.S.C. § 105(a).

22. More specifically, this Court retains subject matter jurisdiction to enforce the 363 Sale Order, as it "is axiomatic that a court possesses the inherent authority to enforce its own orders" and agreements approved by the court. *In re Cont'l Airlines, Inc.*, 236 B.R. 318, 326 (Bankr. D. Del. 1999) ("In the bankruptcy context, courts have specifically, and consistently, held that the bankruptcy court retains jurisdiction, *inter alia*, to enforce its confirmation order."), *aff'd*, No. 09-932, Adv. 99-47, Civ. A. 99-795-SLR, 2000 WL 1425751 (D. Del. Sep. 12, 2000), *aff'd*, 279 F.3d 226 (3d Cir.), *cert. denied*, 537 U.S. 944 (2002); *Travelers Indemn. Co. v. Bailey*, 129 S. Ct. 2195, 2205 (2009) ("as the Second Circuit recognized, . . . the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders.").

23. Additionally, pursuant to Paragraph 71 of the 363 Sale Order and Section 9.13 of the MSPA, this Court retained exclusive jurisdiction "to enforce and implement the terms and provisions of this [363 Sale] Order, the M[S]PA, [and] all amendments thereto." (*See* 363 Sale Order 71; MSPA Art. IX, § 9.13.)

24. As plainly demonstrated above, the MSPA and 363 Sale Order specifically shield New GM from the claims asserted in the Accident Plaintiffs' Civil Actions. In addition, as stated, the 363 Sale Order specifically bars, estops, and enjoins the Accident Plaintiffs from pursuing their actions against New GM in any respect. Under these incontrovertible facts and circumstances, the relief requested in this Motion should be granted.

25. Further, New GM will continue to suffer harm and prejudice if the Accident Plaintiffs' Civil Actions are permitted to continue against New GM. Under settled law, when a party unilaterally violates a Bankruptcy Court order, that violation, standing alone, constitutes the only harm necessary for a renewed injunction. *See, e.g.*, *Balanoff v. Glazier (In re Steffan)*, 97 B.R. 741, 746 (Bankr. N.D.N.Y. 1989) (noting that "the usual equitable grounds for relief, such as irreparable damage, need not be shown" in injunctions in bankruptcy cases) (citation omitted).

26. Additionally, New GM has suffered harm by reason of the Accident Plaintiffs' Civil Actions because it has been forced to incur unwarranted costs and expenses and has had to deal with the distraction and imposition of baseless litigation. In view of the clear provisions of the 363 Sale Order, New GM should not be under any obligation to defend itself and its rights in the various jurisdictions where the Accident Plaintiffs' Civil Actions are pending. Rather, this Court should enforce the terms and provisions of its order and direct the Accident Plaintiffs to dismiss New GM, with prejudice, forthwith.

27. As noted above, prior to filing this Motion, New GM requested in writing that the Accident Plaintiffs comply with this Court's 363 Sale Order and dismiss New GM from the respective Accident Plaintiffs' Civil Actions. The Accident Plaintiffs have refused to do so. Accordingly, New GM reserves the right to seek sanctions and/or costs resulting from the

Accident Plaintiffs' knowing violation of the 363 Sale Order, including costs related to the filing of this Motion and continued defense of the Accident Plaintiffs' Civil Actions, and any other appropriate relief.

Notice

28. Notice of this Motion has been provided to (a) counsel for each of the Accident Plaintiffs except for Sizemore, a pro se plaintiff, who received notice of this Motion directly, and (b) parties in interest in accordance with the Third Amended Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Establishing Notice and Case Management Procedures, dated April 29, 2010 [Docket No. 5670]. The Debtors submit that such notice is sufficient and no other or further notice need be provided.

29. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE New GM respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit "R**,**"** granting the relief requested and such other and further relief as is just.

Dated: New York, New York
May 17, 2010

/s/ Stephen Karotkin

Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for General Motors, LLC

EXHIBIT A

COMMONWEALTH OF KENTUCKY
CLAY CIRCUIT COURT
CIVIL ACTION NO.: 09 CI- 00212

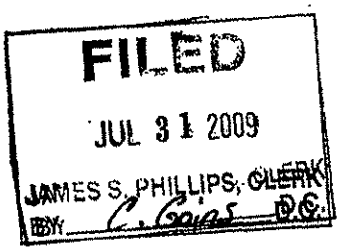
LESLIE GRIFFIN **PLAINTIFF,**

V.

GENERAL MOTORS COMPANY **DEFENDANT,**

Clay Circuit Court Clerk to **SERVE:**

CT Corporation
4169 Westport Road
Louisville, Kentucky 40207



COMPLAINT

Comes the Plaintiff, by counsel, and for his cause of action herein states as follows.

PARTIES

1. The Plaintiff, Leslie Griffin, is and was at all times relevant hereto a citizen of the Commonwealth of Kentucky and a resident of Clay County, Kentucky;

2. The Defendant, General Motors Company (hereinafter referred to as "GM") is a foreign corporation authorized to do business in this Commonwealth. It has appointed CT Corporation, 4169 Westport Road, Louisville, Kentucky 40207 as its agent for service of process;

FACTS

3. That on or about August 1, 2008 the Plaintiff was involved in a one motor vehicle accident in which he was a restrained driver of a 2002 Chevrolet Blazer. This accident occurred on state highway 421 in Clay County, Kentucky. That the Plaintiff attempted to avoid an animal on the road way causing him to swerve violently and ultimately loss control of his vehicle causing

it to leave the road way and run into a ditch. That the front end of his vehicle dug up into the ditch and caused him to flip at least twice;

COUNT I

4. Before August 1, 2008, the Defendant, GM, marketed and sold a 2002 Chevrolet Blazer automobile, VIN# 1GNDT13W62K205416;

5. Before August 1, 2008, Defendant, GM, designed, manufactured, marketed and distributed the 2002 Chevrolet Blazer referred to above;

6. On August 1, 2008, while traveling on Kentucky highway 421 in Clay County, Kentucky, as set forth above, the 2002 Chevrolet Blazer failed to reasonably and adequately protect the driver, Leslie Griffin, resulting in severe and permanent injuries as the air bag did not properly deploy;

COUNT II

7. Defendant, GM, should be held strictly liable as the designer, manufacturer, distributor and seller of said 2002 Chevrolet Blazer, which was in a defective condition and unreasonably dangerous to user.

8. Defendant, GM, as designer, manufacturer, distributor and seller, as well as through its marketing of this product, made implied and express warranties that the Chevrolet Blazer was reasonably fit for the general uses and purposes intended, and that it was free of any defects in its design or construction;

9. Defendant, GM, negligently designed, manufactured, marketed and distributed said Chevrolet Blazer in such a manner that it created an unreasonable risk of physical harm and injury; this negligence included, but was not limited to, improper and dangerous design, testing and inspection;

10. Defendant, GM, unreasonably failed to warn of the known and foreseeable hazards of said Chevrolet Blazer, both before and after the sale of said Chevrolet Blazer;

11. The injuries to Leslie Griffin are the direct and proximate result of the actions and omissions on the part of the Defendant, General Motors Company.

COUNT III

1. As a direct and proximate result of the acts and omissions of the Defendant as set out above, Leslie Griffin has sustained damages as follows:

a. Past, present and future physical and mental suffering;

b. Past and future reasonable and necessary medical expenses;

WHEREFORE, the Plaintiff, Leslie Griffin, demands judgment against the Defendant, General Motors Company, in a sum in excess of any minimum jurisdictional amount of this Court; trial by jury; interest where applicable; his costs herein; and all other relief to which he may appear entitled.

BILL MEADER
P.O. BOX 499
HYDEN, KENTUCKY 41749
Phone: (606) 672-5150
Fax: (606) 672-5109
E-mail: meader_law @ hotmail. com.

JAMES S. PHILLIPS
CIRCUIT COURT CLERK
CLAY CIRCUIT & DISTRICT COURTS
CLAY COUNTY JUSTICE CENTER
316 MAIN STREET, SUITE 108
MANCHESTER, KENTUCKY 40962

CI 09-CI-00232
641293

CERTIFIED MAIL

7008 3230 0002 7900 7527

GENERAL MOTORS COMPANY,
CT CORPORTATION
4169 WESTPORT ROAD
LOUISVILLE KY 40207

40207$2747 C038

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

SHANE J. ROBLEY,	*	
	*	
Plaintiff,	*	
	*	
	*	
vs.	*	**Civil Action No.**
	*	
GENERAL MOTORS LLC, MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION, NORTHROP GRUMMAN SPACE & MISSIONS SYSTEMS CORP. f/k/a TRW, INC., TRW AUTOMOTIVE HOLDINGS CORP. f/k/a TRW AUTOMOTIVE U.S. LLC, and TRW VEHICLE SAFETY SYSTEMS, INC.,	*	_____
	*	
Defendants.	*	

COMPLAINT FOR PERSONAL INJURY
FROM A DANGEROUS AND DEFECTIVE PRODUCT

Comes now the Plaintiff, by and through counsel, and would respectfully state and show unto the Court the following:

Parties, Jurisdiction, Venue

1. Plaintiff Shane J. Robley ("Robley") is a resident citizen of Tipton County, Tennessee.

2. Defendant General Motors LLC ("GM") is a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Tennessee..

3. Defendant Motors Liquidation Company ("GM Co.") is a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of

Tennessee. GM Co. was formerly known as General Motors Corporation.

4. GM is a successor and/or affiliate of GM Co.

5. GM is an automobile manufacturing company created as part of a reorganization of GM Co. under Chapter 11 of the United States Bankruptcy Code.

6. GM and/or GM Co. designs and manufactures or has in the past designed and manufactured a motor vehicle known as the GMC Jimmy and other motor vehicles of various kinds which it sold and/or distributed in Tipton County, Tennessee, and in other communities and locations worldwide.

7. Defendant Northrop Grumman Space & Mission Systems Corp. ("Northrop") is a foreign corporation doing business in Tennessee which acquired the corporation formerly known as TRW, Inc., in or about 2003 by means of a purchase of stock shares. Northrop changed the name of TRW, Inc. to Northrop Grumman Space & Mission Systems Corp. and is authorized to do business in the State of Tennessee.

8. In or about 2003 Northrop in a spin off sold the automotive products business of the corporation formerly known as TRW to a foreign entity now known as Defendant TRW Automotive Holdings Corp. and on information and belief formerly known as TRW Automotive U.S., LLC ("TRW Holdings"), a company authorized to do business in the State of Tennessee.

9. Defendant TRW Vehicle Safety Systems, Inc., ("TRW Safety Systems") was in 1999 a subsidiary and/or affiliate of the corporation formerly known as TRW and is presently a subsidiary and/or affiliate of TRW Holdings. TRW Safety Systems is authorized to do business in the State of Tennessee.

10. In 1999 TRW Safety Systems designed and produced the seat belts sold by the corporation formerly known as TRW, Inc. to the corporation formerly known as General Motors

Corporation for installation in the model year 2000 GMC Jimmy.

11. References in this Complaint to General Motors Corporation include GM and GM Co. On information and belief, GM assumed liability for product liability claims arising from the sale of products by GM Co., and the question whether such assumption of liability includes or should include claims arising prior to the June 1, 2009, Chapter 11 bankruptcy proceeding of GM Co. is presently on appeal and undecided. GM Co. is included in this Complaint for the purpose of tolling the statute of limitation upon the claims of Robley against GM Co. In the event an automatic stay protecting GM Co. remains in effect under the United States Bankruptcy Code, Robley will upon such representation from GM Co. consent to a stay of these proceedings until he can obtain relief from such automatic stay or until adjudication of his claims against GM Co. in the bankruptcy proceeding, or until the Chapter 11 proceeding of GM Co. is dismissed.

12. References in this Complaint to TRW include Northrop, TRW Holdings, and TRW Safety Systems.

13. The injuries which give rise to this cause of action occurred in the Western District of Tennessee, and venue is properly laid in this court pursuant to 28 U.S.C. §1391.

14. . The amount in controversy exceeds $75,000.00, and jurisdiction of this cause of action lies in this court under 28 U.S.C. §1332.

Allegations of Fact

15. On November 25, 2008, Robley owned a model year 2000 GMC "Jimmy" compact sport utility vehicle, having vehicle identification number 1GKCS13WXY2228511 which was designed, tested, manufactured, and sold by General Motors Corporation in or about December, 1999. At all times pertinent to this cause of action and for many years prior thereto General Motors Corporation was in the business of designing, testing, manufacturing, distributing,

and marketing motor vehicles to the general public throughout the United States and abroad. The vehicle owned by Robley was in the same or substantially the same condition and configuration as it was when it left the control of General Motors Corporation.

16. TRW designed, tested, and manufactured the model number H98-07 seat belt restraint system sold to General Motors Corporation and installed in Robley's 2000 GMC Jimmy. At all times pertinent to this cause of action and for many years prior thereto TRW was in the business of designing, testing, manufacturing, distributing, and marketing automotive products, including safety restraint systems, for use in motor vehicles sold to the general public throughout the United States and abroad. The seat belt restraint system in Robley's vehicle was in the same or substantially the same condition and configuration as it was when it left the control of TRW.

17. At approximately 10:55 A.M. on November 25, 2008, Robley was lawfully driving his 2000 GMC Jimmy south from Atoka, Tennessee, toward Memphis, Tennessee, on U.S. Highway 51 in Tipton County, Tennessee. The weather was clear and dry, and no adverse road conditions existed at the intersection of U.S. Highway 51 and Watson Road in Munford, Tennessee. Robley wore the driver's side seat belt and shoulder harness installed in his GMC Jimmy. As he approached that intersection another driver in a pickup truck pulled out into Robley's path of travel from Watson Road on the right. Robley swerved left to avoid hitting the other driver and struck the front of the pickup truck. The driver of the pickup truck sustained no injuries and his pickup truck sustained moderate damage to its center front. Robley's GMC Jimmy suddenly rolled over, flipping him upside down, rolled back upright, and continued rolling over and over, during which the roof of the GMC Jimmy collapsed and Robley was ejected from the vehicle. When it came to rest the GMC Jimmy was a total wreck and Robley was gravely injured.

18. Following the collision Robley was transported by helicopter to the Regional Medical Center at Memphis, where he was examined and treated for his injuries. Robley remained hospitalized fifty-three (53) days, until he was discharged January 17, 2009. He was diagnosed and treated for multiple contusions, lacerations, abrasions, and fractures, and as a result of his injuries remains permanently and totally disabled due to paraplegia from spinal cord injury occurring in conjunction with fracture of his T7 - T12 vertebrae. Robley, who was twenty-six (26) years old at the time of the collision, is confined to a wheelchair and unable to pursue his previous employment as a mechanic. He has been deprived of the ability to lead the full, active and independent life which he previously enjoyed.

19. Defects in the design and manufacture of the 2000 GMC Jimmy directly and proximately caused Robley to suffer the severe and disabling injuries he sustained as a result of the collision which occurred on November 25, 2008. Specifically, the GMC Jimmy had a high center of gravity which rendered it susceptible to rollover accidents, and its roof was not reinforced to prevent it from collapsing and injuring occupants in the event of a rollover. Because of these defects, the 2000 GMC Jimmy was an inherently and unreasonably dangerous and defective product which failed to conform to the safety standards expected by an ordinary consumer under the circumstances.

20. Defects in the design and manufacture of the TRW model number H98-07 seat belt restraint system sold to General Motors Corporation and installed in Robley's 2000 GMC Jimmy directly and proximately caused Robley to suffer the severe and disabling injuries he sustained as a result of the collision which occurred on November 25, 2008. Specifically, the seat belt retractor assembly failed to remain locked throughout the rollovers of his GMC Jimmy, allowing excess webbing to pay out and loosen the hold of the seat belt on Robley's body, resulting in the ejection

of Robley from the vehicle. The TRW seat belt restraint system designed with a pendulum activated ratchet locking and releasing mechanism was ineffective to prevent Robley's injuries in such a rollover, and this defect in the design of the TRW seat belt restraint system allowed the seat belt to momentarily release during the application of centrifugal g-forces occurring in the rollover accident. Because of this defect, the TRW model number H98-07 seat belt restraint system sold to General Motors Corporation and installed in Robley's 2000 GMC Jimmy was an inherently and unreasonably dangerous and defective product which failed to conform to the safety standards expected by an ordinary consumer under the circumstances.

21. General Motors Corporation knew or should have known that the design and manufacture of the 2000 GMC Jimmy was dangerous and defective. It used the same design in the manufacture of both the GMC Jimmy and the Chevrolet Blazer, and both the accident history as well as tests and formulations occurring prior to December 1999, the date Robley's vehicle was manufactured, disclosed the inherently dangerous rollover tendency of these vehicles. Nonetheless, General Motors Corporation continued to manufacture them.

22. TRW knew or should have known that the design and manufacture of the model number H98-07 seat belt restraint system sold to General Motors Corporation and installed in Robley's 2000 GMC Jimmy was dangerous and defective. Both the accident history as well as tests and formulations occurring prior to December 1999, the date Robley's vehicle was manufactured, disclosed the inherently dangerous rollover tendency of the GMC Jimmy and the Chevrolet Blazer, yet TRW persisted in manufacturing and selling a seat belt restraint system for these vehicles which could not hold the body of an occupant in the vehicle during a rollover accident.

23. The rollover tendency of a vehicle can be mathematically calculated from the

vehicles weight, size of wheel base, and other characteristics, and can be determined from testing. Similarly the amount of weight or pressure a vehicles roof can withstand is determinable mathematically and from tests. Because General Motors Corporation designed, manufactured and sold the 2000 GMC Jimmy in which Robley was injured despite the fact that it knew or reasonably should have known this vehicle was inherently dangerous and defective, and that there were safe alternatives to its design, it acted in willful and wanton disregard of the safety and well being of Robley and others, entitling him to recover punitive damages from General Motors Corporation because of his injuries.

24. The inability of a seat belt whose locking is actuated by a pendulum responding to deceleration in the forward motion of a vehicle to hold during a rollover accident is determinable both by reference to mathematical engineering principles and testing. Because TRW designed, manufactured and sold the model number H98-07 seat belt restraint system to General Motors Corporation which was installed in Robley's 2000 GMC Jimmy despite the fact that it knew or reasonably should have known about the inherently dangerous rollover tendency of the GMC Jimmy, that its seat belt restraint system for these vehicles could not hold the body of an occupant in the vehicle during a rollover accident, and that there were safe alternatives to their design, it acted in willful and wanton disregard of the safety and well being of Robley and others, entitling him to recover punitive damages from TRW because of his injuries.

25. General Motors Corporation represented the 2000 GMC Jimmy to be safe and free from defects in its design and manufacture, and it gave no warning to consumers that occupants of the 2000 GMC Jimmy were in danger of serious injuries or death due to its excessive rollover tendency and the lack of reinforcement of its roof.

26. TRW represented the model number H98-07 seat belt restraint system sold to

General Motors Corporation and installed in Robley's 2000 GMC Jimmy to be safe and free from defects in its design and manufacture, and it gave no warning to consumers that occupants of the 2000 GMC Jimmy were in danger of serious injuries or death due to failure of the seat belt retractor assembly to remain locked in a rollover, allowing excess webbing to pay out and loosen the hold of the seat belt on the occupant's body, resulting in ejection of the occupant from the vehicle.

Causes of Action

Negligence

27. The allegations of fact set forth in paragraphs 15. through 26. are incorporated herein by reference and restated as if verbatim.

28. General Motors Corporation and TRW owed a duty of ordinary care to Robley and other members of the public who, as consumers, would use their products to distribute in the stream of commerce only products which were properly designed, tested, and found to be safe and in conformity with the known standards of the automotive industry and the requirements of law.

29. The defendants breached this duty of care by negligently manufacturing, distributing, and selling the 2000 GMC Jimmy, including the seat belt restraint system, when they knew or should have known the vehicle and its seat belt restraint system were substandard products in that the vehicle was prone to rollovers and, if a rollover occurred, the roof would collapse and the seat belt would not hold an occupant in the vehicle and, further, they knew or should have known these dangers could be reduced or eliminated by designing the vehicle with a lower center of gravity, reinforced roof posts, and a seat belt restraint system which would remain locked in response to centrifugal g-forces.

30. An accident and injuries such as occurred to Robley as a result of the substandard design and manufacture of the 2000 GMC Jimmy and its seat belt restraint system were reasonably foreseeable to defendants. Such negligence by the defendants directly and proximately caused Robley to suffer and sustain personal injuries, expenses, loss of income, permanent total disability, pain, suffering, and sorrow for which he is entitled to recover damages from the defendants, including punitive damages because their negligence was gross, willful, and wanton.

Common Law Strict Liability

31. The allegations of fact set forth in paragraphs 15. through 26. are incorporated herein by reference and restated as if verbatim.

32. At the time the defendants put the 2000 GMC Jimmy, including its seat belt restraint system, into the stream of commerce, it was inherently and unreasonably dangerous and defective. It was dangerous to an extent beyond that which would be contemplated by the ordinary consumer purchasing or using such a product, with the ordinary knowledge common to the community as to its characteristics.

33. At the time the defendants put the 2000 GMC Jimmy, including its seat belt restraint system, into the stream of commerce, it was reasonably foreseeable that one such as Robley, using the product as he did for its intended purpose, would be subjected to harm and injury from the defects which rendered it inherently dangerous and defective.

34. The defects which rendered the 2000 GMC Jimmy, including its seat belt restraint system, inherently dangerous and defective did directly and proximately cause Robley to suffer and sustain the injuries alleged herein which occurred during the rollovers after the impact with the other vehicle, and in the absence of such defects the damage and injury, if any, resulting from the impact with the other driver would have been comparatively minimal.

35. The defendants placed into the stream of commerce unreasonably dangerous and defective products which reasonably prudent manufacturers would have known were defective and dangerous and would not have put on the market in such condition. The dangerous and defective condition of the defendants' products was the cause in fact of Robley's injuries, for which the defendants are liable to Robley for compensatory and punitive damages.

Tennessee Products Liability Act

36. The allegations of fact set forth in paragraphs 15. through 26. are incorporated herein by reference and restated as if verbatim.

37. The 2000 GMC Jimmy driven by Robley was unreasonably dangerous. Its performance was below reasonable minimum safety expectations of the ordinary consumer having ordinary, common knowledge of its characteristics. Its design did not provide for utility which justified the risk posed to consumers and users of the product such as Robley. A reasonably prudent manufacturer, knowing of its characteristics, would not offer such a product for sale in the stream of commerce.

38. Further, the seat belt restraint system in the 2000 GMC Jimmy afforded no protection in a rollover and, therefore, its performance was below reasonable minimum safety expectations of the ordinary consumer having ordinary, common knowledge of its characteristics and the characteristics of the GMC Jimmy. A reasonably prudent manufacturer, knowing of its characteristics and those of the GMC Jimmy, would not offer such a product for sale in the stream of commerce as the seat belt safety component for a 2000 GMC Jimmy.

39. Because they have placed unreasonably dangerous products into the stream of commerce, the defendants have violated the Tennessee Products Liability Act of 1978, Tenn. Code Ann. §§29-28-101 - 108 and are liable to Robley for damages, including punitive damages,

under the statute.

Failure to Warn

40. The allegations of fact set forth in paragraphs 15. through 26. are incorporated herein by reference and restated as if verbatim.

41. The defendants owed consumers, including Robley, a duty to give warning of risks and dangers they knew or, in the exercise of reasonable care, should have known existed in the design of the 2000 GMC Jimmy and its seat belt restraint system.

42. By failing to provide any warnings to consumers or users of the 2000 GMC Jimmy that the vehicle was prone to rollovers and, if a rollover occurred, the roof could collapse and the seat belt could not hold an occupant in the vehicle, the defendants breached this duty, for which they are liable to Robley for damages, including punitive damages.

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF PRAYS:

1. That, upon issuance and service of or consent to process upon the defendants, the defendants be required to appear and answer or otherwise defend this cause of action;

2. That, upon trial of this cause, judgment be entered for the plaintiff against the defendants, jointly and severally, for compensatory damages in the amount of Twenty Four Million Dollars ($24,000,000.00) and the costs of this cause;

3. That, upon trial of this cause, judgment be entered for the Plaintiff against the Defendants jointly and severally for punitive damages in the amount of Twenty Four Million Dollars ($24,000,000.00); and

4. That the Plaintiff have and receive such other and further relief as may appear to the Court to be just and proper in the premises.

PLAINTIFF DEMANDS TRIAL BY JURY OF THE ISSUES JOINED IN THIS CAUSE.

Respectfully submitted:

RUTLEDGE & RUTLEDGE, P.C.
Attorneys for Plaintiff
1083 W. Rex Road, Suite 102
Memphis, Tennessee, 38119
(901) 682-0667

By: /S/.
Roger K. Rutledge (5758)

EXHIBIT C

The Law Offices of

BARRY NOVACK

8383 WILSHIRE BLVD. SUITE 830

BEVERLY HILLS, CALIFORNIA 90211-2407

(323) 852-1030 (323) 852-9855 FAX

STATE BAR NO. 57911

ATTORNEYS FOR PLAINTIFFS

(SPACE BELOW FOR FILING STAMP ONLY)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

APR 17 2008

John A. Clarke, Executive Officer/Clerk
BY SHAUNYA WESLEY, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BC389150

BEVERLY DEUTSCH By and Through Her Attorney-In-Fact SANFORD DEUTSCH; and SANFORD DEUTSCH, An Individual, Plaintiffs, vs. GENERAL MOTORS CORPORATION; RENICK CADILLAC, INC.; LOU EHLERS CADILLAC, INC.; NORTH AMERICAN BUS INDUSTRIES, INC.; LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, a Public Corporation; DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6 and DOES 7 through 50, Defendants.	CASE NO. **COMPLAINT FOR DAMAGES FOR PERSONAL INJURIES**

THE LAW OFFICES OF BARRY NOVACK

DATED: April 17, 2008

By: _____
BARRY NOVACK
Attorneys for Plaintiffs

PLAINTIFF BEVERLY DEUTSCH BY AND THROUGH HER ATTORNEY-IN-FACT SANFORD DEUTSCH ALLEGES FIRST CAUSE OF ACTION AGAINST DEFENDANTS GENERAL MOTORS CORPORATION, RENICK CADILLAC, INC., LOU EHLERS CADILLAC, INC., AND DOES 1 THROUGH 10 FOR NEGLIGENCE:

1

The full extent of the facts linking the fictitiously designated defendants with this cause of action is unknown to plaintiff, or the true names or capacities, whether individual, plural, corporate, partnership, associate, or otherwise, of defendants DOES 1 through 50 are unknown to plaintiff. Plaintiff therefore sues said defendants by such fictitious names. Plaintiff is informed, believes, and alleges, that each of the defendants designated herein as a DOE is negligently, wantonly, recklessly, tortuously, and unlawfully responsible in some manner for the events and happenings herein referred to and negligently, wantonly, recklessly, tortiously, and unlawfully proximately caused injury and damages to plaintiff, as herein alleged. Plaintiff will hereafter ask leave of Court to amend this Complaint to show said defendants' true names and capacities after the same have been ascertained.

2

At all times herein mentioned each defendant was the agent of each and all of the other defendants and was acting within the course and scope of said agency.

3

The events giving rise to this cause of action occurred on or about June 27, 2007 at or near Beverly Boulevard and Formosa Avenue, Los Angeles, CA.

4

At all times herein mentioned the following defendants were corporations having business within California: General Motors Corporation, Renick Cadillac, Inc., Lou Ehlers Cadillac, Inc., North American Bus Industries (NABI, Inc.) and DOES 1 through 20.

5

At the time an place of the events hereinafter mentioned the defendants and each of them were engaged in a joint venture and common enterprise and acting within the scope of and in pursuance of the joint venture and common enterprise.

6

As a result of the accident referenced herein, plaintiff Beverly Deutsch has become disabled and incapacitated and is unable to prudently act on her own behalf by reason of the injuries sustained in the accident. Accordingly, her husband, Sanford Deutsch, acting under the authority of a durable power of attorney, has been appointed by his wife Beverly Deutsch as her true and lawful Attorney-In-Fact, and in that capacity has brought this action on behalf of his wife Beverly Deutsch.

7

The product involved in this cause of action is a 2006 Cadillac DTS Sedan, VIN 1G6KD57Y26U13538 and its component parts (hereinafter referred to as THE CADILLAC). At said time and place, the defendants and each of them negligently, wantonly, tortiously, wrongfully and unlawfully:

1. Designed, processed, constructed, manufactured, assembled, prepared, selected materials and parts, represented to test and inspect, managed, maintained, repaired, serviced, sold,

advertised, distributed, owned and operated THE CADILLAC; and

2. Instructed others regarding THE CADILLAC and its use, maintenance, care and operation; and

3. Failed to warn, instruct, advise, educate and train its users regarding THE CADILLAC and its use, maintenance, care and operation; and

4. Conducted themselves with reference to THE CADILLAC and plaintiff so as to proximately cause injury and damage to plaintiff.

8

As a proximate result thereof, this plaintiff sustained permanent bodily injuries, and has had and in the future will have pain, suffering, worry and anxiety, all to plaintiff's general damages in an amount within the jurisdiction of the Court, and according to proof.

9

As a proximate result thereof, this plaintiff incurred and in the future will incur medical and related expenses all to plaintiff's damage in such amount as will be proven at trial.

10

As a proximate result thereof, this plaintiff has and in the future will lose the ability to do plaintiff's usual work, and has and in the future will have lost earning capacity all to plaintiff's damage in such amount as will be proven at trial.

11

As a proximate result thereof, certain property belonging to this plaintiff was damaged in such an amount as will be proven at trial.

As a proximate result thereof plaintiff has lost the use of and interest on the money owed to plaintiff as permitted by law:

A. On the general damages.

B. On the medical expenses incurred to judgment.

C. On the loss of earnings to judgment.

D. On property damaged and destroyed.

PLAINTIFF BEVERLY DEUTSCH BY AND THROUGH HER ATTORNEY-IN-FACT SANFORD DEUTSCH ALLEGES SECOND CAUSE OF ACTION AGAINST DEFENDANTS GENERAL MOTORS CORPORATION, RENICK CADILLAC, INC., LOU EHLERS CADILLAC, INC., AND DOES 1 THROUGH 10 FOR STRICT PRODUCTS LIABILITY:

13

Plaintiff refers to and incorporates by reference paragraphs 1 through 6 and 8 through 12 as if fully set forth herein.

14

A. The product involved in this cause of action is a 2006 Cadillac DTS Sedan VIN 1G6KD57Y26U13538 and its component parts, referred to as THE CADILLAC.

B. Defendants, and each of them, designed, processed, developed, manufactured, constructed, assembled THE CADILLAC and represented to inspect and test it, instruct, advise and warn concerning its use, maintenance and repair.

C. Defendants, and each of them, sold, advertised, leased, licensed, bailed, distributed and franchised THE CADILLAC, and were in the chain of distribution for THE CADILLAC.

D. THE CADILLAC had defects and was defective.

E. These defects existed when THE CADILLAC left the possession of the defendants, and each of them.

F. Each defect in THE CADILLAC was the proximate cause of injury and damage to plaintiff.

PLAINTIFF BEVERLY DEUTSCH BY AND THROUGH HER ATTORNEY-IN-FACT SANFORD DEUTSCH ALLEGES THIRD CAUSE OF ACTION AGAINST NORTH AMERICAN BUS INDUSTRIES, INC. AND DOES 11 THROUGH 20 FOR NEGLIGENCE:

15

Plaintiffs incorporate paragraphs 1 through 6 and 8 through 12 as though fully set forth herein.

16

The product involved in this cause of action is a 2006 NABI 60' BRT-01 articulated bus, VIN 1N960B0175A140319 and its component parts, (hereinafter referred to as THE BUS). At said time and place the defendants, and each of them negligently, wantonly, recklessly, tortiously, wrongfully and unlawfully:

1. Designed, processed, constructed, manufactured, assembled, prepared, selected materials and parts, represented to test and inspect, managed, maintained, repaired, serviced, sold, advertised, distributed, owned and operated THE BUS; and
2. Instructed others regarding THE BUS and its use, maintenance, care and operation; and
3. Failed to warn, instruct, advise, educate and train its users regarding THE BUS and its use, maintenance, care and operation; and
4. Conducted themselves with reference to THE BUS and plaintiff so as to proximately cause injury and damage to plaintiff.

PLAINTIFF BEVERLY DEUTSCH BY AND THROUGH HER ATTORNEY-IN-FACT SANFORD DEUTSCH ALLEGES FOURTH CAUSE OF ACTION AGAINST NORTH AMERICAN BUS INDUSTRIES, INC. AND DOES 11 THROUGH 20 FOR STRICT PRODUCTS LIABILITY:

17

Plaintiff refers to and incorporates by reference paragraphs 1 through 6 and 8 through 12 as though fully set forth herein.

18

A. The product involved in this cause of action is a NABI 2006 60' BRT-01 articulated bus, VIN 1N960B0175A140319 and its component parts, (hereinafter referred to as THE BUS).

B. Defendants, and each of them, designed, processed, developed, manufactured, constructed, assembled THE BUS and represented to inspect and test it, instruct, advise and warn concerning its use, maintenance and repair.

C. Defendants, and each of them, sold, advertised, leased, licensed, bailed, distributed and franchised THE BUS, and were in the chain of distribution for THE BUS.

D. THE BUS had defects and was defective.

E. These defects existed when THE BUS left the possession of the defendants, and each of them.

F. Each defect in THE BUS was the proximate cause of injury and damage to plaintiff.

PLAINTIFF BEVERLY DEUTSCH BY AND THROUGH HER ATTORNEY-IN-FACT SANFORD DEUTSCH ALLEGES FIFTH CAUSE OF ACTION AGAINST DEFENDANT LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY AND DOES 21 THROUGH 30 FOR A DANGEROUS CONDITION OF PUBLIC PROPERTY:

19

Plaintiff refers to and incorporates by reference paragraphs 1 through 3, 6 and 8 through 12 as though fully set forth herein.

20

Before filing this lawsuit, proper claims for damages were timely filed by plaintiff with the proper public entity defendants and said claims were not accepted. Thereafter this suit was timely filed.

21

THE BUS was owned and operated by the Los Angeles County Metropolitan Transportation Authority (hereinafter referred to as LACMTA). A defective and unsafe condition existed in defendant's public property, namely THE BUS, which constituted a dangerous condition of public property.

22

The dangerous condition of public property was the excessive height of the rear bumper of THE BUS above the road surface which resulted in the front bumper of THE CADILLAC underriding the bus bumper, thereby preventing the safety air bag in THE CADILLAC from deploying. This dangerous condition of public property was a substantial factor in causing plaintiff Beverly Deutsch to suffer serious injuries.

23

Defendants are responsible for the injuries and damages sustained

by plaintiff resulting from this accident because they:

A. Designed, constructed, maintained, managed, owned, operated, controlled, entrusted, permitted, caused and allowed a dangerous, defective and unsafe condition to exist with respect to their public property, namely THE BUS involved in this incident; and they

B. Failed to have and maintain and provide a reasonably safe bus for use on public streets; and they

C. Entrusted, owned, possessed, permitted, managed, maintained, serviced, repaired, tested, controlled and operated THE BUS involved in this accident; and they

D. Designed, processed, constructed, manufactured, assembled, prepared and selected materials and parts for THE BUS involved in this incident; and they

E. Instructed others regarding THE BUS and its use, maintenance, care and operation; and they

F. Failed to warn, instruct, advise, educate and train its drivers regarding THE BUS involved in this accident; and they

G. Failed to take appropriate measures to exclude the public from the area of danger in THE BUS involved in this accident; and they

H. Had actual and/or constructive notice that THE BUS referred to above was unsafe, dangerous, hazardous, defective and a concealed trap within sufficient time before this accident so as to have been able to correct the same and to adequately warn users; and they

I. Created the dangerous condition existing in this public property; and they

J. Negligently, wantonly, recklessly, tortiously and unlawfully:

1. failed to discharge a mandatory duty imposed on them by enactments that are designed to protect against the risks of these types of injuries and damages; and

2. failed to implement, perform and carry out the acts required by the enactments, policies and policy decisions of defendant; and they

K. Conducted themselves with reference to this public property and to plaintiff so as to create a substantial risk of injury and death to persons involved with said property.

PLAINTIFF BEVERLY DEUTSCH BY AND THROUGH HER ATTORNEY-IN-FACT SANFORD DEUTSCH ALLEGES SIXTH CAUSE OF ACTION AGAINST DEFENDANT LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY AND DOES 21 THROUGH 30 FOR NEGLIGENCE:

24

Plaintiff refers to and incorporates by reference paragraphs 1 through 3, 6, 8 through 12, and 20 as though fully set forth herein.

25

At all times herein mentioned the owners of THE BUS involved in this accident were the following: LACMTA and Does 21 through 30.

26

At all times herein mentioned the persons operating and driving THE BUS involved in this accident were: LACMTA and Does 21 through 30.

27

At all times herein mentioned the person acting as operator and driver of THE BUS involved in this accident was doing so with the knowledge, permission and consent of the following defendants: LACMTA and Does 21 through 30.

28

At all times herein mentioned the person acting as operator and driver of THE BUS involved in this accident was the agent, servant, and employee of and acting within the course and scope of said agency and employed by the following defendants: LACMTA and Does 21 through 30.

29

At said time and place defendants proximately caused injuries and damages as herein mentioned to said plaintiff by negligently,

wantonly, recklessly, tortiously, unlawfully:

A. Entrusting, permitting, managing, maintaining, servicing, repairing, inspection, operating and driving THE BUS; and

B. Conducting themselves with reference to THE BUS and to plaintiff

so as to proximately cause a collision between plaintiff's vehicle and THE BUS.

PLAINTIFF SANFORD DEUTSCH AN INDIVIDUAL ALLEGES SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR LOSS OF CONSORTIUM:

30

Plaintiff refers to and incorporates by reference paragraphs 1 through 29 as though fully set forth herein.

31

At all times herein mentioned, plaintiff Sanford Deutsch and plaintiff Beverly Deutsch were and are husband and wife.

32

As a proximate result of this incident plaintiff Beverly Deutsch has been unable to perform said work, services and duties as a spouse as before, and will be unable to perform the same in the future. By reason thereof, this plaintiff Sanford Deutsch has been deprived and in the future will be deprived of the work, services, duties, companionship and consortium of said spouse all to this plaintiff's further damage in such amount as will be proven at the time of trial.

WHEREFORE THE FOLLOWING JUDGMENT AGAINST THE DEFENDANTS AND EACH OF THEM AS PRAYED FOR BY PLAINTIFF BEVERLY DEUTSCH BY AND THROUGH HER ATTORNEY-IN-FACT SANFORD DEUTSCH IN HER FIRST, SECOND, THIRD, FOURTH, FIFTH AND SIXTH CAUSES OF ACTION:

1. Costs of suit;
2. Such other and further relief as this Court deems proper;
3. General damages in an amount within the jurisdiction of the Superior Court, and according to proof;
4. Medical and related expenses according to proof;
5. Loss of earnings and impaired earning capacity according to proof;
6. Property damage according to proof; and
7. Prejudgment interest according to proof.

WHEREFORE THE FOLLOWING JUDGMENT AGAINST THE DEFENDANTS AND EACH OF THEM AS PRAYED FOR BY PLAINTIFF SANFORD DEUTSCH AN INDIVIDUAL. IN HIS SEVENTH CAUSE OF ACTION:

1. Costs of suit;
2. Such other and further relief as this Court deems proper;
3. General damages in an amount within the jurisdiction of the Superior Court, and according to proof; and
4. Prejudgment interest according to proof.

EXHIBIT D

The Law Offices of

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ATTORNEYS FOR PLAINTIFFS

(SPACE BELOW FOR FILING STAMP ONLY)

ORIGINAL FILED

JAN 12 2010

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY LOS ANGELES

ESTATE OF BEVERLY DEUTSCH, and THE HEIRS OF BEVERLY DEUTSCH, By and Through SANFORD DEUTSCH, Administrator of the ESTATE OF BEVERLY DEUTSCH, and SANFORD DEUTSCH, an individual,

Plaintiffs,

vs.

GENERAL MOTORS CORPORATION; TAKATA CORPORATION; TK HOLDINGS, INC.; AUTOLIV ASP, INC.; NORTH AMERICAN BUS INDUSTRIES, INC.; LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, a Public Corporation; MARK VICTOR DONOUGHER; SONIC WILSHIRE CADILLAC, INC. fdba LOU EHLERS CADILLAC; DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6 and DOES 7 through 50,

Defendants.

CASE NO. BC 389150
(Charles F. Palmer, Judge, Dept. 33)

THIRD AMENDED COMPLAINT FOR DAMAGES FOR WRONGFUL DEATH

THE LAW OFFICES OF BARRY NOVACK

DATED: January 12, 2010

By: _____
BARRY NOVACK
Attorney for Plaintiffs

ALL PLAINTIFFS EXCEPT SANFORD DEUTSCH, AN INDIVIDUAL, ALLEGE FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS EXCEPT NORTH AMERICAN BUS INDUSTRIES, INC., LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, A PUBLIC CORPORATION, MARK VICTOR DONOUGHER, AND DOES 1 THROUGH 20 FOR NEGLIGENCE:

1

The full extent of the facts linking the fictitiously designated defendants with this cause of action is unknown to plaintiffs, or the true names or capacities, whether individual, plural, corporate, partnership, associate, or otherwise, of defendants DOES 1 through 20 and 22 through 50 are unknown to plaintiffs. Plaintiffs therefore sue said defendants by such fictitious names. Plaintiffs are informed, believes, and alleges, that each of the defendants designated herein as a DOE is negligently, wantonly, recklessly, tortuously, and unlawfully responsible in some manner for the events and happenings herein referred to and negligently, wantonly, recklessly, tortiously, and unlawfully proximately caused injury and damages to plaintiff, as herein alleged, and/or if this is a wrongful death case that some of said DOES may be an heir at law presently unknown to plaintiffs who has not joined as a party plaintiff. Plaintiffs will hereafter ask leave of Court to amend this Complaint to show said defendants' true names and capacities after the same have been ascertained.

2

At all times herein mentioned each defendant was the agent of each and all of the other defendants and was acting within the course and scope of said agency.

3

The events giving rise to this cause of action stem from an automobile accident that occurred at or near Beverly Boulevard and Formosa Avenue, Los Angeles, CA, and arise directly from a distinct and discreet occurrence that happened on August 2, 2009, namely the death of Beverly Deutsch from injuries sustained in the accident.

4

At all times herein mentioned the following defendants were corporations having business within California: General Motors Corporation; Takata Corporation; TK Holdings, Inc.; Autoliv ASP, Inc.; North American Bus Industries (NABI, Inc.), Sonic Wilshire Cadillac, Inc. fdba Lou Ehlers Cadillac, and DOES 1 through 20.

5

At the time and place of the events hereinafter mentioned the defendants and each of them were engaged in a joint venture and common enterprise and acting within the scope of and in pursuance of the joint venture and common enterprise.

6

Prior to the filing of this action, Sanford Deutsch was appointed by the Court as Administrator of the Estate of Beverly Deutsch, and is now the personal representative of said Decedent. He is bringing this action on behalf of the Estate of Beverly Deutsch, Decedent, as well as on behalf of the heirs of Beverly Deutsch, identified below.

7

Plaintiffs believe all heirs of plaintiff's decedent, Beverly Deutsch, are named below. If other heirs are discovered, plaintiffs will ask leave of Court to amend this complaint to reflect such unknown heirs as a DOE. The heirs are:

A. Sanford Deutsch, husband;

B. Mark Deutsch, son;

C. Robin Gelman, daughter; and

D. June Shames, daughter.

8

The product involved in this cause of action is a 2006 Cadillac DTS Sedan, VIN 1G6KD57Y26U13538 and its component parts including the seat belt and airbag systems (hereinafter referred to as THE CADILLAC). At said time and place, the defendants and each of them negligently, wantonly, tortiously, wrongfully and unlawfully:

1. Designed, processed, constructed, manufactured, assembled, prepared, selected materials and parts, represented to test and inspect, managed, maintained, repaired, serviced, sold, advertised, distributed, owned and operated THE CADILLAC; and

2. Instructed others regarding THE CADILLAC and its use, maintenance, care and operation; and

3. Failed to warn, instruct, advise, educate and train its users regarding THE CADILLAC and its use, maintenance, care and operation; and

4. Conducted themselves with reference to THE CADILLAC and plaintiff so as to proximately cause injury to plaintiffs' decedent Beverly Deutsch as a result of the incident and her death due to said injuries on August 2, 2009.

9

As a proximate result of this incident, plaintiffs' Decedent sustained injuries which required extensive hospitalization. The exact amount of these expenses cannot be ascertained at this time. After this amount is ascertained, or at the time of trial, plaintiffs will ask leave of Court to amend this Complaint to insert the amount therein.

10

By reason of Decedent's death, Decedent's power to earn and accumulate money and property has been destroyed, and Decedent's heirs, acting through the Decedent's personal representative, have been permanently deprived of this support and of the love, care, comfort, companionship, services, society, solace, affection, instruction, advice, training, guidance, protection, counsel, support, contributions, consortium, accumulations, inheritance and right of inheritance of said Decedent, and have suffered grief and sorrow, all to their damage in an amount within the jurisdiction of this Court, and according to proof.

11

By reason of said incident plaintiffs:

A. Incurred funeral and burial expenses in such an amount as will proved at trial.

B. Have lost the use of and interest on the money owed to plaintiffs from the date of this incident to judgment as permitted by law:

1. On funeral and burial expenses.

2. On the lost support.

3. On the medical and related health care expenses.

4. On the pecuniary value on the loss of love, care, comfort, companionship, services and society.

12

At all time herein mentioned Los County Metropolitan Transportation Authority was a public corporation and defendant Mark Victor Donougher, previously identified as DOE 21, was an employee of said defendant and acting within the course and scope of his employment.

ALL PLAINTIFFS EXCEPT SANFORD DEUTSCH AN INDIVIDUAL ALLEGE SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS EXCEPT NORTH AMERICAN BUS INDUSTRIES, INC., LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, A PUBLIC CORPORATION, MARK VICTOR DONOUGHER, AND DOES 1 THROUGH 20 FOR STRICT PRODUCTS LIABILITY:

13

Plaintiffs refer to and incorporate by reference paragraphs 1 through 7 and 9 through 12 as if fully set forth herein.

14

A. The product involved in this cause of action is a 2006 Cadillac DTS Sedan VIN 1G6KD57Y26U13538 and its component parts, including the seat belt and airbag systems, referred to as THE CADILLAC.

B. Defendants, and each of them, designed, processed, developed, manufactured, constructed, assembled THE CADILLAC and represented to inspect and test it, instruct, advise and warn concerning its use, maintenance and repair.

C. Defendants, and each of them, sold, advertised, leased, licensed, bailed, distributed and franchised THE CADILLAC, and were in the chain of distribution for THE CADILLAC.

D. THE CADILLAC had defects and was defective.

E. These defects existed when THE CADILLAC left the possession of the defendants, and each of them.

F. Each defect in THE CADILLAC was a proximate cause of injury to plaintiffs' decedent Beverly Deutsch and a cause of her death due to said injuries on August 2, 2009.

ALL PLAINTIFFS EXCEPT SANFORD DEUTSCH AN INDIVIDUAL ALLEGE THIRD CAUSE OF ACTION AGAINST NORTH AMERICAN BUS INDUSTRIES, INC. AND DOES 11 THROUGH 20 FOR NEGLIGENCE:

15

Plaintiffs refer to and incorporate by reference paragraphs 1 through 7 and 9 through 12 as though fully set forth herein.

16

The product involved in this cause of action is a 2006 NABI 60' BRT-01 articulated bus, VIN 1N960B0175A140319 and its component parts, (hereinafter referred to as THE BUS). At said time and place the defendants, and each of them negligently, wantonly, recklessly, tortiously, wrongfully and unlawfully:

1. Designed, processed, constructed, manufactured, assembled, prepared, selected materials and parts, represented to test and inspect, managed, maintained, repaired, serviced, sold, advertised, distributed, owned and operated THE BUS; and
2. Instructed others regarding THE BUS and its use, maintenance, care and operation; and
3. Failed to warn, instruct, advise, educate and train its users regarding THE BUS and its use, maintenance, care and operation; and
4. Conducted themselves with reference to THE BUS and to plaintiffs so as to proximately cause injury to plaintiffs' decedent Beverly Deutsch as a result of the incident and her death due to said injuries on August 2, 2009.

ALL PLAINTIFFS EXCEPT SANFORD DEUTSCH AN INDIVIDUAL ALLEGE FOURTH CAUSE OF ACTION AGAINST NORTH AMERICAN BUS INDUSTRIES, INC. AND DOES 11 THROUGH 20 FOR STRICT PRODUCTS LIABILITY:

17

Plaintiffs refer to and incorporate by reference paragraphs 1 through 7 and 9 through 12 as though fully set forth herein.

18

A. The product involved in this cause of action is a NABI 2006 60' BRT-01 articulated bus, VIN 1N960B0175A140319 and its component parts, (hereinafter referred to as THE BUS).

B. Defendants, and each of them, designed, processed, developed, manufactured, constructed, assembled THE BUS and represented to inspect and test it, instruct, advise and warn concerning its use, maintenance and repair.

C. Defendants, and each of them, sold, advertised, leased, licensed, bailed, distributed and franchised THE BUS, and were in the chain of distribution for THE BUS.

D. THE BUS had defects and was defective.

E. These defects existed when THE BUS left the possession of the defendants, and each of them.

F. Each defect in THE BUS was a proximate cause of injury to plaintiffs' decedent Beverly Deutsch and a cause of her death due to said injuries on August 2, 2009.

ALL PLAINTIFFS EXCEPT SANFORD DEUTSCH AN INDIVIDUAL ALLEGE FIFTH CAUSE OF ACTION AGAINST DEFENDANT LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY FOR A DANGEROUS CONDITION OF PUBLIC PROPERTY PURSUANT TO GOV. CODE SECTION 835:

19

Plaintiffs refer to and incorporate by reference paragraphs 1 through 3, 6, 7 and 9 through 12 as though fully set forth herein.

20

Before filing this lawsuit, proper claims for damages were timely filed by plaintiffs with the proper public entity defendant and said claims were not accepted. Thereafter this suit was timely filed.

21

THE BUS was owned and operated by the Los Angeles County Metropolitan Transportation Authority (hereinafter referred to as LACMTA). THE BUS was public property pursuant to Gov. Code Section 830 which defines "public property" to include "personal property owned or controlled by the public entity."

22

A defective and unsafe condition existed in THE BUS, which constituted a dangerous condition of public property as defined in Gov. Section 830. **The dangerous condition of public property was the excessive height of the rear bumper of THE BUS above the road surface** which resulted in the front bumper of THE CADILLAC underriding the bus bumper, thereby preventing the safety airbag in THE CADILLAC from deploying. This dangerous condition of public property was a substantial factor in causing plaintiffs' decedent Beverly Deutsch to suffer serious injuries because her airbag did not deploy, and to die from said injuries on August 2, 2009.

23

It was reasonably foreseeable that vehicles using adjacent property with due care would collide with the back of defendant LACMTA's buses, thereby interacting with the dangerous public property.

24

For purposes of this case, Beverly Boulevard was property adjacent to THE BUS at the time of the incident.

25

The dangerous condition of public property (that is, the excessive height of the bumper of THE BUS above the roadway) created a substantial risk of injury to individuals in vehicles on Beverly Boulevard because if a vehicle collided with the back of THE BUS, that vehicle's airbag may not deploy.

26

Plaintiffs' decedent Beverly Deutsch was operating her vehicle on Beverly Boulevard when she collided with the back of THE BUS at the time of this incident, and her vehicle's airbag did not deploy in part due to the dangerous condition of THE BUS.

27

Pursuant to Gov. Code Section 835, Defendant LACTMA is responsible for the injuries and damages sustained by plaintiffs resulting from this accident because:

A. They owned and controlled THE BUS involved in this incident; and

B. THE BUS was in a dangerous condition at the time of this incident; and

C. The dangerous condition created a reasonably foreseeable risk of the kind of incident that occurred; and they

D. Negligently designed and selected materials and parts for the rear bumper of THE BUS involved in this incident; and they

E. Had actual and/or constructive notice that THE BUS referred to above had a dangerous condition within sufficient time before this accident so as to have been able to protect against it; and they

F. Negligently created the dangerous condition existing in THE BUS by failing to specify a safe rear bumper height when ordering THE BUS from NABI; and they

G. Conducted themselves with reference to THE BUS and to plaintiffs so as to create a substantial risk of injury and death to persons involved in a rear end collision with THE BUS.

ALL PLAINTIFFS EXCEPT SANFORD DEUTSCH AN INDIVIDUAL ALLEGE SIXTH CAUSE OF ACTION AGAINST DEFENDANT LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY AND MARK VICTOR DONOUGHER FOR NEGLIGENCE PURSUANT TO GOV. CODE SECTIONS 815.2(a) AND 820(a):

28

Plaintiffs refer to and incorporate by reference paragraphs 1 through 3, 6, 7, 9 through 12, and 20 as though fully set forth herein.

29

At all times herein mentioned the owner of THE BUS involved in this accident was defendant LACMTA.

30

At all times herein mentioned the person driving THE BUS involved in this accident was defendant MARK VICTOR DONOUGHER.

31

At all times herein mentioned the person acting as operator and driver of THE BUS involved in this accident was doing so with the knowledge, permission and consent of defendant LACMTA.

32

At all times herein mentioned the person acting as operator and driver of THE BUS involved in this accident was the agent, servant, and employee of and acting within the course and scope of said agency and employed by defendant LACMTA.

33

At said time and place defendants proximately caused injuries and damages as herein mentioned to said plaintiffs by negligently:

A. Operating and driving THE BUS; and

B. Conducting themselves with reference to THE BUS and to plaintiffs,

so as to proximately cause a collision between Beverly Deutsch's vehicle and THE BUS, causing

injury to plaintiffs' decedent Beverly Deutsch and her death due to said injuries on August 2, 2009. These defendants are responsible for plaintiffs' injuries pursuant to Gov. Code Sections 815.2(a) and 820(a).

PLAINTIFF SANFORD DEUTSCH AN INDIVIDUAL ALLEGES SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS EXCEPT GENERAL MOTORS CORPORATION FOR LOSS OF CONSORTIUM:

34

Plaintiff refers to and incorporates by reference paragraphs 1 through 33 as though fully set forth herein.

35

At the time of the automobile accident and continuing until the death of Beverly Deutsch on August 2, 2009, plaintiff Sanford Deutsch and Beverly Deutsch were husband and wife.

36

As a proximate result of this acciden to and including the date of her death, Beverly Deutsch was unable to perform said work, services and duties as a spouse as before. By reason thereof, plaintiff Sanford Deutsch an individual has been deprived of the work, services, duties, companionship and consortium of said spouse all to this plaintiff's damage in such amount as will be proven at the time of trial.

WHEREFORE THE FOLLOWING JUDGMENT AGAINST THE DEFENDANTS AND EACH OF THEM AS PRAYED FOR BY ALL PLAINTIFFS EXCEPT SANFORD DEUTSCH AN INDIVIDUAL:

1. Costs of suit;
2. Such other and further relief as this Court deems proper;
3. General damages in an amount within the jurisdiction of the Superior Court, and according to proof;
4. Medical and related expenses according to proof except as to defendant General Motors Corporation;
5. Special damages for loss of support and loss of services according to proof;
6. Funeral and burial expenses according to proof; and
7. Prejudgment interest according to proof.

WHEREFORE THE FOLLOWING JUDGEMENT IS PRAYED FOR BY PLAINTIFF SANFORD DEUTSCH AGAINST ALL DEFENDANTS EXCEPT GENERAL MOTORS CORPORATION IN HIS SEVENTH CAUSE OF ACTION:

1. Costs of suit;
2. Such other and further relief as this Court deems proper;
3. General damages in an amount within the jurisdiction of the Superior Court, and according to proof; and
4. Prejudgment interest according to proof.

EXHIBIT E

The Law Offices of

BARRY NOVACK

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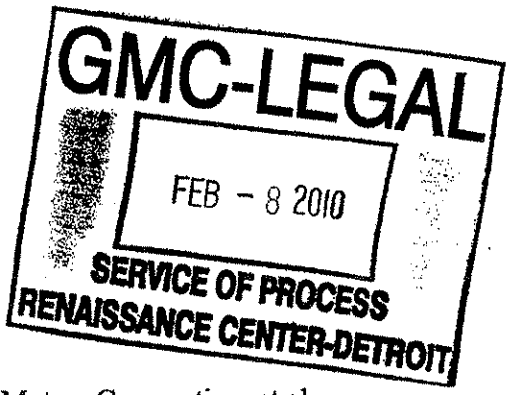
Fax : (323) 852-9855

February 1, 2010



FIRST CLASS CERTIFIED MAIL
RETURN RECEIPT REQUESTED

General Motors Company
300 Renaissance Center
Detroit, MI 48625

Attn: General Manager

Re: Estate of Beverly Deutsch, et al. vs. General Motors Corporation, et al.

Name of Party Served: General Motors Company

Dear Sir/Madam:

This revised Summons, Third Amended Complaint For Damages For Wrongful Death (Complaint), Notice of Continuance of Case Management Conference and Amendment to Complaint is re-served upon the party named above pursuant to California Code of Civil Procedure Section 415.40 (service outside of California).

The service portion of the summons was revised to indicate that General Motors Company is being served as the person sued under the fictitious name of "DOE 4."

Please do the following:

1. Give your insurance agent or broker the revised Summons, Complaint, Notice of Continuance of Case Management Conference and Amendment to Complaint . He should take care of this for you in accordance with the requirements of your insurance policy.

2. If you have any questions about this procedure, please call your insurance broker.

Service of these documents on you is deemed complete 10 days after mailing these documents.

Sincerely yours,

Cynthia Carman for
BARRY NOVACK

BN:cc
Enclosures

SUM-100

SUMMONS (CITACION JUDICIAL)

THIRD AMENDED COMPLAINT

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JAN 13 2010

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
GENERAL MOTORS CORPORATION; TAKATA CORPORATION; TK HOLDINGS, INC.; AUTOLIV ASP, INC.; NORTH AMERICAN BUS INDUSTRIES, INC.; LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, a Public Corporation; MARK VICTOR DONOUGHER, SONIC WILSHIRE CADILLAC, INC. fdba LOU EHLERS CADILLAC; DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, and DOES 7 through 50

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTA DEMANDANDO EL DEMANDANTE):
ESTATE OF BEVERLY DEUTSCH, and THE HEIRS OF BEVERLY DEUTSCH, By and Through SANFORD DEUTSCH, Administrator of the ESTATE OF BEVERLY DEUTSCH, and SANFORD DEUTSCH, an individual

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Los Angeles Superior Court - Central District
111 N. Hill Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):
BC 389150

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Barry Novack (SBN 57911) Law Offices of Barry Novack
8383 Wilshire Blvd., Suite 8[illegible] Hills, CA 90211-2407
Fax No.: (323) 852-1030
Phone No.: (323) 852-9855

DATE: JAN 13 2010 (Fecha)
Clerk, by (Secretario) JOHN A. CLARKE, CLERK M. GARCIA, Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. [ ] as an individual defendant.
2. [X] as the person sued under the fictitious name of *(specify):*
   DOE 4
3. [X] on behalf of *(specify):* General Motors Company
   under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
   [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
   [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorized person)
   [X] other *(specify):* Pursuant to CA CCP Section 415.40
4. [ ] by personal delivery on *(date):*

EXHIBIT F

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY

Dr. Terrie Sizemore RN DVM
PO Box 23
Sullivan, Ohio 44880

Plaintiff

v.

General Motors Company
PO Box 33170
Detroit, Michigan 48232

and

John Doe
(name unknown)

and

John Doe
(name unknown)

and

John Doe
(name unknown

and

John Doe
(name unknown)

Defendants

CASE NO: 10CIV0102

JUDGE: JAMES L. KIMBLER

COMPLAINT

Now comes the Plaintiff, Dr. Terrie Sizemore RN DVM, and alleges and avers as follows:

1. Plaintiff, Dr. Terrie Sizemore RN DVM, is a resident of Ashland, County, Ohio and has been at all times pertinent to this action.
2. Plaintiff has an "Action for Discovery" filed in the Court Of Common Pleas in Medina, Ohio (Case no. 09-CIV-2471) and pursuant to Civ. R. 15, "When the Plaintiff does not know the name of a defendant, that defendant may be designated in a pleading or proceeding by any name and description. When the name is discovered, the pleading or proceeding must be amended accordingly."
3. Plaintiff purchased a 2004 Chevy Silverado Pick up truck, VIN 1GCEC14T44Z232769 from dealership, Norris Chevrolet Buick in Burbank, Ohio, on or about February 14, 2004 equipped with a driver airbag.
4. Plaintiff alleges General Motors Corporation, based in Detroit, Michigan, designed and manufactured Plaintiff's vehicle, VIN 1GCEC14T44Z232769 and was required to comply with all State and Federal laws regarding the construction, design, manufacturing, etc of Plaintiff's vehicle, VIN 1GCEC14T44Z232769 as a vehicle sold in the State of Ohio.
5. To the best of Plaintiff's knowledge, General Motors Corporation entered in to Chapter 11 Bankruptcy in June, 2009. To the best of Plaintiff' knowledge, a new company called, General Motors Company was created and continues to manufacture and supply automobiles for public purchase. To the best of Plaintiff's knowledge-and further amendments may be filed to correct any irregularities not intended-General Motors Company has assumed all liability for product manufactured by General Motors Corporation prior to the filing of Chapter 11 Bankruptcy.

6. To the best of Plaintiff's knowledge General Motors Company has assumed liability and responsibility for all products' compliance with all State Product Liability law and all laws requiring conformance to the Uniform Commercial Code as well as Federal Motor Vehicle Safety Standards-particularly regarding the installation and performance of airbags and 49 USCA 30101 et seq as well as 42 Fed. Reg. 34, 299,34, 304 (1977), 58 Fed. Reg. 46, 551, 46, 553 and all other applicable laws.
7. On January 22, 2008, Plaintiff was driving north on SR 58 in Lorain County, hit a section of ice, lost control of the truck, VIN 1GCEC14T44Z232769, traveled off the road, struck the front end of this vehicle, met the requirements to deploy an airbag and the vehicle airbag failed to deploy.
8. Plaintiff alleges as a direct and proximate result of the airbag failing to deploy, Plaintiff struck the steering wheel resulting in a flap laceration to her forehead including the right eyebrow line.
9. Plaintiff availed herself to the assistance of Plastic surgeon Vasu Pandrangi MD for the repair of her laceration.
10. Plaintiff alleges as a direct and proximate result of the failure of the airbag to deploy, she experienced unnecessary suffering, embarrassment and a permanent blemish to her face-a scar. In addition, Plaintiff alleges she experienced fear and anxiety over potential complications of head injuries as well as loss of enjoyment in life, social isolation due to embarrassment for an extended time after her accident and at present and for the indefinite future.

11. Plaintiff alleges she contacted General Motors-then Corporation-and filed a complaint for product failure-failure of the airbag to deploy. This provided claim for 'Breach of Warranty' within a reasonable time after the accident and this claim was filed in a timely manner. Since the UCC does not require a particular form of notice required by statute or the Sales Act, a letter or phone communication is sufficient to provide such notice.
12. Plaintiff alleges the Defendant reasonably expected or had reason to expect that the Plaintiff would rely on this safety equipment in an emergency situation as experienced.
13. On or about February 24, 2008, General Motors-then Corporation-sent field investigator Jon Ball to inspect her truck, VIN 1GCEC14T44Z232769. During this inspection, Mr. Ball revealed details of his findings and assured the Plaintiff he would supply her, as the owner of the vehicle permitting the inspection, a full report of the details of his findings and the interpretation of the same by GM engineers.
14. On or about February 26 2008, Plaintiff received a report from Mr. Ball via email. This report was not understandable and in a computer language not able to be interpreted by the Plaintiff. It is Plaintiff's belief that Mr. Ball retrieved information to conclude the reason the airbag did not deploy and failed to provide the Plaintiff with this information. It is Plaintiff's belief Mr. Ball evaluated the entire airbag system thoroughly and completely and did not provide this information to the Plaintiff as promised and expected by Plaintiff.

15. Plaintiff contacted GM- Corporation at the time- and was advised ESIS, Inc., handled these matters for them and directed Plaintiff to contact ESIS, Inc. for all information. At all times pertinent to this action, correspondence received by the Plaintiff stated, "We (ESIS Inc.) are the third party administrators on behalf of General Motors Corporation for matters involving product liability." Claims Administrator Deborah Evans signed this same document.
16. At all times pertinent to this action Plaintiff alleges ESIS Inc. is in possession of all documents relative to the Plaintiff's vehicle, VIN 1GCEC14T44Z232769 including but not limited to the interpretation of the CDR report, all data retrieved by field investigator Jon Ball, any and all interpretive documents/reports/electronically entered data, etc-with particular reference to the airbag system evaluated by Jon Ball on or about February 24, 2008.
17. Plaintiff alleges she has exhaustively attempted to contact ESIS Inc. for the documents relating to her vehicle and has been refused the requested documents.
18. Plaintiff alleges she is making attempt to identify the airbag supplier via her Action for Discovery filed in Medina Common Pleas and will add the same as a defendant.
19. Laws applicable to this cause of action are the following, but not limited to all the following: The ORC including ORC 2307.71-2307.80, The Consumer Product Safety Act, National Highway Traffic and Safety Act, Safety Standards for Motor Vehicles, National Traffic and Motor Vehicle Safety Act, Consumer Sales Practices Act, the Code of Federal Regulations, and the Uniform Commercial Code.

FIRST CAUSE

20. Plaintiff realleges each and every allegation and statement set forth in the preceding paragraphs numbered 1-19 with the same force and effect as though fully set forth herein.

21. Plaintiff alleges the Defendant violated the Product Liability Act and this was a direct and proximate result of extreme emotional distress as well as a laceration to her face requiring plastic surgery. This action, based on The Ohio Product Liability Act (RC 2307.71-2307-80), allows a 'product liability claim' when a claim is asserted in civil action under the Act (RC same as above) and that seeks to recover compensatory damages from a manufacturer or supplier for ..., physical injury to a person, emotional distress, or ....., (RC2307.71 (A) (13) which allegedly arose from any of the following:

    (1) the design, formulation, production, construction, creation, assembly, rebuilding, testing, or marketing of that product;
    (2) any failure of that product to conform to any relevant representation or warranty.

22. Plaintiff alleges that pursuant to the Ohio Product Liability Act amendment, effective August 1, 2007, it is clear that the Act is intended to abrogate all common-law products liability causes of action including common-law public nuisance causes of action, regardless of how the claim is described, styled, captioned, characterized, or designated, including claims against a manufacturer or supplier for a public nuisance allegedly caused by a manufacturer's or supplier's product.

23. Plaintiff alleges her vehicle, VIN 1GCEC14T44Z232769, particularly the airbag, was defective in manufacture and/or construction as defined in RC 2307.74 sect.

29 and was defective in design as defined in RC 2307.75, sect 23-28 and did not conform to the representation made by the manufacturer as required in RC 2307.77 sect. 33.

24. As a direct a proximate result of the defect in the airbag, Plaintiff experienced unnecessary suffering, embarrassment, a permanent blemish to her face, loss of enjoyment in life, anxiety, fear, and extreme emotional distress for which the Plaintiff seeks relief.

25. Plaintiff also states legal cause of action is provided in the content of Development of Product Liability Law which states "The justification for …strict liability …is.. that the seller, by marketing his product for use and consumption has undertaken and assumed a special responsibility toward any member of the consuming public who may be injured by it; that the public has the right to and does expect, in the case of products which it needs and for which it is forced to rely upon the seller, that reputable sellers will stand behind their goods…."

26. Plaintiff alleges she suffered injury and damage while using her vehicle, VIN 1GCEC14T44Z232769, which was allegedly delivered by the manufacturer, processor, and/or seller, in a defective condition. Plaintiff makes this claim upon which relief may be granted for breach of express or implied warranty under the Uniform Commercial Code.

27. Plaintiff alleges when her truck VIN 1GCEC14T44Z232769 left the Defendant's place of manufacture it deviated in a material way from the design specification,… or performance standards of the Defendants and there was foreseeable risk associated with the truck's design…which exceeded the benefits

associated with its design when it left the defendant's place of manufacture. At the time the truck left the defendant's place of manufacture a technically foreseeable alternate design was available.

SECOND CAUSE

28. Plaintiff realleges each and every allegation and statement set forth in the preceding paragraphs numbered 1-27 with the same force and effect as though fully set forth herein.

29. Plaintiff alleges her vehicle, VIN 1GCEC14T44Z232769, was noncompliant with Product Safety Statutes and Regulations based on the fact it did not deploy under conditions claimed for the product to deploy.

30. Plaintiff alleges the airbag's non-compliance with an applicable product safety statute or administrative regulation renders the product defective with respect to the risks sought to be reduced by the statute or regulation.

31. Plaintiff alleges The National Highway Safety Administration has a legislative mandate under Title 49 of the USCA, Chapter 301, Motor Vehicle Safety, to issue Federal Motor Vehicle Safety Standards and Regulations to which manufacturers of motor vehicles and equipment items must conform and certify compliance. These Federal safety standards are regulations written in terms of minimum safety performance requirements for motor vehicles or items of motor vehicle equipment. These requirements are specified in such a manner "that the public is protected against unreasonable risk of crashes occurring as a result of the design, construction, or performance of motor vehicles and is also protected against unreasonable risk of death or injury in the event crashes do occur." Airbags are

minimum safety standard equipment and the Plaintiff alleges these and potentially other regulations were not met in the truck owned and operated by the Plaintiff, VIN 1GCEC14T44Z232769.

THIRD CAUSE

32. Plaintiff realleges each and every allegation and statement set forth in the preceding paragraphs numbered 1-31 with the same force and effect as though fully set forth herein.

33. Plaintiff alleges that circumstantial evidence supports inference of the existence of product defect relating specifically to the airbag in her vehicle, VIN 1GCEC14T44Z232769. Plaintiff alleges she may use this claim to infer that the harm she sustained was caused by a product defect existing at the time of sale or distribution, without proof of a specific defect, when the incident that harmed the plaintiff was of a kind that ordinarily occurs as a result of product defect. Plaintiff alleges had the airbag deployed, she would not have sustained an impact to the steering wheel with her head resulting in her laceration.

34. Plaintiff alleges there is no evidence of tampering or abuse per the CDR report provided by Mr. Jon Ball, so the malfunction of the airbag creates the inference of a defect existing at the time of manufacture. Plaintiff states the CDR report verified the airbag was 'enabled' at the time of Plaintiff's accident.

35. Plaintiff alleges the use of circumstantial evidence that a defect existed at the time the product left the hands of the manufacturer or seller may be permissible despite the passage of a relatively long period of time between the end of the defendant's possession and the plaintiff's injury-as in Plaintiff's case.

FOURTH CAUSE

36. Plaintiff realleges each and every allegation and statement set forth in the preceding paragraphs numbered 1-35 with the same force and effect as though fully set forth herein.

37. Plaintiff's also alleges proximate cause. Since her injuries were a natural and probable consequence of the failure of the airbag to deploy. Plaintiff alleges this causal relation does NOT require a search for all causes that contributed to the injury, nor must the alleged cause be the sole cause, but Plaintiff alleges her injuries were proximately and directly a result of the airbag's failure to deploy.

38. Plaintiff also alleges her injury and damages suffered by the failure while using her vehicle VIN 1GCEC14T44Z232769, equipped with a driver airbag, was proximately caused by the breach of an implied or express warranty by the manufacturer-which guaranteed that this airbag would deploy under these circumstances.

FIFTH CAUSE

39. Plaintiff realleges each and every allegation and statement set forth in the preceding paragraphs numbered 1-38 with the same force and effect as though fully set forth herein.

40. Plaintiff alleges her vehicle, VIN 1GCEC14T44Z232769, did not conform the advertisement claims of General Motors.

41. Plaintiff alleges the owner's manual states an airbag will deploy with a moderate to severe frontal or near frontal collision of approximately 15-30 mph.

42. Plaintiff alleges she relied on the general definition of 'Advertising' to mean the act or practice of attracting public notice and attention, including all forms of public announcement which are intended to aid directly or indirectly to the furtherance or promulgation of an idea, or in directing attention to a business, commodity, service, or entertainment. Plaintiff alleges GM engages in advertising their product.... And are required to conform to RC 1315.16 Sect. 12(c) and 2307.77 sect. 17 but failed to adhere to these statutes.
43. Plaintiff alleges a manufacturer is strictly liable in tort when an article he places on the market, knowing that the article is to be used without inspection for defects, proves to have a defect that causes injury to a human being, the purpose of imposing such strict liability being to insure that the costs of injuries resulting from defective products are borne by the manufacturers who put such products on the market, rather than by the injured persons, who are powerless to protect themselves; such liability for defective products is 'strict' in the sense that it is unnecessary to prove the defendant's negligence and, since the liability is 'in tort,' the defendant cannot avail himself to the usual contract or warranty defenses which might be available in an action for breach of warranty.

CONCLUSION

Plaintiff alleges legal causation rests on policy considerations as to how far the consequences of a defendant's acts should extend and involves a determination of whether liability should attach as a matter of law given the existence of cause-in-fact.

As such, the existence of legal cause is determined upon the facts of each case, upon mixed consideration of logic, common sense, justice, policy, and precedent.

Plaintiff realizes she is only a small private citizen coming up against a big company such as General Motors Company, however, she is convinced that the Court would hold her responsible for her behavior at all times and in all circumstances. If the Court does not hold the automobile companies to the standard the public and the government agencies expect and have set requirements for, then they will always laugh small citizens such as myself out of court and will never comply with safety standards they have been required to comply with. Plaintiff requests the Court find the Defendants responsible for product liability resulting in personal injury as well as unnecessary suffering and unnecessary embarrassment due to the driver airbag failing to deploy in her serious crash.

Plaintiff is convinced the Defendants' counsel will make every attempt to persuade this Court to ignore all allegations in this action and request the Court dismiss this action most probably based on pleading deficiencies or failure to state a claim upon which relief may be granted. However, this leads the Plaintiff to include that she respectfully wishes to remind all involved that Civ. R. 12(B)(6) is not the only Civil Rule in existence.

Plaintiff would like to include:

Ohio Civil Rule 1 (B) Construction: These rules shall be construed and applied to effect just results by eliminating delay, unnecessary expense and ALL other impediments to the expeditious administration of justice.

Also, as stated in Peterson v. Teodosio 34 Ohio St. 2d 161; 297 N.E.2d 113; 1973 Ohio Lexis 364; 63 Ohio Op. 2d 262 states: the spirit of the Civil Rule is the resolution of cases upon their merits, not upon pleading deficiencies. Civil R. 1(B) requires that the

Civil Rules shall be applied to 'effect a just result.' Pleadings are simply an end to that objective. Plaintiff alleges all paragraphs in this Complaint support the merits of her case are outstanding. Plaintiff's position is that to ignore the merits of this action and consider minor pleading deficiencies would possibly constitute 'choking on a gnat, but gulping down a camel' so to speak.

Also, Civ R 8(E) (2) a party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations in Rule 11.

(F) All pleadings shall be so construed as to **do substantial justice**.

Plaintiff states she has set forth several avenues of presenting her complaint, but also holds the position that with Civil Rules 33 and 34, she will be able to obtain absolute definitive proof that the airbag in her vehicle, VIN 1GCEC14T44Z232769 was defective. Plaintiff has experienced great opposition from General Motors and ESIS Inc. regarding this information and feels the Court should come to the same conclusion as the Plaintiff, they have something to hide.

Plaintiff restates that Defendants' counsel may refer to Civ R 12(B)(6) but Plaintiff claims 'unsupported conclusions in a Complaint **are not sufficient to withstand a Motion to Dismiss.**" However, Plaintiff alleges her allegations and conclusions are

severe enough to withstand a Motion to Dismiss. Even without the documents Plaintiff believes would totally support her allegation of defective airbag claim in this Compliant, Plaintiff alleges all other causes in this action support it.

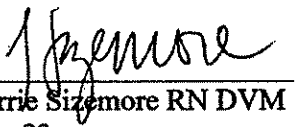
Plaintiff is also aware a court may dismiss a complaint for declaratory judgment for failure to state a claim before addressing the merits of the case only when (1) no real controversy or justiciable issue exists between the parties, and (2) the declaratory judgment will not terminate the uncertainty or controversy. It is the absolute position of the Plaintiff that a **real controversy exists here and the declaratory judgment will terminate the uncertainty and controversy allowed by the Court.**

Plaintiff also reminds all that the Bill of Rights guarantees that all courts shall be open, and every person, for injury done to land, goods, person, or reputation shall have remedy by due course of law, and shall have justice administered without denial or delay. See Ohio Constitution Article 1 sect. 16. Plaintiff asserts her right to present her valid claim to the court.

Plaintiff thanks the Court for their patience with her and these matters.

WHEREFORE, Plaintiff, Dr. Terrie Sizemore RN DVM, prays for a monetary judgment in excess of $25,000.00 for compensatory and punitive damages.

Respectfully Submitted,



Dr. Terrie Sizemore RN DVM
PO Box 23
Sullivan, Ohio 44880
419-736-3559
email:sizemore3630@aol.com
Pro se

JURY DEMAND

Plaintiff, Dr. Terrie Sizemore RN DVM, demands the maximum number of jurors allowable by law.

Dr. Terrie Sizemore RN DVM
Pro se

EXHIBIT G

STATE OF WISCONSIN **CIRCUIT COURT** **MILWAUKEE COUNTY**

BRIAN KOROTKA and SHARON KOROTKA
109 Kent Avenue
Wauconda, IL 60084

Plaintiffs,

AMENDED COMPLAINT

AETNA HEALTH OF ILLINOIS, INC.,
US DEPARTMENT OF VETERANS AFFAIRS
C/o Its Registered Agent Jack Jakubiak
CJ Zablocki Medical Center
Milwaukee, WI 53295

Case No. 08 CV 1799

30100 – Product Liability

Involuntary Plaintiffs,

-vs-

BRAEGER CHEVROLET, INC.,
C/o Its Registered Agent Todd Reardon
4100 South 27th Street
Milwaukee, WI 53221

UNIVERSAL UNDERWRITERS INSURANCE COMPANY
C/o Its Registered Agent CSC Lawyers
Incorporating Service Company
8040 Excelsior Drive, Suite 400
Madison, WI 53717

GENERAL MOTORS COMPANY
D//b/a GENERAL MOTORS LLC
C/o Its Registered Agent CT Corporation System
8040 Excelsior Drive, Suite 200
Madison, WI 53717

Defendants.

Plaintiffs, Brian Korotka and Sharon Korotka, by their attorneys, Murphy & Prachthauser, S.C., by Thadd J. Llaurado, complain of the defendants as follows:

1. Plaintiffs, Brian Korotka and Sharon Korotka, are husband and wife and adult residents of the State of Illinois, residing at 109 Kent Avenue, Wauconda, Illinois.

2. That at the present time the involuntary plaintiff, Aetna Health of Illinois, Inc., is an

insurance corporation with offices of its registered agent located at 8040 Excelsior Drive, Suite 200, Madison, Wisconsin 53717; that Aetna Health of Illinois, Inc., has paid medical and related expenses on behalf of the plaintiff, Brian Korotka, as a result of the injuries he sustained as hereinafter set forth and may be so obliged in the future; that Aetna Health of Illinois, Inc., may have no legal right to subrogation or reimbursement despite its payment of benefits in the past or the future, but by reason of such payments, Aetna Health of Illinois, Inc., is a proper party herein.

3. That at the present time the involuntary plaintiff, US Department of Veterans Affairs with offices of its registered agent located at CJ Zablocki Medical Center, Milwaukee, Wisconsin 53295, has paid medical and related expenses on behalf of the plaintiff, Brian Korotka, as a result of the injuries he sustained as hereinafter set forth; that US Department of Veterans Affairs in the future may continue to receive medical and hospital care and treatment furnished through benefits of the US Department of Veterans Affairs. For the sole use and benefit of the United States, under the provisions of title 42 U.S.C. Section 2651-2653, and with its express consent, the plaintiff asserts a claim for the reasonable value of such medical services.

4. General Motors Corporation was a foreign corporation engaged in the manufacture of motor vehicles. General Motors Corporation, n/k/a Motors Liquidation Company, is a debtor in possession under the jurisdiction of the United State Bankruptcy Court for the Southern District of New York, Chapter 11 Case No. 09-50026 (REG) and the action is stayed against General Motors Corporation. General Motors Corporation is no longer a viable defendant in this action, and plaintiffs have named General Motors Corporation herein merely to preserve their rights in said bankruptcy proceeding.

5. Defendant Braeger Chevrolet, Inc. (hereinafter "Braeger") is a domestic corporation with a registered agent located at 4100 South 27th Street, Milwaukee, Wisconsin 53221; that Braeger is, among other things, in the business of marketing and selling automobiles;

that upon information and belief Braeger, sold the 2001 Chevrolet Blazer with VIN 1GNDT13WX12205532 to Brian Korotka.

6. Defendant Braeger has its principle place of business in Milwaukee County, Wisconsin and does substantial business in Wisconsin.

7. Defendant Universal Underwriters Insurance Company (hereinafter "Universal") is a foreign insurance corporation, that Universal is, among other things, in the business of issuing policies of liability insurance, including coverage for acts of negligence; that at all times pertinent hereto, Universal had issued a policy of insurance coverage to defendant Braeger; that the existence of this policy of insurance makes Universal a necessary party to this action, its policy being in full force and effect at all times pertinent hereto; that pursuant to the Direct Action Statute and Sections 801.05 and 803.04 of the Wisconsin Statutes, Universal is a proper defendant herein.

8. Defendant General Motors Company, d/b/a General Motors, LLC, is a proper party to this action pursuant to an express agreement between it and its dealer, Braeger Chevrolet, Inc., whereby it has agreed to indemnify defendant Braeger for any liability found against Braeger by the plaintiffs.

9. This case involves a claim for enhanced injuries involving a 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, which was designed, manufactured, tested, marketed, and sold by General Motors Corporation. General Motors Corporation placed said vehicle into the stream of commerce in the ordinary course of its business.

10. Said vehicle was sold by defendant Braeger and placed into the stream of commerce in the ordinary course of its business.

11. On March 2, 2007, Brian Korotka, was driving the 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, when the vehicle was caused to roll over. In the rollover, the roof of the 2001 Chevrolet Blazer collapsed into the occupant's space causing severe injuries to Brian

Korotka.

12. The 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, which injured the plaintiff, Brian Korotka, was designed, manufactured, tested, marketed, and sold by General Motors Corporation.

13. The 2001 Chevrolet Blazer VIN 1GNDT13WX12205532 which injured the plaintiff, Brian Korotka, was defective and unreasonably dangerous when it left the possession and control of General Motors Corporation.

14. At the time the 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, which injured the plaintiff, Brian Korotka, was sold and placed on the market it was in a defective and unreasonably dangerous condition to users and consumers.

15. The 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, which injured the plaintiff, Brian Korotka, was expected to and did reach the plaintiff without substantial change in the condition in which it was sold by General Motors Corporation.

16. The unreasonably dangerous and defective condition of the 2001 Chevrolet Blazer was a substantial factor in causing the enhanced injuries and damages sustained by the plaintiffs.

STRICT LIABILITY CLAIM AGAINST DEFENDANT BRAEGER CHEVROLET, INC. FOR ENHANCED INJURIES

17. The plaintiff realleges and incorporates as though fully set forth herein the allegations contained in the previous paragraphs in this Complaint.

18. The 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, which injured plaintiff, Brian Korotka, was marketed and sold by defendant Braeger.

19. The 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, was defective and unreasonably dangerous in design and manufacture when it left the possession and control of defendant Braeger.

20. At the time the 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, which

injured plaintiff, Brian Korotka, was sold and placed on the market, it was in a defective and unreasonably dangerous condition to users and consumers.

21. The 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, which injured plaintiff, Brian Korotka, was expected to and did reach the plaintiff without substantial change in the condition in which it was sold by defendant Braeger.

22. The unreasonably dangerous and defective condition of the 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, was a substantial factor in causing enhanced injuries and damages to plaintiff, Brian Korotka.

23. The defective and unreasonably dangerous condition of the 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532, was a substantial factor in causing the plaintiff, Brian Korotka's, injuries to be enhanced or increased; he was compelled to and did employ the services of hospitals, physicians, and the like to care for and treat his injuries, and did incur hospital, medical and incidental expenses, which will continue into the future; and he has endured pain, suffering and disability, which will continue into the future; and he has sustained lsot wages and impaired earning, past and future; for which he claims damages against defendant Braeger, in an unspecified amount.

24. As a result of the defective and unreasonably dangerous condition of the 2001 Chevrolet Blazer, as alleged above, the plaintiff Sharon Korotka was deprived of the services, society and companionship of her husband, Brian Korotka, for which she claims damages against defendant Braeger in an unspecified amount.

WHEREFORE, plaintiffs, Brian Korotka and Sharon Korotka, demand judgment against the defendants in accordance with the demands of the Complaint, together with the costs and disbursements herein.

Furthermore, in the event Aetna Health of Illinois, Inc., and/or US Department of Veterans

Affairs timely and properly appears in this action, then for judgment determining the rights of Aetna Health of Illinois, Inc., and US Department of Veterans Affairs as against plaintiff, Brian Korotka, and all other named defendants and any and all parties which may be added to this lawsuit in the future upon any claim of subrogation or reimbursement asserted by Aetna Health of Illinois, Inc., and US Department of Veterans Affairs and to the extent that Aetna Health of Illinois, Inc., and US Department of Veterans Affairs may be entitled to judgment.

In the alternative, if Aetna Health of Illinois, Inc., and the US Department of Veterans Affairs does not timely and properly appear in this action, then for default judgment determining that Aetna Health of Illinois, Inc., and the US Department of Veterans Affairs has no claim of subrogation or reimbursement in this action.

Dated at Milwaukee, Wisconsin, this 25 day of February, 2010.

MURPHY & PRACHTHAUSER, S.C.
Attorneys for Plaintiffs, Brian Korotka and Sharon Korotka

By: _____
Thadd J. Llaurado
State Bar No.: 1000773
tllaurado@murphyprachthauser.com

P.O. ADDRESS:
One Plaza East, Suite 1200
330 East Kilbourn Avenue
Milwaukee, WI 53202
414-271-1011
414-271-9987 (fax)

CO-COUNSEL:
Corboy & Demetrio
33 North Dearborn St.
Chicago, IL 60602

DEMAND IS HEREBY MADE FOR TRIAL BY A JURY OF TWELVE (12)

EXHIBIT H

ENID W. HARRIS, ESQUIRE
Pa. Supreme Court ID #30097
400 THIRD AVE., STE. 111
KINGSTON, PA 18704
PHONE: (570) 288-7000
FAX: (570) 288-7003
EMAIL: eharris@epix.net
Counsel for Defendant, RJ BURNE CADILLAC

MICHELE McDADE and MARK McDADE,	:	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY
Plaintiffs	:	CIVIL ACTION— LAW
VS.	:	JURY TRIAL DEMANDED
RJ BURNE CADILLAC	:	
Defendant	:	
VS.	:	
GENERAL MOTORS CORPORATION, GENERAL MOTORS COMPANY,	:	
Additional Defendants	:	NO. 585 of 2010

COMPLAINT AGAINST ADDITIONAL DEFENDANTS

AND NOW, comes the Defendant, RJ BURNE CADILLAC, through counsel, ENID W. HARRIS, ESQUIRE, and makes the following Complaint against Additional Defendants:

1. Defendant, RJ Burne Cadillac, is a fictitious name owned by Burne Oldsmobile Cadillac, Inc. Burne Oldsmobile Cadillac, Inc., is a corporation incorporated in the Commonwealth of Pennsylvania with a principal place of business located at 1201 Wyoming Avenue, Scranton, Lackawanna County, Pennsylvania, 18509.

2. Additional Defendant, General Motors Corporation, is a corporation incorporated in

the state of Delaware with a principal place of business at the Renaissance Center, Detroit, Michigan. General Motors Corporation was incorporated in approximately 1908.

3. Additional Defendant, General Motors Company, is a corporation incorporated in the state of Delaware with a principal place of business at the Renaissance Center, Detroit, Michigan. General Motors Company was incorporated on August 11, 2009.

4. The registered office address in Pennsylvania for both General Motors Corporation and General Motors Company is c/o CT Corporation System, 116 Pine Street, Harrisburg, PA 17101-1250.

5. General Motors Corporation filed for Chapter 11 Bankruptcy on or about June 1, 2009 and emerged from reorganization proceedings on or about July 10, 2009.

6. General Motors Company, successor corporation to General Motors Corporation, is responsible for the liabilities of General Motors Corporation, including but not limited to liabilities under theories of strict product liability and for breaches of warranties made by General Motors Corporation, and automobiles manufactured, sold, distributed, serviced and repaired by the predecessor company, General Motors Corporation.

7. At all times relevant to this cause of action, General Motors Corporation conducted business in the Commonwealth of Pennsylvania, including selling and servicing, directly and through its authorized dealers, new and used Cadillac motor vehicles.

8. On or about January 21, 2010, Plaintiffs, Michele McDade and Mark McDade, filed

a Complaint against the Defendant, R.J. Burne Cadillac, a copy of which Complaint is attached to this Complaint Against Additional Defendants without incorporation as Exhibit "A". The aforesaid Complaint contains allegations of strict product liability (Count I), and breach of warranties (Count III).

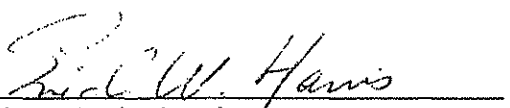
9. The Cadillac Deville that is the subject of the underlying Complaint was designed and manufactured by the Additional Defendant, General Motors Corporation.

10. The allegedly defective air bag sensing unit of the Cadillac Deville that is the subject matter of the underlying Complaint was designed, manufactured, and warranted by the Additional Defendant, General Motors Corporation.

11. If the allegations of Plaintiffs' Complaint are proven at trial, Defendant believes and therefore avers that the proposed Additional Defendants are solely liable to Plaintiffs, are jointly liable on Plaintiffs' cause of action against Defendant or is liable over to Defendant for full indemnity and/or contribution for all such loss, damages and/or court costs as defendant may suffer as a result of this action.

WHEREFORE, the Defendant, RJ Burne Cadillac, respectfully requests judgment in its favor and against the Additional Defendants, General Motors Corporation and General Motors Company.

Respectfully submitted,



Enid W. Harris, Esquire
Pa. Supreme Court ID #30097

400 Third Ave., Ste. 111
Kingston, PA 18704
Phone: (570) 288-7000
Fax: (570) 288-7003
E-Mail: eharris@epix.net
Counsel for RJ Burne Cadillac

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PHONE: (570) 288-7000
FAX: (570) 288-7003
EMAIL: eharris@epix.net
Counsel for Defendant, RJ BURNE CADILLAC

MICHELE McDADE and MARK McDADE,	:	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY
Plaintiffs	:	CIVIL ACTION— LAW
VS.	:	JURY TRIAL DEMANDED
RJ BURNE CADILLAC	:	
Defendant	:	
VS.	:	
GENERAL MOTORS CORPORATION, GENERAL MOTORS COMPANY,	:	
Additional Defendants	:	NO. 585 of 2010

VERIFICATION

I, Richard J. Burne, President of Burne Oldsmobile Cadillac, Inc., D/B/A R.J. Burne Oldsmobile-Cadillac, Defendant herein, states that upon personal knowledge or information and belief that the averments and/or denials set forth in the foregoing Complaint Against Additional Defendants are true.

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

DATE: 3/5/2010

RICHARD J. BURNE, President

MICHELE MCDADE and MARK McDADE,	:	**IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY**
Plaintiffs	:	
	:	**CIVIL ACTION -LAW**
vs.	:	
	:	**JURY TRIAL DEMANDED**
RJ BURNE CADILLAC,	:	
Defendants	:	**No.** 585 **of 2010**

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Northern Pennsylvania Legal Services, Inc.
Suite 1200
108 North Washington Avenue
Scranton, Pa. 18503
(570) 342-0184

or

PA Lawyer Referral Service
P.O. Box 1086
100 South Street
Harrisburg, Pa. 17108
(800) 692-7375 (PA residents)
(570) 238-6715 (Out of State residents)

DOUGHERTY, LEVENTHAL & PRICE, L.L.P.

BY: James M. Wetter

JAMES M. WETTER, ESQ.
Attorney I.D. #: 46847
459 Wyoming Avenue
Kingston, PA 18704
Phone: (570) 288-1427
Attorney for Plaintiffs

MICHELE MCDADE and MARK McDADE,	:	**IN THE COURT OF COMMON PLEAS**
Plaintiffs	:	**OF LACKAWANNA COUNTY**
	:	**CIVIL ACTION -LAW**
vs.	:	
	:	**JURY TRIAL DEMANDED**
RJ BURNE CADILLAC,	:	
Defendants	:	**No. 585 of 2010**

2010 JAN 21 P 1:34
MARY E. DUMAS
PROTHONOTARY
LACKAWANNA COUNTY
CIVIL/FAMILY JUDICIAL RECORDS DIVISION

COMPLAINT

The Plaintiffs, **MICHELE MCDADE** and **MARK McDADE**, by and through their attorneys, **DOUGHERTY, LEVENTHAL & PRICE, L.L.P.**, hereby complain against the above-named Defendant as follows:

1. The Plaintiffs, Michele McDade and Mark McDade, are wife and husband and are adult and competent individuals residing at 102 Ridgeview Drive, Scranton, Pennsylvania 18504.

2. The Defendant, RJ Burne Cadillac, is believed to be a corporation incorporated in the Commonwealth of Pennsylvania with a principal place of business located at 1201 Wyoming Avenue, Scranton, PA 18509.

3. At all relevant times, the Defendant was in the business of selling and servicing new and used Cadillac motor vehicles.

4. In or about March of 2005, Plaintiffs purchased from the Defendant a 2002 Cadillac Deville, vehicle identification number: 1G6KD54Y52U265375.

5. On or about November 3, 2008, Plaintiff Mark McDade was driving the Cadillac Deville along a highway and Plaintiff Michele McDade was occupying the front passenger seat

when a passenger side air bag spontaneously, unexpectedly and erroneously deployed, striking Mrs. McDade in her head, right arm and upper torso, causing bodily injuries to Mrs. McDade. Representatives of the Defendant subsequently removed the deployed air bag and the air bag's sensing unit and advised Plaintiffs that the inadvertent air bag deployment was caused by an electrical short in the sensing unit.

6. The Defendant currently retains possession of the air bag, sensing unit and any other items removed from Plaintiffs' vehicle following the subject incident.

COUNT I

STRICT PRODUCT LIABILITY

Michele McDade v. RJ Burne Cadillac

7. Plaintiffs incorporate paragraphs 1 through 6 above as fully as if the same were set forth at length herein.

8. The Defendant at all relevant times was engaged in the business of marketing, selling, delivering and distributing Cadillac motor vehicles, including the subject Cadillac Deville.

9. The Defendant delivered the subject Cadillac Deville to Plaintiffs in a condition that was defective and unreasonably dangerous to the Plaintiffs.

10. The subject Cadillac Deville was defective in that the air bag sensing unit was prone to or capable of sustaining an electrical short, causing inadvertent air bag deployment.

11. As a direct and proximate result of the defective and unreasonably danagerous condition of the air bag sensor unit, Plaintiff Michele McDade suffered injuries to her head, neck,

back and right arm.

12. As a result of the defective and unreasonably dangerous condition, Plaintiff Michele McDade received medical treatment for her injuries and incurred medical expenses, and she will require additional medical treatment and will incur additional medical bills in the future.

13. As a direct result of the aforementioned defective and unreasonably dangerous condition, Plaintiff Michele McDade endured pain and suffering, and she will continue to endure pain and suffering for an indefinite time into the future.

13. As a result of the defective and unreasonably dangerous condition, Plaintiff Michele McDade suffered embarrassment and humiliation, and she will continue to suffer embarrassment and humiliation for an indefinite time into the future.

14. As a result of the defective and unreasonably dangerous condition, Plaintiff Michele McDade suffered a loss of ability to enjoy the pleasures of life, and she will continue to suffer a loss of ability to enjoy the pleasures of life for an indefinite time into the future.

15. As a result of the dangerous and defective condition, Plaintiff Michele McDade sustained bodily disfigurement.

WHEREFORE, Plaintiffs, Michele McDade and Mark McDade respectfully request that the Court enter judgment in their favor in an amount in excess of fifty thousand dollars ($50,000.00), plus costs and delay damages pursuant to Pennsylvania Rule of Civil Procedure 238.

COUNT II

NEGLIGENCE

Michele McDade v. RJ Burne Cadillac

16. Plaintiffs incorporate paragraphs 1 through 15 above as fully as if the same were set forth at length herein.

17. The aforementioned damages were the direct and proximate result of the negligence and carelessness of the Defendant as follows:

a) selling a motor vehicle wherein the air bag sensing unit was prone to or capable of sustaining an electrical short, causing inadvertent air bag deployment;

b) failing to properly test and inspect the vehicle, particularly the air bag sensing unit;

c) failing to maintain the vehicle and keep it in a state of good repair upon the sale to Mr. McDade; and

d) failing to warn Plaintiffs of the potential danger of an electrical short in the air bag sensing unit.

18. The Defendant's negligent and careless acts and/or omissions were the direct and proximate cause of Plaintiff's damages.

WHEREFORE, Plaintiffs, Michele McDade and Mark McDade respectfully request that the Court enter judgment in their favor in an amount in excess of fifty thousand dollars ($50,000.00), plus costs and delay damages pursuant to Pennsylvania Rule of Civil Procedure 238.

COUNT III

BREACH OF WARRANTIES

Michele McDade v. RJ Burné Cadillac

19. Plaintiffs incorporate paragraphs 1 through 18 above as fully as if the same were set forth at length herein.

20. In selling the subject Cadillac Deville to Mark McDade, the Defendant warranted that said motor vehicle was merchantable and free from defects and safe for its particular and intended purpose.

21. The Cadillac Deville was unfit and unsafe, resulting in a breach of these warranties.

22. Plaintiffs have performed all conditions precedent to recover based upon such breaches.

23. Plaintiffs' damages occurred as a direct and proximate result of the Defendant's breach of its implied warranties of fitness for a particular purchase and merchantability, and as a result of Defendant's breaches of its express and implied warranties, Plaintiffs sustained damages as stated above.

WHEREFORE, Plaintiffs, Michele McDade and Mark McDade respectfully request that the Court enter judgment in their favor in an amount in excess of fifty thousand dollars

($50,000.00), plus costs and delay damages pursuant to Pennsylvania Rule of Civil Procedure 238.

COUNT IV

LOSS OF CONSORTIUM

Mark McDade v. RJ Burne Cadillac

24. Plaintiffs incorporate paragraphs 1 through 23 above as fully as if the same were set forth at length herein.

25. As a result of the Defendant's conduct described above, Plaintiff Mark McDade was wrongfully deprived of his spouse's care, comfort, society and services, and he will continue to be deprived of the same for an indefinite time into the future.

WHEREFORE, Plaintiffs, Michele McDade and Mark McDade respectfully request that the Court enter judgment in their favor in an amount in excess of fifty thousand dollars ($50,000.00), plus costs and delay damages pursuant to Pennsylvania Rule of Civil Procedure 238.

Respectfully Submitted,

DOUGHERTY, LEVENTHAL & PRICE L.L.P.

BY: James M. Wetter

JAMES M. WETTER, ESQ.
Attorney I.D. #: 46847
459 Wyoming Avenue
Kingston, PA 18704
(570) 288-1427

Attorneys for Plaintiffs
MICHELE McDADE and MARK McDADE

VERIFICATION

I, **MICHELE MCDADE,** one of the named Plaintiffs in this action and as such I am authorized to make this Verification on my behalf. The facts set forth in the foregoing **COMPLAINT** are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the answers are that of counsel and not of the undersigned. The undersigned verifies that she has read the attached and that it is true and correct to the best of my information and belief. The contents of the answers were drafted by counsel and the undersigned has relied upon counsel in making this Verification. This Verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

1-18-2010
DATED

Michele McDade
MICHELE McDADE

F:\M\McDade Abbott, Michele\Pleadings\Verification[RJ Burne] - Michele McDade.wpd

VERIFICATION

I, **MARK MCDADE,** one of the named Plaintiffs in this action and as such I am authorized to make this Verification on my behalf. The facts set forth in the foregoing **COMPLAINT** are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the answers are that of counsel and not of the undersigned. The undersigned verifies that he has read the attached and that it is true and correct to the best of my information and belief. The contents of the answers were drafted by counsel and the undersigned has relied upon counsel in making this Verification. This Verification is made subject to the penalties of 18 Pa. C.S.A.§4904 relating to unsworn falsification to authorities.

1-18-10
DATED

Mark E. McDade
MARK McDADE

F:\All\McDade Abbott, Michele\Pleadings\Verification(RJ Burns) - Mark McDade.wpd

ENID W. HARRIS, ESQUIRE
Pa. Supreme Court ID #30097
400 THIRD AVE., STE. 111
KINGSTON, PA 18704
PHONE: (570) 288-7000
FAX: (570) 288-7003
EMAIL: eharris@epix.net
Counsel for Defendant, RJ BURNE CADILLAC

MICHELE McDADE and MARK McDADE, Plaintiffs VS. RJ BURNE CADILLAC Defendant VS. GENERAL MOTORS CORPORATION, GENERAL MOTORS COMPANY, Additional Defendants	: : : : : : : : : : : : : : :	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY CIVIL ACTION— LAW JURY TRIAL DEMANDED NO. 585 of 2010

CERTIFICATE OF SERVICE

I, Enid W. Harris, Esquire, hereby certify that on March 8, 2010, a copy of the Complaint Against Additional Defendants was served by Certified Mail, Return Receipt Requested, upon:

General Motors Corporation
c/o CT Corporation System
116 Pine St., #320
Harrisburg, PA 17101-1250
Cert. Mail #7003 1680 0001 9161 1439

General Motors Company
c/o CT Corporation System
116 Pine St., #320
Harrisburg, PA 17101-1250
Cert. Mail #7003 1680 0001 9161 1446

EXHIBIT I

MICHELE MCDADE and MARK McDADE, Plaintiffs	:	**IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY**
vs.	:	**CIVIL ACTION -LAW**
RJ BURNE CADILLAC,	:	**JURY TRIAL DEMANDED**
Defendants	:	**No.** 585 **of 2010**

COMPLAINT

The Plaintiffs, **MICHELE MCDADE** and **MARK McDADE**, by and through their attorneys, **DOUGHERTY, LEVENTHAL & PRICE, L.L.P.**, hereby complain against the above-named Defendant as follows:

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5. On or about November 3, 2008, Plaintiff Mark McDade was driving the Cadillac Deville along a highway and Plaintiff Michele McDade was occupying the front passenger seat

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6. The Defendant currently retains possession of the air bag, sensing unit and any other items removed from Plaintiffs' vehicle following the subject incident.

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Michele McDade v. RJ Burne Cadillac

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15. As a result of the dangerous and defective condition, Plaintiff Michele McDade sustained bodily disfigurement.

WHEREFORE, Plaintiffs, Michele McDade and Mark McDade respectfully request that the Court enter judgment in their favor in an amount in excess of fifty thousand dollars ($50,000.00), plus costs and delay damages pursuant to Pennsylvania Rule of Civil Procedure 238.

COUNT II

NEGLIGENCE

Michele McDade v. RJ Burne Cadillac

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b) failing to properly test and inspect the vehicle, particularly the air bag sensing unit;

c) failing to maintain the vehicle and keep it in a state of good repair upon the sale to Mr. McDade; and

d) failing to warn Plaintiffs of the potential danger of an electrical short in the air bag sensing unit.

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Michele McDade v. RJ Burné Cadillac

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22. Plaintiffs have performed all conditions precedent to recover based upon such breaches.

23. Plaintiffs' damages occurred as a direct and proximate result of the Defendant's breach of its implied warranties of fitness for a particular purchase and merchantability, and as a result of Defendant's breaches of its express and implied warranties, Plaintiffs sustained damages as stated above.

WHEREFORE, Plaintiffs, Michele McDade and Mark McDade respectfully request that the Court enter judgment in their favor in an amount in excess of fifty thousand dollars

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LOSS OF CONSORTIUM

Mark McDade v. RJ Burne Cadillac

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WHEREFORE, Plaintiffs, Michele McDade and Mark McDade respectfully request that the Court enter judgment in their favor in an amount in excess of fifty thousand dollars ($50,000.00), plus costs and delay damages pursuant to Pennsylvania Rule of Civil Procedure 238.

Respectfully Submitted,

DOUGHERTY, LEVENTHAL & PRICE L.L.P.

BY: James M. Wetter

JAMES M. WETTER, ESQ.
Attorney I.D. #: 46847
459 Wyoming Avenue
Kingston, PA 18704
(570) 288-1427

Attorneys for Plaintiffs
MICHELE McDADE and MARK McDADE

VERIFICATION

I, **MICHELE MCDADE,** one of the named Plaintiffs in this action and as such I am authorized to make this Verification on my behalf. The facts set forth in the foregoing **COMPLAINT** are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the answers are that of counsel and not of the undersigned. The undersigned verifies that she has read the attached and that it is true and correct to the best of my information and belief. The contents of the answers were drafted by counsel and the undersigned has relied upon counsel in making this Verification. This Verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

1-18-2010
DATED

Michele McDade
MICHELE McDADE

F:\MMcDade Abbott, Michele\Pleadings\Verification(RJ Burne) - Michele McDade.wpd

VERIFICATION

I, **MARK MCDADE,** one of the named Plaintiffs in this action and as such I am authorized to make this Verification on my behalf. The facts set forth in the foregoing **COMPLAINT** are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the answers are that of counsel and not of the undersigned. The undersigned verifies that he has read the attached and that it is true and correct to the best of my information and belief. The contents of the answers were drafted by counsel and the undersigned has relied upon counsel in making this Verification. This Verification is made subject to the penalties of 18 Pa. C.S.A.§4904 relating to unsworn falsification to authorities.

1-18-10
DATED

Mark E. McDade
MARK McDADE

F:\MM\McDade Abbott, Michele\Pleadings\Verification(RJ Burns) - Mark McDade.wpd

ENID W. HARRIS, ESQUIRE
Pa. Supreme Court ID #30097
400 THIRD AVE., STE. 111
KINGSTON, PA 18704
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EMAIL: eharris@epix.net
Counsel for Defendant, RJ BURNE CADILLAC

MICHELE McDADE and MARK McDADE,	:	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY
Plaintiffs	:	CIVIL ACTION— LAW
VS.	:	JURY TRIAL DEMANDED
RJ BURNE CADILLAC	:	
Defendant	:	
VS.	:	
GENERAL MOTORS CORPORATION, GENERAL MOTORS COMPANY,	:	
Additional Defendants	:	NO. 585 of 2010

CERTIFICATE OF SERVICE

I, Enid W. Harris, Esquire, hereby certify that on March 8, 2010, a copy of the Complaint Against Additional Defendants was served by Certified Mail, Return Receipt Requested, upon:

General Motors Corporation
c/o CT Corporation System
116 Pine St., #320
Harrisburg, PA 17101-1250
Cert. Mail #7003 1680 0001 9161 1439

General Motors Company
c/o CT Corporation System
116 Pine St., #320
Harrisburg, PA 17101-1250
Cert. Mail #7003 1680 0001 9161 1446

EXHIBIT J

KING & SPALDING

King & Spalding LLP
1180 Peachtree Street N.E.
Atlanta, GA 30309-3521
Tel: (404) 572-4600
Fax: (404) 572-5100
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Philip E. Holladay, Jr.
Direct Dial: 404-572-3340
Direct Fax: 404-572-5100
pholladay@kslaw.com

September 2, 2009

VIA TELECOPY AND UPS NEXT DAY AIR

Mr. Bill Meader
21946 Main Street
Hyden, Kentucky 41749

Re: *Leslie Griffin v. General Motors Company;* Civil Action No. 6:09-CV-295; U.S.D.C. for the Eastern District of Kentucky-Southern Division at London

Dear Mr. Meader:

My name is Phil Holladay and I will be working with Larry Deener in representing General Motors Company ("New GM") in connection with the above-referenced action (this "Action").

Based on plaintiff's Complaint ("Complaint"), we understand that the claims asserted in this Action arise from an accident that occurred on August 1, 2008 involving a 2002 Chevrolet Blazer manufactured and sold by General Motors Corporation (n/k/a "Motors Liquidation Company"). The Complaint incorrectly asserts that New GM designed, manufactured, marketed, distributed, and sold the subject 2002 Chevrolet Blazer. That is not possible since New GM was not created as a legal entity until May 29, 2009.

As you presumably know, New GM acquired substantially all of the assets of General Motors Corporation on July 10, 2009 in a transaction executed under the jurisdiction and pursuant to approval of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). *See generally In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009) ("Sale Opinion") (approving sale transaction). In acquiring these assets, New GM did not assume the liabilities of General Motors Corporation. In particular, New GM did not assume responsibility for product liability claims arising from accidents involving GM vehicles that occurred prior to the July 10, 2009 closing date. *Id.* at 499-507 (overruling objections by tort claimants seeking to preserve claims against New GM). *See also In re Chrysler, LLC*, No. 09-2311-bk, 2009 WL 2382766, at *11-13 (2d Cir. Aug. 5, 2009) (bankruptcy court was permitted to authorize the sale of substantially all Chrysler's automotive assets free and clear of claims of tort claimants).

The scope and limitations of New GM's responsibilities are defined in the Bankruptcy Court's "Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc.[1], a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection with the Sale; and (iii) Granting Related Relief," entered on July 5, 2009 (the "Sale Approval Order"), which is a final binding order.[2] The Sale Approval Order provides that, with the exception of certain liabilities expressly assumed under the relevant agreements, the assets acquired by New GM were transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever. . . including rights or claims based on any successor or transferee liability. . . ." *Id.* ¶ 7. Accordingly, the claims asserted in this Action were not assumed by New GM. To the contrary, the Amended and Restated Master Sale and Purchase Agreement ("MSPA") expressly excludes "Product Liabilities arising in whole or in part from any accidents incidents or other occurrences that happen prior to the Closing Date." Sale Approval Order, Ex. A., § 2.3(ix). *See also* Sale Opinion, 407 B.R. at 500 (". . . New GM would not assume any Old GM liabilities for injuries or illnesses that arose before the 373 Transaction. And the proposed order has a number of provisions making explicit findings that New GM is not subject to successor liability for such matters, and that claims against New GM of that character are enjoined.").

The filing of this Action constitutes a violation of the Sale Approval Order, which unambiguously states that "all persons and entities, including, but not limited to . . . litigation claimants and [others] holding liens, claims and encumbrances, and other interest of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability . . . 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' [rights or claims], including rights or claims based on any successor or transferee liability." *Id.* ¶ 8. *See also id.* ¶ 46 (". . . the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de fact merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated."); *id.* ¶ 52 (Sale Approval Order "effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated. . .").

In the Sale Approval Order, the Bankruptcy Court retained "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" including to "protect [General

[1] New GM was formerly named NGMCO, Inc.

[2] The Sale Approval Order is publicly available http://docs.motorsliquidationdocket.com/pdflib/2968_order.pdf.

Motors Company or New GM] against any of the [liabilities that it not expressly assume under the MSPA]." *Id.* ¶ 71.

Accordingly, General Motors Company hereby demands that this Action be immediately discontinued. Absent prompt compliance, General Motors Company will be forced to initiate proceedings in the Bankruptcy Court to enforce the Sale Approval Order, including to recover all costs, expenses and fees incurred by reason of the Action, along with such other remedies as the Bankruptcy Court may deem appropriate.

Sincerely,

Philip E. Holladay, Jr.

PEH/tas
cc: Mr. Larry C. Deener

bcc: Mr. Glenn A. Jackson (GM File #676867)

EXHIBIT K

F

KING & SPALDING

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Direct Fax: (404) 572-5100
pholladay@kslaw.com

January 25, 2010

VIA TELECOPY AND U.S. MAIL

Mr. Roger K. Rutledge
Rutledge & Rutledge, P.C.
1083 W. Rex Road, Suite 102
Memphis, TN 38119

Re: *Shane J. Robley v. General Motors LLC, et al.*, Civil Action No. 2:09-CV-02767-JPM-CGC; United States District Court for the Western District of Tennesseee

Dear Roger:

As we discussed last week, I have been retained to represent General Motors LLC ("New GM" and f/k/a General Motors Company) in connection with the above-referenced lawsuit (this "Lawsuit").

Plaintiff's Complaint ("Complaint") alleges that the claims asserted in this Lawsuit arise from an accident that occurred on November 25, 2008 involving a 2000 model year GMC Jimmy designed, manufactured and sold by General Motors Corporation (n/k/a "Motors Liquidation Company"). The Complaint incorrectly asserts that New GM is a successor and/or affiliate of MLC, and also incorrectly asserts the extent to which New GM assumed liability for product liability claims arising from the sale of products designed, manufactured and sold by MLC.

As we discussed, New GM acquired substantially all of the assets of General Motors Corporation on July 10, 2009 in a transaction executed under the jurisdiction and pursuant to approval of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). *See generally In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009) ("Sale Opinion") (approving sale transaction). In acquiring these assets, New GM did not assume all of the liabilities of General Motors Corporation/MLC. In particular, New GM did not assume responsibility for product liability claims arising from accidents involving GM vehicles that occurred prior to the July 10, 2009 closing date. *Id.* at 499-507 (overruling objections by tort claimants seeking to preserve claims against New GM). *See also In re Chrysler, LLC*, No. 09-2311-bk, 2009 WL 2382766, at *11-13 (2d Cir. Aug. 5, 2009) (bankruptcy court was permitted to authorize the sale of substantially all Chrysler's automotive assets free and clear of claims of tort claimants).

The scope and limitations of New GM's responsibilities are defined in the Bankruptcy Court's "Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc.,[1] a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection with the Sale; and (III) Granting Related Relief," entered on July 5, 2009 (the "Sale Approval Order"), which is a final binding order.[2] The Sale Approval Order provides that, with the exception of certain liabilities expressly assumed under the relevant agreements, the assets acquired by New GM were transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever. . . including rights or claims based on any successor or transferee liability. . . ." *Id.* ¶ 7. Accordingly, the claims asserted in this Lawsuit were not assumed by New GM. To the contrary, the Amended and Restated Master Sale and Purchase Agreement ("MSPA") expressly excludes "Product Liabilities arising in whole or in part from any accidents incidents or other occurrences that happen prior to the Closing Date." Sale Approval Order, Ex. A., § 2.3(ix). *See also* Sale Opinion, 407 B.R. at 500 (". . . New GM would not assume any Old GM liabilities for injuries or illnesses that arose before the 373 Transaction. And the proposed order has a number of provisions making explicit findings that New GM is not subject to successor liability for such matters, and that claims against New GM of that character are enjoined.").

The filing of this Lawsuit against New GM constitutes a violation of the Sale Approval Order, which unambiguously states that "all persons and entities, including, but not limited to . . . litigation claimants and [others] holding liens, claims and encumbrances, and other interest of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability . . . 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' [rights or claims], including rights or claims based on any successor or transferee liability." *Id.* ¶ 8. *See also id.* ¶ 46 (". . . the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de fact merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated."); *id.* ¶ 52 (Sale Approval Order "effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated. . . .").

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[1] New GM was formerly named NGMCO, Inc.

[2] The Sale Approval Order is publicly available http://docs.motorsliquidationdocket.com/pdflib/2968_order.pdf.

In the Sale Approval Order, the Bankruptcy Court retained "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" including to "protect [General Motors Company or New GM] against any of the [liabilities that it not expressly assume under the MSPA]." *Id.* ¶ 71.

Accordingly, General Motors LLC hereby demands that this Lawsuit be immediately discontinued as to New GM. Absent prompt compliance, General Motors LLC will be forced to initiate proceedings in the Bankruptcy Court to enforce the Sale Approval Order, including to recover all costs, expenses and fees incurred by reason of the Action, along with such other remedies as the Bankruptcy Court may deem appropriate.

I would be happy to discuss the issues raised in this letter or any other aspect of the case at your convenience. Please do not hesitate to call me at (404) 572-3340 if you have any questions.

With best regards,

Sincerely,

Philip E. Holladay, Jr.

PEH/tas
cc: Ms. Susan M. Clare

EXHIBIT L

Ronald Porter
Attorney
Phone: 313-665-7421
Fax: 248/267/4359
Email: ronald.c.porter@gm.com

GENERAL MOTORS COMPANY
LEGAL STAFF
Mail Code: 482-028-205
P.O. Box 400
Detroit, MI 48265-4000

February 5, 2010

Barry Novack, Esq.
8383 Wilshire Boulevard
Suite 830
Beverly Hills, CA 90211

Re: ***Estate of Beverly Deutsch v. Motors Liquidation Company f/k/a General Motors Corporation, et al; Superior Court, Los Angeles County, C, Docket No: BC389150***

Dear Mr. Novack:

I represent General Motors Company and General Motors LLC ("New GM") in connection with the referenced action.

Based on Plaintiff's Third Amended Complaint, I understand that the claims asserted in this Action arise from an accident that occurred on June 27. 2007 involving a 2006 Cadillac DTS Sedan that was manufactured, assembled, and distributed by General Motors Corporation (n/k/a "Motors Liquidation Company").

As you presumably know, New GM acquired substantially all of the assets of General Motors Corporation on July 10, 2009 in a transaction executed under the jurisdiction and pursuant to approval of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). *See generally In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009) ("Sale Opinion") (approving sale transaction). In acquiring these assets, New GM did not assume the liabilities of General Motors Corporation. In particular, New GM did not assume responsibility for product liability claims arising from accidents involving GM vehicles that occurred prior to the July 10, 2009 closing date. *Id.* at 499-507 (overruling objections by tort claimants seeking to preserve claims against New GM). *See also In re Chrysler, LLC*, No. 09-2311-bk, 2009 WL 2382766, at *11-13 (2d Cir. Aug. 5, 2009) (bankruptcy court was permitted to authorize the sale of substantially all Chrysler's automotive assets free and clear of claims of tort claimants).

The scope and limitations of New GM's responsibilities are defined in the Bankruptcy Court's "Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale

and Purchase Agreement with NGMCO, Inc.[1], a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection with the Sale; and (iii) Granting Related Relief," entered on July 5, 2009 (the "Sale Approval Order"), which is a final binding order.[2] The Sale Approval Order provides that, with the exception of certain liabilities expressly assumed under the relevant agreements, the assets acquired by New GM were transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever. . . including rights or claims based on any successor or transferee liability. . . ." *Id.* ¶ 7. Accordingly, the claims asserted in this Action were not assumed. To the contrary, the Amended and Restated Master Sale and Purchase Agreement ("MSPA") expressly excludes "Product Liabilities arising in whole or in part from any accidents incidents or other occurrences that happen prior to the Closing Date." Sale Approval Order, Ex. A., § 2.3(ix). *See also* Sale Opinion, 407 B.R. at 500 (". . . New GM would not assume any Old GM liabilities for injuries or illnesses that arose before the 373 Transaction. And the proposed order has a number of provisions making explicit findings that New GM is not subject to successor liability for such matters, and that claims against New GM of that character are enjoined.").

The filing of Plaintiffs' Complaint in this Action constitutes a violation of the Sale Approval Order, which unambiguously states that "all persons and entities, including, but not limited to . . . litigation claimants and [others] holding liens, claims and encumbrances, and other interest of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability . . . 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' [rights or claims], including rights or claims based on any successor or transferee liability." *Id.* ¶ 8. *See also id.* ¶ 46 (". . . the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de fact merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated."); *id.* ¶ 52 (Sale Approval Order "effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated. . .").

In the Sale Approval Order, the Bankruptcy Court retained "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" including to "protect [General Motors Company or New GM] against any of the [liabilities that it did not expressly assume under the MSPA]." *Id.* ¶ 71.

[1] New GM was formerly named NGMCO, Inc.

[2] The Sale Approval Order is publicly available http://docs.motorsliquidationdocket.com/pdflib/2968_order.pdf.

Accordingly, General Motors Company hereby demands that this Action be immediately discontinued and dismissed with respect to General Motors Company. Absent prompt compliance, General Motors Company will be forced to initiate proceedings in the Bankruptcy Court to enforce the Sale Approval Order, including recovery of all costs, expenses and fees incurred by reason of the Action, along with such other remedies as the Bankruptcy Court may deem appropriate.

Very truly yours,

Ronald C. Porter/mjv

Ronald C. Porter
Attorney

RCP:mjv

EXHIBIT M

The Law Offices of
Barry Novack

8383 Wilshire Blvd., Suite 830, Beverly Hills, CA 90211, (323) 852-1030

SENDER'S FAX NO.: (323) 852-9855

DATE: February 9, 2010

TO: GM Company ATTN: Ronald Porter, Esq.

FAX NO: (313) 665-7456

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 3

RE: Beverly R. Deutsch

If there is any problem concerning the transmission of this document, please call (323) 852-1030.

COMMENTS/MESSAGE: Attached please find a letter dated today. Thank you.

The Law Offices of

BARRY NOVACK

SUITE 830 • 9383 WILSHIRE BOULEVARD • BEVERLY HILLS, CALIFORNIA 90211
Tel: (323) 8[illegible]2-1030
Fax: (323) 8[illegible]2-9855

February 9, 2010

VIA FAX
313-665-7456

General Motors Company
Legal Staff
300 Renaissance Center, L2
Detroit, MI 48625

Attn: Ronald C. Porter, Esq.

Re: Estate of Beverly Deutsch, et al. vs. General Motors Corporation, et al.

Dear Mr. Porter,

Thank you for your letter of February 5, 2010. Before filing suit naming General Motors Company (originally General Motors Corporation was named as a defendant, erroneously) I researched the agreement that had been approved by the Bankruptcy Court concerning the limited acceptance of liability by the new General Motors Company (Agreement). On page 30 of the Agreement, it states that the new company, i.e., General Motors Company, will accept "all liabilities . . . to third parties for death, personal injury or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways . . . which arise directly out of accidents, incidents or **other distinct and discrete occurrences** that happen on or after the Closing Date and arise from such motor vehicles' operation or performance. . .."

In this particular case, we have a distinct and discrete occurrence that happened after the Closing Date. Beverly Deutsch died on August 2, 2009, which was after the new company, General Motors Company, came into existence and accepted liability. Although the automobile accident in question occurred on June 27, 2007, the cause of action for wrongful death did not arise until Beverly Deutsch died on August 2, 2009. All claims against General Motors Company are for wrongful death and for those damages that arose as a result of her death. Until she died, there was no cause of action for wrongful death.

As set for the paragraph 3 of the Third Amended Complaint for Damages for Wrongful Death:

> "The events giving rise to this cause of action stem from an automobile accident that occurred at or near Beverly Boulevard and Formosa Avenue, Los Angeles, CA, and arise directly from a **distinct and discrete occurrence** that happened on August 2, 2009, namely the death of Beverly Deutsch from injuries sustained in the accident."

This claim for wrongful death is not based upon successor liability or injuries that occurre prior to the new company coming into existence and accepting limited liability. The injury fo wrongful death did not arise until after the new company came into existence and accepted limite liability.

Accordingly, the filing of plaintiffs' complaint does not constitute a violation of the sa approval order, but rather is in compliance with the language agreed to by General Motors Compan Any ambiguity associated with the term "other distinct and discrete occurrences that happen on after the Closing Date" would be construed against the drafter of the document, namely Gener Motors Company.

The above sets forth our position concerning the lawsuit. If you have any authority documentation that would refute the position set forth herein, please provide it to my office so I c consider it.

Please feel free to contact me at your convenience to discuss this matter further.

Sincerely yours,

Barry Novack/cc

BARRY NOVACK

BN:cc

EXHIBIT N

Sutter
O'Connell
& Farchione
ATTORNEYS

James M. Popson
Phone: 216.928.4504
Fax: 216.928.3604
Cell: 216.570.7356
jpopson@sutter-law.com

February 19, 2010

VIA FEDERAL EXPRESS
Ms. Terrie Sizemore
c/o Javitch, Block & Rathbone
Attorneys at Law
1100 Superior Avenue, 19th Floor
Cleveland, OH 44114

Ms. Terrie Sizemore
P.O. Box 23
Sullivan, OH 44880

RE: Sizemore v. General Motors Company, et al.
Court of Common Pleas, Medina County, Ohio
Docket No.: 10-CIV-0102
Our File No.: 10429-00008

Dear Ms. Sizemore:

I am an attorney representing General Motors Company ("New GM"). I am writing to you in connection with the above captioned matter. A copy of your Summons and Complaint are attached for reference. For the reasons set forth in greater detail below, your Complaint against General Motors Company should be dismissed.

Based on your Complaint, we understand that the claims asserted relate to a January 22, 2008 collision and a Chevrolet (Silverado) pickup truck sold by General Motors Corporation (n/k/a Motors Liquidation Company). You inaccurately allege that the subject vehicle was manufactured, designed or sold by New GM.

As you know, New GM acquired substantially all of the assets of General Motors Corporation on July 10, 2009 in a transaction executed under the jurisdiction and pursuant to approval of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). See generally In re General Motors Corp., 407 B.R. 463 (Bankr., SDNY 2009)("Sale Opinion") (approving sale transaction). In acquiring these assets, New GM did not assume the liabilities of General Motors Corporation. In particular, New GM did not assume responsibility for product liability claims arising from incidents involving GM vehicles that occurred prior to the July 10 closing date, such as in this Complaint. *Id*, 407 B.R. at 499-507 (overruling objections by tort claimants seeking to preserve claims against New GM). See also In re Chrysler, LLC, 2009 WL 2382766, pp 11-13 (2nd Cir. 2009) (bankruptcy court was permitted to authorize the sale of substantially all Chrysler's automotive assets free and clear of claims).

The scope and limitations of New GM's responsibilities are defined in the Bankruptcy Court's "Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection with the Sale; and (iii) Granting Related Relief," entered on July 5, 2009 (the "Sale Approval Order"), which is a final binding order. The Sale Approval Order is publicly available at httdr//docs.motorsliquidationdocket.com/pdflib/2968_order.pdf.. The Sale Approval Order provides that, with the exceptions of certain liabilities expressly assumed under the relevant agreements, the assets acquired by New GM were transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever... **including rights or claims based on any successor or transferee liability**..." *Id.*, 7. (emphasis added)

The claims asserted in your Complaint were not assumed. To the contrary, the Amended and Restated Master Sale and Purchase Agreement ("MSPA") expressly excludes "Product Liabilities Product Liabilities are defined in the relevant agreements as "all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles..." MSPA, §2.3(a)(ix).arising in whole or in part from any accidents incidents or other occurrences that happen prior to the Closing Date." Sale Approval Order, Ex A., §2.3(ix). See also Sale Opinion, 407 B.R. at 500.

Filing this Complaint against New GM violates the Sale Approval Order, which unambiguously states that "all persons and entities, including, but not limited to ... litigation claimants and [others] holding liens, claims and encumbrances, and other interest of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability .., are forever barred, stopped, and permanently enjoined... from asserting against [New GM], its successors or assigns, its property, or the Purchased Assets, such persons' or entities' [rights or claims], including rights or claims based on any successor or transferee liability." Id., 8. (emphasis added) See also *Id.*, 46 ("... the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated."), *Id.*, 52 (Sale Approval Order "effective as a

determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated..."). (emphasis added)

In the Sale Approval Order, the Bankruptcy Court retained "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" including to "protect [General Motors Company] against any of the [liabilities that it not expressly assume under the MSPA]." *Id.*:, 71.

Accordingly, General Motors Company hereby demands that the Petition against New GM be immediately dismissed. Absent prompt compliance, General Motors Company will initiate proceedings in the Bankruptcy Court to enforce the Sale Approval Order, including to recover all costs, expenses and fees incurred by reason of the Complaint, along with such other remedies as the Bankruptcy Court may deem appropriate. Please let me know as soon as possible if are willing your Complaint against General Motors Company.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

James M. Popson

JMP:bmd
Encls.

EXHIBIT O

STATE OF WISCONSIN	CIRCUIT COURT	MILWAUKEE COUNTY

BRIAN KOROTKA and SHARON KOROTKA Plaintiffs, AETNA HEALTH IF ILLINOIS INC., EDWARD HINES JR. VA HOSPITAL, Involuntary Plaintiffs v. GENERAL MOTORS CORPORATION, BRAEGER CHEVROLET, INC., and ABC INSURANCE COMPANY, Defendants.	)	Case No. 08-CV-17991 30100 -- Product Liability

BRAEGER CHEVROLET, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO AMEND THE COMPLAINT

NOW COMES BRAEGER CHEVROLET, INC. ("Braeger") and files this Opposition to Plaintiffs' Motion to Amend the Complaint, as follows:

I. INTRODUCTION

This is an automotive product liability action involving allegations of defective roof strength in a 2001 Chevrolet Blazer that arises out of a rollover crash on March 2, 2007. On December 18, 2008, Plaintiffs filed this action against General Motors Corporation ("Old GM") and Braeger, alleging negligence and strict liability claims against Old GM and strict liability claims against Braeger. As the Court is no doubt aware, Old GM declared bankruptcy in 2009, and all litigation against Old GM is stayed. Unable to pursue their claims against Old GM, Plaintiffs now seek leave to amend their Complaint to add General Motors LLC ("New GM"), the new entity that emerged from the bankruptcy, as a defendant. Although it is undisputed that

Plaintiffs do not have any viable cause of action against New GM, Plaintiffs nevertheless argue that Wis. Stat. 803.03(1) (Persons to be Joined if Feasible) and Wis. Stat. 803.04(1) (Permissive Joinder) permit them to entangle New GM in this action. This Court should deny Plaintiffs' Motion to Amend the Complaint because they cannot meet the statutory requirements for joinder.

New GM's only connection to this case is a contractual obligation to defend and indemnify Braeger. Braeger is now in New GM's dealer network, and pursuant to the Dealership Participation Agreement between the parties, New GM has agreed to defend Braeger in this suit and indemnify Braeger if a judgment is entered against it in this case. Braeger's individual contractual right to indemnity from New GM does not make New GM a necessary party to this case, or even a proper one. Numerous courts have recognized that indemnitors like New GM are not necessary parties because their absence from the case does not prevent plaintiffs from obtaining complete relief and does not subject the parties to the risk of multiple or inconsistent obligations. Plaintiffs have cited no authority supporting the joinder of New GM under Wis. Stat. 803.03(1).

Nor does Wis. Stat. 803.04(1) permit the joinder of New GM. Plaintiffs are barred from asserting any claims against New GM in this action pursuant to the order of the Bankruptcy Court presiding over the bankruptcy proceedings involving Old GM.[1] Indeed, Plaintiffs do not even suggest New GM is directly liable to them. Because Plaintiffs have no claim to assert against New GM, the permissive joinder statute is inapplicable.

New GM has a contractual obligation to Braeger only. It has no obligation, contractual or otherwise, to Plaintiffs. Nor does it -- or can it -- have any liability to Plaintiffs for the personal injuries alleged in this action. Adding New GM to this action is not permitted by Wisconsin law,

[1] *See In re General Motors Corp.*, 407 B.R. 463, 505-506 (Bankr. S.D.N.Y. July 5, 2009), attached as Ex. A; *Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (III) Granting Related Relief*, ¶¶ AA, BB, 6, (vesting New GM with title "free and clear of liens, claims, encumbrances and other interests . . . based on any successor or transferee liability"), attached as Ex. B.

would be a waste of this Court's time and resources, and would severely prejudice Braeger. Accordingly, Plaintiffs' Motion to Amend their Complaint to add New GM should be denied.

II. LAW AND ARGUMENT

A. New GM is Not a Necessary Party to This Case.

Wis. Stat. 803.03(1) does not provide authority for joining New GM as a defendant. Section 803.03(1), modeled after Fed. R. Civ. P. 19, provides for the joinder, if feasible, of parties that are necessary to the case:

> (1) PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process shall be joined as a party in the action if:
>
> > (a) In the person's absence complete relief cannot be accorded among those already parties; or
> >
> > (b) The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:
> >
> > > ***
> > >
> > > 2. Leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his or her claimed interest.

Wis. Stat. 803.03(1). Neither of the provisions of Section 803.03(1) apply to New GM in this case: New GM's presence is not necessary in order to accord complete relief between Plaintiffs and Braeger, and Braeger is not subject to a risk of incurring double, multiple, or otherwise inconsistent obligations because of New GM's absence.

Braeger's independent contractual right to indemnification does not affect, let alone threaten, Plaintiffs' ability to obtain complete relief through a judgment in this action against Braeger. If anything, it assures it. Plaintiffs' motion does not even assert that they cannot obtain complete relief from Braeger in New GM's absence. Nor do Plaintiffs suggest that they seek some type of relief from New GM that they cannot obtain from Braeger. *Cf. Perrian v.*

O'Grady, 958 F.2d 192, 196 (7th Cir. 1992) ("The term complete relief refers only "to relief between the persons already parties, and not as between a party and the absent person whose joinder is sought.'").[2] Plaintiffs' claims against Braeger are strict liability claims based on Braeger's sale of the subject vehicle. Should Plaintiffs prevail on their claims against Braeger, Plaintiffs would be entitled to complete compensation from Braeger for any injuries and damages found to have been caused by the dealership. Plaintiffs would have a judgment against Braeger and be entitled to execute their judgment against Braeger. It would be Braeger's right to seek reimbursement from New GM for any judgment it satisfies.[3]

Plaintiffs also fail to make any showing that the parties would be subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations if New GM is not made a party. Plaintiffs are not at risk of incurring any obligation in this action. *See Sykes v. Hengel*, 220 F.R.D. 593, 597 (S.D. Iowa 2004) ("Rule 19 does not protect parties from inconsistent relief"). The only obligation Braeger is at risk of incurring in this or any subsequent suit arising out of Plaintiffs' claims is an obligation for Plaintiffs' claimed injuries and damages. This case does not involve multiple claims for the same fund or *res* and in no event will Braeger have to pay on the same claims twice. Even a subsequent determination that New GM need not indemnify Braeger for the judgment in this suit would not subject the dealership to any additional or inconsistent obligations, but would only result in Braeger being responsible for the one judgment in this case. *See Delgado v. Plaza Las Ams.*, 139 F.3d 1, 3 (1st Cir. 1998) ("Inconsistent obligations" are not [] the same as inconsistent adjudications or results . . . Inconsistent obligations oc-

[2] When interpreting a state statute that is patterned after a federal statute, Wisconsin courts may look to cases interpreting the federal statute for guidance. *See Kluth v. General Casualty Co.*, 178 Wis. 2d 808, 817-818 (Wis. Ct. App. 1993); *see also Helgeland v. Wis. Municipalities*, 307 Wis. 2d 1, 63 (Wis. 2008) (approving of the court of appeals' interpretation of Wis. Stat. 803.03 as supported by federal court decisions construing Fed. R. Civ. P. 19).

[3] Moreover, the whole scenario is academic in this instance because New GM has already agreed to indemnify Braeger in this case.

cur when a party is unable to comply with one court's order without breaching another court's order concerning the same incident."). Braeger's right to indemnification from New GM for any judgment simply does not present a risk that Braeger will incur multiple or inconsistent obligations in New GM's absence.

Plaintiffs appear to assert that Section 803.03(1)(b)(2) is satisfied because of "the risk that existing parties may incur the cost of multiple, separate trials." (Pls.' Br. in Supp., at 3.) This risk is non-existent; New GM has already agreed to defend and indemnify Braeger. Nor are Plaintiffs likely to be involved in subsequent suits due to New GM's absence because, as explained in Section II.B, Plaintiffs have no right to relief against New GM. More importantly, the "possibility of subsequent litigation for indemnity or contribution 'was not an eventuality that [803.03(1)] was designed to avoid.'" *WMH Tool Group H.K. Ltd. v. Ill. Indus. Tool, Inc.*, 2006 U.S. Dist. LEXIS 38542 (N.D. Ill. May 24, 2006).

Well-established authority provides that indemnitors of defendants, like New GM here, are not necessary parties to an action. *See, e.g.*, See *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 413 (3d Cir. 1993) (*citing Pasco Int'l (London), Ltd. v. Stenograph Corp.*, 637 F.2d 496, 505 (7th Cir. 1980) ("[P]otential indemnitors have never been considered indispensable parties, or even parties whose joinder is required if feasible."); *Sykes v. Hengel*, 220 F.R.D. 593, 597 (S.D. Iowa 2004) (same). *See also* 4-19 Moore's Federal Practice - Civil § 19.06 (2009) ("joinder of potential indemnitors is not required under Rule 19"). Plaintiffs' motion to amend the complaint and join New GM in this action pursuant to Wis. Stat. 803.03(1) should be denied.

B. Plaintiffs Cannot Use the Permissive Joinder Statute Because Plaintiffs have No Claims Against New GM.

Plaintiffs alternatively argue that New GM should be joined in this case pursuant to Wis. Stat. 803.04(1). Section 803.04(1) provides for the permissive joinder of parties when "there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction or occurrence , or series of transactions or occurrence and if any question of law or fact common to all defendants will arise in the action . . . ." Plaintiffs cannot utilize the permissive joinder statute because Plaintiffs have no right to relief against New GM to assert. *See* 3 Wis. Prac., Civil Procedure § 306.2 (3d ed.) (explaining that under the misjoinder statute, Wis. Stat. 803.05, "misjoinder may be found because no relief is demanded from one or more of the parties joined as defendants, or no claim for relief is stated against one or more of the defendants . . . . "). Plaintiffs' argument is a non-starter.

Plaintiffs state that they "are not alleging any negligence or strict liability against New GM." (Pls.' Br. in Supp., at 4.) Indeed, Plaintiffs cannot assert any theory of direct liability against New GM in this case because such claims by Plaintiffs are "forever barred, estopped, and permanently enjoined" by federal law. Sale Order ¶ 8. Specifically, the Bankruptcy Court's Sale Order in the bankruptcy proceedings of Old GM forecloses any claims by product liability plaintiffs against New GM arising out of motor vehicle crashes occurring prior to July 10, 2009. *See id.* ¶ ¶ AA, BB, 6-8, 46. The Bankruptcy Court "retains exclusive jurisdiction to enforce and implement the terms and provisions of" the Sale Order. Sale Order ¶ 71.

That Plaintiffs have no right to relief against New GM is abundantly clear from the paragraph that Plaintiffs seek to add to their Amended Complaint:

> GM is a proper party to this action pursuant to an express agreement between it and its dealer, defendant Braeger Chevrolet, Inc., whereby it has agreed to indemnify Braeger for any liability found against Braeger by the plaintiffs.

(Pls.' Br. in Supp., at 4.) This paragraph does not state a cause of action against New GM,[4] and Plaintiffs have not even pretended to make a showing of a cause of action against New GM in their brief. The proposed language begs the question: if New GM's obligation is limited to any liability found "*against Braeger*," why is New GM's participation in the case necessary at all?

Instead, what is going on here is obvious: instead of pursuing a bankruptcy claim against Old GM, and barred from asserting a direct claim against New GM, Plaintiffs seek to have the record "reflect that [New GM] will indemnify defendant Braeger" in hopes that a jury will either ignore or be confused by the distinction, impute the acts of Old GM onto New GM and/or Braeger, and be more inclined to reach a verdict in Plaintiffs' favor. Such a result would not only be a blatant violation of the Bankruptcy Court's Order, but would also be extremely prejudicial to Braeger, whose liability in this matter is to be decided on its actions alone, not those of Old GM or New GM.

In addition, having New GM involved would only confuse the jury and complicate the trial of this case, since the jury would have to be educated about the bankruptcy, the distinction between Old GM and New GM, and the limited nature of New GM's role in this case. Yet, after spending the time to explain all this to the jury, they would necessarily be told, "Please ignore New GM completely in arriving at your verdict." New GM's participation in this case is simply not warranted or helpful.

The only party in this action with any potential right to relief against New GM is Braeger. Braeger has chosen not to assert its right through an action in this suit, in part because New GM has already agreed to indemnify Braeger in the event a judgment is rendered against it. Plaintiffs

[4] In this regard Plaintiffs' Motion to Amend should also be denied because any amendment would be futile. Because the paragraph Plaintiffs seek to add to their Complaint does not even purport to state a claim against New GM, any Amended Complaint is sure to be met with a motion to dismiss or misjoinder motion by New GM and a subsequent dismissal.

cannot usurp Braeger's contractual indemnification right and use it as a basis to join New GM in this action when they have no claims of their own against New GM to assert.[5] Joinder of New GM under Section 803.04(1) would be improper.

III. CONCLUSION

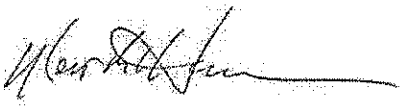
The joinder statutes do not permit Plaintiffs to add New GM as a defendant. New GM's presence is not necessary to this case, and Plaintiffs have no claim they can assert against New GM so as to invoke permissive joinder. Plaintiffs only seek to add New GM in this case in the hopes that the jury will award a larger verdict against Braeger by associating New GM with Old GM, the designer and manufacturer of the allegedly defective vehicle. This Court should not permit such a transparent attempt by Plaintiffs to resurrect their claims against Old GM that were extinguished by the bankruptcy proceeding.

[5] The cases cited by Plaintiffs in their brief do not provide support for the joinder of New GM in this case. In *Deminsky v. Arlington Plastics Machinery*, 259 Wis.2d 587 (2003) the defendant assigned its indemnity rights against the indemnitor to the plaintiff. Braeger has no intention of assigning its indemnification rights to Plaintiffs. Additionally, in *Deminsky*, the indemnitor refused the claim for indemnity and did not participate in the defense or settlement of the claims, resulting in questions regarding the extent to which the indemnitor was bound by the settlement agreement. No such issues are at play in this case where New GM has accepted the tender of Braeger's defense and has agreed to indemnify it.

Larson v. Lester, 259 Wis. 440 (1951) is also distinguishable. *Larson* involved a statutorily created indemnity right whereby the village was required to pay the judgment entered against a village employee. There is no statute that creates a right to indemnity in favor of Plaintiffs here. Rather the right is a private contractual right between New GM and Braeger. Moreover, *Larson* is not precedential authority for when a party is "necessary" under Wis. Stat. 803.03(1) because it was decided under an entirely different version of the statute. *See Shannon v. Milwaukee*, 94 Wis. 2d 364, 374 (Wis. 1980) ("[W]e have serious misgivings about the present authority of the *Larson* Case in view of the more recent changes made in the statutes governing joinder of parties.").

DATED: February 2, 2010.

HANSON MAREK BOLKCOM
& GREENE, LTD.



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Certificate of Service

I certify that on February 2, 2010, I served a copy of the above document on the following counsel of record via facsimile pursuant to Wis. Stat. § 801.14(2):

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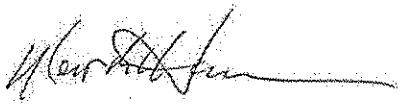

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11 Case No.
GENERAL MOTORS CORP., *et al.*,	:	09-50026 (REG)
Debtors.	:	(Jointly Administered)

ORDER (I) AUTHORIZING SALE OF ASSETS PURSUANT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT WITH NGMCO, INC., A U.S. TREASURY-SPONSORED PURCHASER; (II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE; AND (III) GRANTING RELATED RELIEF

Upon the motion, dated June 1, 2009 (the "**Motion**"), of General Motors Corporation ("**GM**") and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), pursuant to sections 105, 363, and 365 of title 11, United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for, among other things, entry of an order authorizing and approving (A) that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, by and among GM and its Debtor subsidiaries (collectively, the "**Sellers**") and NGMCO, Inc., as successor in interest to Vehicle Acquisition Holdings LLC (the "**Purchaser**"), a purchaser sponsored by the United States Department of the Treasury (the "**U.S. Treasury**"), together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (as amended, the "**MPA**"), a copy of which is annexed hereto as Exhibit "A" (excluding the exhibits and schedules thereto); (B) the sale of the Purchased Assets[1] to the

[1] Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Motion or the MPA.

EXHIBIT A

incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2).

AA. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Assumed Liabilities, will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any successor or transferee liability, including, but not limited to (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or the Purchaser's interest in the Purchased Assets, or any similar rights and (ii) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under doctrines of successor or transferee liability.

BB. The Sellers may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the

Bankruptcy Code has been satisfied. Those (i) holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, and (ii) non-Debtor parties to the Assumable Executory Contracts who did not object, or who withdrew their Objections, to the 363 Transaction or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of liens, claims, and encumbrances, and (ii) non-Debtor parties to the Assumable Executory Contracts who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, to the extent they have valid and enforceable liens or encumbrances, are adequately protected by having such liens or encumbrances, if any, attach to the proceeds of the 363 Transaction ultimately attributable to the property against or in which they assert a lien or encumbrance. To the extent liens or encumbrances secure liabilities that are Assumed Liabilities under this Order and the MPA, no such liens or encumbrances shall attach to the proceeds of the 363 Transaction.

CC. Under the MPA, GM is transferring all of its right, title, and interest in the Memphis, TN SPO Warehouse and the White Marsh, MD Allison Transmission Plant (the "**TPC Property**") to the Purchaser pursuant to section 363(f) of the Bankruptcy Code free and clear of all liens (including, without limitation, the TPC Liens (as hereinafter defined)), claims, interests, and encumbrances (other than Permitted Encumbrances). For purposes of this Order, "**TPC Liens**" shall mean and refer to any liens on the TPC Property granted or extended pursuant to the TPC Participation Agreement and any claims relating to that certain Second Amended and Restated Participation Agreement and Amendment of Other Operative Documents (the "**TPC Participation Agreement**"), dated as of June 30, 2004, among GM, as Lessee, Wilmington Trust Company, a Delaware corporation, not in its individual capacity except as expressly stated herein but solely as Owner Trustee (the "**TPC Trustee**") under GM Facilities Trust No. 1999-I (the "**TPC Trust**"), as Lessor, GM, as Certificate Holder, Hannover Funding Company LLC, as

Contract Objection without prejudice shall have the right, unless it has agreed otherwise, to schedule the hearing to consider a Limited Contract Objection on not less than fifteen (15) days notice to the Debtors, the counterparties to the subject Assumable Executory Contracts, the Purchaser, and the Creditors' Committee, or within such other time as otherwise may be agreed by the parties.

Approval of the MPA

3. The MPA, all transactions contemplated thereby, and all the terms and conditions thereof (subject to any modifications contained herein) are approved. If there is any conflict between the MPA, the Sale Procedures Order, and this Order, this Order shall govern.

4. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under, and comply with the terms of, the MPA and consummate the 363 Transaction pursuant to, and in accordance with, the terms and provisions of the MPA and this Order.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the MPA, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the MPA and effectuate the 363 Transaction, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the MPA.

6. This Order and the MPA shall be binding in all respects upon the Debtors, their affiliates, all known and unknown creditors of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including

rights or claims based on any successor or transferee liability, all non-Debtor parties to the Assumable Executory Contracts, all successors and assigns of the Purchaser, each Seller and their Affiliates and subsidiaries, the Purchased Assets, all interested parties, their successors and assigns, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion of any of such cases to cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in any of the Debtors' chapter 11 cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the MPA or this Order.

Transfer of Purchased Assets Free and Clear

7. Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the MPA, and, upon the Closing, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, shall attach to the net proceeds of the 363 Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses a Seller or any other party in interest may possess with respect thereto.

8. Except as expressly permitted or otherwise specifically provided by the MPA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, 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 a Seller 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, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined (with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible) from asserting against the Purchaser, 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.

9. This Order (a) shall be effective as a determination that, as of the Closing, (i) no claims other than Assumed Liabilities, will be assertable against the Purchaser, its affiliates, their present or contemplated members or shareholders, successors, or assigns, or any of their respective assets (including the Purchased Assets); (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances); and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is directed to accept for filing any and all of the documents

lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

45. All of the TPC Trust Assets and the TPC Property are Purchased Assets under the MPA and shall be transferred by GM pursuant thereto to the Purchaser free and clear of all liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including, without limitation, any liens, claims, encumbrances, and interests of the TPC Lenders. To the extent any of the TPC Trust Assets are executory contracts and unexpired leases, they shall be Assumable Executory Contracts, which shall be assumed by GM and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code and the Sale Procedures Order.

Additional Provisions

46. Except for the Assumed Liabilities expressly set forth in the MPA, none of the Purchaser, its present or contemplated members or shareholders, its successors or assigns, or any of their respective affiliates or any of their respective agents, officials, personnel, representatives, or advisors shall have any liability for any claim that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser shall not be deemed, as a result of any action taken in connection with the MPA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchased Assets from and after the Closing); (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims,

including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated.

47. Effective upon the Closing and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter or an order of the Court, 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, administrative, arbitral, or other proceeding against the Purchaser, its present or contemplated members or shareholders, its successors and assigns, or the Purchased Assets, with respect to any (i) claim against the Debtors other than Assumed Liabilities, or (ii) successor or transferee liability of the Purchaser for any of the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Purchaser, its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (c) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of this Court, or

amendment, or supplement does not have a material adverse effect on the Debtors' estates. Any such proposed modification, amendment, or supplement that does have a material adverse effect on the Debtors' estates shall be subject to further order of the Court, on appropriate notice.

69. The provisions of this Order are nonseverable and mutually dependent on each other.

70. As provided in Fed.R.Bankr.P. 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry, and instead shall be effective as of 12:00 noon, EDT, on Thursday, July 9, 2009. The Debtors and the Purchaser are authorized to close the 363 Transaction on or after 12:00 noon on Thursday, July 9. Any party objecting to this Order must exercise due diligence in filing any appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and the Debtors elect to close prior to this Order becoming a Final Order.

Deleted: Pursuant to Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the 363 Transaction immediately upon entry of this Order

71. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the Deferred Termination Agreements, in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) compel delivery of the purchase price or performance of other obligations owed by or to the Debtors, (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets, and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation

Agreements, stockholder agreements or other documents concerning the corporate governance of the Purchaser, and documents governed by foreign law, which disputes shall be adjudicated as

necessary under applicable law in any other court or administrative agency of competent jurisdiction.

Dated: New York, York
July 5, 2009

s/Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

LEXSEE 407 B.R. 463

In re GENERAL MOTORS CORP., et al., Debtors.

Chapter 11 Case No. 09-50026 (REG) (Jointly Administered)

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

407 B.R. 463; 2009 Bankr. LEXIS 1687; 51 Bankr. Ct. Dec. 225

July 5, 2009, Decided

PRIOR HISTORY: *In re GMC, 2009 Bankr. LEXIS 1986 (Bankr. S.D.N.Y., June 1, 2009)*

COUNSEL: [**1] APPEARANCES: [1]

WEIL, GOTSHAL & MANGES LLP, Attorneys for Debtors and Debtors in Possession, New York, New York, By: Harvey R. Miller (argued), Stephen Karotkin (argued), Joseph H. Smolinsky (argued).

KRAMER LEVIN NAFTALIS & FRANKEL LLP, Counsel for the Official Committee of Unsecured Creditors, New York, New York, By: Kenneth H. Eckstein (argued), Thomas Moers Mayer (argued), Robert Schmidt, Jeffrey S. Trachtman.

LEV L. DASSIN, Acting United States Attorney for the Southern District of New York, Counsel to the United States of America, New York, New York, By: David S. Jones (argued), Jeffrey S. Oestericher, Matthew L. Schwartz (argued), Joseph N. Cordaro.

CADWALADER, WICKERSHAM & TAFT LLP, Counsel to the United States of America, New York, New York, By: John J. Rapisardi.

CLEARY GOTTLIEB STEEN & HAMILTON, Counsel for The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, New York, NY, By: James L. Bromley (argued), Avram E. Luft.

COHEN, WEISS AND SIMON LLP, Counsel for The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, New York, NY, By: Babette A. Ceccotti (argued).

PATTON BOGGS [**2] LLP, Counsel For The Unofficial Committee Of Family & Dissident GM Bondholders, New York, NY, By: Michael P. Richman (argued), Mark A. Salzberg (pro hac vice) (argued), James C. Chadwick (pro hac vice), Melissa Iachan.

THE COLEMAN LAW FIRM, Attorneys for Individual Tort Litigants Callan Campbell, Kevin Junso, Edwin Agosto, Kevin Chadwick, and Joseph Berlingieri, Chicago, IL, By: Steve Jakubowski (argued), Elizabeth Richert.

SCHNADER HARRISON SEGAL & LEWIS LLP, Attorneys for Ad Hoc Committee of Consumer Victims of General Motors, New York, NY, By: Barry E. Bressler (pro hac vice) (argued), Richard A. Barkasy (pro hac vice), Benjamin P. Deutsch.

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA P.C., Counsel For Ad Hoc Committee of Asbestos Personal Injury Claimants, Dallas, TX, By: Sander L. Esserman (pro hac vice) (argued), Robert T. Brousseau (pro hac vice), Peter D'Apice, Jo E. Hartwick (pro hac vice).

ORRICK, HERRINGTON & SUTCLIFFE LLP, Counsel to the Unofficial GM Dealers Committee, Columbia Center, Washington, D.C., By: Roger Frankel (argued), Richard H. Wyron; New York, NY, By: Lorraine S. McGowen, Alyssa D. Englund.

> makes clear that such tort claims are interests in property such that they are extinguished by a free and clear sale under *section 363(f)(5)* and are therefore extinguished by the Sale Transaction. The Court follows *TWA* and overrules the objections premised on this argument. ... [I]n personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by *section 363(f)* and are therefore extinguished by the Sale Transaction. [102]

102 *405 B.R. at 111.*

This Court has already noted its view of the importance of *stare decisis* in this district, [103] and feels no **[**93]** differently with respect to this issue. This Court follows the decisions of its fellow bankruptcy judges in this district, in the absence of plain error, because the interests of predictability in commercial bankruptcy cases are of such great importance. Apart from the underlying reasons that have caused *stare decisis* to be embedded in American decisional law, *stare decisis* is particularly important in commercial bankruptcy cases because of the expense and trauma of any commercial bankruptcy, and the need to deal with foreseeable events, by pre-bankruptcy planning, to the extent they can be addressed. Likewise, litigation, while a fact of life in commercial bankruptcy cases, takes money directly out of the pockets of creditors, and predictability fosters settlements, since with predictability, parties will have an informed sense as to how any disputed legal issues will be decided.

103 *See* 27-28, n.19 above.

Though for all of these reasons, this Court would have followed *Chrysler* even if that case had no subsequent history, we here have a hugely important additional fact. The Circuit affirmed *Chrysler, and* for "substantially for the reasons stated in the opinion below."

Those two matters **[**94]** are somewhat different, and each merits attention. Appellate courts review judgments (or orders), not statements in opinions. [104] With the Circuit having affirmed, application of that principle would not, in the absence of more, necessarily suggest agreement with any reasoning Judge Gonzalez utilized in reaching his conclusion. But it would necessarily support agreement with his bottom line--at least on matters that were argued to the Circuit on appeal. Otherwise, the Circuit would not have affirmed.

104 *See, e.g., O'Brien v. State of Vermont (In re O'Brien), 184 F.3d 140, 142 (2d Cir. 1999); Mangosoft, Inc. v. Oracle Corp., 525 F.3d 1327, 1330 (Fed. Cir. 2008).*

Here, of course, there is more--because the Circuit did not simply affirm without opinion, but it stated, as part of its order, that Judge Gonzalez's decision was affirmed "for substantially the reasons stated in the opinions below." While that might hint that the Circuit generally agreed with Judge Gonzalez's reasoning as **[*505]** well, it does not compel that conclusion. At this point, the Court concludes merely that the Circuit agreed with Judge Gonzalez's successor liability issues bottom line.

But that alone is very important. One **[**95]** of the matters argued at length before the Circuit on the appeal was successor liability, both with respect to present claims [105] and unknown future claims. [106] They were hardly trivial elements of the appeal, and were a subject of questioning by members of the panel. [107] If the Circuit did not agree with Judge Gonzalez's conclusions on successor liability, after so much argument on that exact issue, it would not have affirmed.

105 *See* Tr. of Arg. before Second Circuit, No. 09-2311 (2d Cir. June 5, 2009) ("**2d Cir. Arg. Tr.**")at 17-22 (current tort claims); 47-49 (current tort claims); 60-62 (current tort claims).

106 2d Cir. Arg. Tr. at 22-26 (future and, to a limited extent, current, product liability claims); 26-29 (current and future asbestos claims); 45-46 (future asbestos and tort claims); 62-64 (future asbestos claims).

107 This Court has previously noted that it is hesitant to draw too much from the questions judges ask in argument. *See In re Adelphia Commc'ns Corp., 336 B.R. 610, 636 n.44* ("Thoughts voiced by judges in oral argument do not always find their way into final decisions, often intentionally and for good reason.") Thus the Court does not rely on anything that was said in **[**96]** the way of questions in the *Chrysler* appeal for the purpose of trying to predict the Circuit's thinking or leanings. This Court looks to the *Chrysler* argument questioning solely for the purpose of noting the issues that were before the Circuit, and that got its substantive attention.

Thus the Court has, at the least, a judgment by the Second Circuit that *363(f)* may appropriately be invoked to sell free and clear of successor liability claims. The claims sought to be preserved here are identical to those in *Chrysler*. And *Chrysler* is not distinguishable in any legally cognizable respect. [108] On this issue, it is not just that the Court feels that it *should* follow *Chrysler*. It *must*

follow *Chrysler*. The Second Circuit's *Chrysler* affirmance, even if reduced solely to affirmance of the judgment, is controlling authority. [109]

> 108 The Court cannot agree with the suggestion that *Chrysler* is distinguishable because the purchaser there, Fiat, was a commercial entity, and that the purchaser here is an entity formed by the U.S. and Canadian Governments. We are talking about an issue of statutory interpretation here, and the Code makes no distinction in that regard.
> 109 *Collier* states that "[a]lthough [**97] some courts have limited the term ["interest in property," as used in *section 363(f)*] to *in rem* interests in the property, the trend seems to be in favor of a broader definition that encompasses other obligations that may flow from ownership of the property." 3 *Collier at P 363.06[1]*. Though *Collier* is of course consistent with this Court's conclusion, the Court regards the caselaw holdings in this Circuit and District as more important.

This Court fully understands the circumstances of tort victims, and the fact that if they prevail in litigation and cannot look to New GM as an additional source of recovery, they may recover only modest amounts on any allowed claims--if, as is possible, they do not have other defendants who can also pay. [110] But the law in this Circuit and District is clear; the Court will permit GM's assets to pass to the purchaser free and clear of successor liability claims, and in that connection, will issue the requested findings and associated [*506] injunction. [111]

> 110 They may have to resort to dealers, and the proposed sale motion also contemplates that New GM will indemnify dealers for losses of this type, whenever the claims arose. While this would seemingly greatly [**98] reduce the number of instances where a plaintiff cannot recover meaningful amounts if liability is established, the Court does not suggest that it will cover all of them.
> 111 Findings and an injunction of the character requested were issued in each of *Chrysler* and *TWA*. *See Chrysler*, No. 09-50002 (Bankr. S.D.N.Y. June 1, 2009) (Order Granting 363 Sale PP W-BB, 9-23); *TWA, 322 F.3d at 286-87*.

3. Asbestos Issues

The Asbestos Litigants raise the same successor liability issues just addressed, and, additionally advance the interests of future victims of asbestos ailments (though their counsel do not represent any); *future* victims would not yet know that they have any asbestos ailments, or to whom they might look to bring litigation, if necessary. The Asbestos Litigants' concerns as to a sale free and clear of asbestos liability claims, like those of tort litigants, have already been discussed, and the Court, while also sympathetic to asbestos victims, must rule similarly.

But the Court must separately address the separate issues concerning asbestos ailments, in light of the reality that those ailments may take many years to be discovered, during which asbestos victims would not know that they [**99] should be filing claims.

The Asbestos Litigants object to GM's effort to "channel all present and future asbestos personal injury claims to Old GM and to shield New GM from 'successor liability' claims . . . without the appointment of a future claims representative and the other express requirements mandated by Congress in *11 U.S.C. § 524(g)*." [112] But that overstates, in material part, what GM is trying to do. It is unnecessary to "channel" present asbestos injury claims to GM, as that is where they already are, and belong. And New GM has not yet done anything wrong, if it ever will. So the bulk of the Asbestos Litigants' contention is simply a variant of the successor liability issues that the Court just addressed, and must be decided the same way.

> 112 Asbestos Br. at 2.

Where there *is* a separate issue is claims for *future* injuries that people exposed to asbestos might suffer when they don't yet know of their ailments or the need to sue or assert a claim. The Court refers to those as "**Future Claims**," while noting that they are not yet "claims" as defined in the Bankruptcy Code. Efforts to deal with such circumstances led to the enactment of *section 524(g)* of the Code, which *inter alia* [**100] authorizes injunctions, under a reorganization plan, to enjoin actions against nondebtors by those who have a right of recovery from a trust created to address their claims, in accordance with more detailed provisions set out in *section 524(g)*. (Those provisions also include the appointment of a future claims representative.)

The Debtors ask for findings that New GM will not be deemed to be a successor of Old GM, and ask for an injunction barring those holding Future Claims, like others, from pursuing New GM. The Asbestos Litigants contend that such an injunction would walk, talk and quack like a *section 524(g)* injunction, and that it thus is impermissible. The Debtors respond that we do not yet have a request to approve a plan, and that these issues are now premature--better to be considered if and when they ever ask for a *524(g)* injunction.

The Court does not have to decide these issues now, except in a modest way. The Asbestos Litigants' counsel represent only individuals with *present* asbestos ailments, and do not represent future claimants. Thus the

EXHIBIT P

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

BRIAN KOROTKA and SHARON KOROTKA,

Plaintiffs,

Case No. 08-CV-017991
Code No. 30100

and

AETNA HEALTH OF ILLINOIS, INC., and U.S. DEPARTMENT OF VETERANS AFFAIRS,

Involuntary Plaintiffs,

vs.

BRAEGER CHEVROLET, INC., UNIVERSAL UNDERWRITERS INSURANCE COMPANY, AND GENERAL MOTORS LLC,

Defendants.

ANSWER OF DEFENDANT GENERAL MOTORS LLC TO PLAINTIFFS' AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Defendant General Motors LLC, for its Answer to Plaintiffs' Amended Complaint herein, denies each and every allegation of plaintiffs' Amended Complaint, except those allegations specifically admitted, qualified, or otherwise answered hereinafter, and further answers as follows:

PREAMBLE

On June 1, 2009, General Motors Corporation filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York. On July 10, 2009, General Motors LLC (f/k/a General Motors Company) purchased substantial assets of General

Motors Corporation (n/k/a Motors Liquidation Company), in a sale pursuant to section 363 of the Bankruptcy Code. The United States Bankruptcy Court for the Southern District Court of New York ordered that General Motors LLC purchased those assets "free and clear" of any rights or claims based on any successor liability claims. *See* Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (III) Granting Related Relief, ¶ ¶ AA, BB, 7 (attached as Exhibit A); *In re General Motors Corp.*, 407 B.R. 463, 499-505 (Bankr. S.D.N.Y. July 5, 2009) (attached as Exhibit B). The Bankruptcy Court specifically held that General Motors LLC "shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and *products* or antitrust liability, whether known or unknown as of [July 10, 2009], now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated. . . ." (Ex. A, ¶ 46) (emphasis added.) The Bankruptcy Court further ordered that all persons were "forever barred, estopped, and permanently enjoined" from asserting such claims against General Motors LLC . (*See* Ex. A, ¶ 8; Ex. B, at 500) (holding that as a result of the "free and clear" 363 Transaction "New GM [General Motors Company (n/k/a General Motors LLC)] would not assume any Old GM [General Motors Corporation (n/k/a Motors Liquidation Company)] liabilities for injuries or illnesses that arose before the 363 Transaction.").

Pursuant to the Bankruptcy Court's Order, product liability claims for vehicles sold by General Motors Corporation arising before the sale -- such as Plaintiffs' claims here -- *cannot* be

asserted against General Motors LLC . Such causes of action are claims against the bankrupt estate that must be brought in the bankruptcy proceedings against Motors Liquidation Corporation. (*See* Ex. A, ¶ 6.)

GENERAL ALLEGATIONS

1. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 1 of the Amended Complaint, and therefore denies the same.

2. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 2 of the Amended Complaint, and therefore denies the same.

3. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 3 of the Amended Complaint, and therefore denies the same.

4. Admits, in answer to paragraph 4 of the Amended Complaint, that General Motors Corporation was a Delaware corporation with its principal place of business in Michigan; admits that General Motors Corporation manufactured in part and assembled into final form for sale to independent authorized dealers various motor vehicles; admits that General Motors Corporation filed a bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of New York, Chapter 11 Case No. 09-50026 (REG); admits that plaintiffs' action against General Motors Corporation was stayed; alleges it is without knowledge or information sufficient to form a belief as to what plaintiffs meant by the use of the terms "no longer a viable defendant" and "plaintiffs have named General Motors Corporation herein merely to preserve their rights in said bankruptcy proceeding," and therefore denies the same;

alleges that General Motors Corporation is no longer named as a party herein in any capacity; and otherwise denies the allegations of paragraph 4 of the Amended Complaint.

5. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 5 of the Amended Complaint, and therefore denies the same.

6. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 6 of the Amended Complaint, and therefore denies the same.

7. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 7 of the Amended Complaint, and therefore denies the same.

8. Admits, in answer to paragraph 8 of the Amended Complaint, that General Motors LLC has agreed to indemnify Braeger Chevrolet for any liability found against it in this matter; specifically denies that General Motors LLC is a proper party to this action; and otherwise denies the allegations of paragraph 8 of the Amended Complaint.

9. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 9 of the Amended Complaint regarding the type of claim plaintiffs believe is involved in this case, and therefore denies the same; admits, on information and belief, that General Motors Corporation designed in part, manufactured in part, assembled into final form, tested, marketed and sold to an independent authorized dealer a 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532; admits, on information and belief, that General Motors Corporation sold the subject vehicle in the course of its business; specifically denies that

the subject vehicle was defective or the cause of any alleged injuries; and otherwise denies the allegations of paragraph 9 of the Amended Complaint.

10. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 10 of the Amended Complaint, and therefore denies the same.

11. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 11 of the Amended Complaint regarding the circumstances of the subject incident, and therefore denies the same; specifically denies that the subject vehicle was defective or the cause of any alleged injuries; and otherwise denies the allegations of paragraph 11 of the Amended Complaint.

12. Admits, on information and belief, in answer to paragraph 12 of the Amended Complaint, that General Motors Corporation designed in part, manufactured in part, assembled into final form, tested, marketed and sold to an independent authorized dealer a 2001 Chevrolet Blazer, VIN 1GNDT13WX12205532; specifically denies that the subject vehicle was defective or the cause of any alleged injuries; and otherwise denies the allegations of paragraph 12 of the Amended Complaint.

13. Denies the allegations contained in paragraph 13 of the Amended Complaint.

14. Denies the allegations contained in paragraph 14 of the Amended Complaint.

15. Denies the allegations contained in paragraph 15 of the Amended Complaint.

16. Denies the allegations contained in paragraph 16 of the Amended Complaint.

AS TO "STRICT LIABILITY CLAIM AGAINST DEFENDANT BRAEGER CHEVROLET, INC. FOR ENHANCED INJURIES"

17. Incorporates, in answer to paragraph 17 of the Amended Complaint, its responses previously given to those paragraphs incorporated by reference.

18. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 18 of the Amended Complaint, and therefore denies the same.

19. Denies the allegations contained in paragraph 19 of the Amended Complaint.

20. Denies the allegations contained in paragraph 20 of the Amended Complaint.

21. Denies the allegations contained in paragraph 21 of the Amended Complaint.

22. Denies the allegations contained in paragraph 22 of the Amended Complaint.

23. Denies the allegations contained in paragraph 23 of the Amended Complaint.

24. Denies the allegations contained in paragraph 24 of the Amended Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Amended Complaint, in whole or in part, fails to state a claim against this defendant upon which relief can be granted.

2. Any loss, damage, and/or injury that plaintiffs may have sustained on account of the matters alleged in their Amended Complaint was/were caused or contributed to by the negligence, carelessness, or other culpable conduct of plaintiff Brian Korotka.

3. Any loss, damage, and/or injury that plaintiffs may have sustained on account of the matters alleged in their Amended Complaint was/were caused or contributed by the negligence, fault, or other culpable conduct of third parties over whom this defendant had and exercised no control or right of control, and for whose acts and omissions it is not liable.

4. The subject vehicle was designed, manufactured and assembled in conformity with the then-existing state of the art, and in conformity with all applicable industry standards and governmental regulations.

5. The subject vehicle was or may have been subjected to substantial change and/or abnormal use after leaving the control of Braeger Chevrolet.

6. Plaintiffs' claims and/or causes of action may be barred in whole or in part by the applicable statutes of limitations.

7. Plaintiffs may have failed to mitigate their damages.

8. Plaintiffs' damages or losses, if any, were caused by an intervening or superseding act or acts over which this defendant had no control and for which this defendant has no liability.

9. The injuries sustained by plaintiff Brian Korotka were not enhanced by any alleged defect in the subject vehicle, but rather were solely caused by the negligence of the plaintiff(s) and/or other persons or parties and the violent nature of the rollover crash.

10. Plaintiffs' injuries may have resulted from the abuse, misuse, neglect or alteration of the subject vehicle or its component systems.

11. Pursuant to Wis. Stat. § 801.52, in the interest of justice and for the convenience of the parties and witnesses, venue should be transferred from Milwaukee County to Rock County, Wisconsin, which is the location of the accident and accident site, and the county in which most of the fact witnesses reside.

12. General Motors LLC is not a proper party to this action because it is not a necessary party.

13. General Motors LLC is not a proper party to this action because plaintiffs have no claims against it.

14. This defendant did not design, manufacture, market, distribute, or sell the subject 2001 Chevrolet Blazer. Plaintiffs are therefore not entitled to recover from this defendant in this action.

15. Any claims by plaintiffs against this defendant are preempted, estopped, barred, and enjoined by federal law and full faith and credit. In particular, any claims by plaintiffs against this defendant are preempted, estopped, barred, and enjoined by order of the United States Bankruptcy Court for the Southern District of New York. *See In re General Motors Corp.*, 407 B.R. 463, 505-506 (Bankr. S.D.N.Y. July 5, 2009); *Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (III) Granting Related Relief*, ¶¶ AA, BB, 6.

16. Any claims by plaintiffs against this defendant are barred by res judicata.

17. This court lacks jurisdiction over this defendant in this action. By order of the United States Bankruptcy Court for the Southern District Court of New York, claims such as the ones asserted by plaintiffs are claims that can be brought solely against Motors Liquidation Company in the bankruptcy proceedings pending in that court.

18. General Motors LLC is not a proper party to this action because its presence as a defendant, with no claims that can or will be asserted against it by the plaintiffs, will mislead and confuse the jury.

19. General Motors LLC is not a proper party to this action because its presence as a defendant, with no claims that can or will be asserted against it by the plaintiffs, will be prejudicial to defendant Braeger Chevrolet, Inc., whose liability, if any, must be based upon its conduct alone, and not any conduct of General Motors Corporation or General Motors LLC that may be imputed either directly or indirectly to Braeger Chevrolet, Inc. by the jury because of General Motors LLC's presence as a defendant in this lawsuit.

20. General Motors LLC reserves the right, upon completion of its investigation and discovery, which is ongoing and incomplete, to file such additional defenses, counterclaims, cross claims and/or third-party complaints as may be appropriate.

WHEREFORE, defendant General Motors LLC prays for judgment dismissing plaintiffs' Amended Complaint and awarding this defendant its costs and disbursements herein.

JURY DEMAND

Defendant General Motors LLC hereby requests a trial by a jury of twelve (12) on all issues so triable.

Dated: April 9th, 2010

WHYTE HIRSCHBOECK DUDEK S.C.
Attorneys for defendant General Motors Company d/b/a General Motors LLC

By: _____
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GENERAL MOTORS LLC

Certificate of Service

I certify that on April ___, 2010, I served a copy of the above document on the following counsel of record via U.S. Mail pursuant to Wis. Stat. § 801.14(2):

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EXHIBIT Q

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March 22, 2010

Enid W. Harris, Esquire
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Kingston, PA 18704

Re: Michele McDade, et al v. RJ Burne Cadillac v. General Motors LLC (f/k/a General Motors Company), et al. CCP, Lackawanna County, Docket No.: 585 of 2010

Dear Mr. Harris:

In our phone call of March 19, 2010, I advised you that the action against additional defendants, General Motors Corporation and General Motors LLC (f/k/a General Motors Company) should be dismissed.

Based on Plaintiff's Original Petition, we understand that the claims asserted in the action relate to a November 30, 2008 accident and a 2002 Cadillac Deville sold to plaintiff by RJ Burne Cadillac in March, 2005.

As you know, New GM acquired substantially all of the assets of General Motors Corporation on July 10, 2009 in a transaction executed under the jurisdiction and pursuant to approval of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). *See generally In re General Motors Corp.*, 407 B.R. 463 (Bankr., SDNY 2009)("Sale Opinion") (approving sale transaction). In acquiring these assets, New GM did not assume the liabilities of General Motors Corporation. In particular, New GM did not assume responsibility for product liability claims arising from incidents involving GM vehicles that occurred prior to the July 10 closing date, such as in this Action. *Id.*, 407 B.R. at 499-507 (overruling objections by tort claimants seeking to preserve claims against New GM). *See also In re Chrysler, LLC*, 2009 WL 2382766, pp 11-13 (2nd Cir. 2009) (bankruptcy court was permitted to authorize the sale of substantially all Chrysler's automotive assets free and clear of claims).

The scope and limitations of New GM's responsibilities are defined in the Bankruptcy Court's "Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases

In Connection with the Sale; and (iii) Granting Related Relief," entered on July 5, 2009 (the "Sale Approval Order"), which is a final binding order. The Sale Approval Order is publicly available at http://docs.motorsliquidationdocket.com/pdflib/2968_order.pdf. The Sale Approval Order provides that, with the exceptions of certain liabilities expressly assumed under the relevant agreements, the assets acquired by New GM were transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever... **including rights or claims based on any successor or transferee liability**..." *Id.*, ¶7. (emphasis added)

The claims asserted in the Action were not assumed. To the contrary, the Amended and Restated Master Sale and Purchase Agreement ("MSPA") expressly excludes "Product Liabilities Product Liabilities are defined in the relevant agreements as "all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles..." MSPA, §2.3(a)(ix).arising in whole or in part from any accidents incidents or other occurrences that happen prior to the Closing Date." Sale Approval Order, Ex A., §2.3(ix). *See also* Sale Opinion, 407 B.R. at 500.

Filing this Action against General Motors Corporation and the New GM violates the Sale Approval Order, which unambiguously states that "all persons and entities, including, but not limited to ... litigation claimants and [others] holding liens, claims and encumbrances, and other interest of any kind or nature whatsoever, including rights or claims **based on any successor or transferee liability ... are forever barred, stopped, and permanently enjoined**... from asserting against [New GM], its successors or assigns, its property, or the Purchased Assets, such persons' or entities' [rights or claims], including rights or claims based on any successor or transferee liability." *Id.*, ¶8. (emphasis added) *See also Id.*, ¶46 ("... the **Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind** or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated."), *Id.*, ¶52 (Sale Approval Order "effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated..."). (emphasis added)

In the Sale Approval Order, the Bankruptcy Court retained "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" including to "protect [General Motors LLC (f/k/a General Motors Company)] against any of the [liabilities that it not expressly assume under the MSPA]." *Id.*, ¶71.

Accordingly, General Motors Corporation and General Motors LLC (f/k/a General Motors Company) hereby demands that the Petition against New GM be immediately dismissed.

Absent prompt compliance, General Motors LLC (f/k/a General Motors Company) will initiate proceedings in the Bankruptcy Court to enforce the Sale Approval Order, including to recover all costs, expenses and fees incurred by reason of the Action, along with such other remedies as the Bankruptcy Court may deem appropriate. Please let me know as soon as possible if your client will dismiss his Petition against General Motors Corporation and General Motors LLC (f/k/a General Motors Company)."

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

EDWARD A. GRAY

EAG/dmc

EXHIBIT R

HEARING DATE AND TIME: June 1, 2010 at 9:30 a.m. (Eastern Time)
OBJECTION DEADLINE: May 25, 2010 at 4:00 p.m. (Eastern Time)

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)**

ORDER PURSUANT TO 11 U.S.C. § 105(A) ENFORCING 363 SALE ORDER

Upon the Motion, dated May 17, 2010 (the "**Motion**"), of General Motors, LLC ("**New GM**"),[1] pursuant to section 105(a) of title 11, United States Code (the "**Bankruptcy Code**"), for entry of an order (a) enforcing the 363 Sale Order; (b) enjoining the Accident Plaintiffs from prosecuting or otherwise attempting to enforce the claims asserted against New GM in the Accident Plaintiffs' Civil Actions, and (c) directing the Accident Plaintiffs to dismiss New GM from each of the Accident Plaintiffs' Civil Actions, with prejudice, all as more fully set forth in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted as provided herein; and it is further

[1]Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

ORDERED that plaintiff Leslie Griffin shall immediately dismiss New GM from the Griffin Civil Action styled *Griffin v. General Motors Co.*, No. 09-CI-00232 (Clay Circuit Ct., Ky.), with prejudice; and it is further

ORDERED that plaintiff Shane J. Robley shall immediately dismiss New GM from the Robley Civil Action styled *Robley v. General Motors LLC*, No. 2:09-cv-02767 (W.D. Tenn.), with prejudice; and it is further

ORDERED that plaintiffs the Estate of Beverly Deutsch, the Heirs of Beverly Deutsche, and Sanford Deutsch shall immediately dismiss New GM from the Deutsch Civil Action styled *Estate of Deutsche v. General Motors Corp.*, No. BC 389150 (Los Angels Cnty. Superior Ct., Cal.), with prejudice; and it is further

ORDERED that plaintiff Terrie Sizemore shall immediately dismiss New GM from the Sizemore Civil Action styled *Sizemore v. General Motors Co.*, No 10CIV0102 (Medina Cnty. Ct. of Common Pleas, Ohio), with prejudice; and it is further

ORDERED that plaintiffs Brian Korotka and Sharon Korotka shall immediately dismiss New GM from the Korotka Civil Action styled *Korotka v. Braeger Chevrolet, Inc.*, No. 08 CV 017991 (Milwaukee Cnty. Circuit Ct., Wis.), with prejudice; and it is further

ORDERED that defendant RJ Burne Cadillac shall immediately dismiss New GM from the McDade Civil Action styled *McDade v. RJ Burne Cadillac v. General Motors Corp.*, No. 585 of 2010 (Lackawanna Cnty. Ct. of Common Pleas, Pa.), with prejudice; and it is further

ORDERED that each of the Accident Plaintiffs be and hereby is enjoined and estopped from any further prosecution of their respective Accident Plaintiffs' Civil Actions as against New GM or from otherwise pursuing any of the claims asserted therein against New GM in any other action or proceeding or otherwise; and it is further

ORDERED that each of the Accident Plaintiffs shall file with the Clerk of this Court evidence of the dismissal, with prejudice, of its respective Accident Plaintiffs Civil Action against New GM within ten (10) business days after the entry of this Order; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
_____, 2010

_____
United States Bankruptcy Judge