

HEARING DATE AND TIME: TO BE DETERMINED

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

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In re: : Chapter 11  
: :  
MOTORS LIQUIDATION COMPANY, *et al.*, : Case No.: 09-50026 (REG)  
f/k/a General Motors Corp., *et al.* : (Jointly Administered)  
: :  
Debtors. :  
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**RESPONSE BY GENERAL MOTORS LLC TO  
SUBMISSIONS BY BILLY RAY KIDWELL, *PRO SE***

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

General Motors LLC (f/k/a General Motors Company) (“**New GM**”), by and through its undersigned counsel, hereby submits this response (“**Response**”) (i) to the *pro se Motion for Sanctions Against the Law Firm of King & Spalding LLP, and Attorneys Arthur Steinberg, and Scott Davidson for the Intentional Violation of Rule 9011(b)(1), Rule 9011(b)(2), Rule 9011(b)(3) and Rule 9011(b)(4) with Affidavit(s) and Exhibits* [Docket No. 8375] (“**Sanctions Motion**”) and certain other pleadings identified below, each filed by Billy Ray Kidwell (“**Kidwell**”) and (ii) in further support of the *Objection by General Motors LLC to Pro Se Motion to Show Cause Why General Motors LLC., and its Corporate Governance, Should Not be Held in Contempt for Intentionally Violating this Court’s Orders, While Terrorizing a Disabled Combat Veteran, and His Family*, dated November 22, 2010 [Docket No. 7889] (“**Contempt Objection**”) filed by New GM . In support of this Response, New GM respectfully represents as follows:

### **INTRODUCTION**

1. New GM filed the Contempt Objection in response to Kidwell’s *Motion to Show Cause Why General Motors LLC., and Its Corporate Governance, Should Not Be Held in Contempt for Intentionally Violating this Court’s Orders, While Terrorizing a Disabled Combat Veteran, and his Family* (“**Contempt Motion**”). Thereafter, in response to the Contempt Objection, Kidwell filed the Sanctions Motion and the following additional pleadings: (i) the *Motion to Submit Two Affidavits in Support of Movant’s Motion for Sanctions Against the Law Firm of King & Spalding LLP, and Attorneys Arthur Steinberg, and Scott Davidson for the Intentional Violation of Rule 9011(b)(1), Rule 9011(b)(2), Rule 9011(b)(3) and Rule 9011(b)(4)* [Docket No. 8377] (“**Affidavits Motion**”); (ii) the *pro se Motion for Judicial Notice that GM*

*Vehicle Warranties, State Lemon Law Obligations, and Related Regulatory Obligations under Such Statutes are an Assumed Liability for the New General Motors LLC, with Exhibits* [Docket No. 8376] (“**Judicial Notice Motion**”); (iii) the *pro se Notice of Denial of Due Process Resulting in Great Bodily Harm to Movant, Billy Ray Kidwell and Motion for Appropriate Relief* [Docket No. 8799] (“**Due Process Notice**”); and (iv) the *pro se* letter dated January 6, 2011 from Kidwell to the Honorable Robert E. Gerber [Docket No. 8798] (“**January 6 Letter**” and, collectively with the Sanctions Motion, the Contempt Motion, the Affidavits Motion, the Judicial Notice Motion and the Due Process Notice, the “**Kidwell Pleadings**”).

2. New GM believes that none of the Kidwell Pleadings have any merit. However, New GM is concerned that a specific response to each of the allegations in the Kidwell Pleadings will engender only further pleadings by Kidwell (as has already occurred). New GM notes that in certain recent pleadings filed with this Court and with the Florida District Court,<sup>1</sup> Kidwell has attacked not only New GM and its lawyers, but also the judiciary handling these matters. Attached hereto as Exhibit “A” are pleadings that illustrate this point.

3. Under these circumstances, New GM believes it would promote judicial efficiency to address the central issue that underlies the Kidwell Pleadings, and defer consideration of all other matters raised by the Kidwell Pleadings. In New GM’s view, the central issue for this Court to decide is whether New GM can be held responsible for any of the claims that Kidwell believes emanate out of his purchase of a Chevy S-10 pickup truck from Old GM in 2003. New GM believes that, once this Court decides this central issue, the Court can assess the remaining issues, if any, raised by the Kidwell Pleadings and direct the parties how it would like them addressed. Accordingly, New GM requests that the Court bifurcate the issues

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Contempt Objection.

raised by the Kidwell Pleadings in the manner discussed above, and permit New GM to defer responding to the remaining allegations made in the Kidwell Pleadings (such as the appropriateness of assessing Bankruptcy Rule 9011 sanctions against New GM's attorneys based on the filing of the Contempt Objection) until the central issue has been decided by the Court.

4. As explained in the Contempt Objection and as further discussed below, the scope and limitations of New GM's responsibilities are defined in the Sale Order, which 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 . . . ."* Sale Order, ¶ 7 (emphasis added).

5. Therefore, New GM only assumed such liabilities of Old GM as set forth specifically in the MSPA and Sale Order. In particular, as discussed in the Contempt Objection and further described herein, New GM only assumed certain express warranty-related claims and Lemon Law claims (as defined in the MSPA). New GM did not assume the warranty-related claims and the asserted "Lemon Law" claims set forth by Kidwell in the Contempt Motion. Thus, as provided in the Sale Order, Kidwell is prohibited from asserting such claims against New GM.

6. This Court retained exclusive jurisdiction to resolve all disputes relating to the MSPA and Sale Order including the liabilities assumed by New GM thereunder. *See* Sale Order, ¶ 71. Thus, the central issue raised by the Kidwell Pleadings is squarely before this Court.

## OBJECTION

### **A. The Warranty-Related Claims Asserted by Kidwell are Not Assumed Liabilities**

7. The relevant background facts are set forth in the Contempt Objection<sup>2</sup> and will not be repeated herein.

8. New GM acknowledges that it assumed certain obligations of Old GM in connection with “express written warranties of [the Debtors] that are specifically identified as warranties and delivered in connection with the sale of” specified vehicles. MSPA, §2.3(a)(vii). However, it is clear from a review of the MSPA, the Sale Order and the other relevant documents, that New GM only assumed the obligation to fund and otherwise support the standard limited warranties of repair issued by Old GM. No other warranty-related claims were assumed by New GM. Here, Old GM’s express warranty on Kidwell’s vehicle is expressly limited to repair of specific defects in material and workmanship if the vehicle is presented to an authorized dealer within the express time and *distance* limitations of the warranty. The express warranty specifically provides that performance of repairs and needed adjustments is Kidwell’s exclusive remedy. *New GM did not assume other liability claims relating to alleged warranties, including liability for personal injuries, economic loss, or expenses.* Thus, under the Sale Order, New GM did not assume any civil liability for the damages Kidwell sought as a result of Old GM’s alleged breach of warranty. *See Sale Order, ¶ 56 (New GM assumed express warranties “subject to conditions and limitations contained therein”).*

9. Old GM’s standard limited warranty provides only for repairs to the vehicle during the warranty period in accordance with specified terms, conditions and limitations. *See*

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<sup>2</sup> For the Court’s convenience, a copy of the Contempt Objection (without exhibits) is annexed hereto as Exhibit “B.”

Old GM Limited Warranty,<sup>3</sup> at 4. The express written warranty for Kidwell's vehicle contains the following relevant provisions:

- "General Motors shall not be liable for incidental or consequential damages (such as, but not limited to, lost wages or vehicle rental expenses) resulting from breach of this written warranty or any implied warranty." (Old GM Limited Warranty at 8.)
- "Economic loss or extra expense is not covered. Examples include:
  - Loss of vehicle use
  - Inconvenience
  - Storage
  - Payment for loss of time or pay
  - Vehicle rental expense
  - Lodging, meals, or other travel costs
  - State or local taxes required on warranty repairs" (*Id.* at 7.)

10. The express warranty for repair for Kidwell's vehicle contained the following limitations:

- To obtain repairs to one's vehicle, the owner must "take the vehicle to a Chevrolet dealer facility within the warranty period and request the needed repairs." (Old GM Limited Warranty at 5.)
- The warranty coverage extends only for three years or 36,000 miles, whichever comes first. (*Id.* at 4.)

11. Here, it is undisputed that Kidwell purchased his vehicle in 2003. The repair warranty period lapsed in 2006, three years prior to the entry of the Sale Order and New GM's purchase of Old GM's assets. New GM, thus, cannot be found liable for Kidwell's warranty-related claims for repair, which are the only warranty-related claims New GM assumed.

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<sup>3</sup> While a copy of the Old GM Limited Warranty was attached to the Contempt Objection as Exhibit "D," for the convenience of the Court and Kidwell, another copy of the Old GM Limited Warranty is attached hereto as Exhibit "C."

12. The Sale Order provided that New GM “is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner’s manuals, advertisements, and other promotional materials, catalogs and point of purchase materials.” *Id.* Similarly, the MSPA expressly excluded any 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 [Old GM].” MSPA, §2.3(b)(xvi).

13. Moreover, Kidwell is not entitled to any damages from New GM allegedly arising from vague and unidentified statements Old GM allegedly made about the quality of its vehicles or any implied warranties as the Sale Order specifically provides that New GM did not assume “responsibilities for Liabilities contended to arise by virtue of . . . implied warranties and statements in materials such as, without limitation, individual customer communications, owner’s manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials.” Sale Order, ¶ 56. Again, the MSPA expressly excluded liabilities arising from “allegation, statement or writing by or attributable to [Old GM].” MSPA, §2.3(b)(xvi)(B). The conduct alleged in Kidwell’s Amended Complaint falls squarely within these exclusions.

14. Based on the foregoing, the warranty-related claims asserted by Kidwell are not “Assumed Liabilities” as defined in the MSPA and were not transferred to New GM as part of the sale of Old GM’s assets.

15. It should be noted that Kidwell’s claims against New GM were previously dismissed with prejudice by the Florida District Court in the Florida District Court Action. However, in response to Kidwell’s Reconsideration Motion filed in that action, the Florida

District Court recently issued an Order on December 28, 2010 (“**December 28 Order**”),<sup>4</sup> granting Kidwell leave to file an amended complaint to provide the Florida District Court with the contractual basis upon which he based his express warranty claims against New GM. In so doing, the Florida District Court specifically found that its previous order did not contradict this Court’s Sale Order. It further found that any express warranty obligations assumed by New GM pursuant to the Sale Order “are of limited scope and apply only to funding and supporting standard limited warranties *of repair* issued by the old entity.” December 28 Order, p. 5 (emphasis in original). Nonetheless, the Florida District Court ultimately concluded that “[w]hether Plaintiff’s breach of warranty claims were barred by the Bankruptcy Court’s Sale Approval Order and whether they state a claim for relief depend upon the language of the express warranty.” *Id.* at pp. 5-6. As Kidwell failed to attach a copy of the Old GM Limited Warranty to his complaint, the Florida District Court exercised its discretion by dismissing Kidwell’s warranty-related claims without prejudice to give Kidwell an opportunity to amend his complaint. *Id.* at p. 6.

16. The Florida District Court recognized this Court’s jurisdiction over the express warranty-related claims in the December 28 Order. *See* December 28 Order, p. 6 n. 4 (“Defendant’s right to submit to the jurisdiction of the Southern District of New York in litigating these claims pursuant to section 9.13 of the Sale Approval Order is not foreclosed by this Order. The Court will consider, when appropriate, a motion to transfer this action.”).

**B. Kidwell’s Lemon Law Claims are Not Assumed Liabilities**

17. New GM also acknowledged in the Contempt Objection that the MSPA provided that New GM assumed “all obligations under Lemon Laws . . . .” MSPA, § 2.3(a)(vii)(B). The

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<sup>4</sup> A copy of the December 28 Order is annexed hereto as Exhibit “D.” A summary of subsequent events related to the December 28 Order is set forth in footnote 5, *infra*.

term “Lemon Laws” is defined under the MSPA as “a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.” MSPA, § 1.1. Pursuant to the terms of the MSPA, the assumption of Lemon Law obligations is, therefore, limited by the “express written warranty” obligations assumed by New GM. While state Lemon Laws, in general, create certain additional remedies and procedures, the Sale Order clarified that New GM’s assumption of Old GM’s obligations under state “lemon law” statutes is limited to situations “which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.” Sale Order, ¶ 56.

18. Here, Florida’s Lemon Law affords consumers the right to seek replacement or refunds for a vehicle through alternative dispute procedures within two years of initial delivery if a manufacturer, after three repair attempts, is unable to fix a defect that substantially impairs the use, value or safety of the vehicle. *See Florida Statutes Annotated, Sections 681.10 through 681.118 and 681.1095 and Florida Administrative Code, Rules 2-30.001, and 2-33.002 through 2-33.004.* Kidwell pursued relief under the Florida Lemon Law against Old GM through arbitration, but lost. Kidwell then failed to pursue the appeal mechanism afforded him under Florida’s Lemon Law. *See Kidwell v. General Motors Corp.*, 975 So. 2d 503, 505 (Fla. Dist. Ct. App. 2007) (“if Kidwell was dissatisfied with the decision of the BBB arbitrator he could have sought review by applying to the Florida New Motor Vehicle Arbitration Board, which he failed to do”). Since no liability arose for Old GM under that proceeding, any remaining claims now

being asserted by Kidwell against New GM are not claims that New GM assumed as part of the Sale from Old GM.

19. As stated in the December 28 Order, the Florida District Court agreed with New GM on this point. Specifically, the Florida District Court found as follows: “Specifically, Plaintiff’s Lemon Law-related claims are really for fraud and obstruction of justice rather than an action under the substantive provisions of the statute. . . . Thus, counts IV and V of Plaintiff’s Amended Complaint were properly dismissed with prejudice.” December 28 Order, p. 7. As the Florida District Court has already dismissed Kidwell’s Lemon Law claims *with prejudice*, this issue is resolved. Accordingly, Kidwell should be prohibited from litigating the Lemon Law issues that have already been decided by the Florida District Court.<sup>5</sup>

**C. The Sale Order Bars the Continued Prosecution of Kidwell’s Warranty-Related Claims and Lemon Law Claims**

20. As New GM has not assumed the warranty-related claims or Lemon Law claims asserted by Kidwell, his continued prosecution of such claims against New GM constitutes a violation of the Sale 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

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<sup>5</sup> In response to the December 28 Order, Kidwell filed a *Request for Clarification of Court Order and Voluntary Compliance with ADA* in the Florida District Court on January 10, 2011 (“**Request for Clarification**”), a copy of which has been annexed hereto as Exhibit “A.” In the Request for Clarification, Kidwell continues to assert that the Lemon Law claims are viable against New GM. New GM filed *Defendant General Motors LLC’s Response to Plaintiff’s Request for Clarification of Court Order*, dated January 24, 2011 (“**Response to Request for Clarification**”) in response to the Request for Clarification. A copy of the Response to Request for Clarification is annexed hereto as Exhibit “E.” The Response to the Request for Clarification contains many of the same arguments set forth in this Response.

Recently, Kidwell has filed additional pleadings in the Florida District Court seeking (i) the appointment of counsel and for a stay of the proceeding until counsel can be appointed, and (ii) an extension of time to amend his Amended Complaint. The December 28 Order gave Kidwell until January 18, 2011 to file an amended complaint, which was not done. Instead, as noted, Kidwell filed the additional pleadings referenced above. As of the date hereof, the Eleventh Circuit Court of Appeals has suspended Kidwell’s appeal of the Florida District Court’s September 10 Order (which dismissed Kidwell’s Amended Complaint against New GM with prejudice) pending the Florida District Court’s resolution of Kidwell’s motion to reconsider that order.

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 (“[New GM] 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 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 . . .”). Kidwell should, therefore, be directed to cease and desist from the continued prosecution of New GM in this and any other Court.

WHEREFORE, New GM respectfully requests that the Court (i) find that New GM is not liable for Kidwell's warranty-related claims and Lemon Law claims; (ii) prohibit, restrain and bar Kidwell from asserting any warranty-related claims and/or Lemon law claims against New GM; (iii) set a schedule with respect to any remaining issues raised by the Kidwell Pleadings; and (iv) grant to New GM such other and further relief as is just and proper.

Dated: New York, New York  
January 27, 2011

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# **EXHIBIT A**



General Motors LLC did not respond, **did not deny**, or answer, the *Pro Se Litigant's Emergency Request* for over two months, substantially aggravating *Movant's Life-Threatening Stress Disorder*.

The extremely disabled *Pro Se Litigant* made this Court fully aware that the basis for the EMERGENCY Motion was;

*“The Pro Se Petitioner is extremely disabled with **life-threatening disabilities that are being intentionally aggravated**, at the direction of GM Chairman, Edward E. Whitacre, Jr., the governance of General Motors, LLC., and their legal department, as they blatantly, and intentionally, violate this Court's ORDER(s), and the Amended and Restated Master Sale and Purchase Agreement.”* [Emergency Motion for Expedited, Mandatory Judicial Notice filed on September 20, 2010 at page five (5). Emphasis added as to the Life-threatening disabilities being intentionally aggravated.]

This Court, *by its failure to act in a Life-Threatening Emergency*, encouraged General Motors LLC, and the Law Firm of King & Spalding LLC to RETALIATE against the severely disabled *Pro Se Litigant*, increasing their intentional aggravation of the *Pro Se Movant's Life-Threatening Stress Disorder*, by intentionally lying to this Court about the actual material facts, apparently knowing that they have this Court “*in their pocket*”, and knowing that there would be no action taken against General Motors LLC, or the GM Attorneys, for their blatant, intentional, lying, for their dishonesty, and dilatory “*Tactics*”, and their **Fraud on this Court**.

The *Pro Se Litigant*, who has a history of at least one Stress-Caused Life-Threatening Heart Attack, suffered massive undue stress, as a direct result of this Court's failure to consider the threat to Movant's Life an Emergency, along with depression, heart pains, loss of sleep, and a substantial aggravation of his Stress Disorder.

The *Pro Se Litigant* also sought a Show Cause ORDER against General Motors LLC for its blatant refusal to abide by this Court's Sales ORDER, and the attached GM Sales Agreement.

*Again*, this Court refused to act.

*Again*, this Court allowed General Motors LLC to arbitrarily, and capriciously, decide when they would respond to the *Pro Se Movant's Show Cause Motion*, and General Motors LLC did not respond, **did not deny**, or answer, the *Pro Se Litigant's Show Cause Motion* for over two months.

On November 30, 2010 the severely disabled *Pro Se Litigant* filed a Motion for Sanctions against the Law Firm of King & Spalding LLP for multiple, bad faith, intentional violation(s) of Federal Rule of Bankruptcy Procedure Rule 9011(B)(1), Rule 9011(b)(2), Rule 9011(b)(3), and Rule 9011(b)(4), by the Law Firm of King & Spalding LLP, and King & Spalding Attorneys Arthur Steinberg, and Scott Davidson.

The Law Firm of King & Spalding LLP, and King & Spalding Attorneys Arthur Steinberg, and Scott Davidson, conceded their multiple, bad faith, intentional violation(s) of Federal Rule of Bankruptcy Procedure Rule 9011(B)(1), Rule 9011(b)(2), Rule 9011(b)(3), and Rule 9011(b)(4), and **have not denied**, contested, or bothered to answer the *Pro Se Movant's* Motion for Sanctions.

On December 9, 2010 Movant, Billy Ray Kidwell, filed an Affidavit, *given under oath*, directly stating that the Law Firm of King & Spalding, LLP intentionally violated Federal Rules of Bankruptcy Procedure, Rule 9011(B)(1), Rule 9011(b)(2), Rule 9011(b)(3), and Rule 9011(b)(4).

On December 9, 2010 an Eye Witness, Movant's Wife, Tana Kidwell, filed an Affidavit, *given under oath*, directly stating that the Law Firm of King & Spalding, LLP intentionally violated Federal Rules of Bankruptcy Procedure, Rule 9011(B)(1), Rule 9011(b)(2), Rule 9011(b)(3), and Rule 9011(b)(4).

**The Law Firm of King & Spalding LLP, and King & Spalding Attorneys Arthur Steinberg, and Scott Davidson, have not contested, or otherwise denied, the allegations, and Statements of Fact, in the Affidavits of Billy Kidwell, and Tana Kidwell.**

On December 10, 2010 the Movant filed another Motion for Judicial Notice, as to the content of this Court's OWN GM Sales ORDER to reduce litigation in at least three (3) Courts.

This Court refused to respond.

On December 24, 2010, after months of this Court refusing to abide by the Americans with Disabilities Act, and refusing the minor ADA Disability Accommodation Request of Movant, to merely expedite the matter, **so Movant could avoid Life-Threatening Stress**, all the intentional Retaliation by General Motors LLC, all the harassment, and lies became too much to bear and Movant felt a heavy pressure on his chest, blacked out, and fell down, suffering great bodily harm to his arm requiring substantial emergency medical care, that is ongoing.

The Movant is sure he suffered another **Life-Threatening Stress-Caused Heart Attack**, as a direct result of the ongoing dilatory tactics of this Court, the intentional lying, and Rule Violations, by General Motors, LLC, and it's attorneys, and the complete mockery being made of the Judicial System by this Court refusing to merely be truthful, and state what its OWN Court ORDERS say.

The GM Sales ORDER this Court released to the public clearly states that ALL State Lemon Law Obligations are an Assumed Liability for the new General Motors LLC.

Either that Court ORDER is truthful, and ALL State Lemon Law Obligations are an Assumed Liability for the new General Motors LLC or this Court committed a massive Fraud on the Public, and a Fraud on the machinery of the Court itself.

This Court has a **DUTY** to resolve this issue.

A **DUTY** it is shirking because it does not want to offend the extremely powerful General Motors LLC, and its lobbyists, with bags of money.

The Master Sale and Purchase Agreement at page 29 says ALL State Lemon Law Obligations are an Assumed Liability of the new General Motors LLC. [See attached Exhibit.]

Movant is at a complete loss to understand what is so difficult about simply being honest, and telling the truth.

Movant has been denied anything even remotely close to "*basic fairness*", or Due Process.

The public can have no integrity, or faith, in a Court that ignores the rights of the individual, and will even allow a corrupt Corporation, and dishonest Corporate Attorneys, to intentionally break the law, harass, and torture, a highly decorated American Veteran, until he has Life-Threatening Stress-Caused Heart Attacks, all because General Motors wants to steal \$30,000 from the Disabled Veteran, without providing him a vehicle that will even start, or move on its own.

To the public the only answer that makes sense is that GM's hordes of Lobbyists, with their bags of money, have either made their way to this Court, or to someone this Court owes "favors" too.

Either way this Court's conduct, or lack thereof, has endangered the life of, and irreparably harmed, a severely disabled Veteran that has been openly robbed by the extremely corrupt governance of General Motors, and merely seeks the money stolen from him, and his wife, and minor child, returned, along with reasonable damages for the intentional inhuman torture, irreparable harm to his health, and substantial shorting of his life.

If this Court does not impose substantial Sanctions against General Motors LLC, and the Law Firm of King & Spalding, LLP, after their outrageous, illegal, conduct in this case, and complete farce, and mockery they have made of these proceedings, their irreparable harm to both Movant, and the judicial system, then no person of reasonable intelligence can ever believe, or have faith in the integrity of this Court.

*Indeed*, the very purpose of this Court granting the original Motion filed by the former General Motors Corporation, and the very purpose of the GM Sales ORDER, and Agreement, to honor ALL State Lemon Law Obligations, was to instill public confidence in the new General Motors, LLC, according to the documents filed in this Court.

This Court, General Motors, LLC, and its dishonest attorneys have made a complete farce of that purpose.

Nobody, or anyone of sound mind, after reading the facts of this case, and how Movant has been defrauded by GM, intentionally terrorized, tortured, and then raped by Corporate-Leaning Courts, or Courts “*influenced*” by GM lobbyists, or owing “*favours*” to General Motors, would ever even consider purchasing a General Motors Vehicle.

General Motors has clearly demonstrated, in these proceedings, that they are the most corrupt, and dishonest, corporation on earth.

That they will lie to Congress to get TARP Dollars, and then waste two to three million of those Taxpayer TARP Dollars on corrupt Attorneys, to pay for years of dishonest litigation, all to avoid honoring their warranty, after a State Lemon Law Hearing has found that the truck they sold a disabled Veteran, does not run, knocks when it does run, has a whining transmission, has doors that fly over, has electrical shorts, and according to the hearing officer is so full of manufacturing defects that it’s not fit, or safe, to even be on the road.

**And this Court has demonstrated that individuals have no rights.**

That the Constitution is a joke, and that even America’s Disabled Combat Veterans, who suffer each day as a result of their service to their country, cannot get an honest process, or “*Meaningful*” Access to this Court, without money, and attorneys.

What has taken place in this Court, in this case, is nothing short of Anti-American, Unconstitutional, and **SHAMEFUL**.

Due Process means "*Basic Fairness*". There has been none in this case.

**THEREFORE**, the severely disabled Movant puts into the Record, that the failure of this Court to provide *even minimum* Due Process, and this Court allowing General Motors, LLC, and it's attorneys, to violate the Rules, Harass, Lie, Retaliate, and otherwise torture a *Frail Elderly Severely Disabled Pro Se Veteran* with a Bad Heart, has resulted in great bodily harm to the *Movant-Veteran*.

This Court would never have allowed anything even close to this amount of abuse, and torture, to a fellow Attorney, or Judge, or one of their family members.

This appalling conduct was only allowed by this Court because the victim is a 100% Service-Connected Disabled Combat Veteran, on VA Service-Connected Disability, and unable to afford to pay for Attorneys to protect him.

## RELIEF

1. It is too late for this Court to take any “*Meaningful*” action on the severely disabled *Pro Se Litigant’s “Emergency”* Motion, since this Court has ignored the ADA, the basic human rights of the disabled, *as described in International Treaties the United States is a party to*, and this Court has already allowed, and encouraged, General Motors LLC, and its Attorneys, to inflict Life-Threatening Irreparable Harm on the frail, elderly, extremely disabled *Pro Se Litigant*.
  
2. The frail, elderly, severely disabled *Pro Se Litigant* submits that this Court has an extremely strong Constitutional, and Statutory, **DUTY** to put an end to the ongoing torture, abuse, and terrorizing of Movant, and his family, by issuing an ORDER requiring the Governance of the new General Motors, LLC, to;
  - (a) Re-submit every Motion, Report, Agreement, Court ORDER, and document of any kind in which the **Assumed Liability of State Lemon Law Obligations** is discussed, stated, or mentioned in any way.
  
  - (b) **ORDER** the Governance of General Motors to state to this Court, **under oath**, and under penalty of Perjury, if the new General Motors, LLC, or its governance, was party to an Agreement for ALL State Lemon Law Obligations to be an Assumed Liability of the new General Motors, LLC. [No doubletalk, legalese, or con games, a straight yes or no answer.]

- (c) If General Motors was a party to such an Agreement an **ORDER** from this Court, for the Governance of General Motors to attend a **SHOW CAUSE HEARING** to determine why they should not be held in Contempt, and have **very substantial Sanctions** imposed, for violating this Court's GM Sales **ORDER**, and their **OWN** Agreement, by terrorizing a severely disabled Veteran, and his family, **causing Great Bodily Harm**, and telling both the State Court in Florida, and the United States District Court, that there was no such Agreement, or Court ORDER, and fraudulently claiming that GM is immune from State Lemon Law Obligations because of this bankruptcy case.
- (d) Because of the massive amount of dishonesty by General Motors LLC, and its attorneys, even in the short amount of proceedings Movant has filed in this Court, this Court **MUST** hold General Motors, LLC. responsible for its conduct, and issue an **ORDER** requiring the Governance of General Motors, LLC to review, and assure, that each future document, or response, filed by General Motors, LLC is completely truthful, or face substantial personal Sanctions.

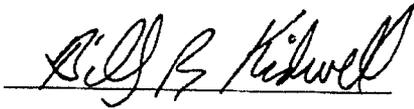
The Record of this Case proves that the above requests are absolutely necessary, pursuant to the unique circumstances of this case, to stop further intentional irreparable harm being inflicted on the severely disabled *Pro Se Litigant*, **in all probability causing his death**, and to get to the truth.

3. This Court **MUST** also set a hearing for Sanctions on the intentional Federal Rules of Bankruptcy Procedure, Rule 9011(B)(1), Rule 9011(b)(2), Rule 9011(b)(3), and Rule 9011(b)(4) violations by the Law Firm of King & Spalding LLP, and King & Spalding Attorneys Arthur Steinberg, and Scott Davidson.

4. Movant seeks any, and all, other relief that this Court deems to be appropriate, and just.

**Pro Bono Publico** this Court should grant this motion.

Respectfully Submitted,



January 6, 2011

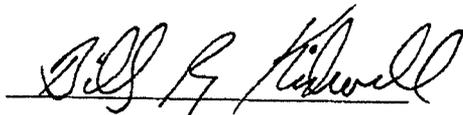
Billy Ray Kidwell

5064 Silver Bell Drive

Port Charlotte, FL. 33948 941 627-0433

CERTIFICATE OF SERVICE

I, Billy Ray Kidwell, hereby certify that a true and correct copy of the attached was served on All Parties on this the 6<sup>th</sup> day of January 2011 by mailing a true and correct copy of same in the U.S. Mail addressed to them.



Billy Ray Kidwell

# EXHIBIT A

AMENDED AND RESTATED  
MASTER SALE AND PURCHASE AGREEMENT

BY AND AMONG

GENERAL MOTORS CORPORATION,

SATURN LLC,

SATURN DISTRIBUTION CORPORATION

AND

CHEVROLET-SATURN OF HARLEM, INC.,

*as Sellers*

AND

NGMCO, INC.,

*as Purchaser*

DATED AS OF

JUNE 26, 2009

---

**Section 2.3(b)(iv), Section 2.3(b)(vi) and Section 2.3(b)(ix), (2) Liabilities arising under any dealer sales and service Contract and any Contract related thereto, to the extent such Contract has been designated as a Rejectable Executory Contract, and (3) Liabilities otherwise assumed in this Section 2.3(a);**

(vi) all Transfer Taxes payable in connection with the sale, transfer, assignment, conveyance and delivery of the Purchased Assets pursuant to the terms of this Agreement;

(vii) (A) all Liabilities arising under express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws;

(viii) all Liabilities arising under any Environmental Law (A) relating to conditions present on the Transferred Real Property, other than those Liabilities described in **Section 2.3(b)(iv)**, (B) resulting from Purchaser's ownership or operation of the Transferred Real Property after the Closing or (C) relating to Purchaser's failure to comply with Environmental Laws after the Closing;

(ix) 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 Sellers (collectively, "Product Liabilities"), which arise directly out of accidents, incidents or other distinct and discreet occurrences that happen on or after the Closing Date and arise from such motor vehicles' operation or performance (for avoidance of doubt, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including asbestos, silicates or fluids, regardless of when such alleged exposure occurs);

(x) all Liabilities of Sellers arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Seller, except for Retained Workers' Compensation Claims;

(xi) all Liabilities arising out of, relating to, in respect of, or in connection with the use, ownership or sale of the Purchased Assets after the Closing;

(xii) all Liabilities (A) specifically assumed by Purchaser pursuant to **Section 6.17** and (B) arising out of, relating to or in connection with the salaries and/or wages and vacation of all Transferred Employees that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date;

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

2011 JAN 10 PM 1:28

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS, FLORIDA

BILLY R. KIDWELL,  
Plaintiff

v.

G. RICHARD WAGONER, et al.,  
Defendant

Case No. 2:09-CV-108-FtM-99DNF

REQUEST FOR CLARIFICATION OF COURT ORDER  
AND VOLUNTARY COMPLIANCE WITH ADA

**I. Introduction**

Both the Americans with Disabilities Act, and the “*Basic Fairness*” Requirements of Due Process, require that this Court clarify, and explain, this Court’s hostile, and extremely ambiguous, Court ORDER of December 28, 2010 that gives the Public Appearance that this case is being “*Fixed*” by a dishonest judge<sup>1</sup>.

The *Pro Se Litigant* cannot make an intelligent decision, as to whether he should Appeal said ORDER for an abuse of discretion, or try to file an Amended Complaint, under this Court’s extreme ambiguous requirements in said ORDER, that are nearly impossible to understand.

That’s because this Court’s ORDER misstates the actual material facts, making a number of statements that the Record of this Case proves are simply not true, while repeatedly contradicting itself.

---

<sup>1</sup> Plaintiff is not accusing this Court of being dishonest but is merely attempting to point out how this case appears to “*Any Reasonable Person*” based on the actual material facts, and Record of this Case, as explained herein.

*For example*, this Court NOW admits that the Bankruptcy Court Sales ORDER makes ALL State Lemon Law Obligations an Assumed Liability for the new General Motors LLC.

Then this Court double-talks and claims the Florida Lemon Law Relief specifically provided for by Florida Law, is not an Assumed Liability for General Motors LLC.

Either Florida's Lemon Law ARE an Assumed Liability for the new General Motors, as the GM Bankruptcy Court ORDER states, or they are not. They can't be both.

If this Court is attempting to only accept limited parts of Florida's Lemon Laws, which should be properly cited as the "*Motor Vehicle Warranty Enforcement Act*", then it **MUST** clarify what pieces, or parts, it accepts as Assumed Liabilities for the new General Motors LLC, and why this Court does not agree with the GM Sales ORDER that states "ALL State Lemon Law Obligations are an Assumed Liability for the new General Motors LLC".

This Court's ORDER needs to be clear and not so conflicting and ambiguous.

## **II. This Court's False Statements in the Court Order as to Florida's Lemon Law**

In this Court's ORDER this Court attempts to re-write Florida's Lemon Laws claiming at page seven (7) that Florida's Lemon Laws "*provides consumers with the right to a refund or replacement vehicle if a manufacturer cannot conform the new motor vehicle purchased by the consumer to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts.*"

That statement is simply not true.

Florida's Lemon Law is actually Title XXXIX, Chapter 681, and according to 681.10 may be cited as the "*Motor Vehicle Warranty Enforcement Act*".

According to the Motor Vehicle Warranty Enforcement Act, if the manufacturer cannot conform the vehicle to its intended use, or does not timely respond, the consumer has an unconditional RIGHT to decide if the consumer wants a replacement vehicle, or a refund. [See yellow highlights on Exhibit A attached hereto.]

681.104(2)(a) specifically requires that “*The refund, or replacement, MUST include all reasonably incurred collateral and incidental charges.*” [Emphasis added. See yellow highlights on Exhibit B.]

Pursuant to Florida’s Motor Vehicle Warranty Enforcement Act the \$50 a day Plaintiff seeks for the cost of a replacement vehicle, the reasonable storage fees for storing the non-running truck, the aggravation of Plaintiff’s disabilities by Defendants leaving a non-running truck, UNDER WARRANTY, in Plaintiff’s driveway, and costs associated with the defective truck, are all 681.104(2)(a) “*reasonably incurred collateral and incidental charges*” 681.104(2)(a) says the manufacturer MUST pay. [See Exhibit B.]

All of Chapter 681, cited as Florida’s Motor Vehicle Warranty Enforcement Act is a STATUTORY State Lemon Law OBLIGATION for the manufacturer, and as this Court NOW admits, all state Lemon Law Obligations are an Assumed Liability of the new General Motors LLC.

Those collateral, and incidental, charges were sought in Plaintiff’s Complaint in Lemon Law Counts IV and V.

Counts IV and V were specifically drafted to comply with Chapter 681, and the specific right of a consumer to file suit for violations of Chapter 681, as specifically authorized by Florida Lemon Law Statutes 681.112, and 681.111. [See Exhibits C and D attached hereto.]

Just as this Court has attempted to re-write Florida’s Lemon Laws, while at the same time NOW ADMITTING all Florida Lemon Law OBLIGATIONS are an Assumed Liability for the new General Motors LLC, this Court has been just as ambiguous in describing Plaintiff’s Counts

IV, and V in his Amended Complaint, which pursuant to Florida Law are Florida Lemon Law **OBLIGATIONS**.

Count IV clearly states that it is a Cause of Action for Intentional Fraud on Florida's Lemon Law Process. This count is authorized by 681.111 which makes any violation of Chapter 681 by a manufacturer an "*Unfair or Deceptive Trade Practice*", and a Statutory Florida Lemon Law **OBLIGATION**.

Count V of Plaintiff's Complaint is specifically authorized by Florida Statute 681.112 which specifically authorizes, and gives consumers a Statutory Right to sue to recover damages caused by a violation of Chapter 681, and makes violations of Chapter 681 a Statutory Florida Lemon Law **OBLIGATION**.

This Court now seeks to arbitrarily, and capriciously, overturn 681.112, and 681.111, without explaining its reasoning, or authority, to do so.

This Court needs to clarify its selective application of Florida's Lemon Laws.

### **III. This Court's Bias Harassment of Plaintiff to wrongly Punish Plaintiff for Intentional Lying by Defendants**

In said ORDER this Court goes out of its way to be-little, and blame, the *Pro Se Litigant* for allegedly "*misapprehending the scope of the GM Sale Approval ORDER*" while this Court fails to mention that Defendants, and their attorneys, Phyllis Sumner, and Henry Salas, intentionally lied to this Court, *multiple times*, stating "*there were no exceptions, that the new General Motors, LLC was absolutely immune from suit for Lemon Law Actions, and Warranty Claims.*" [Emphasis added.]

Nor does the Court correctly state that the *Pro Se Plaintiff* submitted the GM Sales Agreement, and Bankruptcy Sales ORDER, to this Court multiple times, and this Court ignored that evidence, and “*Rubberstamped*” the fraudulent statements made by the GM Defendants fraudulently claiming that “*there were no exceptions, that the new General Motors, LLC was absolutely immune from suit for Lemon Law Actions, and Warranty Claims.*”

**Statements that this Court NOW admits were false, and resulted in an improper judgment by this Court.**

*And as appalling as it is*, this Court attempts to blame the severely disabled *Pro Se Litigant* for the intentional, habitual, lying by GM Attorneys Phyllis Sumner, and Henry Salas, by claiming the *Pro Se Litigant* “*misapprehended the scope of the Sale Approval ORDER.*”

It is the GM Defendants that the record proves have habitually lied throughout these proceedings, who are concealing the key witnesses, who were found at the Florida Quasi-Judicial Lemon Law Hearing to have swindled Plaintiff out of nearly \$30,000 with a non-running truck full of manufacturer defects, who only prevailed by paying a SITEL Employee to fraudulent pose as a GM Executive and to lie about a technicality, and have expanded this case to three Courts with their dishonesty.

The severely disabled Plaintiff respectfully submits that this Court should stop being so “Corporate-Leaning”, and try being impartial by putting the blame, where the blame belongs.

It was the Defendants, with their dishonest corporate attorneys, that lied to this Court saying over, and over, that that “*there were no exceptions, that the new General Motors, LLC was absolutely immune from suit for Lemon Law Actions, and Warranty Claims.*”

It is this Court that issued a wrong decision due to its hate of *Pro Se Litigants*, and this Court’s “*Policy*” of RUBBERSTAMPING anything a Corporation, or Corporate Attorneys, say without even bothering to look at evidence presented by *Pro Se Litigants.*

Now that this Court finds it was lied to, and deceived, by General Motors, and their Corporate Attorneys, resulting in a wrong judgment that this Court had to correct, this Court takes out its anger ON THE VICTIM, a severely disabled *Pro Se Litigant*, who has consistently told the truth.

Plaintiff respectfully submits that this Court should have the courage, and morals, to admit it was wrong, and to be honest and admit it was lied to by General Motors, that the GM Sales ORDER does not make General Motors LLC absolutely immune from suit for its Lemon Law Obligations, as this Court NOW admits.

*In the least*, this Court needs to clarify why it considers only parts of Florida's Lemon Law Manufacturer Obligations an Assumed Liability, and specifically explain what statutes in Chapter 681 this Court considers an Assumed Liability for the new General Motors LLC, and what Florida Lemon Law Obligations this Court claims are not an Assumed Liability for General Motors LLC.

Respectfully submitted,



Billy Kidwell, *Pro Se*

5064 Silver Bell Drive

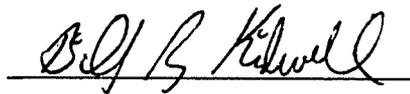
Port Charlotte, FL. 33948

941-627-0433

January 8, 2011

CERTIFICATE OF SERVICE

I, Billy Ray Kidwell, hereby certify that a true and correct copy of the attached Amended Complaint was served on Defendants on this the 8<sup>th</sup> day of January 2011 by mailing a true and correct copy of same to their Attorney, Phyllis B. Sumner, King & Spalding LLP, 1180 Peachtree Street, NE, Atlanta, GA 30309-3521, and the law firm of Cole, Scott & Kissane, 9150 South Dadeland Boulevard, Suite 1400, P.O. Box 569015, Miami, FL. 33156.

A handwritten signature in cursive script, appearing to read "B.R. Kidwell", is written over a horizontal line.

Billy Ray Kidwell

# EXHIBIT A

Florida Lemon Law 681.104 Nonconformity of motor vehicles.--

1.
  1. After three attempts have been made to repair the same nonconformity, the consumer shall give written notification, by registered or express mail to the manufacturer, of the need to repair the nonconformity to allow the manufacturer a final attempt to cure the nonconformity. The manufacturer shall have 10 days, commencing upon receipt of such notification, to respond and give the consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility within a reasonable time after the consumer's receipt of the response. The manufacturer shall have 10 days, except in the case of a recreational vehicle, in which event the manufacturer shall have 45 days, commencing upon the delivery of the motor vehicle to the designated repair facility by the consumer, to conform the motor vehicle to the warranty. If the manufacturer fails to respond to the consumer and give the consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply.
  2. If the motor vehicle is out of service by reason of repair of one or more nonconformities by the manufacturer or its authorized service agent for a cumulative total of 15 or more days, exclusive of downtime for routine maintenance prescribed by the owner's manual, the consumer shall so notify the manufacturer in writing by registered or express mail to give the manufacturer or its authorized service agent an opportunity to inspect or repair the vehicle.
2.
  1. If the manufacturer, or its authorized service agent, cannot conform the motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within 40 days, shall repurchase the motor vehicle and refund the full purchase price to the consumer, less a reasonable offset for use, or, in consideration of its receipt of payment from the consumer of a reasonable offset for use, replace the motor vehicle with a replacement motor vehicle acceptable to the consumer. The refund or replacement must include all reasonably incurred collateral and incidental charges. However, the consumer has an unconditional right to choose a refund rather than a replacement motor vehicle. Upon receipt of such refund or replacement, the consumer, lienholder, or lessor shall furnish to the manufacturer clear title to and possession of the motor vehicle.

# EXHIBIT B

Florida Lemon Law 681.104 Nonconformity of motor vehicles.--

1.
  1. After three attempts have been made to repair the same nonconformity, the consumer shall give written notification, by registered or express mail to the manufacturer, of the need to repair the nonconformity to allow the manufacturer a final attempt to cure the nonconformity. The manufacturer shall have 10 days, commencing upon receipt of such notification, to respond and give the consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility within a reasonable time after the consumer's receipt of the response. The manufacturer shall have 10 days, except in the case of a recreational vehicle, in which event the manufacturer shall have 45 days, commencing upon the delivery of the motor vehicle to the designated repair facility by the consumer, to conform the motor vehicle to the warranty. If the manufacturer fails to respond to the consumer and give the consumer the opportunity to have the motor vehicle repaired at a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply.
  2. If the motor vehicle is out of service by reason of repair of one or more nonconformities by the manufacturer or its authorized service agent for a cumulative total of 15 or more days, exclusive of downtime for routine maintenance prescribed by the owner's manual, the consumer shall so notify the manufacturer in writing by registered or express mail to give the manufacturer or its authorized service agent an opportunity to inspect or repair the vehicle.
2.
  1. If the manufacturer, or its authorized service agent, cannot conform the motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within 40 days, shall repurchase the motor vehicle and refund the full purchase price to the consumer, less a reasonable offset for use, or, in consideration of its receipt of payment from the consumer of a reasonable offset for use, replace the motor vehicle with a replacement motor vehicle acceptable to the consumer. The refund or replacement must include all reasonably incurred collateral and incidental charges. However, the consumer has an unconditional right to choose a refund rather than a replacement motor vehicle. Upon receipt of such refund or replacement, the consumer, lienholder, or lessor shall furnish to the manufacturer clear title to and possession of the motor vehicle.

# EXHIBIT C



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January 07, 2011

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### The 2010 Florida Statutes

[Title XXXIX](#)      [Chapter 681](#)      [View Entire Chapter](#)  
COMMERCIAL RELATIONS    MOTOR VEHICLE SALES WARRANTIES

#### 681.112 Consumer remedies.—

(1) A consumer may file an action to recover damages caused by a violation of this chapter. The court shall award a consumer who prevails in such action the amount of any pecuniary loss, litigation costs, reasonable attorney's fees, and appropriate equitable relief.

(2) An action brought under this chapter must be commenced within 1 year after the expiration of the Lemon Law rights period, or, if a consumer resorts to an informal dispute-settlement procedure or submits a dispute to the division or board, within 1 year after the final action of the procedure, division, or board.

(3) This chapter does not prohibit a consumer from pursuing other rights or remedies under any other law.

History.— ss. 10, 19, ch. 88-95; s. 4, ch. 91-429.

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# EXHIBIT D



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January 07, 2011

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## The 2010 Florida Statutes

[Title XXXIX](#)

[Chapter 681](#)

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### COMMERCIAL RELATIONS MOTOR VEHICLE SALES WARRANTIES

681.111 Unfair or deceptive trade practice.—A violation by a manufacturer of this chapter is an unfair or deceptive trade practice as defined in part II of chapter 501.

History.— s. 7, ch. 85-240; ss. 9, 19, ch. 88-95; s. 4, ch. 91-429.

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Plaintiff knows that United States District Court Judge Honeywell, a noted former Corporate Attorney, who is highly educated, is fully aware of what an “*Assumed Asset*” is.

And that no person, of “*Reasonable Intelligence*”, could read the Bankruptcy Court ORDER of United States Bankruptcy Judge Gerber, Authorizing the Sale of Assets pursuant to the Amended and Restated Master Sale and Purchase Agreement, and not know, beyond any doubt whatsoever, that all GM Vehicle Purchases PRIOR to the closing of the 363 Transaction, such as Plaintiff’s Truck, were classified as an Assumed Asset, and Assumed Obligation of the new General Motors, LLC.

That the Bankruptcy Court ORDER not only doesn’t “*barr*” Plaintiff’s claims in this case, but SPECIFICALLY AUTHORIZES THEM.

That’s because throughout Judge Gerber’s Court ORDER he specifically states;

***“The Purchaser (General Motors, LLC) is assuming the obligations of the Sellers (the former General Motors Corporation) subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles PRIOR to the closing of the 363 Transaction and specifically identified as a Warranty”.*** [See Exhibit A attached hereto].

Plaintiff has submitted to this Court, several times, the complete Court ORDER of Judge Gerber’s Bankruptcy Court, dated July 5, 2009, and also the Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., which is now called General Motors, LLC by this Court.

Both documents, at every single place they discuss Consumer Vehicle Warranties, and Consumer Rights to State Lemon Law Processes, and Related Regulatory Obligations under such statutes, makes it extremely clear that **NO CONSUMER WOULD BE DENIED A CONSUMER RIGHT DUE TO THE BANKRUPTCY BECAUSE THOSE OBLIGATIONS WERE BEING PASSED TO THE NEW OWNER AS AN ASSUMED ASSET.**

This Court, like most of America, is aware that the Chairman of the Board of Directors of General Motors, LLC, and the President of the United States, went on National Television, many

times, in a series of advertisements explaining that the Bankruptcy of GM would not affect a single Vehicle Warranty. **That all GM Warranties, and related rights, would be honored.**

The United States Congress was personally promised by the Chairman of the Board of General Motors that if Congress supplied bailout monies not a single Warranty Claim would be affected by the Bankruptcy of General Motors.

President Obama went on National TV and notified the public, *including this Court*, multitable times, that in case the new General Motors, LLC did not have enough money to honor warranties the United States Government had set up a Federal Fund to pay warranty claims. That ALL pre-bankruptcy Warranty Claims, and Warranty Rights, would be honored.

**The honoring of GM Vehicle Warranties is extremely important to the Bankruptcy Court, to the Sale Court ORDER, to the GM Sale Agreement, the the President of the United States, to the United States Congress, and to the security of this Country, because the Public Faith in GM Vehicles would be completely destroyed if GM used a Bankruptcy to avoid honoring warranties.**

The *Pro Se Plaintiff* realizes that this Court has an extreme intense personal antipathy against *Pro Se Litigants* that has affected the judgment of this Court in several Court ORDERS, and is demonstrated by the great disparity in the treatment of the parties by this Court.

The *Pro Se Plaintiff* also realizes that Defendants, and their attorneys, have a number of strong "*connections*", and ties, with the judges in this Court.

Defendant's Attorney is a "*Fellow United States Attorney*" with the magistrate in this case.

Defendant's Attorney is also a "*Fellow Corporate Attorney*" hostile towards "*Plaintiffs against Corporations*", exactly like Judge Honeywell, which might explain Judge Honeywell's

extreme hostility against the *Pro Se Litigant*, for merely seeking a little honesty in this case, with his Request for a Pollygraph Test<sup>1</sup>.

*However*, being extremely bias does not authorize, or entitle, Judge Honeywell to violate the clear intent of Congree, violate Official American Policy set by the President of the United States to stabilize the American Auto Industry, violate the GM Sales Agreement, and overturn the Court ORDER of Bankruptcy Judge Gerber.

**THEREFORE**, the *Pro Se Plaintiff* respectfully submits, as Exhibit A attached hereto, page 44 of United States Bankruptcy Judge Robert Gerber's Order of July 5, 2009 **SPECIFICALLY**, and **VERY CLEARLY**, stating that Vehicle Warranties, *prior to the bankruptcy*, as in this case with Plaintiff's S-10 Lemon Truck, are an **Assumed Asset** passed on to the new General Motors, LLC. [See Exhibit A attached hereto].

**Since this Court does not like to view evidence, or read Exhibits, presented by *Pro Se Litigants* the *Pro Se Plaintiff* has highlighted the relivent statement in bright yellow.** [See Exhibit A].

This Court in its Court ORDER of September 10, 2010 fraudulently states that "*each of Plaintiff's claims against General Motors is barred by an order of the Bankruptcy court and will be dismissed with prejudice*".

And to justify such an outrageous, fraudulent statement this Court intentionally misquotes the Bankruptcy Order by taking a partical statement, made in the section of the Bankruptcy ORDER that has absolutely nothing to do with Plaintiff's claims, and discusses the sale of land, fully knowing that none of Plaintiff's claims are about land, and quotes that partical statement in an attempt to deceive the lessor educated *Pro Se Litigant*, and get by with fixing this case for a fellow corporate attorney.

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<sup>1</sup> It should be noted that the 11<sup>th</sup> Circuit has allowed Pollygraph Tests in other Civil Proceedings and any Pro Se Litigant would believe such a request to be in Good Faith. Yet Judge Honeywell threatened the Pro Se Litigant for filing his motion merely seeking a little honesty.

Judge Charlene Edwards Honeywell is fully aware that in the Bankruptcy Court ORDER, AFTER discussing GM Land Holdings, when the Bankruptcy Court changed the discussion in its Court ORDER to Vehicle Warranties, consumer rights, and Lemon Law Proceedings, WHICH IS WHAT THE PRO SE LITIGANT'S CLAIMS ARE ALL ABOUT, the Bankruptcy Court stated at the bottom of Page 44;

***“NOTWITHSTANDING THE FOREGOING, the Purchaser (General Motors, LLC) has assumed the Sellers’ obligations under state lemon law statutes, which require a manufacturer to provide a customer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.”***

First, it should be noted that the Bankruptcy Court used the EXACT wording of the Federal Magnuson-Moss Warranty Act, and was addressing all the states, and stated “*Other Related Regulatory Statutes*” making it clear beyond any doubt the Bankruptcy Court specifically authorized Magnuson-Moss Warranty Act Claims such as Plaintiff’s.

So this Court will not keep relying on a partial statement, taken out of context, that related to land sales, and does not seem to understand what the statement **“NOTWITHSTANDING THE FOREGOING”** means the Plaintiff has attached hereto marked as Exhibit B the definition of **“NOTWITHSTANDING THE FOREGOING”** by Dictionary.com.

In addition, to make this Court’s understanding extremely clear Plaintiff has also attached the definition of **“NOTWITHSTANDING THE FOREGOING”** by WordReference.com and marked that attached Exhibit as Exhibit C.

Research on the internet has revealed that all the experts agree that the Bankruptcy Court statement **“NOTWITHSTANDING THE FOREGOING”** as an introduction when the Bankruptcy Court starts addressing Vehicle Warranties, and Consumer State Lemon Law, and Magnuson-Moss Warranty Rights, means this Court MUST ignore the prior partial statement

that it is relying it's Court ORDER on, and accept the Bankruptcy Court clarification that Plaintiff's Claims ARE specifically authorized by the Bankruptcy Court.

Attached hereto and marked Exhibit D and highlighted in yellow is page 44 of Bankruptcy Judge Robert E. Gerber's Decision stating "**NOTWITHSTANDING THE FOREGOING**" and then going on and specifically describing how Vehicle Warranty Claims, Lemon Law Proceedings, and Magnuson-Moss Warranty Act Claims are specifically authorized by the Banruptcy Court, and are an Assumed Obligation of the new General Motors, LLC.

Being consistant with it's policy of not actually viewing evidence before making a favorable decision for fellow Corporate Attorneys Judge Honeywell quotes *In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009) as an authority for her violating the Bankruptcy Court ORDER.

*In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009) , like the Bankruptcy Court ORDER, supports the Plaintiff, and specifically gives GM Vehicle Owners the right to sue, which this Court would have known if it had actually READ the case instead of "Rubberstamping" statements made by Defendant's "Fellow Corporate Attorney" in motions.

*In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009) , specifically states;

"Under the terms of the Sale Approval Order GM did not assume any of the liabilities **EXCEPT FOR SPECIFIC EXCEPTIONS FOR ASSUMED LIABILITIES**" [Emphasis Added].

*In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009) , went on to state;

"Under ARMSPA § 2.3(a)(vii)(A) "Assumed Liabilities" only include all liabilities arising under express written warranties, that are specifically identified as warranties delivered in connection with new, or pre-owned, GM Vehicles prior to, or after, the sale closing."

*Simply put, all of the evidence, the GM Sales Agreement, the Bankruptcy Court ORDER, statements of the Chairman of GM, statements by the President of the United States, testimony before Congress, In re General Motors Corp., 407 B.R. 463 (Bankr. S.D.N.Y. 2009), everything agrees that GM Vehicle owners, like Plaintiff, prior to, and after the bankruptcy, have full warranty, Lemon Law, and Magnuson-Moss Warranty Rights, including the right to sue as specifically authorized by Florida's State Lemon Law Statutes, and the Magnuson-Moss Warranty Act.*

This Court lacks jurisdiction to reverse the judgment of the Bankruptcy Court as it is clearly trying to do, for a fellow Corporate Attorney.

Attached hereto, and marked as Exhibit E, and highlighted in yellow, is the specific ORDER of United States Bankruptcy Judge Gerber that "*the Bankruptcy Court retains EXCLUSIVE Jurisdiction to enforce, and Implement, the terms, and provisions, of the Bankruptcy Court ORDER*".

This Court MUST read Exhibit F attached hereto in its entirety.

## RELIEF

1. This Court must actually view the evidence and issue a Court ORDER reversing its prior judgment that is in conflict with the Bankruptcy Court.
2. This Court MUST stop misusing its Public Office to harass the severely disabled *Pro Se Litigant* for a "*Fellow Corporate Attorney*", and make decisions based on the law, and evidence.
3. This Court MUST re-instate all Warranty Claims, all Florida State Lemon Law Claims, all Magnuson-Moss Warranty Act Claims, and all related claims against General Motors, LLC as authorized by the Bankruptcy Court ORDER, as Assumed Assets of General Motors, LLC.

4. This Court must START being an "*Impartial Hearing Body*" and impose Sanctions, and reasonable damages, for the massive harassment, and substantial harm to Plaintiff's health, by this Court merely "*Rubberstamping*" fraudulent statements by a fellow Corporate Attorney, instead of actually viewing the evidence.
5. Plaintiff seeks any, and all, other relief that he is entitled to.

Respectfully Submitted,



September 21, 2010

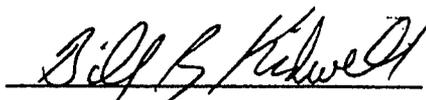
Billy Ray Kidwell

5064 Silver Bell Drive

Port Charlotte, FL. 33948 941 627-0433

CERTIFICATE OF SERVICE

I, Billy Ray Kidwell, hereby certify that a true and correct copy of the attached was served on Defendants on this the 21<sup>st</sup> day of September 2010 by mailing a true and correct copy of same to their Attorney, Phyllis B. Sumner, King & Spalding LLP, 1180 Peachtree Street, NE Atlanta, GA 30309-3521, and the law firm of Cole, Scott & Kissane, 9150 South Dadeland Boulevard, Suite 1400, P.O. Box 569015, Miami, FL. 33156.



Billy Ray Kidwell

CERTIFICATE OF COMPLIANCE

The *Pro Se Plaintiff*, Billy Ray Kidwell, has contacted attorneys for the GM Defendants several months ago asking GM Attorneys Phyllis Sumner, and Henry Salas, for a phone number, and time to confer. Attorneys Phyllis Sumner, and Henry Salas, have never responded.

Both of those attorneys absolutely refuse to confer, or respond, and refuse to abide by Local Rule 3.01(g).

In recent motions Attorneys Phyllis Sumner, and Henry Salas, have intentionally lied to this Court, fraudulently claiming that Plaintiff alleges he does not have a phone number for those attorneys. Plaintiff has never alleged that.

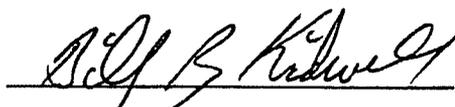
Plaintiff has one phone number for Attorney Phyllis Sumner, 404 572-4600, and another number for Attorney Henry Salas, 305 350-5300, and has e-mailed both attorneys and asked who he should call, and what time they want to confer, and neither attorney has responded, despite Plaintiff e-mailing them around six months ago.

Plaintiff filed motions in this Court seeking a Court Order to require all parties to confer to reduce litigation. Both Attorney Phyllis Sumner, and Henry Salas opposed those motions, and they are still pending.

Attorneys Phyllis Sumner, and Henry Salas, constantly file motions in this Court in which that habitually lie and say they are willing to confer but yet not once have the asked the Plaintiff for a time to call and discuss a motion, and not once have they called the Plaintiff.

Plaintiff cannot get Attorneys Phyllis Sumner, and Henry Salas, to make any attempt to confer, even though they lie in their motions and fraudulently claim that they will.

The only party that has made any effort to confer has been the *Pro Se Litigant*.

  
Billy Ray Kidwell

# EXHIBIT A

54. Any amounts that become payable by the Sellers to the Purchaser pursuant to the MPA (and related agreements executed in connection therewith, including, but not limited to, any obligation arising under Section 8.2(b) of the MPA) shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the MPA without further Court order.

55. The transactions contemplated by the MPA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the 363 Transaction shall not affect the validity of the 363 Transaction (including the assumption and assignment of any of the Assumable Executory Contracts and the UAW Collective Bargaining Agreement), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

56. The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials. Notwithstanding the foregoing, the Purchaser has assumed the

# EXHIBIT B

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notwithstanding

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- Notwithstanding claus...
Notwithstanding or re...
Notwithstanding the f...
Notwithstanding claus...
Notwithstanding anyth...
Canadian notwithstand...
Despite
In spite of
Nevertheless
Govern
Albeit
Pursuant

Synonyms

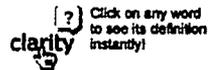
- nevertheless
nonetheless
against
despite
though
but
yet

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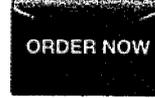
- notus
notuses
notwheat
notwithstanding
network
nouadhibou
nouakchott

Faster Definitions



Did you know: You look for a Web page and it says "Error 404 Not Found." What do the numbers mean?

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not-with-stand-ing

[not-with-stand-ing, -with-] Show IPA

-preposition

- 1. in spite of; without being opposed or prevented by:
Notwithstanding a brilliant defense, he was found guilty. She went to the game anyway, doctor's orders notwithstanding.

-conjunction

- 2. in spite of the fact that; although: It was the same material, notwithstanding the texture seemed different.

-adverb

- 3. nevertheless; anyway; yet: We were invited notwithstanding.

Use notwithstanding in a Sentence

Origin: 1350-1400; ME (prep., adv., and conj.); see not, withstand, -ing2

-Synonyms

1. NOTWITHSTANDING, DESPITE, IN SPITE OF imply that something is true even though there are obstacles or opposing conditions. The three expressions may be used practically interchangeably. NOTWITHSTANDING suggests, however, a hindrance of some kind: Notwithstanding the long delay, I shall still go. DESPITE indicates that there is an active opposition: Despite procrastination and disorganization, they finished the project. IN SPITE OF implies meeting strong opposing forces or circumstances that must be taken into account: She succeeded in spite of many discouragements.

-Antonyms

- 1. because of, on account of.

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Honda Certified Used Cars

**notwithstanding** (ˌnɒtwɪðˈstændɪŋ, -wɪð-) 

— **prep**

1. ( *often immediately postpositive* ) in spite of; despite

— **conj**

2. despite the fact that; although

— **sentence connector**

3. in spite of that; nevertheless

[C14: not + *withstanding*, from Old English *withstandan*, on the model of Medieval Latin *non obstante*, Old French *non obstant* ]

Collins English Dictionary - Complete & Unabridged 10th Edition  
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### Word Origin & History

**notwithstanding**

late 14c., *notwɪstondynge*, from not + *prp.* of the verb *withstand* (q.v.). A loan-translation of L. *non obstante* "being no hindrance."

Online Etymology Dictionary. © 2010 Douglas Harper  
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### Famous Quotations

**notwithstanding**

"When men consider the great pains, industry, and parts,..."

"Most of our platitudes notwithstanding, self-deception ..."

"Shelley is truth itself—and honour itself—notwithstandi..."

"I will therefore ... that women adorn themselves in mod..."

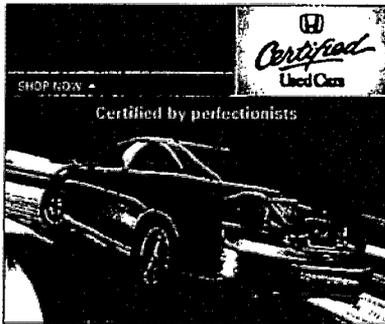
"... whilst you are proclaiming peace and good will to m..."

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notwithstanding

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# EXHIBIT C

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### See Also:

- Notoryctus typhlops
- Notostraca
- Notropis
- Notropis atherinoides
- Notropis comutus
- not suitably
- not surprised
- not to mention
- not traded
- not very likely
- notwithstanding
- not yet
- Nouakchott
- nougat
- nougat bar
- nought
- noughts and crosses
- noumenon
- noun
- noun phrase
- nourish

### Links:

- Forums
- Support WR
- Link to WR
- Bookmark this site
- Suggestions
- Click on word:
  - gets translation
  - does nothing

**notwithstanding:** in Spanish | in French | in Italian in context | images

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### notwithstanding

A adverb

1 however, nevertheless, withal, still, yet, all the same, even so, nonetheless, **notwithstanding**

*despite anything to the contrary (usually following a concession); "although I'm a little afraid, however I'd like to try it"; "while we disliked each other, nevertheless we agreed"; "he was a stern yet fair master"; "granted that it is dangerous, all the*

### Forum discussions with the word(s) "notwithstanding" in the title:

- nevertheless - notwithstanding
- notwithstanding
- notwithstanding
- notwithstanding
- Notwithstanding
- notwithstanding
- Notwithstanding 'many / the many' things ....
- Notwithstanding any other provision of law
- Notwithstanding anything contrary
- notwithstanding as a preposition
- notwithstanding the foregoing
- Notwithstanding/irrespective/regardless
  - Ask in the forums yourself.
  - Visit the English Only Forum.

Look up "notwithstanding" at Meriam-Webster  
Look up "notwithstanding" at dictionary.com

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# EXHIBIT D

54. Any amounts that become payable by the Sellers to the Purchaser pursuant to the MPA (and related agreements executed in connection therewith, including, but not limited to, any obligation arising under Section 8.2(b) of the MPA) shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the MPA without further Court order.

55. The transactions contemplated by the MPA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the 363 Transaction shall not affect the validity of the 363 Transaction (including the assumption and assignment of any of the Assumable Executory Contracts and the UAW Collective Bargaining Agreement), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

56. The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials. Notwithstanding the foregoing, the Purchaser has assumed the

# EXHIBIT E

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

# EXHIBIT F

54. Any amounts that become payable by the Sellers to the Purchaser pursuant to the MPA (and related agreements executed in connection therewith, including, but not limited to, any obligation arising under Section 8.2(b) of the MPA) shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the MPA without further Court order.

55. The transactions contemplated by the MPA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the 363 Transaction shall not affect the validity of the 363 Transaction (including the assumption and assignment of any of the Assumable Executory Contracts and the UAW Collective Bargaining Agreement), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

56. The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials. Notwithstanding the foregoing, the Purchaser has assumed the

Sellers' obligations under state "lemon law" statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.

57. Subject to further Court order and consistent with the terms of the MPA and the Transition Services Agreement, the Debtors and the Purchaser are authorized to, and shall, take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, (a) the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' business, and (b) the cash management system maintained by the Debtors prior to the Closing, as such system may be necessary to effect the orderly administration of the Debtors' estates.

58. The Debtors are authorized to take any and all actions that are contemplated by or in furtherance of the MPA, including transferring assets between subsidiaries and transferring direct and indirect subsidiaries between entities in the corporate structure, with the consent of the Purchaser.

59. Upon the Closing, the Purchaser shall assume all liabilities of the Debtors arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Debtor, except for workers' compensation claims against the Debtors with respect to Employees residing in or employed in, as the case may be as defined by applicable law, the states of Alabama, Georgia, New Jersey, and Oklahoma.

60. During the week after Closing, the Purchaser shall send an e-mail to the Debtors' customers for whom the Debtors have usable e-mail addresses in their database, which will provide information about the Purchaser and procedures for consumers to opt out of being

# **EXHIBIT B**

HEARING DATE AND TIME: TO BE DETERMINED  
OBJECTION DATE AND TIME: November 22, 2010 at 4:00 p.m. (Eastern Time)

KING & SPALDING LLP  
1185 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 556-2100  
Facsimile: (212) 556-2222  
Arthur Steinberg, Esq.  
Scott Davidson, Esq.

*Counsel to General Motors LLC*

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

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

**OBJECTION BY GENERAL MOTORS LLC TO *PRO SE* MOTION TO SHOW  
CAUSE WHY GENERAL MOTORS LLC., AND ITS CORPORATE  
GOVERNANCE, SHOULD NOT BE HELD IN CONTEMPT FOR  
INTENTIONALLY VIOLATING THIS COURT'S ORDERS, WHILE  
TERRORIZING A DISABLED COMBAT VETERAN, AND HIS FAMILY**

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

General Motors LLC (f/k/a General Motors Company) (“**New GM**”), by and through its undersigned counsel, hereby submits this objection (“**Objection**”) to the *pro se Motion to Show Cause Why General Motors LLC., and Its Corporate Governance, Should Not be Held in Contempt for Intentionally Violating this Court’s Orders, While Terrorizing a Disabled Combat Veteran, and His Family*, dated September 20, 2010 (“**Motion**”), filed by Billy Ray Kidwell (“**Movant**”).<sup>1</sup> In support of this Objection, New GM respectfully represents as follows:

### INTRODUCTION

1. The Motion seeks to hold New GM in contempt for its alleged failure to comply with Orders of this Court. As will be further explained below, New GM has fully complied with the Orders of this Court, including the Sale Order (as herein defined). The Motion is the latest pleading filed by the Movant in a long line of fruitless attempts by him to have General Motors Corp. (“**Old GM**”) and now New GM held accountable for alleged liabilities arising from a purportedly defective Chevy S-10 pickup truck purchased by Movant in 2003. Although Movant asserts that all he wants is “his day in Court” (Motion, p. 1), as demonstrated below, Movant has unquestionably already had his day in court, and then some. What Movant really seeks is to forum shop, after he was denied the very same relief against New GM which he now seeks in this Court.

2. Movant began this odyssey in 2005 with the filing of an arbitration proceeding *pro se* in which Movant was unsuccessful in his effort to obtain relief under Florida’s Lemon Law for his purportedly defective Chevrolet S-10 pickup truck. Instead of seeking review

---

<sup>1</sup> By Endorsed Order dated November 1, 2010, the Court declined to enter an order to show cause in connection with the Motion. Instead, the Court directed the above-captioned Debtors and/or New GM to respond to the Motion within three weeks of the entry of the Endorsed Order. A non-evidentiary hearing will be scheduled by the Court thereafter.

through the established procedures for the Better Business Bureau (“**BBB**”) Auto Line Arbitration by applying to the Florida New Motor Vehicle Arbitration Board for review, Movant, *pro se*, brought a multi-count action against Old GM and one of its employees in Florida state court alleging fraud. *See Kidwell v. General Motors Corp.*, 975 So. 2d 503, 505 (Fla. Dist. Ct. App. 2007)(“[I]f Kidwell was dissatisfied with the decision of the BBB arbitrator he could have sought review by applying to the Florida New Motor Vehicle Arbitration Board, which he failed to do.”)(citation omitted) In the state court action, Movant alleged that he purchased a defective GM vehicle and that Old GM and its representative committed fraud in the arbitration proceeding. *Kidwell*, 975 So. 2d at 504. The trial court dismissed the fraud claims in their entirety; the Florida Second District Court of Appeals affirmed the dismissal of the fraud claim against GM’s employee. The Florida Second District Court of Appeals found that “Kidwell’s contention that the BBB arbitration process lacks impartiality . . . is without merit.” *Id.* at 505.

3. Unsatisfied with how the state court action was proceeding, Movant then filed an action (“**Florida District Court Action**”) *pro se* in the United States District Court for the Middle District of Florida (“**Florida District Court**”) in February, 2009 accusing Old GM’s former CEO and various current and former GM Board of Directors of “com[ing] together to make a Corporate Rico Crime Family” “very similar to a Mafia Crime Family.” Amended Complaint (as defined below), ¶¶ 1, 156. In his Florida District Court action, Movant claimed that the former CEO and Old GM Board acted as “a Mafia Don, and his Lieutenants,” while Old GM employees serve as “‘*soldiers*’, much like in the mob.” Amended Complaint, ¶ 158. Movant claimed that this “Crime Family” engaged in numerous RICO Predicate Acts to “trick[]” consumers into purchasing Old GM vehicles, such as Plaintiff’s Chevrolet S-10 pickup truck, which was allegedly “fraudulently portrayed” as being “*Built like a Rock.*” Amended

Complaint, ¶¶ 3, 45, 152-53. Movant further claimed that he “has suffered . . . from years of inhuman torture at the hands of this RICO Enterprise,” “has been terrorized” by Defendants, and has “in essence los[t] five years of his life due to the . . . hardship intentionally inflicted on him by the multi-millionaire Defendants, with their inhuman greed, and lack of ethics.” Amended Complaint, ¶¶ 6(j), 207, 212.

4. Movant’s numerous claims in the Florida District Court Action include: (i) fraudulent advertising; (ii) wire and mail fraud; (iii) breach of warranty; (iv) fraud on the lemon law process and the state statute; (v) fraud on state courts; (vi) violation of the Magnuson-Moss Warranty Act; (vii) violation of Movant’s state and federal statutory rights; (viii) violation of Movant’s constitutional rights; and (ix) violation of RICO and conspiracy to violate RICO. Movant, thereafter filed an amended complaint (“**Amended Complaint**”)<sup>2</sup> on August 27, 2009 in the Florida District Court, purportedly to add New GM as a defendant, alleging that Old GM somehow induced Movant to purchase his Chevy truck through fraudulent advertising and, later, obstructed his Lemon Law claim through fraud on the courts. Although Movant’s claims primarily revolved around fraud and the civil RICO statute in the Florida District Court Action, Movant also asserted causes of action against New GM for breach of warranty and violation of Florida’s Lemon Law. Of course, both the warranty on his vehicle and the Lemon Law rights period as defined by Florida law had expired long before New GM was created. Moreover, Movant has already lost his Lemon Law arbitration and New GM was never involved in responding to Movant’s state court lawsuit or the “warranty” issues alleged therein.

5. In response to the Amended Complaint, New GM filed a motion to dismiss (“**Dismissal Motion**”) in the Florida District Court. In that Dismissal Motion, New GM pointed out (among other things) that the Movant’s claims were barred by this Court’s Order, dated July

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<sup>2</sup> A copy of the Amended Complaint is annexed hereto as Exhibit “A.”

5, 2009 (“**Sale Order**”), which authorized and approved the sale of substantially all of the Debtors’ assets to New GM, free and clear of all of the Debtors’ liabilities, except for those expressly assumed by New GM (which are not applicable to the case at bar) under the Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (“**MSPA**”). Movant did not oppose New GM’s Dismissal Motion, and that any assertion to the contrary was required to be adjudicated by the Bankruptcy Court.

6. While Movant never filed an opposition to New GM’s Dismissal Motion, he churned the docket by filing more than 100 notices, motions, and other pleadings. In at least 60 of those filings, Movant accused Old GM, its executives, its counsel, as well as the courts of fraud, dishonesty, criminal misconduct, and trying to kill him.<sup>3</sup>

7. By Order dated September 10, 2010 (“**September 10 Order**”),<sup>4</sup> the Florida District Court granted New GM’s Dismissal Motion. The Florida District Court found that Movant’s claims were, indeed, barred by the Sale Order because New GM purchased the Debtors’ assets “‘free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever . . . including right or claims based on any successor or transferee liability.’” September 10 Order, at p. 6 (quoting Sale Order). While the Florida District Court noted that this provision of the Sale Order was subject to certain exceptions, it found that none of those exceptions applied in this matter. *Id.* at p. 6 n.2. Holding that New GM acquired the Debtors’ assets free and clear of all claims made by Movant, the Florida District Court dismissed the claims against New GM with prejudice.<sup>5</sup>

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<sup>3</sup> A copy of the Florida District Court’s docket is annexed hereto as Exhibit “B.”

<sup>4</sup> A copy of the September 10 Order is annexed hereto as Exhibit “C.”

<sup>5</sup> Movant subsequently filed a motion for reconsideration of the September 10 Order (“Reconsideration Motion”) and a notice of appeal with respect to the September 10 Order. The 11<sup>th</sup> Circuit Court of Appeals issued a notice on November 16, 2010 suspending the appeal until the Florida District Court rules on the Reconsideration Motion. New GM responded to the Reconsideration Motion but a ruling on that motion has not yet been issued by the Florida District Court. In New GM’s response to the Reconsideration Motion, it noted that paragraph 71 of the Sale

8. Having been unsuccessful in the Florida state and federal courts, Movant now comes before this Court, seeking a third bite at the apple by making the same arguments advanced in the other tribunals. However, as found by the Florida District Court, the Sale Order unquestionably protects New GM from the claims of Movant; claims that clearly arose pre-petition and prior to the entry of the Sale Order. Despite Movant's allegations to the contrary, as already held in the Florida District Court Action, New GM did not assume the liabilities asserted by Movant as part of the sale of the Debtors' assets. New GM has never violated the Sale Order; to the contrary, New GM is appropriately relying on the Sale Order to bar Movant's continued, wrongful prosecution of his purported claims.

9. Sifting out Movant's unfounded allegations of misconduct, the only conceivable issue before the Court is whether New GM appropriately argued in the other proceedings that the Sale Order and MSPA bar Movant's claims against New GM.<sup>6</sup> While New GM assumed some obligations of the Debtors in connection with certain "express written warranties of [the Debtors] that are specifically identified as warranties and delivered in connection with the sale of" specified vehicles (see MSPA, § 2.3(a)(vii)), New GM only assumed the obligation to fund and otherwise support the standard limited warranties of repair issued by Old GM. For avoidance of the doubt, the MSPA expressly defines as a "Retained Liability" (*i.e.*, a liability not assumed by New GM), "all Liabilities arising out of 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 [Old GM]." MSPA,

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Order provides that this Court has exclusive jurisdiction to enforce and implement the terms and provisions of the Sale Order and MSPA, and that if the Florida District Court had any doubt as to whether Movant's claims should be dismissed, it could either (i) dismiss the claims without prejudice to allow Movant to re-file them in this Court, or (ii) transfer the matter to this Court because Movant's violation of the Sale Order is a core matter involving the interpretation and enforcement of one of the most important orders in the Debtors' bankruptcy case.

<sup>6</sup> Movant's due process and other constitutional complaints all emanate out of this one basic issue because the State Lemon Law Action (as defined in the Motion) was enjoined against New GM pursuant to the Sale Order.

§2.3(b)(xvi). Movant's allegations fall squarely within this exclusion. Here, Old GM's express warranty on Movant's vehicle is expressly limited to repair of specific defects in material and workmanship if the vehicle is presented to an authorized dealer within the express time and distance limitations of the warranty. The express warranty specifically provides that performance of repairs and needed adjustments is the Movant's exclusive remedy. *New GM did not assume other liability claims relating to alleged warranties*, including liability for personal injuries, economic loss, or expenses. Thus, under the Sale Order, New GM did not assume any civil liability for the damages Movant sought in his Amended Complaint as a result of Old GM's alleged breach of warranty.

10. Similarly, although New GM assumed certain responsibilities pursuant to state Lemon Laws, the claims asserted by Movant (which referenced the allegedly wrongful conduct of Old GM) are not among them. *See* paragraphs 17-18, *infra*. Nevertheless, the simplest response to Movant's invocation of the Lemon Law is that he pursued a state Lemon Law remedy against Old GM in 2005. **He lost.** *See Kidwell v. General Motors Corp.*, 975 So. 2d 503, 505 (Fla. Dist. Ct. App. 2007).

11. Accordingly, as New GM appropriately cited and made no misrepresentations concerning the Sale Order in the Florida District Court, the Motion should be denied in its entirety.

### **OBJECTION**

12. As this Court is aware, New GM acquired substantially all of the assets of Old GM on July 10, 2009 in a transaction executed under the jurisdiction and pursuant to approval of this Court. *See generally* Sale Order. In acquiring these assets, New GM did not (with some limited exceptions not applicable here) assume the liabilities of Old GM. For example, New GM did not assume responsibility for product liability claims arising from incidents involving Old

GM vehicles that occurred before the July 10, 2009 closing date of the sale. *See In re General Motors Corp.*, 407 B.R. 463, 499-507 (Bankr. S.D.N.Y. 2009)(overruling objections by tort claimants seeking to preserve claims against New GM).

13. The scope and limitations of New GM’s responsibilities are defined in the Sale Order, which is, and has been for over a year, a final binding order. The Sale 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 . . . .”* Sale Order, ¶ 7 (emphasis added).

14. New GM did not assume liability for the claims asserted by Movant. While New GM assumed some obligations of Old GM in connection with certain “express written warranties of [Old GM] that are *specifically identified as warranties and delivered in connection with the sale of*” specified vehicles (MSPA, § 2.3(a)(vii)), the effect was that *New GM only assumed the obligation to fund and otherwise support the standard limited warranty of repair issued by Old GM.* (emphasis added). *See* Sale Order, ¶ 56 (New GM assumed express warranties “subject to conditions and limitations contained” therein). Old GM’s standard limited warranty provides only for “repairs to the vehicle during the warranty period in accordance with the following terms, conditions and limitations.” *See* Old GM 2003 Chevrolet Light Duty New Vehicle Limited Warranty (“**Old GM Limited Warranty**”) at 4.<sup>7</sup>

15. The express written warranty for Movant’s vehicle contains the following limitations on New GM’s liability:

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<sup>7</sup> A copy of the Old GM Limited Warranty is annexed hereto as Exhibit “D.” The warranty expressly provides that “[p]erformance of repairs and needed adjustments is the exclusive remedy under this written warranty . . . .” *Id.* at 8 (emphasis added).

- “General Motors shall not be liable for incidental or consequential damages (such as, but not limited to, lost wages or vehicle rental expenses) resulting from breach of this written warranty or any implied warranty.” (Old GM Limited Warranty at 8.)
- “Economic loss or extra expense is not covered. Examples include:
  - Loss of vehicle use
  - Inconvenience
  - Storage
  - Payment for loss of time or pay
  - Vehicle rental expense
  - Lodging, meals, or other travel costs
  - State or local taxes required on warranty repairs” (*Id.* at 7.)
- To obtain repairs to one’s vehicle, the owner must “take the vehicle to a Chevrolet dealer facility within the warranty period and request the needed repairs.” (*Id.* at 5.)
- The warranty coverage extends only for three years or 36,000 miles, whichever comes first. (*Id.* at 4.)

Except for the foregoing, New GM did not assume other liability claims relating to alleged “warranties.” Indeed, to say New GM assumed “warranty liabilities” is misleading and wrong in more contexts than it is correct. Under the Sale Order, New GM assumed liability only for “repairs and needed adjustments” and not for any other damages, including economic loss, expenses, or personal injuries.

16. To be sure, New GM understands that the distinction between the express limited warranty delivered at the time of sale and other concepts that commonly involve use of the word “warranty” (such as “statutory warranties,” “implied warranties,” and “express warranties” contended to arise by reason of writing or statements other than Old GM’s express limited

warranty) may be difficult for a *pro se* litigant to understand. However, the Sale Order expressly made this point clear when it provided that New GM “is assuming the obligations of [Old GM] pursuant to and *subject to conditions and limitations contained in* their express written warranties . . . .” Sale Order, ¶ 56 (emphasis added). Moreover, to avoid confusion, the Sale Order clarifies that New GM “is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner’s manuals, advertisements, and other promotional materials, catalogs and point of purchase materials.” *Id.* Similarly, the MSPA expressly excluded any 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 [Old GM].” MSPA, §2.3(b)(xvi).

17. While the MSPA does provide that New GM also assumed “all obligations under Lemon Laws” (MSPA, § 2.3(a)(vii)(B)), the term “Lemon Laws,” is defined under the MSPA as “a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.” MSPA, § 1.1. This definition, therefore, limits the standard to the “express written warranty” discussed above. In other words, New GM only assumed the repair obligations in Old GM’s limited warranties and not any additional liability for damages, except those specifically provided by Lemon Laws (as defined in the MSPA). To be sure, state Lemon Laws create certain additional remedies and procedures. Thus, the Sale Order clarifies that “[New GM] has assumed [Old GM’s] obligations under state ‘lemon law’ statutes, which require a manufacturer to provide a consumer remedy when the

manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.” Sale Order, ¶ 56.

18. The contractual arrangement under the MSPA is more easily understood with reference to the specific statute at issue. The Florida Lemon Law affords consumers the right to seek replacement or refunds for a vehicle through alternative dispute procedures within two years of initial delivery if a manufacturer, after three repair attempts, is unable to fix a defect that substantially impairs the use, value or safety of the vehicle. *See* Florida Statutes Annotated, Sections 681.10 through 681.118 and 681.1095 and Florida Administrative Code, Rules 2-30.001, and 2-33.002 through 2-33.004. Movant pursued relief under the Florida Lemon Law against Old GM, but was unsuccessful. Movant failed to pursue the appeal mechanism afforded him under the Lemon Law. Since no liability arose for Old GM under that proceeding, there was no liability that New GM could be argued to have assumed.

19. Because the Sale Order and the MSPA expressly provide that New GM has not assumed any liability for any alleged breach of Old GM’s express warranty *except for* the repair and service of Old GM vehicles, New GM did not assume the liabilities alleged in Movant’s Amended Complaint. In his Amended Complaint, Movant sought a variety of damages for Old GM’s allegedly fraudulent behavior, alleged violation of the civil RICO statute, based on his vehicle’s alleged failure to conform to various vague and unidentified statements Old GM allegedly made about the quality of its vehicles. *See, e.g.*, Amended Complaint, ¶ 34. None of these categories of damages are available under the express terms of Old GM’s limited express warranty. Further, Movant is not entitled to any damages allegedly arising from vague and unidentified statements Old GM allegedly made about the quality of its vehicles or any implied

warranties as the Sale Order specifically provides that New GM did not assume “responsibilities for Liabilities contended to arise by virtue of . . . implied warranties and statements in materials such as, without limitation, individual customer communications, owner’s manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials.” Sale Order, ¶ 56. Again, the MSPA expressly excluded liabilities arising from “allegation, statement or writing by or attributable to [Old GM].” MSPA, § 2.3(b)(xvi)(B). The conduct alleged in the Movant’s Amended Complaint falls squarely within these exclusions.

20. Although the analysis of various legal theories that may apply to product responsibility can be very complicated, the colloquial explanation of the basic division of responsibility is simple. New GM assumed responsibility to administer Old GM’s express limited warranty and the express rights arising thereunder (including under state Lemon Laws) in the ordinary course. Significantly, however, in the situation at hand, both the warranty on Movant’s vehicle and the Lemon Law rights period as defined by Florida law expired long before New GM was created and New GM can have no responsibility for any such claims. Moreover, New GM did not assume the contingent liability for the many litigation theories which human ingenuity has invented or can invent as applied to vehicles sold prior to the 363 transaction. In the vernacular, that was the business deal documented in the MSPA and Sale Order.

21. Accordingly, New GM appropriately argued and the Florida District Court correctly found that all of Movant’s claims asserted in the Amended Complaint, including his breach of warranty and Lemon Law claims, constituted a violation of the Sale 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.” Sale Order, ¶ 8 (emphasis added); *see also id.*, ¶ 46 (“[New GM] 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 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 . . .”).

22. Based on the foregoing, the liabilities asserted by Movant are not “Assumed Liabilities” as defined in the MSPA and were not transferred to New GM as part of the sale of Old GM’s assets. Thus, New GM cannot be held in contempt of Court for violating the Sale Order. Moreover, New GM has not, at any time, lied to any court or tribunal about matters affecting the Movant or his purported claims. To the contrary, New GM has appropriately and consistently relied on the express provisions of the Sale Order and MSPA to bar Movant’s unsupported, vexatious claims. Accordingly, the Motion should be denied in its entirety.

WHEREFORE, New GM respectfully requests that the Court (i) deny the relief requested in the Motion, and (ii) grant to New GM such other and further relief as is just and proper.

Dated: New York, New York  
November 22, 2010

KING & SPALDING LLP

By: /s/ Arthur Steinberg  
Arthur Steinberg  
Scott Davidson  
1185 Avenue of the Americas  
New York, NY 10036  
(212) 556-2100

*Counsel to General Motors LLC*

# **EXHIBIT C**

**IMPORTANT:** This booklet contains important information about the vehicle's warranty coverage. It also explains **Owner Assistance Information and GM's Participation in an Alternative Dispute Resolution Program.** Keep this booklet with your vehicle and make it available to a Chevrolet dealer if warranty work is needed. Be sure to keep it with your vehicle when you sell it so future owners will have the information.

Owner's Name
Street Address
City & State
Vehicle Identification Number (VIN):
Date Vehicle First Delivered or Put In Use:
Odometer Reading on Date Vehicle First Delivered or Put In Use:

	<b>Protection Plan</b>
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Have you purchased the Genuine GM Protection Plan?  
The GM Protection Plan may be purchased within specific time/mileage limitations. See the information request form in the back of this booklet. Remember, if the service contract you are considering to purchase does not have the GM Protection Plan emblem shown above on it, then it is not the Genuine GM Protections Plan from General Motors.

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Part No. C2317 A First Edition

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### **Chevrolet's Commitment to You**

We are committed to assure your satisfaction with your new Chevrolet.

Your Chevrolet dealer also wants you to be completely satisfied and invites you to return for all your service needs both during and after the warranty period.

### **Vehicle Operation and Care**

Considering the investment you have made in your Chevrolet, we know you will want to operate and maintain it properly. We urge you to follow the maintenance instructions contained in your owner's manual.

If you have questions on how to keep your Chevrolet in good working condition, see your Chevrolet dealer, the place many Chevrolet customers choose to have their maintenance work done. You can rely on your Chevrolet dealer to use the proper parts and repair practices.

### **Maintenance Records**

Retain receipts covering performance of regular maintenance. Receipts can be very important if a question arises as to whether a malfunction is caused by lack of maintenance or a defect in material or workmanship.

A "Maintenance Record" is provided in the maintenance schedule section of the owner's manual for your convenience in recording services performed.

### **Owner Assistance**

Your Chevrolet dealer is best equipped to provide all your service needs. Should you ever encounter a problem during or after the limited warranty period that is not resolved, talk to a member of dealer management. Under certain circumstances, General Motors and/or GM dealers may provide assistance after the limited warranty period has expired when the problem results from a defect in material or workmanship. These instances will be reviewed on a case by case basis. If your problem has not been resolved to your satisfaction, follow the "Customer Satisfaction Procedure" as outlined under *Owner Assistance on page 27*.

We thank you for choosing a Chevrolet.

### **GM Participation in an Alternative Dispute Resolution Program**

See the "Customer Satisfaction Procedure" under *Owner Assistance on page 27* for information on the voluntary, non-binding Alternative Dispute Resolution Program in which GM participates.

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**Warranty Coverage at a Glance**

The 2003 warranty coverages are summarized below. Please read *General Motors Corporation New Vehicle Limited Warranty on page 4, Things You Should Know About the New Vehicle Limited Warranty on page 9, and Emission Control Systems Warranties on page 14* for complete details.

New Vehicle Limited Warranty			
Coverage	3 YRS/ 36,000 MI.	5 YRS/ 100,000 MI.	6 YRS/ 100,000 MI.
Bumper-to-Bumper (includes tires)	■	■	■
6.8L Duramax™ Diesel Engine	■	■	■
Sheet Metal	■	■	■
● Corrosion	■	■	■
● Rust-Through	■	■	■

■ No Charge  
 ▨ \$100 Deductible Charge.

Emission Control Systems Warranties						
Coverage	2 YRS/ 24,000 MI.	3 YRS/ 36,000 MI.	5 YRS/ 60,000 MI.	6 YRS/ 100,000 MI.	7 YRS/ 70,000 MI.	8 YRS/ 80,000 MI.
<b>Federal</b>						
● Gasoline Engines						
- light duty emission control system						
- catalytic converters & powertrain control module						
- heavy duty emission control system						
● 6.6L Duramax™ Diesel Engine						
<b>California</b>						
● Gasoline Engines						
- light duty and medium duty emission control systems						
- specified components (light and medium duty emission control systems)						
- heavy duty emission control system						
● Diesel Engines*						
<b>Noise Emissions</b>						
● Applicable to vehicles over 10,000 lbs. GVWR only						

Defects in material or workmanship continue to be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage.

\*or 3,000 hours of operation, whichever comes first.

General Motors Corporation will provide for repairs to the vehicle during the warranty period in accordance with the following terms, conditions and limitations.

### **What Is Covered**

#### **Warranty Applies**

This warranty is for GM vehicles registered in the United States and normally operated in the United States or Canada, and is provided to the original and any subsequent owners of the vehicle during the warranty period.

#### **Repairs Covered**

The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

#### **Warranty Period**

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

#### **Bumper-to-Bumper Coverage**

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What Is Covered" and those items listed under "What Is Not Covered" later in this section.

#### **Accessory Coverages**

All GM accessories sold by GM parts that are permanently installed on a GM vehicle prior to delivery will be covered under the provisions of the New Vehicle Limited Warranty. In the event GM accessories are installed after vehicle delivery, or are replaced under the new vehicle warranty, they will be covered (parts and labor) for the balance of the vehicle warranty, but in no event less than 12 months/12,000 miles. This coverage is only effective for GM accessories permanently installed by a GM dealer or an associated GM-approved Accessory Distributor/Installer (ADI).

GM accessories sold over-the-counter, or those not requiring installation, will continue to receive the standard GM Dealer Parts Warranty of 12 months from the date of purchase (parts only).

GM Licensed Accessories are covered under the accessory-specific manufacturer's warranty and are not warranted by GM or its dealers.

**Tire Coverage**

The tires supplied with your vehicle are covered against defects in material or workmanship under the bumper-to-bumper coverage. Any tire replaced will continue to be warranted for the remaining portion of the bumper-to-bumper coverage period.

Following expiration of the bumper-to-bumper coverage, tires may continue to be covered under the tire manufacturer's warranty. Review the tire manufacturer's warranty booklet or consult the tire manufacturer distributor for specific details.

**Sheet Metal Coverage**

Sheet metal panels are covered against corrosion and rust-through as follows:

**Corrosion:** Body sheet metal panels are covered against rust for 3 years or 36,000 miles, whichever comes first.

**Rust-Through:** Any body sheet metal panel that rusts through (an actual hole in the sheet metal) continues to be covered for up to 6 years or 100,000 miles, whichever comes first.

**Important:** Cosmetic or surface corrosion (resulting from stone chips or scratches in the paint, for example) is not included in sheet metal coverage.

**Towing**

Towing is covered to the nearest Chevrolet dealer facility if your vehicle cannot be driven because of a warranted defect.

**6.6L DURAMAX™ Diesel Engine Coverage**

The diesel engines (except those items listed under "What Is Not Covered" later in this section) are covered for 5 years or 100,000 miles, whichever comes first. A \$100 deductible per repair visit may apply after the vehicle has been in use for 3 years or 36,000 miles, whichever comes first. For additional information, refer to *Things You Should Know About the New Vehicle Limited Warranty* on page 9. Also refer to the appropriate emission control system warranty for possible additional coverages.

**No Charge**

Warranty repairs, including towing, parts and labor, will be made at no charge, less any applicable deductible.

**Obtaining Repairs**

To obtain warranty repairs, take the vehicle to a Chevrolet dealer facility within the warranty period and request the needed repairs. A reasonable time must be allowed for the dealer to perform necessary repairs.

**Tire Damage or Wear**

Normal tire wear or wear-out is not covered. Road hazard damage such as punctures, cuts, snags, and breaks resulting from pothole impact, curb impact, or from other objects is not covered. Also, damage from improper inflation, spinning (as when stuck in mud or snow), tire chains, racing, improper mounting or dismounting, misuse, negligence, alteration, vandalism, or misapplication is not covered.

**Damage Due to Bedliners**

Owners of trucks with a bedliner, whether after-market or factory installed, should expect that with normal operation the bedliner will move. This movement may cause finish damage and/or squeaks and rattles. Therefore, any damage caused by the bedliner is not covered under the terms of the warranty.

**Damage Due to Accident, Misuse, or Alteration**

Damage caused as the result of any of the following is not covered:

- collision, fire, theft, freezing, vandalism, riot, explosion, or objects striking the vehicle;

- misuse of the vehicle such as driving over curbs, overloading, racing, or other competition. Proper vehicle use is discussed in the owner's manual;
- alteration or modification to the vehicle including the body, chassis, or components after final assembly by GM. In addition, coverages do not apply if the odometer has been disconnected, its reading has been altered, or mileage cannot be determined.

**Important:** This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

**Damage or Corrosion Due to Environment, Chemical Treatments or Aftermarket Products**

Damage caused by airborne fallout (chemicals, tree sap, etc.), stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See "Chemical Paint Spotting" under *Things You Should Know About the New Vehicle Limited Warranty* on page 9.

**Damage Due to Insufficient or Improper Maintenance**

Damage caused by failure to follow the recommended maintenance schedule intervals and/or failure to use or maintain fluids, fuel, lubricants, or refrigerants recommended in the owner's manual is not covered.

**Maintenance**

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the owner's manual are the owner's expense. Vehicle lubrication, cleaning, or polishing, as well as items requiring replacement or repair as a result of vehicle use, wear, or exposure are not covered.

Items such as:

- Filters
- Brake Pads / Linings
- Clutch Linings
- Keyless Entry Batteries \*
- Audio System Cleaning
- Coolants and Fluids
- Wiper Inserts

- Limited Slip Rear Axle Service

- Tire Rotation

- Wheel Alignment / Balance \*\*

are covered only when replacement or repair is the result of a defect in material or workmanship.

Failure or damage of components due to vehicle use, wear, exposure, or lack of maintenance is not covered.

\* Consumable battery covered up to 12 months only.

\*\* Maintenance items after 7,500 miles.

**Extra Expenses**

Economic loss or extra expense is not covered.

Examples include:

- Loss of vehicle use
- Inconvenience
- Storage
- Payment for loss of time or pay
- Vehicle rental expense
- Lodging, meals, or other travel costs
- State or local taxes required on warranty repairs

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**Other Terms:** This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

General Motors does not authorize any person to create for it any other obligation or liability in connection with these vehicles. **Any implied warranty of merchantability or fitness for a particular purpose applicable to this vehicle is limited in duration to the duration of this written warranty. Performance of repairs and needed adjustments is the exclusive remedy under this written warranty or any implied**

**warranty. General Motors shall not be liable for incidental or consequential damages (such as, but not limited to, lost wages or vehicle rental expenses) resulting from breach of this written warranty or any implied warranty.\***

\* Some states do not allow limitations on how long an implied warranty will last or the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

### **Warranty Repairs – Component Exchanges**

In the interest of customer satisfaction, General Motors may offer exchange service on some vehicle components. This service is intended to reduce the amount of time your vehicle is not available for use due to repairs. Components used in exchange are service replacement parts which may be new, remanufactured, reconditioned, or repaired, depending on the component involved.

All exchange components used meet GM standards and are warranted the same as new components. Examples of the types of components that might be serviced in this fashion include: engine and transmission assemblies, instrument cluster assemblies, radios, compact disc players, tape players, batteries, and powertrain control modules.

### **Warranty Repairs – Recycled Materials**

Environmental Protection Agency (EPA) guidelines and GM support the capture, purification, and reuse of automotive air conditioning refrigerant gases and engine coolant. As a result, any repairs GM may make to your vehicle may involve the installation of purified reclaimed refrigerant and coolant.

### **Tire Service**

Any authorized Chevrolet or tire dealer for your brand of tires can assist you with tire service. If, after contacting one of these dealers, you need further assistance or you have questions, please contact Chevrolet's Customer Assistance Center. The toll-free telephone numbers are listed under *Owner Assistance on page 27*.

### **6.6L DURAMAX™ Diesel Engine Components**

The complete engine assembly, including turbocharger components, is covered for defects in material or workmanship for 3 years or 36,000 miles, whichever comes first. No deductible applies during this coverage period. The engine parts listed below continue to be covered (subject to a \$100 deductible) for 5 years or 100,000 miles, whichever comes first.

- Cylinder block and heads and all internal parts, intake and exhaust manifolds, timing gears, timing gear chain or belt and cover, flywheel, harmonic balancer, valve covers, oil pan, oil pump, water pump, fuel pump, engine mounts, seals and gaskets.
- Diesel Fuel Metering System: injection pump, nozzles, high pressure lines and high pressure sealing devices.

- Glow Plug Control System: control/glow plug assembly, glow plugs, cold advance relay, and ECM.
- Fuel injection control module, integral oil cooler, transmission adapter plate, left and right common fuel rails, fuel filter assembly, fuel temperature sensor and function block.

**Important:** Some of the above components may also be covered by the Emission Warranty with no deductible. See the "Emission Warranty Parts List" under *Emission Control Systems Warranties* on page 14 for details.

#### **After-Manufacture "Rustproofing"**

Your vehicle was designed and built to resist corrosion. Application of additional rust-inhibiting materials is neither necessary nor required under the Sheet Metal Coverage. GM makes no recommendation concerning the usefulness or value of such products.

Application of after-manufacture rustproofing products may create an environment which reduces the corrosion resistance built into your vehicle. Repairs to correct damage caused by such applications are not covered under your GM New Vehicle Limited Warranty.

Defects in paint, trim, upholstery or other appearance items are normally corrected during new vehicle preparation. If you find any paint or appearance concerns, advise your dealer as soon as possible. Your owner's manual has instructions regarding the care of paint, trim, upholstery, glass, and other appearance items.

#### **Chemical Paint Spotting**

Some weather and atmospheric conditions can create a chemical fallout. Airborne pollutants can fall upon and attack painted surfaces on your vehicle. This damage can take two forms: blotchy, ringlet-shaped discolorations, and small irregular dark spots etched into the paint surface.

Although no defect in the factory applied paint causes this, Chevrolet will repair, at no charge to the owner, the painted surfaces of new vehicles damaged by this fallout condition within 12 months or 12,000 miles of purchase, whichever comes first.

**Time Extensions:** The New Vehicle Limited Warranty will be extended one day for each day beyond the first 24 hour period in which your vehicle is at an authorized dealer facility for warranty service. You may be asked to show the repair orders to verify the period of time the warranty is to be extended. Your extension rights may vary depending on state law.

**Mileage Extensions:** Prior to delivery, some mileage is put on your vehicle during testing at the assembly plant, during shipping and while at the dealer facility. The dealer records this mileage on the first page of this warranty booklet at delivery. For eligible vehicles, this mileage will be added to the mileage limits of the warranty ensuring that you receive full benefit of the coverage. Mileage extension eligibility:

- Applies only to new vehicles held exclusively in new vehicle inventory.
- Does not apply to used vehicles, GM owned vehicles, dealer owned used vehicles, or dealer demonstrator vehicles.
- Does not apply to vehicles with more than 1,000 miles on the odometer even though the vehicle may not have been "registered" for license plates.

**Canada**

For your records, the servicing dealer should provide a copy of the warranty repair order listing all warranty repairs performed. Your selling dealership has made a large investment to ensure that they have the proper tools, training, and parts inventory to make any necessary warranty repairs should they be required during the warranty period. We ask that you return to your selling dealer for warranty repairs. In the event of an emergency repair, you may take your vehicle to any authorized General Motors dealer for warranty repairs. However, certain warranty repairs require special tools or training that only a dealer selling your brand may have. Therefore, not all dealers are able to perform every repair. If a particular dealership cannot assist you, then contact the Customer Assistance Center. If you have changed your residence, visit any Chevrolet dealer in the United States or Canada for warranty service.

If you are touring in a foreign country and repairs are needed, it is suggested you take your vehicle to a General Motors dealer facility, preferably one which sells and services Chevrolet vehicles. Once you return to the United States, for reimbursement consideration, you should provide your dealer with a statement of circumstances, the original repair order, proof of ownership, and any "paid" receipt indicating the work performed and parts replaced.

**Important:** Repairs made necessary by the use of improper or dirty fuels and lubricants are not covered under the warranty. See your owner's manual for additional information on fuel requirements when operating in foreign countries.

### **Warranty Service – Foreign Countries**

This warranty applies to GM vehicles registered in the United States and normally operated in the United States or Canada. If you have permanently relocated and established household residency in another country, GM may authorize the performance of repairs under the warranty authorized for vehicles generally sold by GM in that country. Contact an authorized GM dealer in your country for assistance. GM warranty coverages may be void on GM vehicles that have been imported / exported for resale.

This warranty does not cover any damage or failure resulting from modification or alteration to the vehicle's original equipment as manufactured or assembled by General Motors. Examples of the types of alterations that would not be covered include, installation or use of any non-GM parts, accessories, and materials, or the cutting, welding, or disconnecting of the vehicle's original equipment parts and components.

### **Recreation Vehicle and Special Body or Equipment Alterations**

Installations, or alterations to the original equipment vehicle (or chassis) as manufactured and assembled by General Motors, are not covered by this warranty. The special body company (assembler) or equipment installer is solely responsible for warranties on the body or equipment and any alterations to any of the parts, components, systems, or assemblies installed by GM. Examples include, but are not limited to, special body installation (such as recreational vehicles), the installation of any non-GM part, cutting, welding, or the disconnecting of original equipment vehicle or chassis parts and components, extension of wheelbase, suspension and driveline modifications and axle additions.

**Pre-Delivery Service**  
Defects in the mechanical, electrical, sheet metal, paint, trim, and other components of your vehicle may occur at the factory or while it is being transported to the dealer facility. Normally, any defects occurring during assembly are detected and corrected at the factory during the inspection process. In addition, dealers are obligated to inspect each vehicle before delivery. They repair any uncorrected factory defects and any transit damage detected before the vehicle is delivered to you.

Any defects still present at the time the vehicle is delivered to you are covered by the warranty. If you find any such defects when you take delivery, please advise your dealer without delay. For further details concerning any repairs which the dealer may have made prior to your taking delivery of your vehicle, please ask your dealer.

### **Production Changes**

General Motors Corporation and GM dealers reserve the right to make changes in vehicles built and/or sold by them at any time without incurring any obligation to make the same or similar changes on vehicles previously built and/or sold by them.

General Motors Corporation warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser of this vehicle, as manufactured by GM, was designed, built and equipped to conform at the time it left GM's control with all applicable United States EPA Noise Control Regulations.

This warranty covers this vehicle as designed, built and equipped by GM, and is not limited to any particular part, component or system of the vehicle manufactured by GM. Defects in design, assembly or in any part, component or vehicle system as manufactured by GM, which, at the time it left GM's control, caused noise emissions to exceed Federal standards, are covered by this warranty for the life of the vehicle.

This section outlines the emission warranties that General Motors provides for your vehicle in accordance with the U.S. Federal Clean Air Act. Defects in material or workmanship in GM emission parts may also be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage. There may be additional coverage on GM diesel engine vehicles. In any case, the warranty with the broadest coverage applies.

### **What Is Covered**

The parts covered under the emission warranty are listed under the "Emission Warranty Parts List" later in this section.

### **How to Determine the Applicable Emissions Control System Warranty**

State and Federal agencies may require different emissions control systems warranties for light duty trucks depending on:

- Whether the truck is certified with a light or heavy duty emission control system. and/or
- Whether the truck is certified for California emissions in addition to Federal emissions.

Do the following to determine emissions eligibility:

1. Locate the underhood emission control label located inside the engine compartment on the underside of the hood, on the air cleaner assembly, or on the engine.
2. The language on the bottom left side of the label will describe if equipped with a light, medium, or heavy duty emission control system.
3. All Light Duty Trucks are eligible for Federal Emissions Warranty Coverage. If the emissions control label contains language stating the vehicle is certified to California emissions standards, the vehicle is also eligible for California Emissions Warranty Coverage.

### **1. Federal Emission Control Warranty**

Both the Emission Defect Warranty and the Emission Performance Warranty described next begin on the date the vehicle is first delivered or put into use and continues as follows:

- Light Duty Truck Equipped With Light Duty Gasoline Engine
- 2 years or 24,000 miles, and 8 years or 80,000 miles on the catalytic converter and vehicle (powertrain) control module, whichever comes first.

- 5 years or 50,000 miles, whichever comes first.
- Light Duty Truck Equipped With Heavy Duty Diesel Engine
- 5 years or 100,000 miles, whichever comes first.

#### **Emission Defect Warranty**

General Motors Corporation warrants to the owner that the vehicle:

- was designed, equipped, and built so as to conform at the time of sale with applicable regulations of the Federal Environmental Protection Agency (EPA), and
- is free from defects in materials and workmanship which cause the vehicle to fail to conform with those regulations during the emission warranty period.

Emission related defects in the genuine GM parts listed under Emission Parts Covered, including related diagnostic costs, parts and labor are covered by this warranty.

Some states and/or local jurisdictions have established periodic vehicle inspection and maintenance (I/M) programs to encourage proper maintenance of your vehicle. If an EPA-approved I/M program is required in your area you may also be eligible for Emission Performance Warranty coverage when all of the following three conditions are met:

- The vehicle has been maintained and operated in accordance with the instructions for proper maintenance and use set forth in the owner's manual supplied with your vehicle.
- The vehicle fails an EPA-approved I/M test during the emission warranty period.
- The failure results, or will result, in the owner of the vehicle having to bear a penalty or other sanctions (including the denial of the right to use the vehicle) under local, state, or federal law.

If all these conditions are met, GM warrants that your dealer will replace, repair, or adjust to GM specifications, at no charge to you, any of the parts listed under the "Emission Warranty Parts List" later in this section which may be necessary to cause your vehicle to conform to the applicable emission standards. Non-GM parts labeled "Certified to EPA Standards" are covered by the Emission Performance Warranty.

This section outlines the emission warranties that General Motors provides for your vehicle in accordance with the California Air Resources Board. Defects in material or workmanship in GM emission parts may also be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage. There may be additional coverage on GM diesel engine vehicles. In any case, the warranty with the broadest coverage applies.

This warranty applies if your vehicle meets both of the following requirements:

- Your vehicle is registered in California or other states adopting California emission and warranty regulations\*;
  - is certified for sale in California as indicated on the vehicle's emission control information label.
- \* Currently MA and VT only. Note: NY and ME have adopted California emission regulations, but not California warranty regulations. The Federal Emission Control Warranty applies in NY and ME.

### **Your Rights and Obligations (For Vehicles Subject to California Exhaust Emission Standards)**

The California Air Resources Board and General Motors are pleased to explain the emission control system warranty on your 2003 vehicle. In California, new motor

vehicles must be designed, equipped, and built to meet the states' stringent anti-smog standards. GM must warrant your vehicle's emission control system for the periods of time and mileage listed previously under "Federal Emission Control Warranty" provided there has been no abuse, neglect, or improper maintenance of your vehicle. Your vehicle's emission control system may include parts such as the fuel injection system, ignition system, catalytic converter, and engine computer. Also included are hoses, belts, connectors, and other emission related assemblies.

Where a warrantable condition exists, GM will repair your vehicle at no cost to you including diagnosis, parts, and labor.

### **General Motors Warranty Coverage:**

- For trucks with light duty or medium duty emissions:
  - For 3 years or 50,000 miles, whichever comes first.

If your vehicle fails a smog check inspection, GM will make all necessary repairs and adjustments to ensure that your vehicle passes the inspection. This is your vehicle emission control system performance warranty.

If any emission related part on your vehicle is defective, GM will repair or replace it. This is your short-term emission defects warranty.

- For 7 years or 70,000 miles, whichever comes first:

If an emission related part listed in this booklet specially noted with coverage for 7 years or 70,000 miles is defective, GM will repair or replace it. This is your long-term emission control system defects warranty.

- For 8 years or 80,000 miles, whichever comes first:

If the catalytic converter or vehicle (powertrain) control module is found to be defective, GM will repair or replace it under the Federal Emission Control Warranty listed previously.

- For heavy duty gasoline engine vehicles, the emission warranty period is 5 years or 50,000 miles, whichever comes first.
- For heavy duty diesel engine vehicles, the emission warranty period is 5 years, or 100,000 miles, or 3,000 hours of operation, whichever comes first.

Any authorized Chevrolet dealer will, as necessary under these warranties, replace, repair, or adjust to General Motors specifications any genuine GM parts that affect emissions.

The applicable warranty period shall begin on the date the vehicle is delivered to the first retail purchaser or, if the vehicle is first placed in service as a demonstrator or company vehicle prior to sale at retail, on the date the vehicle is placed in such service.

As the vehicle owner, you are responsible for the performance of the scheduled maintenance listed in your owner's manual. GM recommends that you retain all maintenance receipts for your vehicle, but GM cannot deny warranty solely for the lack of receipts or for your failure to ensure the performance of all scheduled maintenance.

You are responsible for presenting your vehicle to a GM dealer selling your vehicle line as soon as a problem exists. The warranted repairs should be completed in a reasonable amount of time, not to exceed 30 days.

As the vehicle owner, you should also be aware that GM may deny you warranty coverage if your vehicle or a part has failed due to abuse, neglect, improper or insufficient maintenance, or modifications not approved by GM.

If you have any questions regarding your rights and responsibilities under these warranties, you should contact the Customer Assistance Center at 1-800-222-1020 or, in California, write to:

State of California Air Resources Board  
Mobile Source Operations Division  
P.O. Box 8001  
El Monte, CA 91731-2990

**What Is Covered**  
The parts covered under the Emission Control Systems Warranties are listed under the "Emission Warranty Parts List" later in this section.

**What Is Not Covered**

The Emission Control Systems Warranties obligations do not apply to conditions resulting from tampering, abuse, neglect, or improper maintenance; or any other item listed under "What Is Not Covered" under *General Motors Corporation New Vehicle Limited Warranty on page 4*. The "Other Terms" presented under *General Motors Corporation New Vehicle Limited Warranty on page 4* also apply to the emission related warranties.

The parts that may affect your vehicle's emissions are on the following pages. These emission parts covered under emission warranties are as follows:

- **Federal coverage** – refer to the "Federal Emission Control Warranty" previously in this section.
- **California coverage** – refer to the "California Emission Control Warranty" previously in this section.

**Important:** Certain parts may be covered beyond these warranties if shown with asterisk(s) as follows:

- (\*) 7 years/70,000 miles, whichever comes first, California emission coverage.
- (\*\*) 8 years/80,000 miles, whichever comes first, Federal emission coverage. (Also applies to California certified Light Duty and Medium Duty vehicles.)

Barometric Pressure Sensor	Intake Air Temperature Sensor
Brake Switch	Malfunction Indicator Lamp
Camshaft Position Actuator Assembly *	Manifold Absolute Pressure Sensor
Camshaft Position Actuator Valve	Mass Air Flow Sensor (7/70 Tracker Only *)
Coolant Fan Control Relay	Oxygen Sensors
Coolant Level Sensor	Powertrain Control Module (PCM) **
Data Link Connector	Programmable Read Only Memory (PROM)
Electronic Throttle Control (ETC) Motor	Throttle Position Sensor
Engine Control Module (ECM) **	Throttle Position Switch
Engine Coolant Temp. Sensor	Vehicle Control Module (VCM) **
Fast Idle Solenoid	Vehicle Speed Sensor
Flexible Fuel Sensor *	

**Transmission Controls and Torque Management**

Manual Transmission Clutch Switch	Transmission Gear Selection Switch (Diesel)
Torque Converter Clutch Switch	Transmission Internal Mode Switch
Torque Converter Clutch Solenoids	Transmission Speed Sensors
Transmission Control Module **	

Common Rail Assembly (6.6L DURAMAX™ Diesel) \*  
Diesel Fuel Injection Pump \*  
Diesel Fuel Injection Pump Timing Adjust  
Diesel Fuel Injector Control Module – EDU  
(6.6L DURAMAX™ Diesel) \*  
Diesel Fuel Temperature Sensor  
Direct Fuel Injector Assembly  
(6.6L DURAMAX™ Diesel) \*  
Function Block (6.6L DURAMAX™ Diesel)  
Fuel Injector  
Fuel Pressure Regulator  
Fuel Rail Assembly  
Fuel Rail Sensor (6.6L DURAMAX™ Diesel)

**Air Management System**

Air Cleaner  
Air Cleaner Diaphragm Motor  
Air Cleaner Resonator  
Air Cleaner Temp. Compensator Valve  
Air Intake Ducts  
Charge Air Control Actuator  
Charge Air Control Solenoid Valve  
Charge Air Control Valve  
Charge Air Cooler (6.6L DURAMAX™ Diesel) \*  
Charge Air Cooler Fan  
Idle Air Control Valve  
Idle Speed Control Motor  
Intake Manifold \*  
Intake Manifold Tuning Valve  
Intake Manifold Tuning Valve Relay  
Supercharger Assembly \*  
Throttle Body \*  
Throttle Body Heater  
Throttle Closing Dashpot  
Turbocharger Assembly \*  
Turbocharger Boost Sensor (6.6L DURAMAX™ Diesel)  
Turbocharger Oil Separator  
Turbocharger Thermo Purge Switch  
Vacuum Pump (6.6L DURAMAX™ Diesel)

**Ignition System**

Camshaft Position Sensor(s)  
Crankshaft Position Sensor(s)  
Distributor \*  
Distributor Cap  
Distributor Pick Up Coil  
Distributor Rotor  
Glow Plug(s) (Diesel)  
Glow Plug Controller (Diesel)

Glow Plug Relay (Diesel)  
Ignition Coil(s)  
Ignition Control Module  
Ignition Timing Adjustment  
Knock Sensor  
Spark Plug Wires  
Spark Plugs

**Catalytic Converter System**

Catalytic Converter(s) and Muffler if attached as assembly \*\*  
Exhaust Manifold (7/70 Only Cadillac 4.6L, Aurora 4.0L, C/K Truck <14,000 GVWR 8.1L\*)  
Exhaust Manifold with Catalytic Converter attached \*\*

Exhaust Manifold Gasket  
Exhaust pipes and/or Mufflers (when located between catalytic converters and exhaust manifold)

**Positive Crankcase Ventilation System**

Oil Filler Cap  
PCV Filter

PCV Oil Separator  
PCV Valve

EGR Feed and Delivery Pipes or Cast-in Passages  
EGR Valve

EGR Valve Cooler (6.6L DURAMAX™ Diesel)  
EGR Vacuum Pump Assembly  
(6.6L DURAMAX™ Diesel)

**Secondary Air Injection System**

Air Pump  
Cutoff Valve

Check Valves  
Vacuum Control Solenoid

**Evaporative Emission Control System (Gasoline Engines)**

Canister  
Canister Purge Solenoid Valve  
Canister Vent Solenoid  
Fuel Feed and Return Pipes and Hoses  
Fuel Filler Cap

Fuel Limiter Vent Valve \*  
Fuel Tank Filler Pipe (with restrictor)  
Fuel Tank(s) \*  
Fuel Tank Vacuum or Pressure Sensor

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Miscellaneous Items Used with Above Components are Covered

- Belts
- Boots
- Clamps
- Connectors
- Ducts
- Fittings
- Gaskets
- Grommets
- Hoses
- Housings
- Mounting Hardware
- Pipes
- Pulleys
- Sealing Devices
- Springs
- Tubes
- Wiring

\* 7 years/70,000 miles, whichever comes first, California emission coverage.

\*\* 8 years/80,000 miles, whichever comes first, Federal emission coverage.  
(Also applies to California Certified Light Duty and Medium Duty Vehicles.)

If equipped, items marked with an asterisk are covered by the California long-term emission control system Defects Warranty for 7 years/70,000 miles. (For example, if one of these parts causes a smog check failure after the 3 year/50,000 mile performance warranty has expired, the part is still covered for 7 years/70,000 miles.)

For detailed information concerning specific parts covered by these emission control system warranties, ask your dealer.

The emission control systems of your vehicle were designed, built, and tested using genuine GM parts\* and the vehicle is certified as being in conformity with applicable federal and California emission requirements. **Accordingly, it is recommended that any replacement parts used for maintenance or for the repair of emission control systems be new, genuine GM parts.** The warranty obligations are not dependent upon the use of any particular brand of replacement parts. The owner may elect to use non-genuine GM parts for replacement purposes. Use of replacement parts which are not of equivalent quality may impair the effectiveness of emission control systems.

If other than new, genuine GM parts are used for maintenance replacements or for the repair of parts affecting emission control, the owner should assure himself/herself that such parts are warranted by their manufacturer to be equivalent to genuine GM parts in performance and durability.

\* "genuine GM parts," when used in connection with GM vehicles means parts manufactured by or for GM, designed for use on GM vehicles and distributed by any division or subsidiary of General Motors Corporation.

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**Maintenance and Repairs**

Maintenance and repairs can be performed by any qualified service outlet; however, warranty repairs must be performed by an authorized dealer except in an emergency situation when a warranted part or a warranty station is not reasonably available to the vehicle owner.

In an emergency, where an authorized dealer is not reasonably available, repairs may be performed at any available service establishment or by the owner, using any replacement part. Chevrolet will consider reimbursement for the expense incurred (including diagnosis), not to exceed the manufacturer's suggested retail price for all warranted parts replaced and labor charges based on Chevrolet's recommended time allowance for the warranty repair and the geographically appropriate labor rate. A part not being available within 10 days or a repair not being completed within 30 days constitutes an emergency. Retain receipts and failed parts in order to receive compensation for warranty repairs reimbursable due to an emergency.

If, in an emergency situation, it is necessary to have repairs performed by other than a Chevrolet dealer and you believe the repairs are covered by emission warranties, take the replaced parts and your receipt to a Chevrolet dealer for reimbursement consideration. This applies to both the Emission Defect Warranty and Emission Performance Warranty.

Receipts and records covering the performance of regular maintenance or emergency repairs should be retained in the event questions arise concerning maintenance. These receipts and records should be transferred to each subsequent owner. GM will not deny warranty coverage solely on the absence of maintenance records. However, GM may deny a warranty claim if a failure to perform scheduled maintenance resulted in the failure of a warranty part.

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**Claims Procedure**

As with the other warranties covered in this booklet, take your vehicle to any authorized Chevrolet dealer facility to obtain service under the emission warranties. This should be done as soon as possible after failing an EPA-approved I/M test or a California smog check test, or at any time you suspect a defect in a part.

Those repairs qualifying under the warranty will be performed by any Chevrolet dealer at no charge. Repairs which do not qualify will be charged to you. You will be notified as to whether or not the repair qualifies under the warranty within a reasonable time (not to exceed 30 days after receipt of the vehicle by the dealer, or within the time period required by local or state law).

The only exceptions would be if you request or agree to an extension, or if a delay results from events beyond the control of your dealer or GM. If you are not so notified, GM will provide any required repairs at no charge. In the event a warranty matter is not handled to your satisfaction, refer to the "Customer Satisfaction Procedure" in this booklet under *Owner Assistance* on page 27.

For further information or to report violations of the emission control systems warranties, you may contact the EPA at:

Manager, Certification and Compliance  
Division (6405J)  
Warranty Claims  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

For a vehicle subject to the California Exhaust Emission standards, you may contact the:

State of California Air Resources Board  
Mobile Source Operations Division  
P.O. Box 8001  
El Monte, CA 91731-2990

### **Customer Satisfaction Procedure**

Your satisfaction and goodwill are important to your dealer and to Chevrolet. Normally, any concerns with the sales transaction or the operation of your vehicle will be resolved by your dealer's sales or service departments. Sometimes, however, despite the best intentions of all concerned, misunderstandings can occur. If your concern has not been resolved to your satisfaction, the following steps should be taken:

**STEP ONE: Discuss your concern with a member of dealer management.** Normally, concerns can be quickly resolved at that level. If the matter has already been reviewed with the sales, service, or parts manager, **contact the owner of the dealer facility** or the general manager.

**STEP TWO:** If after contacting a member of dealer management, it appears your concern cannot be resolved by the dealer without further help **contact the Chevrolet Customer Assistance Center** by calling

1-800-222-1020. (In Canada, contact GM of Canada Central Office in Oshawa by calling 1-800-263-3777; English or 1-800-263-7854; French).

**We encourage you to call the toll-free number in order to give your inquiry prompt attention.** Please have the following information available to give the Customer Assistance Representative:

- Vehicle Identification Number (VIN) (This is available from the vehicle registration or title, or the plate above the left top of the instrument panel and visible through the windshield.)
- Dealer name and location
- Vehicle's delivery date and present mileage

When contacting Chevrolet, please remember that your concern will likely be resolved at a dealer's facility. That is why we suggest you follow Step One first if you have a concern.

**STEP THREE:** Both General Motors and your GM dealer are committed to making sure you are completely satisfied with your new vehicle. However, if you continue to remain unsatisfied after following the procedure outlined in Steps One and Two, you should file with the GM/BBB Auto Line Program to enforce any additional rights you may have.

The BBB Auto Line Program is an out of court program administered by the Council of Better Business Bureaus to settle automotive disputes regarding vehicle repairs or the interpretation of the New Vehicle Limited Warranty. Although you may be required to resort to this informal dispute resolution program prior to filing a court action, use of the program is free of charge and your case will generally be heard within 40 days. If you do not agree with the decision given in your case, you may reject it and proceed with any other venue for relief available to you.

You may contact the BBB using the toll-free telephone number or write them at the following address:

BBB Auto Line  
Council of Better Business Bureaus, Inc.  
4200 Wilson Boulevard  
Suite 800  
Arlington, VA 22203-1804  
Telephone: 1-800-955-5100

The BBB Auto Line Program is an out of court program administered by the Council of Better Business Bureaus to settle automotive disputes regarding vehicle repairs or the interpretation of the New Vehicle Limited Warranty. Although you may be required to resort to this informal dispute resolution program prior to filing a court action, use of the program is free of charge and your case will generally be heard within 40 days. If you do not agree with the decision given in your case, you may reject it and proceed with any other venue for relief available to you.

You may contact the BBB using the toll-free telephone number or write them at the following address:

BBB Auto Line  
Council of Better Business Bureaus, Inc.  
4200 Wilson Boulevard  
Suite 800  
Arlington, VA 22203-1804  
Telephone: 1-800-955-5100

The TTY for the Chevrolet Customer Assistance Center is:

1-800-833-2438 in the United States  
1-800-263-3830 in Canada

The TTY for the Chevrolet Roadside Assistance Center is:

1-888-889-2438 in the United States

**Assistance For Text Telephone (TTY) Users**

To assist customers who are deaf or hard of hearing and who use Text Telephones (TTYs), Chevrolet has TTY equipment available at its Customer Assistance Center and Roadside Assistance Center.

The TTY for the Chevrolet Customer Assistance Center is:

1-800-833-2438 in the United States  
1-800-263-3830 in Canada

The TTY for the Chevrolet Roadside Assistance Center is:

1-888-889-2438 in the United States

Chevrolet is proud to offer the response, security, and convenience of Chevrolet's 24-hour Roadside Assistance Program. Please refer to your owner's manual for details, or consult your dealer. The Chevrolet Roadside Assistance Center can be reached by calling 1-800-CHEV-USA® (243-8872). This program is not available in Puerto Rico or the U.S. Virgin Islands.

**Chevrolet Courtesy Transportation**

During the Bumper-to-Bumper warranty coverage period, interim transportation may be available under the Chevrolet Courtesy Transportation Program. Please consult your dealer for details.

Laws in many states permit owners to obtain a replacement vehicle or a refund of the purchase price under certain circumstances. The provisions of these laws vary from state to state. To the extent allowed by state law, General Motors requires that you first provide us with written notification of any service difficulty you have experienced so that we have an opportunity to make any needed repairs before you are eligible for the remedies provided by these laws. Your written notification should be sent to the Chevrolet Customer Assistance Center.

Case 2:09-cv-00108-CEH-DNF Document 208-1 Filed 10/19/10 Page 35 of 41  
**Warranty Information for California Only**

California Civil Code Section 1793.2(d) requires that, if General Motors or its representatives are unable to repair a new motor vehicle to conform to the vehicle's applicable express warranties after a reasonable number of attempts, General Motors shall either replace the new motor vehicle or reimburse the buyer the amount paid or payable by the buyer. California Civil Code Section 1793.22(b) creates a presumption that General Motors has had a reasonable number of attempts to conform the vehicle to its applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the vehicle's odometer, whichever occurs first, one or more of the following occurs:

- The same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven AND the nonconformity has been subject to repair two or more times by General Motors or its agents AND the buyer or lessee has directly notified General Motors of the need for the repair of the nonconformity: OR

- The same nonconformity has been subject to repair 4 or more times by General Motors or its agents AND the buyer has notified General Motors of the need for the repair of the nonconformity;

- The vehicle is out of service by reason of repair nonconformities by General Motors or its agents for a cumulative total of more than 30 calendar days after delivery of the vehicle to the buyer.

**NOTICE TO GENERAL MOTORS AS REQUIRED ABOVE SHALL BE SENT TO THE FOLLOWING ADDRESS:**

General Motors Corporation  
P.O. Box 33170  
Detroit, MI 48232-5170  
Fax Number: (313) 381-2617

When you make an inquiry, you will need to give the year, model, and mileage of your vehicle and your Vehicle Identification Number (VIN).

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**Special Policy Adjustment Programs  
Beyond the Warranty Period**

Chevrolet is proud of the protection afforded by its warranty coverages. In order to achieve maximum customer satisfaction, there may be times when Chevrolet will establish a special policy adjustment program to pay all or part of the cost of certain repairs not covered by the warranty or to reimburse certain

repair expenses you may have incurred. Check with your Chevrolet dealer or call the Chevrolet Customer Assistance Center to determine whether any special policy adjustment program is applicable to your vehicle. When you make an inquiry, you will need to give the year, model, and mileage of your vehicle and your Vehicle Identification Number (VIN).

Chevrolet encourages customers to call the toll-free telephone number for assistance. However, if you wish to write or e-mail Chevrolet, refer to the address listed below.

**United States**

Chevrolet Motor Division  
Customer Assistance Center  
P.O. Box 33170  
Detroit, MI 48232-5170  
[www.Chevrolet.com](http://www.Chevrolet.com)  
1-800-222-1020  
1-800-833-2438 (For Text Telephone devices (TTYs))

Roadside Assistance:

1-800-CHEV-USA® (243-8872)  
Fax Number: 313-381-0022

From Puerto Rico:

1-800-496-9992 (English)  
1-800-496-9993 (Spanish)  
Fax Number: 313-381-0022

U.S. Virgin Islands  
1-800-496-9994  
Fax Number: 313-381-0022

**Canada**

Customer Assistance Centre, 163-005  
General Motors of Canada Limited  
1908 Colonel Sam Drive  
Oshawa, Ontario L1H 8P7

1-800-263-3777 (English)  
1-800-263-7854 (French)  
1-800-263-3830 (For Text Telephone devices (TTYs))  
Roadside Assistance: 1-800-268-6800

**Mexico, Central America and Caribbean Islands/Countries (Except Puerto Rico and U.S. Virgin Islands)**

General Motors de Mexico, S. de R.L. de C.V.  
Customer Assistance Center  
Paseo de la Reforma # 2740  
Col. Lomas de Bezales  
C.P. 11910 Mexico, D.F.  
01-800-508-0000  
Long Distance: 011-52-53 29 0 800

**Don't Wait Until Your New Vehicle Limited Warranty - and Your Opportunity to Purchase the GM Protection Plan - Expire.**

Learn how to protect yourself, with the GM Protection Plan, against costly repairs after your new vehicle limited warranty expires. A monthly payment plan makes it convenient and affordable. Just call or mail this request and you'll find out how you can get the security of knowing you're covered if something breaks down.



**No-Obligation GM Protection Information Request**

YES! Please send me free information about how I can protect myself from costly repair bills after my new vehicle limited warranty expires.

Name: \_\_\_\_\_

Address: \_\_\_\_\_ Apt#: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Daytime Phone: ( ) \_\_\_\_\_ Evening Phone: ( ) \_\_\_\_\_

**Vehicle Information**

Vehicle Identification Number (17 Digits) \_\_\_\_\_

Make/Model: \_\_\_\_\_ Year: \_\_\_\_\_

Purchase Date: \_\_\_\_\_ Mileage: \_\_\_\_\_

Complete and mail this request today and we'll send you FREE details about how you can add years and miles of protection.

Mail to: GM Protection Plan Or call 1-800-981-4667 toll-free for  
P.O. Box 02968 details today.  
Detroit, MI 48202







# **EXHIBIT D**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

BILLY R. KIDWELL,

Plaintiff,

v.

Case No. 2:09-cv-108-FtM-36DNF

G. RICHARD WAGONER, et al.,

Defendants.

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**ORDER**

This cause comes before the Court on Plaintiff Billy R. Kidwell's Motion for Reconsideration and Objection (Doc. 202), filed on September 23, 2010. Defendant General Motors LLC filed a Memorandum in Opposition (Doc. 203) and a Supplemental Opposition Memorandum (Doc. 208). In his Motion for Reconsideration, Plaintiff argues that the Court's Order dismissing Defendant General Motors LLC with prejudice (Doc. 199) should be overturned because it contradicts the Bankruptcy Court for the Southern District of New York's Sale Approval Order. Specifically, Plaintiff argues that the Sale Approval Order expressly permits him to pursue his pre-bankruptcy claims for breach of warranty and violations of Florida's Lemon Laws against Defendant. Plaintiff's Motion, which presents arguments that Plaintiff failed to raise in response to the Motion to Dismiss, misapprehends the scope of the Sale Approval Order. Nonetheless, Plaintiff's arguments warrant a dismissal of his warranty-related claims without prejudice. Therefore, the Court will grant Plaintiff's Motion for Reconsideration, in part.

**BACKGROUND**

The allegations of Plaintiff's Amended Complaint—which include fraud, obstruction of

justice, and even manslaughter—are summarized in the Court’s September 10, 2010 Order (Doc. 199). In short, through his Amended Complaint, Plaintiff seeks a plethora of damages in compensation for an allegedly defective truck he purchased from Defendant General Motors LLC in 2003. The basis of Plaintiff’s requested relief centers on Defendant General Motors LLC’s allegedly fraudulent behavior and its violations of the civil RICO statute, as well as his truck’s failure to conform to his expectations. To wit, Plaintiff requests \$50 per day in damages, costs associated with pursuing his claims, damages for personal injuries allegedly related to Plaintiff’s operation of the truck, and reasonable storage fees for “having to store the Lemon GM truck on his property.” *See* Doc. 91 at ¶¶106–108, 133–34. He also requests \$2,100,000,000 (two-billion-one-hundred-million dollars) in punitive damages. *See Id.* at ¶¶224–293.

On August 27, 2009, Plaintiff filed his Amended Complaint (Doc. 91). On January 15, 2010, Defendant General Motors LLC filed its Motion to Dismiss (Doc. 143). Plaintiff failed to file a response. On September 10, 2010, the Court issued an Order Granting Defendant General Motors LLC’s Motion to Dismiss with prejudice (Doc. 199). In the Order, the Court noted that Plaintiff’s twelve counts<sup>1</sup> are barred by the Bankruptcy Court for the Southern District of New York’s Sale Approval Order<sup>2</sup>. On September 14, 2010, judgment was entered dismissing Defendant General

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<sup>1</sup>Although Plaintiff’s Amended Complaint actually lists sixteen counts, he only demands relief for twelve of them. These are: (I) fraudulent advertising; (II) wire and mail fraud; (III) breach of warranty; (IV) intentional fraud on Florida’s Lemon Law process; (V) violations of Florida Statutes Chapter 681 (Florida’s Lemon Law); (VI) fraud on the state courts; (VII) violations of the Magnuson-Moss Warranty Act; (VIII) violations of Plaintiff’s state statutory rights; (IX) violations of Plaintiff’s federal statutory rights; (X) violations of Plaintiff’s Constitutional rights; (XI) violation of the federal RICO Act; (XII) conspiracy to violate the federal RICO Act.

<sup>2</sup>The Order, which was entered on July 5, 2009 and applies to all conduct prior to July 10, 2009, is available at [http://docs.motorsliquidationdocket.com/pdf/lib/2968\\_order.pdf](http://docs.motorsliquidationdocket.com/pdf/lib/2968_order.pdf) (last

Motors LLC with prejudice (Doc. 201). On September 23, 2010, Plaintiff filed a Motion for Reconsideration (Doc. 202). Although Plaintiff's Amended Complaint included claims for violations of the civil RICO statute, fraud, obstruction of justice, and violations of his state and federal constitutional rights, Plaintiff's Motion for Reconsideration is limited to arguments that the Sale Approval Order permits him to pursue his pre-bankruptcy claims for breach of warranty and for Defendant's allegedly fraudulent conduct during Plaintiff's state Lemon Law proceeding. *See* Doc. 202 at 7. Defendant General Motors LLC responds that New GM only assumed the obligation to fund and otherwise support the standard limited warranties of repair issued by Old GM. Further, Defendant contends that New GM did not assume other liability claims relating to warranties, including liability for personal injuries, economic loss or expenses.

#### ANALYSIS

This Court has recognized three grounds justifying reconsideration: (1) when there is an intervening change in controlling law; (2) when new evidence, unavailable at the time of the Court's decision, has since become available; and (3) when failing to reconsider the decision would evidence clear error or do manifest injustice. *See Sussman v. Salem, Saxon & Nielsen, P.A.*, 1994 U.S. Dist. LEXIS 2323, \*\*15 (M.D. Fla. February 28, 1994). Reconsideration is within "the sound discretion of the district judge and will not be overturned on appeal absent an abuse of discretion." *Region 8 Forest Serv. Timber Purchases Council v. Alcock*, 993 F.2d 800, 806 (11th Cir. 1993) (applying the standard to a non-final judgment).

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accessed December 21, 2010). Through the Order, the new General Motors entity acquired substantially all of the assets of the old entity on July 10, 2009 in a transaction executed under the jurisdiction of the Bankruptcy Court for the Southern District of New York. *See generally In Re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009).

“A district court’s denial of reconsideration is especially soundly exercised when the party has failed to articulate any reason for the failure to raise an issue at an earlier stage in the litigation.” *Lussier v. Dugger*, 904 F.2d 661, 667 (11th Cir. 1990) (internal citation omitted). “A motion for reconsideration should raise new issues, not merely readdress issues litigated previously.” *Painewebber Income Properties Three Ltd. Partnership v. Mobil Oil Corp.*, 902 F. Supp. 1514, 1521 (M.D. Fla. 1995). “When issues have been carefully considered and decisions rendered, the only reason which should commend reconsideration of that decision is a change in the factual or legal underpinning upon which the decision was based.” *Taylor Woodrow Constr. Corp. v. Sarasota/Manatee Airport Authority*, 814 F. Supp. 1072, 1072–73 (M.D. Fla. 1993).

A motion for reconsideration does not provide an opportunity to simply reargue—or argue for the first time—an issue the Court has already determined. Court opinions “are not intended as mere first drafts, subject to revision and reconsideration at a litigant’s pleasure.” *Quaker Alloy Casting Co. v. Gulfco Industries, Inc.*, 123 F.R.D. 282, 288 (N.D. Ill. 1988). This is especially true in a situation where a party has failed to brief an issue, then tries to persuade the Court to reverse its decision when the outcome is unfavorable to that party. Unless the movant’s arguments fall into one of the limited categories outlined in *Sussman*, a motion to reconsider is improper.

Here, Plaintiff’s Motion for Reconsideration does not reference a change in intervening law. Rather, for the first time, it raises factual exceptions to the Sale Approval Order. The Court therefore exercises its sound discretion in granting Plaintiff leave to amend his complaint so he may provide the Court with the contractual basis upon which he bases his two breach of warranty-related claims. *See Alcock* 993 F.2d at 806 (“the decision to grant [reconsideration] is committed to the sound discretion of the district judge”).

### **Plaintiff's Breach of Warranty Claims**

In order to properly plead a cause of action for breach of warranty under the Florida Uniform Commercial Code, a plaintiff must allege: (1) facts in respect to the sale of the goods; (2) identification of the types of warranties created; (3) facts in respect to the creation of the particular warranty; (4) facts in respect to the breach of the warranty; (5) notice to seller of breach; and (6) the injuries sustained by the buyer as a result of the breach of warranty. *James v. Ashley Adams Antiques, Inc.*, 2006 U.S. Dist. LEXIS 39690, at \*16 (M.D. Fla. June 15, 2006) (quoting *Dunham-Bush, Inc. v. Thermo-Air Serv.*, 351 So. 2d 351 (Fla. 4th DCA 1977)); *see also* Fla. Stat. 672.607 (1975). Similarly, under the Magnuson-Moss Act, a consumer who is damaged by the failure of the supplier to comply with any obligation under a written warranty may bring suit for damages and other legal and equitable relief. 15 U.S.C. § 2310(d)(1).

The Court's Order dismissing Plaintiff's claims against Defendant General Motors LLC with prejudice did not contradict the Bankruptcy Court for the Southern District of New York's Sale Approval Order. While it is true that the reorganized General Motors entity did assume certain obligations of the old entity, those obligations are of limited scope and apply only to funding and supporting standard limited warranties *of repair* issued by the old entity. *See* Sale Approval Order at ¶56 ("The Purchaser is assuming the obligations of the Sellers subject to conditions and limitations contained in their express written warranties...[t]he purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as...advertisements, and other promotional materials..."). Whether Plaintiff's breach of warranty claims were barred by the Bankruptcy Court's Sale Approval Order and whether they state a claim for relief depend upon the language of the

express written warranty. Here, Plaintiff failed to attach a copy of the General Motors written warranty to his Amended Complaint.<sup>3</sup> See Doc. 91. On a Motion to Dismiss for failure to state a claim, the Court is required to limit its analysis to the four corners of the Amended Complaint and its attachments. See *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009). Thus, Plaintiff's failure to attach the written warranty upon which his claims are based does not warrant dismissal on the merits at this stage of the pleadings. The Court will, therefore, dismiss Plaintiff's two warranty-related claims without prejudice to allow Plaintiff an opportunity to apprise it and the Defendant of the contractual basis upon which he bases his breach of warranty-related claims<sup>4</sup>. See *United States Rubber Products, Inc. v. Clark*, 145 Fla. 631, 636 (Fla. 1941). See also *Sbarbaro v. Yacht Sales Int'l, Inc.*, 1995 U.S. Dist. LEXIS 22437, at \*33 (S.D. Fla. Oct. 10, 1995).

#### **Plaintiff's Lemon Law-Related Claims**

In addition to those responsibilities covered under its express written warranties, the reorganized General Motors entity also assumed obligations pursuant to state Lemon Laws. The Sale Approval Order states that the reorganized General Motors entity has assumed the old entity's "obligations under state 'lemon law' statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as defined in the statute, and other related regulatory obligations under such statutes." See Sale Approval Order at ¶56. Plaintiff currently has

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<sup>3</sup> Defendant General Motors LLC has attached a copy of the written warranty to its supplemental opposition memorandum (Doc. 208).

<sup>4</sup> Defendant's right to submit to the jurisdiction of the Southern District of New York in litigating these claims pursuant to section 9.13 of the Sale Approval Order is not foreclosed by this Order. The Court will consider, when appropriate, a motion to transfer this action.

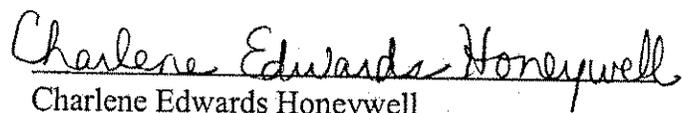
state-law breach of warranty claims pending in the Circuit Court of Charlotte County. *See Kidwell v. General Motors Corp.*, No. 05-1747-CA. Plaintiff's allegation that Defendant "did intentionally commit a Fraud [sic] on Florida's Lemon Law Process" is not within the limited scope of the Sale Approval Order. *See* Doc. 91 ¶240; *see also* Sale Approval Order at ¶56. Specifically, Plaintiff's Lemon Law-related claims are really for fraud and obstruction of justice rather than an action under the substantive provisions of the statute. *See* Doc. 91 at ¶94 ("To further the scheme of the GM Defendants, to commit a fraud on Florida's Lemon Law Process, the GM Defendants suborned Perjury..."); *Ames v. Winnebago Indus.*, 2005 U.S. Dist. LEXIS 44752, at \*12 (M.D. Fla. Jan. 19, 2005) ("Florida's 'Motor Vehicle Warranty Enforcement Act,' also know as Florida's 'Lemon Law,' provides consumers with the right to a refund or replacement vehicle if a manufacturer cannot conform the new motor vehicle purchased by the consumer to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts"); Fla. Stat. §681 et seq. Thus, counts IV and V of Plaintiff's Amended Complaint were properly dismissed with prejudice.

Accordingly it is hereby **ORDERED and ADJUDGED**:

1. Plaintiff's Motion for Reconsideration (Doc. 202) is granted, in part, and denied, in part.
2. Counts III and VII of Plaintiff's Amended Complaint as to Defendant General Motors LLC are dismissed **WITHOUT** prejudice. Plaintiff shall have twenty-one (21) days from the date of this order to file a Second Amended Complaint.
3. All remaining Counts of Plaintiff's Amended Complaint as to Defendant General Motors LLC are dismissed **WITH** prejudice.

4. The Clerk is directed to vacate the judgment entered on September 14, 2010, which dismissed this action as to General Motors LLC with prejudice.(Doc. 201), and enter judgment in accordance with this order.

**DONE AND ORDERED** at Ft. Myers, Florida, on December 28, 2010.

  
Charlene Edwards Honeywell  
United States District Judge

**COPIES TO:**

Counsel of Record and Unrepresented Party

# **EXHIBIT E**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

BILLY R. KIDWELL, )  
 )  
 Plaintiff, )  
 ) **CASE NO. 2:09-cv-00108-CEH-DNF**  
 v. )  
 )  
 G. RICHARD WAGONER, et al., )  
 )  
 Defendants. )  
 )

**DEFENDANT GENERAL MOTORS LLC'S RESPONSE TO  
PLAINTIFF'S REQUEST FOR CLARIFICATION OF COURT ORDER**

Defendant General Motors LLC ("GM" or "New GM"), improperly named as "General Motors Company," files this Response to *pro se* Plaintiff Billy R. Kidwell's ("Plaintiff") "Request for Clarification of Court Order and Voluntary Compliance with ADA" (Dkt. No. 223), showing the Court as follows:

This Court has now *twice* dismissed with prejudice Plaintiff's pre-bankruptcy Lemon Law-related claims (Counts IV & V of Plaintiff's Amended Complaint, Dkt. No. 91). (*See* Order, dated Dec. 28, 2010, Dkt. No. 221; Order, dated Sept. 9, 2010, Dkt. No. 199.) Unwilling to accept this Court's rulings, Plaintiff has filed another unsupported motion in which he again asserts that his Lemon Law-related claims are sustainable against GM while accusing this Court of "fixing" this case for the Defendants, engaging in "double-talk," "hat[ing] Plaintiff, and "rubberstamping" Defendants' motions and accusing Defendants and their counsel of lying and deceiving the Court. (Dkt. No. 223 at 1-6.) Not only are Plaintiff's attacks on this Court, Defendants, and their counsel unjustified and frivolous, but Plaintiff entirely fails to offer any

grounds justifying reconsideration of this Court's December 28, 2010 Order dismissing Counts IV and V of Plaintiff's Amended Complaint with prejudice (the "Dismissal Order"). Indeed, this Court has already considered the issues presented in Plaintiff's instant motion on two separate occasions, and both times properly concluded that the Bankruptcy Court for the Southern District of New York's Sale Approval Order bars Plaintiff's Lemon Law-related claims. To the extent there is any ambiguity regarding proper interpretation of the Approval Order (and there is not), the Approval Order expressly reserves exclusive jurisdiction to adjudicate the matter, which is an alternative ground for upholding this Court's dismissal order.<sup>1</sup>

Plaintiff essentially offers two arguments as to why this Court incorrectly dismissed his Lemon Law-related claims a second time: (1) the damages he seeks in his Amended Complaint constitute "reasonably incurred collateral and incidental charges" associated with the refund or replacement of his vehicle to which he is allegedly entitled under Florida's Lemon Law (Dkt. No. 223 at 3); and (2) Fla. Stat. § 681.111, which provides that a violation of Florida's Lemon Law constitutes "an unfair or deceptive trade practice," permits Plaintiff to pursue his claim that GM committed fraud on the Lemon Law process. (*Id.* at 4.) Neither argument carries any weight.

As the Court recognized in its Dismissal Order, while the Sale Approval Order states that New GM has assumed Old GM's obligations pursuant to state Lemon Laws, Florida's Lemon Law only "provides consumers with the right to a refund or replacement vehicle if a

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<sup>1</sup> Paragraph 71 of the Approval Order provides, in pertinent part, that the Bankruptcy Court "retains exclusive jurisdiction to enforce and implement the terms and provisions of the Order, the [Master Sale and Purchase Agreement], all amendments thereto, any waiver and consents thereunder, and each of the agreements executed in connection therewith . . . including, but not limited to, retaining jurisdiction to . . . (d) interpret, implement, and enforce the terms of" the Approval Order.

manufacturer cannot conform the new motor vehicle purchased by the consumer *to the warranty by repairing or correcting any nonconformity* after a reasonable number of attempts.” (Dkt. No. 221 at 7 (quoting *Ames v. Winnebago Indus.*, 2005 U.S. Dist. LEXIS 44752, at \*12 (M.D. Fla. Jan. 19, 2005) (emphasis added))). Accordingly, *New GM’s assumption of liability is limited solely to the repair obligations in Old GM’s limited warranties and not any additional liability for damages.* (See Dkt. No. 221 at 6 (citing Master Sale Purchase Agreement (“MSPA”), § 1.1 (defining lemon laws as “a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.”)); see also Sale Approval Order, ¶ 56 (“[New GM] has assumed [Old GM’s] obligations under state ‘lemon law’ statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.”).)

In the Dismissal Order, the Court also analyzed the nature of Plaintiff’s Lemon Law-related claims -- Counts IV and V of Plaintiff’s Amended Complaint -- to determine whether those claims, regardless of what Plaintiff named them, actually concerned liabilities that New GM assumed through the Sale Approval Order. Following its review of Plaintiff’s claims, the Court held that *“Plaintiff’s Lemon Law-related claims are really for fraud and obstruction of justice rather than an action under the substantive provision of the [Florida Lemon Law] statute.”* (Dkt. No. 221 at 7 (citing paragraphs 94 and 240 of Plaintiff’s Amended Complaint) (emphasis added).) This reflects, of course, that Plaintiff did not prevail in the Lemon Law

arbitration that is the backdrop for this case. Indeed, Counts IV and V of Plaintiff's Amended Complaint do not allege that GM failed to repair Plaintiff's vehicle pursuant to Old GM's limited warranty, but rather alleges that GM committed "intentional fraud on Florida's Lemon Law process." But the agreement underlying and attached to the Approval Order expressly excludes from those liabilities those "arising out of, related to or in connection with any . . . (B) allegations, statement or writing by or attributable to [Old GM]." (MSPA, 2.3(b)(xvi).) Thus, while New GM assumed responsibility to comply with certain express warranty and related Lemon Law obligations on a forward looking basis, it did not assume liability for Old GM's (alleged) misconduct.

Of course, Plaintiff's Amended Complaint seeks a variety of damages for Old GM's alleged fraudulent behavior, including \$50 per day in damages (Dkt. No. 91, ¶ 106), "reasonable storage fees for having to store the Lemon GM truck on his property" (*id.*, ¶ 107), costs associated with pursuing his claims (*id.* ¶ 108), and damages for various personal injuries. (*Id.*, ¶¶ 108, 133-134.) Plaintiff's Amended Complaint also seeks declaratory and injunctive relief as well as punitive damages. (*Id.* at "Prayer For Relief," ¶¶ 1-4, 6.) After determining that Plaintiff's Lemon Law-related claims were actually claims for fraud and obstruction of justice rather than claims for the repair of his vehicle pursuant to Old GM's long-expired limited warranty, the Court properly held that Counts IV and V of Plaintiff's Amended Complaint are "*not within the scope of [New GM's assumed liabilities in the] Sale Approval Order.*" (Dkt. No. 221 at 7 (emphasis added).)

Significantly, the Court dismissed Counts IV and V on the grounds that the substance of those claims concerned fraud and obstruction of justice, which are not assumed liabilities under

the Sale Approval Order, *not* on the grounds that the damages sought in Plaintiff's Amended Complaint were outside the scope of Florida's Lemon Law. Indeed, this Court is not adjudicating a Lemon Law claim, but rather a claim based on extravagant allegations about conduct in the contest of a Lemon Law arbitration proceeding. Accordingly, Plaintiff's argument that his claims were improperly dismissed because the damages he seeks are obtainable under Florida's Lemon Law is entirely misplaced. Regardless, none of the damages that Plaintiff seeks are available under the express terms of Old GM's limited express warranty, which provides the scope of any possible relief to which Plaintiff could possibly be entitled against New GM. (*See* Sale Approval Order, ¶ 56 (providing that New GM "is assuming the obligations of [Old GM] pursuant to and *subject to conditions and limitations contained in their express written warranties*") (emphasis added); MSPA, § 1.1 (limiting a plaintiff's recovery against New GM under a state's Lemon Law exclusively to that which the plaintiff would be entitled under the applicable Old GM express warranty).) The express warranty accompanying Plaintiff's vehicle specifically provides that *performance of repairs and needed adjustments is Plaintiff's exclusive remedy*. (*See* Dkt. No. 208 at 6-7 (setting forth the limitations on New GM's liability pursuant to the express written warranty for Plaintiff's vehicle). *New GM did not assume other liability claims relating to alleged warranties*, including liability for personal injuries, economic loss, or expenses, including storage costs, vehicle rental expenses, or the cost of inconvenience. (*See id.*; *see also* MSPA, § 2.3(b)(xvi)(B) (expressly excluding liabilities arising from "allegation, statement or writing by or attributable to [Old GM]."); Sale Approval Order, ¶ 56 (providing that New GM did not assume "responsibilities for Liabilities contended to arise by virtue of . . . implied warranties and statements in materials such as, without limitation,

individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials.”.)

Plaintiff's argument that his Lemon Law-related claims are somehow sustainable pursuant to Fla. Stat. § 681.111 is also misplaced. While Fla. Stat. § 681.111 provides that a violation of Florida's Lemon Law is “an unfair or deceptive trade practice,” that statute in no way addresses whether New GM assumed liability for any claims for fraud or obstruction of justice. Even if, *arguendo*, an “unfair or deceptive trade practice” occurred, it would have been conduct “attributable to” Old GM which is expressly excluded under the Approval Order and the contract approved therein. As this Court correctly held, the Sale Approval Order expressly provides that New GM did not assume such liability. (*See* Dkt. No. 221 at 7; MSPA, § 2.3(b)(xvi)(B); Sale Approval Order, ¶ 56.) Rather, New GM *only* assumed liability for the repair and service of Old GM vehicles. And, if there were any doubt about that, that question is governed by the Sale Approval Order and is reserved to the exclusive jurisdiction of the Bankruptcy Court.

In sum, Plaintiff's Lemon Law-related claims constitute 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, 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 (“[New GM] shall not have any successor,



Georgia Bar No. 692165  
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Atlanta, Georgia 30309  
E-Mail: psumner@kslaw.com  
Telephone: 404-572-4600  
Facsimile: 404-572-5100

Attorneys for Defendant  
GENERAL MOTORS LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on January 24, 2011, the foregoing document is being served this day on all counsel of record and *pro se* parties identified in the attached Service List in the manner specified. The foregoing document will be filed with the Clerk of Court, via the CM/ECF e-filing system.

/s \_\_\_\_\_  
Henry Salas

**SERVICE LIST**

Case No: 2:09-CV-108

Billy R. Kidwell  
5064 Silver Bell Drive  
Port Charlotte, Florida 33948  
Plaintiff proceeding *pro se*

Service by U.S. Postal Service Certified Mail, return receipt requested, First Class postage prepaid.