IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

In re Motors Liquidation Company (f/k/a General Motors Corporation), et al.,	)	Case No. 09-50026-REG
Debtors	)	Hon. Robert E. Gerber

MOTION FOR LEAVE TO PURSUE CLAIMS AGAINST GENERAL MOTORS LLC, AND, ALTERNATIVELY, TO FILE A POST-BAR-DATE PROOF OF CLAIM IN THE MOTORS LIQUIDATION COMPANY BANKRUPTCY

Now Comes Roger Dean Gillispie, by and through his attorneys, and hereby respectfully moves for leave to pursue claims against General Motors, LLC, and, alternatively, to file a post-bar-date proof of claim in the Motors Liquidation Company bankruptcy. In support thereof, Mr. Gillispie states as follows:

Background

Roger Dean Gillispie, a former General Motors employee in Dayton, Ohio, spent more than 20 years in prison for crimes he did not commit. Mr. Gillispie is a family man, an avid fisher, and an individual who has no criminal record other than his wrongful conviction.

In 1990, GM's Director of Security in Dayton, Ohio fired and then falsely targeted Mr. Gillispie for several rapes that took place outside of Dayton. The GM Director was also an off-and-on auxiliary police officer in the area and (Mr. Gillispie alleges) conspired with police officers and other GM employees to frame Mr. Gillispie for the crimes. The GM Director then participated in the investigation and

prosecution of Mr. Gillispie, all of which involved a substantial violation of his constitutional rights.

Since then, Mr. Gillispie has steadfastly maintained his innocence and labored tirelessly for over 20 years to clear his name. As a result of these efforts, and those of the Ohio Innocence Project, in 2011 and 2012 two courts—one federal and one state—called into question Mr. Gillispie's conviction. *Gillispie v. Timmerman-Cooper*, 835 F. Supp.2d 482 (S.D. Ohio 2011); *State v. Gillispie* 2012 WL 1264496 (Ohio App. 2 Dist. 2012).

Now, in light of his conviction having been undermined, Mr. Gillispie has begun pursuing the next phase of relief to remedy this wrongful incarceration—a civil suit under 42 U.S.C. § 1983 alleging that his conviction was the result of violations of his constitutional rights and, likewise, the result of a conspiracy among police officers and individuals working at GM to maliciously prosecute him. *Cf. Memphis, Tennessee Area Local, American Postal Workers Union, AFL-CIO v. City of Memphis*, 361 F.3d 898, 905 (6th Cir. 2004) ("Private persons may be held liable under § 1983 if they willfully participate in joint action with state agents.").

To that end, in December of 2013 Mr. Gillispie commenced a civil action, *Gillispie v. Miami Township, et al.*, 13cv416, in the Southern District of Ohio. *See* Exhibit 1 (First Amended Complaint). In his Complaint, Ms. Gillispie alleges that, among others, the police officers from Miami Township worked in conjunction with Mr. Gillispie's former colleagues and supervisors at General Motors to falsely implicate him in several crimes; that they withheld exculpatory evidence from Mr.

Gillispie during his criminal prosecution; and that several General Motors and Miami Township employees even provided false, perjured testimony in order to secure Mr. Gillispie's conviction.

In addition to naming the police officers and other public officials that caused his incarceration, Mr. Gillispie's First Amended Complaint alleges that several of his former colleagues at General Motors, and ultimately GM itself, are liable for the actions they took that contributed to his wrongful incarceration. The Complaint alleges that GM itself is possibly liable on the basis that (1) the GM Director's actions (with other GM employees) were pursuant to company as policies, practices, or customs, *see Monell v. Department of Soc. Svcs*., 436 US 658 (1978); (2) that the supervisor's decisions were sufficient for making company policy in the applicable area, *see Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986), (3) and that GM has an obligation to indemnify its employees if they are ultimately liable, *see, e.g.*, Ohio Rev. Code § 1729.031.

After Mr. Gillispie was convicted in 1990 but before that conviction was called into question in 2011 and 2012, General Motors went through a § 363 sale and a Chapter 11 bankruptcy. These events complicate the question of which entity is the proper defendant to Mr. Gillispie's § 1983 suit, and such a question did not come before the Court in the proceedings regarding the § 363 sale or at any point in the bankruptcy proceedings. Mr. Gillispie's status vis-à-vis GM as a defendant in his lawsuit is therefore unique, and perhaps *sui generis*.

The question is complicated because before Mr. Gillispie's conviction was called into question or otherwise undermined, he could not have filed a § 1983 suit alleging that his conviction was unconstitutional or otherwise invalid. *See Heck v. Humphrey*, 512 U.S. 477 (1994).[1] In addition, to bring a § 1983 malicious prosecution claim, which is advanced in the suit, Mr. Gillispie's conviction similarly had to have been undermined. *Sykes v. Anderson*, 625 F.3d 294, 308-09 (6th Cir .2010). Thus, it is undisputed that before 2011 or 2012 Mr. Gillispie could not have sued GM for the claims advanced in his § 1983 suit—because of *Heck* he had no cause of action. Indeed, under *Heck*, the law would not acknowledge that any wrong at all was done to Mr. Gillispie.

Accordingly, given that Supreme Court law precluded Mr. Gillispie from asserting any claims against GM during the entire pendency of the § 363 sale and bankruptcy proceedings, the constitutional guarantee of Due Process demands that Mr. Gillispie now have the opportunity to present his claims against GM in some capacity. *See Zinermon v. Burch*, 494 U.S. 113, 129-30 (1990) (explaining that due process requires "post deprivation tort remedies" in situations where they are the "only remedies" one "could be expected to provide"); *Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701 (1884) (explaining that due process "must be adapted to the end

[1] In *Heck*, the Supreme Court held that:

> in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.

512 U.S. at 486-87.

to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought"); *cf. Gilbert v. Homar*, 520 U.S. 924, 930 (1997) ("'[D]ue process is flexible and calls for such procedural protections as the particular situation demands.'") (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

Put differently, applying due process here means that Mr. Gillispie must be allowed to seek some form of post-incarceration relief against GM for the actions, if proven, he alleges GM took in violation of his rights. Accordingly, Mr. Gillispie's First Amended Complaint names both "Old GM" (Motors Liquidation Company f/k/a General Motors Corporation) and "New GM" (General Motors, LLC f/k/a General Motors Company and NGMCO, Inc.) as defendants. By this Motion, Mr. Gillispie asks this Court to determine whether he can pursue his claims against New GM, Old GM, or both. Without being granted such relief, contrary to foundational notions of due process, Mr. Gillispie will absolutely no opportunity to seek a remedy for what he alleges was a violation of his most fundamental rights.

Issues Presented & Relief Requested

First, with respect to New GM, the question is whether Mr. Gillispie's interests are ones that, in light of Constitution and other applicable law, he must be entitled to assert against New GM notwithstanding the consideration of similar, though distinct, issues in this Court's prior orders. *See In re General Motors Corp*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009) (the "*Sale Opinion")* (addressing the constitutionality of successor liability issues for certain claimants); *In re General*

Motors Corp., 09-50026, Dkt. 2968, Order Authorizing Sale of Assets, at ¶8 (July 5, 2009) (the "Sale Order"), attached as Exhibit 2 (enjoining "all persons" from asserting claims against New GM related to assets bought from Old GM). Put differently, the question is whether this Court's injunction following the § 363 sale prevents Mr. Gillispie from asserting his claims against New GM.

Importantly, this Court's prior orders do not address whether the § 1983 claims here, which could not have even possibly existed until after the sale and bankruptcy (because they were barred by *Heck* at the time of the § 363 sale and bankruptcy), fall within the ambit of this Court's injunction. Due process demands they do not. Indeed, this Court has acknowledged that individuals with "future claims" should not be treated as bound by the injunction—Mr. Gillispie is such an individual. Due process therefore requires that he have the opportunity to pursue his claims, which did not previously exist, against New GM.

New GM takes the position that Mr. Gillispie's claims against it violate the *Sale Order* and that due process does not demand he be allowed to pursue his claims against New GM. *See* Exhibit 3 (Ltr. from Lawrence Buonomo to Mr. Gillispie's Counsel, Feb. 13, 2014.)[2] Mr. Gillispie has no intention of violating an Order of this Honorable Court, and, by this Motion, seeks an Order clarifying that he can pursue his claims against New GM without violating the injunction. In

[2] Counsel for Mr. Gillispie and New GM have consulted regarding the issues presented in this Motion. Counsel for Mr. Gillispie have agreed not to pursue his case against New GM while this Motion is pending. Likewise, counsel for New GM have agreed that this Motion is the proper way for adjudicating whether New GM should be a party to the civil suit and are not pursuing an injunction or any other form of sanction against Mr. Gillispie for having named New GM as a defendant to the suit.

addition, and in accordance with such an Order, there is a new reason to find that New GM is the proper party to Mr. Gilispie's civil suit: New GM admits that it is in fact the same company as, and legally responsible for the actions of, Old GM.

Second, in the alternative, should the court find that Mr. Gillispie is barred from pursuing his claims against New GM, the issue is whether Mr. Gillispie is an unsecured creditor of the bankruptcy estate. That question turns on whether Mr. Gillispie can now file a proof of claim despite the fact that the bar date was years ago. As explained below, Mr. Gillispie's claims easily satisfy the "excusable neglect" standard of Federal Rule of Bankruptcy Procedure 9006(b)(1). Accordingly, at a minimum, Mr. Gillispie should be permitted to file his proof of claim now, though after the bar date.

Argument

I. Mr. Gillispie Should Be Permitted to Advance His Civil Suit Against New GM

As this Court recognized in *Sale Opinion*, due process demands different treatment for individuals holding "future claims" against GM that could not have been raised previously. The Court defined this class of people as follows: (1) claimants who were not previously able to file a claim at the time of the 363 sale or bankruptcy, who therefore had no notice that such a claim needed to filed; and (2) claimants whose interests were "not yet 'claims' as Defined in the Bankruptcy code." *Sale Opinion*, 407 B.R. at 506. Mr. Gillispie is such an individual, as his situation more than satisfies both of these criteria.

A. Mr. Gillispie Could Not Have Previously Asserted His Claims Against GM and is Therefore a "Future Claims" Holder

When this Court issued the Sale Opinion and Sale Order, and then later confirmed Old GM's Chapter 11 plan, the *Heck*-bar prevented Mr. Gillispie from bringing the claims he now advances civilly in *Gillispie v. Miami Township* because, through those claims, Mr. Gillispie alleges that his conviction was wrongful and invalid. *See Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005); *Heck*, 512 U.S. at 487. Under *Heck*, Mr. Gillispie could not have filed his § 1983 lawsuit until after his conviction was called into question, which occurred in either 2011 or 2012, and is the subject of ongoing litigation in federal and state courts. The law is clear that a § 1983 plaintiff's underlying conviction must be called into question, reversed, or otherwise undermined before civil rights claims implicating the conviction accrue. *Heck*, 512 U.S. at 489-90.

Thus, because Mr. Gillispie's cause of action did not accrue—that is, his claims did not come into existence—until *after* the 363 sale (and *after* the bankruptcy proceedings were complete), he could not have filed a claim at the time of any of GM's bankruptcy proceedings. *See Gabelli v. SEC*, 133 S. Ct. 1216, 1220 (2013) ("'In common parlance a right accrues when it comes into existence'" (quoting *United States v. Lindsay*, 346 U.S. 568, 569 (1954)); *id.* at 1221 (noting that Black's Law Dictionary defines "'accrue' as '[t]o come in to existence as an enforceable claim or right'"). In fact, at the time of the prior proceedings Mr. Gillispie did not know, nor could he have had any way of knowing, whether he would *ever* have federal constitutional claims that he would be able to advance in a § 1983 lawsuit. If, as his

previous attempts had been, Mr. Gillispie was unsuccessful in obtaining post-conviction relief, his claim would have never come into existence.

This Court has recognized that an individual in a situation something analogous to Mr. Gillispie's could not have previously asserted their claims against GM. Specifically, in the *Sale Opinion*, this Court recognized that individuals who had been exposed to asbestos pre-sale and pre-petition, but did not "yet know of their ailments or the need to sue or assert a claim," should not be bound by the *Sale Order*. 407 B.R. at 506. As the Court recognized, Due Process requires a different result for these individuals because "the notice given on the [sale] was not fully effective" because, at the time of the notice, any of these "recipient[s] would be in no position to file a present claim." *Id.* at 507. Accordingly, this correctly explained, barring these sorts of individuals from presenting claims against New GM would be "constitutionally suspect," and the Court therefore added language into its injunction recognizing such limitations. *Id.*

Mr. Gillispie is not a future asbestos claimant. Nonetheless, his claims fall well within the group of individuals holding "future claims," as defined by the Court. To start, he "was in no position to file a present claim" at the time of the sale. *Id.* Indeed, Mr. Gillispie's circumstances are possibly more compelling than, and the due process demands all the more present, than a "future" asbestos claimant. For one, Mr. Gillispie was (wrongfully) incarcerated at the time of the sale and bankruptcy proceedings, rendering him outside of the scope of the notice published in the sale and bankruptcy. In addition, any notice would have been completely

defective: Mr. Gillispie had absolutely *no* cause of action until his conviction was called into question—something that undisputedly took place after the 363 sale and bankruptcy petition. Nor did Mr. Gillispie have any way of knowing (though he had every hope) of whether he would have been ultimately successful in having his conviction declared invalid, undermined, or called into question. Last, while someone who had been exposed to asbestos would have had a claim that they did not know about—because the injuries had not begun to manifest—Mr. Gillispie had no claim whatsoever.

In short, if an asbestos "future claimant's" due process rights require a different analysis, then *a fortiori* Mr. Gillispie's do as well.

B. Mr. Gillispie's Interests, True "Future Claims," are Not "Claims" As Defined in the Bankruptcy Code and Cannot, Consistent with Due Process, Be Categorically Discharged

In the *Sale Opinion*, the Court defined those with "Future Claims" as individuals possessing interests that were "not yet 'claims' as defined in the Bankruptcy Code." *Id.* at 506l. Mr. Gillispie is such an individual, and his § 1983 suit against GM satisfies this criterion (that his interests would not be defined as a "claim" under the Bankruptcy Code) as well.

It is well established that "[a] claim exists *only if* before the filing of the bankruptcy petition, the relationship between the debtor and the creditor contained all the elements necessary to give rise to a legal obligation—a right to payment—under the relevant non-bankruptcy law." *LTV Steel Co. v. Shalala (In re Chateaugay Corp.)*, 53 F.3d 478, 497 (2d Cir.1995) (quoting *In re National Gypsum*

Co., 139 B.R. 397, 405 (N.D.Tex.1992) (emphasis added)). Here, "all of the elements necessary to give rise to a legal obligation" did not occur prepetition; indeed, Mr. Gillispie's legal claims had not accrued and therefore did not even exist. *Gabelli*, 133 S. Ct. at 1220.

Thus, because interests at stake in *Gillispie v. Miami Township* are post-petition "future claims," it is well established: that they are not "claims" for the purposes of the Bankruptcy Code; that due process therefore demands that Mr. Gillispie cannot be bound by the injunction in the *Sale Order*; and that Mr. Gillispie should now be able to assert his claims against New GM. *See In re Johns–Manville Corp.,* 600 F.3d 135 (2d Cir.2010) (discussing the application of due process to future claims in bankruptcy); *In re Grumman Olson Indus.*. 467 B.R. 694, 706 (S.D.N.Y. 2012) ("Courts have held in general that, for due process reasons, a party that did not receive adequate notice of bankruptcy proceedings could not be bound by orders issued during those proceedings."); *see also id.* at 709 ("Because parties holding future claims cannot possibly be identified and, thus, cannot be provided notice of the bankruptcy, courts consistently hold that, for due process reasons, their claims cannot be discharged by the bankruptcy courts' orders."); *In re Waterman S.S. Corp.*, 157 B.R. 220, 222 (S.D.N.Y. 1993) ("The Bankruptcy Court correctly held that the potential future claims of those who had not manifested any detectable signs of disease when notice of the bar date was given, were not discharged in the bankruptcy proceeding.").

Courts nationwide have reached the same conclusion in situations involving "future claims" for others, like unborn claimants, that are materially analogous to Mr. Gillispie. *See, e.g.*, *Lemelle v. Universal Mfg. Corp*., 18 F.3d 1268 (5th Cir. 1994); *Morgan Olson, LLC v. Fredrico (In re Grumman Olson Indus., Inc.)*, 445 B.R. 243, 254-56 (Bankr. S.D.N.Y. 2011); *In re Chance Industries, Inc.*, 367 B.R. 689 (Bankr. D. Kan. 2006); *In re Hoffinger Industries, Inc.*, 307 B.R. 112 (Bankr. E.D. Ark. 2004); *In re Piper Aircraft Corp. v. Official Committee of Unsecured Creditors of The Estate of Piper Aircraft Corp.*, 168 B.R. 434 (S.D. Fla. 1994).

Likewise, courts considering the materially indistinguishable situation of a malicious prosecution claim where the criminal proceedings terminated in the claimants favor after the bankruptcy petition was filed have overwhelmingly held that such an action accrues following a bankruptcy is therefore not a "claim" within the meaning of the bankruptcy code, meaning such a claim cannot be discharged by the bankruptcy either. *Austin v. BFW Liquidation, LLC (In re BFW Liquidation, LLC)*, 471 B.R. 654, 667 (N.D. Ala. 2012), is illustrative. There, the Court explained that where a criminal action against the plaintiff did not conclude in the plaintiff's favor until after the debtor's plan was confirmed, that the plaintiff's "malicious prosecution action accrued … post-confirmation" and was not, therefore, "discharged by confirmation of the debtor's plan." *Id.*

Again, nationwide, numerous courts have reached the same conclusion. *See, e.g.*, *Johnson v. Mitchell*, 2011 WL 1586069, at *7-*8 (E.D. Cal. 2011) (explaining that "the element of termination in plaintiff's favor is of paramount importance to a

malicious prosecution claim, and the claim would not exist without this primary predicate," and that because the "predicate" requirement occurred after the bankruptcy filing, "plaintiff's malicious prosecution claims [we]re not part of the bankruptcy estate"); *In re Jenkins*, 410 B.R. 182 (W.D. Va. 2008) (holding that even though some of the conduct that constituted the basis for the plaintiff's malicious prosecution claim arose prepetition, the fact that the "right to bring the claim" was not in existence at the time of filing—the criminal case had not resolved in the plaintiff's favor—meant that the malicious prosecution was not property of the bankruptcy estate); *Carroll v. Henry County, Georgia*, 336 B.R. 578 (N.D. Ga. 2006)(discussing *Heck*, and concluding that the Plaintiff "had no section 1983 claim until the conclusion of his trial, when the jury found him not guilty of the charges against him," and that "[b]ecause the jury verdict occurred after the filing of the bankruptcy petition, the plaintiff had no section 1983 claims at the time of commencement of [the bankruptcy] case"); *Brunswick Bank & Trust Co. v. Atanasov* (*In re Atanasov*), 221 B.R. 113 (D.N.J.1998) (debtor's malicious prosecution claim was not property of estate as it arose post-petition when indictment was dismissed); *cf. Atkins v. Cory & Cory (In re Cory*), 2008 WL 5157515, at *1 (W.D. Mo. 2008) ("The Debtors concede that the criminal action against Ms. Atkins at issue in the state court malicious prosecution action was dismissed after the Debtors filed their Chapter 7 bankruptcy petition. Therefore, the Plaintiff's malicious prosecution action accrued post-petition. As a post-petition claim, it is not subject to the Debtors' discharge.").

In light of these authorities, there should be no question that, at the time of the 363 sale and confirmation date, Mr. Gillispie did not have a "claim" within the meaning of the Bankruptcy Code. Accordingly, given that due process requires "future claims" holders like Mr. Gillispie be entitled to litigate their claims once they do exist, due process demands that same result here where Mr. Gillispie was incarcerated and had no claim at the time of the 363 sale or petition date.

C. General Motors LLC's Recent Admissions That It Bears Legal Responsibility For The Pre-Sale and Bankruptcy Actions of Motors Liquidation Company Creates A Question of Fact for the Article III Court As To Whether General Motors LLC Should Be A Defendant to Mr. Gillispie's § 1983 Suit.

Apart from the issues related to this Court's prior decisions, General Motors LLC—New GM—is potentially liable for Mr. Gillispie's claims a wealth of new information has recently emerged wherein New GM has admitted to being the same corporation as Motors Liquidation Company—Old GM. These admissions took place well-after the *Sale Opinion*, and were not addressed by that order at all; nor could they have been. Instead, in the last several months New GM has admitted that, despite the language in the used in the sale and bankruptcy, it bears responsibility for the actions of Motors Liquidation Company, Old GM, because they remain the same company.

Specifically, and for example, GM's CEO, Mary Barra, was recently asked about whether the company bears responsibility for ignition switch defects in cars manufactured and sold before the § 363 sale and bankruptcy. When asked whether "New GM" is responsible," Ms. Bara admitted that the company retains "legal

obligations and responsibilities as well as moral obligations," derived out of its continuing operation of General Motors. Tr. of Testimony before the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations, *GM Ignition Switch Recall, Why Did it Take So Long?*, at 105 (Apr. 1, 2014), attached as Exhibit 4; *see also id.* at 36 (Ms. Barra: "As I see it, GM has civil responsibilities and legal responsibilities" related to compensating claimants from Old GM's prior sales); *id.* at 102 (discussing "civic responsibilities as well as legal responsibilities" related to Old GM).

Similarly, before a senate subcommittee, Ms. Barra, admitted that "General Motors is a hundred-year-old company," that has changed its "focus" since the bankruptcy, including compensating families for car crashes after the bankruptcy proceedings. Tr. of Proceedings before the Senate Transportation Subcommittee on Consumer Protection and Product Safety, *GM Ignition Switch Recall*, at 36 (Apr. 2, 2014), attached as Exhibit 5; *see also id*. at 49-51 (admitting that New GM will work to compensate families for pre sale and bankruptcy defects); *id.* at 33 (discussing the changing culture since the bankruptcy). Again, Ms. Barra admitted that "GM has both civic responsibilities and legal responsibilities" associated with pre-sale and pre-bankruptcy transactions. *Id.* at 21.; *see also id.* at 50 (similar). It is no surprise, then, that Congress members recognized New GM to be taking admitting its own legal responsibility for "Old GM's" actions. *See, e.g.*, *id.* at 125(Senator Blumenthal: "What you're doing now is incurring both legal and moral responsibility....").

In light of these sorts of admissions, and entirely distinct from the questions addressed in the *Sale Opinion*, there is now a question of fact related to whether New GM has ongoing "legal obligations" derived from the plain fact that it is the same company as Old GM and has admitted that it bears responsibility as such. That is, the question of whether GM should be a party to Mr. Gillispie's lawsuit also involves factual questions entirely unrelated to the prior proceedings in this Court. As such, like many questions about whether the proper parties have been sued in a given lawsuit, whether New GM can be a defendant in the § 1983 action should be considered in the first instance by the Article III court in the Southern District of Ohio where that lawsuit is currently pending.

II. Mr. Gillispie's Post-Bar-Date Proof Of Claim Should Be Allowed

Should the Court disagree with the foregoing, and hold that New GM cannot be a defendant in *Gillispie v. Miami Township*, the opposite cannot also be true—the Old GM, and its still-open estate, cannot also be potentially liable for the conduct, if proven, alleged in Mr. Gillispie's complaint. That is, given Mr. Gillispie's fundamental, constitutional right to Due Process, this Court cannot hold that Mr. Gillispie—who has never had a prior opportunity to assert his claims—cannot litigate them against New GM *and* Old GM. Accordingly, the flipside of the foregoing is that if Mr. Gillispie's claims are not post-petition claims that, for constitutional and equitable reasons, he is entitled to bring against New GM, then he must, at a minimum, be entitled to pursue relief from Old GM's estate.

In addition to due process, the Court's analysis turns on Federal Rule of Bankruptcy Procedure 9006(b)(1), which "empowers a bankruptcy court to permit a late filing if the movant's failure to comply with an earlier deadline 'was the result of excusable neglect.'" *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship,* 507 U.S. 380, 382 (1993) (quoting FED. R. BANKR. P. 9006(b)(1)). In determining whether an individual has met her burden of demonstrating excusable neglect, the Court considers the "totality of the circumstances," including the (1) danger of prejudice to the debtor, (2) the length of delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was in the movant's control, and (4) whether the movant acted in good faith. *Id.* at 395. At the end of the day, excusable neglect is an "elastic concept" and the Court's determination is "an equitable one." *Id.* at 392 & 395; *see also In re 50-Off Stores, Inc.*, 22 B.R. 897, 901 (Bankr. W.D. Tex 1998) (explaining that "no single circumstance controls, nor is a court simply to proceed down a checklist ticking off traits").

Here, the equities undoubtedly favor Mr. Gillispie. First, and most paramount is the fact that Mr. Gillispie was incarcerated during the sale and confirmation of the bankruptcy due to a conviction that was called into question years after the bar date. Before then, in light of *Heck*, Mr. Gillispie could not have brought his civil rights case. Accordingly, it cannot be doubted that Mr. Gillispie's reason for seeking to file a proof of claim after the bar date is outside of his control.

In addition, by this Motion, Mr. Gillispie is acting in good faith in trying to determine, as a matter of federal bankruptcy law, whether Old GM, New GM, or both are proper defendants to his lawsuit.

The Debtor, Old GM, will not be prejudiced by allowing Mr. Gillispie to file a proof of claim. For one, the amount of time between the bar date (in 2009) and this motion (in 2014) is not prejudicial; there are still a number of pending claims in the bankruptcy estate, and the General Unsecured Creditors Trust remains open. In addition, Mr. Gillispie's claims are unique, allowing his claim will not open the door to a flood of other litigants. *Compare In re Enron Corp.*, 2003 WL 1889042 (Bankr. S.D.N.Y. Apr. 8, 2003) (denying a rule 9006(b)(1) motion to file tardy proof of claim where a "deluge of motions seeking similar relief" could have occurred, thus causing substantial prejudice to the Debtor).

Indeed, underscoring the lack of prejudice is the fact that both the Debtor and this Court have acknowledged that, given the size, structure, and age of General Motors, future claimants would likely be making claims against Old GM related to events that happened well before the bankruptcy was filed. This is why, for example, to "manage the liquidation of this very large and complex estate," the Plan created the GUC trust in the first place, established "future claims" representatives for asbestos litigants, *In re Motors Liquidation Co.*, 447 B.R. 198 (Bankr. S.D.N.Y. 2011), and why this Court reserved its right to Order certain "late claims" be allowed. (*See* Dkt. 11394). Likewise, in the *Sale Opinion*, the Court recognized that many "Future Claims" issues could arise after the purchase and

sale (as now, after the bar date) "especially if Old GM were still in existence, and a claim could be filed with Old GM," which is precisely the circumstance here. *Sale Opinion*, 407 B.R. at 507.

In short, Mr. Gillispie has demonstrated his entitlement to file a post-bar-date proof of claim because he has more than established "excusable neglect" as required by Rule 9006(b)(1).

Conclusion

WHEREFORE, Roger Dean Gillispie respectfully Moves this Court to Order that he be able to pursue his claims in *Gillispie v. Miami Township* against General Motors LLC, and, simultaneously and in the alternative, be granted leave to file a post-bar-date proof of claim the Motors Liquidation Company bankruptcy estate.

Respectfully Submitted,

/s/ David B. Owens*
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CERTIFICATE OF SERVICE

I, David B. Owens, an attorney, certify that on June 17, 2014, I delivered by electronic means a copy of the attached Notice to all counsel of record via the Court's electronic filing system.

/s/ David. B. Owens

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

ROGER DEAN GILLISPIE, Plaintiff, v. THE CITY OF MIAMI TOWNSHIP, MATTHEW SCOTT MOORE, TIM WILSON, THOMAS ANGEL, MARVIN SCOTHORN, JOHN DIPIETRO, STEPHEN GRAY, OTHER UNIDENTIFIED MEMBERS OF THE MIAMI TOWNSHIP POLICE DEPARTMENT, MONTGOMERY COUNTY, KENNETH M. BETZ, DENISE RANKIN, RALPH NICKOSON, OTHER UNIDENTIFIED EMPLOYEES OF THE MIAMI VALLEY REGIONAL CRIME LAB, GENERAL MOTORS, LLC F/K/A GENERAL MOTORS COMPANY AND NGMCO, INC., MOTORS LIQUIDATION COMPANY F/K/A GENERAL MOTORS CORPORATION, RICK WOLFE, KEITH STAPLETON, ROBERT MILLER, DAVID BURKE, ROBERT BURKE, AND OTHER UNIDENTIFIED PERSONS, Defendants.	)))) No. 3:13-cv-416))))) JURY TRIAL DEMANDED))))))))))))))

FIRST AMENDED COMPLAINT

Now Comes Plaintiff, Roger Dean Gillispie, by and through his attorneys, and complains of Defendants the City of Miami Township, Matthew Scott Moore, Tim Wilson, Thomas Angel, Marvin Scothorn, John DiPietro, Stephen Gray, other unidentified members of the Miami Township Police Department, Montgomery County, Kenneth M. Betz, Denise Rankin, Ralph Nickoson, other unidentified

employees of the Miami Valley Regional Crime Lab, Motors Liquidation Company f/k/a General Motors Corporation, General Motors, LLC f/k/a General Motors Company and NGMCO, Inc., Rick Wolfe, Keith Stapleton, Robert Miller, David Burke, Robert Burke, and other unidentified persons.

Introduction

1. Plaintiff, Roger Dean Gillispie, was framed for a series of sexual assaults that he did not commit, and has spent over 20 years incarcerated as an innocent man. Tragically, his conviction was no accident, as his wrongful conviction was the result of police misconduct perpetuated by officers from the Miami Township Police Department. This misconduct included, but was not limited to, witness manipulation; cover-ups; the fabrication, destruction, and suppression of evidence; and perjury. The unlawful conduct was not limited to officers from Miami Township; it included employees of General Motors Corporation who conspired with officers from the Miami Township Police Department to wrongfully convict Mr. Gillispie. Plaintiff's wrongful incarceration was extended when, in violation of his rights, agents of the Montgomery County—employees of the Miami Valley Regional Crime Laboratory—and employees of Miami Township discarded forensic evidence.

2. Mr. Gillispie brings this action pursuant to 42 U.S.C. § 1983 and Ohio law seeking redress for the wrongs done to him, as well as to deter future misconduct and reform the improper policies and practices that emboldened the defendants to frame him and violate his rights.

Jurisdiction and Venue

3. This Court has jurisdiction over Mr. Gillispie's federal claims pursuant to 28 U.S.C. § 1331, and over his state-law claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper because, upon information and belief, the nearly all of the individual defendants reside within this district, and nearly all of the events giving rise to the claims asserted herein occurred within this district.

Parties

5. Plaintiff Roger Dean Gillispie is a 48-year old resident of Fairborn, Ohio.

6. Defendant City of Miami Township (the "Township") is an Ohio municipal corporation that operates the Miami Township Police Department ("Department").

7. Defendants Matthew Scott Moore, Tim Wilson, Thomas Angel, Marvin Scothorn, John DiPietro, Sephen Gray, and other unidentified members of the Miami Township Police Department (the "Defendant Officers") were at all times relevant to this Complaint law enforcement officers with the Department. At least one of the Defendant Officers was, at times relevant here, a policymaker, or had been delegated such authority, for the Township.

8. At all times relevant, the Defendant Officers acted under color of law and within the scope of their employment for the City of Miami Township and the Department. They are sued in their individual capacities.

9. Montgomery County, Ohio (the "County") is a political subdivision, and the governmental body that owns and operates the Miami Valley Regional Crime Lab ("MVRCL"), a forensic science lab.

10. Kenneth M. Betz, Denise Rankin, Ralph Nickoson, and other unidentified employees of the MVRCL (the "County Defendants") were at all times relevant employees of the County.

11. At all times relevant, the County Defendants acted under color of law and within the scope of their employment for Montgomery County, Ohio. They are sued in their individual capacities.

12. Motors Liquidation Company was formerly known as General Motors Corporation, and was a Delaware corporation with its principle place of business in Michigan that, at times relevant to this lawsuit, maintained a number facilities in the Dayton, Ohio area. General Motors, LLC, which was formerly known as both General Motors Company and NGMCO, Inc. is the successor in interest and owner of substantially all of Motors Liquidation Company f/k/a General Motors Corporation's assets and bears liability for any judgment entered against GM as a result of this lawsuit. Collectively, these entities are defined as referred to as "GM" throughout this Complaint.

13. At all times relevant, Defendant Richard "Rick" Wolfe was employed by Defendant GM and was a policymaker for the company, working first as the District Manager for Security over five divisions of GM operations in the Dayton

Area and later as the Manager or Supervisor of Fire and Training. Defendant Wolfe was also a part-time, auxiliary police officer for the Department, a qualification known to and valued by Defendant GM. At all times relevant, Defendant Wolfe maintained relationships with officers in the Department, a fact known and valued by Defendant GM.

14. At all times relevant, Defendants Robert Miller, Keith Stapleton, David Burke, and Robert Burke (collectively, with Defendant Wolfe, the "GM Defendants") were security guards and supervisors working for Defendant GM near Dayton.

15. "Other identified persons" are any employees of GM, including but not limited to other co-workers and supervisors of Plaintiff, who, due to their actions, are also liable for legal claims set forth in this Complaint.

Background

16. Mr. Gillispie grew up in the Dayton area, and had a strong supportive group of family and friends. He is fortunate to enjoy that support to this day. In his early 20s, Mr. Gillispie worked a full-time job, was an entrepreneur, and had no criminal history. From 1985 to the spring of 1990, Mr. Gillispie was employed as a security guard for General Motors in Dayton, Ohio.

17. Outside of work, Mr. Gillispie loves to fish. During the summer of 1988, Mr. Gillispie would spend most of his time not at work fishing, boating, and water skiing with friends.

The Rapes

18. In August of 1988, several incidents of rape, all involving forced oral sex, were reported near Dayton in Montgomery County, Ohio.

19. The first reported incident involved twin sisters, C.W. and B.W., who were sexually assaulted on August 20, 1988, a Saturday, as they left the Best Products store near the Dayton Mall.

20. In broad daylight, the perpetrator approached the twins, claimed to be a law enforcement officer, brandished a gun, and forced the sisters to drive him to a secluded area where he ordered them to perform oral sex on him.

21. After contacting the authorities, both C.W. and B.W. provided a description of their attacker to the police.

22. That description contradicted Mr. Gillispie's features in significant ways.

23. After finding out about the twins' experience, another women, S.C., reported that a similar incident had happened to her on August 5, 1988. According to S.C., the incident occurred in Montgomery County but well outside of Miami Township, in Harrison Township. Further, S.C. informed authorities that a man claiming to be a law-enforcement officer approached her in a retail parking lot, brandished a gun, and forced her to perform oral sex on him.

24. Like the twins, S.C. gave authorities a description of her attacker that significantly contradicted Mr. Gillispie's features.

25. At the time, two veteran officers in the Department were responsible for investigating the rape of the twins. First was Sergeant-Detective Steven Fritz, who supervised the Department's detective division. Second was Detective-Corporal Gary Bailey, who Sergeant Fritz assigned to be the "lead" detective on the matter. As Detective Bailey's direct supervisor, Sergeant Fritz would read and approve of supplemental investigative reports Detective Bailey would author. At various times, Sergeant Fritz and Detective Bailey together discussed the investigation.

26. Under the direction of Sergeant Fritz and Detective Bailey, the Department created a flyer with a composite image of the perpetrator and that described the incident involving the twins.

27. At some time, a "Wanted" flyer bearing a different composite image was also created. That flyer included information about the assault of S.C. and the twins as well.

28. At some point, one of the victims called the Department reporting additional details related to the pants size of the perpetrator. This information, which later confirmed that Mr. Gillispie was not the individual who committed the sexual assaults, was put into a supplemental report authored by Detective Bailey and approved by Sergeant Fritz. The report was then placed in the case file.

Rick Wolfe and Other GM Employees Implicate Mr. Gillispie in the August 1988 Rapes

29. In 1988, and for years to follow Defendant Rick Wolfe was employed by General Motors, and was a high-ranking supervisor for GM such that Defendant Wolfe's actions were those of Defendant General Motors. From 1987 to 1991, Defendant Wolfe was the District Manager in the Security Department and supervised five divisions in the Dayton Area, which included 80 security officers and 15 other supervisors.

30. Defendant Wolfe, along with other GM Defendants, supervised Mr. Gillispie.

31. Defendant GM hired Defendant Wolfe to serve in this post due to his connections and continuing and/or prior experience as a part-time police officer for the Township. In addition to his relationship with the Defendant Officers, Defendant Wolfe worked for and had continuing connections with the Township's Police Chief in 1988—James E. Moore, Defendant Moore's father.

32. The GM Defendants harbored malice against Mr. Gillispie. From time-to-time employees of Defendant GM would target Mr. Gillispie for unfair treatment, and agreed amongst themselves to cause him difficulties in his job. Mr. Gillispie was eventually terminated from his job at GM.

33. Thereafter, in furtherance of the agreement to harass Mr. Gillispie and as a way to prevent him from talking action following his termination, the GM Defendants chose to use Defendant Wolfe's connections and prior and ongoing and/or employment with the Department to implicate Mr. Gillispie in the rapes. To

this end, in 1989 or 1990, Defendant Wolfe used his connections at the Department to arrange a meeting with officers from the Department. Defendant Wolfe and another GM Defendant went to the Department's police station, toting a single picture—a copy of Mr. Gillispie's work identification badge.

34. At the station, Defendant Wolfe and his GM compatriot met with the two detectives who were charged with investigating the rape of the twins—Sergeant Fritz, the supervisor, and Detective Bailey, the lead detective. Because of Wolfe's stature in the Department as an active or prior auxiliary police officer, the Chief of Police (Defendant Angel) and another Department supervisor (Defendant Scothorn) attended the meeting.

35. In the meeting, Defendant Wolfe and the other GM employee attempted to direct the rape investigation toward Mr. Gillispie by giving the Department the single photograph of Gillispie. In so doing, they claimed falsely that some GM employees had seen a composite, thought it looked like Mr. Gillispie, and had then reported this up-the-chain to various GM employees and GM Defendants, including Defendants Stapleton, Miller, and Wolfe.

The Rapes are Investigated by Sergeant Fritz and Detective Bailey

36. The Chief of Police (Defendant Angel) and a high-ranking Captain (Defendant Scothorn) directed Fritz and Bailey to investigate the GM Defendants' contention that Mr. Gillispie perpetrated the August 1988 rapes.

37. A supplemental report documenting the meeting described above was written and then signed by both Detective Bailey and Sergeant Fritz.

38. Sergeant Fritz and Detective Bailey conducted an extensive investigation of Mr. Gillispie, and documented the steps of their investigation in supplementary reports. Doing so was both Fritz and Bailey's standard practice.

39. In this investigation, among other things, Detective Bailey and Sergeant Fritz obtained Mr. Gillispie's description from State records; compared the description of the perpetrator with Mr. Gillispie's profile (including the pants size that had been documented in a prior report); and took other investigative steps concerning Mr. Gillispie's status as a possible suspect. This investigation was documented in reports signed by Detective Bailey, Sergeant Fritz, or both.

40. In the end, the detectives produced supplemental reports documenting the meeting described above, many of their investigative steps, and explained why Detective Bailey Sergeant Fritz ultimately excluded Mr. Gillispie as a suspect.

41. Over the course of the investigation, Detective Bailey received a number of other "tips," and considered them accordingly. In so doing, he would create a supplemental report regarding the potential suspect or "tip." These, too, were approved by Sergeant Fritz and placed in the case file.

42. In the 1990, after Sergeant Fritz and Detective Bailey had excluded Mr. Gillispie as a suspect, Defendant Wolfe returned to the Department, again with

a goal of implicating Mr. Gillispie in the 1988 rapes. This time, Defendant Wolfe arrived with several GM identification badges, again including Mr. Gillispie's.

Moore and the Defendant Officers Take Over and Conspire with the GM Defendants

43. In June of 1990, the investigation of the twins' incident was reassigned to Defendant Moore by Defendants Angel, Scothorn, and Wilson.

44. As it had before, the Montgomery County Sheriff's department remained responsible for investigating S.C.'s incident, owing to the location she reported being outside of the Township and, instead, in Harrison Township.

45. Thereafter, Defendants Moore and Wolfe set out to frame Mr. Gillispie for the sexual assault of the twins. Together, through numerous conversations, they fabricated evidence, withheld and destroyed evidence, unlawfully undermined Mr. Gillispie's defense, and ultimately provided false and misleading testimony at Mr. Gillispie's criminal trials.

46. Defendant Wolfe admits that Defendant Moore provided him and other GM Defendants with a copy or copies of one or several composite images. Defendant Wolfe further admits that, though he had previously spoken with Fritz about the rapes, he worked primarily with Moore in his dealings with the Department.

47. At some point thereafter, Defendant Wolfe returned to the Department with several GM identification cards, again including a photograph of Mr. Gillispie.

48. Bringing multiple photographs to the Department was an attempt to make it appear as if Defendant Wolfe came to the Department with these photographs without Moore's assistance and that this was the first time Mr. Gillispie had been named by Defendant Wolfe or anyone at GM as the perpetrator of the rapes. It was also an attempt to make the GM Defendants role in fingering Mr. Gillispie appear to be innocent, and to conceal the fact that GM Defendants had previously brought a single image—of Mr. Gillispie—to the Department in connection with the rapes.

49. In addition, and as part of their conspiracy with the GM Defendants, the Defendant Officers removed from the case file supplemental reports authored by Bailey and approved by Fritz, which included exculpatory evidence for Mr. Gillispie. Among other things, these reports documented: the initial meeting with Defendant Wolfe and other Defendants described above; Detective Bailey and Sergeant Fritz's investigation of Mr. Gillispie; the pant size of the perpetrator called in by one of the twins; and myriad other reasons Mr. Gillispie was eliminated as a suspect.

50. These reports were later destroyed.

51. These reports were destroyed to prevent Mr. Gillispie from using them in his defense.

52. Next, though he had no probable cause, Defendant Moore created unduly suggestive photo line-ups for the twins to view. Moore intentionally set out to make this photo spread misleading. Among other things, Defendant Moore made

Mr. Gillispie's face appear larger than the other photos, placed it on a different color background than the other photos, and used a picture of Mr. Gillispie that had a different finish than the other photographs. This was all done to manipulate the twins, and ensure that they would select and identify Mr. Gillispie.

53. In addition, Moore made suggestive comments to the victims in an effort to get them to identify Mr. Gillispie, despite the fact that he did not match their initial description. Moore's supervisors, including Defendants Angel, Wilson, and Scothorn, approved of Defendant Moore's conduct. Ultimately, these efforts succeeded, and the twins selected Mr. Gillispie from an unduly suggestive photo-spread.

54. Though the investigation of S.C.'s complaint was the responsibility of the Montgomery County Sherriff's Department, Defendant Moore went beyond his jurisdiction and attempted to influence S.C. to identify Mr. Gillispie. Using similar methods of pressure employed with the twins, Detective Moore succeeded in getting S.C. to identify Mr. Gillispie.

Arrest and Prosecution

55. Mr. Gillispie was subsequently arrested by the Defendant Officers, who searched his home and confiscated his property without lawful justification. None of the evidence recovered from Gillispie's residence was in any way corroborative of the notion that he had performed the 1988 sexual assaults. Indeed,

all of the evidence recovered at his home suggested that Mr. Gillispie was not the perpetrator.

56. Throughout the course of the corrupt, sham "investigation" that was designed to frame Mr. Gillispie, the Defendant Officers and GM Defendants conspired to secure Mr. Gillispie's conviction. Among other things, these co-conspirators concealed, destroyed (or took actions designed to cause the destruction of) evidence. In addition, they pressured and manipulated witnesses, convincing some not to testify, and by lying to the victims regarding Mr. Gillispie's background and characteristics.

57. For example, though interviews of witnesses and suspects were recorded, Defendant Moore would frequently turn the tapes off and on at times designed to make it appear the individual being recorded had made statements inculpating Mr. Gillispie though they had not. In the course of "transcribing" these recorded interviews, Defendant Moore would insert lies and falsehoods into the statements and refused to ever turn the tapes over to the Montgomery County Prosecutors' office or to defense counsel for Mr. Gillispie.

58. Defendant Moore, in furtherance of the conspiracy described herein and with agreement of his co-conspirators, later destroyed these recordings altogether.

59. Additionally, to account for the large differences between the true perpetrator and Mr. Gillispie, Defendant Moore manipulated and lied to the victims

of the rapes about Mr. Gillispie saying, among other things, that he had dyed or cut his hair to change his appearance. These statements were complete lies Defendant Moore made up to secure Mr. Gillispie's wrongful conviction even though he knew that his statements were completely false.

60. The Defendant Officers, in furtherance of a conspiracy, took additional unlawful steps to hamper Mr. Gillispie's defense. For one, they attempted to undercut Mr. Gillispie's alibi for the August 20, 1988 assault of the twins. The co-conspirators knew that, at trial, Mr. Gillispie would argue that he was camping and fishing in Kentucky, and would adduce evidence to that effect. Accordingly, the Defendant Officers went to the campground that Gillispie identified and obtained registration cards demonstrating that Mr. Gillispie was fishing in Kentucky at the time the twins were assaulted. Rather than turning these cards over to the defense, they were destroyed.

61. Likewise, though it was the Department's practice and procedure to administer a polygraph examination to a suspect in a sex-crime case, with the approval of the additional Defendant Officers, Defendant Moore refused to permit Mr. Gillispie to take a polygraph examination even though he had requested one.

62. As described above, the Defendant Officers and GM Defendants further conspired to make it appear as if the "investigation" of Mr. Gillispie began in June of 1990, when Moore took over the case, and not before when Defendant Wolfe met with Sergeant Fritz, Detective Bailey, and a number of other Defendants.

These co-conspirators, therefore, attempted to make it seem like the investigation began in June of 1990 when several GM photographs were provided to the Department via Defendant Wolfe, not when the single picture was previously provided to Sergeant Fritz and Detective Bailey.

63. To this end, the Defendant Officers and GM Defendants also agreed to withhold supplemental reports prepared by Detective Bailey and approved by Sergeant Fritz, as they knew the reports included exculpatory information for Mr. Gillispie's defense.

64. These reports were later destroyed by the Defendant Officers.

65. The Defendant Officers' and GM Defendants' conspiracy to frame Mr. Gillispie continued at trial when they served as prosecuting witnesses and provided false and misleading testimony before the jury. Their testimony included lying about when the investigation began, how Mr. Gillispie became a suspect, and regarding the number of times the GM Defendants met with the Defendant Officers to steer the investigation toward Mr. Gillispie. Acting as an agent of Defendant GM, Defendants Miller and Wolfe provided testimony designed to conceal the animus stemming from Mr. Gillispie's employment and their and targeting of Mr. Gillispie. Likewise, Defendant Moore provided perjured testimony when he denied going to Kentucky to review the camping receipts relevant to Mr. Gillispie's alibi defense.

Additional Exculpatory Evidence Withheld and Destroyed

66. After a jury trial in 1991, Mr. Gillispie was convicted of the sexual assaults of B.W., C.W., and S.C.

67. At the crime scene, hair samples were recovered. These samples—which were of highly probative, exculpatory value—were in the custody and care of either the Department and/or the County (at the MVRCL). These samples were not provided to the defense before Mr. Gillispie's initial trial wherein he was convicted.

68. Once this evidence was located and turned over by Defendant Rankin, Mr. Gillispie was granted a new trial.

69. After the retrial, the Department and County were ordered to retain this evidence. Nonetheless, through the Defendant Officers and/or County Defendants, the Department and/or County caused this evidence, which would have been exculpatory, to be lost and destroyed.

70. The testimony provided at the retrial was essentially identical to the first trial. Mr. Gillispie was again convicted of the sexual assaults.

71. The clothing belonging to one or both of the sisters contained evidence of the sexual assault, as the perpetrator's ejaculate was located on a piece of the sisters' clothing. Despite knowing of its highly probative evidentiary value, the Defendant Officers, spoliated this evidence by returning it to the twins, where the exculpatory evidence (the perpetrator's ejaculate) was then compromised and destroyed.

Mr. Gillispie Continually Asserts His Innocence

72. All along, Mr. Gillispie has asserted that he is innocent of the crimes for which he was convicted.

73. Accordingly, even after the conviction, Defendant Moore and other Defendant Officers have continued to work to keep Mr. Gillispie behind bars by repeating their lies and misrepresentations in post-conviction proceedings and through efforts to conceal their own misconduct, thereby causing Mr. Gillispie further damage.

Mr. Gillispie's Wrongful Conviction Was Caused by the Department's Widespread Practices, Customs, and Policies

74. Though unknown to Mr. Gillispie or his defense counsel at the time of his conviction, the Department, the Chief of Police, Defendant Angel, other high-ranking Department officers, including Defendants Wilson and Scothorn, engaged in a systematic process of rigging criminal prosecutions against persons whom they and/or other "friends of the Department" (like Defendant Wolfe) had problems with. These defendants were policymakers or delegated such authority for the City of Miami Township, on account of their ranks in the Department, and Mr. Gillispie is one of their victims. In particular, files would often be destroyed or removed from case files, and reports would be written that included lie and misstatements later used to secure convictions. Moreover, despite being warned, the Department chose to approve of rather than discipline its officers for the widespread misconduct in the Department.

75. This misconduct led to Mr. Gillispie's conviction. Though the Department has consistently denied that these sorts of widespread practices existed, it knew of and attempted to "cover-up" the misconduct of its highest-ranking officers.

Legal Claims

Count I: 42 U.S.C. § 1983 — Suppression of Exculpatory Material

76. Plaintiff incorporates every paragraph in this Complaint as if fully set forth here.

77. The Defendant Officers, GM Defendants, and County Defendants, acting individually and in conspiracy with each other, destroyed, failed to disclose, and otherwise withheld and/or suppressed exculpatory information and material from the prosecution and, thus, from Plaintiff.

78. As a result of these violations, Plaintiff was deprived of his right to fair trial and was falsely convicted for a crime of which he was innocent.

79. Defendants were acting under color of law and within the scope of employment when they took these acts.

80. Through the doctrine of *respondeat superior*, Defendant GM is liable for the conduct of its employees falling within this Count.

81. The City, County, and GM are liable because the violation of Plaintiff's rights described in this Count was caused by the policies, practices, customs, and/or the decisions of policymakers for these Defendants.

82. Plaintiff suffered actual damages, pain and suffering, lost wages, and other damages as a direct and proximate result.

Count II: 42 U.S.C. § 1983 — Suggestive Identification

83. Plaintiff incorporates every paragraph in this Complaint as if fully set forth here.

84. Defendants Moore and Wilson, acting individually and in conspiracy with each other GM Defendants, used improper and suggestive procedures to cause Plaintiff to be misidentified as the perpetrator. This misconduct tainted the pretrial identifications of Mr. Gillispie, which were offered against him at trial, and the in-court identifications during his trial.

85. As a result of these violations, Plaintiff was deprived of his right to fair trial and was falsely convicted for a crime of which he was innocent.

86. These Defendants were acting under color of law and within the scope of their employment when they took these acts.

87. Through the doctrine of *respondeat superior*, Defendant GM is liable for the conduct of its employees falling within this Count.

88. The Township, County, and GM are liable because the violation of Plaintiff's rights described in this Count was caused by the policies, practices, customs, and/or the decisions of policymakers for these Defendants.

89. Plaintiff suffered actual damages, pain and suffering, lost wages, and other damages as a direct and proximate result.

Count III: 42 U.S.C. § 1983 — Fabricated Evidence

90. Plaintiff incorporates every paragraph in this Complaint as if fully set forth here.

91. Defendants Moore and Wolfe, acting in conspiracy with the remaining Defendant Officers and GM Defendants, fabricated evidence, including without limitation, false police reports, fabricated statements attributed to witnesses, and their own fabricated testimony offered at both trials.

92. As a result of these violations, Plaintiff was deprived of his right to fair trial and was falsely convicted for a crime of which he was innocent.

93. These Defendants were acting under color of law and within the scope of employment when they took these acts.

94. Through the doctrine of *respondeat superior*, Defendant GM is liable for the conduct of its employees falling within this Count.

95. The Township, County, and GM are liable because the violation of Plaintiff's rights described in this Count was caused by the policies, practices, customs, and/or the decisions of policymakers for these Defendants.

96. Plaintiff suffered actual damages, pain and suffering, lost wages, and other damages as a direct and proximate result.

Count VI: 42 U.S.C. § 1983 —Malicious Prosecution

97. Plaintiff incorporates every paragraph in this Complaint as if fully set forth here.

98. Defendants Moore, Wilson, Angel, Scothorn, DiPietro, other unidentified members of the Miami Township Police Department, acting in conspiracy with GM Defendants, Stapleton, Miller, D. Burke, R. Burke, and other unidentified persons, instigated and continued the prosecution of Plaintiff without probable cause and acting out of malice.

99. As a result of the malicious prosecution, Plaintiff was falsely convicted for a crime of which he was innocent.

100. These Defendants were acting under color of law and within the scope of employment when they took these acts.

101. Through the doctrine of *respondeat superior*, Defendant GM is liable for the conduct of its employees falling within this Count.

102. The Township, County, and GM are liable because the violation of Plaintiff's rights described in this Count was caused by the policies, practices, customs, and/or the decisions of policymakers for these Defendants.

103. Plaintiff suffered actual damages, pain and suffering, lost wages, and other damages as a direct and proximate result.

Count V: 42 U.S.C. § 1983 — Destruction of Exculpatory Evidence

104. Plaintiff incorporates every paragraph in this Complaint as if fully set forth here.

105. Defendants Moore, Wilson, Angel, Scothorn, DiPietro, Gray, and other unidentified members of the Miami Township Police Department, suppressed,

destroyed, or caused to be destroyed exculpatory and materially-favorable evidence, including but not limited to police reports, audio recordings, alibi evidence, and crime-scene evidence containing genetic material. This evidence was destroyed in bad faith, and in furtherance of their conspiracy with GM Defendants.

106. Defendants Betz, Rankin, Nickoson, and other unidentified employees of the Miami Valley Regional Crime Lab, acting individually and in conspiracy amongst, destroyed exculpatory evidence and materially-favorable evidence, including but not limited to crime scene evidence containing genetic material. This evidence was destroyed in bad faith.

107. As a result of these violations, Plaintiff was deprived of his right to fair trial and was falsely convicted for a crime of which he was innocent.

108. These Defendants were acting under color of law and within the scope of employment when they took these acts.

109. The Township and County are liable because the violation of Plaintiff's rights described in this Count was caused by the policies, practices, customs, and/or the decisions of policymakers for these Defendants.

110. Plaintiff suffered actual damages, pain and suffering, lost wages, and other damages as a direct and proximate result.

Count VI: Ohio State Law — Malicious Prosecution

111. Plaintiff incorporates every paragraph in this Complaint as if fully set forth here.

112. Defendants Moore, Wilson, Angel, Scothorn, DiPietro, other unidentified members of the Miami Township Police Department, acting in conspiracy with Defendants Wolfe, Stapleton, Miller, D. Burke, R. Burke, and other unidentified persons, instigated and continued the prosecution of Plaintiff without probable cause and acting out of malice.

113. As a result of the malicious prosecution, Plaintiff was falsely convicted for a crime of which he was innocent.

114. These Defendants were acting under color of law and within the scope of employment when they took these acts.

115. Through the doctrine of *respondeat superior*, Defendant GM is liable for the conduct of its employees falling within this Count.

116. Plaintiff suffered actual damages, pain and suffering, lost wages, and other damages as a direct and proximate result.

Count VII: Ohio State Law—Infliction of Emotional Distress

117. Plaintiff incorporates every paragraph in this Complaint as if fully set forth here.

118. Defendants Moore, Wilson, Angel, Scothorn, DiPietro, other unidentified members of the Miami Township Police Department, Wolfe, Stapleton, Miller, D. Burke, R. Burke, and other unidentified persons, acting individually and in conspiracy among themselves and others, intentionally and/or recklessly engaged

in extreme and outrageous conduct that caused Plaintiff severe emotional distress and also bodily harm from his distress.

119. These Defendants were acting under color of law and within the scope of employment when they took these acts.

120. Through the doctrine of *respondeat superior*, Defendant GM is liable for the conduct of its employees falling within this Count.

121. Plaintiff suffered actual damages, pain and suffering, lost wages, and other damages as a direct and proximate result.

Count VIII: Ohio State Law — Spoliation of Evidence

122. Plaintiff incorporates every paragraph in this Complaint as if fully set forth here.

123. Defendants Moore, Wilson, Angel, Scothorn, DiPietro, Gray, other unidentified members of the Miami Township Police Department, Betz, Rankin, Nickoson, and other unidentified employees of the Miami Valley Regional Crime Lab, willfully destroyed evidence in a manner that disrupted Plaintiff's criminal proceedings, knowing that there was pending or probable litigation that would involve this evidence.

124. As a result of the absence of this evidence, Plaintiff was falsely convicted for a crime of which he was innocent.

125. Plaintiff suffered actual damages, pain and suffering, lost wages, and other damages as a direct and proximate result.

Count VIV: Ohio State Law —Indemnification

126. Plaintiff incorporates every paragraph in this Complaint as if fully set forth here.

127. Additionally, and in the alternative, pursuant to Ohio Revised Code, § 1729.031, Defendants Miami Township, Montgomery County, and GM have a statutory duty to indemnify their current and/or former employees for any judgment entered against them personally in this action for their conduct taken while they were employed by Defendants Miami Township, Montgomery County, or GM, respectively.

WHEREFORE Plaintiff Dean Gillispie respectfully requests that this Court enter judgment in his favor and against Defendants the City of Miami Township, Matthew Scott Moore, Tim Wilson, Thomas Angel, Marvin Scothorn, John DiPietro, Stephen Gray, other unidentified members of the Miami Township Police Department, Montgomery County, Kenneth M. Betz, Denise Rankin, Ralph Nickoson, other unidentified employees of the Miami Valley Regional Crime Lab, General Motors, LLC f/k/a General Motors Company and NGMCO, Inc., Motors Liquidation Company f/k/a General Motors Corporation, Rick Wolfe, Keith Stapleton, Robert Miller, David Burke, Robert Burke, and other persons, awarding compensatory damages, costs, and attorneys' fees, along with punitive damages against each of the individual Defendants in their individual capacities, as well as any other relief this Court deems appropriate.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED,

/s/ David B. Owens
One of Plaintiff's Attorneys

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

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

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

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

Purchaser free and clear of liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability; (C) the assumption and assignment of the Assumable Executory Contracts; (D) the establishment of certain Cure Amounts; and (E) the UAW Retiree Settlement Agreement (as defined below); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with this Court's Order, dated June 2, 2009 (the "**Sale Procedures Order**"), and it appearing that no other or further notice need be provided; and a hearing having been held on June 30 through July 2, 2009, to consider the relief requested in the Motion (the "**Sale Hearing**"); and upon the record of the Sale Hearing, including all affidavits and declarations submitted in connection therewith, and all of the proceedings had before the Court; and the Court having reviewed the Motion and all objections thereto (the "**Objections**") and found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtors, their estates and creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein and in the Court's Decision dated July 5, 2009 (the "**Decision**") constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

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B. To the extent any of the following findings of fact or Findings of Fact in the Decision constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law or Conclusions of Law in the Decision constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the Motion, the MPA, and the 363 Transaction pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code as supplemented by Bankruptcy Rules 2002, 6004, and 6006.

E. As evidenced by the affidavits and certificates of service and Publication Notice previously filed with the Court, in light of the exigent circumstances of these chapter 11 cases and the wasting nature of the Purchased Assets and based on the representations of counsel at the Sale Procedures Hearing and the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the 363 Transaction, the procedures for assuming and assigning the Assumable Executory Contracts as described in the Sale Procedures Order and as modified herein (the "**Modified Assumption and Assignment Procedures**"), the UAW Retiree

Settlement Agreement, and the Sale Hearing have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), and 6006(c) and in compliance with the Sale Procedures Order; (ii) such notice was good and sufficient, reasonable, and appropriate under the particular circumstances of these chapter 11 cases, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, about the Sale Procedures, the sale of the Purchased Assets, the 363 Transaction, and the assumption and assignment of the Assumable Executory Contracts, and to reach all UAW-Represented Retirees about the UAW Retiree Settlement Agreement and the terms of that certain Letter Agreement, dated May 29, 2009, between GM, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "**UAW**"), and Stember, Feinstein, Doyle & Payne, LLC (the "**UAW Claims Agreement**") relating thereto; and (iii) no other or further notice of the Motion, the 363 Transaction, the Sale Procedures, the Modified Assumption and Assignment Procedures, the UAW Retiree Settlement Agreement, the UAW Claims Agreement, and the Sale Hearing or any matters in connection therewith is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, potential contingent warranty claims against the Debtors), the Publication Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

F. On June 1, 2009, this Court entered the Sale Procedures Order approving the Sale Procedures for the Purchased Assets. The Sale Procedures provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. The Debtors received no bids under the Sale Procedures for the Purchased Assets. Therefore, the Purchaser's bid was designated as the Successful Bid pursuant to the Sale Procedures Order.

G. As demonstrated by (i) the Motion, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing, and (iii) the representations of counsel made on the record at the Sale Hearing, in light of the exigent circumstances presented, (a) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets; (c) the consideration provided for in the MPA constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets; (d) the 363 Transaction is a sale of deteriorating assets and the only alternative to liquidation available for the Debtors; (e) if the 363 Transaction is not approved, the Debtors will be forced to cease operations altogether; (f) the failure to approve the 363 Transaction promptly will lead to systemic failure and dire consequences, including the loss of hundreds of thousands of auto-related jobs; (g) prompt approval of the 363 Transaction is the only means to preserve and maximize the value of the Debtors' assets; (h) the 363 Transaction maximizes fair value for the Debtors' parties in interest; (i) the Debtors are receiving fair value for the assets being sold; (j) the 363 Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including liquidation under chapters 7 or 11 of the Bankruptcy Code; (k) no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; (l) the consideration to be paid by the Purchaser under the MPA exceeds the liquidation value of the Purchased Assets; and (m) the Debtors' determination that the MPA constitutes the highest or best offer for the Purchased Assets and that the 363 Transaction represents a better alternative for the Debtors' parties in interest than an immediate liquidation constitute valid and sound exercises of the Debtors' business judgment.

H. The actions represented to be taken by the Sellers and the Purchaser are appropriate under the circumstances of these chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest.

I. Approval of the MPA and consummation of the 363 Transaction at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets pursuant to the 363 Transaction prior to, and outside of, a plan of reorganization and for the immediate approval of the MPA and the 363 Transaction because, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis. In light of the exigent circumstances of these chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the 363 Transaction, time is of the essence in (i) consummating the 363 Transaction, (ii) preserving the viability of the Debtors' businesses as going concerns, and (iii) minimizing the widespread and adverse economic consequences for the Debtors, their estates, their creditors, employees, the automotive industry, and the national economy that would be threatened by protracted proceedings in these chapter 11 cases.

K. The consideration provided by the Purchaser pursuant to the MPA (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery to the Debtors' estates than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The 363 Transaction must be approved and consummated as promptly as practicable in order to preserve the viability of the business to which the Purchased Assets relate as a going concern.

M. The MPA was not entered into and none of the Debtors, the Purchaser, or the Purchasers' present or contemplated owners have entered into the MPA or propose to consummate the 363 Transaction for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors. None of the Debtors, the Purchaser, nor the Purchaser's present or contemplated owners is entering into the MPA or proposing to consummate the 363 Transaction fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to any of the foregoing.

N. In light of the extensive prepetition negotiations culminating in the MPA, the Purchaser's commitment to consummate the 363 Transaction is clear without the need to provide a good faith deposit.

O. Each Debtor (i) has full corporate power and authority to execute the MPA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the MPA, (iii) has taken all corporate action necessary to authorize and approve the MPA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly provided for in the MPA which may be waived by the Purchaser, to consummate such transactions.

P. The consummation of the 363 Transaction outside of a plan of reorganization pursuant to the MPA neither impermissibly restructures the rights of the Debtors' creditors, allocates or distributes any of the sale proceeds, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The 363 Transaction does not constitute a *sub rosa* plan of reorganization. The 363 Transaction in no way dictates distribution of the Debtors' property to creditors and does not impinge upon any chapter 11 plan that may be confirmed.

Q. The MPA and the 363 Transaction were negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Sellers, the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, and advisors, has engaged in any conduct that would cause or permit the MPA to be avoided under 11 U.S.C. § 363(n).

R. The Purchaser is a newly-formed Delaware corporation that, as of the date of the Sale Hearing, is wholly-owned by the U.S. Treasury. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

S. Neither the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, or advisors is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

T. Upon the Closing of the 363 Transaction, the Debtors will transfer to the Purchaser substantially all of its assets. In exchange, the Purchaser will provide the Debtors with (i) cancellation of billions of dollars in secured debt; (ii) assumption by the Purchaser of a portion of the Debtors' business obligations and liabilities that the Purchaser will satisfy; and (iii) no less than 10% of the Common Stock of the Purchaser as of the Closing (100% of which the

Debtors' retained financial advisor values at between $38 billion and $48 billion) and warrants to purchase an additional 15% of the Common Stock of the Purchaser as of the Closing, the combination of which the Debtors' retained financial advisor values at between $7.4 billion and $9.8 billion (which amount, for the avoidance of doubt, does not include any amount for the Adjustment Shares).

U. The Purchaser, not the Debtors, has determined its ownership composition and capital structure. The Purchaser will assign ownership interests to certain parties based on the Purchaser's belief that the transfer is necessary to conduct its business going forward, that the transfer is to attain goodwill and consumer confidence for the Purchaser and to increase the Purchaser's sales after completion of the 363 Transaction. The assignment by the Purchaser of ownership interests is neither a distribution of estate assets, discrimination by the Debtors on account of prepetition claims, nor the assignment of proceeds from the sale of the Debtors' assets. The assignment of equity to the New VEBA (as defined in the UAW Retiree Settlement Agreement) and 7176384 Canada Inc. is the product of separately negotiated arm's-length agreements between the Purchaser and its equity holders and their respective representatives and advisors. Likewise, the value that the Debtors will receive on consummation of the 363 Transaction is the product of arm's-length negotiations between the Debtors, the Purchaser, the U.S. Treasury, and their respective representatives and advisors.

V. The U.S. Treasury and Export Development Canada ("**EDC**"), on behalf of the Governments of Canada and Ontario, have extended credit to, and acquired a security interest in, the assets of the Debtors as set forth in the DIP Facility and as authorized by the interim and final orders approving the DIP Facility (Docket Nos. 292 and 2529, respectively). Before entering into the DIP Facility and the Loan and Security Agreement, dated as of December 31, 2008 (the "**Existing UST Loan Agreement**"), the Secretary of the Treasury, in

consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is "necessary to promote financial market stability," and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201 et seq. ("**EESA**"). The U.S. Treasury's extension of credit to, and resulting security interest in, the Debtors, as set forth in the DIP Facility and the Existing UST Loan Agreement and as authorized in the interim and final orders approving the DIP Facility, is a valid use of funds pursuant to EESA.

W. The DIP Facility and the Existing UST Loan Agreement are loans and shall not be recharacterized. The Court has already approved the DIP Facility. The Existing UST Loan Agreement bears the undisputed hallmarks of a loan, not an equity investment. Among other things:

(i) The U.S. Treasury structured its prepetition transactions with GM as (a) a loan, made pursuant to and governed by the Existing UST Loan Agreement, in addition to (b) a separate, and separately documented, equity component in the form of warrants;

(ii) The Existing UST Loan Agreement has customary terms and covenants of a loan rather than an equity investment. For example, the Existing UST Loan Agreement contains provisions for repayment and pre-payment, and provides for remedies in the event of a default;

(iii) The Existing UST Loan Agreement is secured by first liens (subject to certain permitted encumbrances) on GM's and the guarantors' equity interests in most of their domestic subsidiaries and certain of their foreign subsidiaries (limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries), intellectual property, domestic real estate (other than manufacturing plants or facilities) inventory that was not pledged to other lenders, and cash and cash equivalents in the United States;

(iv) The U.S. Treasury also received junior liens on certain additional collateral, and thus, its claim for recovery on such collateral under the Existing UST Loan Agreement is, in part, junior to the claims of other creditors;

(v) the Existing UST Loan Agreement requires the grant of security by its terms, as well as by separate collateral documents, including: (a) a guaranty and

security agreement, (b) an equity pledge agreement, (c) mortgages and deeds of trust, and (d) an intellectual property pledge agreement;

(vi) Loans under the Existing UST Loan Agreement are interest-bearing with a rate of 3.00% over the 3-month LIBOR with a LIBOR floor of 2.00%. The Default Rate on this loan is 5.00% above the non-default rate.

(vii) The U.S. Treasury always treated the loans under the Existing UST Loan Agreement as debt, and advances to GM under the Existing Loan Agreement were conditioned upon GM's demonstration to the United States Government of a viable plan to regain competitiveness and repay the loans.

(viii) The U.S. Treasury has acted as a prudent lender seeking to protect its investment and thus expressly conditioned its financial commitment upon GM's meaningful progress toward long-term viability.

Other secured creditors of the Debtors also clearly recognized the loans under the Existing UST Loan Agreement as debt by entering into intercreditor agreements with the U.S. Treasury in order to set forth the secured lenders' respective prepetition priority.

X. This Court has previously authorized the Purchaser to credit bid the amounts owed under both the DIP Facility and the Existing UST Loan Agreement and held the Purchaser's credit bid to be, for all purposes, a "Qualified Bid" under the Sale Procedures Order.

Y. The Debtors, the Purchaser, and the UAW, as the exclusive collective bargaining representative of the Debtors' UAW-represented employees and the authorized representative of the persons in the Class and the Covered Group (as described in the UAW Retiree Settlement Agreement) (the "**UAW-Represented Retirees**") under section 1114(c) of the Bankruptcy Code, engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of "retiree benefits" within the meaning of section 1114(a) of the Bankruptcy Code and related matters. Conditioned upon the consummation of the 363 Transaction and the approval of the Bankruptcy Court granted in this Order, the Purchaser and the UAW will enter into that certain Retiree Settlement Agreement, dated as of the Closing Date (the "**UAW Retiree Settlement Agreement**"), which is Exhibit D to the MPA, which resolves

issues with respect to the provision of certain retiree benefits to UAW-Represented Retirees as described in the UAW Retiree Settlement Agreement. As set forth in the UAW Retiree Settlement Agreement, the Purchaser has agreed to make contributions of cash, stock, and warrants of the Purchaser to the New VEBA (as defined in the UAW Retiree Settlement Agreement), which will have the obligation to fund certain health and welfare benefits for the UAW-Represented Retirees. The New VEBA will also be funded by the transfer of assets from the Existing External VEBA and the assets in the UAW Related Account of the Existing Internal VEBA (each as defined in the UAW Retiree Settlement Agreement). GM and the UAW, as the authorized representative of the UAW-Represented Retirees, as well as the representatives for the class of plaintiffs in a certain class action against GM (the "**Class Representatives**"), through class counsel, Stemper, Feinstein, Doyle and Payne LLC ("**Class Counsel**"), negotiated in good faith the UAW Claims Agreement, which requires the UAW and the Class Representatives to take actions to effectuate the withdrawal of certain claims against the Debtors, among others, relating to retiree benefits in the event the 363 Transaction is consummated and the Bankruptcy Court approves, and the Purchaser becomes fully bound by, the UAW Retiree Settlement Agreement, subject to reinstatement of such claims to the extent of any adverse impact to the rights or benefits of UAW-Represented Retirees under the UAW Retiree Settlement Agreement resulting from any reversal or modification of the 363 Transaction, the UAW Retiree Settlement Agreement, or the approval of the Bankruptcy Court thereof, the foregoing as subject to the terms of, and as set forth in, the UAW Claims Agreement.

Z. Effective as of the Closing of the 363 Transaction, the Debtors will assume and assign to the Purchaser the UAW Collective Bargaining Agreement and all liabilities thereunder. The Debtors, the Purchaser, the UAW and Class Representatives intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings

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

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

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

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

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

CP Lender, Wells Fargo Bank Northwest, N.A., as Agent, Norddeutsche Landesbank Girozentrale (New York Branch), as Administrator, and Deutsche Bank, AG, New York Branch, HSBC Bank USA, ABN AMRO Bank N.V., Royal Bank of Canada, Bank of America, N.A., Citicorp USA, Inc., Merrill Lynch Bank USA, Morgan Stanley Bank, collectively, as Purchasers (collectively, with CP Lender, Agent and Administrator, the "**TPC Lenders**"), together with the Operative Documents (as defined in the TPC Participation Agreements (the "**TPC Operative Documents**").

DD. The Purchaser would not have entered into the MPA and would not consummate the 363 Transaction (i) if the sale of the Purchased Assets was not free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability or (ii) if the Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the "**Retained Liabilities**"), other than, in each case, the Assumed Liabilities. The Purchaser will not consummate the 363 Transaction unless this Court expressly orders that none of the Purchaser, its affiliates, their present or contemplated members or shareholders (other than the Debtors as the holder of equity in the Purchaser), or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability or Retained Liabilities, other than as expressly provided herein or in agreements made by the Debtors and/or the Purchaser on the record at the Sale Hearing or in the MPA.

EE. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Purchased Contracts to the Purchaser in connection

with the consummation of the 363 Transaction, and the assumption and assignment of the Purchased Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Purchased Contracts being assigned to, and the liabilities being assumed by, the Purchaser are an integral part of the Purchased Assets being purchased by the Purchaser, and, accordingly, such assumption and assignment of the Purchased Contracts and liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

FF. For the avoidance of doubt, and notwithstanding anything else in this Order to the contrary:

- The Debtors are neither assuming nor assigning to the Purchaser the agreement to provide certain retiree medical benefits specified in (i) the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW, and (ii) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW (together, the "**VEBA Settlement Agreement**");

- at the Closing, and in accordance with the MPA, the UAW Collective Bargaining Agreement, and all liabilities thereunder, shall be assumed by the Debtors and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. Assumption and assignment of the UAW Collective Bargaining Agreement is integral to the 363 Transaction and the MPA, are in the best interests of the Debtors and their estates, creditors, employees, and retirees, and represent the exercise of the Debtors' sound business judgment, enhances the value of the Debtors' estates, and does not constitute unfair discrimination;

- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the "authorized representative" of the UAW-Represented Retirees under section 1114(c) of the Bankruptcy Code, GM, and the Purchaser engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of retiree health benefits within the meaning of section 1114(a) of the Bankruptcy Code. Conditioned upon the consummation of the 363 Transaction, the UAW and the Purchaser have entered into the UAW Retiree Settlement Agreement, which, among other things, provides for the financing by the Purchaser of modified retiree health care obligations for the Class and Covered Group (as defined in the UAW Retiree Settlement Agreement) through contributions by the Purchaser (as referenced in paragraph Y herein). The New VEBA will also be funded by the transfer of the UAW Related Account from the Existing Internal VEBA and the assets of the Existing External VEBA to the New VEBA (each as defined in the UAW Retiree Settlement Agreement). The Debtors, the

Purchaser, and the UAW specifically intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2);

- the Debtors' sponsorship of the Existing Internal VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the MPA.

GG. The Debtors have (i) cured and/or provided adequate assurance of cure (through the Purchaser) of any default existing prior to the date hereof under any of the Purchased Contracts that have been designated by the Purchaser for assumption and assignment under the MPA, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation through the Purchaser to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Purchased Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance of future performance under the Purchased Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code. The Modified Assumption and Assignment Procedures are fair, appropriate, and effective and, upon the payment by the Purchaser of all Cure Amounts (as hereinafter defined) and approval of the assumption and assignment for a particular Purchased Contract thereunder, the Debtors shall be forever released from any and all liability under the Purchased Contracts.

HH. The Debtors are the sole and lawful owners of the Purchased Assets, and no other person has any ownership right, title, or interest therein. The Debtors' non-Debtor Affiliates have acknowledged and agreed to the 363 Transaction and, as required by, and in accordance with, the MPA and the Transition Services Agreement, transferred any legal, equitable, or beneficial right, title, or interest they may have in or to the Purchased Assets to the Purchaser.

II. The Debtors currently maintain certain privacy policies that govern the use of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) in conducting their business operations. The 363 Transaction may contemplate the transfer of certain personally identifiable information to the Purchaser in a manner that may not be consistent with certain aspects of their existing privacy policies. Accordingly, on June 2, 2009, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and such ombudsman was appointed on June 10, 2009. The Privacy Ombudsman is a disinterested person as required by section 332(a) of the Bankruptcy Code. The Privacy Ombudsman filed his report with the Court on July 1, 2009 (Docket No. 2873) (the "**Ombudsman Report**") and presented his report at the Sale Hearing, and the Ombudsman Report has been reviewed and considered by the Court. The Court has given due consideration to the facts, including the exigent circumstances surrounding the conditions of the sale of personally identifiable information in connection with the 363 Transaction. No showing has been made that the sale of personally identifiable information in connection with the 363 Transaction in accordance with the provisions of this Order violates applicable nonbankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the 363 Transaction.

JJ. Pursuant to Section 6.7(a) of the MPA, GM offered Wind-Down Agreements and Deferred Termination Agreements (collectively, the "**Deferred Termination Agreements**") in forms prescribed by the MPA to franchised motor vehicle dealers, including dealers authorized to sell and service vehicles marketed under the Pontiac brand (which is being discontinued), dealers authorized to sell and service vehicles marketed under the Hummer, Saturn and Saab brands (which may or may not be discontinued depending on whether the brands are sold to third parties) and dealers authorized to sell and service vehicles marketed

under brands which will be continued by the Purchaser. The Deferred Termination Agreements were offered as an alternative to rejection of the existing Dealer Sales and Service Agreements of these dealers pursuant to section 365 of the Bankruptcy Code and provide substantial additional benefits to dealers which enter into such agreements. Approximately 99% of the dealers offered Deferred Termination Agreements accepted and executed those agreements and did so for good and sufficient consideration.

KK. Pursuant to Section 6.7(b) of the MPA, GM offered Participation Agreements in the form prescribed by the MPA to dealers identified as candidates for a long term relationship with the Purchaser. The Participation Agreements provide substantial benefits to accepting dealers, as they grant the opportunity for such dealers to enter into a potentially valuable relationship with the Purchaser as a component of a reduced and more efficient dealer network. Approximately 99% of the dealers offered Participation Agreements accepted and executed those agreements.

LL. This Order constitutes approval of the UAW Retiree Settlement Agreement and the compromise and settlement embodied therein.

MM. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Consistent with Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order to the full extent to which those rules provide, but that its Order should not become effective instantaneously. Thus the Court will shorten, but not wholly eliminate, the periods set forth in Fed.R.Bankr.P. 6004(h) and 6006, and expressly directs entry of judgment as set forth in accordance with the provisions of Paragraph 70 below.

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NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the MPA and the 363 Transaction is approved.

2. All Objections to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such Objections, are overruled on the merits other than a continuing Objection (each a "**Limited Contract Objection**") that does not contest or challenge the merits of the 363 Transaction and that is limited to (a) contesting a particular Cure Amount(s) (a "**Cure Objection**"), (b) determining whether a particular Assumable Executory Contract is an executory contract that may be assumed and/or assigned under section 365 of the Bankruptcy Code, and/or (c) challenging, as to a particular Assumable Executory Contract, whether the Debtors have assumed, or are attempting to assume, such contract in its entirety or whether the Debtors are seeking to assume only part of such contract. A Limited Contract Objection shall include, until resolved, a dispute regarding any Cure Amount that is subject to resolution by the Bankruptcy Court , or pursuant to the dispute resolution procedures established by the Sale Procedures Order or pursuant to agreement of the parties, including agreements under which an objection to the Cure Amount was withdrawn in connection with a reservation of rights under such dispute resolution procedures. Limited Contract Objections shall not constitute objections to the 363 Transaction, and to the extent such Limited Contract Objections remain continuing objections to be resolved before the Court, the hearing to consider each such Limited Contract Objection shall be adjourned to August 3, 2009 at 9:00a.m. (the "**Limited Contract Objection Hearing**"). Within two (2) business days of the entry of this Order, the Debtors shall serve upon each of the counterparties to the remaining Limited Contract Objections a notice of the Limited Contract Objection Hearing. The Debtors or any party that withdraws, or has withdrawn, a Limited

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

Approval of the MPA

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

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

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

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

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

Transfer of Purchased Assets Free and Clear

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

8. Except as expressly permitted or otherwise specifically provided by the MPA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims

based on any successor or transferee liability, against or in a Seller or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined (with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible) from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

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

and instruments necessary and appropriate to consummate the transactions contemplated by the MPA.

10. The transfer of the Purchased Assets to the Purchaser pursuant to the MPA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.

11. On the Closing of the 363 Transaction, each of the Sellers' creditors and any other holder of a lien, claim, encumbrance, or other interest, is authorized and directed to execute such documents and take all other actions as may be necessary to release its lien, claim, encumbrance (other than Permitted Encumbrances), or other interest in the Purchased Assets, if any, as such lien, claim, encumbrance, or other interest may have been recorded or may otherwise exist.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing a lien, claim, encumbrance, or other interest in the Sellers or the Purchased Assets (other than Permitted Encumbrances) shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, encumbrances, or other interests, which the person or entity has with respect to the Sellers or the Purchased Assets or otherwise, then (a) the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sellers or the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which

shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Sellers or the Purchased Assets.

13. All persons or entities in possession of any of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of Closing of the 363 Transaction.

14. Following the Closing of the 363 Transaction, no holder of any lien, claim, encumbrance, or other interest (other than Permitted Encumbrances) shall interfere with the Purchaser's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such lien, claim, encumbrance, or other interest, or based on any actions the Debtors may take in their chapter 11 cases.

15. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the MPA and this Order; *provided, however*, that the foregoing restriction shall not prevent any person or entity from appealing this Order or opposing any appeal of this Order.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the 363 Transaction contemplated by the MPA.

17. From and after the Closing, the Purchaser shall comply with the certification, reporting, and recall requirements of the National Traffic and Motor Vehicle Safety Act, as amended and recodified, including by the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety

Code, and similar Laws, in each case, to the extent applicable in respect of motor vehicles, vehicles, motor vehicle equipment, and vehicle parts manufactured or distributed by the Sellers prior to the Closing.

18. Notwithstanding anything to the contrary in this Order or the MPA, (a) any Purchased Asset that is subject to any mechanic's, materialman's, laborer's, workmen's, repairman's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings, or any lien for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable, or delinquent (or which may be paid without interest or penalties) shall continue to be subject to such lien after the Closing Date if and to the extent that such lien (i) is valid, perfected and enforceable as of the Commencement Date (or becomes valid, perfected and enforceable after the Commencement Date as permitted by section 546(b) or 362(b)(18) of the Bankruptcy Code), (ii) could not be avoided by any Debtor under sections 544 to 549, inclusive, of the Bankruptcy Code or otherwise, were the Closing not to occur; and (iii) the Purchased Asset subject to such lien could not be sold free and clear of such lien under applicable non-bankruptcy law, and (b) any Liability as of the Closing Date that is secured by a lien described in clause (a) above (such lien, a "**Continuing Lien**") that is not otherwise an Assumed Liability shall constitute an Assumed Liability with respect to which there shall be no recourse to the Purchaser or any property of the Purchaser other than recourse to the property subject to such Continuing Lien. The Purchased Assets are sold free and clear of any reclamation rights, *provided, however*, that nothing, in this Order or the MPA shall in any way impair the right of any claimant against the Debtors with respect to any alleged reclamation right to the extent such reclamation right is not subject to the prior rights of a holder of a security interest in

the goods or proceeds with respect to which such reclamation right is alleged, or impair the ability of a claimant to seek adequate protection against the Debtors with respect to any such alleged reclamation right. Further, nothing in this Order or the MPA shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the Purchaser, the U.S. Treasury, EDC, the Creditors' Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or with respect to any claim for adequate protection.

Approval of the UAW Retiree Settlement Agreement

19. The UAW Retiree Settlement Agreement, the transactions contemplated therein, and the terms and conditions thereof, are fair, reasonable, and in the best interests of the retirees, and are approved. The Debtors, the Purchaser, and the UAW are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and to comply with the terms of the UAW Retiree Settlement Agreement, including the obligation of the Purchaser to reimburse the UAW for certain expenses relating to the 363 Transaction and the transition to the New VEBA arrangements. The amendments to the Trust Agreement (as defined in the UAW Retiree Settlement Agreement) set forth on Exhibit E to the UAW Retiree Settlement Agreement, are approved, and the Trust Agreement is reformed accordingly.

20. In accordance with the terms of the UAW Retiree Settlement Agreement, (I) as of the Closing, there shall be no requirement to amend the Pension Plan as set forth in section 15 of the Henry II Settlement (as such terms are defined in the UAW Retiree Settlement Agreement); (II) on the later of December 31, 2009, or the Closing of the 363 Transaction (the "**Implementation Date**"), (i) the committee and the trustees of the Existing External VEBA (as defined in the UAW Retiree Settlement Agreement) are directed to transfer to the New VEBA all assets and liabilities of the Existing External VEBA and to terminate the Existing External

VEBA within fifteen (15) days thereafter, as provided under Section 12.C of the UAW Retiree Settlement Agreement, (ii) the trustee of the Existing Internal VEBA is directed to transfer to the New VEBA the UAW Related Account's share of assets in the Existing Internal VEBA within ten (10) business days thereafter as provided in Section 12.B of the UAW Retiree Settlement Agreement, and, upon the completion of such transfer, the Existing Internal VEBA shall be deemed to be amended to terminate participation and coverage regarding Retiree Medical Benefits for the Class and the Covered Group, effective as of the Implementation Date (each as defined in the UAW Retiree Settlement Agreement); and (III) all obligations of the Purchaser and the Sellers to provide Retiree Medical Benefits to members of the Class and Covered Group shall be governed by the UAW Retiree Settlement Agreement, and, in accordance with section 5.D of the UAW Retiree Settlement Agreement, all provisions of the Purchaser's Plan relating to Retiree Medical Benefits for the Class and/or the Covered Group shall terminate as of the Implementation Date or otherwise be amended so as to be consistent with the UAW Retiree Settlement Agreement (as each term is defined in the UAW Retiree Settlement Agreement), and the Purchaser shall not thereafter have any such obligations as set forth in Section 5.D of the UAW Retiree Settlement Agreement.

Approval of GM's Assumption of the UAW Claims Agreement

21. Pursuant to section 365 of the Bankruptcy Code, GM's assumption of the UAW Claims Agreement is approved, and GM, the UAW, and the Class Representatives are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Claims Agreement and comply with the terms of the UAW Claims Agreement.

Assumption and Assignment to the Purchaser of Assumable Executory Contracts

22. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and subject to and conditioned upon (a) the Closing of the 363 Transaction, (b) the occurrence of the Assumption Effective Date, and (c) the resolution of any relevant Limited Contract Objections, other than a Cure Objection, by order of this Court overruling such objection or upon agreement of the parties, the Debtors' assumption and assignment to the Purchaser of each Assumable Executory Contract (including, without limitation, for purposes of this paragraph 22) the UAW Collective Bargaining Agreement) is approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are deemed satisfied.

23. The Debtors are authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective as of the Assumption Effective Date, as provided by, and in accordance with, the Sale Procedures Order, the Modified Assumption and Assignment Procedures, and the MPA, those Assumable Executory Contracts that have been designated by the Purchaser for assumption pursuant to sections 6.6 and 6.31 of the MPA and that are not subject to a Limited Contract Objection other than a Cure Objection, free and clear of all liens, claims, encumbrances, or other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities, and (ii) execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deems may be necessary to assign and transfer such Assumable Executory Contracts and Assumed Liabilities to the Purchaser. The Purchaser shall Promptly Pay (as defined below) the following (the "**Cure Amount**"): (a) all amounts due under such Assumable Executory Contract as of the Commencement Date as reflected on the website established by the Debtors (the "**Contract Website**"), which is referenced and is accessible as set forth in the Assumption and Assignment

Notice or as otherwise agreed to in writing by an authorized officer of the parties (for this purpose only, Susanna Webber shall be deemed an authorized officer of the Debtors) (the "**Prepetition Cure Amount**"), less amounts, if any, paid after the Commencement Date on account of the Prepetition Cure Amount (such net amount, the "**Net Prepetition Cure Amount**"), plus (b) any such amount past due and owing as of the Assumption Effective Date, as required under the Modified Assumption and Assignment Procedures, exclusive of the Net Prepetition Cure Amount. For the avoidance of doubt, all of the Debtors' rights to assert credits, chargebacks, setoffs, rebates, and other claims under the Purchased Contracts are purchased by and assigned to the Purchaser as of the Assumption Effective Date. As used herein, "**Promptly Pay**" means (i) with respect to any Cure Amount (or portion thereof, if any) which is undisputed, payment as soon as reasonably practicable, but not later than five (5) business days after the Assumption Effective Date, and (ii) with respect to any Cure Amount (or portion thereof, if any) which is disputed, payment as soon as reasonably practicable, but not later than five (5) business days after such dispute is resolved or such later date upon agreement of the parties and, in the event Bankruptcy Court approval is required, upon entry of a final order of the Bankruptcy Court. On and after the Assumption Effective Date, the Purchaser shall (i) perform any nonmonetary defaults that are required under section 365(b) of the Bankruptcy Code; *provided* that such defaults are undisputed or directed by this Court and are timely asserted under the Modified Assumption and Assignment Procedures, and (ii) pay all undisputed obligations and perform all obligations that arise or come due under each Assumable Executory Contract in the ordinary course. Notwithstanding any provision in this Order to the contrary, the Purchaser shall not be obligated to pay any Cure Amount or any other amount due with respect to any Assumable Executory Contract before such amount becomes due and payable under the applicable payment terms of such Contract.

24. The Debtors shall make available a writing, acknowledged by the Purchaser, of the assumption and assignment of an Assumable Executory Contract and the effective date of such assignment (which may be a printable acknowledgment of assignment on the Contract Website). The Assumable Executory Contracts shall be transferred and assigned to, pursuant to the Sale Procedures Order and the MPA, and thereafter remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Assumable Executory Contract (including those of the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Sellers shall be relieved from any further liability with respect to the Assumable Executory Contracts after such assumption and assignment to the Purchaser. Except as may be contested in a Limited Contract Objection, each Assumable Executory Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code and the Debtors may assume each of their respective Assumable Executory Contracts in accordance with section 365 of the Bankruptcy Code. Except as may be contested in a Limited Contract Objection other than a Cure Objection, the Debtors may assign each Assumable Executory Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumable Executory Contract that prohibit or condition the assignment of such Assumable Executory Contract or terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumable Executory Contract, constitute unenforceable antiassignment provisions which are void and of no force and effect in connection with the transactions contemplated hereunder. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of each Assumable Executory Contract have been satisfied, and, pursuant to section 365(k) of the Bankruptcy Code, the

Debtors are hereby relieved from any further liability with respect to the Assumable Executory Contracts, including, without limitation, in connection with the payment of any Cure Amounts related thereto which shall be paid by the Purchaser. At such time as provided in the Sale Procedures Order and the MPA, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract. With respect to leases of personal property that are true leases and not subject to recharacterization, nothing in this Order or the MPA shall transfer to the Purchaser an ownership interest in any leased property not owned by a Debtor. Any portion of any of the Debtors' unexpired leases of nonresidential real property that purport to permit the respective landlords thereunder to cancel the remaining term of any such leases if the Sellers discontinue their use or operation of the Leased Real Property are void and of no force and effect and shall not be enforceable against the Purchaser, its assignees and sublessees, and the landlords under such leases shall not have the right to cancel or otherwise modify such leases or increase the rent, assert any Claim, or impose any penalty by reason of such discontinuation, the Sellers' cessation of operations, the assignment of such leases to the Purchaser, or the interruption of business activities at any of the leased premises.

25. Except in connection with any ongoing Limited Contract Objection, each non-Debtor party to an Assumable Executory Contract is forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or the Purchaser, their successors or assigns, or their respective property, any default arising prior to, or existing as of, the Commencement Date, or, against the Purchaser, any counterclaim, defense, or setoff (other than defenses interposed in connection with, or related to, credits, chargebacks, setoffs, rebates, and other claims asserted by the Sellers or the Purchaser in its capacity as assignee), or other claim asserted or assertable against the Sellers and (b) imposing or charging against the Debtors, the

Purchaser, or its Affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Sellers' assumption and assignment to the Purchaser of the Assumable Executory Contracts. The validity of such assumption and assignment of the Assumable Executory Contracts shall not be affected by any dispute between the Sellers and any non-Debtor party to an Assumable Executory Contract.

26. Except as expressly provided in the MPA or this Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities other than certain Cure Amounts as provided in the MPA, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, and their estates.

27. The failure of the Sellers or the Purchaser to enforce at any time one or more terms or conditions of any Assumable Executory Contract shall not be a waiver of such terms or conditions, or of the Sellers' and the Purchaser's rights to enforce every term and condition of the Assumable Executory Contracts.

28. The authority hereunder for the Debtors to assume and assign an Assumable Executory Contract to the Purchaser includes the authority to assume and assign an Assumable Executory Contract, as amended.

29. Upon the assumption by a Debtor and the assignment to the Purchaser of any Assumable Executory Contract and the payment of the Cure Amount in full, all defaults under the Assumable Executory Contract shall be deemed to have been cured, and any counterparty to such Assumable Executory Contract shall be prohibited from exercising any rights or remedies against any Debtor or non-Debtor party to such Assumable Executory Contract based on an asserted default that occurred on, prior to, or as a result of, the Closing, including the type of default specified in section 365(b)(1)(A) of the Bankruptcy Code.

30. The assignments of each of the Assumable Executory Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

31. Entry by GM into the Deferred Termination Agreements with accepting dealers is hereby approved. Executed Deferred Termination Agreements represent valid and binding contracts, enforceable in accordance with their terms.

32. Entry by GM into the Participation Agreements with accepting dealers is hereby approved and the offer by GM of entry into the Participation Agreements and entry into the Participation Agreements was appropriate and not the product of coercion. The Court makes no finding as to whether any specific provision of any Participation Agreement governing the obligations of Purchaser and its dealers is enforceable under applicable provisions of state law. Any disputes that may arise under the Participation Agreements shall be adjudicated on a case by case basis in an appropriate forum other than this Court.

33. Nothing contained in the preceding two paragraphs shall impact the authority of any state or of the federal government to regulate Purchaser subsequent to the Closing.

34. Notwithstanding any other provision in the MPA or this Order, no assignment of any rights and interests of the Debtors in any federal license issued by the Federal Communications Commission ("**FCC**") shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.

TPC Property

35. The TPC Participation Agreement and the other TPC Operative Documents are financing transactions secured to the extent of the TPC Value (as hereinafter defined) and shall be Retained Liabilities.

36. As a result of the Debtors' interests in the TPC Property being transferred to the Purchaser free and clear of all liens, claims, interests, and encumbrances (other than Permitted Encumbrances), including, without limitation, the TPC Lenders' Liens and Claims, pursuant to section 363(e) of the Bankruptcy Code, the TPC Lenders shall have an allowed secured claim in a total amount equal to the fair market value of the TPC Property on the Commencement Date under section 506 of the Bankruptcy Code (the "**TPC Value**"), as determined at a valuation hearing conducted by this Court or by mutual agreement of the Debtors, the Purchaser, and the TPC Lenders (such claim, the "**TPC Secured Claim**"). Either the Debtors, the Purchaser, the TPC Lenders, or the Creditors' Committee may file a motion with this Court to determine the TPC Value on twenty (20) days notice.

37. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for the TPC Secured Claim and for the sole benefit of the TPC Lenders, at the Closing or as soon as commercially practicable thereafter, but in any event not later than five (5) business days after the Closing, the Purchaser shall place $90,700,000 (the "**TPC Escrow Amount**") in cash into an interest-bearing escrow account (the "**TPC Escrow Account**") at a financial institution selected by the Purchaser and acceptable to the other parties (the "**Escrow Bank**"). Interest earned on the TPC Escrow Amount from the date of deposit through the date of the disposition of the proceeds of such account (the "**TPC Escrow Interest**") will follow principal, such that interest earned on the amount of cash deposited into the TPC Escrow Account equal to the TPC Value shall be paid to the TPC Lenders and interest earned on the balance of the TPC Escrow Amount shall be paid to the Purchaser.

38. Promptly after the determination of the TPC Value, an amount of cash equal to the TPC Secured Claim plus the TPC Lenders' pro rata share of the TPC Escrow Interest shall be released from the TPC Escrow Account and paid to the TPC Lenders (the "**TPC**

Payment") without further order of this Court. If the TPC Value is less than $90,700,000, the TPC Lenders shall have, in addition to the TPC Secured Claim, an aggregate allowed unsecured claim against GM's estate equal to the lesser of (i) $45,000,000 and (ii) the difference between $90,700,000 and the TPC Value (the "**TPC Unsecured Claim**").

39. If the TPC Value exceeds $90,700,000, the TPC Lenders shall be entitled to assert a secured claim against GM's estate to the extent the TPC Lenders would have an allowed claim for such excess under section 506 of the Bankruptcy Code (the "**TPC Excess Secured Claim**"); *provided, however*, that any TPC Excess Secured Claim shall be paid from the consideration of the 363 Transaction as a secured claim thereon and shall not be payable from the proceeds of the Wind-Down Facility; *and provided further, however*, that the Debtors, the Creditors' Committee, and all parties in interest shall have the right to contest the allowance and amount of the TPC Excess Secured Claim under section 506 of the Bankruptcy Code (other than to contest the TPC Value as previously determined by the Court). All parties' rights and arguments respecting the determination of the TPC Secured Claim are reserved; *provided, however*, that in consideration of the settlement contained in these paragraphs, the TPC Lenders waive any legal argument that the TPC Lenders are entitled to a secured claim equal to the face amount of their claim under section 363(f)(3) or any other provision of the Bankruptcy Code solely as a matter of law, including, without limitation, on the grounds that the Debtors are required to pay the full face amount of the TPC Lenders' secured claims in order to transfer, or as a result of the transfer of, the TPC Property to the Purchaser. After the TPC Payment is made, any funds remaining in the TPC Escrow Account plus the Purchasers' pro rata share of the TPC Escrow Interest shall be released and paid to the Purchaser without further order of this Court. Upon the receipt of the TPC Payment by the TPC Lenders, other than any right to payment from GM on account of the TPC Unsecured Claim and the TPC Excess Secured Claim, the TPC

Lenders' Claims relating to the TPC Property shall be deemed fully satisfied and discharged, including, without limitation, any claims the TPC Lenders might have asserted against the Purchaser relating to the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents. For the avoidance of doubt, any and all claims of the TPC Lenders arising from or in connection with the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents shall be payable solely from the TPC Escrow Account or GM and shall be nonrecourse to the Purchaser.

40. The TPC Lenders shall not be entitled to payment of any fees, costs, or expenses (including legal fees) except to the extent that the TPC Value results in a TPC Excess Secured Claim and is thereby oversecured under the Bankruptcy Code and such claim is allowed by the Court as a secured claim under section 506 of the Bankruptcy Code.

41. In connection with the foregoing, and pursuant to Section 11.2 of the TPC Trust Agreement, GM, as the sole Certificate Holder and Beneficiary under the TPC Trust, together with the consent of GM as the Lessee, effective as of the date of the Closing, (a) exercises its election to terminate the TPC Trust and (b) in connection therewith, assumes all of the obligations of the TPC Trust and TPC Trustee under or contemplated by the TPC Operative Documents to which the TPC Trust or TPC Trustee is a party and all other obligations of the TPC Trust or TPC Trustee incurred under the TPC Trust Agreement (other than obligations set forth in clauses (i) through (iii) of the second sentence of Section 7.1 of the TPC Trust Agreement).

42. As a condition precedent to the 363 Transaction, in connection with the termination of the TPC Trust, effective as of the date of the Closing, all of the assets of the TPC Trust (the "**TPC Trust Assets**") shall be distributed to GM, as sole Certificate Holder and beneficiary under the TPC Trust, including, without limitation, the following:

(i) Industrial Development Revenue Real Property Note (General Motors Project) Series 1999-I, dated November 18, 1999, in the principal amount of $21,700,000, made by the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, to PVV Southpoint 14, LLC, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds (the "**TPC Tennessee Ground Lease**");

(ii) Real Property Lease Agreement dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Lessor, and PVV Southpoint 14, LLC, as Lessee, recorded as JW1262 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Real Property Lease dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1267 in the records of the Shelby County Register of Deeds;

(iii) Deed of Trust dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Grantor, in favor of Mid-South Title Corporation, as Trustee, for the benefit of PVV Southpoint 14, LLC, Beneficiary, recorded as JW1263 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(iv) Assignment of Rents and Lease dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Assignor, and PVV Southpoint 14, LLC, as Assignee, recorded as JW1264 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(v) The Tennessee Master Lease (as defined in the TPC Participation Agreement);

(vi) A certain tract of land being known and designated as Lot 1, as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Maryland, together with a certain tract of land being known and designated as "1.1865 Acre of Highway Widening," as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Baltimore, Maryland, saving and excepting from the above described property all that land conveyed to the State of Maryland to the use of the State Highway Administration of the Department of Transportation dated November 24, 2003, and

recorded among the Land Records of Baltimore County in Liber 19569, folio 074, Maryland, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way, including, without limitation, those easements benefiting Parcel 1 set forth in the Declaration and Agreement Respecting Easements, Restrictions and Operations, between the TPC Trust, GM, and Whitemarsh Associates, LLC, recorded among the Land Records of Baltimore County in Liber 14019, folio 430, as amended (collectively, the "**Maryland Property**");

(vii) alternatively to the transfer of a direct interest in the Maryland Property pursuant to item (vi) above, if such documents are still extant, the following interests shall be transferred: (a) Ground Lease Agreement dated as of September 8, 1999, between the TPC Trustee of the TPC Trust. as lessor, and Maryland Economic Development Corporation, as lessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 565, (b) Sublease Agreement dated as of September 8, 1999, between the Maryland Economic Development Corporation, as sublessor, and the TPC Trustee of the TPC Trust, as sublessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 589, together with (c) all agreements, loan agreements, notes, rights, obligations, and interests held by the TPC Trustee of the TPC Trust and/or issued by the TPC Trustee of the TPC Trust in connection therewith; and

(viii) The Maryland Master Lease (as defined in the TPC Participation Agreement).

43. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the leasehold interest of the TPC Trustee of the TPC Trust under the TPC Tennessee Ground Lease and the lessor's interest under the Tennessee Master Lease shall be held by GM, as are the lessor's and lessee's interests under the Tennessee Master Lease, and as permitted by the TPC Trust Agreement, the Tennessee Master Lease shall hereby be terminated, and GM shall succeed to all rights of the lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

44. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the Maryland Property, the lessor's and lessee's interests under the Maryland Master Lease shall be held by GM, and as permitted by the TPC Trust Agreement, the Maryland Master Lease shall hereby be terminated, and GM shall succeed to all rights of the

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

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

Additional Provisions

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

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

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

the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets. Notwithstanding the foregoing, a relevant taxing authority's ability to exercise its rights of setoff and recoupment are preserved.

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

49. The Purchaser has given fair and substantial consideration under the MPA for the benefit of the holders of liens, claims, encumbrances, or other interests. The consideration provided by the Purchaser for the Purchased Assets under the MPA is greater than the liquidation value of the Purchased Assets and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

50. The consideration provided by the Purchaser for the Purchased Assets under the MPA is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

51. If there is an Agreed G Transaction (determined no later than the due date, with extensions, of GM's tax return for the taxable year in which the 363 Transaction occurs), (i) the MPA shall, and hereby does, constitute a "plan" of GM and the Purchaser solely for purposes of sections 368 and 354 of the Tax Code, and (ii) the 363 Transaction, as set forth in the MPA, and the subsequent liquidation of the Sellers, are intended to constitute a tax reorganization of GM pursuant to section 368(a)(1)(G) of the Tax Code.

52. This Order (a) shall be 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, and that the conveyances described in this Order have been effected, and (b) shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

53. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by the MPA.

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

contacted by the Purchaser for marketing purposes. For a period of ninety (90) days following the Closing Date, the Purchaser shall include on the home page of GM's consumer web site (www.gm.com) a conspicuous disclosure of information about the Purchaser, its procedures for consumers to opt out of being contacted by the Purchaser for marketing purposes, and a notice of the Purchaser's new privacy statement. The Debtors and the Purchaser shall comply with the terms of established business relationship provisions in any applicable state and federal telemarketing laws. The Dealers who are parties to Deferred Termination Agreements shall not be required to transfer personally identifying information in violation of applicable law or existing privacy policies.

61. Nothing in this Order or the MPA releases, nullifies, or enjoins the enforcement of any Liability to a governmental unit under Environmental Laws or regulations (or any associated Liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor liability doctrine with respect to any Liabilities under Environmental Laws or regulations for penalties for days of violation prior to entry of this Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

62. Nothing contained in this Order or in the MPA shall in any way (i) diminish the obligation of the Purchaser to comply with Environmental Laws, or (ii) diminish the obligations of the Debtors to comply with Environmental Laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The definition of Environmental Laws in the MPA shall be amended to delete the words "in existence on the date of the Original Agreement." For purposes of clarity, the exclusion of asbestos liabilities in

section 2.3(b)(x) of the MPA shall not be deemed to affect coverage of asbestos as a Hazardous Material with respect to the Purchaser's remedial obligations under Environmental Laws.

63. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transactions contemplated by the 363 Transaction, the MPA, the Motion, and this Order.

64. The Debtors shall comply with their tax obligations under 28 U.S.C. § 960, except to the extent that such obligations are Assumed Liabilities.

65. Notwithstanding anything contained in their respective organizational documents or applicable state law to the contrary, each of the Debtors is authorized and directed, upon and in connection with the Closing, to change their respective names, and any amendment to the organizational documents (including the certificate of incorporation) of any of the Debtors to effect such a change is authorized and approved, without Board or shareholder approval. Upon any such change with respect to GM, the Debtors shall file with the Court a notice of change of case caption within two (2) business days of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

66. The terms and provisions of the MPA and this Order shall inure to the benefit of the Debtors, their estates, and their creditors, the Purchaser, and their respective agents, officials, personnel, representatives, and advisors.

67. The failure to specifically include any particular provisions of the MPA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the MPA be authorized and approved in its entirety, except as modified herein.

68. The MPA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification,

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

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

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

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

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

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

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

Dated: New York, York
July **5**, 2009

s/Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

EXECUTION COPY

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

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EXHIBITS

AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT (this "Agreement"), dated as of June 26, 2009, is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, on June 1, 2009 (the "Petition Date"), the Parties entered into that certain Master Sale and Purchase Agreement (the "Original Agreement"), and, in connection therewith, Sellers filed voluntary petitions for relief (the "Bankruptcy Cases") under Chapter 11 of Title 11, U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, pursuant to Sections 363 and 365 of the Bankruptcy Code, Sellers desire to sell, transfer, assign, convey and deliver to Purchaser, and Purchaser desires to purchase, accept and acquire from Sellers all of the Purchased Assets (as hereinafter defined) and assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities (as hereinafter defined), in each case, in accordance with the terms and subject to the conditions set forth in this Agreement and the Bankruptcy Code;

WHEREAS, on the Petition Date, Purchaser entered into equity subscription agreements with each of Canada, Sponsor and the New VEBA (each as hereinafter defined), pursuant to which Purchaser has agreed to issue, on the Closing Date (as hereinafter defined), the Canada Shares, the Sponsor Shares, the VEBA Shares, the VEBA Note and the VEBA Warrant (each as hereinafter defined);

WHEREAS, pursuant to the equity subscription agreement between Purchaser and Canada, Canada has agreed to (i) contribute on or before the Closing Date an amount of Indebtedness (as hereinafter defined) owed to it by General Motors of Canada Limited ("GMCL"), which results in not more than $1,288,135,593 of such Indebtedness remaining an obligation of GMCL, to Canada immediately following the Closing (the "Canadian Debt Contribution") and (ii) exchange immediately following the Closing the $3,887,000,000 loan to be made by Canada to Purchaser for additional shares of capital stock of Purchaser;

WHEREAS, the transactions contemplated by this Agreement are in furtherance of the conditions, covenants and requirements of the UST Credit Facilities (as hereinafter defined) and are intended to result in a rationalization of the costs, capitalization and capacity with respect to the manufacturing workforce of, and suppliers to, Sellers and their Subsidiaries (as hereinafter defined);

WHEREAS, it is contemplated that Purchaser may, in accordance with the terms of this Agreement, prior to the Closing (as hereinafter defined), engage in one or more related transactions (the "Holding Company Reorganization") generally designed to reorganize

Purchaser and one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Purchaser into a holding company structure that results in Purchaser becoming a direct or indirect, wholly-owned Subsidiary of a newly-formed Delaware corporation ("Holding Company"); and

WHEREAS, it is contemplated that Purchaser may, in accordance with the terms of this Agreement, direct the transfer of the Purchased Assets on its behalf by assigning its rights to purchase, accept and acquire the Purchased Assets and its obligations to assume and thereafter pay or perform as and when due, or otherwise discharge, the Assumed Liabilities, to Holding Company or one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Holding Company or Purchaser.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties (as hereinafter defined) hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below or in the Sections referred to below:

"Adjustment Shares" has the meaning set forth in **Section 3.2(c)(i)**.

"Advisory Fees" has the meaning set forth in **Section 4.20**.

"Affiliate" has the meaning set forth in Rule 12b-2 of the Exchange Act.

"Affiliate Contract" means a Contract between a Seller or a Subsidiary of a Seller, on the one hand, and an Affiliate of such Seller or Subsidiary of a Seller, on the other hand.

"Agreed G Transaction" has the meaning set forth in **Section 6.16(g)(i)**.

"Agreement" has the meaning set forth in the Preamble.

"Allocation" has the meaning set forth in **Section 3.3**.

"Alternative Transaction" means the sale, transfer, lease or other disposition, directly or indirectly, including through an asset sale, stock sale, merger or other similar transaction, of all or substantially all of the Purchased Assets in a transaction or a series of transactions with one or more Persons other than Purchaser (or its Affiliates).

"Ancillary Agreements" means the Parent Warrants, the UAW Active Labor Modifications, the UAW Retiree Settlement Agreement, the VEBA Warrant, the Equity Registration Rights Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Novation Agreement, the Government Related Subcontract Agreement, the Intellectual Property Assignment Agreement, the Transition Services Agreement, the Quitclaim Deeds, the

Assignment and Assumption of Real Property Leases, the Assignment and Assumption of Harlem Lease, the Master Lease Agreement, the Subdivision Master Lease (if required), the Saginaw Service Contracts (if required), the Assignment and Assumption of Willow Run Lease, the Ren Cen Lease, the VEBA Note and each other agreement or document executed by the Parties pursuant to this Agreement or any of the foregoing and each certificate and other document to be delivered by the Parties pursuant to **ARTICLE VII**.

"Antitrust Laws" means all Laws that (i) are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or the lessening of competition through merger or acquisition or (ii) involve foreign investment review by Governmental Authorities.

"Applicable Employee" means all (i) current salaried employees of Parent and (ii) current hourly employees of any Seller or any of its Affiliates (excluding Purchased Subsidiaries and any dealership) represented by the UAW, in each case, including such current salaried and current hourly employees who are on (a) long-term or short-term disability, military leave, sick leave, family medical leave or some other approved leave of absence or (b) layoff status or who have recall rights.

"Arms-Length Basis" means a transaction between two Persons that is carried out on terms no less favorable than the terms on which the transaction would be carried out by unrelated or unaffiliated Persons, acting as a willing buyer and a willing seller, and each acting in his own self-interest.

"Assignment and Assumption Agreement" has the meaning set forth in **Section 7.2(c)(v)**.

"Assignment and Assumption of Harlem Lease" has the meaning set forth in **Section 7.2(c)(xiii)**.

"Assignment and Assumption of Real Property Leases" has the meaning set forth in **Section 7.2(c)(xii)**.

"Assignment and Assumption of Willow Run Lease" has the meaning set forth in **Section 6.27(e)**.

"Assumable Executory Contract" has the meaning set forth in **Section 6.6(a)**.

"Assumable Executory Contract Schedule" means Section 1.1A of the Sellers' Disclosure Schedule.

"Assumed Liabilities" has the meaning set forth in **Section 2.3(a)**.

"Assumed Plans" has the meaning set forth in **Section 6.17(e)**.

"Assumption Effective Date" has the meaning set forth in **Section 6.6(d)**.

"Bankruptcy Avoidance Actions" has the meaning set forth in **Section 2.2(b)(xi)**.

"Bankruptcy Cases" has the meaning set forth in the Recitals.

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Benefit Plans" has the meaning set forth in **Section 4.10(a)**.

"Bidders" has the meaning set forth in **Section 6.4(c)**.

"Bids" has the meaning set forth in **Section 6.4(c)**.

"Bill of Sale" has the meaning set forth in **Section 7.2(c)(iv)**.

"Business Day" means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York, New York.

"CA" has the meaning set forth in **Section 6.16(g)(i)**.

"Canada" means 7176384 Canada Inc., a corporation organized under the Laws of Canada, and a wholly-owned subsidiary of Canada Development Investment Corporation, and its successors and assigns.

"Canada Affiliate" has the meaning set forth in **Section 9.22**.

"Canada Shares" has the meaning set forth in **Section 5.4(c)**.

"Canadian Debt Contribution" has the meaning set forth in the Recitals.

"Claims" means all rights, claims (including any cross-claim or counterclaim), investigations, causes of action, choses in action, charges, suits, defenses, demands, damages, defaults, assessments, rights of recovery, rights of set-off, rights of recoupment, litigation, third party actions, arbitral proceedings or proceedings by or before any Governmental Authority or any other Person, of any kind or nature, whether known or unknown, accrued, fixed, absolute, contingent or matured, liquidated or unliquidated, due or to become due, and all rights and remedies with respect thereto.

"Claims Estimate Order" has the meaning set forth in **Section 3.2(c)(i)**.

"Closing" has the meaning set forth in **Section 3.1**.

"Closing Date" has the meaning set forth in **Section 3.1**.

"Collective Bargaining Agreement" means any collective bargaining agreement or other written or oral agreement, understanding or mutually recognized past practice with respect to Employees, between any Seller (or any Subsidiary thereof) and any labor organization or other Representative of Employees (including the UAW Collective Bargaining Agreement, local agreements, amendments, supplements and letters and memoranda of understanding of any kind).

"Common Stock" has the meaning set forth in **Section 5.4(b)**.

"Confidential Information" has the meaning set forth in **Section 6.24.**

"Confidentiality Period" has the meaning set forth in **Section 6.24**.

"Continuing Brand Dealer Agreement" means a United States dealer sales and service Contract related to one or more of the Continuing Brands, together with all other Contracts between any Seller and the relevant dealer that are related to the dealership operations of such dealer other than Contracts identified on Section 1.1B of the Sellers' Disclosure Schedule, each of which Contract identified on Section 1.1B of the Sellers' Disclosure Schedule shall be deemed to be a Rejectable Executory Contract.

"Continuing Brands" means each of the following vehicle line-makes, currently distributed in the United States by Parent or its Subsidiaries: Buick, Cadillac, Chevrolet and GMC.

"Contracts" means all purchase orders, sales agreements, supply agreements, distribution agreements, sales representative agreements, employee or consulting agreements, leases, subleases, licenses, product warranty or service agreements and other binding commitments, agreements, contracts, arrangements, obligations and undertakings of any nature (whether written or oral, and whether express or implied).

"Copyright Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to reproduce, publicly display, publicly perform, distribute, create derivative works of or otherwise exploit any works covered by any Copyright.

"Copyrights" means all domestic and foreign copyrights, whether registered or unregistered, including all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship (including all compilations of information or marketing materials created by or on behalf of any Seller), acquired, owned or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States or any other country or any political subdivision thereof) and all reissues, renewals, restorations, extensions and revisions thereof.

"Cure Amounts" means all cure amounts payable in order to cure any monetary defaults required to be cured under Section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Purchaser of the Purchased Contracts.

"Damages" means any and all Losses, other than punitive damages.

"Dealer Agreement" has the meaning set forth in **Section 4.17**.

"Deferred Executory Contract" has the meaning set forth in **Section 6.6(c)**.

"Deferred Termination Agreements" has the meaning set forth in **Section 6.7(a)**.

"Delayed Closing Entities" has the meaning set forth in **Section 6.35**.

"Delphi" means Delphi Corporation.

"Delphi Motion" means the motion filed by Parent with the Bankruptcy Court in the Bankruptcy Cases on June 20, 2009, seeking authorization and approval of (i) the purchase, and guarantee of purchase, of certain assets of Delphi, (ii) entry into certain agreements in connection with the sale of substantially all of the remaining assets of Delphi to a third party, (iii) the assumption of certain Executory Contracts in connection with such sale, (iv) entry into an agreement with the PBGC in connection with such sale and (v) entry into an alternative transaction with the successful bidder in the auction for the assets of Delphi.

"Delphi Transaction Agreements" means (i) either (A) the MDA, the SPA, the Loan Agreement, the Operating Agreement, the Commercial Agreements and any Ancillary Agreements (in each case, as defined in the Delphi Motion), which any Seller is a party to, or (B) in the event that an Acceptable Alternative Transaction (as defined in the Delphi Motion) is consummated, any agreements relating to the Acceptable Alternative Transaction, which any Seller is a party to, and (ii) in the event that the PBGC Agreement is entered into at or prior to the Closing, the PBGC Agreement (as defined in the Delphi Motion) and any ancillary agreements entered into pursuant thereto, which any Seller is a party to, as each of the agreements described in clauses (i) or (ii) hereof may be amended from time to time.

"DIP Facility" means that certain Secured Superpriority Debtor-in-Possession Credit Agreement entered into or to be entered into by Parent, as borrower, certain Subsidiaries of Parent listed therein, as guarantors, Sponsor, as lender, and Export Development Canada, as lender.

"Discontinued Brand Dealer Agreement" means a United States dealer sales and service Contract related to one or more of the Discontinued Brands, together with all other Contracts between any Seller and the relevant dealer that are related to the dealership operations of such dealer other than Contracts identified on Section 1.1B of the Sellers' Disclosure Schedule, each of which Contract identified on Section 1.1B of the Sellers' Disclosure Schedule shall be deemed to be a Rejectable Executory Contract.

"Discontinued Brands" means each of the following vehicle line-makes, currently distributed in the United States by Parent or its Subsidiaries: Hummer, Saab, Saturn and Pontiac.

"Disqualified Individual" has the meaning set forth in **Section 4.10(f)**.

"Employees" means (i) each employee or officer of any of Sellers or their Affiliates (including (a) any current, former or retired employees or officers, (b) employees or officers on long-term or short-term disability, military leave, sick leave, family medical leave or some other approved leave of absence and (c) employees on layoff status or with recall rights); (ii) each consultant or other service provider of any of Sellers or their Affiliates who is a former employee, officer or director of any of Sellers or their Affiliates; and (iii) each individual recognized under any Collective Bargaining Agreement as being employed by or having rights to

employment by any of Sellers or their Affiliates. For the avoidance of doubt, Employees includes all employees of Sellers or any of their Affiliates, whether or not Transferred Employees.

"Employment-Related Obligations" means all Liabilities arising out of, related to, in respect of or in connection with employment relationships or alleged or potential employment relationships with Sellers or any Affiliate of Sellers relating to Employees, leased employees, applicants, and/or independent contractors or those individuals who are deemed to be employees of Sellers or any Affiliate of Sellers by Contract or Law, whether filed or asserted before, on or after the Closing. "Employment-Related Obligations" includes Claims relating to discrimination, torts, compensation for services (and related employment and withholding Taxes), workers' compensation or similar benefits and payments on account of occupational illnesses and injuries, employment Contracts, Collective Bargaining Agreements, grievances originating under a Collective Bargaining Agreement, wrongful discharge, invasion of privacy, infliction of emotional distress, defamation, slander, provision of leave under the Family and Medical Leave Act of 1993, as amended, or other similar Laws, car programs, relocation, expense-reporting, Tax protection policies, Claims arising out of WARN or employment, terms of employment, transfers, re-levels, demotions, failure to hire, failure to promote, compensation policies, practices and treatment, termination of employment, harassment, pay equity, employee benefits (including post-employment welfare and other benefits), employee treatment, employee suggestions or ideas, fiduciary performance, employment practices, the modification or termination of Benefit Plans or employee benefit plans, policies, programs, agreements and arrangements of Purchaser, including decisions to provide plans that are different from Benefit Plans, and the like. Without limiting the generality of the foregoing, with respect to any Employees, leased employees, and/or independent contractors or those individuals who are deemed to be employees of Sellers or any Affiliate of Sellers by Contract or Law, "Employment-Related Obligations" includes payroll and social security Taxes, contributions (whether required or voluntary) to any retirement, health and welfare or similar plan or arrangement, notice, severance or similar payments required under Law, and obligations under Law with respect to occupational injuries and illnesses.

"Encumbrance" means any lien (statutory or otherwise), charge, deed of trust, pledge, security interest, conditional sale or other title retention agreement, lease, mortgage, option, charge, hypothecation, easement, right of first offer, license, covenant, restriction, ownership interest of another Person or other encumbrance.

"End Date" has the meaning set forth in **Section 8.1(b)**.

"Environment" means any surface water, groundwater, drinking water supply, land surface or subsurface soil or strata, ambient air, natural resource or wildlife habitat.

"Environmental Law" means any Law in existence on the date of the Original Agreement relating to the management or Release of, or exposure of humans to, any Hazardous Materials; or pollution; or the protection of human health and welfare and the Environment.

"Equity Incentive Plans" has the meaning set forth in **Section 6.28**.

"Equity Interest" means, with respect to any Person, any shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, options or rights for the purchase or other acquisition from such Person of such shares (or such other ownership or profits interests) and other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting.

"Equity Registration Rights Agreement" has the meaning set forth in **Section 7.1(c)**.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is part of the same controlled group, or under common control with, or part of an affiliated service group that includes any Seller, within the meaning of Section 414(b), (c), (m) or (o) of the Tax Code or Section 4001(a)(14) of ERISA.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Assets" has the meaning set forth in **Section 2.2(b)**.

"Excluded Cash" has the meaning set forth in **Section 2.2(b)(i)**.

"Excluded Continuing Brand Dealer Agreements" means all Continuing Brand Dealer Agreements, other than those that are Assumable Executory Contracts.

"Excluded Contracts" has the meaning set forth in **Section 2.2(b)(vii)**.

"Excluded Entities" has the meaning set forth in **Section 2.2(b)(iv)**.

"Excluded Insurance Policies" has the meaning set forth in **Section 2.2(b)(xiii)**.

"Excluded Personal Property" has the meaning set forth in **Section 2.2(b)(vi)**.

"Excluded Real Property" has the meaning set forth in **Section 2.2(b)(v)**.

"Excluded Subsidiaries" means, collectively, the direct Subsidiaries of Sellers included in the Excluded Entities and their respective direct and indirect Subsidiaries, in each case, as of the Closing Date.

"Executory Contract" means an executory Contract or unexpired lease of personal property or nonresidential real property.

"Executory Contract Designation Deadline" has the meaning set forth in **Section 6.6(a)**.

"Existing Internal VEBA" has the meaning set forth in **Section 6.17(h)**.

"Existing Saginaw Wastewater Facility" has the meaning set forth in **Section 6.27(b)**.

"Existing UST Loan and Security Agreement" means the Loan and Security Agreement, dated as of December 31, 2008, between Parent and Sponsor, as amended.

"FCPA" has the meaning set forth in **Section 4.19**.

"Final Determination" means (i) with respect to U.S. federal income Taxes, a "determination" as defined in Section 1313(a) of the Tax Code or execution of an IRS Form 870-AD and, (ii) with respect to Taxes other than U.S. federal income Taxes, any final determination of Liability in respect of a Tax that, under applicable Law, is not subject to further appeal, review or modification through proceedings or otherwise, including the expiration of a statute of limitations or a period for the filing of Claims for refunds, amended Tax Returns or appeals from adverse determinations.

"Final Order" means (i) an Order of the Bankruptcy Court or any other court or adjudicative body as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending, or (ii) in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such Order of the Bankruptcy Court or any other court or adjudicative body shall have been affirmed by the highest court to which such Order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that no Order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed with respect to such Order.

"FSA Approval" has the meaning set forth in **Section 6.34**.

"G Transaction" has the meaning set forth in **Section 6.16(g)(i)**.

"GAAP" means the United States generally accepted accounting principles and practices as in effect from time to time, consistently applied throughout the specified period.

"GMAC" means GMAC LLC.

"GM Assumed Contracts" has the meaning set forth in the Delphi Motion.

"GMCL" has the meaning set forth in the Recitals.

"Governmental Authority" means any United States or non-United States federal, national, provincial, state or local government or other political subdivision thereof, any entity, authority, agency or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any supranational organization of sovereign states exercising such functions for such sovereign states.

"Government Related Subcontract Agreement" has the meaning set forth in **Section 7.2(c)(vii)**.

"Harlem" has the meaning set forth in the Preamble.

"Hazardous Materials" means any material or substance that is regulated, or can give rise to Claims, Liabilities or Losses, under any Environmental Law or a Permit issued pursuant to any Environmental Law, including any petroleum, petroleum-based or petroleum-derived product, polychlorinated biphenyls, asbestos or asbestos-containing materials, lead and any noxious, radioactive, flammable, corrosive, toxic, hazardous or caustic substance (whether solid, liquid or gaseous).

"Holding Company" has the meaning set forth in the Recitals.

"Holding Company Reorganization" has the meaning set forth in the Recitals.

"Indebtedness" means, with respect to any Person, without duplication: (i) all obligations of such Person for borrowed money (including all accrued and unpaid interest and all prepayment penalties or premiums in respect thereof); (ii) all obligations of such Person to pay amounts evidenced by bonds, debentures, notes or similar instruments (including all accrued and unpaid interest and all prepayment penalties or premiums in respect thereof); (iii) all obligations of others, of the types set forth in clauses (i)-(ii) above that are secured by any Encumbrance on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, but only to the extent so secured; (iv) all unreimbursed reimbursement obligations of such Person under letters of credit issued for the account of such Person; (v) obligations of such Person under conditional sale, title retention or similar arrangements or other obligations, in each case, to pay the deferred purchase price for property or services, to the extent of the unpaid purchase price (other than trade payables and customary reservations or retentions of title under Contracts with suppliers, in each case, in the Ordinary Course of Business); (vi) all net monetary obligations of such Person in respect of interest rate, equity and currency swap and other derivative transaction obligations; and (vii) all guarantees of or by such Person of any of the matters described in clauses (i)-(vi) above, to the extent of the maximum amount for which such Person may be liable pursuant to such guarantee.

"Intellectual Property" means all Patents, Trademarks, Copyrights, Trade Secrets, Software, all rights under the Licenses and all concepts, ideas, know-how, show-how, proprietary information, technology, formulae, processes and other general intangibles of like nature, and other intellectual property to the extent entitled to legal protection as such, including products under development and methodologies therefor, in each case acquired, owned or licensed by a Seller.

"Intellectual Property Assignment Agreement" has the meaning set forth in **Section 7.2(c)(viii)**.

"Intercompany Obligations" has the meaning set forth in **Section 2.2(a)(iv)**.

"Inventory" has the meaning set forth in **Section 2.2(a)(viii)**.

"IRS" means the United States Internal Revenue Service.

"Key Subsidiary" means any direct or indirect Subsidiary (which, for the avoidance of doubt, shall only include any legal entity in which a Seller, directly or indirectly, owns greater than 50% of the outstanding Equity Interests in such legal entity) of Sellers (other than trusts) with assets (excluding any Intercompany Obligations) in excess of Two Hundred and Fifty Million Dollars ($250,000,000) as reflected on Parent's consolidated balance sheet as of March 31, 2009 and listed on Section 1.1C of the Sellers' Disclosure Schedule.

"Knowledge of Sellers" means the actual knowledge of the individuals listed on Section 1.1D of the Sellers' Disclosure Schedule as to the matters represented and as of the date the representation is made.

"Law" means any and all applicable United States or non-United States federal, national, provincial, state or local laws, rules, regulations, directives, decrees, treaties, statutes, provisions of any constitution and principles (including principles of common law) of any Governmental Authority, as well as any applicable Final Order.

"Landlocked Parcel" has the meaning set forth in **Section 6.27(c)**.

"Leased Real Property" means all the real property leased or subleased by Sellers, except for any such leased or subleased real property subject to any Contracts designated as Excluded Contracts.

"Lemon Laws" means 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.

"Liabilities" means any and all liabilities and obligations of every kind and description whatsoever, whether such liabilities or obligations are known or unknown, disclosed or undisclosed, matured or unmatured, accrued, fixed, absolute, contingent, determined or undeterminable, on or off-balance sheet or otherwise, or due or to become due, including Indebtedness and those arising under any Law, Claim, Order, Contract or otherwise.

"Licenses" means the Patent Licenses, the Trademark Licenses, the Copyright Licenses, the Software Licenses and the Trade Secret Licenses.

"Losses" means any and all Liabilities, losses, damages, fines, amounts paid in settlement, penalties, costs and expenses (including reasonable and documented attorneys', accountants', consultants', engineers' and experts' fees and expenses).

"LSA Agreement" means the Amended and Restated GM-Delphi Agreement, dated as of June 1, 2009, and any ancillary agreements entered into pursuant thereto, which any Seller is a party to, as each such agreement may be amended from time to time.

"Master Lease Agreement" has the meaning set forth in **Section 7.2(c)(xiv)**.

"Material Adverse Effect" means any change, effect, occurrence or development that, individually or in the aggregate, has or would reasonably be expected to have a material adverse effect on the Purchased Assets, Assumed Liabilities or results of operations of Parent and its

Purchased Subsidiaries, taken as a whole; provided, however, that the term "Material Adverse Effect" does not, and shall not be deemed to, include, either alone or in combination, any changes, effects, occurrences or developments: (i) resulting from general economic or business conditions in the United States or any other country in which Sellers and their respective Subsidiaries have operations, or the worldwide economy taken as a whole; (ii) affecting Sellers in the industry or the markets where Sellers operate (except to the extent such change, occurrence or development has a disproportionate adverse effect on Parent and its Subsidiaries relative to other participants in such industry or markets, taken as a whole); (iii) resulting from any changes (or proposed or prospective changes) in any Law or in GAAP or any foreign generally accepted accounting principles; (iv) in securities markets, interest rates, regulatory or political conditions, including resulting or arising from acts of terrorism or the commencement or escalation of any war, whether declared or undeclared, or other hostilities; (v) resulting from the negotiation, announcement or performance of this Agreement or the DIP Facility, or the transactions contemplated hereby and thereby, including by reason of the identity of Sellers, Purchaser or Sponsor or any communication by Sellers, Purchaser or Sponsor of any plans or intentions regarding the operation of Sellers' business, including the Purchased Assets, prior to or following the Closing; (vi) resulting from any act or omission of any Seller required or contemplated by the terms of this Agreement, the DIP Facility or the Viability Plans, or otherwise taken with the prior consent of Sponsor or Purchaser, including Parent's announced shutdown, which began in May 2009; and (vii) resulting from the filing of the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by any Subsidiary of Parent) or from any action approved by the Bankruptcy Court (or any other court in connection with any such other proceedings).

"New VEBA" means the trust fund established pursuant to the Settlement Agreement.

"Non-Assignable Assets" has the meaning set forth in **Section 2.4(a)**.

"Non-UAW Collective Bargaining Agreements" has the meaning set forth in **Section 6.17(m)(i)**.

"Non-UAW Settlement Agreements" has the meaning set forth in **Section 6.17(m)(ii)**.

"Notice of Intent to Reject" has the meaning set forth in **Section 6.6(b)**.

"Novation Agreement" has the meaning set forth in **Section 7.2(c)(vi)**.

"Option Period" has the meaning set forth in **Section 6.6(b)**.

"Order" means any writ, judgment, decree, stipulation, agreement, determination, award, injunction or similar order of any Governmental Authority, whether temporary, preliminary or permanent.

"Ordinary Course of Business" means the usual, regular and ordinary course of business consistent with the past practice thereof (including with respect to quantity and frequency) as and to the extent modified in connection with (i) the implementation of the Viability Plans; (ii) Parent's announced shutdown, which began in May 2009; and (iii) the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of

Parent), in the case of clause (iii), to the extent such modifications were approved by the Bankruptcy Court (or any other court or other Governmental Authority in connection with any such other proceedings), or in furtherance of such approval.

"Organizational Document" means (i) with respect to a corporation, the certificate or articles of incorporation and bylaws or their equivalent; (ii) with respect to any other entity, any charter, bylaws, limited liability company agreement, certificate of formation, articles of organization or similar document adopted or filed in connection with the creation, formation or organization of a Person; and (iii) in the case of clauses (i) and (ii) above, any amendment to any of the foregoing other than as prohibited by **Section 6.2(b)(vi)**.

"Original Agreement" has the meaning set forth in the Recitals.

"Owned Real Property" means all real property owned by Sellers (including all buildings, structures and improvements thereon and appurtenances thereto), except for any such real property included in the Excluded Real Property.

"Parent" has the meaning set forth in the Preamble.

"Parent Employee Benefit Plans and Policies" means all (i) "employee benefit plans" (as defined in Section 3(3) of ERISA) and all pension, savings, profit sharing, retirement, bonus, incentive, health, dental, life, death, accident, disability, stock purchase, stock option, stock appreciation, stock bonus, other equity, executive or deferred compensation, hospitalization, post-retirement (including retiree medical or retiree life, voluntary employees' beneficiary associations, and multiemployer plans (as defined in Section 3(37) of ERISA)), severance, retention, change in control, vacation, cafeteria, sick leave, fringe, perquisite, welfare benefits or other employee benefit plans, programs, policies, agreements or arrangements (whether written or oral), including those plans, programs, policies, agreements and arrangements with respect to which any Employee covered by the UAW Collective Bargaining Agreement is an eligible participant, (ii) employment or individual consulting Contracts and (iii) employee manuals and written policies, practices or understandings relating to employment, compensation and benefits, and in the case of clauses (i) through (iii), sponsored, maintained, entered into, or contributed to, or required to be maintained or contributed to, by Parent.

"Parent SEC Documents" has the meaning set forth in **Section 4.5(a)**.

"Parent Shares" has the meaning set forth in **Section 3.2(a)(iii)**.

"Parent Warrant A" means warrants to acquire 45,454,545 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit A**.

"Parent Warrant B" means warrants to acquire 45,454,545 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit B**.

"Parent Warrants" means collectively, Parent Warrant A and Parent Warrant B.

"Participation Agreement" has the meaning set forth in **Section 6.7(b)**.

"Parties" means Sellers and Purchaser together, and "Party" means any of Sellers, on the one hand, or Purchaser, on the other hand, as appropriate and as the case may be.

"Patent Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to manufacture, use, lease, or sell any invention, design, idea, concept, method, technique or process covered by any Patent.

"Patents" means all inventions, patentable designs, letters patent and design letters patent of the United States or any other country and all applications (regular and provisional) for letters patent or design letters patent of the United States or any other country, including applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, and all reissues, divisions, continuations, continuations in part, revisions, reexaminations and extensions or renewals of any of the foregoing.

"PBGC" has the meaning set forth in **Section 4.10(a)**.

"Permits" has the meaning set forth in **Section 2.2(a)(xi)**.

"Permitted Encumbrances" means all (i) purchase money security interests arising in the Ordinary Course of Business; (ii) security interests relating to progress payments created or arising pursuant to government Contracts in the Ordinary Course of Business; (iii) security interests relating to vendor tooling arising in the Ordinary Course of Business; (iv) Encumbrances that have been or may be created by or with the written consent of Purchaser; (v) mechanic's, materialmen's, laborer's, workmen's, repairmen's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established; (vi) liens for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties); (vii) with respect to the Transferred Real Property that is Owned Real Property, other than Secured Real Property Encumbrances at and following the Closing: (a) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose, the existence of which, individually or in the aggregate, would not materially and adversely interfere with the present use of the affected property; (b) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Owned Real Property; (c) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Owned Real Property, which, individually or in the aggregate, would not materially and adversely interfere with the present use of the applicable Owned Real Property; and (d) such other Encumbrances, the existence of which, individually or in the aggregate, would not materially and adversely interfere with or affect the present use or occupancy of the applicable Owned Real Property; (viii) with respect to the Transferred Real Property that is Leased Real Property: (1) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose; (2) rights of the public, any Governmental Authority and adjoining property owners in streets and highways

abutting or adjacent to the applicable Leased Real Property; (3) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Leased Real Property or which have otherwise been imposed on such property by landlords; (ix) in the case of the Transferred Equity Interests, all restrictions and obligations contained in any Organizational Document, joint venture agreement, shareholders agreement, voting agreement and related documents and agreements, in each case, affecting the Transferred Equity Interests; (x) except to the extent otherwise agreed to in the Ratification Agreement entered into by Sellers and GMAC on June 1, 2009 and approved by the Bankruptcy Court on the date thereof or any other written agreement between GMAC or any of its Subsidiaries and any Seller, all Claims (in each case solely to the extent such Claims constitute Encumbrances) and Encumbrances in favor of GMAC or any of its Subsidiaries in, upon or with respect to any property of Sellers or in which Sellers have an interest, including any of the following: (1) cash, deposits, certificates of deposit, deposit accounts, escrow funds, surety bonds, letters of credit and similar agreements and instruments; (2) owned or leased equipment; (3) owned or leased real property; (4) motor vehicles, inventory, equipment, statements of origin, certificates of title, accounts, chattel paper, general intangibles, documents and instruments of dealers, including property of dealers in-transit to, surrendered or returned by or repossessed from dealers or otherwise in any Seller's possession or under its control; (5) property securing obligations of Sellers under derivatives Contracts; (6) rights or property with respect to which a Claim or Encumbrance in favor of GMAC or any of its Subsidiaries is disclosed in any filing made by Parent with the SEC (including any filed exhibit); and (7) supporting obligations, insurance rights and Claims against third parties relating to the foregoing; and (xi) all rights of setoff and/or recoupment that are Encumbrances in favor of GMAC and/or its Subsidiaries against amounts owed to Sellers and/or any of their Subsidiaries with respect to any property of Sellers or in which Sellers have an interest as more fully described in clause (x) above; it being understood that nothing in this clause (xi) or preceding clause (x) shall be deemed to modify, amend or otherwise change any agreement as between GMAC or any of its Subsidiaries and any Seller.

"Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, joint venture, limited liability company, Governmental Authority or other entity.

"Personal Information" means any information relating to an identified or identifiable living individual, including (i) first initial or first name and last name; (ii) home address or other physical address, including street name and name of city or town; (iii) e-mail address or other online contact information (e.g., instant messaging user identifier); (iv) telephone number; (v) social security number or other government-issued personal identifier such as a tax identification number or driver's license number; (vi) internet protocol address; (vii) persistent identifier (e.g., a unique customer number in a cookie); (viii) financial account information (account number, credit or debit card numbers or banking information); (ix) date of birth; (x) mother's maiden name; (xi) medical information (including electronic protected health information as defined by the rules and regulations of the Health Information Portability and Privacy Act, as amended); (xii) digitized or electronic signature; and (xiii) any other information that is combined with any of the above.

"Personal Property" has the meaning set forth in **Section 2.2(a)(vii)**.

"Petition Date" has the meaning set forth in the Recitals.

"PLR" has the meaning set forth in **Section 6.16(g)(i)**.

"Post-Closing Tax Period" means any taxable period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

"Preferred Stock" has the meaning set forth in **Section 5.4(b)**.

"Privacy Policy" means, with respect to any Person, any written privacy policy, statement, rule or notice regarding the collection, use, access, safeguarding and retention of Personal Information or "Personally Identifiable Information" (as defined by Section 101(41A) of the Bankruptcy Code) of any individual, including a customer, potential customer, employee or former employee of such Person, or an employee of any of such Person's automotive or parts dealers.

"Product Liabilities" has the meaning set forth in **Section 2.3(a)(ix)**.

"Promark UK Subsidiaries" has the meaning set forth in **Section 6.34**.

"Proposed Rejectable Executory Contract" has the meaning set forth in **Section 6.6(b)**.

"Purchase Price" has the meaning set forth in **Section 3.2(a)**.

"Purchased Assets" has the meaning set forth in **Section 2.2(a)**.

"Purchased Contracts" has the meaning set forth in **Section 2.2(a)(x)**.

"Purchased Subsidiaries" means, collectively, the direct Subsidiaries of Sellers included in the Transferred Entities, and their respective direct and indirect Subsidiaries, in each case, as of the Closing Date.

"Purchased Subsidiaries Employee Benefit Plans" means any (i) defined benefit or defined contribution retirement plan maintained by any Purchased Subsidiary and (ii) severance, change in control, bonus, incentive or any similar plan or arrangement maintained by a Purchased Subsidiary for the benefit of officers or senior management of such Purchased Subsidiary.

"Purchaser" has the meaning set forth in the Preamble.

"Purchaser Assumed Debt" has the meaning set forth in **Section 2.3(a)(i)**.

"Purchaser Expense Reimbursement" has the meaning set forth in **Section 8.2(b)**.

"Purchaser Material Adverse Effect" has the meaning set forth in **Section 5.3(a)**.

"Purchaser's Disclosure Schedule" means the Schedule pertaining to, and corresponding to the Section references of this Agreement, delivered by Purchaser immediately prior to the execution of the Original Agreement.

"Quitclaim Deeds" has the meaning set forth in **Section 7.2(c)(x)**.

"Receivables" has the meaning set forth in **Section 2.2(a)(iii)**.

"Rejectable Executory Contract" has the meaning set forth in **Section 6.6(b)**.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, discarding, burying, abandoning or disposing into the Environment of Hazardous Materials that is prohibited under, or reasonably likely to result in a Liability under, any applicable Environmental Law.

"Relevant Information" has the meaning set forth in **Section 6.16(g)(ii)**.

"Relevant Transactions" has the meaning set forth in **Section 6.16(g)(i)**.

"Ren Cen Lease" has the meaning set forth in **Section 6.30**.

"Representatives" means all officers, directors, employees, consultants, agents, lenders, accountants, attorneys and other representatives of a Person.

"Required Subdivision" has the meaning set forth in **Section 6.27(a)**.

"Restricted Cash" has the meaning set forth in **Section 2.2(a)(ii)**.

"Retained Liabilities" has the meaning set forth in **Section 2.3(b)**.

"Retained Plans" means any Parent Employee Benefit Plan and Policy that is not an Assumed Plan.

"Retained Subsidiaries" means all Subsidiaries of Sellers and their respective direct and indirect Subsidiaries, as of the Closing Date, other than the Purchased Subsidiaries.

"Retained Workers' Compensation Claims" has the meaning set forth in **Section 2.3(b)(xii)**.

"RHI" has the meaning set forth in **Section 6.30**.

"RHI Post-Closing Period" has the meaning set forth in **Section 6.30**.

"S Distribution" has the meaning set forth in the Preamble.

"S LLC" has the meaning set forth in the Preamble.

"Saginaw Landfill" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Metal Casting Land" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Nodular Iron Land" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Service Contracts" has the meaning set forth in **Section 6.27(b)**.

"Sale Approval Order" has the meaning set forth in **Section 6.4(b)**.

"Sale Hearing" means the hearing of the Bankruptcy Court to approve the Sale Procedures and Sale Motion and enter the Sale Approval Order.

"Sale Procedures and Sale Motion" has the meaning set forth in **Section 6.4(b)**.

"Sale Procedures Order" has the meaning set forth in **Section 6.4(b)**.

"SEC" means the United States Securities and Exchange Commission.

"Secured Real Property Encumbrances" means all Encumbrances related to the Indebtedness of Sellers, which is secured by one or more parcels of the Owned Real Property, including Encumbrances related to the Indebtedness of Sellers under any synthetic lease arrangements at the White Marsh, Maryland GMPT - Baltimore manufacturing facility and the Memphis, Tennessee (SPO - Memphis) facility.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Seller" or "Sellers" has the meaning set forth in the Preamble.

"Seller Group" means any combined, unitary, consolidated or other affiliated group of which any Seller or Purchased Subsidiary is or has been a member for federal, state, provincial, local or foreign Tax purposes.

"Seller Key Personnel" means those individuals described on Section 1.1E of the Sellers' Disclosure Schedule.

"Seller Material Contracts" has the meaning set forth in **Section 4.16(a)**.

"Sellers' Disclosure Schedule" means the Schedule pertaining to, and corresponding to the Section references of this Agreement, delivered by Sellers to Purchaser immediately prior to the execution of this Agreement, as updated and supplemented pursuant to **Section 6.5**, **Section 6.6** and **Section 6.26**.

"Series A Preferred Stock" has the meaning set forth in **Section 5.4(b)**.

"Settlement Agreement" means the Settlement Agreement, dated February 21, 2008 (as amended, supplemented, replaced or otherwise altered from time to time), among Parent, the UAW and certain class representatives, on behalf of the class of plaintiffs in the class action of

Int'l Union, UAW, et al. v. General Motors Corp., Civil Action No. 07-14074 (E.D. Mich. filed Sept. 9, 2007).

"Shared Executory Contracts" has the meaning set forth in **Section 6.6(d)**.

"Software" means all software of any type (including programs, applications, middleware, utilities, tools, drivers, firmware, microcode, scripts, batch files, JCL files, instruction sets and macros) and in any form (including source code, object code, executable code and user interface), databases and associated data and related documentation, in each case owned, acquired or licensed by any Seller.

"Software Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to use, modify, reproduce, distribute or create derivative works of any Software.

"Sponsor" means the United States Department of the Treasury.

"Sponsor Affiliate" has the meaning set forth in **Section 9.22**.

"Sponsor Shares" has the meaning set forth in **Section 5.4(c)**.

"Straddle Period" means a taxable period that includes but does not end on the Closing Date.

"Subdivision Master Lease" has the meaning set forth in **Section 6.27(a)**.

"Subdivision Properties" has the meaning set forth in **Section 6.27(a)**.

"Subsidiary" or "Subsidiaries" means, with respect to any Person, any corporation, limited liability company, partnership or other legal entity (in each case, other than a joint venture if such Person is not empowered to control the day-to-day operations of such joint venture) of which such Person (either alone or through or together with any other Subsidiary) owns, directly or indirectly, more than fifty percent (50%) of the Equity Interests, the holder of which is entitled to vote for the election of the board of directors or other governing body of such corporation, limited liability company, partnership or other legal entity.

"Superior Bid" has the meaning set forth in **Section 6.4(d)**.

"TARP" means the Troubled Assets Relief Program established by Sponsor under the Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, effective as of October 3, 2008, as amended by Section 7001 of Division B, Title VII of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, effective as of February 17, 2009, as may be further amended and in effect from time to time and any guidance issued by a regulatory authority thereunder and other related Laws in effect currently or in the future in the United States.

"Tax" or "Taxes" means any federal, state, provincial, local, foreign and other income, alternative minimum, accumulated earnings, personal holding company, franchise, capital stock,

net worth or gross receipts, income, alternative or add-on minimum, capital, capital gains, sales, use, ad valorem, franchise, profits, license, privilege, transfer, withholding, payroll, employment, social, excise, severance, stamp, occupation, premium, goods and services, value added, property (including real property and personal property taxes), environmental, windfall profits or other taxes, customs, duties or similar fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any Governmental Authority, including any transferee, successor or secondary liability for any such tax and any Liability assumed by Contract or arising as a result of being or ceasing to be a member of any affiliated group or similar group under state, provincial, local or foreign Law, or being included or required to be included in any Tax Return relating thereto.

"Tax Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Taxing Authority" means, with respect to any Tax, the Governmental Authority thereof that imposes such Tax and the agency, court or other Person or body (if any) charged with the interpretation, administration or collection of such Tax for such Governmental Authority.

"Tax Return" means any return, report, declaration, form, election letter, statement or other information filed or required to be filed with any Governmental Authority with respect to Taxes, including any schedule or attachment thereto or amendment thereof.

"Trademark Licenses" means all Contracts naming any Seller as licensor or licensee and providing for the grant of any right concerning any Trademark together with any goodwill connected with and symbolized by any such Trademark or Trademark Contract, and the right to prepare for sale or lease and sell or lease any and all products, inventory or services now or hereafter owned or provided by any Seller or any other Person and now or hereafter covered by such Contracts.

"Trademarks" means all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, designs, logos and other source or business identifiers, and all general intangibles of like nature, now or hereafter owned, adopted, used, acquired, or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof) and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by or associated with such marks.

"Trade Secrets" means all trade secrets or Confidential Information, including any confidential technical and business information, program, process, method, plan, formula, product design, compilation of information, customer list, sales forecast, know-how, Software, and any other confidential proprietary intellectual property, and all additions and improvements to, and books and records describing or used in connection with, any of the foregoing, in each case, owned, acquired or licensed by any Seller.

"Trade Secret Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any rights with respect to Trade Secrets.

"Transfer Taxes" means all transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the transactions contemplated hereby and not otherwise exempted under the Bankruptcy Code, including relating to the transfer of the Transferred Real Property.

"Transfer Tax Forms" has the meaning set forth in **Section 7.2(c)(xi)**.

"Transferred Employee" has the meaning set forth in **Section 6.17(a)**.

"Transferred Entities" means all of the direct Subsidiaries of Sellers and joint venture entities or other entities in which any Seller has an Equity Interest, other than the Excluded Entities.

"Transferred Equity Interests" has the meaning set forth in **Section 2.2(a)(v)**.

"Transferred Real Property" has the meaning set forth in **Section 2.2(a)(vi)**.

"Transition Services Agreement" has the meaning set forth in **Section 7.2(c)(ix)**.

"Transition Team" has the meaning set forth in **Section 6.11(c)**.

"UAW" means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

"UAW Active Labor Modifications" means the modifications to the UAW Collective Bargaining Agreement, as agreed to in the 2009 Addendum to the 2007 UAW-GM National Agreement, dated May 17, 2009, the cover page of which is attached hereto as **Exhibit C** (the 2009 Addendum without attachments), which modifications were ratified by the UAW membership on May 29, 2009.

"UAW Collective Bargaining Agreement" means any written or oral Contract, understanding or mutually recognized past practice between Sellers and the UAW with respect to Employees, including the UAW Active Labor Modifications, but excluding the agreement to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between Parent and the UAW, and the Settlement Agreement. For purpose of clarity, the term "UAW Collective Bargaining Agreement" includes all special attrition programs, divestiture-related memorandums of understanding or implementation agreements relating to any unit or location where covered UAW-represented employees remain and any current local agreement between Parent and a UAW local relating to any unit or location where UAW-represented employees are employed as of the date of the Original Agreement. For purposes of clarity, nothing in this definition extends the coverage of the UAW-GM National Agreement to any Employee of S LLC, S Distribution, Harlem, a Purchased Subsidiary or one of Parent's Affiliates; nothing in this Agreement creates a direct employment relationship with a Purchased Subsidiary's employee or an Affiliate's Employee and Parent.

"UAW Retiree Settlement Agreement" means the UAW Retiree Settlement Agreement to be executed prior to the Closing, substantially in the form attached hereto as **Exhibit D**.

"Union" means any labor union, organization or association representing any employees (but not including the UAW) with respect to their employment with any of Sellers or their Affiliates.

"United States" or "U.S." means the United States of America, including its territories and insular possessions.

"UST Credit Bid Amount" has the meaning set forth in **Section 3.2(a)(i)**.

"UST Credit Facilities" means (i) the Existing UST Loan and Security Agreement and (ii) those certain promissory notes dated December 31, 2008, April 22, 2009, May 20, 2009, and May 27, 2009, issued by Parent to Sponsor as additional compensation for the extensions of credit under the Existing UST Loan and Security Agreement, in each case, as amended.

"UST Warrant" means the warrant issued by Parent to Sponsor in consideration for the extension of credit made available to Parent under the Existing UST Loan and Security Agreement.

"VEBA Shares" has the meaning set forth in **Section 5.4(c)**.

"VEBA Note" has the meaning set forth in **Section 7.3(g)(iv)**.

"VEBA Warrant" means warrants to acquire 15,151,515 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit E**.

"Viability Plans" means (i) Parent's Restructuring Plan for Long-Term Viability, dated December 2, 2008; (ii) Parent's 2009-2014 Restructuring Plan, dated February 17, 2009; (iii) Parent's 2009-2014 Restructuring Plan: Progress Report, dated March 30, 2009; and (iv) Parent's Revised Viability Plan, all as described in Parent's Registration Statement on Form S-4 (Reg. No 333-158802), initially filed with the SEC on April 27, 2009, in each case, as amended, supplemented and/or superseded.

"WARN" means the Workers Adjustment and Retraining Notification Act of 1988, as amended, and similar foreign, state and local Laws.

"Willow Run Landlord" means the Wayne County Airport Authority, or any successor landlord under the Willow Run Lease.

"Willow Run Lease" means that certain Willow Run Airport Lease of Land dated October 11, 1985, as the same may be amended, by and between the Willow Run Landlord, as landlord, and Parent, as tenant, for certain premises located at the Willow Run Airport in Wayne and Washtenaw Counties, Michigan.

"Willow Run Lease Amendment" has the meaning set forth in **Section 6.27(e)**.

"Wind Down Facility" has the meaning set forth in **Section 6.9(b)**.

Section 1.2 Other Interpretive Provisions. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole (including the Sellers' Disclosure Schedule) and not to any particular provision of this Agreement, and all Article, Section, Sections of the Sellers' Disclosure Schedule and Exhibit references are to this Agreement unless otherwise specified. The words "include", "includes" and "including" are deemed to be followed by the phrase "without limitation." The meanings given to terms defined herein are equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to "Dollars" or "$" are deemed references to lawful money of the United States. Unless otherwise specified, references to any statute, listing rule, rule, standard, regulation or other Law (a) include a reference to the corresponding rules and regulations and (b) include a reference to each of them as amended, modified, supplemented, consolidated, replaced or rewritten from time to time, and to any section of any statute, listing rule, rule, standard, regulation or other Law, including any successor to such section. Where this Agreement states that a Party "shall" or "will" perform in some manner or otherwise act or omit to act, it means that the Party is legally obligated to do so in accordance with this Agreement.

ARTICLE II
PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets; Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, other than as set forth in **Section 6.30**, **Section 6.34** and **Section 6.35**, at the Closing, Purchaser shall (a) purchase, accept and acquire from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, free and clear of all Encumbrances (other than Permitted Encumbrances), Claims and other interests, the Purchased Assets and (b) assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities.

Section 2.2 Purchased and Excluded Assets.

(a) The "Purchased Assets" shall consist of the right, title and interest that Sellers possess and have the right to legally transfer in and to all of the properties, assets, rights, titles and interests of every kind and nature, owned, leased, used or held for use by Sellers (including indirect and other forms of beneficial ownership), whether tangible or intangible, real, personal or mixed, and wherever located and by whomever possessed, in each case, as the same may exist as of the Closing, including the following properties, assets, rights, titles and interests (but, in every case, excluding the Excluded Assets):

(i) all cash and cash equivalents, including all marketable securities, certificates of deposit and all collected funds or items in the process of collection at Sellers' financial institutions through and including the Closing, and all bank deposits, investment accounts and lockboxes related thereto, other than the Excluded Cash and Restricted Cash;

(ii) all restricted or escrowed cash and cash equivalents, including restricted marketable securities and certificates of deposit (collectively, "Restricted Cash") other than the Restricted Cash described in **Section 2.2(b)(ii)**;

(iii) all accounts and notes receivable and other such Claims for money due to Sellers, including the full benefit of all security for such accounts, notes and Claims, however arising, including arising from the rendering of services or the sale of goods or materials, together with any unpaid interest accrued thereon from the respective obligors and any security or collateral therefor, other than intercompany receivables (collectively, "Receivables");

(iv) all intercompany obligations ("Intercompany Obligations") owed or due, directly or indirectly, to Sellers by any Subsidiary of a Seller or joint venture or other entity in which a Seller or a Subsidiary of a Seller has any Equity Interest;

(v) (A) subject to **Section 2.4**, all Equity Interests in the Transferred Entities (collectively, the "Transferred Equity Interests") and (B) the corporate charter, qualification to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates and any other documents relating to the organization, maintenance and existence of each Transferred Entity;

(vi) all Owned Real Property and Leased Real Property (collectively, the "Transferred Real Property");

(vii) all machinery, equipment (including test equipment and material handling equipment), hardware, spare parts, tools, dies, jigs, molds, patterns, gauges, fixtures (including production fixtures), business machines, computer hardware, other information technology assets, furniture, supplies, vehicles, spare parts in respect of any of the foregoing and other tangible personal property (including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit) that does not constitute Inventory (collectively, "Personal Property"), including the Personal Property located at the Excluded Real Property and identified on Section 2.2(a)(vii) of the Sellers' Disclosure Schedule;

(viii) all inventories of vehicles, raw materials, work-in-process, finished goods, supplies, stock, parts, packaging materials and other accessories related thereto (collectively, "Inventory"), wherever located, including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit or that is classified as returned goods;

(ix) (A) all Intellectual Property, whether owned, licensed or otherwise held, and whether or not registrable (including any Trademarks and other Intellectual Property associated with the Discontinued Brands), and (B) all rights

and benefits associated with the foregoing, including all rights to sue or recover for past, present and future infringement, misappropriation, dilution, unauthorized use or other impairment or violation of any of the foregoing, and all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing;

(x) subject to **Section 2.4**, all Contracts, other than the Excluded Contracts (collectively, the "Purchased Contracts"), including, for the avoidance of doubt, (A) the UAW Collective Bargaining Agreement and (B) any Executory Contract designated as an Assumable Executory Contract as of the applicable Assumption Effective Date;

(xi) subject to **Section 2.4**, all approvals, Contracts, authorizations, permits, licenses, easements, Orders, certificates, registrations, franchises, qualifications, rulings, waivers, variances or other forms of permission, consent, exemption or authority issued, granted, given or otherwise made available by or under the authority of any Governmental Authority, including all pending applications therefor and all renewals and extensions thereof (collectively, "Permits"), other than to the extent that any of the foregoing relate exclusively to the Excluded Assets or Retained Liabilities;

(xii) all credits, deferred charges, prepaid expenses, deposits, advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating to the Purchased Assets or Assumed Liabilities, including all warranties, rights and guarantees (whether express or implied) made by suppliers, manufacturers, contractors and other third parties under or in connection with the Purchased Contracts;

(xiii) all Claims (including Tax refunds) relating to the Purchased Assets or Assumed Liabilities, including the Claims identified on Section 2.2(a)(xiii) of the Sellers' Disclosure Schedule and all Claims against any Taxing Authority for any period, other than Bankruptcy Avoidance Actions and any of the foregoing to the extent that they relate exclusively to the Excluded Assets or Retained Liabilities;

(xiv) all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, drawings, advertising and promotional materials, reports and other materials (in whatever form or medium), including Tax books and records and Tax Returns used or held for use in connection with the ownership or operation of the Purchased Assets or Assumed Liabilities, including the Purchased Contracts, customer lists, customer information and account records, computer files, data processing records, employment and personnel records, advertising and marketing data and records, credit records, records relating to suppliers, legal records and information and other data;

(xv) all goodwill and other intangible personal property arising in connection with the ownership, license, use or operation of the Purchased Assets or Assumed Liabilities;

(xvi) to the extent provided in **Section 6.17(e)**, all Assumed Plans;

(xvii) all insurance policies and the rights to the proceeds thereof, other than the Excluded Insurance Policies;

(xviii) any rights of any Seller, Subsidiary of any Seller or Seller Group member to any Tax refunds, credits or abatements that relate to any Pre-Closing Tax Period or Straddle Period; and

(xix) any interest in Excluded Insurance Policies, only to the extent such interest relates to any Purchased Asset or Assumed Liability.

(b) Notwithstanding anything to the contrary contained in this Agreement, Sellers shall retain all of their respective right, title and interest in and to, and shall not, and shall not be deemed to, sell, transfer, assign, convey or deliver to Purchaser, and the Purchased Assets shall not, and shall not be deemed to, include the following (collectively, the "Excluded Assets"):

(i) cash or cash equivalents in an amount equal to $950,000,000 (the "Excluded Cash");

(ii) all Restricted Cash exclusively relating to the Excluded Assets or Retained Liabilities;

(iii) all Receivables (other than Intercompany Obligations) exclusively related to any Excluded Assets or Retained Liabilities;

(iv) all of Sellers' Equity Interests in (A) S LLC, (B) S Distribution, (C) Harlem and (D) the Subsidiaries, joint ventures and the other entities in which any Seller has any Equity Interest and that are identified on Section 2.2(b)(iv) of the Sellers' Disclosure Schedule (collectively, the "Excluded Entities");

(v) (A) all owned real property set forth on **Exhibit F** and such additional owned real property set forth on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (including, in each case, any structures, buildings or other improvements located thereon and appurtenances thereto) and (B) all real property leased or subleased that is subject to a Contract designated as an "Excluded Contract" (collectively, the "Excluded Real Property");

(vi) all Personal Property that is (A) located at the Transferred Real Property and identified on Section 2.2(b)(vi) of the Sellers' Disclosure Schedule, (B) located at the Excluded Real Property, except for those items identified on Section 2.2(a)(vii) of the Sellers' Disclosure Schedule or (C) subject to a Contract

designated as an Excluded Contract (collectively, the "Excluded Personal Property");

(vii) (A) all Contracts identified on Section 2.2(b)(vii) of the Sellers' Disclosure Schedule immediately prior to the Closing, (B) all pre-petition Executory Contracts designated as Rejectable Executory Contracts, (C) all pre-petition Executory Contracts (including, for the avoidance of doubt, the Delphi Transaction Agreements and GM Assumed Contracts) that have not been designated as or deemed to be Assumable Executory Contracts in accordance with **Section 6.6** or **Section 6.31**, or that are determined, pursuant to the procedures set forth in the Sale Procedures Order, not to be assumable and assignable to Purchaser, (D) all Collective Bargaining Agreements not set forth on the Assumable Executory Contract Schedule and (E) all non-Executory Contracts for which performance by a third-party or counterparty is substantially complete and for which a Seller owes a continuing or future obligation with respect to such non-Executory Contracts (collectively, the "Excluded Contracts"), including any accounts receivable arising out of or in connection with any Excluded Contract; it being understood and agreed by the Parties hereto that, notwithstanding anything to the contrary herein, in no event shall the UAW Collective Bargaining Agreement be designated or otherwise deemed or considered an Excluded Contract;

(viii) all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, drawings, advertising and promotional materials, reports and other materials (in whatever form or medium) relating exclusively to the Excluded Assets or Retained Liabilities, and any books, records and other materials that any Seller is required by Law to retain;

(ix) the corporate charter, qualification to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates and any other documents relating to the organization, maintenance and existence of each Seller and each Excluded Entity;

(x) all Claims against suppliers, dealers and any other third parties relating exclusively to the Excluded Assets or Retained Liabilities;

(xi) all of Sellers' Claims under this Agreement, the Ancillary Agreements and the Bankruptcy Code, of whatever kind or nature, as set forth in Sections 544 through 551 (inclusive), 553, 558 and any other applicable provisions of the Bankruptcy Code, and any related Claims and actions arising under such sections by operation of Law or otherwise, including any and all proceeds of the foregoing (the "Bankruptcy Avoidance Actions"), but in all cases, excluding all rights and Claims identified on Section 2.2(b)(xi) of the Sellers' Disclosure Schedule;

(xii) all credits, deferred charges, prepaid expenses, deposits and advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating exclusively to the Excluded Assets or Retained Liabilities;

(xiii) all insurance policies identified on Section 2.2(b)(xiii) of the Sellers' Disclosure Schedule and the rights to proceeds thereof (collectively, the "Excluded Insurance Policies"), other than any rights to proceeds to the extent such proceeds relate to any Purchased Asset or Assumed Liability;

(xiv) all Permits, to the extent that they relate exclusively to the Excluded Assets or Retained Liabilities;

(xv) all Retained Plans; and

(xvi) those assets identified on Section 2.2(b)(xvi) of the Sellers' Disclosure Schedule.

Section 2.3 Assumed and Retained Liabilities.

(a) The "Assumed Liabilities" shall consist only of the following Liabilities of Sellers:

(i) $7,072,488,605 of Indebtedness incurred under the DIP Facility, to be restructured pursuant to the terms of **Section 6.9** (the "Purchaser Assumed Debt");

(ii) all Liabilities under each Purchased Contract;

(iii) all Intercompany Obligations owed or due, directly or indirectly, by Sellers to (A) any Purchased Subsidiary or (B) any joint venture or other entity in which a Seller or a Purchased Subsidiary has any Equity Interest (other than an Excluded Entity);

(iv) all Cure Amounts under each Assumable Executory Contract that becomes a Purchased Contract;

(v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Case through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers' Liabilities in clauses (A) and (B) above include Sellers' Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes), in each case, other than (1) Liabilities of the type described in

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;

(xiii) (A) all Employment-Related Obligations and (B) Liabilities under any Assumed Plan, in each case, relating to any Employee that is or was covered by the UAW Collective Bargaining Agreement, except for Retained Workers Compensation Claims;

(xiv) all Liabilities of Sellers underlying any construction liens that constitute Permitted Encumbrances with respect to Transferred Real Property; and

(xv) those other Liabilities identified on Section 2.3(a)(xv) of the Sellers' Disclosure Schedule.

(b) Each Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability of any Seller, whether occurring or accruing before, at or after the Closing, other than the Assumed Liabilities. In furtherance and not in limitation of the foregoing, and in all cases with the exception of the Assumed Liabilities, neither Purchaser nor any of its Affiliates shall assume, or be deemed to have assumed, any Indebtedness, Claim or other Liability of any Seller or any predecessor, Subsidiary or Affiliate of any Seller whatsoever, whether occurring or accruing before, at or after the Closing, including the following (collectively, the "Retained Liabilities"):

(i) all Liabilities arising out of, relating to, in respect of or in connection with any Indebtedness of Sellers (other than Intercompany Obligations and the Purchaser Assumed Debt), including those items identified on Section 2.3(b)(i) of the Sellers' Disclosure Schedule;

(ii) all Intercompany Obligations owed or due, directly or indirectly, by Sellers to (A) another Seller, (B) any Excluded Subsidiary or (C) any joint venture or other entity in which a Seller or an Excluded Subsidiary has an Equity Interest (other than a Transferred Entity);

(iii) all Liabilities arising out of, relating to, in respect of or in connection with the Excluded Assets, other than Liabilities otherwise retained in this **Section 2.3(b)**;

(iv) all Liabilities (A) associated with noncompliance with Environmental Laws (including for fines, penalties, damages and remedies); (B) arising out of, relating to, in respect of or in connection with the transportation, off-site storage or off-site disposal of any Hazardous Materials generated or located at any Transferred Real Property; (C) arising out of, relating to, in respect of or in connection with third-party Claims related to Hazardous Materials that were or are located at or that migrated or may migrate from any Transferred Real Property, except as otherwise required under applicable Environmental Laws; (D) arising under Environmental Laws related to the Excluded Real Property; or (E) for environmental Liabilities with respect to real property formerly owned, operated or leased by Sellers (as of the Closing), which, in the case of clauses (A),

(B) and (C), arose prior to or at the Closing, and which, in the case of clause (D) and (E), arise prior to, at or after the Closing;

(v) except for Taxes assumed in **Section 2.3(a)(v)** and **Section 2.3(a)(vi)**, all Liabilities with respect to any (A) Taxes arising in connection with Sellers' business, the Purchased Assets or the Assumed Liabilities and that are attributable to a Pre-Closing Tax Period (including any Taxes incurred in connection with the sale of the Purchased Assets, other than all Transfer Taxes), (B) other Taxes of any Seller and (C) Taxes of any Seller Group, including any Liability of any Seller or any Seller Group member for Taxes arising as a result of being or ceasing to be a member of any Seller Group (it being understood, for the avoidance of doubt, that no provision of this Agreement shall cause Sellers to be liable for Taxes of any Purchased Subsidiary for which Sellers would not be liable absent this Agreement);

(vi) all Liabilities for (A) costs and expenses relating to the preparation, negotiation and entry into this Agreement and the Ancillary Agreements (and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, which, for the avoidance of doubt, shall not include any Transfer Taxes), including Advisory Fees, (B) administrative fees, professional fees and all other expenses under the Bankruptcy Code and (C) all other fees and expenses associated with the administration of the Bankruptcy Cases;

(vii) all Employment-Related Obligations not otherwise assumed in **Section 2.3(a)** and **Section 6.17**, including those arising out of, relating to, in respect of or in connection with the employment, potential employment or termination of employment of any individual (other than any Employee that is or was covered by the UAW Collective Bargaining Agreement) (A) prior to or at the Closing (including any severance policy, plan or program that exists or arises, or may be deemed to exist or arise, as a result of, or in connection with, the transactions contemplated by this Agreement) or (B) who is not a Transferred Employee arising after the Closing and with respect to both clauses (A) and (B) above, including any Liability arising out of, relating to, in respect of or in connection with any Collective Bargaining Agreement (other than the UAW Collective Bargaining Agreement);

(viii) all Liabilities arising out of, relating to, in respect of or in connection with Claims for infringement or misappropriation of third party intellectual property rights;

(ix) all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date;

(x) all Liabilities to third parties for death, personal injury, other injury to Persons or damage to property, in each case, arising out of asbestos exposure;

(xi) all Liabilities to third parties for Claims based upon Contract, tort or any other basis;

(xii) all workers' compensation Claims with respect to Employees residing in or employed in, as the case may be as defined by applicable Law, the states set forth on **Exhibit G** (collectively, "Retained Workers' Compensation Claims");

(xiii) all Liabilities arising out of, relating to, in respect of or in connection with any Retained Plan;

(xiv) all Liabilities arising out of, relating to, in respect of or in connection with any Assumed Plan or Purchased Subsidiaries Employee Benefit Plan, but only to the extent such Liabilities result from the failure of such Assumed Plan or Purchased Subsidiaries Employee Benefit Plan to comply in all respects with TARP or such Liability related to any changes to or from the administration of such Assumed Plan or Purchased Subsidiaries Employee Benefit Plan prior to the Closing Date;

(xv) the Settlement Agreement, except as provided with respect to Liabilities under Section 5A of the UAW Retiree Settlement Agreement; and

(xvi) all Liabilities arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to Sellers.

Section 2.4 Non-Assignability.

(a) If any Contract, Transferred Equity Interest (or any interest therein), Permit or other asset, which by the terms of this Agreement, is intended to be included in the Purchased Assets is determined not capable of being assigned or transferred (whether pursuant to Sections 363 or 365 of the Bankruptcy Code) to Purchaser at the Closing without the consent of another party thereto, the issuer thereof or any third party (including a Governmental Authority) ("Non-Assignable Assets"), this Agreement shall not constitute an assignment thereof, or an attempted assignment thereof, unless and until any such consent is obtained. Subject to **Section 6.3**, Sellers shall use reasonable best efforts, and Purchaser shall use reasonable best efforts to cooperate with Sellers, to obtain the consents necessary to assign to Purchaser the Non-Assignable Assets before, at or after the Closing; provided, however, that neither Sellers nor Purchaser shall be required to make any expenditure, incur any Liability, agree to any modification to any Contract or forego or alter any rights in connection with such efforts.

(b) To the extent that the consents referred to in **Section 2.4(a)** are not obtained by Sellers, except as otherwise provided in the Ancillary Documents to which one or more Sellers is a party, Sellers' sole responsibility with respect to such Non-Assignable Assets shall be to use reasonable best efforts, at no cost to Sellers, to (i) provide to Purchaser the benefits of any Non-Assignable Assets; (ii) cooperate in any

reasonable and lawful arrangement designed to provide the benefits of any Non-Assignable Assets to Purchaser without incurring any financial obligation to Purchaser; and (iii) enforce for the account of Purchaser and at the cost of Purchaser any rights of Sellers arising from any Non-Assignable Asset against such party or parties thereto; provided, however, that any such efforts described in clauses (i) through (iii) above shall be made only with the consent, and at the direction, of Purchaser. Without limiting the generality of the foregoing, with respect to any Non-Assignable Asset that is a Contract of Leased Real Property for which a consent is not obtained on or prior to the Closing Date, Purchaser shall enter into a sublease containing the same terms and conditions as such lease (unless such lease by its terms prohibits such subleasing arrangement), and entry into and compliance with such sublease shall satisfy the obligations of the Parties under this **Section 2.4(b)** until such consent is obtained.

(c) If Purchaser is provided the benefits of any Non-Assignable Asset pursuant to **Section 2.4(b)**, Purchaser shall perform, on behalf of the applicable Seller, for the benefit of the issuer thereof or the other party or parties thereto, the obligations (including payment obligations) of the applicable Seller thereunder or in connection therewith arising from and after the Closing Date and if Purchaser fails to perform to the extent required herein, Sellers, without waiving any rights or remedies that they may have under this Agreement or applicable Laws, may (i) suspend their performance under **Section 2.4(b)** in respect of the Non-Assignable Asset that is the subject of such failure to perform unless and until such situation is remedied, or (ii) perform at Purchaser's sole cost and expense, in which case, Purchaser shall reimburse Sellers' costs and expenses of such performance immediately upon receipt of an invoice therefor. To the extent that Purchaser is provided the benefits of any Non-Assignable Asset pursuant to **Section 2.4(b),** Purchaser shall indemnify, defend and hold Sellers harmless from and against any and all Liabilities relating to such Non-Assignable Asset and arising from and after the Closing Date (other than such Damages that have resulted from the gross negligence or willful misconduct of Sellers).

(d) For the avoidance of doubt, the inability of any Contract, Transferred Equity Interest (or any other interest therein), Permit or other asset, which by the terms of this Agreement is intended to be included in the Purchased Assets to be assigned or transferred to Purchaser at the Closing shall not (i) give rise to a basis for termination of this Agreement pursuant to **ARTICLE VIII** or (ii) give rise to any right to any adjustment to the Purchase Price.

ARTICLE III
CLOSING; PURCHASE PRICE

Section 3.1 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall occur on the date that falls at least three (3) Business Days following the satisfaction and/or waiver of all conditions to the Closing set forth in **ARTICLE VII** (other than any of such conditions that by its nature is to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or on such other date as the Parties mutually agree, at the offices of Jenner & Block LLP, 919 Third Avenue, New York City, New York 10022-3908, or at such other place or such other date as the Parties may agree in

writing. The date on which the Closing actually occurs shall be referred to as the "Closing Date," and except as otherwise expressly provided herein, the Closing shall for all purposes be deemed effective as of 9:00 a.m., New York City time, on the Closing Date.

Section 3.2 Purchase Price.

(a) The purchase price (the "Purchase Price") shall be equal to the sum of:

(i) a Bankruptcy Code Section 363(k) credit bid in an amount equal to: (A) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing pursuant to the UST Credit Facilities, and (B) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing under the DIP Facility, less $8,022,488,605 of Indebtedness under the DIP Facility (such amount, the "UST Credit Bid Amount");

(ii) the UST Warrant (which the Parties agree has a value of no less than $1,000);

(iii) the valid issuance by Purchaser to Parent of (A) 50,000,000 shares of Common Stock (collectively, the "Parent Shares") and (B) the Parent Warrants; and

(iv) the assumption by Purchaser or its designated Subsidiaries of the Assumed Liabilities.

(b) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (i) offset, pursuant to Section 363(k) of the Bankruptcy Code, the UST Credit Bid Amount against Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities and the DIP Facility; (ii) transfer to Parent, in accordance with the instructions provided by Parent to Purchaser prior to the Closing, the UST Warrant; and (iii) issue to Parent, in accordance with the instructions provided by Parent to Purchaser prior to the Closing, the Parent Shares and the Parent Warrants.

(c)

(i) Sellers may, at any time, seek an Order of the Bankruptcy Court (the "Claims Estimate Order"), which Order may be the Order confirming Sellers' Chapter 11 plan, estimating the aggregate allowed general unsecured claims against Sellers' estates. If in the Claims Estimate Order, the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against Sellers' estates exceed $35,000,000,000, then Purchaser will, within five (5) days of entry of the Claims Estimate Order, issue 10,000,000 additional shares of Common Stock (the "Adjustment Shares") to Parent, as an adjustment to the Purchase Price.

(ii) The number of Adjustment Shares shall be adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization,

merger, consolidation, reorganization or similar transaction with respect to the Common Stock, effected from and after the Closing and before issuance of the Adjustment Shares.

(iii) At the Closing, Purchaser shall have authorized and, thereafter, shall reserve for issuance the Adjustment Shares that may be issued hereunder.

Section 3.3 Allocation. Following the Closing, Purchaser shall prepare and deliver to Sellers an allocation of the aggregate consideration among Sellers and, for any transactions contemplated by this Agreement that do not constitute an Agreed G Transaction pursuant to **Section 6.16**, Purchaser shall also prepare and deliver to the applicable Seller a proposed allocation of the Purchase Price and other consideration paid in exchange for the Purchased Assets, prepared in accordance with Section 1060, and if applicable, Section 338, of the Tax Code (the "Allocation"). The applicable Seller shall have thirty (30) days after the delivery of the Allocation to review and consent to the Allocation in writing, which consent shall not be unreasonably withheld, conditioned or delayed. If the applicable Seller consents to the Allocation, such Seller and Purchaser shall use such Allocation to prepare and file in a timely manner all appropriate Tax filings, including the preparation and filing of all applicable forms in accordance with applicable Law, including Forms 8594 and 8023, if applicable, with their respective Tax Returns for the taxable year that includes the Closing Date and shall take no position in any Tax Return that is inconsistent with such Allocation; provided, however, that nothing contained herein shall prevent the applicable Seller and Purchaser from settling any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of such Allocation, and neither the applicable Seller nor Purchaser shall be required to litigate before any court, any proposed deficiency or adjustment by any Taxing Authority challenging such Allocation. If the applicable Seller does not consent to such Allocation, the applicable Seller shall notify Purchaser in writing of such disagreement within such thirty (30) day period, and thereafter, the applicable Seller shall attempt in good faith to promptly resolve any such disagreement. If the Parties cannot resolve a disagreement under this **Section 3.3**, such disagreement shall be resolved by an independent accounting firm chosen by Purchaser and reasonably acceptable to the applicable Seller, and such resolution shall be final and binding on the Parties. The fees and expenses of such accounting firm shall be borne equally by Purchaser, on the one hand, and the applicable Seller, on the other hand. The applicable Seller shall provide Purchaser, and Purchaser shall provide the applicable Seller, with a copy of any information described above required to be furnished to any Taxing Authority in connection with the transactions contemplated herein.

Section 3.4 Prorations.

(a) The following prorations relating to the Purchased Assets shall be made:

(i) Except as provided in **Section 2.3(a)(v)** and **Section 2.3(a)(vi)**, in the case of Taxes with respect to a Straddle Period, for purposes of Retained Liabilities, the portion of any such Tax that is allocable to Sellers with respect to any Purchased Asset shall be:

(A) in the case of Taxes that are either (1) based upon or related to income or receipts, or (2) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), other than Transfer Taxes, equal to the amount that would be payable if the taxable period ended on the Closing Date; and

(B) in the case of Taxes imposed on a periodic basis, or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire Straddle Period (after giving effect to amounts which may be deducted from or offset against such Taxes) (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction, the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period.

In the case of any Tax based upon or measured by capital (including net worth or long-term debt) or intangibles, any amount thereof required to be allocated under this clause (i) shall be computed by reference to the level of such items on the Closing Date. All determinations necessary to effect the foregoing allocations shall be made in a manner consistent with prior practice of the applicable Seller, Seller Group member, or Seller Subsidiary.

(ii) All charges for water, wastewater treatment, sewers, electricity, fuel, gas, telephone, garbage and other utilities relating to the Transferred Real Property shall be prorated as of the Closing Date, with Sellers being liable to the extent such items relate to the Pre-Closing Tax Period, and Purchaser being liable to the extent such items relate to the Post-Closing Tax Period.

(b) If any of the foregoing proration amounts cannot be determined as of the Closing Date due to final invoices not being issued as of the Closing Date, Purchasers and Sellers shall prorate such items as and when the actual invoices are issued to the appropriate Party. The Party owing amounts to the other by means of such prorations shall pay the same within thirty (30) days after delivery of a written request by the paying Party.

Section 3.5 Post-Closing True-up of Certain Accounts.

(a) Sellers shall promptly reimburse Purchaser in U.S. Dollars for the aggregate amount of all checks, drafts and similar instruments of disbursement, including wire and similar transfers of funds, written or initiated by Sellers prior to the Closing in respect of any obligations that would have constituted Retained Liabilities at the Closing, and that clear or settle in accounts maintained by Purchaser (or its Affiliates) at or following the Closing.

(b) Purchaser shall promptly reimburse Sellers in U.S. Dollars for the aggregate amount of all checks, drafts and similar instruments of disbursement, including

wire and similar transfers of funds, written or initiated by Sellers following the Closing in respect of any obligations that would have constituted Assumed Liabilities at the Closing, and that clear or settle in accounts maintained by Sellers (or their Affiliates) at or following the Closing.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as disclosed in the Parent SEC Documents or in the Sellers' Disclosure Schedule, each Seller represents and warrants severally, and not jointly, to Purchaser as follows:

Section 4.1 Organization and Good Standing. Each Seller and each Purchased Subsidiary is duly organized and validly existing under the Laws of its jurisdiction of organization. Subject to the limitations imposed on Sellers as a result of having filed the Bankruptcy Cases, each Seller and each Purchased Subsidiary has all requisite corporate, limited liability company, partnership or similar power, as the case may be, and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Each Seller and each Purchased Subsidiary is duly qualified or licensed or admitted to do business, and is in good standing in (where such concept is recognized under applicable Law), the jurisdictions in which the ownership of its property or the conduct of its business requires such qualification or license, in each case, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to have a Material Adverse Effect. Sellers have made available to Purchaser prior to the execution of this Agreement true and complete copies of Sellers' Organizational Documents, in each case, as in effect on the date of this Agreement.

Section 4.2 Authorization; Enforceability. Subject to the entry and effectiveness of the Sale Approval Order, each Seller has the requisite corporate or limited liability company power and authority, as the case may be, to (a) execute and deliver this Agreement and the Ancillary Agreements to which such Seller is a party; (b) perform its obligations hereunder and thereunder; and (c) consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which such Seller is a party. Subject to the entry and effectiveness of the Sale Approval Order, this Agreement constitutes, and each Ancillary Agreement, when duly executed and delivered by each Seller that is a party thereto, shall constitute, a valid and legally binding obligation of such Seller (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of Purchaser), enforceable against such Seller in accordance with its respective terms and conditions, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.3 Noncontravention; Consents.

(a) Subject, in the case of clauses (i), (iii) and (iv), to the entry and effectiveness of the Sale Approval Order, the execution, delivery and performance by each Seller of this Agreement and the Ancillary Agreements to which it is a party, and (subject to the entry of the Sale Approval Order) the consummation by such Seller of the

transactions contemplated hereby and thereby, do not (i) violate any Law to which the Purchased Assets are subject; (ii) conflict with or result in a breach of any provision of the Organizational Documents of such Seller; (iii) result in a material breach or constitute a material default under, or create in any Person the right to terminate, cancel or accelerate any material obligation of such Seller pursuant to any material Purchased Contract (including any material License); or (iv) result in the creation or imposition of any Encumbrance, other than a Permitted Encumbrance, upon the Purchased Assets, except for any of the foregoing in the case of clauses (i), (iii) and (iv), that would not reasonably be expected to have a Material Adverse Effect.

(b) Subject to the entry and effectiveness of the Sale Approval Order, no consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority (other than the Bankruptcy Court) is required by any Seller for the consummation by each Seller of the transactions contemplated by this Agreement or by the Ancillary Agreements to which such Seller is a party or the compliance by such Seller with any of the provisions hereof or thereof, except for (i) compliance with the applicable requirements of any Antitrust Laws and (ii) such consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority, the failure of which to be received or made would not reasonably be expected to have a Material Adverse Effect.

Section 4.4 Subsidiaries. Section 4.4 of the Sellers' Disclosure Schedule identifies each Purchased Subsidiary and the jurisdiction of organization thereof. There are no Equity Interests in any Purchased Subsidiary issued, reserved for issuance or outstanding. All of the outstanding shares of capital stock, if applicable, of each Purchased Subsidiary have been duly authorized, validly issued, are fully paid and nonassessable and are owned, directly or indirectly, by Sellers, free and clear of all Encumbrances other than Permitted Encumbrances. Sellers, directly or indirectly, have good and valid title to the outstanding Equity Interests of the Purchased Subsidiaries and, upon delivery by Sellers to Purchaser of the outstanding Equity Interests of the Purchased Subsidiaries (either directly or indirectly) at the Closing, good and valid title to the outstanding Equity Interests of the Purchased Subsidiaries will pass to Purchaser (or, with respect to any Purchased Subsidiary that is not a direct Subsidiary of a Seller, the Purchased Subsidiary with regard to which it is a Subsidiary will continue to have good and valid title to such outstanding Equity Interests). None of the outstanding Equity Interests in the Purchased Subsidiaries has been conveyed in violation of, and none of the outstanding Equity Interests in the Purchased Subsidiaries has been issued in violation of (a) any preemptive or subscription rights, rights of first offer or first refusal or similar rights or (b) any voting trust, proxy or other Contract (including options or rights of first offer or first refusal) with respect to the voting, purchase, sale or other disposition thereof.

Section 4.5 Reports and Financial Statements; Internal Controls.

(a) (i) Parent has filed or furnished, or will file or furnish, as applicable, all forms, documents, schedules and reports, together with any amendments required to be made with respect thereto, required to be filed or furnished with the SEC from April 1, 2007 until the Closing (the "Parent SEC Documents"), and (ii) as of their respective

filing dates, or, if amended, as of the date of the last such amendment, the Parent SEC Documents complied or will comply in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the Parent SEC Documents contained or will contain any untrue statement of a material fact or omitted or will omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, subject, in the case of Parent SEC Documents filed or furnished during the period beginning on the date of the Original Agreement and ending on the Closing Date, to any modification by Parent of its reporting obligations under Section 12 or Section 15(d) of the Exchange Act as a result of the filing of the Bankruptcy Cases.

(b) (i) The consolidated financial statements of Parent included in the Parent SEC Documents (including all related notes and schedules, where applicable) fairly present or will fairly present in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries, as at the respective dates thereof, and (ii) the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) in conformity with GAAP (except, in the case of the unaudited statements, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto), subject, in the case of Parent SEC Documents filed or furnished during the period beginning on the date of the Original Agreement and ending on the Closing Date, to any modification by Parent of its reporting obligations under Section 12 or Section 15(d) of the Exchange Act as a result of the filing of the Bankruptcy Cases.

(c) Parent maintains a system of internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for inclusion in the Parent SEC Documents in accordance with GAAP and maintains records that (i) in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of Parent and its consolidated Subsidiaries, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are made only in accordance with appropriate authorizations and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets. There are no (A) material weaknesses in the design or operation of the internal controls of Parent or (B) to the Knowledge of Sellers, any fraud, whether or not material, that involves management or other employees of Parent or any Purchased Subsidiary who have a significant role in internal control.

Section 4.6 Absence of Certain Changes and Events. From January 1, 2009 through the date hereof, except as otherwise contemplated, required or permitted by this Agreement, there has not been:

(a) (i) any declaration, setting aside or payment of any dividend or other distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to any Seller or any Key Subsidiary without receipt of fair value) with

respect to any Equity Interests in any Seller or any Key Subsidiary or any repurchase for value of any Equity Interests or rights of any Seller or any Key Subsidiary (except for dividends and distributions among its Subsidiaries) or (ii) any split, combination or reclassification of any Equity Interests in Sellers or any issuance or the authorization of any issuance of any other Equity Interests in respect of, in lieu of or in substitution for Equity Interests of Sellers;

(b) other than as is required by the terms of the Parent Employee Benefit Plans and Policies, the Settlement Agreement, the UAW Collective Bargaining Agreement or consistent with the expiration of a Collective Bargaining Agreement or as may be required by applicable Law, in each case, as may be permitted by TARP or under any enhanced restrictions on executive compensation agreed to by Parent and Sponsor, any (i) grant to any Seller Key Personnel of any increase in compensation, except increases required under employment Contracts in effect as of January 1, 2009, or as a result of a promotion to a position of additional responsibility, (ii) grant to any Seller Key Personnel of any increase in retention, change in control, severance or termination compensation or benefits, except as required under any employment Contracts in effect as of January 1, 2009, (iii) other than in the Ordinary Course of Business, adoption, termination of, entry into or amendment or modification of, in a material manner, any Benefit Plan, (iv) adoption, termination of, entry into or amendment or modification of, in a material manner, any employment, retention, change in control, severance or termination Contract with any Seller Key Personnel or (v) entry into or amendment, modification or termination of any Collective Bargaining Agreement or other Contract with any Union of any Seller or Purchased Subsidiary;

(c) any material change in accounting methods, principles or practices by any Seller, Purchased Subsidiary or Seller Group member or any material joint venture to which any Seller or Purchased Subsidiary is a party, in each case, materially affecting the consolidated assets or Liabilities of Parent, except to the extent required by a change in GAAP or applicable Law, including Tax Laws;

(d) any sale, transfer, pledge or other disposition by any Seller or any Purchased Subsidiary of any portion of its assets or properties not in the Ordinary Course of Business and with a sale price or fair value in excess of $100,000,000;

(e) aggregate capital expenditures by any Seller or any Purchased Subsidiary in excess of $100,000,000 in a single project or group of related projects or capital expenditures in excess of $100,000,000 in the aggregate;

(f) any acquisition by any Seller or any Purchased Subsidiary (including by merger, consolidation, combination or acquisition of any Equity Interests or assets) of any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeded $100,000,000;

(g) any discharge or satisfaction of any Indebtedness by any Seller or any Purchased Subsidiary in excess of $100,000,000, other than the discharge or satisfaction of any Indebtedness when due in accordance with its terms;

(h) any alteration, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of any Seller or any Key Subsidiary or any material joint venture to which any Seller or any Key Subsidiary is a party, or the adoption or alteration of a plan with respect to any of the foregoing;

(i) any amendment or modification to the material adverse detriment of any Key Subsidiary of any material Affiliate Contract or Seller Material Contract, or termination of any material Affiliate Contract or Seller Material Contract to the material adverse detriment of any Seller or any Key Subsidiary, in each case, other than in the Ordinary Course of Business;

(j) any event, development or circumstance involving, or any change in the financial condition, properties, assets, liabilities, business, or results of operations of Sellers or any circumstance, occurrence or development (including any adverse change with respect to any circumstance, occurrence or development existing on or prior to the end of the most recent fiscal year end) of Sellers that has had or would reasonably be expected to have a Material Adverse Effect; or

(k) any commitment by any Seller, any Key Subsidiary (in the case of clauses (a), (g) and (h) above) or any Purchased Subsidiary (in the case of clauses (b) through (f) and clauses (h) and (j) above) to do any of the foregoing.

Section 4.7 Title to and Sufficiency of Assets.

(a) Subject to the entry and effectiveness of the Sale Approval Order, at the Closing, Sellers will obtain good and marketable title to, or a valid and enforceable right by Contract to use, the Purchased Assets, which shall be transferred to Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The tangible Purchased Assets of each Seller are in normal operating condition and repair, subject to ordinary wear and tear, and sufficient for the operation of such Seller's business as currently conducted, except where such instances of noncompliance with the foregoing would not reasonably be expected to have a Material Adverse Effect.

Section 4.8 Compliance with Laws; Permits.

(a) Each Seller and each Purchased Subsidiary is in compliance with and is not in default under or in violation of any applicable Law, except where such non-compliance, default or violation would not reasonably be expected to have a Material Adverse Effect. Notwithstanding anything contained in this **Section 4.8(a)**, no representation or warranty shall be deemed to be made in this **Section 4.8(a)** in respect of

the matters referenced in **Section 4.5**, **Section 4.9**, **Section 4.10**, **Section 4.11** or **Section 4.13**, each of which matters is addressed by such other Sections of this Agreement.

(b) (i) Each Seller has all Permits necessary for such Seller to own, lease and operate the Purchased Assets and (ii) each Purchased Subsidiary has all Permits necessary for such entity to own, lease and operate its properties and assets, except in each case, where the failure to possess such Permits would not reasonably be expected to have a Material Adverse Effect. All such Permits are in full force and effect, except where the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect.

Section 4.9 Environmental Laws. Except as would not reasonably be expected to have a Material Adverse Effect, to the Knowledge of Sellers, (a) each Seller and each Purchased Subsidiary has conducted its business on the Transferred Real Property in compliance with all applicable Environmental Laws; (b) none of the Transferred Real Property currently contains any Hazardous Materials, which could reasonably be expected to give rise to an undisclosed Liability under applicable Environmental Laws; (c) as of the date of this Agreement, no Seller or Purchased Subsidiary has received any currently unresolved written notices, demand letters or written requests for information from any Governmental Authority indicating that such entity may be in violation of any Environmental Law in connection with the ownership or operation of the Transferred Real Property; and (d) since April 1, 2007, no Hazardous Materials have been transported in violation of any applicable Environmental Law, or in a manner reasonably foreseen to give rise to any Liability under any Environmental Law, from any Transferred Real Property as a result of any activity of any Seller or Purchased Subsidiary. Except as provided in **Section 4.8(b)** with respect to Permits under Environmental Laws, Purchaser agrees and understands that no representation or warranty is made in respect of environmental matters in any Section of this Agreement other than this **Section 4.9**.

Section 4.10 Employee Benefit Plans.

(a) Section 4.10 of the Sellers' Disclosure Schedule sets forth all material Parent Employee Benefit Plans and Policies and Purchased Subsidiaries Employee Benefit Plans (collectively, the "Benefit Plans"). Sellers have made available, upon reasonable request, to Purchaser true, complete and correct copies of (i) each material Benefit Plan, (ii) the three (3) most recent annual reports on Form 5500 (including all schedules, auditor's reports and attachments thereto) filed with the IRS with respect to each such Benefit Plan (if any such report was required by applicable Law), (iii) the most recent actuarial or other financial report prepared with respect to such Benefit Plan, if any, (iv) each trust agreement and insurance or annuity Contract or other funding or financing arrangement relating to such Benefit Plan and (v) to the extent not subject to confidentiality restrictions, any material written communications received by Sellers or any Subsidiaries of Sellers from any Governmental Authority relating to a Benefit Plan, including any communication from the Pension Benefit Guaranty Corporation (the "PBGC"), in respect of any Benefit Plan, subject to Title IV of ERISA.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each Benefit Plan has been administered in accordance with its terms, (ii) each

of Sellers, any of their Subsidiaries and each Benefit Plan is in compliance with the applicable provisions of ERISA, the Tax Code, all other applicable Laws (including Section 409A of the Tax Code, TARP or under any enhanced restrictions on executive compensation agreed to by Sellers with Sponsor) and the terms of all applicable Collective Bargaining Agreements, (iii) there are no (A) investigations by any Governmental Authority, (B) termination proceedings or other Claims (except routine Claims for benefits payable under any Benefit Plans) or (C) Claims, in each case, against or involving any Benefit Plan or asserting any rights to or Claims for benefits under any Benefit Plan that could give rise to any Liability, and there are not any facts or circumstances that could give rise to any Liability in the event of any such Claim and (iv) each Benefit Plan that is intended to be a Tax-qualified plan under Section 401(a) of the Tax Code (or similar provisions for Tax-registered or Tax-favored plans of non-United States jurisdictions) is qualified and any trust established in connection with any Benefit Plan that is intended to be exempt from taxation under Section 501(a) of the Tax Code (or similar provisions for Tax-registered or Tax-favored plans of non-United States jurisdictions) is exempt from United States federal income Taxes under Section 501(a) of the Tax Code (or similar provisions under non-United States law). To the Knowledge of Sellers, no circumstance and no fact or event exists that would be reasonably expected to adversely affect the qualified status of any Benefit Plan.

(c) None of the Parent Employee Benefit Plans and Policies or any material Purchased Subsidiaries Employee Benefit Plans that is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) has failed to satisfy, as applicable, the minimum funding standards (as described in Section 302 of ERISA or Section 412 of the Tax Code), whether or not waived, nor has any waiver of the minimum funding standards of Section 302 of ERISA or Section 412 of the Tax Code been requested.

(d) No Seller or any ERISA Affiliate of any Seller (including any Purchased Subsidiary) (i) has any actual or contingent Liability (A) under any employee benefit plan subject to Title IV of ERISA other than the Benefit Plans (except for contributions not yet due), (B) to the PBGC (except for the payment of premiums not yet due), which Liability, in each case, has not been fully paid as of the date hereof, or, if applicable, which has not been accrued in accordance with GAAP or (C) under any "multiemployer plan" (as defined in Section 3(37) of ERISA), or (ii) will incur withdrawal Liability under Title IV of ERISA as a result of the consummation of the transactions contemplated hereby, except for Liabilities with respect to any of the foregoing that would not reasonably be expected to have a Material Adverse Effect.

(e) Neither the execution of this Agreement or any Ancillary Agreement nor the consummation of the transactions contemplated hereby (alone or in conjunction with any other event, including termination of employment) will entitle any member of the board of directors of Parent or any Applicable Employee who is an officer or member of senior management of Parent to any increase in compensation or benefits, any grant of severance, retention, change in control or other similar compensation or benefits, any acceleration of the time of payment or vesting of any compensation or benefits (but not including, for this purpose, any retention, stay bonus or other incentive plan, program, arrangement that is a Retained Plan) or will require the securing or funding of any

compensation or benefits or limit the right of Sellers, any Subsidiary of Sellers or Purchaser or any Affiliates of Purchaser to amend, modify or terminate any Benefit Plan. Any new grant of severance, retention, change in control or other similar compensation or benefits to any Applicable Employee, and any payout to any Transferred Employee under any such existing arrangements, that would otherwise occur as a result of the execution of this Agreement or any Ancillary Agreement (alone or in conjunction with any other event, including termination of employment), has been waived by such Applicable Employee or otherwise cancelled.

(f) No amount or other entitlement currently in effect that could be received (whether in cash or property or the vesting of property) as a result of the actions contemplated by this Agreement and the Ancillary Agreements (alone or in combination with any other event) by any Person who is a "disqualified individual" (as defined in Treasury Regulation Section 1.280G-1) (each, a "Disqualified Individual") with respect to Sellers would be an "excess parachute payment" (as defined in Section 280G(b)(1) of the Tax Code). No Disqualified Individual or Applicable Employee is entitled to receive any additional payment (e.g., any Tax gross-up or any other payment) from Sellers or any Subsidiaries of Sellers in the event that the additional or excise Tax required by Section 409A or 4999 of the Tax Code, respectively is imposed on such individual.

(g) All individuals covered by the UAW Collective Bargaining Agreement are either Applicable Employees or employed by a Purchased Subsidiary.

(h) Section 4.10(h) of the Sellers' Disclosure Schedule lists all non-standard individual agreements currently in effect providing for compensation, benefits and perquisites for any current and former officer, director or top twenty-five (25) most highly paid employee of Parent and any other such material non-standard individual agreements with non-top twenty-five (25) employees.

Section 4.11 Labor Matters. There is not any labor strike, work stoppage or lockout pending, or, to the Knowledge of Sellers, threatened in writing against or affecting any Seller or any Purchased Subsidiary. Except as would not reasonably be expected to have a Material Adverse Effect: (a) none of Sellers or any Purchased Subsidiary is engaged in any material unfair labor practice; (b) there are not any unfair labor practice charges or complaints against Sellers or any Purchased Subsidiary pending, or, to the Knowledge of Sellers, threatened, before the National Labor Relations Board; (c) there are not any pending or, to the Knowledge of Sellers, threatened in writing, union grievances against Sellers or any Purchased Subsidiary as to which there is a reasonable possibility of adverse determination; (d) there are not any pending, or, to the Knowledge of Sellers, threatened in writing, charges against Sellers or any Purchased Subsidiary or any of their current or former employees before the Equal Employment Opportunity Commission or any state or local agency responsible for the prevention of unlawful employment practices; (e) no union organizational campaign is in progress with respect to the employees of any Seller or any Purchased Subsidiary and no question concerning representation of such employees exists; and (f) no Seller nor any Purchased Subsidiary has received written communication during the past five (5) years of the intent of any Governmental Authority responsible for the enforcement of labor or employment Laws to conduct an investigation of or

affecting Sellers or any Subsidiary of Sellers and, to the Knowledge of Sellers, no such investigation is in progress.

Section 4.12 Investigations; Litigation. (a) To the Knowledge of Sellers, there is no investigation or review pending by any Governmental Authority with respect to any Seller that would reasonably be expected to have a Material Adverse Effect, and (b) there are no actions, suits, inquiries or proceedings, or to the Knowledge of Sellers, investigations, pending against any Seller, or relating to any of the Transferred Real Property, at law or in equity before, and there are no Orders of or before, any Governmental Authority, in each case that would reasonably be expected to have a Material Adverse Effect.

Section 4.13 Tax Matters. Except as would not reasonably be expected to have a Material Adverse Effect, (a) all Tax Returns required to have been filed by, with respect to or on behalf of any Seller, Seller Group member or Purchased Subsidiary have been timely filed (taking into account any extension of time to file granted or obtained) and are correct and complete in all respects, (b) all amounts of Tax required to be paid with respect to any Seller, Seller Group member or Purchased Subsidiary (whether or not shown on any Tax Return) have been timely paid or are being contested in good faith by appropriate proceedings and have been reserved for in accordance with GAAP in Parent's consolidated audited financial statements, (c) no deficiency for any amount of Tax has been asserted or assessed by a Taxing Authority in writing relating to any Seller, Seller Group member or Purchased Subsidiary that has not been satisfied by payment, settled or withdrawn, (d) there are no audits, Claims or controversies currently asserted or threatened in writing with respect to any Seller, Seller Group member or Purchased Subsidiary in respect of any amount of Tax or failure to file any Tax Return, (e) no Seller, Seller Group member or Purchased Subsidiary has agreed to any extension or waiver of the statute of limitations applicable to any Tax Return, or agreed to any extension of time with respect to a Tax assessment or deficiency, which period (after giving effect to such extension or waiver) has not yet expired, (f) no Seller, Seller Group member or Purchased Subsidiary is a party to or the subject of any ruling requests, private letter rulings, closing agreements, settlement agreements or similar agreements with any Taxing Authority for any periods for which the statute of limitations has not yet run, (g) no Seller, Seller Group member or Purchased Subsidiary (A) has any Liability for Taxes of any Person (other than any Purchased Subsidiary), including as a transferee or successor, or pursuant to any contractual obligation (other than pursuant to any commercial Contract not primarily related to Tax), or (B) is a party to or bound by any Tax sharing agreement, Tax allocation agreement or Tax indemnity agreement (in every case, other than this Agreement and those Tax sharing, Tax allocation or Tax indemnity agreements that will be terminated prior to Closing and with respect to which no post-Closing Liabilities will exist), (h) each of the Purchased Subsidiaries and each Seller and Seller Group member has withheld or collected all Taxes required to have been withheld or collected and, to the extent required, has paid such Taxes to the proper Taxing Authority, (i) no Seller, Seller Group member or Purchased Subsidiary will be required to make any adjustments in taxable income for any Tax period (or portion thereof) ending after the Closing Date, including pursuant to Section 481(a) or 263A of the Tax Code or any similar provision of foreign, provincial, state, local or other Law as a result of transactions or events occurring, or accounting methods employed, prior to the Closing, nor is any application pending with any Taxing Authority requesting permission for any changes in accounting methods that relate to any Seller, Seller Group member or Purchased Subsidiary, (j) the Assumed Liabilities were incurred through the

Ordinary Course of Business, (k) there are no Tax Encumbrances on any of the Purchased Assets or the assets of any Purchased Subsidiary (other than Permitted Encumbrances for which appropriate reserves have been established (and to the extent that such liens relate to a period ending on or before December 31, 2008, the amount of any such Liability is accrued or reserved for as a Liability in accordance with GAAP in the audited consolidated balance sheet of Sellers at December 31, 2008)), (l) none of the Purchased Subsidiaries or Sellers has been a "distributing corporation" or a "controlled corporation" in a distribution intended to qualify under Section 355(a) of the Tax Code, (m) none of the Purchased Subsidiaries, Sellers or Seller Group members has participated in any "listed transactions" or "reportable transactions" within the meaning of Treasury Regulations Section 1.6011-4, (n) there are no unpaid Taxes with respect to any Seller, Seller Group member or Purchased Asset for which Purchaser will have liability as a transferee or successor and (o) the most recent financial statements contained in the Parent SEC Documents reflect an adequate reserve for all Taxes payable by Sellers, the Purchased Subsidiaries and the members of all Seller Groups for all taxable periods and portions thereof through the date of such financial statements.

Section 4.14 Intellectual Property and IT Systems.

(a) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Seller and each Purchased Subsidiary owns, controls, or otherwise possesses sufficient rights to use, free and clear of all Encumbrances (other than Permitted Encumbrances) all Intellectual Property necessary for the conduct of its business in substantially the same manner as conducted as of the date hereof; and (ii) all Intellectual Property owned by Sellers that is necessary for the conduct of the business of Sellers and each Purchased Subsidiary as conducted as of the date hereof is subsisting and in full force and effect, has not been adjudged invalid or unenforceable, has not been abandoned or allowed to lapse, in whole or in part, and to the Knowledge of Sellers, is valid and enforceable.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, all necessary registration, maintenance and renewal fees in connection with the Intellectual Property owned by Sellers have been paid and all necessary documents and certificates in connection with such Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or applicable foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining or renewing such Intellectual Property.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, no Intellectual Property owned by Sellers is the subject of any licensing or franchising Contract that prohibits or materially restricts the conduct of business as presently conducted by any Seller or Purchased Subsidiary or the transfer of such Intellectual Property.

(d) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the Intellectual Property or the conduct of Sellers' and the Purchased Subsidiaries' businesses does not infringe, misappropriate, dilute, or otherwise violate or conflict with the trademarks, patents, copyrights, inventions, trade secrets, proprietary

information and technology, know-how, formulae, rights of publicity or any other intellectual property rights of any Person; (ii) to the Knowledge of Sellers, no other Person is now infringing or in conflict with any Intellectual Property owned by Sellers or Sellers' rights thereunder; and (iii) no Seller or any Purchased Subsidiary has received any written notice that it is violating or has violated the trademarks, patents, copyrights, inventions, trade secrets, proprietary information and technology, know-how, formulae, rights of publicity or any other intellectual property rights of any third party.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, no holding, decision or judgment has been rendered by any Governmental Authority against any Seller, which would limit, cancel or invalidate any Intellectual Property owned by Sellers.

(f) No action or proceeding is pending, or to the Knowledge of Sellers, threatened, on the date hereof that (i) seeks to limit, cancel or invalidate any Intellectual Property owned by Sellers or such Sellers' ownership interest therein; and (ii) if adversely determined, would reasonably be expected to have a Material Adverse Effect.

(g) Except as would not reasonably be expected to have a Material Adverse Effect, Sellers and the Purchased Subsidiaries have taken reasonable actions to (i) maintain, enforce and police their Intellectual Property; and (ii) protect their material Software, websites and other systems (and the information therein) from unauthorized access or use.

(h) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Seller and Purchased Subsidiary has taken reasonable steps to protect its rights in, and confidentiality of, all the Trade Secrets, and any other confidential information owned by such Seller or Purchased Subsidiary; and (ii) to the Knowledge of Sellers, such Trade Secrets have not been disclosed by Sellers to any Person except pursuant to a valid and appropriate non-disclosure, license or any other appropriate Contract that has not been breached.

(i) Except as would not reasonably be expected to have a Material Adverse Effect, there has not been any malfunction with respect to any of the Software, electronic data processing, data communication lines, telecommunication lines, firmware, hardware, Internet websites or other information technology equipment of any Seller or Purchased Subsidiary since April 1, 2007, which has not been remedied or replaced in all respects.

(j) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the consummation of the transactions contemplated by this Agreement will not cause to be provided or licensed to any third Person, or give rise to any rights of any third Person with respect to, any source code that is part of the Software owned by Sellers; and (ii) Sellers have implemented reasonable disaster recovery and back-up plans with respect to the Software.

Section 4.15 Real Property. Each Seller owns and has valid title to the Transferred Real Property that is Owned Real Property owned by it and has valid leasehold or

subleasehold interests, as the case may be, in all of the Transferred Real Property that is Leased Real Property leased or subleased by it, in each case, free and clear of all Encumbrances, other than Permitted Encumbrances. Each of Sellers and the Purchased Subsidiaries has complied with the terms of each lease, sublease, license or other Contract relating to the Transferred Real Property to which it is a party, except any failure to comply that would not reasonably be expected to have a Material Adverse Effect.

Section 4.16 Material Contracts.

(a) Except for this Agreement, the Parent Employee Benefit Plans and Policies, except as filed with, or disclosed or incorporated in, the Parent SEC Documents or except as set forth on Section 4.16 of the Sellers' Disclosure Schedule, as of the date hereof, no Seller is a party to or bound by (i) any "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC); (ii) any non-compete or exclusivity agreement that materially restricts the operation of Sellers' core business; (iii) any asset purchase agreement, stock purchase agreement or other agreement entered into within the past six years governing a material joint venture or the acquisition or disposition of assets or other property where the consideration paid or received for such assets or other property exceeded $500,000,000 (whether in cash, stock or otherwise); (iv) any agreement or series of related agreements with any supplier of Sellers who directly support the production of vehicles, which provided collectively for payments by Sellers to such supplier in excess of $250,000,000 during the 12-month period ended December 31, 2008; (v) any agreement or series of related agreements with any supplier of Sellers who does not directly support the production of vehicles, which, provided collectively for payments by Sellers to such supplier in excess of $100,000,000 during the 12-month period ended April 30, 2009; (vi) any Contract relating to the lease or purchase of aircraft; (vii) any settlement agreement where a Seller has paid or may be required to pay an amount in excess of $100,000,000 to settle the Claims covered by such settlement agreement; (viii) any material Contract that will, following the Closing, as a result of transactions contemplated hereby, be between or among a Seller or any Retained Subsidiary, on the one hand, and Purchaser or any Purchased Subsidiary, on the other hand (other than the Ancillary Agreements); and (ix) agreements entered into in connection with a material joint venture (all Contracts of the type described in this **Section 4.16(a)** being referred to herein as "Seller Material Contracts").

(b) No Seller is in breach of or default under, or has received any written notice alleging any breach of or default under, the terms of any Seller Material Contract or material License, where such breach or default would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Sellers, no other party to any Seller Material Contract or material License is in breach of or default under the terms of any Seller Material Contract or material License, where such breach or default would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, each Seller Material Contract or material License is a valid, binding and enforceable obligation of such Seller that is party thereto and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws

relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.17 Dealer Sales and Service Agreements for Continuing Brands. Parent is not in breach of or default under the terms of any United States dealer sales and service Contract for Continuing Brands other than any Excluded Continuing Brand Dealer Agreement (each, a "Dealer Agreement"), where such breach or default would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Sellers, no other party to any Dealer Agreement is in breach of or default under the terms of such Dealer Agreement, where such breach or default would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, each Dealer Agreement is a valid and binding obligation of Parent and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.18 Sellers' Products.

(a) To the Knowledge of Sellers, since April 1, 2007, neither Sellers nor any Purchased Subsidiary has conducted or decided to conduct any material recall or other field action concerning any product developed, designed, manufactured, sold, provided or placed in the stream of commerce by or on behalf of any Seller or any Purchased Subsidiary.

(b) As of the date hereof, there are no material pending actions for negligence, manufacturing negligence or improper workmanship, or material pending actions, in whole or in part, premised upon product liability, against or otherwise naming as a party any Seller, Purchased Subsidiary or any predecessor-in-interest of any of the foregoing Persons, or to the Knowledge of Sellers, threatened in writing or of which Seller has received written notice that involve a product liability Claim resulting from the ownership, possession or use of any product manufactured, sold or delivered by any Seller, any Purchased Subsidiary or any predecessor-in-interest of any of the foregoing Persons, which would reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of Sellers and except as would not reasonably be expected to have a Material Adverse Effect, no supplier to any Seller has threatened in writing to cease the supply of products or services that could impair future production at a major production facility of such Seller.

Section 4.19 Certain Business Practices. Each of Sellers and the Purchased Subsidiaries is in compliance with the legal requirements under the Foreign Corrupt Practices Act, as amended (the "FCPA"), except for such failures, whether individually or in the aggregate, to maintain books and records or internal controls as required thereunder that are not

material. To the Knowledge of Sellers, since April 1, 2007, no Seller or Purchased Subsidiary, nor any director, officer, employee or agent thereof, acting on its, his or her own behalf or on behalf of any of the foregoing Persons, has offered, promised, authorized the payment of, or paid, any money, or the transfer of anything of value, directly or indirectly, to or for the benefit of: (a) any employee, official, agent or other representative of any foreign Governmental Authority, or of any public international organization; or (b) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any act or decision of such recipient in the recipient's official capacity, or inducing such recipient to use his, her or its influence to affect any act or decision of such foreign government or department, agency or instrumentality thereof or of such public international organization, or securing any improper advantage, in the case of both clause (a) and (b) above, in order to assist any Seller or any Purchased Subsidiary to obtain or retain business for, or to direct business to, any Seller or any Purchased Subsidiary and under circumstances that would subject any Seller or any Purchased Subsidiary to material Liability under any applicable Laws of the United States (including the FCPA) or of any foreign jurisdiction where any Seller or any Purchased Subsidiary does business relating to corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities, or lawful expenses.

Section 4.20 Brokers and Other Advisors. No broker, investment banker, financial advisor, counsel (other than legal counsel) or other Person is entitled to any broker's, finder's or financial advisor's fee or commission (collectively, "Advisory Fees") in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sellers or any Affiliate of any Seller.

Section 4.21 Investment Representations.

(a) Each Seller is acquiring the Parent Shares for its own account solely for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act or the applicable securities Laws of any jurisdiction. Each Seller agrees that it shall not transfer any of the Parent Shares, except in compliance with the Securities Act and with the applicable securities Laws of any other jurisdiction.

(b) Each Seller is an "Accredited Investor" as defined in Rule 501(a) promulgated under the Securities Act.

(c) Each Seller understands that the acquisition of the Parent Shares to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Each Seller and its officers have experience as an investor in the Equity Interests of companies such as the ones being transferred pursuant to this Agreement and each Seller acknowledges that it can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Parent Shares to be acquired by it pursuant to the transactions contemplated by this Agreement.

(d) Each Seller further understands and acknowledges that the Parent Shares have not been registered under the Securities Act or under the applicable securities Laws of any jurisdiction and agrees that the Parent Shares may not be sold, transferred, offered

for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or under the applicable securities Laws of any jurisdiction, or, in each case, an applicable exemption therefrom.

(e) Each Seller acknowledges that the offer and sale of the Parent Shares has not been accomplished by the publication of any advertisement.

Section 4.22 No Other Representations or Warranties of Sellers. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS **ARTICLE IV**, NONE OF SELLERS AND ANY PERSON ACTING ON BEHALF OF A SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, ANY OF THEIR AFFILIATES, SELLERS' BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLERS CONTAINED IN THIS **ARTICLE IV**, SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION, WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE (WHETHER BEFORE OR, IN CONNECTION WITH ANY SUPPLEMENT, MODIFICATION OR UPDATE TO THE SELLERS' DISCLOSURE SCHEDULE PURSUANT TO **SECTION 6.5**, **SECTION 6.6** OR **SECTION 6.26,** AFTER THE DATE HEREOF) TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, INCLUDING IN "DATA ROOMS" (INCLUDING ON-LINE DATA ROOMS), MANAGEMENT PRESENTATIONS, FUNCTIONAL "BREAK-OUT" DISCUSSIONS, RESPONSES TO QUESTIONS SUBMITTED ON BEHALF OF THEM OR OTHER COMMUNICATIONS BETWEEN THEM OR ANY OF THEIR REPRESENTATIVES, ON THE ONE HAND, AND SELLERS, THEIR AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, OR ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (C) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLERS' BUSINESS OR THE PURCHASED ASSETS.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers as follows:

Section 5.1 Organization and Good Standing. Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of

incorporation. Purchaser has the requisite corporate power and authority to own, lease and operate its assets and to carry on its business as now being conducted.

Section 5.2 Authorization; Enforceability.

(a) Purchaser has the requisite corporate power and authority to (i) execute and deliver this Agreement and the Ancillary Agreements to which it is a party; (ii) perform its obligations hereunder and thereunder; and (iii) consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party.

(b) This Agreement constitutes, and each of the Ancillary Agreements to which Purchaser is a party, when duly executed and delivered by Purchaser, shall constitute, a valid and legally binding obligation of Purchaser (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of each Seller that is a party thereto and the other applicable parties thereto), enforceable against Purchaser in accordance with its respective terms and conditions, except as may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 5.3 Noncontravention; Consents.

(a) The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which it is a party, and (subject to the entry of the Sale Approval Order) the consummation by Purchaser of the transactions contemplated hereby and thereby, do not (i) violate any Law to which Purchaser or its assets is subject; (ii) conflict with or result in a breach of any provision of the Organizational Documents of Purchaser; or (iii) create a breach, default, termination, cancellation or acceleration of any obligation of Purchaser under any Contract to which Purchaser is a party or by which Purchaser or any of its assets or properties is bound or subject, except for any of the foregoing in the cases of clauses (i) and (iii), that would not reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby or thereby or to perform any of its obligations under this Agreement or any Ancillary Agreement to which it is a party (a "Purchaser Material Adverse Effect").

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required by Purchaser for the consummation by Purchaser of the transactions contemplated by this Agreement or the Ancillary Agreements to which it is a party or the compliance by Purchaser with any of the provisions hereof or thereof, except for (i) compliance with the applicable requirements of any Antitrust Laws and (ii) such consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Governmental Authority, the failure of which to be received

or made would not, individually or in the aggregate, reasonably be expected to have a Purchaser Material Adverse Effect.

Section 5.4 Capitalization.

(a) As of the date hereof, Sponsor holds beneficially and of record 1,000 shares of common stock, par value $0.01 per share, of Purchaser, which constitutes all of the outstanding capital stock of Purchaser, and all such capital stock is validly issued, fully paid and nonassessable.

(b) Immediately following the Closing, the authorized capital stock of Purchaser (or, if a Holding Company Reorganization has occurred prior to the Closing, Holding Company) will consist of 2,500,000,000 shares of common stock, par value $0.01 per share ("Common Stock"), and 1,000,000,000 shares of preferred stock, par value $0.01 per share ("Preferred Stock"), of which 360,000,000 shares of Preferred Stock are designated as Series A Fixed Rate Cumulative Perpetual Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock").

(c) Immediately following the Closing, (i) Canada or one or more of its Affiliates will hold beneficially and of record 58,368,644 shares of Common Stock and 16,101,695 shares of Series A Preferred Stock (collectively, the "Canada Shares"), (ii) Sponsor or one or more of its Affiliates collectively will hold beneficially and of record 304,131,356 shares of Common Stock and 83,898,305 shares of Series A Preferred Stock (collectively, the "Sponsor Shares") and (iii) the New VEBA will hold beneficially and of record 87,500,000 shares of Common Stock and 260,000,000 shares of Series A Preferred Stock (collectively, the "VEBA Shares"). Immediately following the Closing, there will be no other holders of Common Stock or Preferred Stock.

(d) Except as provided under the Parent Warrants, VEBA Warrants, Equity Incentive Plans or as disclosed on the Purchaser's Disclosure Schedule, there are and, immediately following the Closing, there will be no outstanding options, warrants, subscriptions, calls, convertible securities, phantom equity, equity appreciation or similar rights, or other rights or Contracts (contingent or otherwise) (including any right of conversion or exchange under any outstanding security, instrument or other Contract or any preemptive right) obligating Purchaser to deliver or sell, or cause to be issued, delivered or sold, any shares of its capital stock or other equity securities, instruments or rights that are, directly or indirectly, convertible into or exercisable or exchangeable for any shares of its capital stock. There are no outstanding contractual obligations of Purchaser to repurchase, redeem or otherwise acquire any shares of its capital stock or to provide funds to, or make any material investment (in the form of a loan, capital contribution or otherwise) in, any other Person. There are no voting trusts, shareholder agreements, proxies or other Contracts or understandings in effect with respect to the voting or transfer of any of the shares of Common Stock to which Purchaser is a party or by which Purchaser is bound. Except as provided under the Equity Registration Rights Agreement or as disclosed in the Purchaser's Disclosure Schedule, Purchaser has not granted or agreed to grant any holders of shares of Common Stock or securities

convertible into shares of Common Stock registration rights with respect to such shares under the Securities Act.

(e) Immediately following the Closing, (i) all of the Canada Shares, the Parent Shares and the Sponsor Shares will be duly and validly authorized and issued, fully paid and nonassessable, and will be issued in accordance with the registration or qualification provisions of the Securities Act or pursuant to valid exemptions therefrom and (ii) none of the Canada Shares, the Parent Shares or the Sponsor Shares will be issued in violation of any preemptive rights.

Section 5.5 Valid Issuance of Shares. The Parent Shares, Adjustment Shares and the Common Stock underlying the Parent Warrants, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement and the related warrant agreement, as applicable, will be (a) validly issued, fully paid and nonassessable and (b) free of restrictions on transfer other than restrictions on transfer under applicable state and federal securities Laws and Encumbrances created by or imposed by Sellers. Assuming the accuracy of the representations of Sellers in **Section 4.21**, the Parent Shares, Adjustment Shares and Parent Warrants will be issued in compliance with all applicable federal and state securities Laws.

Section 5.6 Investment Representations.

(a) Purchaser is acquiring the Transferred Equity Interests for its own account solely for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act or the applicable securities Laws of any jurisdiction. Purchaser agrees that it shall not transfer any of the Transferred Equity Interests, except in compliance with the Securities Act and with the applicable securities Laws of any other jurisdiction.

(b) Purchaser is an "Accredited Investor" as defined in Rule 501(a) promulgated under the Securities Act.

(c) Purchaser understands that the acquisition of the Transferred Equity Interests to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Purchaser and its officers have experience as an investor in Equity Interests of companies such as the ones being transferred pursuant to this Agreement and Purchaser acknowledges that it can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Transferred Equity Interests to be acquired by it pursuant to the transactions contemplated hereby.

(d) Purchaser further understands and acknowledges that the Transferred Equity Interests have not been registered under the Securities Act or under the applicable securities Laws of any jurisdiction and agrees that the Transferred Equity Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or under the applicable securities Laws of any jurisdiction, or, in each case, an applicable exemption therefrom.

(e) Purchaser acknowledges that the offer and sale of the Transferred Equity Interests has not been accomplished by the publication of any advertisement.

Section 5.7 Continuity of Business Enterprise. It is the present intention of Purchaser to directly, or indirectly through its Subsidiaries, continue at least one significant historic business line of each Seller, or use at least a significant portion of each Seller's historic business assets in a business, in each case, within the meaning of Treas. Reg. § 1.368-1(d).

Section 5.8 Integrated Transaction. Sponsor has contributed, or will, prior to the Closing, contribute the UST Credit Facilities, a portion of the DIP Facility that is owed as of the Closing and the UST Warrant to Purchaser solely for the purposes of effectuating the transactions contemplated by this Agreement.

Section 5.9 No Other Representations or Warranties of Sellers. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN **ARTICLE IV**, NONE OF SELLERS AND ANY PERSON ACTING ON BEHALF OF A SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, ANY OF THEIR AFFILIATES, SELLERS' BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLERS CONTAINED IN **ARTICLE IV**, PURCHASER FURTHER HEREBY ACKNOWLEDGES AND AGREES THAT SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION, WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE (WHETHER BEFORE OR, IN CONNECTION WITH ANY SUPPLEMENT, MODIFICATION OR UPDATE TO THE SELLERS' DISCLOSURE SCHEDULE PURSUANT TO **SECTION 6.5**, **SECTION 6.6** OR **SECTION 6.26,** AFTER THE DATE HEREOF) TO PURCHASER OR ANY OF ITS REPRESENTATIVES, INCLUDING IN "DATA ROOMS" (INCLUDING ON-LINE DATA ROOMS), MANAGEMENT PRESENTATIONS, FUNCTIONAL "BREAK-OUT" DISCUSSIONS, RESPONSES TO QUESTIONS SUBMITTED ON BEHALF OF IT OR OTHER COMMUNICATIONS BETWEEN IT OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, ON THE ONE HAND, AND SELLERS, THEIR AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION OR (C) ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (D) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLERS' BUSINESS OR THE PURCHASED ASSETS.

ARTICLE VI
COVENANTS

Section 6.1 Access to Information.

(a) Sellers agree that, until the earlier of the Executory Contract Designation Deadline and the termination of this Agreement, Purchaser shall be entitled, through its Representatives or otherwise, to have reasonable access to the executive officers and Representatives of Sellers and the properties and other facilities, businesses, books, Contracts, personnel, records and operations (including the Purchased Assets and Assumed Liabilities) of Sellers and their Subsidiaries, including access to systems, data, databases for benefit plan administration; provided however, that no such investigation or examination shall be permitted to the extent that it would, in Sellers' reasonable determination, require any Seller, any Subsidiary of any Seller or any of their respective Representatives to disclose information subject to attorney-client privilege or in conflict with any confidentiality agreement to which any Seller, any Subsidiary of any Seller or any of their respective Representatives are bound (in which case, to the extent requested by Purchaser, Sellers will use reasonable best efforts to seek an amendment or appropriate waiver, or necessary consents, as may be required to avoid such conflict, or restructure the form of access, so as to permit the access requested); provided further, that notwithstanding the notice provisions in **Section 9.2** hereof, all such requests for access to the executive officers of Sellers shall be directed, prior to the Closing, to the Chief Financial Officer of Parent or his designee, and following the Closing, to the Chief Restructuring Officer of Parent or his or her designee. If any material is withheld pursuant to this **Section 6.1(a)**, Seller shall inform Purchaser in writing as to the general nature of what is being withheld and the reason for withholding such material.

(b) Any investigation and examination contemplated by this **Section 6.1** shall be subject to restrictions set forth in **Section 6.24** and under applicable Law. Sellers shall cooperate, and shall cause their Subsidiaries and each of their respective Representatives to cooperate, with Purchaser and its Representatives in connection with such investigation and examination, and each of Purchaser and its Representatives shall use their reasonable best efforts to not materially interfere with the business of Sellers and their Subsidiaries. Without limiting the generality of the foregoing, subject to **Section 6.1(a),** such investigation and examination shall include reasonable access to Sellers' executive officers (and employees of Sellers and their respective Subsidiaries identified by such executive officers), offices, properties and other facilities, and books, Contracts and records (including any document retention policies of Sellers) and access to accountants of Sellers and each of their respective Subsidiaries (provided that Sellers and each of their respective Subsidiaries, as applicable, shall have the right to be present at any meeting between any such accountant and Purchaser or Representative of Purchaser, whether such meeting is in person, telephonic or otherwise) and Sellers and each of their respective Subsidiaries and their Representatives shall prepare and furnish to Purchaser's Representatives such additional financial and operating data and other information as Purchaser may from time to time reasonably request, subject, in each case, to the confidentiality restrictions outlined in this **Section 6.1**. Notwithstanding anything contained herein to the contrary, Purchaser shall consult with Sellers prior to conducting

any environmental investigations or examinations of any nature, including Phase I and Phase II site assessments and any environmental sampling in respect of the Transferred Real Property.

Section 6.2 Conduct of Business.

(a) Except as (i) otherwise expressly contemplated by or permitted under this Agreement, including the DIP Facility; (ii) disclosed on Section 6.2 of the Sellers' Disclosure Schedule; (iii) approved by the Bankruptcy Court (or any other court or other Governmental Authority in connection with any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of Parent); or (iv) required by or resulting from any changes to applicable Laws, from and after the date of this Agreement and until the earlier of the Closing and the termination of this Agreement, Sellers shall and shall cause each Purchased Subsidiary to (A) conduct their operations in the Ordinary Course of Business, (B) not take any action inconsistent with this Agreement or with the consummation of the Closing, (C) use reasonable best efforts to preserve in the Ordinary Course of Business and in all material respects the present relationships of Sellers and each of their Subsidiaries with their respective customers, suppliers and others having significant business dealings with them, (D) not take any action to cause any of Sellers' representations and warranties set forth in **ARTICLE IV** to be untrue in any material respect as of any such date when such representation or warranty is made or deemed to be made and (E) not take any action that would reasonably be expected to materially prevent or delay the Closing.

(b) Subject to the exceptions contained in clauses (i) through (iv) of **Section 6.2(a)**, each Seller agrees that, from and after the date of this Agreement and until the earlier of the Closing and the termination of this Agreement, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), such Seller shall not, and shall not permit any of the Key Subsidiaries (and in the case of clauses (i), (ix), (xiii) or (xvi), shall not permit any Purchased Subsidiary) to:

(i) take any action with respect to which any Seller has granted approval rights to Sponsor under any Contract, including under the UST Credit Facilities, without obtaining the prior approval of such action from Sponsor;

(ii) issue, sell, pledge, create an Encumbrance or otherwise dispose of or authorize the issuance, sale, pledge, Encumbrance or disposition of any Equity Interests of the Transferred Entities, or grant any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any such Equity Interests;

(iii) declare, set aside or pay any dividend or make any distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to any Seller or any Key Subsidiary without receipt of fair value with respect to any Equity Interest of Seller or any Key Subsidiary), except for dividends and distributions among the Purchased Subsidiaries;

(iv) directly or indirectly, purchase, redeem or otherwise acquire any Equity Interests or any rights to acquire any Equity Interests of any Seller or Key Subsidiary;

(v) materially change any of its financial accounting policies or procedures or any of its methods of reporting income, deductions or other material items for financial accounting purposes, except as permitted by GAAP, a SEC rule, regulation or policy or applicable Law, or as modified by Parent as a result of the filing of the Bankruptcy Cases;

(vi) adopt any amendments to its Organizational Documents or permit the adoption of any amendment of the Organizational Documents of any Key Subsidiary or effect a split, combination or reclassification or other adjustment of Equity Interests of any Purchased Subsidiary or a recapitalization thereof;

(vii) sell, pledge, lease, transfer, assign or dispose of any Purchased Asset or permit any Purchased Asset to become subject to any Encumbrance, other than a Permitted Encumbrance, in each case, except in the Ordinary Course of Business or pursuant to a Contract in existence as of the date hereof (or entered into in compliance with this **Section 6.2**);

(viii) (A) incur or assume any Indebtedness for borrowed money or issue any debt securities, except for Indebtedness for borrowed money incurred by Purchased Subsidiaries under existing lines of credit (including through the incurrence of Intercompany Obligations) to fund operations of Purchased Subsidiaries and Indebtedness for borrowed money incurred by Sellers under the DIP Facility or (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person, except for Indebtedness for borrowed money among any Seller and Subsidiary or among the Subsidiaries;

(ix) discharge or satisfy any Indebtedness in excess of $100,000,000 other than the discharge or satisfaction of any Indebtedness when due in accordance with its originally scheduled terms;

(x) other than as is required by the terms of a Parent Employee Benefit Plan and Policy (in effect on the date hereof and set forth on Section 4.10 of the Sellers' Disclosure Schedule), any Assumed Plan (in effect on the date hereof) the UAW Collective Bargaining Agreement or consistent with the expiration of a Collective Bargaining Agreement, the Settlement Agreement, the UAW Retiree Settlement Agreement or as may be required by applicable Law or TARP or under any enhanced restrictions on executive compensation agreed to by Sellers and Sponsor, (A) increase the compensation or benefits of any Employee of Sellers or any Purchased Subsidiary (except for increases in salary or wages in the Ordinary Course of Business with respect to Employees who are not current or former directors or officers of Sellers or Seller Key Personnel), (B) grant any severance or termination pay to any Employee of Sellers or any Purchased

Subsidiary except for severance or termination pay provided under any Parent Employee Benefit Plan and Policy or as the result of a settlement of any pending Claim or charge involving a Governmental Authority or litigation with respect to Employees who are not current or former officers or directors of Sellers or Seller Key Personnel), (C) establish, adopt, enter into, amend or terminate any Benefit Plan (including any change to any actuarial or other assumption used to calculate funding obligations with respect to any Benefit Plan or any change to the manner in which contributions to any Benefit Plan are made or the basis on which such contributions are determined), except where any such action would reduce Sellers' costs or Liabilities pursuant to such plan, (D) grant any awards under any Benefit Plan (including any equity or equity-based awards), (E) increase or promise to increase or provide for the funding under any Benefit Plan, (F) forgive any loans to Employees of Sellers or any Purchased Subsidiary (other than as part of a settlement of any pending Claim or charge involving a Governmental Authority or litigation in the Ordinary Course of Business or with respect to obligations of Employees whose employment is terminated by Sellers or a Purchased Subsidiary in the Ordinary Course of Business, other than Employees who are current or former officers or directors of Sellers or Seller Key Personnel or directors of Sellers or a Purchased Subsidiary) or (G) exercise any discretion to accelerate the time of payment or vesting of any compensation or benefits under any Benefit Plan;

(xi) modify, amend, terminate or waive any rights under any Affiliate Contract or Seller Material Contract (except for any dealer sales and service Contracts or as contemplated by **Section 6.7**) in any material respect in a manner that is adverse to any Seller that is a party thereto, other than in the Ordinary Course of Business;

(xii) enter into any Seller Material Contract other than as contemplated by **Section 6.7**;

(xiii) acquire (including by merger, consolidation, combination or acquisition of Equity Interests or assets) any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeds $100,000,000;

(xiv) alter, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of any Key Subsidiary, or adopt or approve a plan with respect to any of the foregoing;

(xv) enter into any Contract that limits or otherwise restricts or that would reasonably be expected to, after the Closing, restrict or limit in any material respect (A) Purchaser or any of its Subsidiaries or any successor thereto or (B) any Affiliates of Purchaser or any successor thereto, in the case of each of

clause (A) or (B), from engaging or competing in any line of business or in any geographic area;

(xvi) enter into any Contracts for capital expenditures, exceeding $100,000,000 in the aggregate in connection with any single project or group of related projects;

(xvii) open or reopen any major production facility; and

(xviii) agree, in writing or otherwise, to take any of the foregoing actions.

Section 6.3 Notices and Consents.

(a) Sellers shall and shall cause each of their Subsidiaries to, and Purchaser shall use reasonable best efforts to, promptly give all notices to, obtain all material consents, approvals or authorizations from, and file all notifications and related materials with, any third parties (including any Governmental Authority) that may be or become necessary to be given or obtained by Sellers or their Affiliates, or Purchaser, respectively, in connection with the transactions contemplated by this Agreement.

(b) Each of Purchaser and Parent shall, to the extent permitted by Law, promptly notify the other Party of any communication it or any of its Affiliates receives from any Governmental Authority relating to the transactions contemplated by this Agreement and permit the other Party to review in advance any proposed substantive communication by such Party to any Governmental Authority. Neither Purchaser nor Parent shall agree to participate in any material meeting with any Governmental Authority in respect of any significant filings, investigation (including any settlement of the investigation), litigation or other inquiry unless it consults with the other Party in advance and, to the extent permitted by such Governmental Authority, gives the other Party the opportunity to attend and participate at such meeting; provided, however, in the event either Party is prohibited by applicable Law or such Governmental Authority from participating in or attending any such meeting, then the Party who participates in such meeting shall keep the other Party apprised with respect thereto to the extent permitted by Law. To the extent permitted by Law, Purchaser and Parent shall coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Party may reasonably request in connection with the foregoing, including, to the extent reasonably practicable, providing to the other Party in advance of submission, drafts of all material filings, submissions, correspondences or other written communications, providing the other Party with an opportunity to comment on the drafts, and, where practicable, incorporating such comments, if any, into the final documents. To the extent permitted by applicable Law, Purchaser and Parent shall provide each other with copies of all material correspondences, filings or written communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement or the transactions contemplated by this Agreement.

(c) None of Purchaser, Parent or their respective Affiliates shall be required to pay any fees or other payments to any Governmental Authorities in order to obtain any authorization, consent, Order or approval (other than normal filing fees and administrative fees that are imposed by Law on Purchaser), and in the event that any fees in addition to normal filing fees imposed by Law may be required to obtain any such authorization, consent, Order or approval, such fees shall be for the account of Purchaser.

(d) Notwithstanding anything to the contrary contained herein, no Seller shall be required to make any expenditure or incur any Liability in connection with the requirements set forth in this **Section 6.3**.

Section 6.4 Sale Procedures; Bankruptcy Court Approval.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers and the Bankruptcy Court of higher or better competing Bids with respect to an Alternative Transaction. Nothing contained herein shall be construed to prohibit Sellers and their respective Affiliates and Representatives from soliciting, considering, negotiating, agreeing to, or otherwise taking action in furtherance of, any Alternative Transaction but only to the extent that Sellers determine in good faith that such actions are permitted or required by the Sale Procedures Order.

(b) On the Petition Date, Sellers filed with the Bankruptcy Court the Bankruptcy Cases under the Bankruptcy Code and a motion (and related notices and proposed Orders) (the "Sale Procedures and Sale Motion"), seeking entry of (i) the sale procedures order, in the form attached hereto as **Exhibit H** (the "Sale Procedures Order"), and (ii) the sale approval order, in the form attached hereto as **Exhibit I** (the "Sale Approval Order"). The Sale Approval Order shall declare that if there is an Agreed G Transaction, (A) this Agreement constitutes a "plan" of Parent and Purchaser solely for purposes of Sections 368 and 354 of the Tax Code and (B) the transactions with respect to Parent described herein, in combination with the subsequent liquidation of Sellers, are intended to constitute a reorganization of Parent pursuant to Section 368(a)(1)(G) of the Tax Code. To the extent reasonably practicable, Sellers shall consult with and provide Purchaser and the UAW a reasonable opportunity to review and comment on material motions, applications and supporting papers prepared by Sellers in connection with this Agreement prior to the filing or delivery thereof in the Bankruptcy Cases.

(c) Purchaser acknowledges that Sellers may receive bids ("Bids") from prospective purchasers (such prospective purchasers, the "Bidders") with respect to an Alternative Transaction, as provided in the Sale Procedures Order. All Bids (other than Bids submitted by Purchaser) shall be submitted with two copies of this Agreement marked to show changes requested by the Bidder.

(d) If Sellers receive any Bids, Sellers shall have the right to select, and seek final approval of the Bankruptcy Court for, the highest or otherwise best Bid or Bids from the Bidders (the "Superior Bid"), which will be determined in accordance with the Sale Procedure Order.

(e) Sellers shall use their reasonable best efforts to obtain entry of the Sale Approval Order on the Bankruptcy Court's docket as soon as practicable, and in no event no later than July 10, 2009.

(f) Sellers shall use reasonable best efforts to comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure in connection with obtaining approval of the transactions contemplated by this Agreement, including serving on all required Persons in the Bankruptcy Cases (including all holders of Encumbrances and parties to the Purchased Contracts), a notice of the Sale Procedures and Sale Motion, the Sale Hearing and the objection deadline in accordance with Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (as modified by Orders of the Bankruptcy Court), the Sale Procedures Order or other Orders of the Bankruptcy Court, including General Order M-331 issued by the Bankruptcy Court, and any applicable local rules of the Bankruptcy Court.

(g) Sellers shall provide Purchaser with a reasonable opportunity to review and comment on all motions, applications and supporting papers prepared by Sellers in connection with this Agreement (including forms of Orders and of notices to interested parties) prior to the filing or delivery thereof in the Bankruptcy Cases. All motions, applications and supporting papers prepared by Sellers and relating to the approval of this Agreement (including forms of Orders and of notices to interested parties) to be filed or delivered on behalf of Sellers shall be reasonably acceptable in form and substance to Purchaser. Sellers shall provide written notice to Purchaser of all matters that are required to be served on Sellers' creditors pursuant to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. In the event the Sale Procedures Order and the Sale Approval Order is appealed, Sellers shall use their reasonable best efforts to defend such appeal.

(h) Purchaser agrees, to the extent reasonably requested by Sellers, to cooperate with and assist Sellers in seeking entry of the Sale Procedures Order and the Sale Approval Order by the Bankruptcy Court, including attending all hearings on the Sale Procedures and Sale Motion.

Section 6.5 Supplements to Purchased Assets. Purchaser shall, from the date hereof until the Executory Contract Designation Deadline, have the right to designate in writing additional Personal Property it wishes to designate as Purchased Assets if such Personal Property is located at a parcel of leased real property where the underlying lease has been designated as a Rejectable Executory Contract pursuant to **Section 6.6** following the Closing.

Section 6.6 Assumption or Rejection of Contracts.

(a) The Assumable Executory Contract Schedule sets forth a list of Executory Contracts entered into by Sellers that Sellers may assume and assign to Purchaser in accordance with this **Section 6.6(a)** (each, an "Assumable Executory Contract"). Any Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule and Section 6.6(a)(ii) of the Sellers' Disclosure Schedule shall automatically be designated as an

Assumable Executory Contract and deemed to be set forth on the Assumable Executory Contract Schedule. Purchaser may, until the Executory Contract Designation Deadline, designate in writing any additional Executory Contract it wishes to designate as an Assumable Executory Contract and include on the Assumable Executory Contract Schedule, or any Assumable Executory Contract it no longer wishes to designate as an Assumable Executory Contract and remove from the Assumable Executory Contract Schedule; provided, however, that (i) Purchaser may not designate as an Assumable Executory Contract any (A) Rejectable Executory Contract, unless Sellers have consented to such designation in writing or (B) Contract that has previously been rejected by Sellers pursuant to Section 365 of the Bankruptcy Code, and (ii) Purchaser may not remove from the Assumable Executory Contract Schedule (v) the UAW Collective Bargaining Agreement, (w) any Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule or Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, (x) any Contract that has been previously assumed by Sellers pursuant to Section 365 of the Bankruptcy Code, (y) any Deferred Termination Agreement (or the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement) or (z) any Participation Agreement (or the related Continuing Brand Dealer Agreement). Except as otherwise provided above, for each Assumable Executory Contract, Purchaser must determine, prior to the Executory Contract Designation Deadline, the date on which it seeks to have the assumption and assignment become effective, which date may be the Closing Date or a later date (but not an earlier date). The term "Executory Contract Designation Deadline" shall mean the date that is thirty (30) calendar days following the Closing Date, or if such date is not a Business Day, the next Business Day, or if mutually agreed upon by the Parties, any later date up to and including the Business Day immediately prior to the date of the confirmation hearing for Sellers' plan of liquidation or reorganization. For the avoidance of doubt, the Executory Contract Designation Deadline may be extended by mutual agreement of the Parties with respect to any single unassumed and unassigned Executory Contract, groups of unassumed and unassigned Executory Contracts or all of the unassumed and unassigned Executory Contracts.

(b) Sellers may, until the Closing, provide written notice (a "Notice of Intent to Reject") to Purchaser of Sellers' intent to designate any Executory Contract (that has not been designated as an Assumable Executory Contract) as a Rejectable Executory Contract (each a "Proposed Rejectable Executory Contract"). Following receipt of a Notice of Intent to Reject, Purchaser shall as soon as reasonably practicable, but in no event later than fifteen (15) calendar days following receipt of a Notice of Intent to Reject (the "Option Period"), provide Sellers written notice of Purchaser's designation of one or more Proposed Rejectable Executory Contracts identified in such Notice of Intent to Reject as an Assumable Executory Contract. Each Proposed Rejectable Executory Contract that has not been designated by Purchaser as an Assumable Executory Contract during the applicable Option Period shall automatically, without further action by Sellers, be designated as a Rejectable Executory Contract. A "Rejectable Executory Contract" is an Executory Contract that Sellers may, but are not obligated to, reject pursuant Section 365 of the Bankruptcy Code.

(c) Immediately following the Closing, each Executory Contract entered into by Sellers and then in existence that has not previously been designated as an Assumable

Executory Contract, a Rejectable Executory Contract or a Proposed Rejectable Executory Contract, and that has not otherwise been assumed or rejected by Sellers pursuant to Section 365 of the Bankruptcy Code, shall be deemed to be an Executory Contract subject to subsequent designation by Purchaser as an Assumable Executory Contract or a Rejectable Executory Contract (each a "Deferred Executory Contract").

(d) All Assumable Executory Contracts shall be assumed and assigned to Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the date designated by the Purchaser and (ii) the date following expiration of the objection deadline if no objection, other than to the Cure Amount, has been timely filed or the date of resolution of any objection unrelated to Cure Amount, as provided in the Sale Procedures Order; provided, however, that in the case of each (A) Assumable Executory Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule, (2) Deferred Termination Agreement (and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract and (3) Participation Agreement (and the related Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract, the Assumption Effective Date shall be the Closing Date and (B) Assumable Executory Contract identified on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, the Assumption Effective Date shall be a date that is no later than the date set forth with respect to such Executory Contract on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule. On the Assumption Effective Date for any Assumable Executory Contract, such Assumable Executory Contract shall be deemed to be a Purchased Contract hereunder. If it is determined under the procedures set forth in the Sale Procedures Order that Sellers may not assume and assign to Purchaser any Assumable Executory Contract, such Executory Contract shall cease to be an Assumable Executory Contract and shall be an Excluded Contract and a Rejectable Executory Contract. Except as provided in **Section 6.31**, notwithstanding anything else to the contrary herein, any Executory Contract that has not been specifically designated as an Assumable Executory Contract as of the Executory Contract Designation Deadline applicable to such Executory Contract, including any Deferred Executory Contract, shall automatically be deemed to be a Rejectable Executory Contract and an Excluded Contract hereunder. Sellers shall have the right, but not the obligation, to reject, at any time, any Rejectable Executory Contract; provided, however, that Sellers shall not reject any Contract that affects both Owned Real Property and Excluded Real Property (whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule), including any such Executory Contract that involves the provision of water, water treatment, electric, fuel, gas, telephone and other utilities to any facilities located at the Excluded Real Property, whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (the "Shared Executory Contracts"), without the prior written consent of Purchaser.

(e) From and after the Closing and during the applicable period specified below, Purchaser shall be obligated to pay or cause to be paid all amounts due in respect of Sellers' performance (i) under each Proposed Rejectable Executory Contract, during the pendency of the applicable Option Period under such Proposed Rejectable Executory Contract, (ii) under each Deferred Executory Contract, for so long as such Contract remains a Deferred Executory Contract, (iii) under each Assumable Executory Contract,

as long as such Contract remains an Assumable Executory Contract and (iv) under each GM Assumed Contract, until the applicable Assumption Effective Date. At and after the Closing and until such time as any Shared Executory Contract is either (y) rejected by Sellers pursuant to the provision set forth in this **Section 6.6** or (z) assumed by Sellers and subsequently modified with Purchaser's consent so as to no longer be applicable to the affected Owned Real Property, Purchaser shall reimburse Sellers as and when requested by Sellers for Purchasers' and its Affiliates' allocable share of all costs and expenses incurred under such Shared Executory Contract.

(f) Sellers and Purchaser shall comply with the procedures set forth in the Sale Procedures Order with respect to the assumption and assignment or rejection of any Executory Contract pursuant to, and in accordance with, this **Section 6.6**.

(g) No designation of any Executory Contract for assumption and assignment or rejection in accordance with this **Section 6.6** shall give rise to any right to any adjustment to the Purchase Price.

(h) Without limiting the foregoing, if, following the Executory Contract Designation Deadline, Sellers or Purchaser identify an Executory Contract that has not previously been identified as a Contract for assumption and assignment, and such Contract is important to Purchaser's ability to use or hold the Purchased Assets or operate its businesses in connection therewith, Sellers will assume and assign such Contract and assign it to Purchaser without any adjustment to the Purchase Price; provided that Purchaser consents and agrees at such time to (i) assume such Executory Contract and (ii) and discharge all Cure Amounts in respect hereof.

Section 6.7 Deferred Termination Agreements; Participation Agreements.

(a) Sellers shall, and shall cause their Affiliates to, use reasonable best efforts to enter into short-term deferred voluntary termination agreements in substantially the form attached hereto as **Exhibit J-1** (in respect of all Saturn Discontinued Brand Dealer Agreements), **Exhibit J-2** (in respect of all Hummer Discontinued Brand Dealer Agreements) and **Exhibit J-3** (in respect of all non-Saturn and non-Hummer Discontinued Brand Dealer Agreements and all Excluded Continuing Brand Dealer Agreements) that will, when executed by the relevant dealer counterparty thereto, modify the respective Discontinued Brand Dealer Agreements and selected Continuing Brand Dealer Agreements (collectively, the "Deferred Termination Agreements"). For the avoidance of doubt, (i) each Deferred Termination Agreement, and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement modified thereby, will automatically be an Assumable Executory Contract hereunder upon valid execution of such Deferred Termination Agreement by the parties thereto and (ii) all Discontinued Brand Dealer Agreements that are not modified by a Deferred Termination Agreement, and all Continuing Brand Dealer Agreements that are not modified by either a Deferred Termination Agreement or a Participation Agreement, will automatically be a Rejectable Executory Contract hereunder.

(b) Sellers shall, and shall cause their Affiliates to, use reasonable best efforts to enter into agreements, substantially in the form attached hereto as **Exhibit K** that will modify all Continuing Brand Dealer Agreements (other than the Continuing Brand Dealer Agreements that are proposed to be modified by Deferred Termination Agreements) (the "Participation Agreements"). For the avoidance of doubt, (i) all Participation Agreements, and the related Continuing Brand Dealer Agreements, will automatically be Assumable Executory Contracts hereunder upon valid execution of such Participation Agreement and (ii) all Continuing Brand Dealer Agreements that are proposed to be modified by a Participation Agreement and are not modified by a Participation Agreement will be offered Deferred Termination Agreements pursuant to **Section 6.7(a)**.

Section 6.8 [Reserved]

Section 6.9 Purchaser Assumed Debt; Wind Down Facility.

(a) Purchaser shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of the Purchaser Assumed Debt so as to be assumed by Purchaser immediately prior to the Closing. Purchaser shall use reasonable best efforts to enter into definitive financing agreements with respect to the Purchaser Assumed Debt so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

(b) Sellers shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of $950,000,000 of Indebtedness accrued under the DIP Facility (as restructured, the "Wind Down Facility") to provide for such Wind Down Facility to be non-recourse, to accrue payment-in-kind interest at LIBOR plus 300 basis points, to be secured by all assets of Sellers (other than the Parent Shares, Adjustment Shares, Parent Warrants and any securities received in respect thereof), and to be subject to mandatory repayment from the proceeds of asset sales (other than the sale of Parent Shares, Adjustment Shares, Parent Warrants and any securities received in respect thereof). Sellers shall use reasonable best efforts to enter into definitive financing agreements with respect to the Wind Down Facility so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

Section 6.10 Litigation and Other Assistance. In the event and for so long as any Party is actively contesting or defending against any action, investigation, charge, Claim or demand by a third party in connection with any transaction contemplated by this Agreement, the other Parties shall reasonably cooperate with the contesting or defending Party and its counsel in such contest or defense, make available its personnel and provide such testimony and access to its books, records and other materials as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party; provided, however, that no Party shall be required to provide the contesting or defending party with any access to its books, records or materials if such access would violate the attorney-client privilege or conflict with any confidentiality obligations to which the non-contesting or defending Party is subject. In addition, the Parties agree to cooperate in connection with the making or filing of claims, requests for information, document retrieval and other activities in connection with any

and all Claims made under insurance policies specified on Section 2.2(b)(xiii) of the Sellers' Disclosure Schedule to the extent any such Claim relates to any Purchased Asset or Assumed Liability. For the avoidance of doubt, this **Section 6.10** shall not apply to any action, investigation, charge, Claim or demand by any of Sellers or their Affiliates, on the one hand, or Purchaser or any of its Affiliates, on the other hand.

Section 6.11 Further Assurances.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use their reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all actions necessary, proper or advisable to consummate and make effective as promptly as practicable, the transactions contemplated by this Agreement in accordance with the terms hereof and to bring about the satisfaction of all other conditions to the other Parties' obligations hereunder; provided, however, that nothing in this Agreement shall obligate Sellers or Purchaser, or any of their respective Affiliates, to waive or modify any of the terms and conditions of this Agreement or any documents contemplated hereby, except as expressly set forth herein. The Parties acknowledge that Sponsor's acquisition of interest is a sovereign act and that no filings should be made by Sponsor or Purchaser in non-United States jurisdictions.

(b) The Parties shall negotiate the forms, terms and conditions of the Ancillary Agreements, to the extent the forms thereof are not attached to this Agreement, on the basis of the respective term sheets attached to this Agreement, in good faith, with such Ancillary Agreements to set forth terms on an Arms-Length Basis and incorporate usual and customary provisions for similar agreements.

(c) Until the Closing, Sellers shall maintain a team of appropriate personnel (each such team, a "Transition Team") to assist Purchaser and its Representatives in connection with Purchaser's efforts to complete prior to the Closing the activities described below. Sellers shall use their reasonable best efforts to cause the Transition Team to (A) meet with Purchaser and its Representatives on a regular basis at such times as Purchaser may reasonably request and (B) take such action and provide such information, including background and summary information, as Purchaser and its Representatives may reasonably request in connection with the following activities:

(i) evaluation and identification of all Contracts that Purchaser may elect to designate as Purchased Contracts or Excluded Contracts, consistent with its rights under this Agreement;

(ii) evaluation and identification of all assets and entities that Purchaser may elect to designate as Purchased Assets or Excluded Assets, consistent with its rights under this Agreement;

(iii) maintaining and obtaining necessary governmental consents, permits, authorizations, licenses and financial assurance for operation of the business by Purchaser following the Closing;

(iv) obtaining necessary third party consents for operation of the business by Purchaser following the Closing;

(v) implementing the optimal structure for Purchaser and its subsidiaries to acquire and hold the Purchased Assets and operate the business following the Closing;

(vi) implementing the assumption of all Assumed Plans and otherwise satisfying the obligations of Purchaser as provided in **Section 6.17** with respect to Employment Related Obligations; and

(vii) such other transition matters as Purchaser may reasonably determine are necessary for Purchaser to fulfill its obligations and exercise its rights under this Agreement.

Section 6.12 Notifications.

(a) Sellers shall give written notice to Purchaser as soon as practicable upon becoming aware of any event, circumstance, condition, fact, effect or other matter that resulted in, or that would reasonably be likely to result in (i) any representation or warranty set forth in **ARTICLE IV** being or becoming untrue or inaccurate in any material respect as of any date on or after the date hereof (as if then made, except to the extent such representation or warranty is expressly made only as of a specific date, in which case, as of such date), (ii) the failure by Sellers to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by Sellers under this Agreement or (iii) a condition to the Closing set forth in **Section 7.1** or **Section 7.2** becoming incapable of being satisfied; provided, however, that no such notification shall affect or cure a breach of any of Sellers' representations or warranties, a failure to perform any of the covenants or agreements of Sellers or a failure to have satisfied the conditions to the obligations of Sellers under this Agreement. Such notice shall be in form of a certificate signed by an executive officer of Parent setting forth the details of such event and the action which Parent proposes to take with respect thereto.

(b) Purchaser shall give written notice to Sellers as soon as practicable upon becoming aware of any event, circumstance, condition, fact, effect or other matter that resulted in, or that would reasonably be likely to result in (i) any representation or warranty set forth in **ARTICLE V** being or becoming untrue or inaccurate in any material respect with respect to Purchaser as of any date on or after the date hereof (as if then made, except to the extent such representation or warranty is expressly made only as of a specific date, in which case as of such date), (ii) the failure by Purchaser to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by Purchaser under this Agreement or (iii) a condition to the Closing set forth in **Section 7.1** or **Section 7.3** becoming incapable of being satisfied; provided, however, that no such notification shall affect or cure a breach of any of Purchaser's representations or warranties, a failure to perform any of the covenants or agreements of Purchaser or a failure to have satisfied the conditions to the obligations of Purchaser under this Agreement. Such notice shall be in a form of a certificate signed by

an executive officer of Purchaser setting forth the details of such event and the action which Purchaser proposes to take with respect thereto.

Section 6.13 Actions by Affiliates. Each of Purchaser and Sellers shall cause their respective controlled Affiliates, and shall use their reasonable best efforts to ensure that each of their respective other Affiliates (other than Sponsor in the case of Purchaser) takes all actions reasonably necessary to be taken by such Affiliate in order to fulfill the obligations of Purchaser or Sellers, as the case may be, under this Agreement.

Section 6.14 Compliance Remediation. Except with respect to the Excluded Assets or Retained Liabilities, prior to the Closing, Sellers shall use reasonable best efforts to, and shall use reasonable best efforts to cause their Subsidiaries to use their reasonable best efforts to, cure in all material respects any instances of non-compliance with Laws or Orders, failures to possess or maintain Permits or defaults under Permits.

Section 6.15 Product Certification, Recall and Warranty Claims.

(a) From and after the Closing, Purchaser shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Safety Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code and similar Laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by Seller.

(b) From and after the Closing, Purchaser shall be responsible for the administration, management and payment of all Liabilities arising under (i) 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 (ii) Lemon Laws. In connection with the foregoing clause (ii), (A) Purchaser shall continue to address Lemon Law Claims using the same procedural mechanisms previously utilized by the applicable Sellers and (B) for avoidance of doubt, Purchaser shall not assume Liabilities arising under the law of implied warranty or other analogous provisions of state Law, other than Lemon Laws, that provide consumer remedies in addition to or different from those specified in Sellers' express warranties.

(c) For the avoidance of doubt, Liabilities of the Transferred Entities arising from or in connection with products manufactured or sold by the Transferred Entities remain the responsibility of the Transferred Entities and shall be neither Assumed Liabilities nor Retained Liabilities for the purposes of this Agreement.

Section 6.16 Tax Matters; Cooperation.

(a) Prior to the Closing Date, Sellers shall prepare and timely file (or cause to be prepared and timely filed) all Tax Returns required to be filed prior to such date (taking into account any extension of time to file granted or obtained) that relate to Sellers, the Purchased Subsidiaries and the Purchased Assets in a manner consistent with

past practices (except as otherwise required by Law), and shall provide Purchaser prompt opportunity for review and comment and shall obtain Purchaser's written approval prior to filing any such Tax Returns. After the Closing Date, at Purchaser's election, Purchaser shall prepare, and the applicable Seller, Seller Subsidiary or Seller Group member shall timely file, any Tax Return relating to any Seller, Seller Subsidiary or Seller Group member for any Pre-Closing Tax Period or Straddle Period due after the Closing Date or other taxable period of any entity that includes the Closing Date, subject to the right of the applicable Seller to review any such material Tax Return. Purchaser shall prepare and file all other Tax Returns required to be filed after the Closing Date in respect of the Purchased Assets. Sellers shall prepare and file all other Tax Returns relating to the Post-Closing Tax Period of Sellers, subject to the prior review and approval of Purchaser, which approval may be withheld, conditioned or delayed with good reason. No Seller or Seller Group member shall be entitled to any payment or other consideration in addition to the Purchase Price with respect to the acquisition or use of any Tax items or attributes by Purchaser, any Purchased Subsidiary or Affiliates thereof. At Purchaser's request, any Seller or Seller Group member shall designate Purchaser or any of its Affiliates as a substitute agent for the Seller Group for Tax purposes. Purchaser shall be entitled to make all determinations, including the right to make or cause to be made any elections with respect to Taxes and Tax Returns of Sellers, Seller Subsidiaries, Seller Groups and Seller Group members with respect to Pre-Closing Tax Periods and Straddle Periods and with respect to the Tax consequences of the Relevant Transactions (including the treatment of such transactions as an Agreed G Transaction) and the other transactions contemplated by this Agreement, including (i) the "date of distribution or transfer" for purposes of Section 381(b) of the Tax Code, if applicable; (ii) the relevant Tax periods and members of the Seller Group and the Purchaser and its Affiliates; (iii) whether the Purchaser and/or any of its Affiliates shall be treated as a continuation of Seller Group; and (iv) any other determinations required under Section 381 of the Tax Code. Purchaser shall have the sole right to represent the interests, as applicable, of any Seller, Seller Group member or Purchased Subsidiary in any Tax proceeding in connection with any Tax Liability or any Tax item for any Pre-Closing Tax Period, Straddle Period or other Tax period affecting any such earlier Tax period. After the Closing, Purchaser shall have the right to assume control of any PLR or CA request filed by Sellers or any Affiliate thereof, including the right to represent Sellers and their Affiliates and to direct all professionals acting on their behalf in connection with such request, and no settlement, concession, compromise, commitment or other agreements in respect of such PLR or CA request shall be made without Purchaser's prior written consent.

(b) All Taxes required to be paid by any Seller or Seller Group member for any Pre-Closing Tax Period or any Straddle Period shall be timely paid. To the extent a Party hereto is liable for a Tax pursuant to this Agreement and such Tax is paid or payable by another Party or such other Party's Affiliates, the Party liable for such Tax shall make payment in the amount of such Tax to the other Party no later than three (3) days prior to the due date for payment of such Tax, unless a later time for payment is agreed to in writing by such other Party. To the extent that any Seller or Seller Group member receives or realizes the benefit of any Tax refund, abatement or credit that is a Purchased Asset, such Seller or Seller Group member receiving the benefit shall transfer

an amount equal to such refund, abatement or credit to Purchaser within fourteen (14) days of receipt or realization of the benefit.

(c) Purchaser and Sellers shall provide each other with such assistance and non-privileged information relating to the Purchased Assets as may reasonably be requested in connection with any Tax matter, including the matters contemplated by this **Section 6.16**, the preparation of any Tax Return or the performance of any audit, examination or other proceeding by any Taxing Authority, whether conducted in a judicial or administrative forum. Purchaser and Sellers shall retain and provide to each other all non-privileged records and other information reasonably requested by the other and that may be relevant to any such Tax Return, audit, examination or other proceeding.

(d) After the Closing, at Purchaser's election, Purchaser shall exercise exclusive control over the handling, disposition and settlement of any inquiry, examination or proceeding (including an audit) by a Governmental Authority (or that portion of any inquiry, examination or proceeding by a Governmental Authority) with respect to Sellers, any Subsidiary of Sellers or any Seller Group, provided that to the extent any such inquiry, examination or proceeding by a Governmental Authority could materially affect the Taxes due or payable by Sellers, Purchaser shall control the handling, disposition and settlement thereof, subject to reasonable consultation rights of Sellers. Each Party shall notify the other Party (or Parties) in writing promptly upon learning of any such inquiry, examination or proceeding. The Parties and their Affiliates shall cooperate with each other in any such inquiry, examination or proceeding as a Party may reasonably request. Neither Parent nor any of its Affiliates shall extend, without Purchaser's prior written consent, the statute of limitations for any Tax for which Purchaser or any of its Affiliates may be liable.

(e) Notwithstanding anything contained herein, Purchaser shall prepare and Sellers shall timely file all Tax Returns required to be filed in connection with the payment of Transfer Taxes.

(f) From the date of this Agreement to and including the Closing Date, except to the extent relating solely to an Excluded Asset or Retained Liability, no Seller, Seller Group member or Purchased Subsidiary shall, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed, and shall not be withheld if not resulting in any Tax impact on Purchaser or any Purchased Asset), (i) make, change, or terminate any material election with respect to Taxes (including elections with respect to the use of Tax accounting methods) of any Seller, Seller Group member or Purchased Subsidiary or any material joint venture to which any Seller or Purchased Subsidiary is a party, (ii) settle or compromise any Claim or assessment for Taxes (including refunds) that could be reasonably expected to result in any adverse consequence on Purchaser or any Purchased Asset following the Closing Date, (iii) agree to an extension of the statute of limitations with respect to the assessment or collection of the Taxes of any Seller, Seller Group member or Purchased Subsidiary or any material joint venture of which any Seller or Purchased Subsidiary is a party or (iv) make or surrender any Claim for a refund of a material amount of the Taxes of any of

Sellers or Purchased Subsidiaries or file an amended Tax Return with respect to a material amount of Taxes.

(g)

(i) Purchaser shall treat the transactions with respect to Parent described herein, in combination with the subsequent liquidation of Sellers (such transactions, collectively, the "Relevant Transactions"), as a reorganization pursuant to Section 368(a)(1)(G) of the Tax Code with any actual or deemed distribution by Parent qualifying solely under Sections 354 and 356 of the Tax Code but not under Section 355 of the Tax Code (a "G Transaction") if (x) the IRS issues a private letter ruling ("PLR") or executes a closing agreement ("CA"), in each case reasonably acceptable to Purchaser, confirming that the Relevant Transactions shall qualify as a G Transaction for U.S. federal income Tax purposes, or (y) Purchaser determines to treat the Relevant Transactions as so qualifying (clause (x) or (y), an "Agreed G Transaction"). In connection with the foregoing, Sellers shall use their reasonable best efforts to obtain a PLR or execute a CA with respect to the Relevant Transactions at least seven (7) days prior to the Closing Date. At least three (3) days prior to the Closing Date, Purchaser shall advise Parent in writing as to whether Purchaser has made a determination regarding the treatment of the Relevant Transactions for U.S. federal income Tax purposes and, if applicable, the outcome of any such determination.

(ii) On or prior to the Closing Date, Sellers shall deliver to Purchaser all information in the possession of Sellers and their Affiliates that is reasonably related to the determination of whether the Relevant Transactions constitute an Agreed G Transaction ("Relevant Information"), and, after the Closing, Sellers shall promptly provide to Purchaser any newly produced or obtained Relevant Information. For the avoidance of doubt, the Parties shall cooperate in taking any actions and providing any information that Purchaser determines is necessary or appropriate in furtherance of the intended U.S. federal income Tax treatment of the Relevant Transactions and the other transactions contemplated by this Agreement.

(iii) If Purchaser has not determined as of the Closing Date whether to treat the Relevant Transactions as an Agreed G Transaction, Purchaser shall make such determination in accordance with this **Section 6.16** prior to the due date (including validly obtained extensions) for filing the corporate income Tax Return for Parent's U.S. affiliated group (as defined in Section 1504 of the Tax Code) for the taxable year in which the Closing Date occurs, and shall convey such decision in writing to Parent, which decision shall be binding on Parent.

(iv) If the Relevant Transactions constitute an Agreed G Transaction under this **Section 6.16**: (A) Sellers shall use their reasonable best efforts, and Purchaser shall use reasonable best efforts to assist Sellers, to effectuate such treatment and the Parties shall not take any action or position inconsistent with, or

fail to take any necessary action in furtherance of, such treatment (subject to **Section 6.16(g)(vi)**); (B) the Parties agree that this Agreement shall constitute a "plan" of Parent and Purchaser for purposes of Sections 368 and 354 of the Tax Code; (C) the board of directors of Parent and Purchaser shall, by resolution, approve the execution of this Agreement and expressly recognize its treatment as a "plan" of Parent and Purchaser for purposes of Sections 368 and 354 of the Tax Code, and the treatment of the Relevant Transactions as a G Transaction for federal income Tax purposes; (D) Sellers shall provide Purchaser with a statement setting forth the adjusted Tax basis of the Purchased Assets and the amount of net operating losses and other material Tax attributes of Sellers and any Purchased Subsidiary that are available as of the Closing Date and after the close of any taxable year of any Seller or Seller Group member that impacts the numbers previously provided, all based on the best information available, but with no Liability for any errors or omissions in information; and (E) Sellers shall provide Purchaser with an estimate of the cancellation of Indebtedness income that Sellers and any Seller Group member anticipate realizing for the taxable year that includes the Closing Date, and shall provide revised numbers after the close of any taxable year of any Seller or Seller Group member that impacts this number.

(v) If the Relevant Transactions do not constitute an Agreed G Transaction under this **Section 6.16**, the Parties hereby agree, and Sellers hereby consent, to treat the sale of the Purchased Assets by Parent as a taxable asset sale for all Tax purposes, to make any elections pursuant to Section 338 of the Tax Code requested by Purchaser, and to report consistently herewith for purposes of **Section 3.3**. In addition, the Parties hereby agree, and Sellers hereby consent, to treat the sales of the Purchased Assets by S Distribution and Harlem as taxable asset sales for all Tax purposes, to make any elections pursuant to Section 338 of the Tax Code requested by Purchaser, and to report consistently herewith for purposes of **Section 3.3**.

(vi) No Party shall take any position with respect to the Relevant Transactions that is inconsistent with the position determined in accordance with this **Section 6.16**, unless, and then only to the extent, otherwise required to do so by a Final Determination.

(vii) Each Seller shall liquidate, as determined for U.S. federal income Tax purposes and to the satisfaction of Purchaser, no later than December 31, 2011, and each such liquidation may include a distribution of assets to a "liquidating trust" within the meaning of Treas. Reg. § 301.7701-4, the terms of which shall be satisfactory to Purchaser.

(viii) Effective no later than the Closing Date, Purchaser shall be treated as a corporation for federal income Tax purposes.

Section 6.17 Employees; Benefit Plans; Labor Matters.

(a) *Transferred Employees*. Effective as of the Closing Date, Purchaser or one of its Affiliates shall make an offer of employment to each Applicable Employee. Notwithstanding anything herein to the contrary and except as provided in an individual employment Contract with any Applicable Employee or as required by the terms of an Assumed Plan, offers of employment to Applicable Employees whose employment rights are subject to the UAW Collective Bargaining Agreement as of the Closing Date, shall be made in accordance with the applicable terms and conditions of the UAW Collective Bargaining Agreement and Purchaser's obligations under the Labor Management Relations Act of 1974, as amended. Each offer of employment to an Applicable Employee who is not covered by the UAW Collective Bargaining Agreement shall provide, until at least the first anniversary of the Closing Date, for (i) base salary or hourly wage rates initially at least equal to such Applicable Employee's base salary or hourly wage rate in effect as of immediately prior to the Closing Date and (ii) employee pension and welfare benefits, Contracts and arrangements that are not less favorable in the aggregate than those listed on Section 4.10 of the Sellers' Disclosure Schedule, but not including any Retained Plan, equity or equity-based compensation plans or any Benefit Plan that does not comply in all respects with TARP. For the avoidance of doubt, each Applicable Employee on layoff status, leave status or with recall rights as of the Closing Date, shall continue in such status and/or retain such rights after Closing in the Ordinary Course of Business. Each Applicable Employee who accepts employment with Purchaser or one of its Affiliates and commences working for Purchaser or one of its Affiliates shall become a "Transferred Employee." To the extent such offer of employment by Purchaser or its Affiliates is not accepted, Sellers shall, as soon as practicable following the Closing Date, terminate the employment of all such Applicable Employees. Nothing in this **Section 6.17(a)** shall prohibit Purchaser or any of its Affiliates from terminating the employment of any Transferred Employee after the Closing Date, subject to the terms and conditions of the UAW Collective Bargaining Agreement. It is understood that the intent of this **Section 6.17(a)** is to provide a seamless transition from Sellers to Purchaser of any Applicable Employee subject to the UAW Collective Bargaining Agreement. Except for Applicable Employees with non-standard individual agreements providing for severance benefits, until at least the first anniversary of the Closing Date, Purchaser further agrees and acknowledges that it shall provide to each Transferred Employee who is not covered by the UAW Collective Bargaining Agreement and whose employment is involuntarily terminated by Purchaser or its Affiliates on or prior to the first anniversary of the Closing Date, severance benefits that are not less favorable than the severance benefits such Transferred Employee would have received under the applicable Benefit Plans listed on Section 4.10 of the Sellers' Disclosure Schedule. Purchaser or one of its Affiliates shall take all actions necessary such that Transferred Employees shall be credited for their actual and credited service with Sellers and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual (except in the case of a defined benefit pension plan sponsored by Purchaser or any of its Affiliates in which Transferred Employees may commence participation after the Closing that is not an Assumed Plan), in any employee benefit plans (excluding equity compensation plans or programs) covering Transferred Employees after the Closing to the same extent as such Transferred Employee was

entitled as of immediately prior to the Closing Date to credit for such service under any similar employee benefit plans, programs or arrangements of any of Sellers or any Affiliate of Sellers; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such Transferred Employee or the funding for any such benefit. Such benefits shall not be subject to any exclusion for any pre-existing conditions to the extent such conditions were satisfied by such Transferred Employees under a Parent Employee Benefit Plan as of the Closing Date, and credit shall be provided for any deductible or out-of-pocket amounts paid by such Transferred Employee during the plan year in which the Closing Date occurs.

(b) *Employees of Purchased Subsidiaries*. As of the Closing Date, those employees of Purchased Subsidiaries who participate in the Assumed Plans, may, subject to the applicable Collective Bargaining Agreement, for all purposes continue to participate in such Assumed Plans, in accordance with their terms in effect from time to time. For the avoidance of any doubt, Purchaser shall continue the employment of any current Employee of any Purchased Subsidiary covered by the UAW Collective Bargaining Agreement on the terms and conditions of the UAW Collective Bargaining Agreement in effect immediately prior to the Closing Date, subject to its terms; provided, however, that nothing in this Agreement shall be construed to terminate the coverage of any UAW-represented Employee in an Assumed Plan if such Employee was a participant in the Assumed Plan immediately prior to the Closing Date. Further provided, that nothing in this Agreement shall create a direct employment relationship between Parent or Purchaser and an Employee of a Purchased Subsidiary or an Affiliate of Parent.

(c) *No Third Party Beneficiaries*. Nothing contained herein, express or implied, (i) is intended to confer or shall confer upon any Employee or Transferred Employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment, (ii) except as set forth in **Section 9.11**, is intended to confer or shall confer upon any individual or any legal Representative of any individual (including employees, retirees, or dependents or beneficiaries of employees or retirees and including collective bargaining agents or representatives) any right as a third-party beneficiary of this Agreement or (iii) shall be deemed to confer upon any such individual or legal Representative any rights under or with respect to any plan, program or arrangement described in or contemplated by this Agreement, and each such individual or legal Representative shall be entitled to look only to the express terms of any such plans, program or arrangement for his or her rights thereunder. Nothing herein is intended to override the terms and conditions of the UAW Collective Bargaining Agreement.

(d) *Plan Authority*. Nothing contained herein, express or implied, shall prohibit Purchaser or its Affiliates, as applicable, from, subject to applicable Law and the terms of the UAW Collective Bargaining Agreement, adding, deleting or changing providers of benefits, changing, increasing or decreasing co-payments, deductibles or other requirements for coverage or benefits (e.g., utilization review or pre-certification requirements), and/or making other changes in the administration or in the design, coverage and benefits provided to such Transferred Employees. Without reducing the obligations of Purchaser as set forth in **Section 6.17(a)**, no provision of this Agreement

shall be construed as a limitation on the right of Purchaser or its Affiliates, as applicable, to suspend, amend, modify or terminate any employee benefit plan, subject to the terms of the UAW Collective Bargaining Agreement. Further, (i) no provision of this Agreement shall be construed as an amendment to any employee benefit plan, and (ii) no provision of this Agreement shall be construed as limiting Purchaser's or its Affiliate's, as applicable, discretion and authority to interpret the respective employee benefit and compensation plans, agreements arrangements, and programs, in accordance with their terms and applicable Law.

(e) *Assumption of Certain Parent Employee Benefit Plans and Policies.* As of the Closing Date, Purchaser or one of its Affiliates shall assume (i) the Parent Employee Benefit Plans and Policies set forth on Section 6.17(e) of the Sellers' Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto, except for any that do not comply in all respects with TARP or as otherwise provided in **Section 6.17(h)** and (ii) all employee benefit plans, programs, policies, agreements or arrangements (whether written or oral) in which Employees who are covered by the UAW Collective Bargaining Agreement participate and all assets, trusts, insurance and other Contracts relating thereto (the "Assumed Plans"), for the benefit of the Transferred Employees and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Affiliates as the sponsor of such Assumed Plans including all assets, trusts, insurance policies and other Contracts relating thereto. Other than with respect to any Employee who was or is covered by the UAW Collective Bargaining Agreement, Purchaser shall have no Liability with respect to any modifications or changes to Benefit Plans contemplated by Section 6.17(e) of the Sellers' Disclosure Schedule, or changes made by Parent prior to the Closing Date, and Purchaser shall not assume any Liability with respect to any such decisions or actions related thereto, and Purchaser shall only assume the Liabilities for benefits provided pursuant to the written terms and conditions of the Assumed Plan as of the Closing Date. Notwithstanding the foregoing, the assumption of the Assumed Plans is subject to Purchaser taking all necessary action, including reduction of benefits, to ensure that the Assumed Plans comply in all respects with TARP. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement to which Purchaser or one of its Affiliates is a party, Purchaser and its Affiliates may, in its sole discretion, amend, suspend or terminate any such Assumed Plan at any time in accordance with its terms.

(f) *UAW Collective Bargaining Agreement.* Parent shall assume and assign to Purchaser, as of the Closing, the UAW Collective Bargaining Agreement and all rights and Liabilities of Parent relating thereto (including Liabilities for wages, benefits and other compensation, unfair labor practices, grievances, arbitrations and contractual obligations). With respect to the UAW Collective Bargaining Agreement, Purchaser agrees to (i) recognize the UAW as the exclusive collective bargaining representative for the Transferred Employees covered by the terms of the UAW Collective Bargaining Agreement, (ii) offer employment to all Applicable Employees covered by the UAW Collective Bargaining Agreement with full recognition of all seniority rights, (iii) negotiate with the UAW over the terms of any successor collective bargaining agreement upon the expiration of the UAW Collective Bargaining Agreement and upon timely

demand by the UAW, (iv) with the agreement of the UAW or otherwise as provided by Law and to the extent necessary, adopt or assume or replace, effective as of the Closing Date, employee benefit plans, policies, programs, agreements and arrangements specified in or covered by the UAW Collective Bargaining Agreement as required to be provided to the Transferred Employees covered by the UAW Collective Bargaining Agreement, and (v) otherwise abide by all terms and conditions of the UAW Collective Bargaining Agreement. For the avoidance of doubt, the provisions of this **Section 6.17(f)** are not intended to (A) give, and shall not be construed as giving, the UAW or any Transferred Employee any enhanced or additional rights or (B) otherwise restrict the rights that Purchaser and its Affiliates have, under the terms of the UAW Collective Bargaining Agreement.

(g) *UAW Retiree Settlement Agreement.* Prior to the Closing, Purchaser and the UAW shall have entered into the UAW Retiree Settlement Agreement.

(h) *Assumption of Existing Internal VEBA.* Purchaser or one of its Affiliates shall, effective as of the Closing Date, assume from Sellers the sponsorship of the voluntary employees' beneficiary association trust between Sellers and State Street Bank and Trust Company dated as of December 17, 1997, that is funded and maintained by Sellers ("Existing Internal VEBA") and, in connection therewith, Purchaser shall, or shall cause one of its Affiliates to, (i) succeed to all of the rights, title and interest (including the rights of Sellers, if any) as plan sponsor, plan administrator or employer) under the Existing Internal VEBA, (ii) assume any responsibility or Liability relating to the Existing Internal VEBA and each Contract established thereunder or relating thereto, and (iii) to operate the Existing Internal VEBA in accordance with, and to otherwise comply with the Purchaser's obligations under, the New UAW Retiree Settlement Agreement between Purchaser and the UAW, effective as of the Closing and subject to approval by a court having jurisdiction over this matter, including the obligation to direct the trustee of the Existing Internal VEBA to transfer the UAW's share of assets in the Existing Internal VEBA to the New VEBA. The Parties shall cooperate in the execution of any documents, the adoption of any corporate resolutions or the taking of any other reasonable actions to effectuate such succession of the settlor rights, title, and interest with respect to the Existing Internal VEBA. For avoidance of doubt, Purchaser shall not assume any Liabilities relating to the Existing Internal VEBA except with respect to such Contracts set forth in Section 6.17(h) of the Sellers' Disclosure Schedule.

(i) *Wage and Tax Reporting.* Sellers and Purchaser agree to apply, and cause their Affiliates to apply, the standard procedure for successor employers set forth in Revenue Procedure 2004-53 for wage and employment Tax reporting.

(j) *Non-solicitation.* Sellers shall not, for a period of two (2) years from the Closing Date, without Purchaser's written consent, solicit, offer employment to or hire any Transferred Employee.

(k) *Cooperation.* Purchaser and Sellers shall provide each other with such records and information as may be reasonably necessary, appropriate and permitted under applicable Law to carry out their obligations under this **Section 6.17**; provided, that all

records, information systems data bases, computer programs, data rooms and data related to any Assumed Plan or Liabilities of such, assumed by Purchaser, shall be transferred to Purchaser.

(l) *Union Notifications.* Purchaser and Sellers shall reasonably cooperate with each other in connection with any notification required by Law to, or any required consultation with, or the provision of documents and information to, the employees, employee representatives, the UAW and relevant Governmental Authorities and governmental officials concerning the transactions contemplated by this Agreement, including any notice to any of Sellers' retired Employees represented by the UAW, describing the transactions contemplated herein.

(m) *Union-Represented Employees (Non-UAW).*

(i) Effective as of the Closing Date, Purchaser or one of its Affiliates shall assume the collective bargaining agreements, as amended, set forth on Section 6.17(m)(i) of the Sellers' Disclosure Schedule (collectively, the "Non-UAW Collective Bargaining Agreements") and make offers of employment to each current employee of Parent who is covered by them in accordance with the applicable terms and conditions of such Non-UAW Collective Bargaining Agreements, such assumption and offers conditioned upon (A) the non-UAW represented employees' ratification of the amendments thereto (including termination of the application of the Supplemental Agreements Covering Health Care Program to retirees and the reduction to retiree life insurance coverage) and (B) Bankruptcy Court approval of Settlement Agreements between Purchaser and such Unions and Proposed Memorandum of Understanding Regarding Retiree Health Care and Life Insurance between Sellers and such Unions, as identified on Section 6.17(m)(ii) of the Sellers' Disclosure Schedule and satisfaction of all conditions stated therein. Each such non-UAW hourly employee on layoff status, leave status or with recall rights as of the Closing Date shall continue in such status and/or retain such rights after the Closing in the Ordinary Course of Business, subject to the terms of the applicable Non-UAW Collective Bargaining Agreement. Other than as set forth in this **Section 6.17(m)**, no non-UAW collective bargaining agreement shall be assumed by Purchaser.

(ii) Section 6.17(m)(ii) of the Sellers' Disclosure Schedule sets forth agreements relating to post-retirement health care and life insurance coverage for non-UAW retired employees (the "Non-UAW Settlement Agreements"), including those agreements covering retirees who once belonged to Unions that no longer have any active employees at Sellers. Conditioned on both the approval of the Bankruptcy Court and the non-UAW represented employees' ratification of the amendments to the applicable Non-UAW Collective Bargaining Agreement providing for such coverage as described in **Section 6.17(m)(i)** above, Purchaser or one of its Affiliates shall assume and enter into the agreements identified on Section 6.17(m)(ii) of the Sellers' Disclosure Schedule. Except as set forth in those agreements identified on Section 6.17(m)(i) and Section 6.17(m)(ii) of the Sellers' Disclosure Schedule, Purchaser shall not assume any Liability to provide

post-retirement health care or life insurance coverage for current or future hourly non-UAW retirees.

(iii) Other than as expressly set forth in this **Section 6.17(m)**, Purchaser assumes no Employment-Related Obligations for non-UAW hourly Employees. For the avoidance of doubt, (A) the provisions of **Section 6.17(f)** shall not apply to this **Section 6.17(m)** and (B) the provisions of this **Section 6.17(m)** are not intended to (y) give, and shall not be construed as giving, any non-UAW Union or the covered employee or retiree of any Non-UAW Collective Bargaining Agreement any enhanced or additional rights or (z) otherwise restrict the rights that Purchaser and its Affiliates have under the terms of the Non-UAW Collective Bargaining Agreements identified on Section 6.17(m)(i) of the Sellers' Disclosure Schedule.

Section 6.18 TARP. From and after the date hereof and until such time as all amounts under the UST Credit Facilities have been paid in full, forgiven or otherwise extinguished or such longer period as may be required by Law, subject to any applicable Order of the Bankruptcy Court, each of Sellers and Purchaser shall, and shall cause each of their respective Subsidiaries to, take all necessary action to ensure that it complies in all material respects with TARP or any enhanced restrictions on executive compensation agreed to by Sellers and Sponsor prior to the Closing.

Section 6.19 Guarantees; Letters of Credit. Purchaser shall use its reasonable best efforts to cause Purchaser or one or more of its Subsidiaries to be substituted in all respects for each Seller and Excluded Entity, effective as of the Closing Date, in respect of all Liabilities of each Seller and Excluded Entity under each of the guarantees, letters of credit, letters of comfort, bid bonds and performance bonds (a) obtained by any Seller or Excluded Entity for the benefit of the business of Sellers and their Subsidiaries and (b) which is assumed by Purchaser as an Assumed Liability. As a result of such substitution, each Seller and Excluded Entity shall be released of its obligations of, and shall have no Liability following the Closing from, or in connection with any such guarantees, letters of credit, letters of comfort, bid bonds and performance bonds.

Section 6.20 Customs Duties. Purchaser shall reimburse Sellers for all customs-related duties, fees and associated costs incurred by Sellers on behalf of Purchaser with respect to periods following the Closing, including all such duties, fees and costs incurred in connection with co-loaded containers that clear customs intentionally or unintentionally under any Seller's importer or exporter identification numbers and bonds or guarantees with respect to periods following the Closing.

Section 6.21 Termination of Intellectual Property Rights. Each Seller agrees that any rights of any Seller, including any rights arising under Contracts, if any, to any and all of the Intellectual Property transferred to Purchaser pursuant to this Agreement (including indirect transfers resulting from the transfer of the Transferred Equity Interests and including transfers resulting from this **Section 6.21**), whether owned or licensed, shall terminate as of the Closing. Before and after the Closing, each Seller agrees to use its reasonable best efforts to cause the Retained Subsidiaries to do the following, but only to the extent that such Seller can do so

without incurring any Liabilities to such Retained Subsidiaries or their equity owners or creditors as a result thereof: (a) enter into a written Contract with Purchaser that expressly terminates any rights of such Retained Subsidiaries, including any rights arising under Contracts, if any, to any and all of the Intellectual Property transferred to Purchaser pursuant to this Agreement (including indirect transfers resulting from the transfer of the Transferred Equity Interests), whether owned or licensed; and (b) assign to Purchaser or its designee(s): (i) all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted, used, acquired, or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by or associated with such marks, in each case, that are owned by such Retained Subsidiaries and that contain or are confusingly similar with (whether in whole or in part) any of the Trademarks; and (ii) all other intellectual property owned by such Retained Subsidiaries. Nothing in this **Section 6.21** shall preserve any rights of Sellers or the Retained Subsidiaries, or any third parties, that are otherwise terminated or extinguished pursuant to this Agreement or applicable Law, and nothing in this **Section 6.21** shall create any rights of Sellers or the Retained Subsidiaries, or any third parties, that do not already exist as of the date hereof. Notwithstanding anything to the contrary in this **Section 6.21**, Sellers may enter into (and may cause or permit any of the Purchased Subsidiaries to enter into) any of the transactions contemplated by Section 6.2 of the Sellers' Disclosure Schedule.

Section 6.22 Trademarks.

(a) At or before the Closing (i) Parent shall take any and all actions that are reasonably necessary to change the corporate name of Parent to a new name that bears no resemblance to Parent's present corporate name and that does not contain, and is not confusingly similar with, any of the Trademarks; and (ii) to the extent that the corporate name of any Seller (other than Parent) or any Retained Subsidiary resembles Parent's present corporate name or contains or is confusingly similar with any of the Trademarks, Sellers (including Parent) shall take any and all actions that are reasonably necessary to change such corporate names to new names that bear no resemblance to Parent's present corporate name, and that do not contain and are not confusingly similar with any of the Trademarks.

(b) As promptly as practicable following the Closing, but in no event later than ninety (90) days after the Closing (except as set forth in this **Section 6.22(b)**), Sellers shall cease, and shall cause the Retained Subsidiaries to cease, using the Trademarks in any form, whether by removing, permanently obliterating, covering, or otherwise eliminating all Trademarks that appear on any of their assets, including all signs, promotional or advertising literature, labels, stationery, business cards, office forms and packaging materials. During such time period, Sellers and the Retained Subsidiaries may continue to use Trademarks in a manner consistent with their usage of the Trademarks as of immediately prior to the Closing, but only to the extent reasonably necessary for them to continue their operations as contemplated by the Parties as of the

Closing. If requested by Purchaser within a reasonable time after the Closing, Sellers and Retained Subsidiaries shall enter into a written agreement that specifies quality control of such Trademarks and their underlying goods and services. For signs and the like that exist as of the Closing on the Excluded Real Property, if it is not reasonably practicable for Sellers or the Retained Subsidiaries to remove, permanently obliterate, cover or otherwise eliminate the Trademarks from such signs and the like within the time period specified above, then Sellers and the Retained Subsidiaries shall do so as soon as practicable following such time period, but in no event later than one-hundred eighty (180) days following the Closing.

(c) From and after the date of this Agreement and, until the earlier of the Closing or termination of this Agreement, each Seller shall use its reasonable best efforts to protect and maintain the Intellectual Property owned by Sellers that is material to the conduct of its business in a manner that is consistent with the value of such Intellectual Property.

(d) At or prior to the Closing, Sellers shall provide a true, correct and complete list setting forth all worldwide patents, patent applications, trademark registrations and applications and copyright registrations and applications included in the Intellectual Property owned by Sellers.

Section 6.23 Preservation of Records. The Parties shall preserve and keep all books and records that they own immediately after the Closing relating to the Purchased Assets, the Assumed Liabilities and Sellers' operation of the business related thereto prior to the Closing for a period of six (6) years following the Closing Date or for such longer period as may be required by applicable Law, unless disposed of in good faith pursuant to a document retention policy. During such retention period, duly authorized Representatives of a Party shall, upon reasonable notice, have reasonable access during normal business hours to examine, inspect and copy such books and records held by the other Parties for any proper purpose, except as may be prohibited by Law or by the terms of any Contract (including any confidentiality agreement); provided that to the extent that disclosing any such information would reasonably be expected to constitute a waiver of attorney-client, work product or other legal privilege with respect thereto, the Parties shall take all reasonable best efforts to permit such disclosure without the waiver of any such privilege, including entering into an appropriate joint defense agreement in connection with affording access to such information. The access provided pursuant to this **Section 6.23** shall be subject to such additional confidentiality provisions as the disclosing Party may reasonably deem necessary.

Section 6.24 Confidentiality. During the Confidentiality Period, Sellers and their Affiliates shall treat all trade secrets and all other proprietary, legally privileged or sensitive information related to the Transferred Entities, the Purchased Assets and/or the Assumed Liabilities (collectively, the "Confidential Information"), whether furnished before or after the Closing, whether documentary, electronic or oral, labeled or otherwise identified as confidential, and regardless of the form of communication or the manner in which it is or was furnished, as confidential, preserve the confidentiality thereof, not use or disclose to any Person such Confidential Information and instruct their Representatives who have had access to such information to keep confidential such Confidential Information. The "Confidentiality Period"

shall be a period commencing on the date of the Original Agreement and (a) with respect to a trade secret, continuing for as long as it remains a trade secret and (b) for all other Confidential Information, ending four (4) years from the Closing Date. Confidential Information shall be deemed not to include any information that (i) is now available to or is hereafter disclosed in a manner making it available to the general public, in each case, through no act or omission of Sellers, any of their Affiliates or any of their Representatives, or (ii) is required by Law to be disclosed, including any applicable requirements of the SEC or any other Governmental Authority responsible for securities Law regulation and compliance or any stock market or stock exchange on which any Seller's securities are listed.

Section 6.25 Privacy Policies. At or prior to the Closing, Purchaser shall, or shall cause its Subsidiaries to, establish Privacy Policies that are substantially similar to the Privacy Policies of Parent and the Purchased Subsidiaries as of immediately prior to the Closing, and Purchaser or its Affiliates, as applicable, shall honor all "opt-out" requests or preferences made by individuals in accordance with the Privacy Policies of Parent and the Purchased Subsidiaries and applicable Law; provided that such Privacy Policies and any related "opt-out" requests or preferences are delivered or otherwise made available to Purchaser prior to the Closing, to the extent not publicly available.

Section 6.26 Supplements to Sellers' Disclosure Schedule. At any time and from time to time prior to the Closing, Sellers shall have the right to supplement, modify or update Section 4.1 through Section 4.22 of the Sellers' Disclosure Schedule (a) to reflect changes and developments that have arisen after the date of the Original Agreement and that, if they existed prior to the date of the Original Agreement, would have been required to be set forth on such Sellers' Disclosure Schedule or (b) as may be necessary to correct any disclosures contained in such Sellers' Disclosure Schedule or in any representation and warranty of Sellers that has been rendered inaccurate by such changes or developments. No supplement, modification or amendment to Section 4.1 through Section 4.22 of the Sellers' Disclosure Schedule shall without the prior written consent of Purchaser, (i) cure any inaccuracy of any representation and warranty made in this Agreement by Sellers or (ii) give rise to Purchaser's right to terminate this Agreement unless and until this Agreement shall be terminable by Purchaser in accordance with **Section 8.1(f)**.

Section 6.27 Real Property Matters.

(a) Sellers and Purchaser acknowledge that certain real properties (the "Subdivision Properties") may need to be subdivided or otherwise legally partitioned in accordance with applicable Law (a "Required Subdivision") so as to permit the affected Owned Real Property to be conveyed to Purchaser separate and apart from adjacent Excluded Real Property. Section 6.27 of the Sellers' Disclosure Schedule contains a list of the Subdivision Properties that was determined based on the current list of Excluded Real Property. Section 6.27 of the Sellers' Disclosure Schedule may be updated at any time prior to the Closing to either (i) add additional Subdivision Properties or (ii) remove any Subdivision Properties, which have been determined to not require a Required Subdivision or for which a Required Subdivision has been obtained. Purchaser shall pay for all costs incurred to complete all Required Subdivisions. Sellers shall cooperate in good faith with Purchaser in connection with the completion with all Required

Subdivisions, including executing all required applications or other similar documents with Governmental Authorities. To the extent that any Required Subdivision for a Subdivision Property is not completed prior to Closing, then at Closing, Sellers shall lease to Purchaser only that portion of such Subdivision Property that constitutes Owned Real Property pursuant to the Master Lease Agreement (Subdivision Properties) substantially in the form attached hereto as **Exhibit L** (the "Subdivision Master Lease"). Upon completion of a Required Subdivision affecting an Owned Real Property that is subject to the Subdivision Master Lease, the Subdivision Master Lease shall be terminated as to such Owned Real Property and such Owned Real Property shall be conveyed to Purchaser by Quitclaim Deed for One Dollar ($1.00) in stated consideration.

(b) Sellers and Purchaser acknowledge that the Saginaw Nodular Iron facility in Saginaw, Michigan (the "Saginaw Nodular Iron Land") contains a wastewater treatment facility (the "Existing Saginaw Wastewater Facility") and a landfill (the "Saginaw Landfill") that currently serve the Owned Real Property commonly known as the GMPT - Saginaw Metal Casting facility (the "Saginaw Metal Casting Land"). The Saginaw Nodular Iron Land has been designated as an Excluded Real Property under Section 2.2(b)(v) of the Sellers' Disclosure Schedule. At the Closing (or within sixty (60) days after the Closing with respect to the Saginaw Landfill), Sellers shall enter into one or more service agreements with one or more third party contractors (collectively, the "Saginaw Service Contracts") to operate the Existing Saginaw Wastewater Facility and the Saginaw Landfill for the benefit of the Saginaw Metal Casting Land. The terms and conditions of the Saginaw Service Contracts shall be mutually acceptable to Purchaser and Sellers; provided that the term of each Saginaw Service Contract shall not extend beyond December 31, 2012, and Purchaser shall have the right to terminate any Saginaw Service Contract upon prior written notice of not less than forty-five (45) days. At any time during the term of the Saginaw Service Contracts, Purchaser may elect to purchase the Existing Saginaw Wastewater Facility, the Saginaw Landfill, or both, for One Dollar ($1.00) in stated consideration; provided that (i) Purchaser shall pay all costs and fees related to such purchase, including the costs of completing any Required Subdivision necessary to effectuate the terms of this **Section 6.27(b)**, (ii) Sellers shall convey title to the Existing Saginaw Wastewater Facility, the Saginaw Landfill and/or such other portion of the Saginaw Nodular Iron Land as is required by Purchaser to operate the Existing Saginaw Wastewater Facility and/or the Saginaw Landfill, including lagoons, but not any other portion of the Saginaw Nodular Iron Land, to Purchaser by quitclaim deed and (iii) Sellers shall grant Purchaser such easements for utilities over the portion of the Saginaw Nodular Iron Land retained by Sellers as may be required to operate the Existing Saginaw Wastewater Facility and/or the Saginaw Landfill.

(c) Sellers and Purchaser acknowledge that access to certain Excluded Real Property owned by Sellers or other real properties owned by Excluded Entities and certain Owned Real Property that may hereafter be designated as Excluded Real Property on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (a "Landlocked Parcel") is provided over land that is part of the Owned Real Property. To the extent that direct access to a public right-of-way is not obtained for any Landlocked Parcel by the Closing, then at Closing, Purchaser, in its sole election, shall for each such Landlocked Parcel either (i) grant an access easement over a mutually agreeable portion of the adjacent

Owned Real Property for the benefit of the Landlocked Parcel until such time as the Landlocked Parcel obtains direct access to the public right-of-way, pursuant to the terms of a mutually acceptable easement agreement, or (ii) convey to the owner of the affected Landlocked Parcel by quitclaim deed such portion of the adjacent Owned Real Property as is required to provide the Landlocked Parcel with direct access to a public right-of-way.

(d) At and after Closing, Sellers and Purchasers shall cooperate in good faith to investigate and resolve all issues reasonably related to or arising in connection with Shared Executory Contracts that involve the provision of water, water treatment, electricity, fuel, gas, telephone and other utilities to both Owned Real Property and Excluded Real Property.

(e) Parent shall use reasonable best efforts to cause the Willow Run Landlord to execute, within thirty (30) days after the Closing, or at such later date as may be mutually agreed upon, an amendment to the Willow Run Lease which extends the term of the Willow Run Lease until December 31, 2010 with three (3) one-month options to extend, all at the current rental rate under the Willow Run Lease (the "Willow Run Lease Amendment"). In the event that the Willow Run Lease Amendment is approved and executed by the Willow Run Landlord, then Purchaser shall designate the Willow Run Lease as an Assumable Executory Contract and Parent and Purchaser, or one of its designated Subsidiaries, shall enter into an assignment and assumption of the Willow Run Lease substantially in the form attached hereto as **Exhibit M** (the "Assignment and Assumption of Willow Run Lease").

Section 6.28 Equity Incentive Plans. Within a reasonable period of time following the Closing, Purchaser, through its board of directors, will adopt equity incentive plans to be maintained by Purchaser for the benefit of officers, directors, and employees of Purchaser that will provide the opportunity for equity incentive benefits for such persons ("Equity Incentive Plans").

Section 6.29 Purchase of Personal Property Subject to Executory Contracts. With respect to any Personal Property subject to an Executory Contract that is nominally an unexpired lease of Personal Property, if (a) such Contract is recharacterized by a Final Order of the Bankruptcy Court as a secured financing or (b) Purchaser, Sellers and the counterparty to such Contract agree, then Purchaser shall have the option to purchase such personal property by paying to the applicable Seller for the benefit of the counterparty to such Contract an amount equal to the amount, as applicable (i) of such counterparty's allowed secured Claim arising in connection with the recharacterization of such Contract as determined by such Order or (ii) agreed to by Purchaser, Sellers and such counterparty.

Section 6.30 Transfer of Riverfront Holdings, Inc. Equity Interests or Purchased Assets; Ren Cen Lease. Notwithstanding anything to the contrary set forth in this Agreement, in lieu of or in addition to the transfer of Sellers' Equity Interest in Riverfront Holdings, Inc., a Delaware corporation ("RHI"), Purchaser shall have the right at the Closing or at any time during the RHI Post-Closing Period, to require Sellers to cause RHI to transfer good and marketable title to, or a valid and enforceable right by Contract to use, all or any portion of the assets of RHI

to Purchaser. Purchaser shall, at its option, have the right to cause Sellers to postpone the transfer of Sellers' Equity Interest in RHI and/or title to the assets of RHI to Purchaser up until the earlier of (i) January 31, 2010 and (ii) the Business Day immediately prior to the date of the confirmation hearing for Sellers' plan of liquidation or reorganization (the "RHI Post-Closing Period"); provided, however, that (a) Purchaser may cause Sellers to effectuate said transfers at any time and from time to time during the RHI-Post Closing Period upon at least five (5) Business Days' prior written notice to Sellers and (b) at the closing, RHI, as landlord, and Purchaser, or one of its designated Subsidiaries, as tenant, shall enter into a lease agreement substantially in the form attached hereto as **Exhibit N** (the "Ren Cen Lease") for the premises described therein.

Section 6.31 Delphi Agreements. Notwithstanding anything to the contrary in this Agreement, including **Section 6.6**:

(a) Subject to and simultaneously with the consummation of the transactions contemplated by the MDA or of an Acceptable Alternative Transaction (in each case, as defined in the Delphi Motion), (i) the Delphi Transaction Agreements shall, effective immediately upon and simultaneously with such consummation, (A) be deemed to be Assumable Executory Contracts and (B) be assumed and assigned to Purchaser and (ii) the Assumption Effective Date with respect thereto shall be deemed to be the date of such consummation.

(b) The LSA Agreement shall, effective at the Closing, (i) be deemed to be an Assumable Executory Contract and (B) be assumed and assigned to Purchaser and (ii) the Assumption Effective Date with respect thereto shall be deemed to be the Closing Date. To the extent that any such agreement is not an Executory Contract, such agreement shall be deemed to be a Purchased Contract.

Section 6.32 GM Strasbourg S.A. Restructuring. The Parties acknowledge and agree that General Motors International Holdings, Inc., a direct Subsidiary of Parent and the direct parent of GM Strasbourg S.A., may, prior to the Closing, dividend its Equity Interest in GM Strasbourg S.A. to Parent, such that following such dividend, GM Strasbourg S.A. will become a wholly-owned direct Subsidiary of Parent. Notwithstanding anything to the contrary in this Agreement, the Parties further acknowledge and agree that following the consummation of such restructuring at any time prior to the Closing, GM Strasbourg S.A. shall automatically, without further action by the Parties, be designated as an Excluded Entity and deemed to be set forth on Section 2.2(b)(iv) of the Sellers' Disclosure Schedule.

Section 6.33 Holding Company Reorganization. The Parties agree that Purchaser may, with the prior written consent of Sellers, reorganize prior to the Closing such that Purchaser may become a direct or indirect, wholly-owned Subsidiary of Holding Company on such terms and in such manner as is reasonably acceptable to Sellers, and Purchaser may assign all or a portion of its rights and obligations under this Agreement to Holding Company (or one or more newly formed, direct or indirect, wholly-owned Subsidiaries of Holding Company) in accordance with **Section 9.5**. In connection with any restructuring effected pursuant to this **Section 6.33**, the Parties further agree that, notwithstanding anything to the contrary in this Agreement (a) Parent shall receive securities of Holding Company with the same rights and

privileges, and in the same proportions, as the Parent Shares and the Parent Warrants, in each case, in lieu of the Parent Shares and Parent Warrants, as Purchase Price hereunder, (b) Canada, New VEBA and Sponsor shall receive securities of Holding Company with the same rights and privileges, and in the same proportions, as the Canada Shares, VEBA Shares, VEBA Warrant and Sponsor Shares, as applicable, in each case, in connection with the Closing and (c) New VEBA shall receive the VEBA Note issued by the same entity that becomes the obligor on the Purchaser Assumed Debt.

Section 6.34 Transfer of Promark Global Advisors Limited and Promark Investment Trustees Limited Equity Interests. Notwithstanding anything to the contrary set forth in this Agreement, in the event approval by the Financial Services Authority (the "FSA Approval") of the transfer of Sellers' Equity Interests in Promark Global Advisors Limited and Promark Investments Trustees Limited (together, the "Promark UK Subsidiaries") has not been obtained as of the Closing Date, Sellers shall, at their option, have the right to postpone the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries until such time as the FSA Approval is obtained. If the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries is postponed pursuant to this **Section 6.34**, then (a) Sellers and Purchaser shall effectuate the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries no later than five (5) Business Days following the date that the FSA Approval is obtained and (b) Sellers shall enter into a transitional services agreement with Promark Global Advisors, Inc. in the form provided by Promark Global Advisors, Inc., which shall include terms and provisions regarding: (i) certain transitional services to be provided by Promark Global Advisors, Inc. to the Promark UK Subsidiaries, (ii) the continued availability of director and officer liability insurance for directors and officers of the Promark UK Subsidiaries and (iii) certain actions on the part of the Promark UK Subsidiaries to require the prior written consent of Promark Global Advisors, Inc., including changes to employee benefits or compensation, declaration of dividends, material financial transactions, disposition of material assets, entry into material agreements, changes to existing business plans, changes in management and the boards of directors of the Promark UK Subsidiaries and other similar actions.

Section 6.35 Transfer of Equity Interests in Certain Subsidiaries. Notwithstanding anything to the contrary set forth in this Agreement, the Parties may mutually agree to postpone the transfer of Sellers' Equity Interests in those Transferred Entities as are mutually agreed upon by the Parties ("Delayed Closing Entities") to a date following the Closing.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.1 Conditions to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver (to the extent permitted by applicable Law), prior to or at the Closing, of each of the following conditions:

(a) The Bankruptcy Court shall have entered the Sale Approval Order and the Sale Procedures Order on terms acceptable to the Parties and reasonably acceptable to the UAW, and each shall be a Final Order and shall not have been vacated, stayed or

reversed; provided, however, that the conditions contained in this **Section 7.1(a)** shall be satisfied notwithstanding the pendency of an appeal if the effectiveness of the Sale Approval Order has not been stayed.

(b) No Order or Law of a United States Governmental Authority shall be in effect that declares this Agreement invalid or unenforceable or that restrains, enjoins or otherwise prohibits the consummation of the transactions contemplated by this Agreement.

(c) Sponsor shall have delivered, or caused to be delivered to Sellers and Purchaser an equity registration rights agreement, substantially in the form attached hereto as **Exhibit O** (the "Equity Registration Rights Agreement"), duly executed by Sponsor.

(d) Canada shall have delivered, or caused to be delivered to Sellers and Purchaser the Equity Registration Rights Agreement, duly executed by Canada.

(e) The Canadian Debt Contribution shall have been consummated.

(f) The New VEBA shall have delivered, or caused to be delivered to Sellers and Purchaser, the Equity Registration Rights Agreement, duly executed by the New VEBA.

(g) Purchaser shall have received (i) consents from Governmental Authorities, (ii) Permits and (iii) consents from non-Governmental Authorities, in each case with respect to the transactions contemplated by this Agreement and the ownership and operation of the Purchased Assets and Assumed Liabilities by Purchaser from and after the Closing, sufficient in the aggregate to permit Purchaser to own and operate the Purchased Assets and Assumed Liabilities from and after the Closing in substantially the same manner as owned and operated by Sellers immediately prior to the Closing (after giving effect to (A) the implementation of the Viability Plans; (B) Parent's announced shutdown, which began in May 2009; and (C) the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of Parent).

(h) Sellers shall have executed and delivered definitive financing agreements restructuring the Wind Down Facility in accordance with the provisions of **Section 6.9(b)**.

Section 7.2 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver, prior to or at the Closing, of each of the following conditions; provided, however, that in no event may Purchaser waive the conditions contained in **Section 7.2(d)** or **Section 7.2(e)**:

(a) Each of the representations and warranties of Sellers contained in **ARTICLE IV** of this Agreement shall be true and correct (disregarding for the purposes of such determination any qualification as to materiality or Material Adverse Effect) as of

the Closing Date as if made on the Closing Date (except for representations and warranties that speak as of a specific date or time, which representations and warranties shall be true and correct only as of such date or time), except to the extent that any breaches of such representations and warranties, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Material Adverse Effect.

(b) Sellers shall have performed or complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by Sellers prior to or at the Closing.

(c) Sellers shall have delivered, or caused to be delivered, to Purchaser:

(i) a certificate executed as of the Closing Date by a duly authorized representative of Sellers, on behalf of Sellers and not in such authorized representative's individual capacity, certifying that the conditions set forth in **Section 7.2(a)** and **Section 7.2(b)** have been satisfied;

(ii) the Equity Registration Rights Agreement, duly executed by Parent;

(iii) stock certificates or membership interest certificates, if any, evidencing the Transferred Equity Interests (other than in respect of the Equity Interests held by Sellers in RHI, Promark Global Advisors Limited, Promark Investments Trustees Limited and the Delayed Closing Entities, which the Parties agree may be transferred following the Closing in accordance with **Section 6.30**, **Section 6.34** and **Section 6.35**), duly endorsed in blank or accompanied by stock powers (or similar documentation) duly endorsed in blank, in proper form for transfer to Purchaser, including any required stamps affixed thereto;

(iv) an omnibus bill of sale, substantially in the form attached hereto as **Exhibit P** (the "Bill of Sale"), together with transfer tax declarations and all other instruments of conveyance that are necessary to effect transfer to Purchaser of title to the Purchased Assets, each in a form reasonably satisfactory to the Parties and duly executed by the appropriate Seller;

(v) an omnibus assignment and assumption agreement, substantially in the form attached hereto as **Exhibit Q** (the "Assignment and Assumption Agreement"), together with all other instruments of assignment and assumption that are necessary to transfer the Purchased Contracts and Assumed Liabilities to Purchaser, each in a form reasonably satisfactory to the Parties and duly executed by the appropriate Seller;

(vi) a novation agreement, substantially in the form attached hereto as **Exhibit R** (the "Novation Agreement"), duly executed by Sellers and the appropriate United States Governmental Authorities;

(vii) a government related subcontract agreement, substantially in the form attached hereto as **Exhibit S** (the "Government Related Subcontract Agreement"), duly executed by Sellers;

(viii) an omnibus intellectual property assignment agreement, substantially in the form attached hereto as **Exhibit T** (the "Intellectual Property Assignment Agreement"), duly executed by Sellers;

(ix) a transition services agreement, substantially in the form attached hereto as **Exhibit U** (the "Transition Services Agreement"), duly executed by Sellers;

(x) all quitclaim deeds or deeds without warranty (or equivalents for those parcels of Owned Real Property located in jurisdictions outside of the United States), in customary form, subject only to Permitted Encumbrances, conveying the Owned Real Property to Purchaser (the "Quitclaim Deeds"), duly executed by the appropriate Seller;

(xi) all required Transfer Tax or sales disclosure forms relating to the Transferred Real Property (the "Transfer Tax Forms"), duly executed by the appropriate Seller;

(xii) an assignment and assumption of the leases and subleases underlying the Leased Real Property, in substantially the form attached hereto as **Exhibit V** (the "Assignment and Assumption of Real Property Leases"), together with such other instruments of assignment and assumption that are necessary to transfer the leases and subleases underlying the Leased Real Property located in jurisdictions outside of the United States, each duly executed by Sellers; provided, however, that if it is required for the assumption and assignment of any lease or sublease underlying a Leased Real Property that a separate assignment and assumption for such lease or sublease be executed, then a separate assignment and assumption of such lease or sublease shall be executed in a form substantially similar to **Exhibit V** or as otherwise required to assume or assign such Leased Real Property;

(xiii) an assignment and assumption of the lease in respect of the premises located at 2485 Second Avenue, New York, New York, substantially in the form attached hereto as **Exhibit W** (the "Assignment and Assumption of Harlem Lease"), duly executed by Harlem;

(xiv) an omnibus lease agreement in respect of the lease of certain portions of the Excluded Real Property that is owned real property, substantially in the form attached hereto as **Exhibit X** (the "Master Lease Agreement"), duly executed by Parent;

(xv) *[Reserved]*;

(xvi) the Saginaw Service Contracts, if required, duly executed by the appropriate Seller;

(xvii) any easement agreements required under **Section 6.27(c)**, duly executed by the appropriate Seller;

(xviii) the Subdivision Master Lease, if required, duly executed by the appropriate Sellers;

(xix) a certificate of an officer of each Seller (A) certifying that attached to such certificate are true and complete copies of (1) such Seller's Organizational Documents, each as amended through and in effect on the Closing Date and (2) resolutions of the board of directors of such Seller, authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which such Seller is a party, the consummation of the transactions contemplated by this Agreement and such Ancillary Agreements and the matters set forth in **Section 6.16(e)**, and (B) certifying as to the incumbency of the officer(s) of such Seller executing this Agreement and the Ancillary Agreements to which such Seller is a party;

(xx) a certificate in compliance with Treas. Reg. §1.1445-2(b)(2) that each Seller is not a foreign person as defined under Section 897 of the Tax Code;

(xxi) a certificate of good standing for each Seller from the Secretary of State of the State of Delaware;

(xxii) their written agreement to treat the Relevant Transactions and the other transactions contemplated by this Agreement in accordance with Purchaser's determination in **Section 6.16**;

(xxiii) payoff letters and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements), each in a form reasonably satisfactory to the Parties and duly executed by the holders of the secured Indebtedness; and

(xxiv) all books and records of Sellers described in **Section 2.2(a)(xiv)**.

(d) The UAW Collective Bargaining Agreement shall have been ratified by the membership, shall have been assumed by the applicable Sellers and assigned to Purchaser, and shall be in full force and effect.

(e) The UAW Retiree Settlement Agreement shall have been executed and delivered by the UAW and shall have been approved by the Bankruptcy Court as part of the Sale Approval Order.

(f) The Canadian Operations Continuation Agreement shall have been executed and delivered by the parties thereto in the form previously distributed among them.

Section 7.3 Conditions to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver, prior to or at the Closing, of each of the following conditions; provided, however, that in no event may Sellers waive the conditions contained in **Section 7.3(h)** or **Section 7.3(i)**:

(a) Each of the representations and warranties of Purchaser contained in **ARTICLE V** of this Agreement shall be true and correct (disregarding for the purpose of such determination any qualification as to materiality or Purchaser Material Adverse Effect) as of the Closing Date as if made on such date (except for representations and warranties that speak as of a specific date or time, which representations and warranties shall be true and correct only as of such date or time), except to the extent that any breaches of such representations and warranties, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Purchaser Material Adverse Effect.

(b) Purchaser shall have performed or complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers:

(i) Parent Warrant A (including the related warrant agreement), duly executed by Purchaser;

(ii) Parent Warrant B (including the related warrant agreement), duly executed by Purchaser;

(iii) a certificate executed as of the Closing Date by a duly authorized representative of Purchaser, on behalf of Purchaser and not in such authorized representative's individual capacity, certifying that the conditions set forth in **Section 7.3(a)** and **Section 7.3(b)** are satisfied;

(iv) stock certificates evidencing the Parent Shares, duly endorsed in blank or accompanied by stock powers duly endorsed in blank, in proper form for transfer, including any required stamps affixed thereto;

(v) the Equity Registration Rights Agreement, duly executed by Purchaser;

(vi) the Bill of Sale, together with all other documents described in **Section 7.2(c)(iv)**, each duly executed by Purchaser or its designated Subsidiaries;

(vii) the Assignment and Assumption Agreement, together with all other documents described in **Section 7.2(c)(v)**, each duly executed by Purchaser or its designated Subsidiaries;

(viii) the Novation Agreement, duly executed by Purchaser or its designated Subsidiaries;

(ix) the Government Related Subcontract Agreement, duly executed by Purchaser or its designated Subsidiary;

(x) the Intellectual Property Assignment Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xi) the Transition Services Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xii) the Transfer Tax Forms, duly executed by Purchaser or its designated Subsidiaries, to the extent required;

(xiii) the Assignment and Assumption of Real Property Leases, together with all other documents described in **Section 7.2(c)(xii)**, each duly executed by Purchaser or its designated Subsidiaries;

(xiv) the Assignment and Assumption of Harlem Lease, duly executed by Purchaser or its designated Subsidiaries;

(xv) the Master Lease Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xvi) *[Reserved]*;

(xvii) the Subdivision Master Lease, if required, duly executed by Purchaser or its designated Subsidiaries;

(xviii) any easement agreements required under **Section 6.27(c)**, duly executed by Purchaser or its designated Subsidiaries;

(xix) a certificate of a duly authorized representative of Purchaser (A) certifying that attached to such certificate are true and complete copies of (1) Purchaser's Organizational Documents, each as amended through and in effect on the Closing Date and (2) resolutions of the board of directors of Purchaser, authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Purchaser is a party, the consummation of the transactions contemplated by this Agreement and such Ancillary Agreements and the matters set forth in **Section 6.16(g)**, and (B) certifying as to the incumbency of the officer(s) of Purchaser executing this Agreement and the Ancillary Agreements to which Purchaser is a party; and

(xx) a certificate of good standing for Purchaser from the Secretary of State of the State of Delaware.

(d) *[Reserved]*

(e) Purchaser shall have filed a certificate of designation for the Preferred Stock, substantially in the form attached hereto as **Exhibit Y**, with the Secretary of State of the State of Delaware.

(f) Purchaser shall have offset the UST Credit Bid Amount against the amount of Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities pursuant to a Bankruptcy Code Section 363(k) credit bid and delivered releases and waivers and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements) with respect to the UST Credit Bid Amount, in a form reasonably satisfactory to the Parties and duly executed by Purchaser in accordance with the applicable requirements in effect on the date hereof, (iii) transferred to Sellers the UST Warrant and (iv) issued to Parent, in accordance with instructions provided by Parent, the Purchaser Shares and the Parent Warrants (duly executed by Purchaser).

(g) Purchaser shall have delivered, or caused to be delivered, to Canada, Sponsor and/or the New VEBA, as applicable:

(i) certificates representing the Canada Shares, the Sponsor Shares and the VEBA Shares in accordance with the applicable equity subscription agreements in effect on the date hereof;

(ii) the Equity Registration Rights Agreement, duly executed by Purchaser;

(iii) the VEBA Warrant (including the related warrant agreement), duly executed by Purchaser; and

(iv) a note, in form and substance consistent with the terms set forth on **Exhibit Z** attached hereto, to the New VEBA (the "VEBA Note").

(h) The UAW Collective Bargaining Agreement shall have been ratified by the membership, shall have been assumed by Purchaser, and shall be in full force and effect.

(i) The UAW Retiree Settlement Agreement shall have been executed and delivered, shall be in full force and effect, and shall have been approved by the Bankruptcy Court as part of the Sale Approval Order.

ARTICLE VIII
TERMINATION

Section 8.1 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time prior to the Closing Date as follows:

(a) by the mutual written consent of Sellers and Purchaser;

(b) by either Sellers or Purchaser, if (i) the Closing shall not have occurred on or before August 15, 2009, or such later date as the Parties may agree in writing, such date not to be later than September 15, 2009 (as extended, the "End Date"), and (ii) the Party seeking to terminate this Agreement pursuant to this **Section 8.1(b)** shall not have breached in any material respect its obligations under this Agreement in any manner that shall have proximately caused the failure of the transactions contemplated hereby to close on or before such date;

(c) by either Sellers or Purchaser, if the Bankruptcy Court shall not have entered the Sale Approval Order by July 10, 2009;

(d) by either Sellers or Purchaser, if any court of competent jurisdiction in the United States or other United States Governmental Authority shall have issued a Final Order permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement or the sale of a material portion of the Purchased Assets;

(e) by Sellers, if Purchaser shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, and such breach or failure to perform has not been cured by the End Date, provided that (i) Sellers shall have given Purchaser written notice, delivered at least thirty (30) days prior to such termination, stating Sellers' intention to terminate this Agreement pursuant to this **Section 8.1(e)** and the basis for such termination and (ii) Sellers shall not have the right to terminate this Agreement pursuant to this **Section 8.1(e)** if Sellers are then in material breach of any its representations, warranties, covenants or other agreements set forth herein;

(f) by Purchaser, if Sellers shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in **Section 7.2(a)** or **Section 7.2(b)** to be fulfilled, (ii) cannot be cured by the End Date, provided that (i) Purchaser shall have given Sellers written notice, delivered at least thirty (30) days prior to such termination, stating Purchaser's intention to terminate this Agreement pursuant to this **Section 8.1(f)** and the basis for such termination and (iii) Purchaser shall not have the right to terminate this Agreement pursuant to this **Section 8.1(f)** if Purchaser is then in material breach of any its representations, warranties, covenants or other agreements set forth herein; or

(g) by either Sellers or Purchaser, if the Bankruptcy Court shall have entered an Order approving an Alternative Transaction.

Section 8.2 Procedure and Effect of Termination.

(a) If this Agreement is terminated pursuant to **Section 8.1**, this Agreement shall become null and void and have no effect, and all obligations of the Parties hereunder shall terminate, except for those obligations of the Parties set forth this **Section 8.2** and **ARTICLE IX**, which shall remain in full force and effect; provided that nothing

herein shall relieve any Party from Liability for any material breach of any of its representations, warranties, covenants or other agreements set forth herein. If this Agreement is terminated as provided herein, all filings, applications and other submissions made pursuant to this Agreement shall, to the extent practicable, be withdrawn from the agency or other Person to which they were made.

(b) If this Agreement is terminated by Sellers or Purchaser pursuant to **Section 8.1(a)** through **Section 8.1(d)** or **Section 8.1(g)** or by Purchaser pursuant to **Section 8.1(f)**, Sellers, severally and not jointly, shall reimburse Purchaser for its reasonable, out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Purchaser in connection with this Agreement and the transactions contemplated hereby (the "Purchaser Expense Reimbursement"). The Purchaser Expense Reimbursement shall be paid as an administrative expense Claim of Sellers pursuant to Section 503(b)(1) of the Bankruptcy Code.

(c) Except as expressly provided for in this **Section 8.2**, any termination of this Agreement pursuant to **Section 8.1** shall be without Liability to Purchaser or Sellers, including any Liability by Sellers to Purchaser for any break-up fee, termination fee, expense reimbursement or other compensation as a result of a termination of this Agreement.

(d) If this Agreement is terminated for any reason, Purchaser shall, and shall cause each of its Affiliates and Representatives to, treat and hold as confidential all Confidential Information, whether documentary, electronic or oral, labeled or otherwise identified as confidential, and regardless of the form of communication or the manner in which it was furnished. For purposes of this **Section 8.2(d)**, Confidential Information shall be deemed not to include any information that (i) is now available to or is hereafter disclosed in a manner making it available to the general public, in each case, through no act or omission of Purchaser, any of its Affiliates or any of their Representatives, or (ii) is required by Law to be disclosed.

ARTICLE IX
MISCELLANEOUS

Section 9.1 Survival of Representations, Warranties, Covenants and Agreements and Consequences of Certain Breaches. The representations and warranties of the Parties contained in this Agreement shall be extinguished by and shall not survive the Closing, and no Claims may be asserted in respect of, and no Party shall have any Liability for any breach of, the representations and warranties. All covenants and agreements contained in this Agreement, including those covenants and agreements set forth in **ARTICLE II** and **ARTICLE VI**, shall survive the Closing indefinitely.

Section 9.2 Notices. Any notice, request, instruction, consent, document or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes (a) upon delivery when personally delivered; (b) on the delivery date after having been sent by a nationally or internationally recognized overnight courier service (charges prepaid); (c) at the time received

when sent by registered or certified mail, return receipt requested, postage prepaid; or (d) at the time when confirmation of successful transmission is received (or the first Business Day following such receipt if the date of such receipt is not a Business Day) if sent by facsimile, in each case, to the recipient at the address or facsimile number, as applicable, indicated below:

If to any Seller:

General Motors Corporation
300 Renaissance Center
Tower 300, 25th Floor, Room D55
M/C 482-C25-D81
Detroit, Michigan 48265-3000
Attn: General Counsel
Tel.: 313-667-3450
Facsimile: 248-267-4584

With copies to:

Jenner & Block LLP
330 North Wabash Avenue
Chicago, Illinois 60611-7603
Attn: Joseph P. Gromacki
Michael T. Wolf
Tel.: 312-222-9350
Facsimile: 312-527-0484

and

Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Harvey R. Miller
Stephen Karotkin
Raymond Gietz
Tel.: 212-310-8000
Facsimile: 212-310-8007

If to Purchaser:

NGMCO, Inc.
c/o The United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington D.C. 20220
Attn: Chief Counsel Office of Financial Stability
Facsimile: 202-927-9225

With a copy to: Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attn: John J. Rapisardi
R. Ronald Hopkinson
Tel.: 212-504-6000
Facsimile: 212-504-6666

provided, however, if any Party shall have designated a different addressee and/or contact information by notice in accordance with this **Section 9.2**, then to the last addressee as so designated.

Section 9.3 Fees and Expenses; No Right of Setoff. Except as otherwise provided in this Agreement, including **Section 8.2(b)**, Purchaser, on the one hand, and each Seller, on the other hand, shall bear its own fees, costs and expenses, including fees and disbursements of counsel, financial advisors, investment bankers, accountants and other agents and representatives, incurred in connection with the negotiation and execution of this Agreement and each Ancillary Agreement and the consummation of the transactions contemplated hereby and thereby. In furtherance of the foregoing, Purchaser shall be solely responsible for (a) all expenses incurred by it in connection with its due diligence review of Sellers and their respective businesses, including surveys, title work, title inspections, title searches, environmental testing or inspections, building inspections, Uniform Commercial Code lien and other searches and (b) any cost (including any filing fees) incurred by it in connection with notarization, registration or recording of this Agreement or an Ancillary Agreement required by applicable Law. No Party nor any of its Affiliates shall have any right of holdback or setoff or assert any Claim or defense with respect to any amounts that may be owed by such Party or its Affiliates to any other Party (or Parties) hereto or its or their Affiliates as a result of and with respect to any amount that may be owing to such Party or its Affiliates under this Agreement, any Ancillary Agreement or any other commercial arrangement entered into in between or among such Parties and/or their respective Affiliates.

Section 9.4 Bulk Sales Laws. Each Party hereto waives compliance by the other Parties with any applicable bulk sales Law.

Section 9.5 Assignment. Neither this Agreement nor any of the rights, interests or obligations provided by this Agreement may be assigned or delegated by any Party (whether by operation of law or otherwise) without the prior written consent of the other Parties, and any such assignment or delegation without such prior written consent shall be null and void; provided, however, that, without the consent of Sellers, Purchaser may assign or direct the transfer on its behalf on or prior to the Closing of all, or any portion, of its rights to purchase, accept and acquire the Purchased Assets and its obligations to assume and thereafter pay or perform as and when due, or otherwise discharge, the Assumed Liabilities, to Holding Company or one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Holding Company or Purchaser; provided, further, that no such assignment or delegation shall relieve Purchaser of any of its obligations under this Agreement. Subject to the preceding sentence and except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 9.6 Amendment. This Agreement may not be amended, modified or supplemented except upon the execution and delivery of a written agreement executed by a duly authorized representative or officer of each of the Parties.

Section 9.7 Waiver. At any time prior to the Closing, each Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties; (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant hereto; or (c) waive compliance with any of the agreements or conditions contained herein (to the extent permitted by Law). Any such waiver or extension by a Party (i) shall be valid only if, and to the extent, set forth in a written instrument signed by a duly authorized representative or officer of the Party to be bound and (ii) shall not constitute, or be construed as, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement. The failure in any one or more instances of a Party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said Party of any breach of any of the terms, covenants or conditions of this Agreement shall not be construed as a subsequent waiver of, or estoppel with respect to, any other terms, covenants, conditions, rights or privileges, but the same will continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Section 9.8 Severability. Whenever possible, each term and provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law. If any term or provision of this Agreement, or the application thereof to any Person or any circumstance, is held to be illegal, invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be legal, valid and enforceable, the intent and purpose of such illegal, invalid or unenforceable provision and (b) the remainder of this Agreement or such term or provision and the application of such term or provision to other Persons or circumstances shall remain in full force and effect and shall not be affected by such illegality, invalidity or unenforceability, nor shall such invalidity or unenforceability affect the legality, validity or enforceability of such term or provision, or the application thereof, in any jurisdiction.

Section 9.9 Counterparts; Facsimiles. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

Section 9.10 Headings. The descriptive headings of the Articles, Sections and paragraphs of, and Schedules and Exhibits to, this Agreement, and the table of contents, table of Exhibits and table of Schedules contained in this Agreement, are included for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit, modify or affect any of the provisions hereof.

Section 9.11 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective permitted successors and

assigns; provided, that (a) for all purposes each of Sponsor, the New VEBA, and Canada shall be express third-party beneficiaries of this Agreement and (b) for purposes of **Section 2.2(a)(x)** and **(xvi)**, **Section 2.2(b)(vii)**, **Section 2.3(a)(x)**, **(xii)**, **(xiii)** and **(xv)**, **Section 2.3(b)(xv)**, **Section 4.6(b)**, **Section 4.10**, **Section 5.4(c)**, **Section 6.2(b)(x)**, **(xv)** and **(xvii)**, **Section 6.4(a)**, **Section 6.4(b)**, **Section 6.6(a)**, **(d)**, **(f)** and **(g)**, **Section 6.11(c)(i)** and **(vi)**, **Section 6.17**, **Section 7.1(a)** and **(f)**, **Section 7.2(d)** and **(e)** and **Section 7.3(g)**, **(h)** and **(i)**, the UAW shall be an express third-party beneficiary of this Agreement. Subject to the preceding sentence, nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to any Person, other than the Parties, their Affiliates and their respective permitted successors or assigns, any legal or equitable Claims, benefits, rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.12 Governing Law. The construction, interpretation and other matters arising out of or in connection with this Agreement (whether arising in contract, tort, equity or otherwise) shall in all respects be governed by and construed (a) to the extent applicable, in accordance with the Bankruptcy Code, and (b) to the extent the Bankruptcy Code is not applicable, in accordance with the Laws of the State of New York, without giving effect to rules governing the conflict of laws.

Section 9.13 Venue and Retention of Jurisdiction. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein); provided, however, that this **Section 9.13** shall not be applicable in the event the Bankruptcy Cases have closed, in which case the Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the federal courts in the Southern District of New York and state courts of the State of New York located in the Borough of Manhattan in the City of New York for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in the federal courts in the Southern District of New York and state courts of the State of New York located in the Borough of Manhattan in the City of New York, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein).

Section 9.14 Waiver of Jury Trial. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN, AND AGREES TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER.

Section 9.15 Risk of Loss. Prior to the Closing, all risk of loss, damage or destruction to all or any part of the Purchased Assets shall be borne exclusively by Sellers.

Section 9.16 Enforcement of Agreement. The Parties agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the

Parties shall, without the posting of a bond, be entitled, subject to a determination by a court of competent jurisdiction, to an injunction or injunctions to prevent any such failure of performance under, or breaches of, this Agreement, and to enforce specifically the terms and provisions hereof and thereof, this being in addition to all other remedies available at law or in equity, and each Party agrees that it will not oppose the granting of such relief on the basis that the requesting Party has an adequate remedy at law.

Section 9.17 Entire Agreement. This Agreement (together with the Ancillary Agreements, the Sellers' Disclosure Schedule and the Exhibits) contains the final, exclusive and entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, among the Parties with respect to the subject matter hereof and thereof. Neither this Agreement nor any Ancillary Agreement shall be deemed to contain or imply any restriction, covenant, representation, warranty, agreement or undertaking of any Party with respect to the transactions contemplated hereby or thereby other than those expressly set forth herein or therein, and none shall be deemed to exist or be inferred with respect to the subject matter hereof.

Section 9.18 Publicity. Prior to the first public announcement of this Agreement and the transactions contemplated hereby, Sellers, on the one hand, and Purchaser, on the other hand, shall consult with each other regarding, and share with each other copies of, their respective communications plans, including draft press releases and related materials, with regard to such announcement. Neither Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party or Parties, as applicable, which approval shall not be unreasonably withheld, conditioned or delayed, unless, in the sole judgment of the Party intending to make such release, disclosure is otherwise required by applicable Law, or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or Sellers list securities; provided, that the Party intending to make such release shall use reasonable best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party or Parties, as applicable, with respect to the text thereof; provided, further, that, notwithstanding anything to the contrary contained in this section, no Party shall be prohibited from publishing, disseminating or otherwise making public, without the prior written approval of the other Party or Parties, as applicable, any materials that are derived from or consistent with the materials included in the communications plan referred to above. In an effort to coordinate consistent communications, the Parties shall agree upon procedures relating to all press releases and public announcements concerning this Agreement and the transactions contemplated hereby.

Section 9.19 No Successor or Transferee Liability. Except where expressly prohibited under applicable Law or otherwise expressly ordered by the Bankruptcy Court, upon the Closing, neither Purchaser nor any of its Affiliates or stockholders shall be deemed to (a) be the successor of Sellers; (b) have, de facto, or otherwise, merged with or into Sellers; (c) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (d) other than as set forth in this Agreement, be liable for any acts or omissions of Sellers in the conduct of Sellers' business or arising under or related to the Purchased Assets. Without limiting

the generality of the foregoing, and except as otherwise provided in this Agreement, neither Purchaser nor any of its Affiliates or stockholders shall be liable for any Claims against Sellers or any of their predecessors or Affiliates, and neither Purchaser nor any of its Affiliates or stockholders shall have any successor, transferee or vicarious Liability of any kind or character whether known or unknown as of the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to Sellers' business or any obligations of Sellers arising prior to the Closing, except as provided in this Agreement, including Liabilities on account of any Taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of Sellers' business prior to the Closing.

Section 9.20 Time Periods. Unless otherwise specified in this Agreement, an action required under this Agreement to be taken within a certain number of days or any other time period specified herein shall be taken within the applicable number of calendar days (and not Business Days); provided, however, that if the last day for taking such action falls on a day that is not a Business Day, the period during which such action may be taken shall be automatically extended to the next Business Day.

Section 9.21 Sellers' Disclosure Schedule. The representations and warranties of Sellers set forth in this Agreement are made and given subject to the disclosures contained in the Sellers' Disclosure Schedule. Inclusion of information in the Sellers' Disclosure Schedule shall not be construed as an admission that such information is material to the business, operations or condition of the business of Sellers, the Purchased Assets or the Assumed Liabilities, taken in part or as a whole, or as an admission of Liability of any Seller to any third party. The specific disclosures set forth in the Sellers' Disclosure Schedule have been organized to correspond to Section references in this Agreement to which the disclosure may be most likely to relate; provided, however, that any disclosure in the Sellers' Disclosure Schedule shall apply to, and shall be deemed to be disclosed for, any other Section of this Agreement to the extent the relevance of such disclosure to such other Section is reasonably apparent on its face.

Section 9.22 No Binding Effect. Notwithstanding anything in this Agreement to the contrary, no provision of this Agreement shall (i) be binding on or create any obligation on the part of Sponsor, the United States Government or any branch, agency or political subdivision thereof (a "Sponsor Affiliate") or the Government of Canada, or any crown corporation, agency or department thereof (a "Canada Affiliate") or (ii) require Purchaser to initiate any Claim or other action against Sponsor or any Sponsor Affiliate or otherwise attempt to cause Sponsor, any Sponsor Affiliate, Government of Canada or any Canada Affiliate to comply with or abide by the terms of this Agreement. No facts, materials or other information received or action taken by any Person who is an officer, director or agent of Purchaser by virtue of such Person's affiliation with or employment by Sponsor, any Sponsor Affiliate, Government of Canada or any Canada Affiliate shall be attributed to Purchaser for purposes of this Agreement or shall form the basis of any claim against such Person in their individual capacity.

[Remainder of the page left intentionally blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
Title: Vice President and Treasurer

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By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
Title: Vice President and Treasurer

FIRST AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT, dated as of June 30, 2009 (this "Amendment"), is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, Sellers and Purchaser have entered into that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (the "Purchase Agreement"); and

WHEREAS, the Parties desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Section 1. *Capitalized Terms.* All capitalized terms used but not defined herein shall have the meanings specified in the Purchase Agreement.

Section 2. *Amendments to Purchase Agreement.*

(a) **Section 2.3(a)(v)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Cases through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases, to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers' Liabilities in clauses (A) and (B) above include all of Sellers' Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes and other Liabilities mentioned in the Bankruptcy Court's Order - Docket No. 174), in each case, other than (1) Liabilities of the type described in **Section 2.3(b)(iv)**, **Section 2.3(b)(vi)**, **Section 2.3(b)(ix)** and **Section 2.3(b)(xii)**, (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)**;

(b) **Section 2.3(a)(ix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (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 death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date and arising from such motor vehicles' operation or performance (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);

(c) **Section 2.3(b)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all workers' compensation Claims with respect to Employees residing or employed in, as the case may be and as defined by applicable Law, (A) the states set forth on **Exhibit G** and (B) if the State of Michigan (1) fails to authorize Purchaser and its Affiliates operating within the State of Michigan to be a self-insurer for purposes of administering workers' compensation Claims or (2) requires Purchaser and its Affiliates operating within the State of Michigan to post collateral, bonds or other forms of security to secure workers' compensation Claims, the State of Michigan (collectively, "Retained Workers' Compensation Claims");

(d) **Section 6.6(d)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (d) All Assumable Executory Contracts shall be assumed and assigned to Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the date designated by the Purchaser and (ii) the date following expiration of the objection deadline if no objection, other than to the Cure Amount, has been timely filed or the date of resolution of any objection unrelated to Cure Amount, as provided in the Sale Procedures Order; provided, however, that in the case of each (A) Assumable Executory Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule, (2) Deferred Termination Agreement (and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement)

designated as an Assumable Executory Contract and (3) Participation Agreement (and the related Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract, the Assumption Effective Date shall be the Closing Date and (B) Assumable Executory Contract identified on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, the Assumption Effective Date shall be a date that is no later than the date set forth with respect to such Executory Contract on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule. As soon as reasonably practicable following a determination that an Executory Contract shall be designated as an Assumable Executory Contract hereunder, Sellers shall use reasonable best efforts to notify each third party to such Executory Contract of their intention to assume and assign such Executory Contract in accordance with the terms of this Agreement and the Sale Procedures Order. On the Assumption Effective Date for any Assumable Executory Contract, such Assumable Executory Contract shall be deemed to be a Purchased Contract hereunder. If it is determined under the procedures set forth in the Sale Procedures Order that Sellers may not assume and assign to Purchaser any Assumable Executory Contract, such Executory Contract shall cease to be an Assumable Executory Contract and shall be an Excluded Contract and a Rejectable Executory Contract. Except as provided in **Section 6.31**, notwithstanding anything else to the contrary herein, any Executory Contract that has not been specifically designated as an Assumable Executory Contract as of the Executory Contract Designation Deadline applicable to such Executory Contract, including any Deferred Executory Contract, shall automatically be deemed to be a Rejectable Executory Contract and an Excluded Contract hereunder. Sellers shall have the right, but not the obligation, to reject, at any time, any Rejectable Executory Contract; provided, however, that Sellers shall not reject any Contract that affects both Owned Real Property and Excluded Real Property (whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule), including any such Executory Contract that involves the provision of water, water treatment, electric, fuel, gas, telephone and other utilities to any facilities located at the Excluded Real Property, whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (the "Shared Executory Contracts"), without the prior written consent of Purchaser.

Section 3. Effectiveness of Amendment. Upon the execution and delivery hereof, the Purchase Agreement shall thereupon be deemed to be amended and restated as set forth in Section 2, as fully and with the same effect as if such amendments and restatements were originally set forth in the Purchase Agreement.

Section 4. Ratification of Purchase Agreement; Incorporation by Reference. Except as specifically provided for in this Amendment, the Purchase Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement, including **Article IX** thereof, which sections are hereby incorporated into this Amendment, mutatis mutandis, as if they were set forth in their entirety herein.

Section 5. *Counterparts.* This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

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Name: Sadiq Malik
Title: Vice President and Treasurer

SECOND AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT, dated as of July 5, 2009 (this "Amendment"), is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, Sellers and Purchaser have entered into that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended, the "Purchase Agreement");

WHEREAS, Sellers and Purchaser have entered into that certain First Amendment to Amended and Restated Master and Purchase Agreement; and

WHEREAS, the Parties desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Section 1. *Capitalized Terms.* All capitalized terms used but not defined herein shall have the meanings specified in the Purchase Agreement.

Section 2. *Amendments to Purchase Agreement.*

(a) The following new definition of "Advanced Technology Credits" is hereby included in **Section 1.1** of the Purchase Agreement:

> "Advanced Technology Credits" has the meaning set forth in **Section 6.36**.

(b) The following new definition of "Advanced Technology Projects" is hereby included in **Section 1.1** of the Purchase Agreement:

> "Advanced Technology Projects" means development, design, engineering and production of advanced technology vehicles and components, including the vehicles known as "the Volt", "the Cruze" and components, transmissions and systems for vehicles employing hybrid technologies.

(c) The definition of "Ancillary Agreements" is hereby amended and restated in its entirety to read as follows:

"Ancillary Agreements" means the Parent Warrants, the UAW Active Labor Modifications, the UAW Retiree Settlement Agreement, the VEBA Warrant, the Equity Registration Rights Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Intellectual Property Assignment Agreement, the Transition Services Agreement, the Quitclaim Deeds, the Assignment and Assumption of Real Property Leases, the Assignment and Assumption of Harlem Lease, the Master Lease Agreement, the Subdivision Master Lease (if required), the Saginaw Service Contracts (if required), the Assignment and Assumption of Willow Run Lease, the Ren Cen Lease, the VEBA Note and each other agreement or document executed by the Parties pursuant to this Agreement or any of the foregoing and each certificate and other document to be delivered by the Parties pursuant to **ARTICLE VII**.

(d) The following new definition of "Excess Estimated Unsecured Claim Amount" is hereby included in **Section 1.1** of the Purchase Agreement:

"Excess Estimated Unsecured Claim Amount" has the meaning set forth in **Section 3.2(c)(i)**.

(e) The definition of "Permitted Encumbrances" is hereby amended and restated in its entirety to read as follows:

"Permitted Encumbrances" means all (i) purchase money security interests arising in the Ordinary Course of Business; (ii) security interests relating to progress payments created or arising pursuant to government Contracts in the Ordinary Course of Business; (iii) security interests relating to vendor tooling arising in the Ordinary Course of Business; (iv) Encumbrances that have been or may be created by or with the written consent of Purchaser; (v) mechanic's, materialmen's, laborer's, workmen's, repairmen's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings; (vi) liens for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties); (vii) with respect to the Transferred Real Property that is Owned Real Property, other than Secured Real Property Encumbrances at and following the Closing: (a) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose, the existence of which, individually or in the aggregate, would not materially and adversely interfere with the present use of the affected property; (b) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Owned Real Property; (c) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Owned Real Property, which, individually or in the aggregate, would not materially and adversely interfere with the present use

of the applicable Owned Real Property; and (d) such other Encumbrances, the existence of which, individually or in the aggregate, would not materially and adversely interfere with or affect the present use or occupancy of the applicable Owned Real Property; (viii) with respect to the Transferred Real Property that is Leased Real Property: (1) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose; (2) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Leased Real Property; (3) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Leased Real Property or which have otherwise been imposed on such property by landlords; (ix) in the case of the Transferred Equity Interests, all restrictions and obligations contained in any Organizational Document, joint venture agreement, shareholders agreement, voting agreement and related documents and agreements, in each case, affecting the Transferred Equity Interests; (x) except to the extent otherwise agreed to in the Ratification Agreement entered into by Sellers and GMAC on June 1, 2009 and approved by the Bankruptcy Court on the date thereof or any other written agreement between GMAC or any of its Subsidiaries and any Seller, all Claims (in each case solely to the extent such Claims constitute Encumbrances) and Encumbrances in favor of GMAC or any of its Subsidiaries in, upon or with respect to any property of Sellers or in which Sellers have an interest, including any of the following: (1) cash, deposits, certificates of deposit, deposit accounts, escrow funds, surety bonds, letters of credit and similar agreements and instruments; (2) owned or leased equipment; (3) owned or leased real property; (4) motor vehicles, inventory, equipment, statements of origin, certificates of title, accounts, chattel paper, general intangibles, documents and instruments of dealers, including property of dealers in-transit to, surrendered or returned by or repossessed from dealers or otherwise in any Seller's possession or under its control; (5) property securing obligations of Sellers under derivatives Contracts; (6) rights or property with respect to which a Claim or Encumbrance in favor of GMAC or any of its Subsidiaries is disclosed in any filing made by Parent with the SEC (including any filed exhibit); and (7) supporting obligations, insurance rights and Claims against third parties relating to the foregoing; and (xi) all rights of setoff and/or recoupment that are Encumbrances in favor of GMAC and/or its Subsidiaries against amounts owed to Sellers and/or any of their Subsidiaries with respect to any property of Sellers or in which Sellers have an interest as more fully described in clause (x) above; it being understood that nothing in this clause (xi) or preceding clause (x) shall be deemed to modify, amend or otherwise change any agreement as between GMAC or any of its Subsidiaries and any Seller.

(f) The following new definition of "Purchaser Escrow Funds" is hereby included in **Section 1.1** of the Purchase Agreement:

"Purchaser Escrow Funds" has the meaning set forth in **Section 2.2(a)(xx)**.

(g) **Section 2.2(a)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all credits, Advanced Technology Credits, deferred charges, prepaid expenses, deposits, advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating to the Purchased Assets or Assumed Liabilities, including all warranties, rights and guarantees (whether express or implied) made by suppliers, manufacturers, contractors and other third parties under or in connection with the Purchased Contracts;

(h) **Section 2.2(a)(xviii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xviii) any rights of any Seller, Subsidiary of any Seller or Seller Group member to any Tax refunds, credits or abatements that relate to any Pre-Closing Tax Period or Straddle Period;

(i) **Section 2.2(a)(xix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xix) any interest in Excluded Insurance Policies, only to the extent such interest relates to any Purchased Asset or Assumed Liability; and

(j) A new **Section 2.2(a)(xx)** is hereby added to the Purchase Agreement to read as follows:

> (xx) all cash and cash equivalents, including all marketable securities, held in (1) escrow pursuant to, or as contemplated by that certain letter agreement dated as of June 30, 2009, by and between Parent, Citicorp USA, Inc., as Bank Representative, and Citibank, N.A., as Escrow Agent or (2) any escrow established in contemplation or for the purpose of the Closing, that would otherwise constitute a Purchased Asset pursuant to **Section 2.2(a)(i)** (collectively, "Purchaser Escrow Funds");

(k) **Section 2.2(b)(i)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (i) cash or cash equivalents in an amount equal to $1,175,000,000 (the "Excluded Cash");

(l) **Section 2.2(b)(ii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (ii) all Restricted Cash exclusively relating to the Excluded Assets or Retained Liabilities, which for the avoidance of doubt, shall not be deemed to include Purchaser Escrow Funds;

(m) **Section 2.3(a)(viii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (viii) all Liabilities arising under any Environmental Law (A) relating to 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;

(n) **Section 2.3(a)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all Liabilities (A) specifically assumed by Purchaser pursuant to **Section 6.17** or (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;

(o) **Section 2.3(b)(iv)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (iv) all Liabilities (A) associated with noncompliance with Environmental Laws (including for fines, penalties, damages and remedies); (B) arising out of, relating to, in respect of or in connection with the transportation, off-site storage or off-site disposal of any Hazardous Materials generated or located at any Transferred Real Property; (C) arising out of, relating to, in respect of or in connection with third party Claims related to Hazardous Materials that were or are located at or that were Released into the Environment from Transferred Real Property prior to the Closing, except as otherwise required under applicable Environmental Laws; (D) arising under Environmental Laws related to the Excluded Real Property, except as provided under Section 18.2(e) of the Master Lease Agreement or as provided under the "Facility Idling Process" section of Schedule A of the Transition Services Agreement; or (E) for environmental Liabilities with respect to real property formerly owned, operated or leased by Sellers (as of the Closing), which, in the case of clauses (A), (B) and (C), arose prior to or at the Closing, and which, in the case of clause (D) and (E), arise prior to, at or after the Closing;

(p) **Section 2.3(b)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all workers' compensation Claims with respect to Employees residing or employed in, as the case may be and as defined by applicable Law, the states set forth on **Exhibit G** (collectively, "Retained Workers' Compensation Claims");

(q) **Section 3.2(a)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(a) The purchase price (the "Purchase Price") shall be equal to the sum of:

(i) a Bankruptcy Code Section 363(k) credit bid in an amount equal to: (A) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing pursuant to the UST Credit Facilities, and (B) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing under the DIP Facility, less $8,247,488,605 of Indebtedness under the DIP Facility (such amount, the "UST Credit Bid Amount");

(ii) the UST Warrant (which the Parties agree has a value of no less than $1,000);

(iii) the valid issuance by Purchaser to Parent of (A) 50,000,000 shares of Common Stock (collectively, the "Parent Shares") and (B) the Parent Warrants; and

(iv) the assumption by Purchaser or its designated Subsidiaries of the Assumed Liabilities.

For the avoidance of doubt, immediately following the Closing, the only indebtedness for borrowed money (or any guarantees thereof) of Sellers and their Subsidiaries to Sponsor, Canada and Export Development Canada is amounts under the Wind Down Facility.

(r) **Section 3.2(c)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(c)

(i) Sellers may, at any time, seek an Order of the Bankruptcy Court (the "Claims Estimate Order"), which Order may be the Order confirming Sellers' Chapter 11 plan, estimating the aggregate allowed general unsecured claims against Sellers' estates. If in the Claims Estimate Order, the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against Sellers' estates exceed $35,000,000,000, then Purchaser will, within five (5) Business Days of entry of the Claims Estimate Order, issue additional shares of Common Stock (the "Adjustment Shares") to Parent, as an adjustment to the Purchase Price, based on the extent by which such estimated aggregate general unsecured claims exceed $35,000,000,000 (such amount, the "Excess Estimated Unsecured Claim Amount;" in the event this amount exceeds $7,000,000,000 the Excess Estimated Unsecured Claim Amount will be reduced to a cap of $7,000,000,000). The number of Adjustment Shares to be issued will be equal to the number of shares, rounded up to the next whole share, calculated by multiplying (i) 10,000,000 shares of Common Stock (adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization, merger, consolidation, reorganization or similar transaction with respect to the

Common Stock, effected from and after the Closing and before issuance of the Adjustment Shares) and (ii) a fraction, (A) the numerator of which is Excess Estimated Unsecured Claim Amount (capped at $7,000,000,000) and (B) the denominator of which is $7,000,000,000.

(ii) At the Closing, Purchaser will have authorized and, thereafter, will reserve for issuance the maximum number of shares of Common Stock issuable as Adjustment Shares.

(s) **Section 6.9(b)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(b) Sellers shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of $1,175,000,000 of Indebtedness accrued under the DIP Facility (as restructured, the "Wind Down Facility") to provide for such Wind Down Facility to be non-recourse, to accrue payment-in-kind interest at the Eurodollar Rate (as defined in the Wind-Down Facility) plus 300 basis points, to be secured by all assets of Sellers (other than the Parent Shares, Adjustment Shares, Parent Warrants and any securities or proceeds received in respect thereof). Sellers shall use reasonable best efforts to enter into definitive financing agreements with respect to the Wind Down Facility so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

(t) **Section 6.17(e)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(e) *Assumption of Certain Parent Employee Benefit Plans and Policies*. As of the Closing Date, Purchaser or one of its Affiliates shall assume (i) the Parent Employee Benefit Plans and Policies set forth on Section 6.17(e) of the Sellers' Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto, except for any that do not comply in all respects with TARP or as otherwise provided in **Section 6.17(h)** and (ii) all employee benefit plans, programs, policies, agreements or arrangements (whether written or oral) in which Employees who are covered by the UAW Collective Bargaining Agreement participate and all assets, trusts, insurance and other Contracts relating thereto (collectively, the "Assumed Plans"), and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Affiliates as the sponsor of such Assumed Plans including all assets, trusts, insurance policies and other Contracts relating thereto. Other than with respect to any Employee who was or is covered by the UAW Collective Bargaining Agreement, Purchaser shall have no Liability with respect to any modifications or changes to Benefit Plans contemplated by Section 6.17(e) of the Sellers' Disclosure Schedule, or changes made by Parent prior to the Closing Date, and Purchaser shall not assume any Liability with respect to any such decisions or actions related thereto, and Purchaser shall only assume the Liabilities for benefits provided pursuant to the written terms and conditions of

the Assumed Plan as of the Closing Date. Notwithstanding the foregoing, the assumption of the Assumed Plans is subject to Purchaser taking all necessary action, including reduction of benefits, to ensure that the Assumed Plans comply in all respects with TARP. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement to which Purchaser or one of its Affiliates is a party, Purchaser and its Affiliates may, in its sole discretion, amend, suspend or terminate any such Assumed Plan at any time in accordance with its terms.

(u) A new **Section 6.17(n)** is hereby added to the Purchase Agreement to read as follows:

(n) *Harlem Employees*. With respect to non-UAW employees of Harlem, Purchaser or one of its Affiliates may make offers of employment to such individuals at its discretion. With respect to UAW-represented employees of Harlem and such other non-UAW employees who accept offers of employment with Purchaser or one of its Affiliates, in addition to obligations under the UAW Collective Bargaining Agreement with respect to UAW-represented employees, Purchaser shall assume all Liabilities arising out of, relating to or in connection with the salaries and/or wages and vacation of all such individuals that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date. With respect to non-UAW employees of Harlem who accept such offers of employment, Purchaser or one of its Affiliates shall take all actions necessary such that such individuals shall be credited for their actual and credited service with Sellers and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual in any employee benefit plans (excluding equity compensation plans or programs) covering such individuals after the Closing; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such individual or the funding for any such benefit. Purchaser or one of its Affiliates, in its sole discretion, may assume certain employee benefit plans maintained by Harlem by delivering written notice (which such notice shall indentify such employee benefit plans of Harlem to be assumed) to Sellers of such assumption on or before the Closing, and upon delivery of such notice, such employee benefit plans shall automatically be deemed to be set forth on Section 6.17(e) of the Sellers' Disclosure Schedules. All such employee benefit plans that are assumed by Purchaser or one of its Affiliates pursuant to the preceding sentence shall be deemed to be Assumed Plans for purposes of this Agreement.

(v) A new **Section 6.36** is hereby added to the Purchase Agreement to read as follows:

Section 6.36 Advanced Technology Credits. The Parties agree that Purchaser shall, to the extent permissible by applicable Law (including all rules, regulations and policies pertaining to Advanced Technology Projects), be entitled to receive full credit for expenditures incurred by Sellers prior to the Closing towards Advanced Technology Projects for the purpose of any current or future program sponsored by a Governmental Authority providing financial assistance in

connection with any such project, including any program pursuant to Section 136 of the Energy Independence and Security Act of 2007 ("Advanced Technology Credits"), and acknowledge that the Purchase Price includes and represents consideration for the full value of such expenditures incurred by Sellers.

(w) **Section 7.2(c)(vi)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(vi) *[Reserved]*;

(x) **Section 7.2(c)(vii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(vii) *[Reserved]*;

(y) **Section 7.3(c)(viii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(viii) *[Reserved]*;

(z) **Section 7.3(c)(ix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(ix) *[Reserved]*;

(aa) **Section 7.3(f)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(f) Purchaser shall have (i) offset the UST Credit Bid Amount against the amount of Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities and the DIP Facility pursuant to a Bankruptcy Code Section 363(k) credit bid and delivered releases and waivers and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements) with respect to the UST Credit Bid Amount, in a form reasonably satisfactory to the Parties and duly executed by Purchaser in accordance with the applicable requirements in effect on the date hereof, (ii) transferred to Sellers the UST Warrant and (iii) issued to Parent, in accordance with instructions provided by Parent, the Purchaser Shares and the Parent Warrants (duly executed by Purchaser).

(bb) **Exhibit R** to the Purchase Agreement is hereby deleted in its entirety.

(cc) **Exhibit S** to the Purchase Agreement is hereby deleted in its entirety.

(dd) **Exhibit U** to the Purchase Agreement is hereby replaced in its entirety with **Exhibit U** attached hereto.

(ee) **Exhibit X** to the Purchase Agreement is hereby replaced in its entirety with **Exhibit X** attached hereto.

(ff) Section 2.2(b)(iv) of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 2.2(b)(iv) of the Sellers' Disclosure Schedule attached hereto.

(gg) Section 4.4 of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 4.4 of the Sellers' Disclosure Schedule attached hereto.

(hh) Section 6.6(a)(i) of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 6.6(a)(i) of the Sellers' Disclosure Schedule attached hereto.

Section 3. *Effectiveness of Amendment.* Upon the execution and delivery hereof, the Purchase Agreement shall thereupon be deemed to be amended and restated as set forth in Section 2, as fully and with the same effect as if such amendments and restatements were originally set forth in the Purchase Agreement.

Section 4. *Ratification of Purchase Agreement; Incorporation by Reference.* Except as specifically provided for in this Amendment, the Purchase Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement, including **Article IX** thereof, which sections are hereby incorporated into this Amendment, mutatis mutandis, as if they were set forth in their entirety herein.

Section 5. *Counterparts.* This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

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Lawrence S. Buonomo
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February 13, 2014

Via e-mail (MBerry@mberrylaw.com)

Michele L Berry, Esq.
Law Offices of Michelle Berry LLC
114 East 8th Street
Cincinnati, Ohio 45202

Via Federal Express

Michael Kanovitz, Esq.
David B. Owens, Esq.
Loevy & Loevy
312 North May St., Suite 100
Chicago, IL 60607

Re: **Gillispie v. The City of Miami Township, et al**
Civil Action 3:13-cv-00416 (Southern District of Ohio) (the "Action")

Dear Counsel:

I represent General Motors LLC f/k/a General Motors Company and NGMco, Inc. (together "New GM"). The referenced Action was served upon New GM's registered agent on February 13, 2014.

The Action, which seeks damages relating to events alleged to have occurred in the late 1980's and early 1990's, names New GM as a defendant based upon an allegation that it "is the successor in interest and owner of substantially all of Motors Liquidation Company f/k/a General Motors Corporation's assets and bears liability for any judgment entered against GM as a result of this lawsuit." Complaint, ¶12. That premise is erroneous. In fact, the assertion of the Action against New GM constitutes violation of a binding final order of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). Accordingly, I write to request that General Motors LLC be voluntarily dismissed from the action.

As you undoubtedly know, Motors Liquidation Company f/k/a General Motors Corporation ("MLC") filed a proceeding pursuant to Chapter 11 of the Bankruptcy Code in the Bankruptcy court on June 1, 2009. On July 10, 2009, New GM acquired substantially all of the assets of MLC in a transaction

approved by the "Bankruptcy Court" pursuant to Section 363 of the Bankruptcy Code. *See generally In re General Motors Corp.,* 407 B.R. 463 (Bankr., SDNY 2009)("Sale Opinion")(approving sale transaction). In acquiring these assets, New GM did not assume the liabilities of General Motors Corporation. *Id.,* 407 B.R. at 499-507 (overruling objections by tort claimants seeking to preserve claims against New GM). *See also In re Chrysler, LLC*, 2009 WL 2382766, pp 11-13 (2nd Cir. 2009)(bankruptcy court was permitted to authorize the sale of substantially all Chrysler's automotive assets free and clear of claims).

The scope and limitations of New GM's responsibilities are defined in the Bankruptcy Court's "Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection with the Sale; and (iii) Granting Related Relief," entered on July 5, 2009 (the "Sale Approval Order"), which is a final binding order.[1] The Sale Approval Order provides that, with the exceptions of certain liabilities expressly assumed under the relevant agreements, the assets acquired by New GM were transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever . . . including rights or claims based on any successor or transferee liability . . ." *Id.,* ¶7.

The claims asserted in the Action were not assumed. To the contrary, the Amended and Restated Master Sale and Purchase Agreement ("MSPA"), which defined the scope of New GM's responsibilities, expressly excludes all Liabilities to third parties for Claims based upon Contract, tort or any other basis. MSPA, Sale Approval Order, Ex A., §2.3(xi). There is go genuine basis to dispute that claims against MLC of the type alleged in the Action were unambiguously outside the scope of any responsibilities assumed by New GM under the Sale Approval Order.

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

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

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[1] The Sale Approval Order is publicly available on the Bankruptcy Court docket and also at http://docs.motorsliquidationdocket.com/pdflib/2968_order.pdf

Accordingly, General Motors LLC hereby requests that the assertion of claims in the Action against General Motors Company be immediately discontinued. Absent prompt compliance, New GM will be required to initiate appropriate proceedings in the Bankruptcy Court to enforce the Sale Approval Order.

I am available to discuss this matter if you have any questions.

Sincerely,

Lawrence S. Buonomo
Attorney

Transcript of the Testimony of

4/1/2014

Case: Committee on Energy and Commerce Subcommittee on Oversight and Investigations GM Ignition Switch Recall, Why Did It Take So Long? No. xxxx

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UNITED STATES OF AMERICA

HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

"GM Ignition Switch Recall, Why Did It Take So Long?"

April 1, 2014

Transcript prepared from the videotape recording of the hearing occurring on April 1, 2014, of the Subcommittee on Oversight and Investigations, prepared by Christine M. Vitosh, C.S.R.

PRESENT:

REP. TIMOTHY MURPHY, Pennsylvania,
Chairman
REP. JOE BARTON, Texas
REP. MARSHA BLACKBURN, Tennessee
REP. BRUCE BRALEY, Iowa
REP. KATHERINE ANNE CASTOR, Florida
REP. DIANA L. DeGETTE, Colorado
REP. JOHN D. DINGELL, JR., Michigan
REP. PHIL GINGREY, Georgia
REP. GENE GREEN, Texas
REP. H. MORGON GRIFFITH, Virginia
REP. GREGG HARPER, Mississippi
REP. BILLY LONG, Missouri
REP. STEPHEN SCALISE, Louisiana
REP. JANICE SCHAKOWSKY, Illinois
REP. PAUL TONKO, New York
REP. FREDERICK S. UPTON, Michigan
REP. HENRY WAXMAN, California
REP. PETER WELCH, Vermont
REP. JOHN YARMUTH, Kentucky.

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I N D E X

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CHAIRMAN MURPHY: I now convene this hearing of the Oversight and Investigation Subcommittee entitled the GM Ignition Switch Recall: Why Did It Take So Long?

Ms. Barra, if you would like to take your seat, please. Thank you.

This question is the focus of our investigation. As soon as the Chevy Cobalt rolled off the production line in 2004, customers began filing complaints about the ignition switch.

These customers told General Motors that just by bumping the key with their knee while driving the Cobalt, it would shut off.

In 2004 and 2005, GM engineers twice considered the problem and even developed potential solutions to fix it, but GM decided the, quote, tooling costs and piece prices are too high, end quote, and that, quote, none of the solutions represent an acceptable business case, end quote.

The solution GM ultimately settled for was to tell their dealers to ask Cobalt drivers to remove heavy objects from their keychains, and yet just a year later GM decided to fix the ignition switch.

In 2005, GM told their supplier, Delphi, to increase the torque in the ignition switch so the key wouldn't move out of the run position and into accessory mode.

GM was not alone in examining problems with the Cobalt.

The lead government safety regulator, the National Highway Traffic Safety Administration, known as NHTSA, was also evaluating concerns with the Cobalt, but NHTSA didn't look at the ignition switch problem, just airbag non-deployment.

In 2007, three years after the Cobalt's release, the chief of NHTSA's Defects Assessment Division proposed that the agency investigate the Cobalt because he spotted a, quote, pattern of non-deployments, end quote,

in Cobalt airbags that didn't exist similar sedans.

An internal NHTSA presentation noted a spike in warranty claims for Cobalt airbags; a total of 29 crashes causing 25 injuries, four deaths, and 14 field reports, yet NHTSA ultimately decided not to investigate.

Even when the issue was again raised three years later in 2010, NHTSA again passed on investigating.

GM was also looking into the airbag non-deployments. As early as 2007 GM started tracking incidents where Cobalt airbags did not deploy in car crashes.

In 2011 and 2012 GM assigned at least two groups of engineers to examine the problem.

According to GM's public statements, it wasn't until December, 2013, that the company finally put the pieces together and linked the problems with the

airbags with the faulty ignition switch, almost ten years after customers first told GM the Cobalt ignition switch didn't work.

We know this: The red flags were there for GM and NHTSA to take action, but for some reason, it did not happen.

Why didn't GM and NHTSA put the pieces together for ten years?

Why didn't anyone ask the critical important questions?

Why did GM accept parts below their own company standards and specs?

When GM decided to get a new ignition switch for the Cobalt in 2006, did GM do so because they recognized that the faulty switch posed a safety problem?

Why did GM keep the old part number, which led to confusion?

When GM replaced the ignition switch, did engineers also consider how the faulty ignition impacted other systems in the car, like airbags?

Why did GM replace the ignition switch in new cars, but not the older models?

Why did GM think a memo about the size of keychains was enough to solve the problems?

Why did NHTSA twice decide not to investigate the Cobalt and why didn't NHTSA make the link between the keys being in the accessory position and airbags not deploying? Did anyone ask why?

And for both GM and NHTSA, are people talking to one another? Do GM and NHTSA have a culture where people don't pass information up and down the chain of command?

To borrow a phrase, what we have here is a failure to communicate and the results were deadly, a failure to communicate both between and within GM and NHTSA.

Today we will ask GM and NHTSA what they're doing to not just fix the car, but to fix a culture within a business and a government regulator that led to these

problems.

This is about restoring public trust and giving the families and crash victims the truth about whether this tragedy could have been prevented and in the future what will be prevented.

It is my hope and expectation that today will not hear a blame game or finger pointing.

All the brilliant engineers and workers in the world won't matter if the people don't really care, and as the old saying goes, people don't care that you know until they know that you care.

This debate -- This investigation is only three weeks old, and we are determined to find the facts and identify the problem so a tragedy like this will never happen again.

This investigation is bipartisan and is a priority of all the members of this committee.

I want to thank Mary Barra for

being here and also the head of NHTSA, David Friedman, Ranking Members Waxman and Dingell for working with us, and I now give the remaining of my time to Dr. Michael Burgess.

DR. BURGESS: I thank the chairman for yielding. I thank our witnesses for being here. I thank our witnesses for being so responsive to the committee's staff requests.

We are here to examine a very important matter. The hearing is appropriately named.

We do have questions for General Motors. We have questions for the National Highway Traffic Safety Administration.

Two chances to open up formal investigations into the recalled General Motors cars; both in 2007 and 2010 NHTSA initially examined problems with the vehicles and both times, both times, decided that no investigation was needed.

We need to hear from NHTSA today how you intend to improve the process going

forward.

And we were just here five years ago with the Toyota investigation. We heard a lot of things out of NHTSA on those hearings.

I'd like to know how they have improved the process and how we can expect to have confidence in their ability going forward and I yield back.

CHAIRMAN MURPHY: I recognize the ranking member of the committee, Ms. DeGrette, of Colorado.

MS. DeGRETTE: Thank you very much, Mr. Chairman.

Like all of us, I am deeply troubled about what our investigation has revealed about GM's business practices and its commitment to safety.

Here's what we know: We know that GM has recalled over 2.5 million vehicles because of defective ignition switches.

We know they should have done it much, much earlier. We know that GM failed to

provide federal regulators with key information and, sadly, we know that at least 13 people are dead and there have been dozens of crashes because GM produced cars that had a deadly effect.

Mr. Chairman, I have a copy of the ignition switch assembly for one of these vehicles, and this is it.

A spring inside the switch, a piece that cost pennies, failed to provide enough force, causing the switch to turn off when the car went over a bump.

GM knew about this problem in 2001, they were warned again and again over the next decade, but they did nothing.

And I just want to show how easy it is to turn this key in this switch.

If you had a heavy keychain like my mom's keychain or if you had -- if you were short and you bumped up against the ignition with your knee, it could cause this key to switch right off.

Mr. Chairman, we now know that these switches were defective from the start. In February of 2002, GM's ignition switch supplier, Delphi, informed the company that the switch did not meet GM's minimum specifications, but GM approved it anyway.

Now, yesterday we sent Ms. Barra a letter about this decision. I'd like unanimous consent to make that letter a part of the hearing record.

CHAIRMAN MURPHY: Without objection.

MS. DeGRETTE: Soon after this approval, the defective cars were on the road and it didn't take long for problems to appear.

In 2003, June, 2003, the owner of a Saturn Ion with 3,474 miles on the odometer made a warranty report that he or she, quote, bumped the key and the car shut off.

GM would receive more than 130 similar warranty claims from owners about this problem over the next decade, but it never informed the public or reported the problem to

federal safety regulators.

The minority staff conducted this warranty analysis and again we prepared a memo about these claims. I'd also like unanimous consent to put that in the record, Mr. Chairman.

CHAIRMAN MURPHY: Without objection.

MS. DeGETTE: Initially GM opened multiple investigations into the ignition switch issue, each which concluded the switch was bad, it didn't meet the minimums.

In 2005 GM identified solutions to the problem, but concluded that, quote, the tooling cost and piece price are too high; thus, none of the solutions represents an acceptable business case.

Documents provided by GM show that this unacceptable cost increase was only 57 cents, and, Mr. Chairman, we have this document that we got from GM, somehow it's not in the binder.

I'd ask unanimous consent to put

this in the -- in the record as well.

CHAIRMAN MURPHY: Without objection. So ordered.

MS. DeGETTE: Another technical investigation completed in 2005 led GM to issue a technical service bulletin advising dealers to distribute key inserts to help reduce the problem. This was a simple fix to reduce the force on the switch.

And, Mr. Chairman, these are the keys of one of my staff members who actually owns one of these cars and, as you can see, there is a long, long insert.

What the key inserts were supposed to do is go in the middle and just create a little hole so the key and the keys wouldn't go back and forth.

Unfortunately GM never made this bulletin public. More than 500 people, out of the thousands of drivers who had cars with faulty switches, got the key insert, and GM knew it.

Soon after this decision, company officials quietly redesigned the switch, but they never changed the part number, and astonishingly, this committee has heard that when GM approved a new switch in 2006 they did it with still not -- still knowing that the new switch didn't meet specifications.

The company even put more cars with bad switches on the road from 2008 until 2011, and we still don't know all the information about this.

Between 2003 and 2014, GM learned hundreds of reports of ignition switch problems through customer complaints, warranty claims, lawsuits, press coverage, field reports, and even more internal investigations, but time and time again, GM did nothing. The company continued to sell cars knowing they were unsafe.

I know we have a lot of family members here, Mr. Chairman, and I know -- and I want to express my deepest sympathies to them,

but I want to tell them something more: We're going to get to the bottom of this, we're going to figure out what happened, and we're going to make sure it doesn't happen again.

Now, Mr. Chairman, I want to thank Ms. Barra for coming; she is brand new at the company. I believe she is committed to fixing this situation.

We have a lot of questions to ask today, though, and I know every member of this committee is concerned about this.

Thank you very much.

CHAIRMAN MURPHY: And the gentleman's time has expired.

Now recognize the chairman of the full committee, Mr. Upton, for five minutes.

MR. UPTON: Well, thank you, Mr. Chairman.

We know that with a two-ton piece of high velocity there is, in fact, a zero margin for error.

Product safety is indeed a life

or death issue, but sadly vehicle safety has fallen short, and it's not the first time.

During the late summer of 2000 in this very room I led the oversight hearings that examined the Ford Firestone recalls. A tire malfunction was causing violent crashes and Americans did not feel safe behind the wheel.

We gathered testimony from the company and agency officials and reviewed thousands and thousands of pages of documents and we found that the system indeed had failed.

Information about the defective tires had been shared with the companies and with NHTSA, the parties failed to protect the public safety and over a hundred people died.

After that investigation I introduced the TREAD Act to correct many of the problems that contributed to the Ford Firestone tragedy.

That bill was meant to ensure data about safety is reported so that defects

can be quickly identified and fixed and lives ultimately saved.

The TREAD Act has now been law since November of 2000 yet here we are investigating another safety failure. It's déjà vu all over again.

One month ago GM issued a recall for an ignition switch defect in six vehicles totaling 1.6 million cars, and last Friday they recalled another 900,000 vehicles.

GM acknowledges that a dozen people have died in automobile crashes associated with that defect; two were teenagers from my own community.

Testifying today are GM's CEO, Mary Barra, and NHTSA acting director David Friedman, a first step in our quest to find out what went wrong.

The committee's purpose is the same as it was in 2000, making sure that drivers and families are protected and cars are safe.

And I'll repeat what I said at the first oversight committee hearing on Firestone tires in 2000: Today's hearing is very personal to me, because I come from Michigan, the auto state, the auto capital of the world. That is no less true today.

Michigan is proud of its auto industry, and while Michigan citizens build cars, obviously we drive them, too.

Documents produced to the committee show that both NHTSA and GM received complaints about and data about problems with ignition switches and airbags.

These complaints go back at least a decade. NHTSA engineers did crash investigations as early as '05 and twice examined whether complaints with airbags constituted a trend.

GM submitted early warning reports to NHTSA including data about crashes in the recalled cars.

With all that information

available, why did it take so long to issue the recall? In this case, just as it was with Ford Firestone, it was news reports that brought the nation to the nation's attention -- brought the problem to the nation's attention.

This investigation of the recall is indeed bipartisan, as it should be. We'll follow the facts wherever they lead us and we're going to work until we have the answers and can assure the public that indeed they're safe, and I'd like to note that the chairman of our CMT subcommittee, Mr. Terry, will be joining us for questions this afternoon.

With his subcommittee's record on motor vehicle safety issues, he will be watching closely as this investigation unfolds so that he can take our findings and determine whether and what changes may be needed to the laws designed to keep drivers safe on the road.

After our -- After all, our goal on every issue follows the Dingell motto: Identify the problem or abuse fully and, where

needed, fix it with legislation so that it won't happen again.

I yield to the vice chair of the -- of the committee, Ms. Blackburn.

MS. BLACKBURN: Thank you, Mr. Chairman, and, Ms. Barra, thank you very much for being here today.

We really owe this hearing to the American people, to GM customers, and to the relatives of the 12 individuals that have lost their lives, and it is important that we get to the bottom of this and to see what the roles of GM and NHTSA were in this, figure out who's at fault, and we want to know who knew what when, and /PH*B, that includes you.

We're going to want to know what your exposure was to this issue as you took the helm at GM as the CEO.

You know, in my district we have the GM plant. The Saturn Ion has been recalled; that was made at that plant there in Spring Hill, so this is something that is

important to my constituents, those that have worked with GM.

I thank you for being here and we look forward to the answers.

I yield back.

CHAIRMAN MURPHY: Thank you. Gentleman yields back.

Now recognize ranking member of the full committee, Mr. Waxman, for five minutes.

MR. WAXMAN: Thank you very much, Mr. Chairman.

I have a sad sense of déjà vu as I sit here today. I was part of this committee when we held our Ford Firestone hearing in 2000.

I led the committee's hearing on Toyota's problems with unintended acceleration in 2010. Each time we heard about how auto manufacturers knew about potential defects and about how federal safety officials at the National Highway Traffic Safety Administration

missed signals that should have alerted them to defective cars on the road and here we are today under similar circumstances.

Over the last month, the full dimensions of another auto safety disaster have unfolded. General Motors has recalled 2.5 million vehicles due to a defective ignition switch and the company has acknowledged that these cars have caused dozens of crashes and 13 fatalities.

Mr. Chairman, I know the families of some of these victims are in the audience for today's hearing.

I want to acknowledge them, thank them for coming. We owe it to them to find out what happened.

The facts that we already know are hard to believe. GM has known for years about this safety defect and has failed to take appropriate action to fix the problem.

The company installed an ignition switch that it knew did not meet its own

specification, numerous internal investigations resulted in nothing but a non-public technical service bulletin that partially fixed the problem for fewer than 500 drivers.

A new analysis I released this morning revealed that over the last decade GM received over 130 warranty claims from drivers and GM technicians who experienced and identified the defect.

Drivers reported that their cars shut off after hitting bumps or potholes at highway speeds when they did something as simple as brushing the ignition switch with their knee.

One GM technician even identified the exact part causing the problem, a spring, that would have cost at most as much as a few postage stamps. A couple of dollars.

Because GM didn't implement this simple fix when it learned about the problem, at least a dozen people have died in defective GM vehicles.

What's more, new information the committee received last week suggests that GM still has failed to fully own up to potential problems. GM finally modified the ignition switch for later model cars.

Delphi, the manufacturer of the ignition switch, told the committee that the switches installed in model year 2008 to 2011 vehicles still do not meet GM's own specifications.

GM finally announced a recall of these vehicles last Friday, but told the public that it was because of bad parts installed during repairs, not because of defective parts originally installed in the vehicles.

There are legitimate questions we need to ask about whether NHTSA did enough to identify and uncover this problem. In retrospect it's clear that the agency missed some red flags, but NHTSA was also laboring under a handicap.

There appears to have been a lot

of information that GM knew but they didn't share with the National Highway Traffic Safety Administration. We need to make sure that NHTSA and the public have access to the same information about safety as auto executives.

That's why today I'm introducing the Motor Vehicle Safety Act of 2014. This bill is modeled on the legislation that the committee passed in 2010 but was never enacted into law.

It will make more information on defects available to the public and it will increase NHTSA's funding and increase civil penalties for manufacturers when companies like GM fail to comply with the law.

Mr. Chairman, we should learn as much as we can from this investigation, then we should improve the law to make sure we're not here again after another auto safety tragedy in the near future.

I want to yield back my time. Thank you.

CHAIRMAN MURPHY: Gentleman yields back.

I would now like to introduce the witness on the first panel for today's hearing.

Ms. Mary Barra is the chief executive officer of General Motors Company and has been in this role since January 15th, 2014, when she also became a member of its board of directors.

She has held a number of positions in this company. From 2008 to 2009, Ms. Barra served as vice president of global manufacturing engineering, and from 2005 to 2008 she was executive director of vehicle manufacturing engineering.

She has also served as a plant manager and director of competitive operations engineering as well as numerous other positions. I will now swear in the witness.

Ms. Barra, you are aware that the committee is holding an investigative hearing and, when doing so, has a practice of taking

testimony under oath.

Do you have any objections to testifying under oath?

MS. BARRA: No.

CHAIRMAN MURPHY: The Chair then advises you that under the rules of the House and the rules of the committee you are entitled to be advised by counsel.

Do you desire to be advised by counsel during today's hearing?

MS. BARRA: No.

CHAIRMAN MURPHY: In that case if you would please rise and raise your right hand, I'll swear you in.

MS. BARRA: I do.

(The witness was thereupon duly sworn.)

MARY BARRA,

called as a witness herein, having been first duly sworn, testified before the Subcommittee as follows:

CHAIRMAN MURPHY: Thank you.

Ms. Barra, you are now under oath and subject to the penalties set forth in Title 18, Section 1001 of the United States Code.

You may now give a five-minute summary of your written statement.

MS. BARRA: Thank you, Mr. Chairman, and committee members.

CHAIRMAN MURPHY: Please pull the microphone close to your mouth and make sure it's on. Thank you.

MS. BARRA: Can you hear me? Okay.

Thank you, Mr. Chairman, and committee members. My name is Mary Barra and I am the chief executive officer of General Motors. I appreciate the opportunity to be here today.

More than a decade ago GM embarked on a small car program. Sitting here today I cannot tell you why it took so long for a safety defect to be announced for this problem, but I can tell you we will find out.

This is an extraordinary

situation, it involves vehicles we no longer make, but it came to light on my watch, so I am responsible for resolving it.

When we have answers, we will be fully transparent with you, with our regulators, and with our customers.

While I cannot turn back the clock, as soon as I learned about the problem, we acted without hesitation. We told the world we had a problem that needed to be fixed. We did so because whatever mistakes were made in the past, we will not shirk from our responsibilities now or in the future. Today's GM will do the right thing.

That begins with my sincere apologies to everyone who has been affected by this recall, especially the families and friends who lost their lives or were injured. I am deeply sorry.

I've asked former U.S. Attorney Anton Valukas to conduct a thorough and unimpeded investigation of the actions of

General Motors.

I have received updates from him and he tells me he is well along with his work. He has free rein where the facts take him, regardless of outcome. The facts will be the facts.

Once they are in, my leadership team and I will do what is needed to help assure this does not happen again.

We will hold ourselves fully accountable; however, I want to stress I'm not waiting for his results to make changes. I've named a new vice president of Global Vehicle Safety, a first for General Motors.

Jeff Boyer's top priority is to quickly identify and resolve any and all product safety issues. He is not taking on this task alone. I stand with him, and my senior leadership team stands with him as well, and we will welcome input from outside of GM, from you, from NHTSA, from our customers, our dealers, and current and former employees.

The latest round of recalls demonstrates just how serious we are about the way we want to do things at today's GM. We've identified these issues and we've brought them forward and we're fixing them.

I have asked our team to keep stressing the system at GM and work with one thing in mind, the customer and their safety are at the center of everything we do.

Our customers who have been affected by this recall are getting our full and undivided attention. We are talking directly through -- to them through a dedicated website with constantly updated information and through social media platforms.

We've trained and assigned more people, over a hundred, to our customer call centers, and wait times are down to seconds, and of course we've sending customers written information through the mail.

We have empowered our dealers to take extraordinary measures to treat each case

specifically. If people do not want to drive a recalled vehicle before it is repaired, dealers can provide them with a loaner or a rental car free-of-charge. To date we've provided nearly 13,000 loaner vehicles.

If a customer is already looking for another car, dealers are allowed to provide additional cash allowances for the purchase of a lease or new vehicle.

Our supplier is manufacturing new replacement parts for the vehicles that are no longer in production. We have commissioned two lines and have asked for a third production line, and those parts will start being delivered to dealers next week.

These measures are only the first in making things right and rebuilding trust with our customers, and as I have reminded our employees, getting the cars repaired is only the first step. Getting customers the best support possible throughout this process is how we will be judged.

I would like this committee to know that all of our GM employees and I are determined to set a new standard. I'm encouraged to say that everyone at GM up to and including our board of directors supports this.

I'm a second generation GM employee, and I'm here as our CEO, but I'm also here representing the men and women who are part of today's GM and are dedicated to putting the highest quality, safest vehicles on the road.

I recently held a town hall meeting to formally introduce our new VP of safety. We met at our technical center in Michigan. This is one of the places where the men and women who engineer our vehicles work. They are the brains behind our cars, but they are also the heart of General Motors. It was a tough meeting. Like me, they are disappointed and upset. I could see it in their faces, I could hear it in their voices.

They had many of the same

questions that I suspect are on your mind; they want to make things better for our customers and in that process make GM better. They particularly wanted to know what we planned to do for those who have suffered the most from this tragedy.

That's why I'm pleased to announce that we have retained Kenneth Feinberg as a consultant to help us evaluate the situation and recommend the best path forward.

I am sure this committee knows Mr. Feinberg is highly qualified and is very experienced in handling matters such as this, having led the compensation efforts involved with 911, the BP oil spill, and the Boston marathon bombing. Mr. Feinberg brings expertise and objectivity to this effort.

As I have said, I consider this to be an extraordinary event and we are responding to it in an extraordinary way.

As I see it, GM has civil responsibilities and legal responsibilities.

We are thinking through exactly what those responsibilities are and how to balance them in an appropriate manner. Bringing on Mr. Feinberg is the first step.

I would now be happy to answer your questions. Thank you.

CHAIRMAN MURPHY: Thank you, Ms. Barra. I also want to acknowledge all the families that are here today and know that we are aware and have the sympathies of all the committee here.

One, Kelly Erin Ruddy, of Scranton, Pennsylvania, is one of those that we offer sympathy to the families, but we have all of you in our hearts.

Ms. Barra, our committee reviewed more than 200,000 pages of documents. What we found is that as soon as the Cobalt hit the road in 2004, drivers began to immediately complain to General Motors that the cars' ignition systems didn't work properly.

You can imagine how frightening

it is to drive a car that suddenly you lose your power steering and power brakes.

When the switch for the Cobalt was being built back in 2002, GM knew the switch did not meet its specification for torque, am I correct?

MS. BARRA: Yes.

CHAIRMAN MURPHY: GM engineers began to look at the problem and try to figure out how to address it. GM understood the torque in the switches measured below its own specifications; is that right?

MS. BARRA: Yes.

CHAIRMAN MURPHY: Is it common practice for GM to accept a part that does not meet GM specifications?

MS. BARRA: No, but there is a difference between a part meeting or not meeting specifications and a part being defective.

CHAIRMAN MURPHY: So under what scenario is accepting parts that don't meet GM

specs allowable?

MS. BARRA: An example of that would be when you are purchasing steel. You'll set a specification for steel, but then because of the different suppliers and availability of steel to make products, you'll assess the performance, the functionality, the durability, you know, the aspects of the part or, in this case, steel that is necessary to live up to what the performance and the durability, the safety, needs to be.

CHAIRMAN MURPHY: Well, let's --

MS. BARRA: That's an example of when you would have a part or have material that doesn't meet the spec that was set out, but was acceptable from a safety -- from a functionality perspective, performance as well.

CHAIRMAN MURPHY: Is that switch acceptable?

MS. BARRA: The switch -- I'm sorry, the switch?

CHAIRMAN MURPHY: Is the switch

acceptable in two-thousand --

MS. BARRA: At what timeframe? I'm sorry.

CHAIRMAN MURPHY: Well, at the beginning. It seems -- it didn't meet the specs for GM, so is that what you would consider acceptable?

MS. BARRA: As we -- as we clearly know today, it's not.

CHAIRMAN MURPHY: So in 2006 GM changed its ignition switch and GM switch supplier, Delphi, put in a new spring to increase the torque; is that correct?

MS. BARRA: There was a new part.

CHAIRMAN MURPHY: Thank you.

Now, in that binder next to you, if you would turn to Tab 25. This is e-mail exchange between Delphi employees in 2005 discussing the changes to the ignition switch.

The e-mail notes that a GM engineer is asking for information about the ignition switch because, quote, Cobalt is

blowing up in their face in regards to turning the car off with the driver's knee, unquote.

If this was such a big problem, why didn't GM replace the ignition switch on the cars already on the road, the cars where the torque fell well below GM specifications, instead of just the new cars? Why?

MS. BARRA: What you just said does not match under Tab 25.

CHAIRMAN MURPHY: It's the bottom of the page, there should be something there. Well, just note that what I've said -- I apologize for that.

MS. BARRA: Okay.

CHAIRMAN MURPHY: But there was a statement made that Cobalt is blowing up in their face just by a bump of the driver's knee.

MS. BARRA: Clearly there were a lot of things that happened, there's been a lot of statements made as it relates.

That's why we've hired Anton Valukas to do a complete investigation of this

process. We are spanning over a decade --

CHAIRMAN MURPHY: But you don't know why they didn't just replace the switch on the old cars as well as the new cars?

MS. BARRA: I do not know the answer to that and that's why we're doing this investigation.

CHAIRMAN MURPHY: Given the number of complaints about ignitions turning off while driving, why wasn't this identified as a safety issue?

MS. BARRA: Again, I can't answer specific questions at that point in time. That's why we're doing a full and complete investigation.

CHAIRMAN MURPHY: I've got another one. In the chronology GM submitted to NHTSA, GM states it didn't make the connection between the ignition switch problems and the airbag non-deployment problems until late 2013, so my question is when GM decided to switch the ignition in 2006 did the company ever examine

how a faulty ignition switch could affect other systems like the airbags?

MS. BARRA: Again, that's part of the investigation.

CHAIRMAN MURPHY: Should they?

MS. BARRA: Should we understand --

CHAIRMAN MURPHY: Should they look at how it affects other vehicle systems?

MS. BARRA: Yes.

CHAIRMAN MURPHY: Let me ask another question then. So when GM concluded -- and you heard from my opening statement -- that the tooling costs and price pieces are too high, what does that mean?

MS. BARRA: I find that statement to be very disturbing. As we do this investigation and understand it in the context of the whole timeline, if that was the reason the decision was made, that is unacceptable. That is not the way we do business in today's GM.

CHAIRMAN MURPHY: Well, how does GM

balance costs and safety?

MS. BARRA: We don't. Today if there is a safety issue, we take action. If we know there is a defect on our vehicles, we do not look at the costs associated with it, we look at the speed in which we can fix the issue.

CHAIRMAN MURPHY: Was there a culture in GM at that time that they would have put cost over safety?

MS. BARRA: Again, we're doing -- we're doing a complete investigation, but I would say in general we've moved from a cost culture after the bankruptcy to a customer culture.

We've trained thousands of people on putting the customer first. We've actually gone with outside training. It's a part of our core values and it's one of the most important cultural changes we're driving in General Motors today.

CHAIRMAN MURPHY: I understand today; we're asking about then. I'm out of time.

Ms. DeGette, you're recognized for five minutes.

MS. DeGETTE: Thank you very much, Mr. Chairman.

Ms. Barra, GM knew about the defect in the ignition switches as far back as 2001, 13 years before the recall, correct?

MS. BARRA: The --

MS. DeGETTE: Yes or no will work.

MS. BARRA: The investigation will tell us that.

MS. DeGETTE: You don't know when GM knew about the defect?

MS. BARRA: I will -- I --

MS. DeGETTE: Take a look at Tab 7 in your notebook, Ms. Barra. This is a GM document, and what this GM document talks about is this switch.

It says: Tear-down evaluation on the switch revealed two causes of failure: Low contact force and low detent plunger force.

Do you recognize that document,

ma'am?

MS. BARRA: This is the first I've seen this document.

MS. DeGETTE: Okay. Well, so you don't know how long GM knew about this, right?

MS. BARRA: And that's why -- and that's why I'm doing a investigation.

MS. DeGETTE: Okay. And, in fact, Delphi, the manufacturer of the ignition switch, informed GM in 2002 that the switch was supposed to be 15 minimum torque specification, but, in fact, these switches were between four and ten, didn't it?

MS. BARRA: The specification is correct, that it was supposed to be 20 plus or minus 5.

MS. DeGETTE: And these switches were between four and ten, correct? Yes or no will work.

MS. BARRA: We know that now.

MS. DeGETTE: And -- and they -- and GM was notified by Delphi of this, correct?

Yes or no.

MS. BARRA: I am not aware of being notified.

MS. DeGETTE: Okay. Then --

MS. BARRA: Can I also correct I was trying --

MS. DeGETTE: I need a yes or no; I only have five minutes. I'm sorry.

So as far back as 2004, ten years ago, GM conducted a problem resolution tracking system inquiry after it learned of an incident where the key moved out of the run condition in a 2005 Chevrolet Cobalt; is this correct?

MS. BARRA: Again, you're relating to specific incidents that happened --

MS. DeGETTE: You don't know?

MS. BARRA: -- in our entire investigation.

MS. DeGETTE: You don't know about that? Take a look at Tab 8, please.

Yeah. And by the way, ma'am, I'm getting this information from the chronology

that GM provided to NHTSA.

MS. BARRA: Right. And there -- and --

MS. DeGETTE: So, let me ask you, again, as far back as 2004, GM conducted a problem resolution tracking system inquiry after it learned of an incident where the key moved out of the run condition; is that correct?

MS. BARRA: Yes.

MS. DeGETTE: Thank you. Now, after the PRTS inquiry, one engineer advised against further action because there was, quote, no acceptable business case to provide a resolution, and the PRTS was closed; is that correct?

MS. BARRA: If that is true, that is a very disturbing fact.

MS. DeGETTE: Yes, it is.

MS. BARRA: That is not the way we make decisions.

MS. DeGETTE: Okay. Again in 2005 GM

received more reports of engines stopping when the keys were jerked out of the run condition.

Further investigations were conducted and engineers provide -- proposed changes to the keys, is that correct?

MS. BARRA: It's part of our investigation to get that complete timeline under --

MS. DeGETTE: Okay. Well, much of this I'm taking from the timeline GM has already done.

MS. BARRA: Which was a summary.

MS. DeGETTE: Okay. So as a result of the investigation, a technical service bulletin was issued to dealers that if car owners complained, they should be warned of this risk and advised to take unessential items from the keychain, but this recommendation was not made to the public.

No public statements were issued, no recall set; is that correct?

MS. BARRA: It's my understanding,

yes.

MS. DeGETTE: Thank you.

In 2006, GM had contracted with Delphi to redesign the ignition switch to use a new detent plunger and spring that would increase torque force in the switch; is that correct?

MS. BARRA: Yes.

MS. DeGETTE: And for some reason, though, the new switch was not given a part number and instead shared a number with the original defective switch; is that correct?

MS. BARRA: Yes.

MS. DeGETTE: Now, this new switch also did not meet GM's minimum torque specifications either. This one Delphi said was in the range of ten to 15 and it really should have been 15 at a minimum; is that correct?

MS. BARRA: I have not seen the test results from then.

MS. DeGETTE: You don't know that.

Okay. Now, despite these facts, GM continued to manufacture cars with these same ignition switches from models 2008 to 2011; is that correct?

MS. BARRA: Yes.

MS. DeGETTE: And between 2004 and 2014, no public notices were issued as a result of GM's knowledge of these facts and no recalls were issued for the over 2.5 million vehicles manufactured with these defective ignition switches; is that correct?

MS. BARRA: Yes.

MS. DeGETTE: And, finally, three recalls were made this year, 2014 -- 2014, two in February and one just last Friday; is that right?

MS. BARRA: Related to this ignition switch.

MS. DeGETTE: Now, I have -- I have just a couple more questions.

The first question I have, Ms. Barra, GM is intending to replace all the

switches for those cars beginning on April 7th; is that right?

MS. BARRA: We will begin shipping material, or new parts --

MS. DeGETTE: Now, are you going to put a completely redesigned switch or are you going to put the old switches from 2006 into those cars?

MS. BARRA: It's going to be a switch that meets the --

MS. DeGETTE: Is it going to be a newly designed switch or is it going to be the old switch from 2006?

MS. BARRA: It's the old design that meets the performance that's required to act.

MS. DeGETTE: Okay. I have more questions, Mr. Chairman. Perhaps we can do another round. Thank you.

CHAIRMAN MURPHY: But an important part, follow-up, several members are concerned about this, too. You're saying that there is an ongoing investigation, you cannot comment on

these yet.

Are you getting updates on a regular basis as this is going on?

MS. BARRA: From Mr. Valukas?

CHAIRMAN MURPHY: From anybody in the company regarding these proceedings, are you getting updates?

MS. BARRA: Yes, I am.

CHAIRMAN MURPHY: Thank you. Now go to the chairman of the full committee, Mr. Upton, for five minutes.

MR. UPTON: Thank you once again, Ms. Barra, for being here this afternoon.

I want to make sure that we ask similar questions of both you and of NHTSA. We want to learn about the documents that were submitted on a timely and appropriate basis to that end, and in fact, what did they do with that information.

The documents that we've looked at produced showed that GM received complaints about its Cobalt ignition switch for about two

years that ultimately resulted in a redesigned ignition switch in 2006.

Who within GM would have known about those specific complaints? What was the process back then?

MS. BARRA: I -- I was not a part of that organization at the time; that's why I'm doing the investigation, to understand that.

MR. UPTON: So you don't know the folks that it would have been reported to at this point; is that right?

MS. BARRA: I don't know the people who would have been handling this issue at that point.

MR. UPTON: But you're getting updates and what -- what's supposed to happen? Looking back, what should have happened when these reports came in?

MS. BARRA: In general when you have an issue, a product issue, a safety issue, a field incident, any type of issue that comes in, you have a team of engineers that are the

most knowledgeable that work on that.

If they see there is an issue, they elevate it to a cross functional team that looks at it and then it goes to a group for a decision.

MR. UPTON: Now, we know that the ignition switch was, in fact, redesigned because it didn't meet the specs that were there; is that right?

MS. BARRA: Yes.

MR. UPTON: Now, I would guess that Engineering 101 would normally require that when you assign a new part or replace a new part -- or a replace a part with a new part, that that newly redesigned part in fact should have a different number on it; is that right?

MS. BARRA: That is correct.

MR. UPTON: So -- And that didn't happen, right? Did not happen?

MS. BARRA: That is correct.

MR. UPTON: Who within GM made the decision to move forward with that redesigned

switch without a new part number? Do you know who that is?

MS. BARRA: I do not know the name of the individual.

MR. UPTON: Are you going to be able to find that out for us?

MS. BARRA: Yes, I will.

MR. UPTON: And will you give that name to our committee?

MS. BARRA: I can provide that.

MR. UPTON: Is it -- Is it likely that that same person was the one that decided not to recall the defective version? Where -- where did that -- Where in the timeline is that?

MS. BARRA: I don't know, but that is part of the investigation that we're doing.

MR. UPTON: Do you know when it was that it was discovered, what year -- you know, where in the timeline that it was discovered that, in fact, a new part number was not assigned?

MS. BARRA: I became aware of that after we did the recall and the timeline was put together.

MR. UPTON: So that was just within the last month or so; is that right?

MS. BARRA: That's when I became aware.

MR. UPTON: But when did GM realize that no new part number had been assigned?

MS. BARRA: Again, that's part of our investigation. I'm -- I want to know that just as much as you because that is an unacceptable practice. It is not the way we do business.

MR. UPTON: So you've stated publicly that something went wrong with the process?

MS. BARRA: Yes.

MR. UPTON: How is the process supposed to work? How are you redesigning the process to ensure that, in fact, it should work the way that it needs to work?

MS. BARRA: Well, one of the things we're doing is the investigation by

Mr. Valukas. I have some early findings from Mr. Valukas.

As we look across the company, it appears at this time there were -- was information in one part of the company and another part of the company didn't have access to that.

At times they didn't share information just by course of process, or they didn't recognize that the information would be valuable to another area of the company.

We have fixed that. We have announced a new position, Jeff Boyer, who is the vice president of Global Vehicle Safety. All of this will report to him.

He will have additional staff and have the ability to cut across the organization and will also have the right functional leadership that understands what's going on in the different areas, so that's a fix we've already made and he is operating that way today.

MR. UPTON: So when GM received complaints about ignition switches for a number of years and ended up resulting in the redesigned ignition switch in '06, when was it that anyone linked up the ignition switch problems to look at the Cobalt's airbags not deploying?

Was that at about the same time? Was that later? What's the timeline on that?

MS. BARRA: That is something I very much want to understand and know, but I -- again, this is -- we are doing an investigation that spans over a decade. And it's very important because designing a vehicle is a very complex process that we get a detailed understanding of exactly what happened because that's the only way we can know that we can fix processes and make sure that it never happens again.

MR. UPTON: When was it that GM informed NHTSA that, in fact, redesigns -- Did, in fact, GM inform NHTSA that the ignition

switch had been redesigned?

MS. BARRA: I don't know that.

MR. UPTON: I yield -- I yield back.

CHAIRMAN MURPHY: Gentleman yields back.

Now recognize the ranking member of the full committee, Mr. Waxman, for five minutes.

MR. WAXMAN: Thank you, Mr. Chairman.

Ms. Barra, we've heard about how in 2002 GM approved the use of faulty ignition switches in Cobalts, Ions, and other cars, that's what caused many of the problems that led to the recall of the cars for model years 2003 to 2007, so new ignition switches were designed and approved by General Motors. These were switches that were used -- were in use in the model years 2008 to 2010.

Does that all sound right to you? Am I correct in what I'm saying?

MS. BARRA: There's a couple statements you made at the beginning --

MR. WAXMAN: Oh.

MS. BARRA: -- that I don't know to be true.

MR. WAXMAN: Well, in 2002 GM approved the use of what turned out to be faulty ignition switches in several of these cars?

MS. BARRA: They were actually -- they were parts that went into a 2003, was the earliest model.

MR. WAXMAN: Well, the tests were done in 2002, but the cars were 2003 to 2007, so we had a recall of those cars?

MS. BARRA: Right.

MR. WAXMAN: And then there was a new switch, new ignition switch, designed and approved by GM, and these new switches were in use in the model years 2008 to 2010 Cobalts and Ions; is that --

MS. BARRA: To the best of my knowledge, that's correct.

MR. WAXMAN: Okay. But in a briefing last week, Delphi told committee staff that

these new switches also did not meet GM specifications.

They told us the force required to turn these switches was about two-thirds of what GM said it should be, and documents that were provided to the committee also confirmed that top GM officials were aware of the out-of-spec switches in 2008 and 2002 vehicles in December, 2013, so there is a document -- if you want to look it up, it's Tab 39, Page 6 of your binder.

There was a December presentation for GM's high-level executive field action decision committee, and that meeting -- at that meeting they showed that the performance measurement for almost half of 2008 -- so you go to 2008-2010 model year vehicles -- ignition switches were below the minimum GM-required specifications.

My question to you is are you concerned that many 2008 to 2010 model year cars have switches that do not meet the

company's specifications?

MS. BARRA: As we assessed the situation, my understanding, that there was work going on to look at these switches again, looking at -- Just because a switch -- or a part, an engineered part, doesn't meet specification does not necessarily mean it is a defective part.

As that analysis was going on, at the same time we were doing the look across to make sure we could get all of the spare parts and when we recognized that spare parts might be -- have been sold through third parties that have no tracking to know which, then we made the decision --

MR. WAXMAN: Well, your own executives --

MS. BARRA: -- to recall all of those vehicles.

MR. WAXMAN: -- were informed that a lot of these cars, those model years, had switches that were just as defective as the

2003 to 2007 cars, that -- those cars were recalled, but you didn't recall the model year 2008 to 2011 vehicles until a month later, on March 28th, why did the company delay in recalling these newer vehicles?

MS. BARRA: The company was looking -- My understanding is the company was assessing those -- those switches, but again, at the same time again in parallel they were looking at the spare parts issue, and the spare parts issue became very clear we needed to go and get all of those vehicles because we couldn't identify which vehicles may have had a spare part put in them, and we --

MR. WAXMAN: But you didn't --

MS. BARRA: And we did recall the entire population.

MR. WAXMAN: But you recalled those vehicles? You recalled them later?

MS. BARRA: Yes, we did.

MR. WAXMAN: But not when you knew there was a problem?

MS. BARRA: Well, we recalled them --

MR. WAXMAN: Your recall of these later vehicles did not mention the faulty switches that were originally installed in the cars, they mentioned only, quote, faulty switches may have been used to repair the vehicles.

Why did the company not announce that subpar switches may have been installed in those cars in the first place?

MS. BARRA: Again, there was an assessment going on to understand whether the specification -- the parts performance was adequate.

MR. WAXMAN: Well, wasn't it misleading to say that the company didn't tell them subpar switches may have been installed in the first place?

What if I owned a later model car with its original ignition switch? Your recall implies that I don't have to do anything, but my car might still -- still have a subpar

switch.

Will your company conduct a detailed analysis of these late model vehicles to determine if they're safe and will you provide the committee with warranty reports and other information so we can do our own analysis?

MS. BARRA: I believe we're recalling all of those parts. All of those vehicles are being recalled.

MR. WAXMAN: They're all being recalled. Well, I must say, in conclusion, Mr. Chairman, I'm concerned.

I know you've taken this job at an inauspicious time, you're trying to clean up a mess that was left behind for you by your predecessors, but I have one last question: How can GM assure its customers that new switches being installed beginning April 7th will finally meet GM's requirements?

Thank you.

MS. BARRA: We have done -- we are

working very closely with our supplier, our executive director responsible for switches is personally looking at the performance of the new switches.

We will do 100 percent end-of-line testing to make sure that the performance, the safety, the functionality of these switches are -- are safe.

CHAIRMAN MURPHY: Thank you. The gentleman's time has expired.

Ms. Barra, let me ask one question, I just want to be clear.

Did you review the documents that GM submitted to the committee?

MS. BARRA: No, I did not. There was over 200,000 pages --

CHAIRMAN MURPHY: How about the document Mr. Waxman is talking about, did you review that?

MS. BARRA: This page right here?

CHAIRMAN MURPHY: Yes.

MS. BARRA: I actually saw this for

the first time I think a day ago.

CHAIRMAN MURPHY: Thank you. Now I will recognize Ms. Blackburn for five minutes.

MS. BLACKBURN: Thank you, Mr. Chairman.

Ms. Barra, you've mentioned several times in your comments: "Today's GM", so my assumption is that you are going to run GM in a different manner than it has been run in the past --

MS. BARRA: That's correct.

MS. BLACKBURN: -- and that you are making some changes.

I want to ask you just a little bit about timeline, helping us to get our hands around this, because we're -- this is the first investigation we're going to do.

We're going to have others and continue to look at this to get answers and figure out what has happened here between you all and NHTSA and also within what happened at GM, so you mentioned in your testimony that

this came to light on your watch, so I am assuming that there was no widespread knowledge in GM about this issue until you became CEO.

Am I correct on that?

MS. BARRA: At the senior level of the company, we learned of this after the recall decision was made on January 31st.

I was aware there -- in late December there was analysis going on on a Cobalt issue, but I had no more information than that, but I can assure you, as soon as we understood -- the senior leadership understood this issue and that a recall decision had been made we acted without hesitation.

MS. BLACKBURN: Okay then. How did you find out about it? Was it through someone bringing the issue to you to say, Ms. Barra, we have a real problem here, or in doing your due diligence did you find out about it?

MS. BARRA: The committee -- the leadership committee responsible for making recall decisions made a decision on

January 31st.

They notified Mark Reuss, who immediately picked up the phone and called me.

MS. BLACKBURN: Okay. And could you submit to us the members of that leadership committee that make those --

MS. BARRA: Yes.

MS. BLACKBURN: -- recommendations? Thank you.

And then was your predecessor, Mr. Akerson, your predecessor, was he aware of this issue?

MS. BARRA: Not to my knowledge.

MS. BLACKBURN: He was not. Are any members of the leadership committee also -- were they a part of his leadership committee?

MS. BARRA: There are members of today -- today's team that were also members of Mr. Akerson's leadership team, and to my knowledge, they were not aware.

MS. BLACKBURN: Okay. Do you think there was a cover-up or it was sloppy work?

MS. BARRA: That is the question I have asked Mr. Valukas to uncover, and I'm anxiously awaiting the results from his -- his study.

MS. BLACKBURN: Okay. Do you think it had anything to do with the auto bail-out?

MS. BARRA: With, I'm sorry?

MS. BLACKBURN: With the auto bail-out. Do you think it had anything --

MS. BARRA: Again, I need to -- to get the results of the study to make all determinations.

MS. BLACKBURN: And going back to what Mr. Upton said, you're going to be sharing that information with us?

MS. BARRA: Yes, we will.

MS. BLACKBURN: And get those --

MS. BARRA: We will be transparent.

MS. BLACKBURN: Okay. Was there -- the engineers that were responsible for this, have you brought them into the process?

I know this is something that the

part was actually created by Delphi, correct?

MS. BARRA: Correct.

MS. BLACKBURN: And they have an engineering team that was working on that, so they have a shared responsibility and liability in this entire issue.

Have you met with them and with the engineering team that was responsible for -- for this switch?

MS. BARRA: I have not met with the specific engineering team --

MS. BLACKBURN: Okay.

MS. BARRA: -- that was responsible, but I am speaking to leadership, and those individuals are being interviewed as part of the investigation conducted by Mr. Valukas.

MS. BLACKBURN: Okay. Now, going back, did you say that this was a defective part when you talked about it earlier?

MS. BARRA: We have learned when we -- when we knew -- when the recall decision was made and we later went back and looked at the

chronology, there's points that suggest -- and that's why we're doing the investigation.

MS. BLACKBURN: Okay. All right. Now, I think that you're going to hear from more than one of us about not having a new part number assigned. That -- Who made that decision?

Was that strictly a Delphi decision, or did that come into the GM supply chain for that decision to be made as to how that part number would be coded?

MS. BARRA: At a general level, General Motors is responsible for General Motors parts numbers.

MS. BLACKBURN: Okay.

MS. BARRA: But, again, that's part of the investigation to understand how that happened.

MS. BLACKBURN: Okay. Does that seem inconceivable to you?

MS. BARRA: Yes, it is inconceivable, it is not our process, and it is not

acceptable.

MS. BLACKBURN: Okay. I -- I would think that it probably is -- is not.

Have you asked Delphi if you can have access to their documentation and their e-mail chain dealing with this issue?

MS. BARRA: I have not, and we'll -- Again, Mr. Valukas will go as the investigation takes him to get the information he needs to make a complete and accurate accounting of what happened.

MS. BLACKBURN: Okay. My time has expired. Thank you, Mr. Chairman.

I yield back.

CHAIRMAN MURPHY: Just for clarification, Ms. Blackburn, we have asked for that e-mail chain from Delphi, and we'll let you know when we get that.

Now recognize Chairman Emeritus of the committee, Mr. Dingell, for five minutes.

MR. DINGELL: Mr. Chairman, I thank

you for your courtesy.

I begin by telling the families of those who were injured or killed by the defective General Motors' vehicles they have our sympathy, and we believe the events here are tragic indeed, and I join everyone in expressing my condolences to the families who were killed or injured in those crashes.

Now, it is incumbent upon the Congress, federal regulators and General Motors to determine how these deaths could have happened and to take reasonable steps to ensure that the safety of American motorists and their families are moving forward.

I expect that this investigation will be thorough, and I counsel all the stakeholders to be unabashedly forthright.

Now, Ms. Barra, I'd like to build on Chairman Murphy's line of questioning, and all of my questions will require yes or no answers.

If you cannot answer some of my

questions, I expect that you will submit responses for the record and all available relevant supporting materials.

Now, Ms. Barra, is it correct that GM has now recalled approximately 2.5 million small cars in the United States due to defective ignition switches?

MS. BARRA: Yes.

MR. DINGELL: Yes or no.

Now, Ms. Barra, is it correct that GM recently expanded its recall of small cars because it was possible that defective ignition switches may have been installed as replacement parts? Yes or no.

MS. BARRA: Yes.

MR. DINGELL: Ms. Barra, is it correct that the ignition switch in question was originally developed in the late 1990's and approved by General Motors in February of 2002? Yes or no.

MS. BARRA: Yes.

MR. DINGELL: Ms. Barra, is it correct

that General Motors' own design specifications for such ignition switch required 20 plus or minus five Newton centimeters of torque to move the switch from the accessory position to the run position? Yes or no.

MS. BARRA: Yes.

MR. DINGELL: Ms. Barra, is it correct that General Motors approved production of such ignition switch despite test results by Delphi during the production part approval process, or PPAP, showing that the switch did not meet GM's torque requirement? Yes or no.

MS. BARRA: It's not clear to me.

MR. DINGELL: Now, Ms. Barra, is it correct that General Motors approved a redesign of the ignition switch used in the presently-recalled vehicles in April of 2006?

MS. BARRA: Yes.

MR. DINGELL: Ms. Barra, and is it correct that GM's torque requirement for the redesigned switch remained the same as for the original ignition switch? Yes or no.

MS. BARRA: It is not clear to me and that's why we're -- focused the investigation on that area specifically.

MR. DINGELL: When that information becomes available, would you submit it to the committee, please?

MS. BARRA: Yes, I will.

MR. DINGELL: Now, Ms. Barra, to your knowledge, did the redesigned ignition switch meet GM's torque requirements? Yes or no.

MS. BARRA: I believe --

MR. DINGELL: Do you want me to say it again? To your knowledge, did the redesigned ignition switch meet GM's torque requirement? Yes or no.

MS. BARRA: It's part of the investigation.

MR. DINGELL: Ms. Barra, will you please submit for the record an explanation of the factors that GM takes into consideration when approving a part for production?

Are there circumstances where GM

may approve parts for production when such parts do not make such design specifications? Yes or no.

MS. BARRA: Yes.

MR. DINGELL: If so, could you please submit materials for the record explaining when and why that might occur?

MS. BARRA: Yes.

MR. DINGELL: Ms. Barra, I appreciate the lengths to which GM under your leadership is going to recall the vehicles and ensure that they are safe to drive.

GM's cooperation with the committee is necessary in order to understand the process by which and the reasons decisions were made leading up to the 2014 recall.

You may have so far done so, and I expect that you will continue to do so. Thank you for your courtesy, Mr. Chairman.

Thank you, Ms. Barra.

I yield back the balance of my time.

CHAIRMAN MURPHY: Gentleman yields back. Now recognize the Chairman Emeritus of the majority, Mr. Barton of Texas, for five minutes.

MR. BARTON: Thank you, Mr. Chairman.

Before I ask my questions, I want to make just a general observation. This is probably the last major investigation that this subcommittee and full committee is going to conduct where we have the services of Mr. Dingell and Mr. Waxman.

We've had a history on this committee and this subcommittee going back at least 40 to 50 years that when we have major issues, we try to approach them on behalf of the American people in a nonpartisan, very open way, and it certainly appears that we're going to continue that tradition today, so I hope that we can show the best to the American people that the Congress at its best gets the facts, presents the facts, and does so in a way that in the future we protect the public health

and safety for the American people.

Now, with that caveat, I do have a few questions. A number of Congressmen so far have made the point that these ignition switches didn't appear to meet specifications, and I -- my assumption is that you have agreed that they did not meet specification.

Is that correct?

MS. BARRA: We have learned that as we did the recall.

MR. BARTON: Now, I'm an industrial engineer, and I used to be a registered professional engineer. I'm not currently registered, but I have been in the past.

Why in the world would a company with the stellar reputation of General Motors purchase a part that did not meet its own specifications?

MS. BARRA: I want to know that as much as you do. It is not the way we do business today, it's not the way we want to design and engineer vehicles for our customers.

MR. BARTON: I mean, I just don't understand that. I never worked in an auto assembly environment, I've worked in a defense plant, an aircraft plant. I was plant manager of a printing plant. I've done limited, very limited consulting in the oil and gas industry, but I've never been a part of an organization that said we set the specs, when a part doesn't meet the specs, we go ahead and buy it anyway.

And I just -- you know, you're currently the CEO, but at one time I think before you became CEO you were the vice president for global product development, purchasing and supply chain. Let me --

Is it your position now that General Motors will not accept parts that don't meet specifications?

MS. BARRA: We will not accept parts that don't meet our performance, safety, functionality, durability requirements.

As I mentioned before in the steel example, there will be times where there

will be a material or a part that doesn't meet the exact specification, but after analysis and looking at the information, the safety, the durability, the reliability, the functionality, it will be okay.

That happens very often as we buy steel to make the bodies of the vehicles.

MR. BARTON: Well, then -- then you don't need specifica --

MS. BARRA: No, but -- but --

MR. BARTON: What you just answered is gobbledygook.

MS. BARRA: But --

MR. BARTON: It's your own specification. It's your company's specification.

If a part doesn't meet the specification, why in the world would you not refuse it and only accept a part that meets a specification?

MS. BARRA: There needs to be a well-documented process if you accept a part

that doesn't meet the original specification.

MR. BARTON: A --

MS. DeGETTE: Will the chairman yield?

CHAIRMAN MURPHY: Briefly, yes.

MS. DeGETTE: Do you have that information?

MS. BARRA: On steel?

MS. DeGETTE: No, on starters.

MS. BARRA: On the ignition switch?

MS. DeGETTE: Yeah. If it doesn't -- didn't meet specifications, do you have the information on these starters, that it met all these other criteria?

MS. BARRA: That is part of the investigation, but clearly by the fact that we made a recall, it did meet -- did not meet the performance specifications.

MR. BARTON: We have the advantage as the subcommittee that we know now what happened in the past, we know now that there is a real problem, we know now that -- that a number of young people have lost their lives apparently

because of this -- this defect, so we have the advantage of hindsight, and so I understand that, but as Ms. DeGette just said, and a number of others, there's no reason to have specifications if you don't enforce them.

This next question is not a trick question, but it's an important question.

Right now how many parts are being used in General Motors' product that don't meet your own company specifications?

MS. BARRA: I don't have that exact number, but I can tell you the parts that we're using today meet the performance and the reliability, the safety, that they need to.

If we find we have a part that is defective that doesn't meet the requirements, we then do a recall or --

MR. BARTON: Well, again, that's not an acceptable answer I think to the American people. We're not telling you the specifications to set.

Now, there are some safety

specifications that by law and NHTSA by regulation set, but there shouldn't be a part used in any GM product -- or for that matter, any other automobile product that's sold in the United States that doesn't -- that doesn't meet the specifications.

My last question -- Well, at what level was the decision made to override and to use this part even though it didn't meet specification?

Was that made at the manufacturing level, at the executive level, or even at some subcomponent purchasing level?

Do you know that right now?

MS. BARRA: That's part of our investigation, to find that question -- answer that question.

MR. BARTON: All right. Thank you. Thank you, Mr. Chairman.

CHAIRMAN MURPHY: All right. Gentleman's time has expired.

Now recognize Mr. Braley for five

minutes.

MR. BRALEY: Thank you, Mr. Chairman.

Ms. Barra, we've had different perspectives during this hearing; you've been appropriately focusing your attention on the members of this committee and answering our questions, and I've been staring at these photographs on the back wall, and I see young women the same age as my daughter, I see young men the same age as my two sons. My son Paul owns one of your Cobalts.

I see a young Marine in his dress blues, and I'm reminded of the photograph I have in my office upstairs of my father at the age of 18 in his dress blues at Camp Pendleton, and the focus of this hearing so far has been on GM's commitment to safety, which I think we all agree is an important topic for this hearing.

You testified in your opening -- and I think I am quoting -- our customers and their safety are at the center of everything we

do, and you responded to a question from Ms. Blackburn and told us that you were going to run GM differently than it's been run in the past, and I have a copy of GM's March 18th press release announcing Jeff Boyer as your new Vice President of Global Vehicle Safety, and in this press release he is quoted as saying nothing is more important than the safety of our customers and the vehicles they drive. Today's GM is committed to this, and I am ready to take on this assignment.

20 years ago today, before this hearing, an Iowa family harmed by another defective GM vehicle gave me this promotional screwdriver set that they got from their local GM dealer, and if you look at it, on the outside it has a slogan, "Safety comes first at GM."

So my question for you -- and I think the question that these families back here want to know, is what's changed at GM?

Isn't it true that throughout its

corporate history GM has represented to the driving public that safety has always been their number one priority?

MS. BARRA: I can't speak to the statements that were made in the past; all I can tell you is the way we are working now, the training that we've done. We have changed our core values, the decision-making.

We're leading -- we're leading by example, we're -- you know, one of the process changes that we've also made is in addition to when the technical community makes their decision about a safety recall or a recall, we are going to be reviewing it, Mark Royce, the head of local product development and myself, to see if there is more than we want to do. We --

MR. BRALEY: Hasn't the core values of General Motors always been that safety comes first?

MS. BARRA: I've never seen that part before.

MR. BRALEY: Isn't it true that throughout the history of the company it's made representations like this to the driving public as a way of inducing them to buy your vehicles?

MS. BARRA: Today's General Motors, we -- All I can tell you is today's General Motors, we are focused on safety.

We have over 18 vehicles that have five-star crash rating. Our entire Buick lineup meets that requirement. We take it very --

MR. BRALEY: But we are talking about these vehicles and what's changed.

Have you had a chance to read this article in the Saturday New York Times, a Florida engineer's eureka moment with a deadly GM flaw?

MS. BARRA: I believe I read a portion of that article.

MR. BRALEY: Okay. This is an article by a writer named Bill Vlasic, and he wrote in here about an engineer named Mark Hood who was

at a loss to explain why the engine in Brooke Melton's Cobalt had suddenly shut off causing her fatal accident in 2010 in Georgia?

Then he bought a replacement for $30 from a local GM dealership and the mystery quickly unraveled.

For the first time someone outside GM, even by the company's own account, had figured out a problem that it had known about for a decade and is now linked to 12 deaths.

Even though the new switch had the same identification number, Mr. Hood found big differences, and then the article continues, So began the discovery that would set in motion GM's worldwide recall of 2.6 million Cobalts and other cars and one of the gravest safety crises in the company's history.

Do you agree with the author that this is a grave safety crisis in the history of General Motors?

MS. BARRA: I've said that this incident took way too long, it is not acceptable, and that's why we're making radical change to the entire process, adding more resources, and even a vice president of Global Vehicle Safety, who is tremendously experienced and of the highest integrity, and we will continue to make processes and -- process changes and people changes as we get the results of the Mr. Valukas investigation, and we will take all of those recommendations and we will make changes.

MR. BRALEY: Before I yield back, Mr. Chairman, I would like to ask unanimous consent to have this article added to the record as part of the hearing if it's not already part of the record.

CHAIRMAN MURPHY: Without objection, so --

MS. BLACKBURN: If the gentleman would yield his remaining second, Ms. Barra said they had changed their core values; I think it would

be great if she could submit to us what those new core values for GM are so we would have those for the record.

CHAIRMAN MURPHY: We'll ask that for the record.

MR. BRALEY: And I would also like to have any prior statement of core values from General Motors over the last 20 years so that we can see what has changed, Mr. Chairman.

CHAIRMAN MURPHY: We'll be asking the members for -- several questions to submit to GM for the record.

Now recognize the vice chair of the subcommittee, Dr. Burgess, for five minutes.

DR. BURGESS: Thank you, Chairman, and thank the witness for spending so much time with us this afternoon.

You mentioned, Ms. Barra, in the start of your written testimony that over a decade ago General Motors embarked on a small car program.

Do you recall why that was?

MS. BARRA: I'm sorry?

DR. BURGESS: Why did GM embark on a small car program ten years ago, over a decade ago?

MS. BARRA: To have a complete portfolio, I believe.

DR. BURGESS: But the mission or the type of car manufactured by GM previously had not -- had not fit that model, so this was an entirely new business line that GM was undertaking?

MS. BARRA: The -- the Cobalt and -- There are several cars, but if you are speaking specifically about the Cobalt, it was following a previous small car, but it was an all new program architecture, et cetera.

DR. BURGESS: Was any part of this done because of the cafe standards that were changing?

Was any of this done because of Congressional action that had occurred

previously?

MS. BARRA: I cannot answer that question. I wasn't in decision making at that point.

DR. BURGESS: Let me ask you this: When Mr. Waxman was giving his opening statement, he said it was a shame that the National Highway Traffic Safety Administration did not have access to the same information that General Motors had.

Do you think that was a fair statement for him to have made?

MS. BARRA: As part of the investigation we're doing, I'm looking at what information was provided and when.

DR. BURGESS: And that, you know, becomes then the troubling part of all of this, I think Ranking Member DeGrette had you look at Tab 8 in the -- in the information binder and this was talking about the ignition key cylinder assembly, and the date of the PDF that I have is January 1st of 2005.

Again, you'll find that under Tab 8, but later on in the same document it says, We are closing this with no action.

The main reasons are all possible solutions were presented, the lead time for solutions is too long, the tooling and costs -- tooling costs and price -- piece price were too high and none of the solutions seems to fully countermeasure the possibility of the key being turned off.

So that was all in January of 2005, and then, you know, as part of our document evaluation for getting ready for this hearing there were several accident reports that were supplied to us, and one of those occurred not too far away in Maryland in the middle of the Summer of 2005, and in that accident sequence a Cobalt hit a series of trees at the end of a cul-de-sac, the driver was fatally injured during that.

She wasn't wearing a seatbelt, wasn't a terribly large individual, she weighed

about a hundred pounds. Because the airbag did not deploy, though, it would be my -- well, you just have to wonder had the airbag deployed, would her small frame have been protected.

I mean, she broke the rim off the steering wheel because of the impact of the collision, her body with the steering wheel and steering column.

Of course the steering wheel being somewhat indented toward the driver, the lower part of the driver's body, hit her under the rib cage apparently resulting in a liver laceration, which resulted in the exsanguination in the time sequence to get her out of the crash and get her to the hospital.

You can't help but wonder because the -- the other injuries that were reported with that crash are really fairly -- fairly mild.

You've got to believe the airbag would have made a difference there. I just can't help but think that the people evaluating

this must have asked themselves why -- why no airbag went off with this type of crash.

She was going 70 miles an hour and hit an oak tree. Wouldn't that be a logical place for an airbag to deploy?

MS. BARRA: First off, it's a very tragic situation, some of -- the fatalities in these vehicles again we see as a tragedy -- as a tragedy and we have apologized.

As I read the document that you have asked me, I find that unacceptable, that any engineer would stop at that point if there was an issue that they felt was a safety defect, and that's why we're doing the investigation, again, to put a complete timeline together and I commit to you we will take action and we will -- we've made process changes. We will fix the process.

Our goal is to have a world class safety process.

MR. BRALEY: And I -- I respect you for -- for being here and answering that way.

One of the other accidents that's recorded in our binder under Tab 20 was a head-on collision that occurred I believe in Pennsylvania where another -- the Cobalt was not at fault, another car went over the -- the center line and there was a head-on impact. Again the Cobalt airbags did not deploy. The driver of the other vehicle, the airbag did deploy.

It seems to me this should be a red flag to the people who investigate airbag non-deployments as an occurrence or as an issue.

In fairness let me just state that all of the front seat occupants in both vehicles were -- were deceased as a result of that accident, so the deployment of the airbag in that situation did not protect -- preserve the life of the driver, but still you'd have to ask the question, you've got a Cobalt and a Hyundai meeting head on, why did the Cobalt's airbags not deploy.

It was the exact same force for both vehicles and there was no intercedent jarring of the vehicle. They didn't run off the curb, they didn't run over another tree first.

So the airbag did not deploy, and why would that have been the case in that particular accident?

MS. BARRA: Again, it's a -- it's a tragic situation any time there is a loss of life in a traffic situation.

Again, I -- this is not a report -- or an investigation that was done by GM.

I -- I can't answer your questions because it's usually very complex as they look at that, so I -- I can't comment on this particular study.

MR. BRALEY: If that is part of your internal investigation, though, I would like for you to make that information available to the committee staff and to the committee.

CHAIRMAN MURPHY: It's time.

MS. BARRA: We can -- We will make whatever information we have available.

MR. BRALEY: Thank you, and thanks for being here.

CHAIRMAN MURPHY: Your time has expired.

Now recognize Ms. Schakowsky for five minutes.

MS. SCHAKOWSKY: Thank you. Thank you, Mr. Chairman.

Mr. Braley testified about the pictures in the back and I think that what must make it more -- even more painful is that these deaths were needless, so I want to ask you about something a little bit more than an apology.

One of the many questions raised about GM is how -- GM today is how they will -- you will handle accidents that happened prior to the company's bankruptcy.

GM filed for bankruptcy in June,

2009, emerging as new GM about six weeks later, so that means that new GM, the company as it exists today, I've been told may not be liable for accidents that occurred prior to July, 2009.

Is that your understanding, Ms. Barra?

MS. BARRA: We at GM want to do the right thing for our customers, and that's why we feel this is an extraordinary situation.

As I have said, it took too long to get to the answers and the understanding about this part. That's why we have hired Mr. Feinberg.

We feel Mr. Feinberg has had extensive experience, and he will bring his experience and objectivity to assess what are the appropriate next steps because we do understand that we have civic responsibilities as well as legal responsibilities.

MS. SCHAKOWSKY: Are you saying that the hiring of Mr. Feinberg indicates that GM

will give some -- some kind of settlement with those individuals whose -- families whose loved ones lost their lives?

MS. BARRA: We have just begun to work with Mr. Feinberg; in fact, our first meeting will be on Friday.

It will take probably 30 to 60 days to evaluate the situation, so I have -- we have not made any decisions. We have just started this process with Mr. Feinberg.

MS. SCHAKOWSKY: And that might include people who have been injured as well?

MS. BARRA: Again, I -- we have not made any decisions.

MS. SCHAKOWSKY: Let me ask you this: During GM's restructuring, did the company disclose what it knew about this ignition switch defect?

By 2009 there is no doubt officials in GM were aware of this problem.

MS. BARRA: I was not aware of this issue, I can't speak to what was disclosed,

but -- so, again, our investigation will cover if there was any information.

To my knowledge, there was -- it was not known at the senior leadership of the company.

MS. SCHAKOWSKY: So does GM accept responsibility for the accidents caused by the company's defective vehicles?

MS. BARRA: We -- I -- First of all, I again want to reiterate, we think the situation is tragic, and we apologize for what has happened, and we are doing a full investigation to understand --

MS. SCHAKOWSKY: I am talking about responsibility and even liability.

MS. BARRA: Responsibility and -- I'm sorry, I don't understand.

MS. SCHAKOWSKY: And even liability. Do you take responsibility? Is the company responsible?

MS. BARRA: The --

MS. SCHAKOWSKY: The new GM, is it

responsible?

MS. BARRA: We will make the best decisions for our customers, recognizing that we have legal obligations and responsibilities as well as moral obligations.

We are committed to our customers and we are going to work very hard to do the right thing for our customers.

MS. SCHAKOWSKY: I hope that you do do the right thing. Let me ask you about some of the people who potentially knew about this.

Where is my -- hold on one second. Okay.

So you've appointed a new -- for the first time a president of Global Vehicle Safety.

I have to tell you I am underwhelmed by that, thinking it's such an obvious thing to have someone high up that would, in fact, be able to connect the departments, so everyone knew -- I guess it's a good thing; however, that it's finally --

finally done.

So we know that Ray DiGiorgio was the GM engineer who approved the ignition switch redesign in 2006. Is he still an employee of your company?

MS. BARRA: I believe he is.

MS. SCHAKOWSKY: Do you know who signed off on the initial faulty ignition switch that did not meet your specifications?

MS. BARRA: I don't, but that's what I will learn with the investigation, and after we have a complete investigation from a very complex process, we will take action.

We will change process, and we will deal with any people issues.

I think we demonstrated in the issues we learned in India with the Tavera about a year ago, we will take serious steps and hold people accountable.

MS. SCHAKOWSKY: So no one right now has lost their job as a result of this knowledge about this defective part?

MS. BARRA: We are just a few weeks into the investigation by Mr. Valukas. We've already made process changes, and as I return to the office after this, we will begin to look at the implications now that we have more data coming from the investigation and take the appropriate steps.

MS. SCHAKOWSKY: Thank you. I yield back.

CHAIRMAN MURPHY: The gentleman yields back.

Now recognize the gentleman from Georgia, Dr. Gingrey, for five minutes.

DR. GINGREY: Mr. Chairman, thank you very much. This hearing is much appreciated.

Pretty poignant to me since Brooke Melton lived in my congressional district at the time, and had it not been for an outstanding plaintiff's attorney in the Cobb Judicial District in Georgia in bringing this case, I'm sure it was against the local dealership, it resulted in a settlement, but it

brought to light what's going on now, and the purpose -- and hopefully some good can come from this hearing, and I want to thank Chairman Murphy for holding it and investigating the root causes of the General Motors' recall of over 2.6 million vehicles linked to these ignition defects.

Unfortunately, Ms. Barra, I heard just yesterday that the recall now includes 6.3 million vehicles.

And I do want to speak a little about this lady named Brooke Melton, a nurse in Spalding County, Georgia, which at the time was in the district I represent, and she was, as you know, tragically killed March the 10th, 2010, on her 29th birthday, in a horrific side-impact accident on Highway 92 and the ignition switch in the access reposition.

Just the day before, just the day before her death, she took her 2005 Chevy Cobalt into the dealership for service and the service report stated: Customer states engine

shut off while driving, please check, end of quote.

Despite the fact that a service bulletin was issued from General Motors for faulty ignition switches back in 2005, for that make and that model, the on-site mechanics cleaned the fuel line, cleaned the fuel injection, told her to come pick up her car, which she did.

Brooke Melton's tragic death is not acknowledged as part of this recall because it involved a side impact instead of a front impact.

Mrs. Melton's parents, Ken and Beth -- they're not here today I don't think -- but they deserve answers.

Ms. Barra, is Brooke Melton included in General Motors' death count? Yes or no.

MS. BARRA: To my knowledge, no.

DR. GINGREY: No?

MS. BARRA: It was a side impact and

we --

DR. GINGREY: Right. Why did General Motors not include the non-deployment of airbags from side-impact accidents resulting in loss of life or injury in this recall?

MS. BARRA: As you look at a frontal collision and the way the airbag is to operate, I believe the assessment -- that was -- the assessment was made that would potentially be related to the switch.

DR. GINGREY: Yeah, but, Ms. Barra, if you connect the dots -- I mean, the ignition gets knocked over to the accessory position, there was a problem, you were using faulty -- even by your own standards -- equipment, and so maybe what happened was that all of a sudden the car stalls, she is driving perfectly, trying to control without any power steering, without any power brakes, may very well have -- and I don't know the details of that accident, but may very well have run through a four-way or a red light and was slammed into from the

side.

Whether it was a head-on collision or side collision, it would be for the same reason, and she is dead, and that was almost four years ago.

I don't understand why -- why General Motors does not include the non-deployment of airbags from side-impact accidents resulting in loss of life or injury in this recall.

Can you explain that to us?

MS. BARRA: Well, first of all, all of the accidents and fatalities are very tragic, as you've -- as you've indicated, and we are deeply sorry for those.

We have been very clear of the number that we've put forward. There's been a lot of analysis that's gone on to look at potential incidents, and --

DR. GINGREY: Well, did General Motors investigate or do you plan to investigate whether this condition relates to the

non-deployment of airbags and side-impact crashes?

MS. BARRA: We have individuals that are looking at the available information from accident --

DR. GINGREY: Well, you told us about your recent hire, and -- well, lastly, Ms. Barra, to what extent did GM regularly inform dealerships, like the dealership obviously in Cobb County, of its 2005 technical service bulletin on faulty ignition switches so that these service technicians, these young guys, you know, maybe working there six months to a year, that they could properly address a customer complaint like Brooke had the day before her death?

MS. BARRA: I'm sorry. Was your question how do we communicate service bulletins? I didn't --

DR. GINGREY: How do you make sure that these dealerships all across the country and their service departments are making sure

that their technicians are getting and receiving the instructions?

MS. BARRA: We can provide details on exactly how we communicate service bulletins and how that's rolled out to each of our dealerships across the country.

DR. GINGREY: I hope you will. Thank you. Thank you, Ms. Barra. And, Mr. Chairman, I yield back.

CHAIRMAN MURPHY: Ms. Barra, related to his questions, with all of these cars recalled and waiting for parts, what are drivers supposed to do in the meantime while their cars sit in the driveway?

MS. BARRA: We have communicated and we have done extensive testing that if you take the -- if you have just the ignition key with the ring or just the ignition key, the vehicle is safe to drive.

If people are not comfortable with that, we are making loaners or rentals available. They can go to their dealer. We

have over 13,000 customers that have these vehicles in rentals or loaners right now.

CHAIRMAN MURPHY: And you are assuring people it is safe to drive if they just take the other things off the key?

MS. BARRA: There's been extensive testing done by the engineering team and with just the key and the ring or just the key, we believe it is safe based on our testing.

CHAIRMAN MURPHY: Recognize Mr. --

MS. DeGETTE: Excuse me, Mr. Chairman.

CHAIRMAN MURPHY: Yes.

MS. DeGETTE: Is that true of the -- of the earlier ignitions as well as the 2006, all of them? All these cars that's true?

MS. BARRA: That is our -- Yes.

MS. DeGETTE: Thank you.

CHAIRMAN MURPHY: Mr. Tonko, you are recognized for five minutes.

MR. TONKO: All right. Thank you, Mr. Chair.

Ms. Barra, thank you for

appearing before the committee and I have to believe for the members of -- family members and friends of the victims of this tragic outcome, it must be a very painful process to sit here and listen to the exchange.

Just a comment at first, we're hearing a lot about information that will come post the investigation or the review; however,.

I hold in my hands a February report and a March report to NHTSA on behalf of GM under your watch that provides detailed timelines with a whole bit of knowledge exchanged.

And I'm confused somewhat about that fair amount of knowledge that has been formally exchanged to NHTSA, NHTSA, and at the same time we're hearing well, we don't know until the investigation is complete.

So there's a conflict that I think is brought to bear here in terms of an exchange that has been detailed in the last few weeks under the watch of the -- the new General

Motors, today's GM.

And at the same time when I was listening to a representative from Illinois ask about the corporate chart and the changes, no changes have been made, we're waiting for that pending the investigation.

But at the same time we've characterized or relabeled it as today's General Motors, so while we're all products of the environment that produces us, the cultural impact of GM seems to still be in play with a number of people who have perhaps shifted positions, but all part of that organization.

So comfort me by telling me that there is a new thinking, there is a new culture that has beset GM, while all the players are there in the corporate chart.

Tell me how the company has restructured and reorganized so as to bring comfort to the consumer.

MS. BARRA: First, there are many new people in the company as well as people who

have experience across the company. There is a new structure.

For instance, in Global Product Development we have streamlined, eliminated bureaucracy. We took out an entire layer of management in the product development.

We've completely redone the quality processes over the last -- it started in the 2011-2012 timeframe.

We've changed our test procedure. We've added additional validations.

So there has been a complete remake of the way we drive quality.

We test a failure instead of a testing to a -- to a -- a standard, that's just one example, and we've looked across the entire organization.

We've rebuilt our supply -- supplier quality organization adding over -- over a hundred resources just in this country alone, so we've systematically gone across the company and we're making changes.

Even in the chronologies which I think you held up, those are the most detailed chronologies that we have ever provided, sharing, again, in a summary fashion with the information we have now.

But then we are conducting an investigation with Mr. Valukas.

We've also rolled out new values with the customer as our compass; relationships matter and individual excellence.

We've trained thousands of people, and -- but most importantly it's leadership at the top.

It's the leadership of how we behave, of how we demonstrate when we make decisions, and that we make decisions that focus on the customer, focus on safety, focus on quality.

And I can tell you from my leadership team and the next layer, we continue to drive that every day.

We recognize culture change

doesn't happen in a year or two, but we are well on that journey and we will -- we're dedicated to it and we very clearly want to have the safest vehicles on the road.

MR. TONKO: And will you make that list public from the -- from the report that you're anticipating?

MS. BARRA: I'm sorry?

MR. TONKO: Will you make the list that will be coming forth public? Will you share that?

MS. BARRA: The list of -- I'm sorry.

MR. TONKO: The full report coming from Mr. Valukas.

MS. BARRA: Mr. Valukas will give us findings, and we will make the appropriate findings available to this body, to our customers and to our employees.

MR. TONKO: The appropriate findings. What about the full report?

MS. BARRA: I'm not con -- I don't know if he'll give a report or if he'll share

findings.

MR. TONKO: If he does, will you share the full report?

MS. BARRA: We will share the appropriate information.

MR. TONKO: Not the full report?

MS. BARRA: Again, I don't know if there will be a full report, but we will share --

MR. TONKO: If there will be a full report, will you share it?

MS. BARRA: I commit that we will be very transparent, and we will share what's appropriate.

MR. TONKO: So, in other words, there is no commitment to share the full report?

MS. BARRA: I'm saying I will share what is appropriate.

MR. TONKO: I hear the answer.

Mr. Chair, I yield back.

CHAIRMAN MURPHY: The gentleman yields back.

Recognize the gentleman from Louisiana, Mr. Scalise, for five minutes.

MR. SCALISE: Thank you, Mr. Chairman, appreciate you having this hearing.

Ms. Barra, thank you for being here.

And let me first say my prayers are with all the families of those who lost their lives and others who have been impacted by this.

I want to thank you all for being here in this room as well.

Obviously the questions we have are even more pertinent to the families that are here and that's why it's important that we ask the questions and we get answers, and if we're going to work to make sure that we can prevent something like this from happening again, we've got to get into the real details of what -- what went on during those period of years, unfortunately years, where it seemed somewhere inside of General Motors there was

knowledge that this was a problem before it got to the level of recall, and want to first take you, Ms. Barra, to the tab you've got there, number 38.

Tab 38 is the sign-off. This is a -- it's called a General Motors commodity validation sign-off. This is the actual sheet that the engineer signed off on that approved the design change in the faulty ignition switch.

Have you seen that document before?

MS. BARRA: This is the first time I have seen this document that's labeled Delphi.

MR. SCALISE: Now, what we're talking about here, I mean, how long have you been aware of -- of the problem with these faulty ignition switches?

MS. BARRA: I was aware that there was a faulty ignition switch on January 31st.

MR. SCALISE: Of this year?

MS. BARRA: Of this year.

MR. SCALISE: Okay. So as you're -- as you're going through I'm sure some of the questions you have and are asking and maybe some of the questions we're having, the first question you would want to ask is what did we know about it, when did we know, did we know well in advance, and why didn't we prevent it from happening.

The first thing we all are talking about is when was this found out within GM to the point where they actually made a change.

I mean, y'all made a design change. The letter I've got here, this form, is dated April 25th of 2006.

So 2006 is when your engineers -- and there's a name on this. There is an actual engineer who you just said under oath earlier is still employed with GM.

There is an engineer that actually signed this document requesting -- not requesting, approving a change in this ignition

switch, in fact, with the part number. The part number is on here.

Has anyone -- In your knowledge, has anyone at GM taken -- he is an employee of yours, you can just pull him aside right now and ask him:

When you signed off on this in 2006, number 1, why didn't you change the part number.

And, number 2, why did you approve a change in the ignition switch and not bring it to the level of recall, in 2006?

Clearly people lost their lives after, after this was signed off on, so do you know right now -- you are under oath.

Do you know of anyone that has asked the person that signed this, that signed off on this, have any of y'all asked him those basic questions?

MS. BARRA: I know this is part of the Anton Valukas' investigation, and I want to know the answers to the questions you're

asking.

MR. SCALISE: So do you know -- do you know of anyone that's asked him that question? I mean, he is an employee of yours right now.

MS. BARRA: Right.

MR. SCALISE: You can pull him aside --

MS. BARRA: We --

MR. SCALISE: -- right when you leave here today and ask him these questions.

MS. BARRA: But I think it's very important as we do an independent investigation that we let Mr. Valukas go do a thorough investigation, talk to people, that there's not a lot of side investigations going on.

He is the one standard that we're going to use in this investigation.

MR. SCALISE: Clearly --

MS. BARRA: He brings the objectivity to it.

MR. SCALISE: Clearly -- I mean, you talk about a new culture. Has anyone been held

accountable as of now for what's happened?

MS. BARRA: Again, we are just -- this -- we learned of this on the -- January 31st --

MR. SCALISE: Again, you have documents -- I have a design change in 2006 related to what we're talking about. This is not a 2014 issue.

The recall was issued in 2014 but the product, the product, the faulty ignition switch we're talking about, was redesigned in 2006 by one of your engineers who is still an employee of General Motors.

If you can't get me that information -- and if you do find that information out, by the way, would you get that to the committee?

MS. BARRA: It will be part of the investigation we are sharing.

MR. SCALISE: The other question I want to ask you, because later on we're going to have the acting administrator of the

National Highway Traffic Safety Administration. Some of the things he says in his testimony before you leave I'd like to get at least some responses.

He says, number one, we are pursuing an investigation whether GM met its timeliness responsibilities to report and address this defect under federal law.

Are you aware of whether or not GM has met its obligations of timeliness?

MS. BARRA: That will -- that will be part of the investigation that we're doing to answer --

MR. SCALISE: So you're not aware at this time, though? I mean, if you are aware of something that would be a violation of federal law, if you're aware of that already, can you share that with us?

MS. BARRA: I am aware of the findings that I have already shared from Mr. Valukas today.

MR. SCALISE: Okay. Another question

he asked, in the brief time I have left, he says GM had critical information that would have helped identify this defect. That's the gentleman that's testifying right after you.

You don't have the opportunity to come behind him and respond; he's going to be saying this. He's writing this in his testimony.

What would you say in response to his statement that GM had critical information that would have helped identify this defect?

MS. BARRA: As I've already said, we have already learned through Mr. Valukas' investigation that there were points in time where one part of the organization had information that wasn't shared across to the other side of the organization. You can call it a silo.

At some point they didn't understand that the information would be valuable to another party, so I've already shared that we have found that to be true and

we've already made changes to the structure and to the responsibilities of people so that won't happen again.

MR. SCALISE: We appreciate getting the full range of answers to all these questions, and with that I yield back the balance of my time.

Thank you, Mr. Chairman.

CHAIRMAN MURPHY: Now recognize Mr. Green for five minutes of Texas. Thank you.

MR. GREEN: Thank you, Mr. Chairman. And Ms. Barra, first of all, congratulations on being the CEO of General Motors.

Like a lot of my constituents, I've been a customer of GM; in fact, I can't list the number of vehicles I think I've owned. Although my wife drives a Tahoe, I lease a Malibu, I have a Blazer, and -- you know, so -- and we keep them for a long time, and so I appreciate GM products.

And you heard the questioning

today from -- and it seems like on a bipartisan basis we're trying to find out what's happening, although, Mr. Chairman, I know you heard it, I was surprised because Dr. Gingrey is a good friend of mine and a physician, and to say he thanked the plaintiff's lawyer for something, you at least have got Republicans and Democrats on the same side of something, but -- Phil's not here now, but -- but there is a reason we have a civil bar.

You've gone down the litany with the other questions of the problems that were happening.

I see in 2002 the switch was -- was acknowledged it was below specs; in 2005 the dealers were notified of a problem, but it was because of heavier key rings, and I thought about my wife's key ring that she uses, it like has everything in the world on that key ring, so I couldn't imagine that would be an issue.

But I guess getting down to the concern I have, and in 2007, you modified the

switch ignitions for future models, though the switch ignition still fell below the initial torque standards by GM.

Let me give you an example of what this has caused.

I have a constituent who I talked to yesterday before I left Houston whose mother, Lois, owns a 2003 Regal which is ten years old, and she's owned I guess GM products like I have for years, but the Regal began stalling and turning off in February of '13 and the car had less than 50,000 miles.

She owned -- Since she's owned the car it's gone to the GM dealer six times, the battery's been replaced, and each time the dealer did not fix the problem.

She ended up finding -- and I'll quote Ms. Knudson, who told it to me -- she finally found a trade -- a shade tree mechanic who actually fixed it.

And I guess what bothers me, if you go back to the dealer this many times --

and I hold the dealers, you know, repair shops to a higher level, simply because they know the product, that what has happened, can you confidently say that these stalling issues are limited only to the Cobalt, the HHR, the Pontiac G5, the Ion, Solstice and Saturn Ion and the Sky models of vehicles, or is it other ones like the Regal, or maybe like the Malibu I drive?

MS. BARRA: Again, I -- I'm not aware of any other stalling issues. If we have an issue, we put it into our -- our recall process and make decisions, so if there is a defect that you are aware of, I would appreciate the information and I will definitely look into it.

MR. GREEN: Well, we'll get you that information from the -- I have a couple minutes left, but I represent a very industrial area.

We have refineries and chemical plants. What we do is inherently dangerous and so you have to take extra concern about it, and it looks like in the last ten years GM has

not -- somewhere along that line the culture of the company is not there to deal with that, and as the new CEO, I would hope you would make sure it happens.

And I have said this many times, when I have a chemical company or a refinery and have an accident chemical plant or refinery that has an accident and somebody dies and we've been able to pinpoint, sometimes with civil justice, but sometimes through chemical safety board, on what the decision was made that they didn't do that caused people to die.

That's what happened here, and General Motors is a much greater company than to do that, and I would hope the culture of your corporation would be better so it would continue to earn the respect that both this lady and I have, and -- but that's your job now as CEO, but you need to fix it --

MS. BARRA: I agree.

MR. GREEN: -- and fix it as quick as you can because it's going to cause problems

obviously.

MS. BARRA: I agree with you, it's completely my responsibility and we will work day and night.

We've already made tremendous change at General Motors, and I recognize it's my responsibility.

MR. GREEN: The last thing in my 30 seconds is should that -- my constituent, should she have her mother in Phoenix take that Regal back and have it checked by a dealer now --

MS. BARRA: Yes.

MR. GREEN: -- to see what happened?

MS. BARRA: And I wish you would send a note to me, and I will --

MR. GREEN: I'll get you that information. We'll check.

MS. BARRA: Thank you.

MR. GREEN: Thank you, Mr. Chairman.

CHAIRMAN MURPHY: Chair will now recognize Mr. Griffith for five minutes.

MR. GRIFFITH: Thank you, Mr. Chairman.

Ms. Barra, you have indicated that the -- not having a new part number when the part was changed in 2006 is not acceptable.

MS. BARRA: Correct.

MR. GRIFFITH: Is that correct?

MS. BARRA: That's correct.

MR. GRIFFITH: And I guess it's hard to figure that somebody would have just done that by accident and that there had to be a reason because that was a breach of protocol, wasn't it?

MS. BARRA: I don't think there is an acceptable reason to do that.

MR. GRIFFITH: Okay. And while there may not be an acceptable reason, but you would have to acknowledge that a reason in somebody's mind, while not acceptable, might mean that it is actually harder to track the problem with an old part when you have an improved new part that's put in its place, isn't that correct?

Yes or no.

MS. BARRA: Yes.

MR. GRIFFITH: Yes. And while you have indicated that you did not know the individual name of the person who made that decision, do you know whose job title it was or in whose chain of command it was to make the decision not to create a new part number for that part?

MS. BARRA: I don't -- it would be within the engineering organization, but I will learn that from the investigation, and we will take appropriate action.

MR. GRIFFITH: And would that engineering department have been under your chain of command at some point in your tenure with GM?

MS. BARRA: Since 20 -- February of 2011.

MR. GRIFFITH: But it never got to you?

MS. BARRA: No.

MR. GRIFFITH: Nobody ever brought this to your attention?

MS. BARRA: No, it did not.

MR. GRIFFITH: All right. I appreciate that. I do have this question, and I think that the answer probably is is that your investigation will reveal this, but it is somewhat concerning that while the trial lawyer that uncovered this may be very savvy and his expert might be pretty sharp, you all have sharp people working at GM as well, do you not?

MS. BARRA: I believe we do.

MR. GRIFFITH: And it's one of those questions that I'm sure your investigation will uncover, but why not -- why didn't your team of engineers connect the dots and figure out that when the -- when the ignition slips into that auxiliary position, the airbags won't function properly?

MS. BARRA: Congressman, those are the questions I want to answer.

And, as I've said, it's taken way

too long, and we will learn from this and we will make changes, and we will hold people accountable.

MR. GRIFFITH: And not only holding people accountable; you were asked earlier and I know that you're in a tough spot on that as to what kind of liability GM will end up accepting because there is legal liability and moral liability and you've said that.

One of the questions that I would have would have been a whole lot easier just to have actually listed these liabilities in the bankruptcy, would it -- wouldn't it -- would it not?

It would have been easier to do it in the bankruptcy instead of having it come out now, wouldn't it?

MS. BARRA: The best thing in the world would be as soon as we find a problem, we fix it, and it doesn't exist in the marketplace and doesn't affect our customers and doesn't create tragedies.

MR. GRIFFITH: And here's -- here's one of the things that concerns me, have you been -- have you been given any estimates yet by Mr. Feinberg or others as to what a best case, worst case scenario is on your civil liabilities?

MS. BARRA: We have just been in initial conversations with Mr. Feinberg. I believe we will work through him to evaluate the situation over the next 30 to 60 days.

MR. GRIFFITH: Has anybody else given you a best case or worst case scenario over liability issues related to this problem?

MS. BARRA: There's been a lot of -- of estimates done in the public, but none given specifically to me.

MR. GRIFFITH: Okay. Would those liability issues have negatively impacted the prospects of either a bail-out by the federal government or prior to the bail-out the people who were lending you money to keep GM afloat with its heavy liabilities already existing,

would not the additional liabilities that would have come forward by this problem have had the potential to dissuade private investors or the federal government to giving cash to GM?

MS. BARRA: As I look at it, as soon as we identify an issue and fix it, then there aren't liabilities or the liabilities are contained, and that's what -- as we look at problems, as we go forward, we want to fix them as soon as we can, and if there is a safety issue, we're going to make the change, make the right investment and accept that.

MR. GRIFFITH: But in the real world of business if there's a new set of liabilities that come onto the page that weren't there before, it's harder to get money from both public and private sources, isn't that true?

MS. BARRA: I think it depends -- it depends on the situation, so as a general question, I -- I don't feel appropriate commenting.

MR. GRIFFITH: All right. I

appreciate that.

Let me ask this last question: When this issue was first -- when this issue first came up, the corresponding problem resolution tracking system report document identified the issue as severity 3.

What does that mean?

MS. BARRA: I'm sorry, I --

MR. GRIFFITH: It said severity 3. I'm referencing back to some of the documents that you have given or that your folks have given, and the initial assessment in 2004, 2005, when your problem resolution tracking system report came out, it related this problem as being severity 3.

What does that mean?

MS. BARRA: I don't have a specific definition for that. I --

MR. GRIFFITH: Can you get one for us?

MS. BARRA: I can.

MR. GRIFFITH: I appreciate that, and I yield back.

CHAIRMAN MURPHY: Can I ask a clarifying question for what Mr. Griffith was saying?

Did GM purposely and willfully negotiate during the bankruptcy issues, or in the process of obtaining the loans, did they purposely withhold any information that they may have known about pending lawsuits or things that would be emerging in the future about the Cobalt or other cars?

MS. BARRA: I am not aware -- I personally did not withhold any information.

I am not aware, but I -- I can't speak to every single person.

CHAIRMAN MURPHY: Thank you.

Mr. Welch, you are recognized for five minutes.

MR. WELCH: Thank you. I have to congratulate General Motors for doing the impossible. You've got Republicans and Democrats working together, and I thank my colleagues for their focus on this hearing.

A couple of things. How many cars have been recalled as of this date?

MS. BARRA: Related to the ignition switch?

MR. WELCH: Right.

MS. BARRA: Over 2.5 million.

MR. WELCH: Now, this ignition switch issue was -- first came to light in 2006; is that correct?

MS. BARRA: Through our investigation we'll know when it came to light. It came to light to me on January 31st, 2014.

MR. WELCH: I mean, that's totally irrelevant to the people who lost their lives.

MS. BARRA: I understand.

MR. WELCH: I mean, you are the current CEO, but that's not relevant to the question I just asked.

MS. BARRA: I'm sorry, I thought you asked when I became aware of it.

MR. WELCH: No, no. GM.

MS. BARRA: Again, that's what we'll

learn in our investigation.

MR. WELCH: Well, you changed the switch after 2006, you began in 2007 changing the switch, right?

MS. BARRA: Yes, there were changes made.

MR. WELCH: So would it be a logical inference that somebody thought there was a reason to change the switch that had been in use in 2006 to 2007?

MS. BARRA: As we do our internal investigation, I hope to get those answers.

MR. WELCH: Well, wouldn't that be a starting point? Somebody for some reason started to change a very critical part in the car between 2006, 2007, correct?

MS. BARRA: Correct.

MR. WELCH: So let me ask you this: If you had recalled cars and acted on this aggressively in 2006 when you were making the decision that you had to change the --

You, GM; not you. Okay?

MS. BARRA: I'm sorry.

MR. WELCH: GM changed the switch, how many cars would you have had to recall had you acted in 2007 when you made the decision to change the switch?

MS. BARRA: I can get you the exact number, but it would have been significantly less. I don't -- I don't --

MR. WELCH: You may estimate. You can talk to your back row there, if you want.

MS. BARRA: I would -- again, I will confirm with an answer, but I would assume it is something around more 1.2 million.

MR. WELCH: Just from 2000 -- so you would have cut it down at least in half and maybe more?

MS. BARRA: Because again we're starting with vehicles that -- the Saturn Ion was in production in '03.

MR. WELCH: Let me just get a business-type question here.

What do you estimate would have

been the cost to GM of this recall had they done it in 2007?

MS. BARRA: When we looked at the population from '03 to '07 -- actually, if I look at all the vehicles that had this, it would have been a higher number. I believe it was 1.8 and that would have probably -- the estimated cost for those two pieces is something less than a hundred million.

MR. WELCH: Okay. And what do you estimate will be the cost of the recall now that it is being done eight years later?

MS. BARRA: Well, there is a -- there is a larger population. We can provide the information. I --

MR. WELCH: Well, I want an estimate. I want people to be able to hear this. Decision delayed is money and lives at risk, so I'm trying to get an opinion from you, and it's ballpark, so it can be adjusted, as to what the cost would have been had you acted eight years ago versus acting now. You, GM.

MS. BARRA: Well, if we would have acted at that point, we would have had a smaller population, as we have talked about.

MR. WELCH: Look, I know that. That's obvious, okay?

MS. BARRA: I'm sorry, I'm not trying to be difficult.

MR. WELCH: I'm asking about the cost.

MS. BARRA: I don't understand your question.

MR. WELCH: You know what, if I were on the board of directors and I had an obligation to shareholders, and I had a company that could have acted eight years ago to deal with a problem, but by not acting let that problem increase in magnitude, do more damage to shareholders, do more damage to the bottom line, do enormous damage to the reputation of this company, and cause we don't know how much harm, to citizens, I'd want an answer to the question.

MS. BARRA: I agree, and it would

have -- it would have been substantially less at that timeframe had we done it than what it will be now.

MR. WELCH: GM was involved in litigation concerning allegations that this switch was defective and caused problems, correct?

MS. BARRA: Yes.

MR. WELCH: And GM settled some of these litigation matters, correct?

MS. BARRA: Correct.

MR. WELCH: After very aggressive defense.

Those settlements were secret?

MS. BARRA: They are confidential by both parties.

MR. WELCH: By "both parties" -- I'm -- you know, some of us have been in court, by both parties usually means at the request of the party that's paying the damages.

MS. BARRA: I wasn't involved in those settlements, all I know is confidential, it was

by both parties.

MR. WELCH: Okay. This is not good. You are the company right now, all right?

MS. BARRA: All right.

MR. WELCH: Let me ask this question: Do you believe that when a company that has been sued about a matter involving product safety where a person has been seriously injured or has died that the company that settles as a matter of policy should be entitled to keep secret what that settlement was about?

MS. BARRA: I am not -- I think that there are issues associated with that, that every settlement is -- is unique and it's a decision that is agreed to by both parties, and I'm -- - I don't have any comment --

MR. WELCH: Do you -- Let me ask a question.

MS. BARRA: -- what is unique.

MR. WELCH: If a company, GM or any other company, settles litigation and pays a

substantial amount of money pertaining to an allegation about serious bodily injury or death, should that company be permitted to keep secret that settlement from the governmental agency whose responsibility it is to protect the public safety?

MS. BARRA: If that is information required by that government agency, then we would provide it.

If the two parties involved in the settlement agreed to it, that's their agreement.

MR. WELCH: So if you don't have to do it, you won't do it?

MS. BARRA: If both parties want that -- I am making the assumption that both parties agreed to it, which is what I have been told.

MR. WELCH: I yield back. Thank you.

CHAIRMAN MURPHY: Gentleman's time has expired. Now recognize the gentleman from Missouri for five minutes, Mr. Long.

MR. LONG: Thank you, Mr. Chairman, and thank you for being here, Ms. Barra.

And I want to thank the families that are here today for keeping safety in the forefront of America's and Congress' consciousness when it comes to automobile safety, and we've heard about the same subcommittee in the past dealing with this issue before I came to Congress, the Ford Explorer, Firestone tire situation, we've heard about the Toyota accelerating car issue, and, like I say, I wasn't here, but I can imagine that the questions were similar, who knew what when, who was responsible, did you know this person, have you done anything about it.

I want to take a little different tact with my line of questioning, as I normally do, and that is that people ask me all the time, do you think you make a difference, when you go to Congress, you're up there a few years, do you think you're making a difference, and that's hard to quantify, to think to

somebody are you making a difference or not.

But today, and this is the day I want to look back on and say, you know what? I think I made a difference.

I think that we got some answers to questions in the future to prevent -- I don't want to be here again, and I don't want to have them say Ford Explorer, Firestone tire, Toyota accelerating, and do you remember the GM faulty ignition switch, so that's what I would like to say, yeah, we made a difference.

And with that, like I say, I thank the families for being here and keeping it in the forefront of safety so there is not other people sitting in those same seats next time we approach an issue like that, because hopefully there won't be a next time, and the finger pointing -- with the old analogy, when you're pointing your finger, you've got three fingers pointing at yourself, there's going to be a lot of finger pointing in this, but what I would really like to drill down on and get

answers to is how the NHTSA or whatever they're called, the National Trans -- National Highway Transportation -- or excuse me, National Highway Traffic Safety Administration, and you all, as an automobile manufacturer, if you can work to see that this doesn't happen again so that the two organizations can work together and drill down on these problems when we first learn them, whatever the next problem may be, that would be my goal for here today.

And in answer to one of Chairman Upton's -- the chairman of the full committee's question a while ago, and I don't even know what he was asking about exactly, but you said, I was not part of that organization at the time.

I don't have -- I'm sure that was something within General Motors because you like I have a history that goes back I think to you were -- when you were 18 years old with General Motors, so you were there at the time as far as the overall organization, but not

whatever part he asked, your father worked I believe for 39 years for Pontiac, so you indeed go way back.

I go back to 18 years old with General Motors, too. When I was 18 my folks bought me a 1973 GM Jimmy. It's -- if you think of a big Suburban today, cut off two doors, and that was a Jimmy, or a Blazer. Chevrolet called theirs the Blazer.

I was in the real estate auction business for years, from '73 to about '05, I drove nothing but General Motors Suburbans.

I remember times when the key would be in there and you -- and you'd go to put your key in and it wouldn't work. Why wouldn't it work? Because I had a big keychain, big key ring, and it would vibrate, and it would tear the teeth off the keys to where the key no longer functioned, but never once did I have that shut off, never once did I have that fail to act or shut off in the middle of driving.

So to me, from '73 to '05 with my experience they made pretty good ignition switches.

Can you tell me how many models GM makes today?

MS. BARRA: Oh, around the globe, very -- over a hundred.

MR. LONG: Hundred different models? Can you tell me how many ignition switches they made?

MS. BARRA: Well, we sell, you know, over eight million vehicles --

MR. LONG: No, I mean how many per -- If you have a hundred different models, how many different ignition switches would there be?

MS. BARRA: I can't answer that question, I don't know.

MR. LONG: Well, to me, GM has proven in the past, and other companies have, that you can build -- I just don't understand this reinventing the wheel, that every car has to

have a different ignition switch with a different set of circumstances made by somebody down in Mexico to make sure that it meets the qualifications.

So I'd recommend two things, that you work hard with us, our next witness from the National Highway Traffic Safety Administration, says that a car, when it shuts off, that the airbag will still deploy for 60 seconds.

I can't imagine being in a crash that a car shut off and you continued for more than 60 seconds, so that's a question that I'm going to have for him, but I would ask that you reach out and work not only with your engineers saying hey, we've got some pretty good -- why do we reinvent the wheel every time we go to invent a new ignition switch for all these different models.

And I also hope that you will reach out and work with the National Highway Traffic Safety Administration. So...

MS. BARRA: I would welcome the opportunity to have our technical experts look at how we can improve the way the system works, because airbag deployment is part of the system, and I would welcome the opportunity, if there are improvements that can be made, we would want to be in the forefront of making them.

MR. LONG: And the communication with NHTSA?

MS. BARRA: And work closely with NHTSA.

MR. LONG: Thank you, ma'am. I appreciate it again. I thank the families.

Mr. Chairman, I yield back.

CHAIRMAN MURPHY: Now recognize Mr. Yarmuth for five minutes.

MR. YARMUTH: Thank you, Mr. Chairman.

I at the outset want to express my condolences to the family -- the victims of this tragedy, and I know it must be frustrating to you to listen to this testimony, and you are

looking for answers and so are we and so is GM right now, and I hope we do get answers because I was frustrated by the same questions that my colleague had just mentioned.

I've been driving a long time and this is a pretty well established technology, sticking a key into an ignition -- ignition and turning it.

Are you aware of any other ignition problems that have been -- that have been discovered or -- GM or any other vehicle over the history of key ignition systems?

MS. BARRA: I have not reviewed every incident we've ever had, but I -- you know, we do -- as we find issues, we document them and take them through our process.

In this particular case it took way too long.

MR. YARMUTH: And there is a new technology, I've been driving a car for four and a half years -- I confess, it's a Ford product, not a GM product -- that has a push

button ignition.

I was in a GM car last week -- very nice one, by the way -- that has a push button ignition system.

How do you make a judgment as to whether a car has a push button car ignition system or a key ignition system, and what are the differences, first of all, in terms of safety?

We know that this one -- this particular situation wouldn't occur with a push button ignition system, but how do you make that decision as to what goes into which car?

MS. BARRA: We evaluate, and actually the push button start is something that we are evaluating at putting across the portfolio.

As you look at the specifics of a push button start versus a traditional ignition, I'd like our experts to provide that information because, again, the ignition switch and how -- it is a component that operates as part of a system of the vehicle especially as

it relates to a safety perspective, and I think we'd be better served to have our experts cover that.

MR. YARMUTH: But you are doing an analysis of whether a push button ignition system is safer than a key ignition system?

MS. BARRA: I -- we -- we can definitely do that. I think, you know, there's been work done that both can be designed to be safe, but we are looking because of the customer -- you know, it's a function -- it's a delighter usually when the vehicle has a push button start.

We have them on some of our vehicles, we continue to roll those out across our entire portfolio, and we are looking at doing it across the board.

MR. YARMUTH: Yeah, I mean, I have no idea if there is a difference in safety, there may be none, but it would be worth doing that analysis.

My -- one of my staff members has

a 2005 Malibu that was recalled because of a power steering issue, and she called the dealership and the dealership said that they didn't know how to fix it.

So my question to you is, are you confident that GM knows how to fix the vehicles it recalls for the variety of problems of --

MS. BARRA: Well, first of all, if we find a situation that's not safe and we don't know how to fix it we're still going to recall the vehicles and we will take those actions.

In this case there may be a communication lag because there is a fix, whether it's a check or a replacement of the product, so that does exist for that specific vehicle.

MR. YARMUTH: So she is getting bad information from her dealership or they haven't been told yet?

MS. BARRA: I would assume. I can follow up, if you would like.

MR. YARMUTH: I think the public would

want to know.

MS. BARRA: Right.

MR. YARMUTH: Because you now have.

MS. BARRA: Because --

MR. YARMUTH: There are millions of vehicles out there under the recall, and she was told to go ahead and drive the vehicle if she felt safe, and I'm not sure whether every driver would know whether they should feel safe or not.

I mean, some people if the power steering goes out are strong people, and maybe it's happened to them before and they know it's going to take a little bit more effort to steer, other people might not, so, you know, I don't even know how the average consumer is supposed to know whether they feel safe or not after a vehicle has been recalled.

Doesn't the company have some disclosure responsibility to say these things -- at least these things could happen, there could --

MS. BARRA: Yeah, and we have done that. That is part of a letter that we send to the customer when they -- we notify them of this issue and then we provide information to the dealers as well.

MR. YARMUTH: Okay. One final question. We talked about it, when we're going to have the NHTSA representative here earlier.

One of the things that you are not required to do is to provide warranty data proactively to the National Highway Traffic Safety Administration.

Do you think that's something that ought to be considered that --

MS. BARRA: I would --

MR. YARMUTH: -- it might be helpful, in this case maybe dots could have been connected sooner if all that data would have been --

MS. BARRA: I welcome the opportunity to look at what information that NHTSA would feel is of value to submit.

MR. YARMUTH: Thank you. I yield back.

CHAIRMAN MURPHY: The gentleman yields back.

Now recognize Mr. Harper for five minutes.

MR. HARPER: Thank you, Mr. Chairman.

And to the family members that are here, our hearts indeed go out to you and we will continue to get to the bottom of this.

And, Ms. Barra, I know this is not the most enjoyable experience to go through this, but we are in a situation that, you know, we -- we don't trust the company right now, and we have to get to the bottom of this, and so we want to continue to ask some questions.

If I could get you to refer to Tab 28 in your binder, and I want to direct your attention to that e-mail that's found at Tab 28.

In September of 2005, a few months after General Motors decided that there

was not an acceptable business case to implement changes to the ignition switch, an engineering group manager e-mailed Lori Queen and other GM personnel including Raymond DiGiorgio about proposed changes for model year 2008 ignition switch.

So this engineering obviously explains that a more robust ignition switch will not be implemented in model year 2008 vehicles because it appears the piece cost could not be offset with warranty savings.

In his e-mail he references piece cost. Is that just the ignition switch?

MS. BARRA: Generally when people refer to piece cost, they refer to the part.

MR. HARPER: So he's just referring to that ignition switch? That's a yes?

MS. BARRA: Again, I didn't write that note, but I'm just telling you generally when people --

MR. HARPER: Okay.

MS. BARRA: -- use piece cost, that's

what it means.

MR. HARPER: As he notes in that e-mail, an increase of 90 cents; is that correct?

MS. BARRA: I'm sorry?

MR. HARPER: It says -- Does the e-mail say there would be an increase of 90 cents?

MS. BARRA: Yes. Yes, I see it.

MR. HARPER: And since the warranty offset was only 10 cents to 15 cents, GM didn't make the change?

MS. BARRA: And that is not something that I find acceptable. If there is a safety defect, but there is not a business case, this analysis is inappropriate.

MR. HARPER: And I appreciate that you don't find that acceptable, but that indeed is what happened here, correct?

MS. BARRA: And that is -- Exactly, and that's one piece of data. As we go through the investigation, as we put the pieces

together, we will take action because this is not the type of behavior that we want in our company today, with our engineers today.

MR. HARPER: And understand we're trying to go back and figure out what happened and understand that so we can indeed make sure, as you do, that this never happens to anyone else again.

Now, Lori Queen, what was her position at the time?

MS. BARRA: 2005, I believe she was a vehicle line executive, but I can go back and confirm that.

MR. HARPER: If you would let us know, please.

How does cost factor into decisions about safety?

MS. BARRA: They don't.

MR. HARPER: Has --

MS. BARRA: Again, I can only speak to the way that we are running the company, and if there is a safety issue, if there is a defect

identified, we go fix the -- fix the vehicle, fix the part, fix the system.

It's not acceptable to have a cost put on a safety issue.

MR. HARPER: And that is obviously your position and your goal and your -- the way you want it to be now, but that's not the case of what we're going back and looking at.

So you're telling us that General Motors has changed its position how it handles cost and safety issues; it hasn't been this way before, but this is how you want it now, am I correct?

MS. BARRA: I think in the past we have had more of a cost culture, and we are going to more of a customer culture that focuses more on safety and quality.

MR. HARPER: When we go back and look at who first -- who first authorized the use of an ignition switch that did not meet specifications --

MS. BARRA: And that is something we

will learn in our investigation.

MR. HARPER: Now, one of the things that concerns us, of course, is when General Motors filed bankruptcy in 2009, it wasn't an overnight problem with -- with money or with the loss of profits or losing money each year.

In 2005 I know General Motors lost 10.6 billion; jump to 2007, lost 38.7 billion; 2008, lost 30.9 billion; and then filed for bankruptcy in 2009.

The fact that General Motors was going to -- through many years of financial issues, did that impact how this was categorized and was not dealt with at that time as it should have been?

MS. BARRA: I can't answer that question. I want to know the answer to that question, and when I do, I will take action.

MR. HARPER: All right. You indicated earlier that a specific traffic death was not included in the -- the count of fatalities that may have been associated with this issue.

I would like to see other traffic deaths or serious injuries that were looked at, but the determination was made that it was not part of this total.

Can you get us that information?

MS. BARRA: Through our -- our TREAD information, yes.

MR. HARPER: Will you get that for us?

MS. BARRA: Yes.

MR. HARPER: Thank you very much.

I yield back.

CHAIRMAN MURPHY: Gentleman yields back. Now recognize Ms. Castor for five minutes.

MS. CASTOR: Thank you. Natasha Weigel, age 18, was killed October 24th, 2006, while riding in a 2005 Chevy Cobalt. Cheryl Trotline, age 19, was killed on June 12th, 2009, after losing control of her 2005 Chevy Cobalt, and Allen Ray Floyd, age 26, was killed on July 3rd, 2009, after losing control of his 2006 Chevy Cobalt.

I understand that Ms. Weigel's parents and Ms. Trotline's family are in attendance at the hearing today. Others have been killed because of GM's defective ignition switch.

The fact is we do not know yet the full extent of the fatalities, injuries and accidents, but evidence is growing through this investigation and that of -- in the press, and hopefully your own investigation, that the deaths could have been avoided if GM had addressed this issue long ago.

We know that GM knew about this problem as far back as 2001.

The committee learned last week that the supplier of the faulty switch, Delphi, conducted tests that year, 2001, which showed the switch didn't meet GM's specifications, but GM used this switch in Cobalts and Ions and other vehicles anyway.

Ms. Barra, the committee sent you a letter about this issue and documents were

received yesterday that showed that these inadequate switches were approved by GM in May, 2002.

I have a document here -- and it's been placed before you and it's in Tab 54 in the binder as well -- this document shows that the force required to turn the ignition switch was too low. That specification is clearly marked "not okay".

Ms. Barra, does this document show that GM officials were aware that the ignition switch did not meet company standards in 2002?

MS. BARRA: If this document was provided to the engineers, again that's something I will learn in our investigation.

MS. CASTOR: Internally GM knew there were problems. By 2004, they were considering ways to fix the problem by redesigning the faulty switch.

This document, which is also placed before you -- this is at Tab 8 in that

notebook as well -- from 2004 shows that GM did reject alternative designs.

It mentions one-year lead times and says, quote, the tooling costs and piece prices are too -- excuse me, are too high. It concludes: Thus, none of the solutions represents an acceptable business case. Other documents present the piece cost increase per potential solution as 57 cents per unit.

Ms. Barra, do you know who at GM would have made the decision about whether to make this change in 2004?

MS. BARRA: Well, first of all, I find that decision unacceptable, as I've stated. If there is a safety defect, the cost is not the issue that we look at; we look at what it's going to take to fix the problem and make the vehicle safe.

As we go through our investigation we will put all the pieces together of incidents and -- and actions that were taken or not taken over a -- more than a

decade period and make the appropriate process changes and --

MS. CASTOR: So in retrospect do you think that a repair cost of 57 cents was too costly for GM to undertake?

MS. BARRA: Again, if we are making a decision on safety, we don't even look at costs, we make the change.

MS. CASTOR: But there was a major disconnect between what GM told the public and what it knew in private.

In private GM approved a switch that it knew was defective and then the company appeared to reject other changes because the cost of 57 cents per fix was too high of a price to pay.

Now, also in 2005 the New York Times ran a review in which the author wrote about his wife encountering a problem with the Chevy Cobalt.

He, quote, said: She was driving on a freeway when the car just went dead. The

only other thing besides a key on the ring was a remote control fob provided by GM.

The GM spokesman at that time, Alan Adler, issued a statement saying in rare cases when a combination of factors is present, a Chevrolet -- Chevrolet Cobalt driver can cut power to the engine by inadvertently bumping the ignition key to the accessory or off position while the car is running. When this happens, the Cobalt is still controllable.

So I find it baffling that not only did GM know about this serious problem over a decade ago, but that it was discussed on the pages of the New York Times, and when GM responded publicly, it essentially told drivers no big deal, engines cut off all the time.

When your engine suddenly cuts off when you are driving on the highway, would you consider this a safety issue?

MS. BARRA: Yes.

MS. CASTOR: And you've indicated that you were not even aware that GM was

investigating the Cobalt until December, 2013; is that correct?

MS. BARRA: I was aware that there was analysis going on related to a Cobalt.

MS. CASTOR: But at the time the New York Times wrote their report in 2005, what was your position?

MS. BARRA: In 2005 I believe I was in the manufacturing engineering organization of the company.

MS. CASTOR: So you were a high-level executive at GM responsible for vehicle manufacturing?

MS. BARRA: Vehicle -- the equipment that we used to make vehicles.

MS. CASTOR: And one of the nation's largest newspapers raised the issue in this important new vehicle launch for GM and you did not know about it at the time?

MS. BARRA: I -- I don't have a recollection of that article.

MS. CASTOR: Do you recall it being a

concern for GM?

MS. BARRA: I was not aware that there was this issue until the recall was introduced on January 31st.

I only knew at the end of December that there was an issue with the Cobalt; I did not know it was an ignition switch issue.

MS. CASTOR: Thank you, Mr. Chairman.

CHAIRMAN MURPHY: Thank you. That concludes our members, but I would like to see if Mr. Terry, of Nebraska, who is the subcommittee chairman of Commerce, Manufacturing and Trade, have an opportunity for five minutes.

Is there any objection?

(No response.)

MR. TERRY: Thank you.

CHAIRMAN MURPHY: Without objection, you may proceed, Mr. Terry.

MR. TERRY: Thank you. I appreciate this, and I'm sorry for being late, but my

plane was cancelled, for mechanical reasons probably, ignition switch.

So getting back to NHTSA -- and I chair the subcommittee over jurisdiction with NHTSA and the TREAD Act, and the TREAD Act clearly requires manufacturers to inform NHTSA within five days of any, quote, non-compliance or defects that complete an unreasonable risk of safety.

Did GM at any time contact or notice NHTSA of any non-compliance or defects regarding the ignition switch?

MS. BARRA: That is something I hope to learn as we go through our investigation.

MR. TERRY: Okay. What is the difference between non-compliance and a defect?

MS. BARRA: That's a very broad question.

MR. TERRY: No, it's a very specific question.

MS. BARRA: I think it depends on the specific situation that you are talking about.

MR. TERRY: Regarding an ignition switch.

MS. BARRA: So your question is what is a non- -- a non-compliance --

MR. TERRY: Yes, non-compliant ignition switch.

MS. BARRA: My understanding of when there is a non-compliance, it's a very specific term used by NHTSA to standards, but I can get you the specific definition of that, versus when we feel we have found a defect with one of our parts. That's my issue.

MR. TERRY: And that's why it's "or", so when it -- when an ignition switch is substandard, it's non-compliant, and a defect then is a higher level, and I think that's what we are looking for here today, is to determine if there was, quote, unquote, a defect.

MS. BARRA: Congressman, I think in the language that we use with NHTSA there is very specific definitions, and I'd like to provide those to you as opposed to --

MR. TERRY: Oh, I -- I can get the definitions from NHTSA, that's --

MS. BARRA: I'm just --

MR. TERRY: I'm not asking you to do that.

MS. BARRA: You're asking a very specific question related to this, and I'm trying to be truthful.

MR. TERRY: Okay, but just -- All right. I'm not trying to beat up on you here, but just repeating back NHTSA's definition, I'm asking specifically how it com -- how it applies to the ignition switch and...

NHTSA is going to testify there was no notice.

MS. BARRA: NHTSA -- I'm sorry, I didn't hear you. NHTSA is going to testify --

MR. TERRY: I'm under -- My understanding is that NHTSA said that GM did not contact them of non-compliance.

MS. BARRA: If I find through our investigation that we did not provide the

appropriate information to NHTSA, that will be a very serious issue, and we will take appropriate action with the individuals involved.

MR. TERRY: All right. Thank you. I yield back.

CHAIRMAN MURPHY: Gentleman yields back. I think there is no other questions, although, Ms. DeGette, you had a clarifying question?

MS. DeGETTE: Yes. I just had two questions, Mr. Chairman. Thank you.

The first one is as I've been sitting here thinking about these new ignition switches that you are putting into the recalled cars, they're based on the 2006 specs, but what you're saying, Ms. Barra, is that they're going to meet the highest safety standards when they're manufactured; is that right?

MS. BARRA: Our engineering team is going through extensive validation testing to make sure that they meet the requirements.

MS. DeGETTE: And on the component technical specification, it's Tab 53 of your notebook, which was December 6, 2012, it says:

The minimum torque required by the switch on the return side of the ignition switch from crank to the run position must be 15 N-CM.

So would that be the standard then, since it says it must be that?

MS. BARRA: From the position of run to access --

MS. DeGETTE: Yes.

MS. BARRA: -- 15 is the minimum. The spec is 20 plus or minus 5.

MS. DeGETTE: Right. And my final question, I'm impressed, this committee has had -- has had experience with Kenneth Feinberg before because he was appointed to help administer the fund that was set up by BP after Deep Water Horizon, which was this committee's investigation; he was also appointed to administer the fund after the Boston marathon

terrorist attacks.

But I want to make sure that what you're doing when you hire him is you're really doing something because he's usually hired to sort out the value of people's claims and then assign money, and I'm assuming GM's hiring him to help identify the size of claims and then help compensate the victims; is that right?

Is GM willing to put together some kind of a compensation fund for this -- these victims that Mr. Feinberg will then administer?

Is that why you have hired him?

MS. BARRA: We've hired Mr. Feinberg to help us assess the situation. We under --

MS. DeGETTE: So really there is no money involved in this at this point?

MS. BARRA: We have just hired him, and we will begin work with him on Friday.

MS. DeGETTE: So really you hired him, you announced it today, but so far he has not being given any ability to compensate victims,

is that what you're saying?

MS. BARRA: We are going to work with him to determine what the right course of action is.

MS. DeGETTE: And might that include victim compensation here?

MS. BARRA: We haven't made any decisions on that yet.

MS. DeGETTE: Okay. Thank you so much, Mr. Chairman.

CHAIRMAN MURPHY: Thank you, Ms. Barra. We thank you for your time today.

GM has cooperated with this investigation, and we expect your company will continue to cooperate. Let me make a couple of requests.

One is members will have other questions for you, and we hope that you respond to those within -- in a timely manner.

We also plan to conduct interviews, further interviews, with General Motors officials and employees involved in the

recalled part and may be requesting more records.

Will you make sure you make those available to us?

MS. BARRA: We will absolutely cooperate.

CHAIRMAN MURPHY: Thank you.

And also on behalf of Chairman Upton, we would also like to be notified when you get your internal report and would like to discuss the chance to review that report as well.

MS. BARRA: We will notify.

CHAIRMAN MURPHY: Thank you very much. I thank you, Ms. Barra. You'll be dismissed.

But while this is taking place and we're waiting for Mr. Friedman to sit down, we're going to take a five-minute break to allow Mr. Friedman to take his seat, and we will reconvene this hearing in five minutes. Thank you.

(WHEREUPON, a short recess was taken.)

CHAIRMAN MURPHY: Before becoming NHTSA's, which is the National Highway Transportation Safety Administration, Deputy Administrator Friedman worked for 12 years at the Union of Concerned Scientists as a senior engineer, research director, and as a deputy director of the Clean Vehicles Program.

I will now swear in the witness.

Mr. Friedman, you are aware that the subcommittee is holding an investigative hearing and, when doing so, has the practice of take being testimony under oath.

Do you have any objections to testifying under oath?

MR. FRIEDMAN: I do not.

CHAIRMAN MURPHY: Thank you.

The Chair advises you that under the rules of the House and under the rules of the committee, you are entitled to be advised by counsel.

Do you desire to be advised by counsel during your testimony today?

MR. FRIEDMAN: I do not.

CHAIRMAN MURPHY: In that case, will you please rise and raise your right hand?

(The witness was thereupon duly sworn.)

MR. FRIEDMAN: I do.

DAVID J. FRIEDMAN,

called as a witness herein, having been first duly sworn, testified before the Subcommittee as follows:

CHAIRMAN MURPHY: Let the record show the witness is now under oath and subject to the penalties set forth in Title 18, Section 1001, of the United States Code.

Mr. Friedman, you may now give a five-minute summary of your written statement.

MR. FRIEDMAN: Chairman Murphy, Ranking Member DeGrette, and members of the committee, thank you for the opportunity to testify before you today.

To begin, I would like to say that on behalf of everyone at NHTSA, we are deeply saddened by the lives lost in crashes involving the GM ignition switch defect.

The victims, families and friends, some of whom I believe are here today, have suffered greatly, and I am deeply sorry for their loss.

Safety is NHTSA's top priority, and our employees go to work every day trying to prevent tragedies just like these.

Our work reducing dangerous behaviors behind the wheel, improving the safety of vehicles, and addressing safety defects has helped reduce highway fatalities to historic lows not seen since 1950.

In the case of the recently recalled General Motors vehicles, we are first focused on ensuring that General Motors identifies all vehicles with a defective ignition switch, fixes the vehicles quickly and is doing all it can to inform consumers on how

to keep themselves safe.

We are also investigating whether General Motors met its responsibilities to report and address this defect as required under federal law.

If it failed to do so, we will hold General Motors accountable as we have in other cases over the last five years which have led to record fines on automakers.

Internally at NHTSA and the department, we have already begun a review of our actions and assumptions in this case to further our ability to address potential defects.

Today I will share what I have learned so far. NHTSA used consumer complaints and early warning data, three special crash investigations on the Cobalt, industry websites and agency expertise on airbag technology.

Some of that information did raise concerns about airbag non-deployments, so in 2007 we convened an expert panel to review

the data.

Our consumer complaint data on injury crashes with airbag non-deployments showed that neither the Cobalt nor the Ion stood out when compared to other vehicles.

The two special crash investigation reports we reviewed at the time were inconclusive on the cause of non-deployment.

The reports noted that the airbags did not deploy and the power mode was in accessory, but these crashes involved unbelted occupants and off-road conditions that began with relatively small collisions where, by design, airbags are less likely to deploy in order to avoid doing more harm than good.

Further, power loss is not uncommon in crashes where airbags deploy and did not stand out as a reason for non-deployment.

In light of these factors, NHTSA did not launch a formal investigation. We

continued monitoring the data, and in 2010 found that the related consumer complaint rate for the Cobalt had decreased by nearly half since the 2007 review.

Based on our engineering expertise and our process, the data available to NHTSA at the time was not sufficient to warrant a formal investigation.

So what does all this mean? It means that NHTSA was concerned and engaged on this issue.

This was a difficult case where we used tools and expertise that over the last decade have successfully resulted in 1,299 recalls, including 35 recalls on airbag non-deployments.

These tools and expertise have served us well, and we will continue to rely on and improve them.

For example, we have already invested in advanced computer tools to improve our ability to spot defects and trends and are

planning to expand that effort, but what we know now also means that we need to challenge our assumptions, we need to look at how we handle difficult cases like this going forward.

So we are looking to better understand how manufacturers deal with power loss and airbags.

We are also considering ways to improve the use of crash investigations in identifying defects.

We are reviewing ways to address what appear to be remote defect possibilities and we are evaluating our approach to engaging manufacturers in all stages of our defects process.

Between these efforts and those of the departments's inspector general, I know that we will continue to improve our ability to identify vehicle defects and ensure that they are fixed.

But I want to close on one last important note: Our ability to find defects

also requires automakers to act in good faith and to provide information on time.

General Motors has now provided new information definitively linking airbag non-deployment to faulty ignition switches, identifying the parts change, and indicating potentially critical supplier conversations on airbags.

Had this information been available earlier, it would have likely changed NHTSA's approach to this issue.

But let me be clear: Both NHTSA and the auto industry as a whole must look to improve.

Mr. Chairman, Ranking Member DeGrette, I greatly appreciate the opportunity to testify before you today. Thank you.

CHAIRMAN MURPHY: Thank you. I will now recognize myself for five minutes.

Now, Mr. Friedman, I -- with the understanding you just got in this position of acting administrator just a couple months ago

and for the last 12 years you were involved in other groups that focused on green energy and fuel cell technology, we understand that.

If you are unable or uncomfortable answering certain questions about automobile engineering and safety, you are more than welcome to ask someone else, some of your support staff behind you.

So I wanted to find out how NHTSA is communicating to the public about this recall, and I believe I have a slide available, or I have a poster here.

I went to your website to see what I could learn, and -- do we have that image available, about this -- and what it shows -- this is all.

This is all I could find on your website about the recall notice. No information about the broader recalls, about parts, replacement, investigation or anything.

I can't even click on this. It simply says get rid of your car key fobs, but

there is nothing else that person can do.

Can you fix this website so people can use it to get more useful information, please?

MS. BARRA: Congressman, if there is added information that should be on there to make sure that people can get to the information available on our website, we'll take those steps.

Right now consumers can go to our website and get all of -- all of the details associated with this recall if they go to that search button and select the 2005 Cobalt.

CHAIRMAN MURPHY: I just -- to make it easier, because --

MR. FRIEDMAN: Absolutely.

CHAIRMAN MURPHY: -- still don't trust government websites.

MR. FRIEDMAN: We'll make a link --

CHAIRMAN MURPHY: Just make the click link.

MR. FRIEDMAN: -- right there, sir.

Absolutely. That's fine.

CHAIRMAN MURPHY: In 2007 the chief of NHTSA's Defect Assessment Division proposed opening an investigation of airbag non-deployments in Chevy Cobalts.

Am I correct about that date?

MR. FRIEDMAN: Yes.

CHAIRMAN MURPHY: Now, if you turn to Page -- to Tab 19 in your binder, it's labeled as the DAD panel for November 15th, 2007, this is the Power Point presentation made to the defect assessment panel on November 15th.

At Bates stamp 4474 -- those little numbers at the bottom of the page -- the presentation states that there have been 29 complaints about the Cobalt airbags, 4 fatal crashes, and 14 field reports; is that correct?

MR. FRIEDMAN: That sounds correct.

CHAIRMAN MURPHY: At Bates stamp 4480 there is a chart of airbag warranty claims for Cobalt airbags as compared to other comparable vehicles.

Do you agree that the number of warranty claims for Cobalt airbags is much higher than other cars?

MR. FRIEDMAN: Congressman, Mr. Chairman, that is one of the issues that did raise concerns on our part.

What that chart shows is warranty claims, some of which are likely associated with airbag non-deployments, some of which may also, and are very likely, to be associated with warning lights on airbags or other potential problems.

This is a gross look at the data, an important look at the data, that is provided by our early warning data system that we use to decide whether or not we need to look further into one of these issues, which is what we did do in this case.

CHAIRMAN MURPHY: But still the NHTSA panel decided there was not a trend here and decided not to investigate despite the number of complaints, the fatal crashes and the

warranty claims.

Why was NHTSA convinced that investigation was not warranted? I believe this happened on two occasions; NHTSA decided twice don't move forward with an investigation.

What specific information did you have that said don't go forward?

MR. FRIEDMAN: Mr. Chairman, when we look at these cases, and when they looked at this case, at the time they look at the whole body of information.

They don't -- you can't just rely necessarily on one piece of information.

The core piece of information that they relied on in the determination there wasn't sufficient enough information first was analysis of the complaints, the injury crash complaints associated with airbag non-deployments, and the exposure, the number of those divided by the number of vehicles that were on the road and the number of years they were on the road. That gives you a sense of

how large the problem is in comparison to other vehicles.

When the team did that comparison, the Cobalt did not stand out. It was a little bit above average, but there were several vehicles that were significantly higher, there were some vehicles --

CHAIRMAN MURPHY: I understand, but twice employees at NHTSA raised a red flag on this; it wasn't just once, and a second time, too, they said something's not right here, so I'm wondering if you did something different when that occurred the second time in reviewing it, such as did anybody ask questions of why an airbag doesn't deploy?

I mean, I looked at the statements there, it had a number of things about power losses or how much longer battery power would be involved in an airbag deployment in the case of an accident, but did anybody ask the question was there anything else, any other reason, why an airbag wouldn't deploy within

NHTSA? Did anybody ask those questions?

MR. FRIEDMAN: Mr. Chairman, my understanding is folks were trying to understand why the airbags did not deploy; when you -- when they looked at the special crash investigations in 2007 as well as the data available, those special crash investigations were inconclusive.

Why? Because they indicated that these crashes were happening in off-road conditions with unbelted occupants --

CHAIRMAN MURPHY: I understand. I'm looking at reasons why airbags wouldn't deploy, and so you were talking among yourselves according to what we understand of the Power Points.

What specifically did, NHTSA, ask GM, for example, and this is very important, did NHTSA raise a question with GM, tell us the reasons why an airbag would not deploy in one of your cars?

Did you ask GM that question?

MR. FRIEDMAN: I don't have a record of that. I know our team did bring up concerns over this case to General Motors in a meeting, but I don't have records of us asking that specific question.

CHAIRMAN MURPHY: I mean, it's important because you're saying GM didn't provide you information, but you're also saying you don't know if you asked them for the information.

I mean, it's important for the families to know what happened, and if this key government agency which is tasked with protecting the safety of the public -- I just want to know if those kind of questions get asked.

MR. FRIEDMAN: Mr. Chairman, those questions typically do get asked of the car companies when we move into the investigation phase.

What this phase and where this was was a phase where concerns are raised and

it's discussed whether or not there is sufficient information to move to the point of asking those questions of automakers.

Roughly -- In these defects panels, roughly half the cases that are brought up are brought into investigations, roughly half are not.

One of the things that we are looking at relative to this process going forward is do we need to make any changes when it comes to how we present this information and when we present our concerns to automakers.

I do believe that there are some changes that we can make to engage automakers earlier in the process to put them in the position of letting us know if our concerns are shared by them and...

CHAIRMAN MURPHY: Certainly the families would want to know in retrospect what would you change in this whole process, but I'm out of time.

I now recognize Ms. DeGette for

five minutes.

MS. DeGETTE: Thank you, Mr. Chairman.

Mr. Friedman, NHTSA investigated airbag non-deployment, but as -- as you talked about, it was never able to connect the dots between that problem and the defective ignition switch, so what I want to know is if NHTSA had the relevant information it needed to make a fully informed determination and what the agency believed about the connection between the ignition switch position and airbag non-deployment during the time of its special crash investigations.

In your written testimony you note that when NHTSA was investigating the airbag non-deployment issue, the agency mistakenly believed -- mistakenly believed based on GM service literature that the airbags would function up to 60 seconds after the power cut off.

Why did NHTSA think that?

MR. FRIEDMAN: Thank you, Ranking

Member.

That -- that knowledge was actually based on years of experience and previous experience with earlier airbags where there was actually a problem where airbags would go off long after the vehicle was turned off.

MS. DeGETTE: And --

MR. FRIEDMAN: Airbag systems have capacitors in them, and those capacitors are designed to store energy so that if power is lost, the airbag can still deploy, because power is often lost in some of these kinds of crashes.

MS. DeGETTE: So that's based on the GM service literature --

MR. FRIEDMAN: Yes.

MS. DeGETTE: -- or the agency's experience or both?

MR. FRIEDMAN: That's a very important question.

MS. DeGETTE: Right.

MR. FRIEDMAN: My understanding is that was based on the agency's experience.

My understanding is, and I apologize if I was not clear enough in my testimony, we have -- we since -- after General Motors made this recall found that service information that confirmed our understanding at the time is that airbags are designed to be, which was that airbags are designed to be powered when the power is lost, so a power loss would not typically stand out.

MS. DeGETTE: Okay. So -- so you were base -- NHTSA was basing -- you weren't there, but NHTSA was basing its determination on its experience.

How is it then that it failed to connect the dots between the airbag non-deployment problem and the ignition switch problem?

MR. FRIEDMAN: Well, excuse me, I believe there is two situations here.

First of all, the information we

had at the time indicated that there were two possibilities put in front of us in one of the special crash investigation reports.

One of them was that the ignition being off could have been a cause; another one was that the circumstances of the crash could have been the cause.

In those two cases, the more likely scenario was that the circumstances of the crash were more likely to yield to the airbags not deploying.

MS. DeGETTE: So you also said that GM had critical information that would have helped identify this -- this defect that NHTSA didn't have.

What information could GM have given you that would -- the agency, that would have helped identify the real problem?

MR. FRIEDMAN: Well, I made that statement based on looking at the chronology that General Motors provided with this recall.

MS. DeGETTE: Okay.

MR. FRIEDMAN: And there were at least a few things in that chronology that raised some concerns for me.

MS. DeGETTE: And what were those things?

MR. FRIEDMAN: The first was that there was a change in part number relative to the ignition switch, and we were never informed of that change.

The second is that there was a -- there were some conversations with suppliers about their control algorithms, the control systems, for airbags. We were never informed of that conversation to my knowledge, and we did not have the details on how that -- those algorithms worked.

Third, and most importantly, General Motors created a direct connection in their recall between the airbag non-deployment and the ignition switch.

If we had any of those pieces of information, I truly believe it would have

changed. (Inaudible).

MS. DeGETTE: Now, if GM is changing a part, are they legally required to inform NHTSA of that change?

MR. FRIEDMAN: That's not -- it's not clear to me that that's a legal requirement, but I can get back to you to make sure.

MS. DeGETTE: I'd appreciate that because it seems to me that's critical.

Now, in your -- in your opening statement, you said that -- you said that in order for NHTSA to be able to make a correct determination, you need all of the information as you have just said and you need the company to be acting in good faith.

Based on what you know now, do you think that at this -- at the time that all of this was happening, GM was acting in good faith towards the agency?

MR. FRIEDMAN: Congressman, we have an open investigation to answer that exact question, and if we find out that they were

not, we will hold them accountable.

MS. DeGETTE: And I would hope that you would inform this committee irrespective of your determination, whether they did or didn't.

MR. FRIEDMAN: Absolutely.

MS. DeGETTE: When do you expect to finish that investigation?

MR. FRIEDMAN: I can't put an exact timeline on it. We're getting hundreds of thousands of documents from General Motors.

The deadline is April 3rd for them to provide those documents; it's not clear that they will be able to provide all the documents at the time, but we've been making sure that they are continuously producing documents so we can understand.

As soon as my team is able to find information in those documents that indicates that General Motors had information that they should have acted on sooner, we will determine how to move forward to hold General Motors accountable or, if we don't find that

information, then we will also let you know.

MS. DeGETTE: Thank you.

CHAIRMAN MURPHY: Ms. DeGette yields back.

With regard to Ms. DeGette's question about if there is a change in a part do they need to notify you, will you also let us know if there -- if they make a change in a part, do they also have to have a different part number?

I don't know what NHTSA's requirements are on that. That's an issue. Just -- You can submit that for the record.

MR. FRIEDMAN: Yes, I'll circle back to you to be clear.

CHAIRMAN MURPHY: We also need to know what information you were reviewing with regard to these airbags, was -- on GM cars, was it specific to Cobalt, and would you please provide that information to the -- to the --

MR. FRIEDMAN: Yes, Mr. Chairman, I believe we have provided a significant --

significant amount of documentation, but we will continue to do so.

CHAIRMAN MURPHY: We'd like to know what you're reviewing.

Now recognize the chairman of the full committee, Mr. Upton, for five minutes.

MR. UPTON: Well, thank you, Mr. Chairman, and I just want to -- I know you are, as well as our committee, is literally -- we're looking through boxes of information, thousands and thousands of pages, and -- and that continues, and it looks like we'll be getting some more down the road.

As you know, I wrote the TREAD Act, which passed unanimously in Congress, President Clinton signed it into law, and the whole point -- or a major point of that law was that NHTSA would, in fact, get the information that it needed to detect -- to detect a trend as quickly as they could.

So when NHTSA considered whether to investigate the Cobalt for an airbag defect

back in '07, the early warning data was one of the factors that was cited in the defect -- Defect Assessment Division's recommendation to investigate it, correct?

MR. FRIEDMAN: That's correct.

MR. UPTON: So what was -- what was -- Looking back, what is the problem? Did GM not report the information that the law required or was NHTSA unable to sort through the information that it had to find the problem, or both?

MR. FRIEDMAN: Congressman, we have an open investigation to determine whether or not General Motors failed in their responsibility to provide information, and we will definitely report to this committee the results of that effort.

In terms of what our team did, our team looked at all the available information using -- using the approach that we've used successfully to lead to over 1,299 recalls influenced by NHTSA over the last ten

years.

We used that process to look into the early warning data, to look at the consumer complaint data, to look at special crash investigations, and a variety of other information.

We dug into that data. We analyzed it. We tried to see if there was a defect trend that stood out. The data didn't support that. It showed that the Cobalt did not stand out when it came to airbag non-deployments.

We looked at the special crash investigations; those available at the time were inconclusive.

This is a case where the team worked very hard to try to understand what was happening and wasn't able to see a significant enough trend or a clear enough defect.

What I'm learning from this and where we have to go in the future is we need to look more carefully at remote defect

possibilities. We need to reconsider the way we're using special crash investigations. We need to continue to invest in tools.

We're already investing in computer tools basically grown out of the Watson-IBM software to be able to more effectively, more efficiently, use our resources to spot trends.

We've got to put all these tools forward and we've got to look for opportunities to make changes so we can better spot these defects.

MR. UPTON: So when you look to embark on an investigation, do you consider the number of deaths?

I mean, is there -- is there some trigger that you use to -- to -- to warrant a further exploration, whether it's 1 death, 4 deaths, 10 deaths, 20, 100?

I mean, is there some type of standard equation that you put into place?

MR. FRIEDMAN: Congressman, there's

not. Our goal, what I would love to be able to do, is to find each and every one of these defects before there is a death.

It is the manufacturer's responsibility to be reporting all of these defects and getting them fixed.

When they do not, it is our job to try to find them.

We don't have a simple rule of thumb because each case is different.

In some cases we have opened investigations after one incident where it was clear that it was a defect; in other cases we've had to rely on the trend data that indicates that this stands out. I can't give you a specific rule of thumb.

MR. UPTON: So let's play Monday morning quarterback. So today's April 1st, 2014. These problems arose over the last ten years.

What would you have liked to have had on your platter from GM specifically in

terms of information today that you didn't have in the last eight or ten years?

MR. FRIEDMAN: Well, at a minimum what I can tell you, based on their chronology, I would have liked to have had information that they had changed the parts on the ignition switch.

I would have liked to have had information that they were talking to their suppliers, because they appear to have had concerns about the algorithm associated with airbag non-deployments.

I would certainly have liked to have any information linking the ignition switch defect to airbag non-deployments.

As we go through our investigation I should be able to come back to you and let you know if there is additional information they should have --

MR. UPTON: And are you pretty certain today that they did not provide that information to you?

MR. FRIEDMAN: It's my understanding that none of that information was available.

We are continuing our efforts to try to make sure that we understand what happened, so I can't say that I can give you a comprehensive and definitive answer, but my understanding at this point is that no, we did not have that information.

MR. UPTON: I know Mr. Long wanted my last 15 seconds, so -- I bet it's now gone. I yield back.

MR. LONG: Thank you, Mr. Chairman. I will have my friend, Mr. Terry here, assist me, and the chairman of the committee here, subcommittee, showed you this picture a while ago and said he couldn't navigate past this page, and you said that if any new information became available to you, that you would get this on the website.

Something we learned at the first hearing that I think is very germane, is if you will take your car to General Motors, they will

give you a loaner at no cost or a rental car at no cost.

I would call that very germane, I would call it critical. If somebody's got an '05, '06, '07, I think it would be enticing to drive a '14 for a little while while they repair your car, so that would be suggestion to put on there.

I yield back.

CHAIRMAN MURPHY: Thank you. I might note to the gentleman that I received a call from one of my constituents that said he's tried to get a loaner car and the dealer told him he couldn't have one, too.

MS. DeGETTE: And one more thing, too, you could put on there is take all your keys off the key ring except for the ignition key. That's the other thing Ms. Barra said.

Is that on here?

MR. FRIEDMAN: Congressman, I believe that is very clearly on there.

MS. DeGETTE: Okay.

MR. FRIEDMAN: In fact, just to be clear, the reason why we did that is because safety is our top priority. We are all focused on investigating this case, but safety --

MS. DeGETTE: Right.

MR. FRIEDMAN: -- safety is our top priority, which is why the first thing I wanted people to see when they came to that website was how to keep themselves safe, so I do just want to be clear, that's why we have that limited information there, because I didn't want anyone out there who came to our website not to understand the steps how to keep themselves safe.

I agree, it's a good idea to put on there. I'll have to see if we can fit it in the space we've got or if there is another way to point people to it, but I agree, it's a good idea to let people know.

CHAIRMAN MURPHY: People need to know if it's safe to drive their current cars.

Mr. Dingell, you are now

recognized for five minutes.

MR. DINGELL: Thank you.

Mr. Friedman, let's look at NHTSA's internal decision making processes. These questions will require a yes or no answer.

Is it correct that contractors for NHTSA's special crash investigations program conducted three separate investigations of Chevy Cobalts in 2005, '06 and '09 related to airbag non-deployment?

MR. FRIEDMAN: Yes, that's correct.

MR. DINGELL: Now, is it correct that NHTSA's Office of Defects Investigation reviews early warning reporting data and consumer complaints in deciding whether to open a formal defects investigation?

MR. FRIEDMAN: Yes, those are parts of the process.

MR. DINGELL: Now, is it correct that GM submitted EWR data to NHTSA concerning the Chevrolet Cobalts subject to NHTSA's 2005 and 2006 special con -- special crash

investigations? Yes or no.

MR. FRIEDMAN: I'm sorry, sir, could you repeat that, please?

MR. DINGELL: I'll give it to you again.

Is it correct that GM submitted EWR data to NHTSA concerning Chevrolet Cobalts subject to NHTSA's 2005 and 2006 special crash investigations?

MR. FRIEDMAN: Yes, that's correct. Those are important parts of our company.

MR. DINGELL: Now, is it correct that the Office of Defects Investigation, ODI, follows a multi-step process in order to determine whether a defect exists in a vehicle? Yes or no.

MR. FRIEDMAN: Yes.

MR. DINGELL: Now, and that process includes an initial evaluation, a preliminary evaluation, and an engineering analysis; is that correct?

MR. FRIEDMAN: Yes, that's the

standard process, but we will act earlier in that stage if we have compelling information if there is a defect.

We do not wait necessarily to go through that whole process if we have sufficient information to act.

MR. DINGELL: All right. Now, let's clarify something.

NHTSA's special crash investigation program is something separate and distinct from the formal ODI investigations process; is that correct?

MR. FRIEDMAN: That's correct.

MR. DINGELL: Now, is it correct that the Office of Defects Investigation convened an initial evaluation panel in 2007 to investigate the non-deployment of airbags in the 2003, 2006 Chevy Cobalts and Ions? Yes or no.

MR. FRIEDMAN: That's correct.

MR. DINGELL: Now, is it correct that the review was prompted by 29 consumer complaints, 4 fatal crashes, and 14 field

reports?

MR. FRIEDMAN: That was one of the reasons for the review. Additional --

MR. DINGELL: What were the other reasons?

MR. FRIEDMAN: In addition we were looking at consumer complaints; those complaints raised concerns as well, and I can get back to you on the record with each of the pieces of information that were involved, but we do have a memo that was provided when this -- when it was proposed to potentially move this to a defect.

It lays out early warning data, consumer complaint data concerns, special crash investigations.

MR. DINGELL: Would you submit that for the record, please?

MR. FRIEDMAN: Yes.

MR. DINGELL: Now, were there other things that triggered this review?

MR. FRIEDMAN: My understanding is it

was all the items in that memo, was the information that triggered this review.

MR. DINGELL: So there weren't other things. Now, is it correct that ODI decided not to elevate that review to a more formal investigation because there was a lack of discernible trend? Yes or no.

MR. FRIEDMAN: Yes, that was one of the reasons.

MR. DINGELL: What were the other reasons?

MR. FRIEDMAN: The other reason is that the crash investigation information we had was inconclusive and did not -- was not able to point to a specific defect.

MR. DINGELL: All right. Now, to be clear, at the time of the 2000 initial evaluation, NHTSA had concluded that the Chevy Cobalt was not over-represented compared to other peer vehicles with respect to injury crash rates; is that correct?

MR. FRIEDMAN: That's correct.

MR. DINGELL: Was there any other reason?

MR. FRIEDMAN: Was there any other -- the --

MR. DINGELL: Was there any other reason that you came to that conclusion?

MR. FRIEDMAN: And 2007.

MR. DINGELL: Now, also to be clear, NHTSA did not have information at the time of the 2007 investigation that, for example, linked airbag non-deployment to ignition switch position; is that correct?

MR. FRIEDMAN: We do not have any specific information that provided a direct link.

MR. DINGELL: So you agree?

MR. FRIEDMAN: I believe so.

MR. DINGELL: Okay. Now, Mr. Chairman, I am troubled here. It appears that we have a flaw in NHTSA's decision making process which is related to defects and their inquiries into defects.

I fully recognize, and I am, like most of the members of this committee I think, critical of the fact that NHTSA is short staffed and underfunded.

At the same time, I am compelled to agree with Acting Administrator Friedman that Congress may need to examine the use of special crash investigations in the defect screening process, how best to get NHTSA the information it needs for that process and how best to engage manufacturers around the issue of evaluations.

In so doing, I think we will help better the safety of American motorists and their families, and I yield back the balance of my time.

CHAIRMAN MURPHY: The gentleman yields back.

Now recognize Dr. Gingrey of Georgia for five minutes.

DR. GINGREY: Mr. Chairman, thank you.

Mr. Friedman, in your written

testimony you suggested that NHTSA, your agency, did not pursue investigations into the issues with Cobalt and Ion because they were unaware of information developed by General Motors.

In the years leading up to this recall, has NHTSA had any concern with General Motors' responsiveness or lack thereof to safety defects and concerns?

MR. FRIEDMAN: Congressman, I would like to get back to you on the record for that.

MR. DINGELL: Well, let me -- let me do this. You may not have to do that. Just -- Just look at Tab 34. It's right there in front of you.

In July, 2013 the head of ODI e-mailed the head of General Motors with a number of concerns. It's the second page, bottom of the second page. Sent to Carmen.

Do you see where I am --

MR. FRIEDMAN: Yes.

DR. GINGREY: Are you with me?

MR. FRIEDMAN: I have not seen this before, but yes, I do.

DR. GINGREY: Yeah, okay. Do you want to read that first paragraph? And then look up and I'll know that you have read it.

MR. FRIEDMAN: Yes.

DR. GINGREY: He stated the general perception is that General Motors is slow to communicate, slow to act and at times requires additional efforts of ODI that we do not feel is necessary with some of your peers.

You read that, didn't you?

MR. FRIEDMAN: Yes.

DR. GINGREY: Were you aware of the concerns raised by ODI in I guess that was July of 2013?

MR. FRIEDMAN: I was not aware of this specific e-mail, but I have been in at least one meeting where we sat down with General Motors and made clear to them that they needed to make sure that they were following an effective process when it came to their

recalls.

DR. GINGREY: Yes, so there was -- there was definitely some concern?

MR. FRIEDMAN: Well, we -- with each and every automaker we need to make sure that they have a good and effective process to quickly deal with this.

This e-mail clearly indicates some very specific concerns.

DR. GINGREY: Did the agency have similar concerns in 2007, 2010, when it declined to advance any investigations into non-deployment of airbags in these GM vehicles?

MR. FRIEDMAN: I don't know.

DR. GINGREY: You weren't with NHTSA at the time?

MR. FRIEDMAN: No, I joined NHTSA back last year. I've been there for almost a year now.

DR. GINGREY: Do you think NHTSA did enough to get the information that it needed?

MR. FRIEDMAN: I believe in this case

that the team looked very clearly and very carefully at the data.

I believe that the reason why we didn't move forward was because the data indicated that the Cobalts didn't stand out and that we didn't have conclusive -- we didn't have conclusive information as to a very specific --

DR. GINGREY: Well, you know in 2005 GM issued this technical services bulletin, and that's Tab 12, if you want to flip quickly to Tab 12 of your document binder.

In this technical service bulletin to its dealers it recommended a solution for complaints of this inadvertent key turn due to the low torque, particularly to the Chevrolet Cobalts.

The technical service bulletin instructed the dealers exactly what to do, to provide an insert that converted a key from a slot design to a hole design. I don't know exactly what that means, but they do.

General Motors believed that this would help reduce the force exerted on the ignition while driving from maybe shaking of the keys or bumping it with your knee.

In 2006 the technical services bulletin was expanded to include additional make and model years.

Unfortunately in the case of this young girl, 29-year old Brooke Melton, the nurse from my congressional district, that was killed the day after she took her car in, saying, hey, this engine is cutting off for no reason, and, you know, I know they must have gotten the technical service bulletin about this issue, but all they did was clean out her fuel line, gave her the car the next day, and led her to her death.

Administrator Friedman, yes or no, was NHTSA aware of General Motors' 2005, 2006 technical services bulletins related to low ignition key cylinder torque effect?

MR. FRIEDMAN: Mr. Gingrey, first if I

may --

DR. GINGREY: Yes.

MR. FRIEDMAN: -- Brooke's death was a tragedy, and it's a tragedy that we work each and every day to avoid.

I do believe we were aware as part of our efforts and as part of the special crash investigation, that we were aware of that technical service bulletin.

At the time that technical service bulletin would not have been seen as being associated with airbag malfunction.

DR. GINGERY: Yes, listen, I believe you, Mr. Friedman. I believe you, and obviously when people are -- are driving impaired or through texting or e-mailing or whatever and, you know, they don't change the oil when they should and their tires are low and the brakes are worn out, you know, there is some responsibility there, some personal responsibility, but when they're doing everything the right way and they take their

car in and they think that -- you know, they trust the service department of the local dealership and they get a situation like this, I mean, you can understand why -- She's gone, but her parents are obviously -- and all these parents, these families, are just irate because they -- the expectation, if they're doing the right thing, they ought to be safe.

MR. FRIEDMAN: Congressman, I completely understand, and I would actually argue that consumers should expect that their cars should function as they are designed no matter the cause of the crash.

DR. GINGREY: Absolutely. Thank you. Thank you, Mr. Friedman.

I yield back.

CHAIRMAN MURPHY: I would venture to say that they would assume the car keys don't have to be monitored and checked.

MR. FRIEDMAN: Correct.

CHAIRMAN MURPHY: Mr. Green, you are recognized for five minutes.

MR. GREEN: Thank you, Mr. Chairman. Mr. Friedman, thank you for appearing today.

NHTSA has a central role for consumer safety, and I would like to understand better how long it took for NHTSA to identify this fault.

In your opinion how did NHTSA not identify the deadly trend?

MR. FRIEDMAN: Congressman, when our team looked at the data the trend did not -- there was not a trend that stuck out.

In fact, when it came to airbag non-deployments, the Cobalt was not an outlier.

MR. GREEN: Was GM forthcoming with their data?

MR. FRIEDMAN: Well, that -- that's the exact question and that's the exact reason why we have an open investigation to them.

I do have -- I do have concerns about the parts change, about conversations they had with suppliers and any other information they may have had, which is exactly

why we opened up an investigation to them, and if they did not follow the law in their requirements to get information to us and to respond quickly, we are going to hold them accountable as we have with many other automakers.

MR. GREEN: Okay. Earlier this month the New York Times reported on NHTSA's response to the consumer complaints over the years about ignition switch issues for the recalled vehicles.

According to the Times, many of the complaints detail frightening scenes in which moving cars suddenly stalled at high speeds on highways in the middle of city traffic and while crossing railroad tracks.

A number of the complaints warned of catastrophic consequences if something was not done.

NHTSA received more than 260 of these consumer complaints over the past 11 years about GM vehicles suddenly turning off

while driving, but it never once opened a defective investigation with the ignition issue, switch issue.

If consumers submitted these complaints to NHTSA, many were met with a code of just silence.

Mr. Friedman, Mary Ruddy's daughter died in a crash involving a 2005 Cobalt. Ms. Ruddy has repeatedly tried to contact NHTSA for information, but has only received form letters.

She told the New York Times that, quote, I just want to hear -- someone to hear from me. We've had no closure, we still have no answers. Ms. Ruddy -- I don't know if she is still here today, but she was in the audience.

Has NHTSA been in contact with Ms. Ruddy?

MR. FRIEDMAN: Mr. Congressman, my understanding of what happened with Ms. Ruddy -- Well, first of all, Ms. Ruddy

deserves answers and that's exactly why we're looking into what GM did, that's exactly why we're making sure we understand what happened.

What she's been through, it's a tragedy, and we've got to work to make sure that those don't happen again.

In terms of my understanding of Ms. Ruddy's contacts with NHTSA, those contacts were made through our complaint system.

In those complaint systems, as we do note on the website, we do not necessarily respond to all of those complaints because what we're doing with those complaints is we're looking for potential problems, and if those complaints don't contain sufficient information, if we have questions about them, we do follow up with consumers, but if they have the information we need, we do not because the goal of those complaint databases is to try to find problems.

In this case my understanding is Ms. Ruddy provided those complaints after being

notified of a recall that NHTSA did influence, and we got the Cobalt recalled.

MR. GREEN: I only have 5 minutes, but did you initially receive 260 complaints over 11 years about this automatic shut down of your engines?

MR. FRIEDMAN: I don't have that exact number, but what I do know is we at NHTSA humanize, look at every single one of these complaints to try to find out if there is something that stands out.

My understanding of the complaints you are referencing is that they were for stalls and that only a very small number of them were for airbag non-deployments.

What we were looking for --

MR. GREEN: Oh, I know, but 260 complaints on the car stopping on the freeway or wherever it's at, I don't know if that's a high number or a low number over 11 years, but you might need to have somebody who actually looks at complaints -- and I assume they come

from different parts of the country, so somebody identify this and say, hey, we need to focus on these 260 complaints.

MR. FRIEDMAN: Congressman, in this case a human eye looks at each and every one of those, and whether that's a large or a small number, based on the analysis that I've seen relative to the number of Cobalts that were out on the road, that was not a very large number compared to a lot of the other stall complaints that do happen for a variety of other vehicles that are out there.

MR. GREEN: Well, you told me about how NHTSA responds to consumer complaints, but it seems like in this case NHTSA might look at how they respond to consumer complaints much better because I know as a member of Congress, believe me, if we don't not respond to e-mails letters, we will hear about it, and if I get a number of e-mails on a certain subject, you know, we obviously respond to it.

Mr. Chairman, I know I am almost

out of time and thank you for your courtesy.

CHAIRMAN MURPHY: Gentleman yields back.

Now recognize the gentleman from Louisiana, Mr. Scalise, for five minutes.

MR. SCALISE: Thank you, Mr. Chairman, and, Mr. Friedman, thank you for being with us and participating in this investigative hearing as well.

I know earlier you had talked about the decision back in 2007 when the chief of the Defect Assessment Division at your agency had suggested opening an investigation and then ultimately sometime after it was decided not to open that investigation.

When was the decision made not to open the investigation?

MR. FRIEDMAN: That was also made in 2007, and basically what the chief of the defects investment -- sorry, Defects Assessment Division was doing was exactly what his job requires him to do; he is supposed to look for

the potential defect cases and bring those up to a panel where those are considered, where a broad set of evidence is considered.

MR. SCALISE: Is that the trends in relation to peers? I think that's the language that y'all were using when you were looking at I guess similar cars, that were having similar problems with airbags.

MR. FRIEDMAN: That's one of the pieces of information that's used, as well as crash investigations and other EWR data that is involved.

About half of those that are brought up do not end up going to investigation, but we have designed our system to make sure that we have at least two teams always looking for potential problems.

The Defects Assessment Division is always looking for potential problems and raising that question.

MR. SCALISE: Right. And I would be curious to get the information that you've got

within NHTSA that helped make that decision not to move forward with the investigation between September of 2007 when the Defect Assessment Division decided that -- suggested to go forward and then when you subsequently -- your agency subsequently decided not to, because when you look at this chart we've got from 2007, the Cobalt versus peer crash rate, there is a chart -- and you've got the other peers and you've got some fairly static numbers and then you've got the spike here in what's called the exposure rate per -- per population that seems to spike with the Cobalt, and so if -- if the internal decision making was that they were similar to their peers, it doesn't seem to mesh with this chart from 2007.

So if you can get me or get the committee whatever information you have on what decision making went into NHTSA's final call to -- to reject what was -- what was a warning or so from -- from internal -- the Defect Assessment Division, and can you get us that

information?

MR. FRIEDMAN: Well, I believe we have provided that information to -- to the committee already, but if there is additional information, I will make sure that --

MR. SCALISE: And then when y'all --

MR. FRIEDMAN: I'm sorry, sir.

MR. SCALISE: Were y'all -- You had something else you wanted to add to that?

MR. FRIEDMAN: Thank you. Yes. I apologize.

I just wanted to be clear what the data shows. I believe you are referring to this chart. The bars here represent the defect -- the potential defect or really the complaint rate, and what you'll see with these bars is they are not spiking, they're not standing out in comparison to these others. The average is here and they're just above average.

MR. SCALISE: The blue line there on your chart?

MR. FRIEDMAN: Right, and that's what I was wondering if you were pointing to. The blue line is the volume of -- I believe that's the volume of reports. No, that's the volume of sales, so that indicates how many vehicles were sold, but the complaint rate that's the important data that we are looking at are the bars, and the bars --

MR. SCALISE: Okay. Did you take action on any of those other cars that are identified in that chart?

MR. FRIEDMAN: In some cases, we took action. In some cases, we did not.

MR. SCALISE: So some did. If you can get us -- Again, if you can get the committee the list of those cars where you did take action because clearly you made the choice not to take action in the case of the Cobalt, so we appreciate if you can get us that.

I do want to ask a few other questions because in your testimony you made a few -- I don't know if you would call them

accusations, but I guess you could call them that, I mean, here you're saying we're pursuing an investigation of whether GM met its timely -- timeliness obligations to report and address this defect under law.

I know you addressed this earlier, but if you've got any specifics that you're referring to when you make that statement, can you get that to the committee?

MR. FRIEDMAN: Yes. Well, the specifics I believe are in my testimony, that there are three things that I'm -- that I'm concerned about based on their chronology.

First and foremost is that they have identified there is a link between the ignition switch and airbag non-deployment; second is that they changed a part; and third is they appear to have had conversations with their suppliers about the airbag algorithm in relation to the shut-off.

MR. SCALISE: The final question -- and I know I am out of time -- GM had -- this

is your statement, GM had critical information that would have helped identify this defect.

Have you gotten our staff that critical information already that you feel GM had that would have helped identify this defect?

MR. FRIEDMAN: That information is the information that was referred to in General Motors' chronology.

I believe the committee has asked for all that information --

MR. SCALISE: So we don't yet have that as far as you know?

MR. FRIEDMAN: I am not aware of exactly what documents you do or don't have, but if you don't have that information --

MR. SCALISE: If you can make sure we get that information.

MR. FRIEDMAN: -- I will make sure you have it.

I also just wanted to clarify. We don't only look for trends. If there is a

clear defect, we move forward into the investigation as well, so I don't know the answer, but on some of these cases, there may have not been as large of a trend, but if there was a clear defect, we would have investigated. There is multiple reasons we do so.

MR. SCALISE: Thanks for your testimony and yield back the balance of my time, Mr. Chair.

CHAIRMAN MURPHY: I just want to make sure so we are very clear on this, when he's referring to the information given to this committee, if you could highlight very specifically the information you did not have that GM later gave you that would have changed your decision, make sure the committee has that.

I mean, I know you said it was a part switch, but so we can have it.

MR. FRIEDMAN: Oh. What I'm referring to -- and I can highlight it in GM's chronology -- is I'm referring to specific

items that are identified in General Motors' chronology that brought concerns.

We are getting that information --

CHAIRMAN MURPHY: Thank you.

MR. FRIEDMAN: -- from General Motors.

CHAIRMAN MURPHY: Thank you.

Now recognize the gentleman from Florida, Ms. Castor, for five minutes.

MS. CASTOR: Thank you, Mr. Chairman.

Administrator Friedman, GM has confirmed that it knew as early as 2001 that its ignition switches contained defects, and by 2004, GM had a body of consumer complaints that raised enough questions for them to open an internal engineering inquiry of the switches.

Meanwhile, the National Highway Traffic Safety Administration, your agency, was beginning to receive its own body of consumer complaints of cars stalling and ignition switch failures, and in 2005 as your agency was monitoring airbag non-deployment issues, its

special crash investigation of a 2005 Cobalt found that the ignition switch was in the accessory position when the airbags did not deploy.

You said at this point it was not clear to the Highway Traffic Safety Administration, what was happening, but then information came out subsequently -- that you can tell us -- should this have pointed NHTSA in the right direction -- in 2007 the agency investigated a second crash of a 2005 Cobalt where the airbags did not deploy.

I think you said at this point still it did not stick out and you have testified that you didn't see trends.

The crash report found that the non-deployment could be the result of, quote, power loss due to movement of the ignition switch just prior to impact, but at this point GM was also providing your agency with early warning reports in the third quarter of 2005, the fourth quarter of 2006, in addition to the

crash -- special crash investigations, so we're all trying to figure out how it took so long for these defective ignition switches to trigger a recall at GM and then raise red flags at NHTSA and how the Highway Traffic Safety Administration could have noticed this issue sooner if GM had been more forthcoming, so the committee's investigation has revealed that GM approved switches for these cars that did not meet the company's specifications in 2002 and again in 2006.

Did GM ever inform the Highway Traffic Safety Administration of this fact?

MR. FRIEDMAN: Of which specific fact? I apologize.

MS. CASTOR: That they -- that the ignition switches did not meet the company's specifications.

MR. FRIEDMAN: It's my understanding that we did not have that information.

MS. CASTOR: Okay. The supplemental memo released this morning by the committee's

staff also revealed that GM had over 130 warranty claims on the recalled vehicle that specifically referred to problems with the ignition switch turning off -- turning the car off when going over bumps or when drivers accidentally hit the key with their knee or leg.

Is it true that GM provides -- provided early -- in their early warning reports aggregate data of the warranty information, but not the specific warranty claims listed one-by-one in the comments from consumers?

MR. FRIEDMAN: What -- what all car companies provide are aggregate numbers associated with -- with warranties, and so we don't know when we get those counts what the reason for those warranties could be.

For example, on the airbag side, I believe I mentioned before, you know, the complaints could be because the airbag light was going off when they thought it shouldn't or

because the passenger sensor was not working, so we don't -- when we have that count, we do not have the information as to the detail of exactly what each and every one of those warranty claims is.

MS. CASTOR: So if GM had shared the specific warranty claims, would that have been helpful to your agency?

MR. FRIEDMAN: The specific warranty claims I believe you're speaking of are related to the ignition switch itself.

MS. CASTOR: Yes, the 130 that have now come out when the -- due to the committee investigation.

MR. FRIEDMAN: And -- and my honest answer is I don't know, and that is in part because what -- at the time we did not have the information we now have from General Motors directly connecting the ignition switch to the airbag recalls.

MS. CASTOR: So the state of the law currently is that in early warning reports on

any type of vehicle problem, the car companies do not have to provide you the specific warranty claims?

MR. FRIEDMAN: I believe that's the case.

MS. CASTOR: They give you a summary in general?

MR. FRIEDMAN: Yes, I believe that's the case.

MS. CASTOR: And that's true whether it is a warranty problem with a radio or a warranty problem that could be a serious safety defect?

MR. FRIEDMAN: I believe that's correct.

MS. CASTOR: Is that -- do you think it's time to look at the law, if the -- if there -- if a car company has ag -- has so many -- you know, here are 130 warranty claims that are specific, and they relate to a serious safety defect, do you think that would be helpful to your agency, maybe change the law

and say when a car company becomes aware that they have so many of these serious safety defects, they have to provide you the specific warranty complaints from the consumer?

MR. FRIEDMAN: Congresswoman, I have to look at the exact data before I would be able to tell you whether or not it would be valuable, but --

MS. CASTOR: But certainly if the company has gathered a critical mass of serious safety defect complaints, that would be helpful, right?

MR. FRIEDMAN: Well, if they have information regarding a defect, I believe that information they without a doubt have to provide to us. I believe the information --

MS. CASTOR: But the law does not require that currently?

MR. FRIEDMAN: Well, if they have information about a defect, I believe the law does.

I believe what you are referring

to are warranty claims, which may or may not be associated with a defect.

MS. CASTOR: Okay. Well, I think this is an important issue for the committee to look at. There might be some new line drawing or direction on what these early warning reports, and if there is serious safety information, that they -- a car company has gleaned through their own internal investigation, it really needs to be provided to the --

CHAIRMAN MURPHY: Thank you.

MR. FRIEDMAN: And, Congressman, Chairman --

CHAIRMAN MURPHY: Now recognize Dr. Burgess for five minutes. Thank you.

DR. BURGESS: Thank you, Mr. Chairman. Thank you, Mr. Friedman, for being here with us. It's been a long afternoon.

Now, your testimony, I think you stated that in 2007 and 2010 there was not enough evidence to conduct a formal

investigation into General Motors' Chevrolet Cobalt despite the number of complaints and four fatal crashes that had already showed up.

But in 2012 your agency, the National Highway Traffic Safety Administration, opened an investigation into an airbag problem that some Hyundai models -- and my understanding was this was based on a single complaint, and that's okay, I think the airbag non-deployment is a serious issue, but why wasn't it a serious issue when the complaints were coming in about the Cobalt?

Given the fact that you initiated an investigation with much less evidence in the case of Hyundai, how can you -- how can you assert that there was not enough evidence to proceed with General Motors' case?

MR. FRIEDMAN: Congressman, safety is our priority and airbag non-deployment is a serious issue, and we treat them very, very, seriously.

I would have to get back to you

on the specifics of the Hyundai case, but it goes back to one of the points I was -- I made before, which was we are looking for two potential things, the best thing and the easiest ability -- the best thing to be able to find and the clearest thing to be able to find is when there is an obvious indication of a defect. All it takes is one, if that's clear.

DR. BURGESS: And I agree completely, and I don't know -- I mean, you were not here when the CEO testified, when we posed questions, and one of the questions I posed was for the accident that occurred in Maryland in July of 2005 where a Chevy Cobalt went down a street that ended in a cul-de-sac, it was driving too fast, lot of problems that night, but the airbag didn't deploy when the car impacted some trees, and it was a pretty serious impact.

In fact, it was so serious that the driver was then pushed up -- compressed against the steering wheel with such force -- I

mean, she only weighed 106 pounds and she broke the rim off the steering wheel. That's a massive amount of force for a little 106-pound body to exhibit.

So the airbag didn't deploy, and you know I've got your report here that it was, in fact, investigated in December of 2006, but that's a big deal, that that airbag didn't deploy, different from all of the other accidents that we were given information about.

Because of the nature of this person's injuries, because of the cause of her demise, I can't tell you if the airbag would have saved her life, but I know without the airbag there was no chance at all and, of course, that was proven that night, but an airbag might have made a difference because the steering wheel that she broke off actually compressed against the upper dome of the -- just below the diaphragms, below the rib cage and lacerated the liver and over the course of the next hour and 45 minutes, small woman,

small blood volume, she bled out. I mean, an airbag might have made a big difference that night.

Now, contrasting that with another accident that occurred in Pennsylvania in 2009 where there was a head-on collision between a Hyundai and a Cobalt, and as I pointed out to the GM CEO, the Cobalt was not at fault in this, the driver of the Cobalt was not at fault, the Hyundai came over the center line and there was a head-on collision.

Closing speed was probably close to a hundred miles an hour when you add the speeds of the two vehicles together. Everyone who was in the front seat of those two vehicles died.

But the Cobalt airbags did not deploy, the Hyundai did. Now, unfortunately it didn't make any difference as to the overall fatality of that accident, but here you've got a side-by-side, identical speeds with which the impact occurred, the deceleration forces were

identical in both automobiles, Hyundai deploys, Cobalt doesn't.

This is a problem, don't you agree?

MR. FRIEDMAN: Congressman, when airbags don't deploy, that's a serious issue. There is also a serious issue sometimes when airbags do deploy.

Over 200 people died because airbags, earlier airbags, deployed when they shouldn't have or deployed too strongly when they shouldn't have.

Part of the challenge with all this, part of the reason why this information ended up not being conclusive for us, is because airbags are designed even in some difficult crashes to not go off because that's the safest thing. That's the best way to avoid physical harm.

DR. BURGESS: Sir, with all due respect, I cannot imagine -- and I am not an engineer and I am not a lawyer, but I cannot

imagine any circumstance where impacting an oak tree at 70 miles an hour or a head-on collision at 45 miles per hour per vehicle would not be a situation where you did not want the deployment of the airbag.

I can't think of a single reason why the airbag deploying would add to the lethality of that accident sequence.

MR. FRIEDMAN: Congressman, I completely understand why -- why you -- why you feel that, why you have the impression.

In the case of the 2005 crash, and in general with these airbags, if you have an unbelted occupant and a small strike first, the risk at play here is that the occupant may be moving forward during that crash.

If you are moving forward during that crash and the airbag is opening, yes, it actually could cause more harm than good.

When the airbag system is trying to decide whether or not to open --

DR. BURGESS: It couldn't have caused

any more harm that night. I would just suggest that first impact was with a five-inch pine tree, and although the pine tree yielded to the Cobalt, it was still a pretty significant impact when that happened.

Thank you, Mr. Chairman. I will yield back.

CHAIRMAN MURPHY: Gentleman's time has expired.

Now recognize Mr. Barton for five minutes.

MR. BARTON: Thank you, and I want to apologize to the other members that are still here. I have been watching the hearing as I've been doing meetings, but I apologize for not being here physically to go ahead of some of you folks, and having said that, I'm going to go ahead.

I have listened to most of what you have said today on the television, and I think it's obvious that GM has some -- some real questions that they have not done a very

good job of answering today, but I also think as the federal regulator on the block, there are some -- some valid questions for your agency to answer.

My first question is at what level of accidents or deaths or incidents of malfunction triggers more than normal NHTSA review? Not necessarily a full fledged investigation, but in this case we in hindsight have got 13 deaths that we feel are attributable to this ignition problem over a ten-year period. I don't know how many accidents, how many injuries, but, you know, when would NHTSA really start looking at something and say, you know, there is an anomaly here, we need to check it out?

MR. FRIEDMAN: Congressman, first, I appreciate your question and, you know, part of where you started with this is that there are important questions that NHTSA has to answer in addition to General Motors, and I think this is an incredibly important process, because we

have questions, you have questions, and what we need -- and what my focus is in addition to the recall is making sure NHTSA does everything we can to improve the way we deal with these cases.

When it comes to your question about is there a specific level, each case ends up being different.

Ideally what I would like to have happen is that we find any -- Well, first, that automakers find and fix these -- these defects right away.

If they don't, ideally I want to find and fix these defects before any lives are lost.

MR. BARTON: But there is some internal reporting system or monitoring system, and like if a specific model started showing up a hundred accidents a month that were unexplainable, that would be a big enough blip that somebody at NHTSA would say well, what's going on there.

I mean, if you had a steering problem, if you had a brake problem, if you had a gasoline tank problem that kept exploding over and over again, not once every decade, you know, but enough that you could see in your reporting, somebody at NHTSA would say, hey, we need to check that out.

Now, I am told at the staff level there were some internal NHTSA employees and -- employees at NHTSA said -- you know, before GM admitted there was a problem, there were some NHTSA mid-level people that said we need to look at it and a decision was made within NHTSA that it wasn't at a level that was worthy of further investigation. Is that true?

MR. FRIEDMAN: Congressman, we have a process to do exactly what you just said. We have people who are reading every single one of the more than 45,000 complaints that come in. We have a team dedicated to that. We have a team dedicated to looking at all the early warning data that comes in.

In this case red flags were raised, concerns were raised, and it was posed because of that exact process, the exact process you are talking about that we do have, concerns were raised and this was brought to a panel.

The job of that panel is to consider all of the evidence, the initial evidence as well as a more detailed look at the data, whether or not there is a clear trend, whether or not there is enough information to have concern over a specific defect. The panel did that in this case.

What I'm learning, what I'm seeing from all this, is that we need to reconsider and look at how do we deal with cases where there may be something that's considered a remote explanation, should we change the way we follow up on it, should we change the way we follow up on that with the car company. These are things that I think we're learning.

MR. BARTON: My time is just about done. I want to make one general comment and then one final question.

Now, we pointed out to the GM executive that was here that their part didn't meet their own specifications, and it didn't just almost not meet them, it didn't meet them by a long way. I mean, like a third -- it was like two-thirds off. It was way blow, not just a little bit.

That's not NHTSA's problem and you're not expected -- the NHTSA people aren't expected to know things at that level, but on a general point that Dr. Burgess was asking about, you know, when the airbag doesn't deploy when it runs into a tree at 40 or 50 miles an hour and the general response from NHTSA is that we didn't know how that particular airbag system was supposed to work, I don't think that's a very good answer.

MR. FRIEDMAN: Congress --

MR. BARTON: Isn't NHTSA supposed to

know how the airbag systems work and, if they're not, if NHTSA doesn't know, aren't you in your agency supposed to find out?

MR. FRIEDMAN: Congressman, the circumstances of these crashes were much more complicated than that.

We applied expertise. We applied our understanding. We applied a process that has worked to generate over 1,299 recalls over the last decade.

Are there improvements that we need to make to that process based on what we have learned today? Yes, absolutely.

MR. BARTON: Okay.

MR. FRIEDMAN: And I am committed to making sure that that happens, but these -- I wish these crashes were as simple as they appear to be.

I wish the connection was as -- as direct as we now know it is. At the time and with the information we had --

MR. BARTON: Hindsight is always

easier than current sight.

MR. FRIEDMAN: As you said before, hindsight is 20/20, and I dearly wish we had it then.

MR. BARTON: Thank you, Mr. Chairman.

CHAIRMAN MURPHY: Gentleman yields back.

Now recognize Mr. Griffith of Virginia for five minutes.

MR. GRIFFITH: Thank you very much. I appreciate it.

I would ask -- Appreciate you being here and I would ask several questions following up, you know, on why didn't NHTSA know, and it is true that hindsight is 20/20, but it appears that some of your folks were at least sending up warning signals.

I am looking at what I believe is Tab 18 and the DAD, which is the Defects Assessment Division -- and I know you know that, but not everyone watching on TV knows that and so I wanted to make sure they know

because I had to look it up -- sent out and said -- in one of their e-mails in 2007 said notwithstanding GM's indications that they see no specific problem pattern, DAD perceives a pattern of non-deployments in these vehicles that does not exist in their peers and that their circumstances are such that in our engineering judgment merited a deployment and that such deployment would have reduced injury level or saved lives.

When you combine that flag with the flag I think you have mentioned earlier in your testimony that you were getting a number, if I remember correctly, it was about 200 and some complaints on this particular Cobalt vehicle that they were stalling out in the road or the engine was cutting off, and you start adding those together, along with the fact that I believe you all knew that there were at least I think it was three where the airbag didn't deploy and the ignition was in the accessory mode, it would seem that somebody ought to have

started an investigation that those coincidences might have been more than coincidences, and I would ask -- I know you're trying to do things better, but apparently the person who put all this together was an investigator for a one-man law firm, he did have somebody of-counsel, but basically you've got a one-than law firm with an engineering investigator who figures all this out.

So I would say to you, you know, what can you do better and have you called on that investigator to maybe come in and train some of your folks to look at some of these coincidences, because when you start seeing a series of negative things happen, that might be where you ought to be looking.

MR. FRIEDMAN: Congressman, our team was looking at this issue. The Defects Assessment Division was doing exactly their job. We have a system and it is designed to raise those red flags.

About half of the time the

recommendations of those Defects Assessment Division end up moving on to investigations.

This -- what I see in this case is one of the things I mentioned before, which is one of the things we need to look at is how do we make connections between remote defect possibilities.

In this case you had one theory that was put forth, which was that the accessory -- the key being in the accessory position could have caused airbag non-deployments.

In the crashes that we looked at, the circumstances of those crashes led the investigators to believe that it was more -- much more likely that the airbags didn't go off because of the circumstances of that crash.

I understand, completely understand, why it looks like --

MR. GRIFFITH: Well, but let me --

MR. FRIEDMAN: -- it should have been clear, but it's clear now in part because we

have that clear connection from General Motors.

MR. GRIFFITH: Well, but let me -- let me raise this concern. This memo indicates there is a reliance, and implying this from the wording, notwithstanding GM's indication that they see no specific pattern problem, it shows -- that statement shows a reliance on GM.

Likewise in your testimony you state that this understanding was verified -- talking about the power loss situation -- this understanding was verified by GM service literature during our due diligence effort.

Now, if you've got a company that's got a car that's not functioning the way it's supposed to, I would like to think that with 51 employees versus that one-man law firm out of Georgia that you would look at something other than the service literature and not necessarily rely on GM indications that they see no specific pattern or problem pattern.

So I'm concerned that there may have been too much reliance on information from

GM, including their service -- make sure I get the wording right -- their service literature and what they saw as problem patterns when I think, in fact, you all are supposed to be finding the problem patterns.

Now, I understand it's easy in hindsight sitting up here to say that, but these are warning signs that go off to me as a legislator that maybe you all need to take a look at that and, you know, when you see problems maybe the service literature of the company that you're looking at is not the best place to get your information.

MR. FRIEDMAN: Congressman, just to be clear, we did not rely on General Motors when it came to defects, whether or not there was a defect trend.

We did our own analysis of the data and our own analysis indicated that the Cobalt didn't stand out.

I also wonder if I haven't been clear enough relative to that service bulletin.

We did not rely on that service bulletin at the time, we did not rely on that information from General Motors.

We relied on our experts' understanding of airbag systems.

MR. GRIFFITH: But their understanding of the airbag system in the Cobalt was based on the service literature for the Cobalt according to your written testimony.

MR. FRIEDMAN: Well --

MR. GRIFFITH: Am I not correct? Is that not what you said?

MR. FRIEDMAN: My testimony sounds like it was not clear enough.

What happened was once we found out about this defect, we looked into the service literature to confirm our understanding at the time and the service literature that we looked at this year for that vehicle confirmed our understanding at the time --

MR. GRIFFITH: But your --

MR. FRIEDMAN: -- which was that --

MR. GRIFFITH: Your understanding at the time and the service literature were both wrong isn't that correct? Yes or no.

MR. FRIEDMAN: Yes, that's correct.

MR. GRIFFITH: Thank you. I yield back.

CHAIRMAN MURPHY: Gentleman yields back.

Now recognize Mr. Long for five minutes.

MR. LONG: Thank you, Mr. Chairman. I want to thank the chairman, the ranking member, and all of the members on both sides that have been here today.

We originally weren't scheduled to be in this soon and so a lot of us had to change our travel plans to get in today, and a lot of us have been sitting here through the entire both hearings today because it is a very, very important issue of course that we're discussing, and thank you, Mr. Friedman, for being here with us today with your testimony.

You know, when I think of NHTSA, I think of Number 66 for the Green Bay Packers, linebacker, Ray Nitschke, and all day we've been talking about NHTSA, NHTSA.

Tell me what NHTSA is.

MR. FRIEDMAN: NHTSA is the National Highway Traffic Safety Administration. It's an organization of nearly 600 people whose mission it is to save lives and reduce injuries by addressing issues like drunk driving, unbelted occupants, vehicle safety, and the subject we're talking about today, which is finding vehicle defects when automakers don't find them themselves, which is their first and foremost responsibility.

MR. LONG: I just wanted to get that out there on the record.

I, of course, know what it is, but I think a lot of people when they hear that, NHTSA, all day, are thinking what exactly is this.

So the next question I would have

would be do you have any way to track consumer complaints to auto dealers short of waiting for them to reach out to you, not the dealers, but the consumers that are having a problem?

Do you have any way to track people coming in and my car stopped, it died, it did this, it did that?

Do you have any way to track that or do you have to wait for someone to contact you all?

MR. FRIEDMAN: We have early warning data which tracks the cases where warranty service is provided on vehicles.

MR. LONG: So any time a warranty service provided, you would be notified of that?

MR. FRIEDMAN: We are notified of a count. We have -- we have a total number -- a count of the number of those and the part that that's associated with.

MR. LONG: And how often --

MR. FRIEDMAN: The reason for the

complaint.

MR. LONG: Do you get that annually, semi-annually, quarterly? How --

MR. FRIEDMAN: Once a quarter.

MR. LONG: Once a quarter. Okay.

MR. FRIEDMAN: The information is required once a quarter.

MR. LONG: How would a -- What kind of marketing do you do? How would a consumer know, learn about, the National Highway Traffic Safety Administration? What kind of marketing do you do?

If I took my car in, had a problem, it wouldn't pop into my head to call you, so how do you market yourself?

How can we let the American public know if they do have an issue and they're not satisfied with their dealer, how can they contact you or what can we do to better augment that I guess?

MR. FRIEDMAN: Well, some of the things that we're already looking at doing, and

we are already making sure that happens, is on every single recall letter that goes out, both NHTSA's name is on that letter, even though it's sent from the automaker and it's in clear red letters that this is an important safety recall information.

We also have apps that are available online that we try to make sure that consumers download. These apps allow people to lodge complaints directly to us, they allow them to track their recalls.

We also moving forward later on this year with a tool that will allow all consumers to come to our website, put in their VIN number to find out if there is a recall associated with their very specific vehicle that has yet to be addressed.

We have additional efforts where we try to make sure that people are aware of who NHTSA is, but, yes, I've seen the same data, and one of the things that I have talked to my staff about is that we are not at the top

of the list when people have complaints, and we have been talking about ways that we make sure that we have campaigns to make people aware that if you've got a complaint, if you've got a concern, come to NHTSA, and we need that information.

Consumer complaint data is one of the vital tools that we have to try to find these defects, and I would appreciate any help anyone can provide to make sure that people are aware, that people go to safercar.gov to report these defects. Any help --

MR. LONG: Or tomorrow you're going to be able to see on there that you can take your car in there and get a free loaner or a free rental, right?

MR. FRIEDMAN: Absolutely.

MR. LONG: Very good. My last question, at what point is a consumer supposed to reach out to you?

MR. FRIEDMAN: At any point they have a concern. I mean, you know, when --

MR. LONG: At what point is that, though? If I -- if I get a -- go home this evening, in the mail I get a recall on my vehicle, and they want me to bring it in and fix this switch or that do-dob there, whatever, do I run to the phone and call you and say hey, I've got a recall, or do I wait until I am not satisfied with the dealer, or at what point do consumers -- should consumers reach out to you?

MR. FRIEDMAN: Well, in that case, if you've got a recall letter, the first thing you should do without a doubt is contact your dealer and get your vehicle fixed as soon as possible. These are --

MR. LONG: Yes, but I'm talking about contacting you. At what point do I -- if it's just a standard thing, I don't need to contact you on that?

MR. FRIEDMAN: Well, if it's a standard recall and you are concerned and you want to reach out to us, absolutely, but typically when we want people to contact us is

well before there's a recall.

We rely on and look at over 45,000 consumer complaints every single year to try to spot these trends, so I want someone to reach out to NHTSA the instant they have a serious concern about their vehicle, and they feel -- their safety is at risk so we can have that information.

Right now we've got 45,000 complaints; I'd like to see that number get up to 50, 60, 75,000 complaints relative to safety issues so that we can have more information to be able to track down these problems.

MR. LONG: Okay. Mr. Chairman, I don't have any time left, but if I did, I'd sure yield back.

CHAIRMAN MURPHY: Thank you, gentleman.

The gentleman from Nebraska, Mr. Terry --

MR. TERRY: Thank you --

CHAIRMAN MURPHY: -- for five minutes.

MR. TERRY: -- acting chair.

You had testified, Mr. Friedman, or in your testimony you showed -- or testified that there were two SCI reports that showed indications of power loss and identified the vehicle power mode as accessory, and I think one of these has been highlighted in several newspaper articles that the SCI noted during airbag investigation a problem with the accessory, so the question I have is did these reports merely report the vehicle power mode as a fact or did it report this -- and identify it as a potential contributing factor?

MR. FRIEDMAN: Well, the two reports handled the case differently.

My understanding and my memory is that in one of the reports it simply had an entry in the EDR data, in the event data recorder data that indicated that the vehicle power mode is accessory. That's typically not reported.

In another case, in the other

case, it was included in the special crash investigation that there were two possible reasons why the airbags did not deploy.

One possible reason was because of the ignition switch; the other possible reason was the yielding nature of the trees wasn't sufficient --

MR. TERRY: You mean they're hard when they're hit?

MR. FRIEDMAN: I'm sorry?

MR. TERRY: I'm being sarcastic. You said the yielding nature of the trees --

MR. FRIEDMAN: I'm sorry. I'm using --

MR. TERRY: They're hard. They're hard when objects hit them and --

MR. FRIEDMAN: Well, different trees have different sizes. In this case --

MR. TERRY: Well, anyway, I don't want to get bogged down into the force of the impact --

MR. FRIEDMAN: But the --

MR. TERRY: -- of the tree, but the point is they were noted in SCI reports, but not acted upon.

So what is the communication process between the SCI and the ODI? Someone's got to take that up and say gees, there is a problem with an ignition switch that's been noted, maybe we should follow up on that.

What's the process?

MR. FRIEDMAN: So the process -- it depends on the circumstance. In some cases our Office of Defects Investigation will actually ask the special crash investigators to go out and look at a crash so that they can seek new information.

In other cases when the special crash investigators follow up on a crash, they will bring it to the attention of the Office of Defects Investigation so we try to make sure that both teams are talking to each other and sharing critical information.

MR. TERRY: Okay. So in these two SCI

reports that were filed, did the SCI -- did the special crash investigator communicate that there is a problem other than noting it in those reports on those two occasions to the ODI?

MR. FRIEDMAN: I don't know if SCI specifically communicated the accessory issue, but when the team did look at -- especially the investigation that indicated there were two possible reasons for that --

MR. TERRY: Yeah. So the ODI knew that there may have been -- that the switch may have been part of the problem, let's say.

MR. FRIEDMAN: ODI would have been aware of exactly --

MR. TERRY: So ODI was aware.

MR. FRIEDMAN: They -- I believe so, because my understanding is --

MR. TERRY: Because it looks like you have one group of people that's not talking to another group of people.

MR. FRIEDMAN: Our teams do talk to

each other, but as you will notice in my testimony, one of the things that I do think we need to discuss is are there ways that we can change the way these crash investigations are used in our defects process.

MR. TERRY: Okay.

MR. FRIEDMAN: But in this case I do want to note that the draft version of this report that the team had at the time at that moment indicated that the crash investigators thought the more likely reason the airbags did not go off was because of the circumstances of the crash.

MR. TERRY: I would think if you note there is a problem with the -- with the switch turning automatically to accessory, that would be significant enough to just follow up on, whether or not it was deemed to be a contributing factor or the sole factor.

I need to ask, though, on the ER -- EW -- the early warning reports, you received early warning the reports from GM,

correct?

MR. FRIEDMAN: That's correct.

MR. TERRY: Okay. In my question to the chair -- I'm sorry. The president of GM, she said that they were submitting those.

Were they required when they know or feel that there is a problem with a specific item in that car, like the ignition switch, to report that, or is that just one of the many items to be submitted within the EWR?

MR. FRIEDMAN: Well, my understanding is that if they are aware of a problem that relates to a safety defect, that that actually is not reported within the EWR. That needs to be directly report to us.

MR. TERRY: They have to report -- under the TREAD Act they have to report that separately.

MR. FRIEDMAN: Well, under the TREAD Act they are required to report warranty claims and a variety of other pieces of information to us, but if they saw a defect, then they needed

to report that to us completely separate from -- from -- you know, that's simply their requirement of the law --

MR. TERRY: What's non-compliance --

MR. FRIEDMAN: -- as to why we have an investigation.

MR. TERRY: I'm over my time, but I do need to get on the record what is "non-compliance" versus "defect".

MR. FRIEDMAN: So these are two different --

MR. TERRY: And you have two seconds.

MR. FRIEDMAN: Sure. Really quickly.

Non-compliance means that you did not meet the standards that we have.

A safety defect means you may have met the standards, but there is something wrong with the vehicle that poses an unreasonable risk to safety.

MR. TERRY: All right. Thank you.

CHAIRMAN MURPHY: I thank the gentleman.

I would ask for unanimous consent that the members' written opening statements introduced into the record.

Without objection, the documents will be entered into the record.

(No response.)

CHAIRMAN MURPHY: Hearing none.

I also ask unanimous consent that the consents of the documents binder be introduced into the record and to authorize staff to make appropriate redaction.

Without objection, the documents will be entered into the record with any redactions that staff determines are appropriate.

(No response.)

CHAIRMAN MURPHY: Hearing no objections.

In conclusion, I would like to thank all of the witnesses. Thank you, Mr. Friedman, and members that participated in today's hearing.

I remind members that they have ten business days to submit questions for the record, and I ask that the witnesses all agree to respond promptly to the questions.

Anything else?

UNIDENTIFIED MEMBER: No.

CHAIRMAN MURPHY: Thank you very much, and this hearing is adjourned.

MR. FRIEDMAN: Thank you.

(Which were all the proceedings on the videotaped recording.)

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

I, Christine M. Vitosh, a Certified Shorthand Reporter, do hereby certify that I transcribed the proceedings from the videotaped recording of the hearing and that the foregoing, Pages 1 through 293, inclusive, is a true, correct and complete computer-generated transcript of the proceedings had at the time and place aforesaid.

I further certify that my certificate annexed hereto applies to the original transcript and copies thereof, signed and certified under my hand only. I assume no responsibility for the accuracy of any reproduced copies not made under my control or direction.

As certification thereof, I have hereunto set my hand this 15th day of April, A.D., 2014.

Christine M. Vitosh
Illinois CSR No. 084-002883

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UNITED STATES OF AMERICA

SENATE HEARING

TRANSPORTATION SUBCOMMITTEE ON
CONSUMER PROTECTION AND PRODUCT
SAFETY

GM Ignition Switch Recall

April 2, 2014

Transcript prepared from the videotape recording of the hearing occurring on April 2, 2014, of the Transportation Subcommittee on Consumer Protection and Product Safety, prepared by Christine M. Vitosh, C.S.R.

PRESENT:

SEN. CLAIRE McCASKILL, Missouri,

Chairman

SEN. DEAN HELLER, Nevada, Ranking Member

SEN. BARBARA BOXER, California

SEN. AMY KLOBUCHAR, Minnesota

SEN. RICHARD BLUMENTHAL, Connecticut

SEN. KELLY AYOTTE, New Hampshire

SEN. DAN COATS, Indiana

SEN. MARCO RUBIO, Florida

SEN. BILL NELSON, Florida

SEN. EDWARD J. MARKEY, Massachusetts

SEN. RON JOHNSON, Wisconsin

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I N D E X

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CHAIRMAN McCASKILL: This subcommittee will come to order.

It was a rainy night in Los Angeles. Brooke Melton, who was 29 years old and a pediatric nurse, was driving in her 2005 Chevrolet Cobalt to meet her boyfriend for her birthday dinner outside of Atlanta.

As she was driving on the highway, her car suddenly lost power, unable to control the vehicle, it hydroplaned, crossed the center line, and slammed into another vehicle at 58 miles per hour. Her car ended up in a creek. The airbag never deployed.

Ken and Beth Melton, her parents, rushed to the hospital, but she was dead when they arrived.

In their nightmare of grief, they hired a lawyer, a trial lawyer. They asked him to help them understand what had happened and, if possible, hold whoever was responsible accountable, and he went to work, spending his own resources to get to the bottom of what

happened to Brooke on that rainy night in Georgia when she was on her way to celebrate her birthday.

He hired an engineer to help him. Together Mr. Cooper, the lawyer, and Mr. Hood, an engineer, began to identify a defect that someone at General Motors had discovered years before.

There was a problem with the ignition switch in Chevy Cobalts; it could be easily bumped or brushed or pulled from on to accessory or off powering down the car, disabling the power steering, disabling the power brakes, and preventing the airbags from deploying.

After two years of fighting General Motors for documents and a timeline of events and a deposition in April of last year, Mr. Cooper finally confronted General Motors with the facts.

Someone at General Motors had switched out the unsafe ignition switches in

several car models and covered it up by using the same part number for the -- for the same switch, for the new switch. Had covered it up by using the same part number for the new switch.

The simple work of the engineer hired by the trial lawyer representing the Meltons had discovered the defective part and its replacement with the same number, and when Mr. Cooper confronted General Motors, Mr. Ray DiGiorgio, their lead switch engineer with the evidence of the part switch, he lied. He said he didn't know anything about it.

Documents, General Motors commodity validation sign-off, signed in April of 2006 bear the signature of, in fact, Ray DiGiorgio, spelling out in the document, also new detent plunger has -- was implemented to increase torque force in the switch with the box checked "Re: Submission during engineering changes".

Further, it is now clear that GM

knew of the faulty switch in 2004, knew the airbags were not deploying in 2005, and in late 2005 knew someone had died.

We don't know how many people crashed because of this cover-up. We do know that many died, including Miss Melton.

And at least one of my constituents, a Missouri woman, who died in a crash in 2009 in the suburbs surrounding St. Louis.

So there was great work done by a trial lawyer and an engineer he hired in exposing a serious safety issue with a product, work that should have first been done by GM.

And, secondly, by federal regulators.

And then there is the federal regulators' failure to spot a trend, even though the TREAD Act was specifically to give this regulatory agency the information it needed to catch exactly this type of problem.

In a culture of cover-up that

allowed an engineer at General Motors to lie under oath, repeatedly lie under oath, it might have been the old GM that started sweeping this defect under the rug ten years ago, but even under the new GM, they entered the company, waited nine months to take action after being confronted with specific evidence of this egregious violation of public trust.

Thousands of my constituents in St. Louis and Kansas City areas go to work for General Motors every day building some of the finest cars on the road. I am proud of them and I am proud of their work. This is not their failure.

They, and the American public, were failed by a corporate culture that chose to conceal rather than disclose and by a safety regulator that failed to act.

With this hearing I intend to identify potential problems in our auto safety system and work with Chairman Rockefeller, Ranking Members Thune and Heller, and the other

members of this committee to rectify these problems so that this tragedy hopefully is never repeated again.

It's time that we finally get this right so that it didn't take an enterprising trial lawyer and an engineer to bring -- that he hired to bring to light what NHTSA should have known long ago and what General Motors should have fixed long before Ken and Beth Melton lost their daughter Brooke.

Our job today is to learn as much as possible about the failures of General Motors and the regulators to keep unsuspecting daughters, fathers, wives and sons safe.

Senator Heller.

SENATOR HELLER: Thank you, Chairman McCaskill. Thanks you for holding this hearing, and thank you, Ms. Barra, for appearing in front us today.

I want to begin by offering my deepest sympathies to the family and friends of those have been affected by these tragedies.

I also want you to know that we will get to the bottom of why it took so long to get these vehicles off the record.

As many of you know, General Motors has issued a recall of over 2.2 million vehicles due to problems with the ignition switch that GM has admitted to knowing about in some form as early as 2001.

These faulty ignition switches are linked to 13 deaths. GM has now recalled certain years of Chevrolet Cobalts, Pontiac G5's, Saturn Ions, the Chevrolet HHR, and the Pontiac Solstice and the Saturn Sky.

Last Friday it was reported that sometime in 2006 or as late as 2007 General Motors changed the ignition switch part.

A whole new part was manufactured and sold, but GM kept the same part number for that new part.

Now, in my hometown in Carson City, we have an engineering company that builds pistons and rods for Nascar teams. I

have talked with him, talked with owners, talked with other builders in Nevada, and I can tell you this: If a company sold a part that was changed in any way and did not change the model number or the serial number on that part, it would cause significant problems for these businesses, these individuals, and of course the racing teams themselves.

Ms. Barra, you know that I have raced cars for years. I have used GM testing facilities on some of the cars that I have raced.

I have blown engines, broke transmissions, broke rear ends, lost my brakes, throttle stuck, and my ignition quit on me, and I tell you this, because we break those engines down, those transmissions, those rear ends, to find out exactly what the integrity of those parts are and how they broke, why they broke, and the difference, of course, then is winning or losing.

I can tell you based on my

experience: It is incredibly unusual for a car company to change a car part and not change the part number.

Government investigators have now requested that GM provide any documents chronicling the switch change and who within the company provided it.

I am also requesting today that GM provide this committee with that same information.

But that's only part of this issue. We also need to recognize that when GM emerged from bankruptcy in 2009, the federal government owned 60 percent of the company because taxpayer -- taxpayers bailed the company out, so GM knew of this issue in some capacity over ten years ago.

They changed the part, but didn't tell anyone. They asked for a taxpayer bail-out, and the current administration had to step in and restructure the company.

Through all of this, GM was

unable to determine that they should pull 2.2 million vehicles off the road.

This is why, from where I'm sitting, GM has a lot of explaining to do both to this committee and to the taxpayers.

Here's the issue for GM: It looks like there are multiple moments when the company faced conflicts of interest, and you said it yourself yesterday, Ms. Barra, GM has a culture based on cost, not safety.

So many people are wondering if GM did not initiate a recall because GM could not survive one in 2006, or they did not initiate a recall because the government owned 60 percent of the company.

It is possible that GM has an explanation for why it took so long to pull these cars off the road.

However, after yesterday's hearing, I'm afraid we're not going to get too many answers today.

I hope GM is in a position to

speak to what happened more specifically, that is why we called you here, and I think GM should take the opportunity today to explain their actions and help this committee get to the bottom of what happened.

There is also another side of this story, and this is whether the National Highway Traffic and Safety Administration received all the information from early warning reports that it needed to determine if further investigations were warranted.

NHTSA received 260 complaints over 11 (inaudible) -- that these vehicles were turning off while being driven, yet NHTSA did not move forward with a recall investigation in 2007 or 2010.

I wrote to NHTSA asking very simple questions regarding their process in recalling vehicles and what they saw in 2007 or 2010 that compelled them to pass on any investigation.

I am very disappointed in NHTSA's

ability to respond to my letter in time for this hearing.

When we're looking at incidents in which individuals died, I expect more from NHTSA and what they showed today, and I think NHTSA knows that they can do better, and they better do better.

That being said, it's my understanding that the Secretary of Transportation has requested an internal investigation to conduct an audit of NHTSA's handling of the GM recall.

Secretary Fox also stated that he is directing NHTSA and the department's general counsel to jointly conduct a due diligence review, and I am pleased by both of these developments and look forward to the reports.

We need ensure that consumers are safe on the road. We need to understand the facts of this recall.

There are many questions that need answering, and I hope that today's hearing

begins to provide some answers to the U.S. taxpayers and to what they deserve.

So thank you, Chairman McCaskill.

CHAIRMAN McCASKILL: Thank you, Senator Heller.

Ms. Barra, welcome. We respect and appreciate your presence here today, and we welcome your testimony.

(Inaudible.)

MARY BARRA,

called as a witness herein, testified before the Subcommittee as follows:

MS. BARRA: Is it on now?

UNIDENTIFIED SPEAKER: It is.

MS. BARRA: Okay. Sorry about that.

Thank you very much.

My name is Mary Barra, and I am the Chief Executive Officer of General Motors. I appreciate the opportunity to be here today.

More than a decade ago GM embarked on a small car program, and sitting here today, I cannot tell you why it took years

for a safety defect to be announced in that program, but I can tell you we will find out.

This is an extraordinary situation; it involves vehicles we no longer make, but it came to light on my watch, so it is my responsibility to resolve it.

When we have answers, we will be fully transparent with you, with our regulators and with our customers.

While I can't turn back the clock, as soon as I learned about the problem, we acted without hesitation. We told the world we had a problem that needed to be fixed. We did so because whatever mistakes were made in the past, we will not shirk from our responsibilities now and in the future. Today's GM will do the right thing.

This begins with my sincere apologies to everyone who has been affected by this recall, especially to the families and friends of those who lost lives or were injured. I am deeply sorry and the men and

women of General Motors are deeply sorry.

I've asked former U.S. Attorney Anton Valukas to conduct an thorough and unimpeded investigation of the actions of General Motors, and I have received updates from him and he tells me his work is well along.

He has the free rein to go where the facts take him, regardless of outcome. The facts will be the facts.

Once they are in, my leadership team and I will do what's necessary to assure this doesn't happen again. We will hold ourselves accountable.

However, I want to stress we are not waiting for his results to make changes.

I've named a new vice president of Global Vehicle Safety, which is a first for General Motors. Jeff Boyer's top priority is to quickly identify and resolve any and all product safety issues.

He is not taking on this task

alone; I stand with him, my senior management team stands with him, and we will welcome input from outside GM, from you, from NHTSA, from our customers, our dealers, and our current and former employees.

I have asked everyone on our team to keep stressing the system at GM and work with one thing in mind:

Our customers and their safety are at the center of everything we do.

Our customers who have been affected by this recall are getting our full and undivided attention.

We have empowered our dealers to take extraordinary measures to treat each case specifically.

If people do not want to drive a recalled vehicle before it is repaired, dealers can provide a loaner or a rental free-of-charge. To date we have provided nearly 13,000 loaner vehicles.

Our supplier is manufacturing new

replacement parts for the vehicles that are no longer in production. We've commissioned two lines and asked for a third, and those parts will start being delivered to dealers next week. These measures are only the first in making things right and rebuilding the trust of our customers.

I would like this committee to know that all of our GM employees and I are determined to set a new standard.

I am encouraged to say that everyone at GM, up to and including our board of directors, supports this.

As a second generation General Motors employee, I am here as the CEO, but I'm also here representing the men and women who are part of today's GM, and I can tell you that they are dedicated to putting the highest quality and safest vehicles on the road.

In addition, I announced yesterday that we have retained Kenneth Feinberg as a consultant to help us evaluate

the situation and recommend the best path forward.

I am sure this committee knows Mr. Feinberg is highly qualified and is very experienced in the handling of matters such as this, having led the compensation efforts involved in 911, the BP oil spill, and the Boston marathon bombing. Mr. Feinberg brings expertise and objectivity to this effort.

As I have said, I consider this to be an extraordinary event, and we are responding to it in an extraordinary way.

As I see it, GM has both civic responsibilities and legal responsibilities and we are thinking through exactly what those responsibilities are and how to balance them appropriately. Bringing Mr. Feinberg on is the first step.

I would now be happy to answer your questions. Thank you.

CHAIRMAN McCASKILL: Thank you, Ms. Barra.

I want to briefly go through your resume.

Beginning in 2004 when this defect was discovered by someone at GM, you were Executive Director of Manufacturing Engineering from 2004 and 2005.

In 2005 to 2008 you were Executive Director of Vehicle Manufacturing Engineering.

From February 1st, 2008 to July, 2009, you were Vice President of Global Manufacturing and Engineering.

From July 30th, 2009 to February 1st of 2011, you were Vice President of Global Human Resources.

From February 1st, 2011 to August, 2013 you were Senior Vice President of Global Product Development.

And from 2000 -- August of 2013 to January 15th of 2014 you were Executive Vice President of Global Product Development.

Is that a correct --

MS. BARRA: Yes.

CHAIRMAN McCASKILL: -- rendition of your resume over the last decade?

MS. BARRA: Yes.

CHAIRMAN McCASKILL: In April and May of last year, GM's employees were deposed in the lawsuit trying to get some kind of justice for Brooke Melton.

They were confronted in the deposition with the fact that there were two different parts with the same part number and a different torque on both of those parts leading to the malfunction of the ignition switch.

At that deposition General Motors had a lawyer, and it was very clear at that deposition that there were two parts with the same number, and they had been switched out and that one of them was defective.

When that lawyer for General Motors left that hearing, who did he report to?

MS. BARRA: I don't know which lawyer was at that trial, so I can't answer that

question.

CHAIRMAN McCASKILL: Hold on, and I will get it for you.

You have some lawyers here with you today, don't you? Don't you have your general counsel with you?

MS. BARRA: Yes, I do.

CHAIRMAN McCASKILL: You're free to confer with him if he would like to tell you who that gentleman would report to after that deposition.

MS. BARRA: Again, we are doing a full investigation with Mr. Valukas and all of the individuals that are associated with this incident will be a part of that and the findings will be conclusive.

CHAIRMAN McCASKILL: It was Mr. Philip Holladay, appearing on behalf of General Motors from the King & Spalding law firm in Atlanta, Georgia.

MS. BARRA: Okay. So he didn't report to General Motors then, he was part of

King & Spalding.

CHAIRMAN McCASKILL: Well, but he would have reported to his client. He was there representing you. He was your --

MS. BARRA: Yes.

CHAIRMAN McCASKILL: -- agent at that deposition.

MS. BARRA: Yes.

CHAIRMAN McCASKILL: So he would have -- I guarantee you, if I am a lawyer and I am at a deposition where this bombshell has been dropped on my client, that there are two identical -- two different parts with the same number, one of which is defective, I guarantee you I don't go back and tell the folks at the law firm, I am on my cell phone in the lobby saying to General Motors: "We've got a problem."

I need to know who would typically be -- Would it be the general counsel's office that the lawyers that you hire would report to you on litigation?

MS. BARRA: It would have been part of the senior legal team.

CHAIRMAN McCASKILL: Okay. It would be very important for us to identify who that lawyer reported to after that deposition.

MS. BARRA: I will -- that will be part of Mr. Valukas' investigation.

CHAIRMAN McCASKILL: Now, I am assuming that when that happens there is an investigation internally.

MS. BARRA: When -- One of the findings that we've had from Mr. Valukas already as he has done his study is that within General Motors, there were silos, and as information was known in one part of the business, for instance, the legal team, it didn't necessarily get communicated as effectively as it should have been to other parts, for instance, the engineering team.

That's something that I've already corrected today.

CHAIRMAN McCASKILL: Ms. Barra, I'm

not asking whether or not the lawyers called the engineers, I'm asking whether or not lawyers in a multi-million dollar lawsuit where there has been evidence of a defective switch and replacement that had never been identified to the public being presented to the lawyers for your company not reporting that up to the executive level of your company.

Those lawyers work for the executive level, they don't work for the engineers. They are hired by your senior counsel. That's who hires those lawyers, his office, correct?

MS. BARRA: Yes.

CHAIRMAN McCASKILL: Okay. So what I want to know is what investigation began after that deposition?

MS. BARRA: That is part of the investigation that we're doing.

CHAIRMAN McCASKILL: So you don't know whether or not anything happened after that investigation?

MS. BARRA: I don't have the complete facts to share with you today.

CHAIRMAN McCASKILL: Okay. Well, that is incredibly frustrating to me that you wouldn't have a simple timeline of what happened once you got that knowledge.

So it went on for nine months. You have no idea, even though you were in executive level of leadership in the company at that time, it was never discussed anywhere in your presence --

MS. BARRA: Correct.

CHAIRMAN McCASKILL: -- for nine months even though this had occurred?

MS. BARRA: I became aware of the defect and the recall on January 31st.

CHAIRMAN McCASKILL: Okay. So let me do quickly that.

On February 7th you issued the first recall.

12 days later Mr. Cooper, the trial lawyer, wrote to NHTSA pointing out that

in addition to the recall you had done, it was not complete. He pointed out there were four other models that had the defective ignition.

Six days later you, in fact, recalled those vehicles.

On Monday of last week Mr. Cooper filed a court pleading in California alleging there were additional cars that should have been recalled and had not been recalled because they had defective switches placed in them during repairs.

Last Friday, four days later after that pleading, GM finally issued the third round of recalls.

Is this the new GM, Ms. Barra? Is this the new GM that takes a lawyer having to write NHTSA and a court pleading in court for you to finally recall all the cars that had been impacted by this defective switch?

MS. BARRA: As we looked at first population of vehicles, we immediately go and then read across to the other vehicles that may

have the same part.

Often when you have same part in another vehicle it can be a different configuration, a different geometry.

As we looked into that population, we then recalled that population, and then we immediately started to look of where were the spare parts.

From a General Motors perspective for GM dealers we could go to dealer records and understand where the dealer put a spare part into a vehicle.

We knew the VIN, but then as we worked with our supplier we learned that they have sold these parts to other third-party repairs where there were no records kept.

When we learned that, we immediately went out and recalled the entire population of all of these vehicles because we couldn't be certain if there was a vehicle that had a part put in that we couldn't track.

CHAIRMAN McCASKILL: And I think it's

great you have done that, it just is worrisome to me that it took three shots after nine months.

Senator Heller.

SENATOR HELLER: Thank you.

Ms. Barra, the public is very skeptical of General Motors, and let me explain to you what they are seeing.

At some point last decade GM knew there was a problem with the faulty ignition switch which led to the death of 13 people.

In late 2006 or early 2007 GM replaced the ignition part, but kept the same part number and did not tell anyone.

Shortly thereafter, GM needed U.S. taxpayers' loan to bail them out. The company was provided so much assistance that when they emerged from bankruptcy, the federal government in 2009 owned 60 percent of the company.

So from where I sit, it looks like GM is not forthcoming with the American

people who bailed them out.

It looks like there were multiple moments where the company had conflicts of interest either with initiating a recall at a time when GM was not financially sound or when the government owned 60 percent of the company.

So what I'm going to do is allow you to explain yourself to the American people, and I think we need to know whether you believe the company acted in the best interests of the consumer who bought your car and the U.S. taxpayers who bailed you out.

MS. BARRA: First of all, I agree, it took way too long for this to come to the attention and to do the recall, and we have admitted that.

We have also apologized, it is tragic that there has been lives lost and lives impacted with this event.

From the part number perspective, I find it completely unacceptable that a part would be changed without a part number -- the

actual identifier being changed, that is not a process of good engineering, that is not an acceptable process; it wasn't then and it clearly isn't now.

And as we do our investigation, we will deal with that situation because that is not acceptable for good engineering principles.

But as I look at the culture of the company during the timeframe this part was designed in the late 90's, it went into vehicles that went into production in '03, the latest of which went out of production in the '11 timeframe.

The culture of the company at that time had more of a cost culture focus, and I can tell you we have done several things since the bankruptcy to create a new culture at General Motors to be focused on the customer, starting with rewriting our values.

The first value is the customer is our compass.

The second is relationships matters, and individual excellence.

We have also taken quite a bit of bureaucracy out of the vehicle development process and the structure itself.

We have dramatically improved our quality organization and our customer experience organization.

So there has been dramatic improvements made in General Motors since that time.

SENATOR HELLER: Ms. Barra, I've heard -- I read the transcripts from yesterday's hearing and you said most of this when you were on the other side of the capital.

You said safety comes first at GM, that you don't look at cost.

GM looks at the speed at which it can fix it, and you said that there was a change, that GM has gone from a cost culture to a safety culture.

I want you to explain that, and

in explaining that, does that mean in 2006 General Motors was more concerned with the bottom line as opposed to recalling their vehicles?

MS. BARRA: When we look at -- when the complete investigation is done, there was documents that were produced yesterday that if those are in complete context that they valued cost over quality, once we knew there was a safety defect, that is unacceptable.

In today's culture we don't condone that, and it starts with leadership, myself, our leadership and product development across the company.

If there is a safety defect, there is not a calculation done on business case or cost; it's how quickly can we get the repair and put the right part or fix or inspection, whatever needs to be done to make sure the vehicles are safe that our customers are driving.

SENATOR HELLER: So let me ask you

again, if safety was not the highest priority in the past, is it fair to assume that GM only acts in the best interests of GM at all times? Was that true in 2006?

MS. BARRA: Again, that's a very broad statement. I would say that there has been times in the past where there has been a safety focus, General Motors is a hundred-year-old company, but I can tell you now from post-bankruptcy there is a focus on the customer and on safety and on quality.

SENATOR HELLER: I have more questions, but I'll wait.

CHAIRMAN McCASKILL: We will have another round of questions for Ms. Barra.

Senator Boxer.

SENATOR BOXER: Thank you, Ms. Barra.

I have here a timeline of when the company knew there were problems.

It starts in '01.

In '03 a service technician of GM noted that there was a stall while driving, and

it goes on.

And there is a constant theme here of the thing is getting worse and worse through the years.

Now, you're new at your job, but you've been at GM for how many years?

MS. BARRA: 33.

SENATOR BOXER: 33 years. So when this was first discovered, you were Executive Director of Competitive Operations Engineering where you developed and executed strategies to improve the effectiveness of vehicle manufacturing and engineering, but you didn't know of this?

MS. BARRA: Correct.

SENATOR BOXER: Nobody told you about this?

MS. BARRA: Correct.

SENATOR BOXER: And then you were plant manager of Detroit Hamtramck assembly in '03 to '04 where were you responsible for day-to-day plant activities related to safety,

people and quality, and still you knew nothing about this?

MS. BARRA: We didn't build any of these models at the Detroit Hamtramck plant.

SENATOR BOXER: In that position you knew nothing about that, correct?

MS. BARRA: Correct.

SENATOR BOXER: Okay. And then in '04 to '05 you were Executive Director of Manufacturing Engineering responsible for developing and implementing global bills of process and equipment to optimize capital deployment and manufacturing operating costs, and you developed and continuously improved lean cost initiatives.

You knew nothing about this when you were Executive Director of Manufacturing and Engineering?

MS. BARRA: Correct.

SENATOR BOXER: You knew nothing.

How about when you were Vice President of Global Manufacturing Engineering,

'08 to '09, you knew nothing?

MS. BARRA: Correct.

SENATOR BOXER: You still knew nothing when you were Vice President of Global Human Resources?

MS. BARRA: Correct.

SENATOR BOXER: You're a really important person to this company. Something is very strange that such a top employee would know nothing.

Now, have you seen photos of your cars that have had that ignition problem and that problem led to deaths?

Have you seen photos of those cars, what they look like?

MS. BARRA: Yes.

SENATOR BOXER: I have another one for you to look at. The people are here.

Mary Theresa Ruddy of Scranton, Pennsylvania, died at the age of 21. She was a senior at Marywood University. Her parents are here, her family.

And I guess it's -- it's somewhat shocking after the Pinto -- and that goes back to when I was first an elected official -- I was shocked that there was such a cold and calculating way that Ford decided not to fix a fatal flaw in their fuel tank, and we learned through lawyers, as our chairman has pointed out, they made a very -- through discovery they found out there was a very careful cost benefit analysis and Ford decided it was cheaper for them to pay off the families of the dead than to fix the problem that would have cost them $11 a car.

Did you make that kind of calculation over at GM in this situation?

MS. BARRA: I did not.

SENATOR BOXER: Do you know of anybody who did make it?

MS. BARRA: That is the purpose of the investigation that --

SENATOR BOXER: But you don't know now?

MS. BARRA: Correct.

SENATOR BOXER: You haven't asked and you don't know?

MS. BARRA: I have asked for an investigation.

SENATOR BOXER: Do you know if GM ever used this kind of cost benefit analysis in its history?

MS. BARRA: There were documents shared with me yesterday, that if they're true, as we go through the complete timeline, will demonstrate that it's completely unacceptable --

SENATOR BOXER: Well, I didn't ask you that. I said: Do you know if GM ever used this kind of cost benefit analysis in its history. Do you know?

MS. BARRA: If it was used for -- Not for a safety item. It would be unacceptable.

SENATOR BOXER: It's okay to do it for a safety item, is that what you're saying?

MS. BARRA: I said the opposite of

that.

SENATOR BOXER: Well, you didn't.

MS. BARRA: Well --

SENATOR BOXER: So what about in 1973 when GM engineer Edward Ivy concluded it was not cost effective for GM to spend more than $2.20 per vehicle to prevent a fire death?

Do you know about that?

MS. BARRA: I've heard of that.

SENATOR BOXER: You have heard of it?

MS. BARRA: Uh-huh.

SENATOR BOXER: You haven't looked at it, looked into it?

MS. BARRA: General Motors today finds any time there is an incident is --

SENATOR BOXER: Well, you know, today and today. Yesterday I did some things that I am accountable for.

It's not about -- You have been involved in this since you became CEO.

Have you not looked into this?

Look. Mr. Ivy's study placed the

value of a human life lost at 200,000 and estimated the company could cost effectively spend only $2.00 for rear-impact protection to prevent fuel-fed fires, and that a burn death would cost the company $2.40 a vehicle.

Through this analysis, GM determined it would not be cost effective to pay more than $2.20 per car for each burn death.

So you talk about today's GM, but evidence shows that as recently as 2005 GM used a cost benefit analysis to determine if fixing the problem was, quote, not an acceptable business case.

Are you aware of the situation in 2005? Has that been called to your attention?

MS. BARRA: I was aware in general of the Ivy letter. I have never seen it.

SENATOR BOXER: What about the 2005, is that the new GM or the old GM, 2005?

MS. BARRA: General Motors Company was formed in 2009.

SENATOR BOXER: Okay. So the old GM in 2005, you're not aware that they used a cost benefit analysis to determine if fixing the problem was not, quote, an acceptable business case?

MS. BARRA: Again, if it's a safety issue, there should not be a business case calculated.

SENATOR BOXER: But you don't know anything about this?

MS. BARRA: That's why we've hired an investigation. We're going back over a period of a decade to understand exactly what happened.

SENATOR BOXER: Okay. I'll hold for the second round. Thank you.

CHAIRMAN McCASKILL: As people know, the Commerce Committee does order of arrival. Just to remind everyone, every committee does it different, but Senator Rockefeller does order of arrival. I will respect him in that regard. I respect him anyway, I respect

him in all regards, but I also will respect him in that regard.

So next will be Senator Klobuchar.

SENATOR KLOBUCHAR: Thank you very much, Senator McCaskill. Thank you for holding this hearing.

Ms. Barra, the -- one of the families involved in this is a young woman who was killed named Natasha Weigel from Albert Lea, Minnesota. I met her dad yesterday. I talked to her mom -- or to her mom's husband yesterday.

And this young girl was in Wisconsin, she was in a Cobalt with some friends and suddenly the ignition went off and the car barreled 71 miles per hour into trees, and two of the girls were killed, including Natasha, and she was a hockey player, young girl.

In one of the letters that her dad gave me that she wrote to him just a few

months before she died she talks about -- this is her words -- I wouldn't be the good goalie I am now if it wasn't for you, Dad, standing behind the net behind the glass just knowing you were there made me trust myself better and I definitely felt secure to know you had my back.

And I think you understand that these families need someone to have their back. They want to have the backs of their kids, at least the memories of their kids.

And I think this is a lot about what this is about, including a major change in process that we clearly need in GM and probably in the transportation field in terms of how we look at these things.

And as you look at this internal evidence, I think the things that we need to know, including why did GM open numerous internal reviews but not elevate the issue to a formal investigation until 2011, why was GM's management not aware of critical decisions

being made related to the defect, did GM disclose the issue during the company's bankruptcy proceedings, these are the things that are on the minds of the American people.

And then on the government side with NHTSA, did NHTSA have sufficient resources to do a prompt, thorough investigation, did NHTSA have the technical expertise and technology to evaluate this growing evidence?

I know in our case, in the Weigel family, a claim -- a complaint was made with NHTSA way back when Natasha was killed.

What could NHTSA have done differently as it was receiving complaints over this very long period of time?

So my first question of you is really about your -- this internal process and I'd like to know what factors -- as we've just seen these recalls, with more and more of them rolling out over the last few weeks, what factors did GM consider when it's examining whether or not to elevate a potential safety

defect to a higher level of review?

MS. BARRA: In today's General Motors, we look at -- I mean, as an incident is learned about, and it can come from any source, it can come from our dealers, it can come from testing, it can come from outside, it can come from a claim being made, and it gets assigned to team of knowledgeable engineers, they investigate, try to understand what's happening, try to understand, you know, if there is an incident, what it could cause, that then gets reviewed by a team, a cross-functional team, and then goes to a final group to make a determination. That's the process that's used.

SENATOR KLOBUCHAR: And what's the single most important factor the company considers when looking at whether to do a recall?

MS. BARRA: The most important thing is if there is a safety issue, and we will -- and we have actually over the last two years

made great strides to quickly get information, look and get into the field as quickly as possible.

If you look at the data right now of General Motors, we actually do more recalls than anyone with smaller population because we're trying to get -- if we find something, we're trying to get in and fix it as quick as we can.

SENATOR KLOBUCHAR: And do you think there will be further recalls to come here with different models?

MS. BARRA: I believe as we find problems large or small, we will do the right thing, and if it requires a recall, we will do a recall.

SENATOR KLOBUCHAR: Okay. Now, we have the issue of the claims with many of these families that have been involved.

Do you think that families have equal opportunity to compensation regardless of whether and when GM went through bankruptcy,

and if you could also describe -- you just announced this appointment of Mr. Feinberg --

MS. BARRA: Right.

SENATOR KLOBUCHAR: -- but how would it work so that these families would get their compensation?

MS. BARRA: And we hired Mr. Feinberg late last week, we have our first meeting with Mr. Feinberg on Friday, and we want to -- It's open right now.

We've -- he has guided us on the different things that we need to consider.

Again, as I've said, we have civil and we have legal responsibilities. We are going to work through those.

I anticipate, based on the timeline he has given us, it will take about 60 days. That's the timeline he has told us to plan for.

As we explore and look at all the different options, we have not made any decisions yet, all options are still open, but

I don't have a decision today.

SENATOR KLOBUCHAR: So do you think that these families should be able to be compensated regardless of the bankruptcy issue?

MS. BARRA: That's why we hired Mr. Feinberg to work through this issue.

SENATOR KLOBUCHAR: Last question as my time is running out:

What does GM have to do to regain the American public's trust?

MS. BARRA: We have to work every day, and I am 150 percent committed to it, as is my team, to make sure we are putting the safest and the highest quality vehicles on the road across the globe, and that's what we will work tirelessly to do. That's what the men and women of General Motors want to do.

SENATOR KLOBUCHAR: Thank you.

CHAIRMAN McCASKILL: Senator Coats.

SENATOR COATS: Madame Chair, thank you very much.

Ms. Barra, yesterday, correct me

if I am wrong here, but I believe you said that GM, you did say you had hired Mr. Feinberg to investigate the matter, but you also did not commit to sharing the results of that investigation with the public and with the Congress, instead saying, and I think I am quoting it correctly, you will share what's appropriate.

After a night's sleep on that question, is that still your position or do you think it would be appropriate to share everything Mr. Feinberg discovered with us and with the public?

MS. BARRA: Well, first of all, I would like to add to that.

What I -- the specific question I was asked was the findings from Mr. Valukas' study, who is doing the complete investigation, the external investigation of what happened over this more-than-a-decade period.

And when I said we would share what appropriate -- we will share everything

and anything that's related to safety of our vehicles, that's related to the safety of this incident, we will share that with the customers, we will share that with you, with our regulators.

If we learn things that are broader from a safety perspective, we will share that.

The only thing, and the reason why I use "what is appropriate", is if there is an issue of competitiveness, because we have opened up everything to Mr. Valukas, that would be something that we would -- again, if there was any safety issue, we would override on the safety side, but other competitive issues, and then also as an employer we have responsibilities on privacy to some our employees as part of an employment agreement, I have to respect that as well.

But clearly I appreciate the opportunity to clarify this:

Anything remotely related to

safety of vehicles or anything that could improve the process, we could have done better with NHTSA, will readily be shared and in a very transparent process.

SENATOR COATS: Well, I am glad you clarified that because I think it raised concerns with all of us relative to that.

So just to make the record clear, anything related to the safety issue will be shared with the public and with the Congress?

MS. BARRA: Absolutely.

SENATOR COATS: Were you aware of this problem when you were offered the chairmanship of the CEO position at GM?

MS. BARRA: I became aware of the recall on January 31st. I was aware in late December that there was analysis going on on a Cobalt, but I didn't even know what the part was.

SENATOR COATS: Well, whether you like it or not, you've become the face of the problem, but hopefully also the face of the

solution.

But it is important that I think we understand what your role was during your 33 years, and more important than that, that the investigation point out just who knew what and when did they know it.

I would suggest to the Chair that perhaps a follow-up subcommittee hearing potentially involve those who held the leadership and the key positions in GM during the timeframe that we're looking at here, and that would include some government officials also since it owned the company, 60 percent of the company for a considerable period of time.

And so I say that because I think we need to hear from people who had the key positions in GM that perhaps had knowledge of this and made a decision, either on a cost basis or another reason, to come before the committee and explain their role in this rather than dumping the whole issue on its new CEO.

But, again, as I said, you've

taken on this duty, and like many before you, including presidents of the United States, what is anticipated that your role will be turns out to be something very, very different.

But we're going to need your complete cooperation as we work through this difficult issue, but I think also I would suggest to the chair and vice chair that we seriously consider bringing before us those who were in positions of responsibility when these decisions were made.

CHAIRMAN McCASKILL: Thank you, Senator Coats.

We will in all likelihood do some kind of follow-up hearing on this, and I think it would be helpful to hear from some of the people in key places.

I'd certainly like to talk to under oath -- I shouldn't say under oath. In a committee setting I'd like to talk to the legal team about how they handled the lawsuits around this defect.

Senator Nelson.

SENATOR NELSON: Thank you, Madame Chairman.

Ms. Barra, I have been a General Motors customer for virtually all my life and have been very satisfied.

I'm concerned by virtue of what we've learned is there a corporate culture, and since you're the new sheriff in town, you're going to have to get into that culture.

As Senator Boxer had mentioned, back in 1973, that accident of the fuel fires, and so an engineer for GM wrote the value analysis of auto fuel-fed fire related facilities, and Senator Boxer already talked about that.

Madame Chairman, I would ask that that be entered into the record, that engineer's report.

CHAIRMAN McCASKILL: Without objection.

SENATOR NELSON: Given this potential

culture problem in GM, since I am a GM customer, if I were to have a recalled Chevrolet Cobalt, would you recommend that I drive home in it tonight?

MS. BARRA: If you take the -- all the keys off the ring except the ignition key or just use the ignition key, our engineering team has done extensive analysis to say it is safe to drive.

SENATOR NELSON: What if I were going on a long trip?

MS. BARRA: Again, if you don't have anything else on your key ring, and I recommend just the ignition key, you are safe to drive the vehicle. That analysis has been done over weeks.

SENATOR NELSON: I suspect that Cobalt drivers would not take comfort in that advice knowing what has come up, and you all may want to revise that advice.

You mentioned here that GM has hired Ken Feinberg. You know, he is accustomed

to large claims; he handled the BP oil spill in the Gulf.

You all have confirmed 13 deaths. Does this suggest with Feinberg coming on board that the number of deaths and injuries is going to be potentially much higher?

MS. BARRA: We are starting our work with Mr. Feinberg on Friday. We think he is an expert in this area, and we want to do what's right. So we thought he was the person with the most expertise to go forward.

And I would also -- to the previous question, if a person is not comfortable driving their Cobalt or one of these models, we are providing loaners free-of-charge.

SENATOR NELSON: With Feinberg on board, does that suggest that GM is going to compensate owners who feel the need that they have to park their car other than the loaner that you're speaking about?

MS. BARRA: Again, working with

Mr. Feinberg, there is many aspects that we need to work through with him, and that is why he on his timeline is saying it will be about the 60 days.

SENATOR NELSON: The Center on Auto Safety has suggested that they think this defect may have caused over 300 deaths. That's a big difference from the 13 that you've acknowledged.

Why do you think those numbers are so far apart?

MS. BARRA: My understanding is there is data sources from the FARS (phonetic) database where it captures a proportion of incidents that occurred in those vehicles in a broader population.

In some case the way airbags are designed, they are not intended to go off depending on the crash, and if you'd like me to have -- we have a team that's very knowledgeable, they've spent virtually their entire career working on airbags. We could

share that.

SENATOR NELSON: Tomorrow you're going to have to formally respond to NHTSA about what the company did and did not know.

Companies are legally required to report safety defects within five business days of discovering them and so this information is going to be critical to determine whether GM broke the law.

While we're waiting on this determination, can you tell us whether you think that GM informed the government and the consumers pursuant to the law in order to prevent those accidents?

MS. BARRA: I want to know that answer just as much as you did, and that's why -- you do and that's why I've got Mr. Valukas who is doing this report, and we are working on all the information that NHTSA has requested to provide that in a timely fashion.

SENATOR NELSON: Thank you.

CHAIRMAN McCASKILL: Let's see, who is

next. Senator Booker is not here.

It would be Senator Blumenthal.

SENATOR BLUMENTHAL: Thank you, and thank you for holding this hearing. Thank you, Ms. Barra, for being here today.

You and I have met before, haven't we?

MS. BARRA: Yes, we have.

SENATOR BLUMENTHAL: And I'm going to tell you now what I said then, which is that I have enormous admiration and respect for your career, what you have accomplished, and the leadership that you've provided to GM, and I also have enormous respect for your company.

It's an iconic, enormously important manufacturing company and it produces terrific products generally, and I know that you're accompanied here by a regiment of lawyers and a battalion of public relations consultants and that you are breaking with the culture. It's a very difficult step.

But let me with all due respect

suggest three steps, at least three steps, you can take if you really want to break with the culture and show the leadership that I think is worthy of GM and worthy of your leadership.

Number 1, commit to a compensation fund that will do justice for the victims of the defects that killed people in your cars.

Number 2, warn drivers who are currently behind the wheel of those cars that they should not drive them until they are repaired because they are unsafe.

And, Number 3, support the measure that Senator Markey and I have proposed that would improve the system of safety accountability going forward, require more disclosure to the public and better transparency and reporting by the car manufacturers in case of defects to the federal agencies, and the federal agencies have a substantial share of the blame in this instance.

I think it's pretty much incontrovertible that GM knew about this lethal safety defect, failed to correct it, and failed to tell its customers about it and then concealed it from the courts and the United States.

So I think these steps are appropriate, and I hope that you will adopt them despite whatever complexities that you see and whatever the advice is that you're getting.

And I want to know, first of all, what is it that Ken Feinberg has to work through to convince you that there should be compensation to these victims?

MS. BARRA: Ken Feinberg has just indicated to us, as he goes in he interviews a lot of people, tries to get an understanding of the process.

SENATOR BLUMENTHAL: But he is not a -- and excuse me for interrupting you, but we have all of five minutes here, so I'm trying to make the best use of it as possible.

He is not a bankruptcy expert, and right now GM is still in courts across the country invoking a blanket shield from liability that is the result of its deception and concealment to the federal government.

I opposed it at the time as Attorney General for the State of Connecticut, not foreseeing that the material adverse fact being concealed was as gigantic as this one, but why not just come clean and say we're going to do justice here, we're going to do the right thing, we're going to compensate victims, knowing that money can't erase the pain or maybe even ease it, but it's the right thing to do.

MS. BARRA: Our first step in evaluating this is to hire Mr. Feinberg, and we plan to work through it with him and understand his expertise.

As I've said, there is civic as well as legal responsibilities, and we want to be balanced and make sure we are thoughtful in

what we do.

SENATOR BLUMENTHAL: Let me go on to the next step. Let me show you the recall notice, and I'm sure you've seen it.

It says: The risk increases if your key ring is carrying added weight, such as more keys or the key fob, or -- and I stress -- or your vehicle experiences rough road conditions or other jarring or impact-related events.

Even with all the weight off the keychain, doesn't that recall notice tell you that cars should not be driven where there are rough road conditions or other kinds of potential jarring events?

MS. BARRA: The testing that has been done has been on our proving ground that has extensive capability where the vehicle would be jarred and with just the key or the key and the ring, it has -- it has performed.

SENATOR BLUMENTHAL: Is it your testimony here today that those cars are as

safe as any other car on the road today?

MS. BARRA: Again, as you look across all the safety technology that is on vehicles from the past to present, there is variation on safety based on the technology that's on cars today. So there is variation with -- across the whole population.

SENATOR BLUMENTHAL: Is that Cobalt car as driven now safe for your daughters to drive? Would you allow them behind the wheel?

MS. BARRA: I would allow my son and daughter to drive -- Well, my son because he is the only one eligible to drive, if he only had the ignition key.

SENATOR BLUMENTHAL: So the added risk if you have only the ignition key of driving that car on the road is zero? There is no additional risk of driving the unrecalled Cobalt on the road?

MS. BARRA: The testing that we have done as it relates to this indicates that that the weight is not -- would not cause that

issue.

SENATOR BLUMENTHAL: If my time --

MS. BARRA: Can I just say if someone is uncomfortable, though, we are providing loans, if someone asks for a loaner, a loaner is provided.

SENATOR BLUMENTHAL: Well, again, I would respectfully suggest that you advise your customers to get loaners rather than driving these cars.

Thank you, Madame Chairman.

CHAIRMAN McCASKILL: Senator Ayotte.

SENATOR AYOTTE: Thank you, Madame Chairman.

Ms. Barra, you described the situation with the duplicate parts, the duplicate ignition switches, one had the defect, one didn't; however, the same part number was kept.

As I understand that, that happened -- the part was actually approved by the chief engineer in 2006 and then it was --

the redesigned ignition switch was put at some point into the model during the 2007 year, and you've described that as an unacceptable practice.

You know, I have to say when I look at this situation, particularly the fact that there is indications that GM may have known as soon 2001 about the problems with the ignition switch, the fact that there would be two identical parts -- and, in other words, one's defective and one isn't, and you didn't change the part number strikes me as deception, and I think it goes beyond unacceptable. I believe this is criminal.

And I guess my question to you is: Have there been any other instances where GM actually is changing a part and fixing a defect and keeps the part number the same because this -- this to me is not a matter of acceptability. This is criminal deception.

MS. BARRA: I am not aware of any, and I -- it is not an appropriate practice to do.

It is not acceptable. It is crucial. It's engineering principle 101 to change the part number when you make a change.

SENATOR AYOTTE: Yeah, I think it's just -- Obviously someone made the decision and it was approved by GM to do this, and I would like to know whether it's ever been done in any other instance, because I think that we should get to the bottom of that in terms of deception, in terms of the potential safety issues that can flow from that, of not triggering for people that there is actually a part that is being fixed, but not with a different number.

So it's really a matter I think of being honest and truthful with the public here.

So I would like to get a follow-up answer to that as this investigation goes forward, because I don't see this as anything but criminal when I see the change in this part number.

I also wanted to ask about -- The Chair asked you about the deposition in April or May of last year where clearly in the deposition the trial counsel had raised this issue of the two parts with the same number, one defective, one not, and does the general counsel report directly to the CEO?

MS. BARRA: Yes.

SENATOR AYOTTE: Yes. And I find it shocking that something like that, and I share the Chair's concern, wouldn't have gone directly up through the leadership of GM, and so I think this is a very important issue that we need to understand even a year ago what was told and who knew what when because it seems to me, I'm a lawyer by background as well, this would have been shocking for me to hear in a deposition representing a client, and I would have gone to the top if something -- if I heard something like that to make sure that my client understood what was happening and the risks that they faced.

I also wanted to ask you about with regard to the taxpayer bail-out of GM in 2009, at that point had there already been lawsuits filed related to the ignition switch?

MS. BARRA: I can't answer that question. I don't know.

SENATOR AYOTTE: I would like to know whether GM actually notified the administration's auto industry task force, which helped administer the taxpayer bail-out about the ignition switch, but I would assume that if there were any lawsuits that had been filed that were pending with regard to the safety of the products of GM that this would have been something that would have been brought to the attention of the administration.

And I would like to know what information was provided to that task force or to other officials in the administration as we provided taxpayer dollars to GM to address the bail-out and the bankruptcy?

So I think this is an important

issue as well and obviously an important issue I think for NHTSA as well.

So if you could get back to us on that, I would appreciate it. Thank you.

CHAIRMAN McCASKILL: Senator Rubio.

SENATOR RUBIO: Thank you, Madame Chair.

Ms. Barra, you've been at GM for how many years?

MS. BARRA: 33.

SENATOR RUBIO: 33. You have discussed a lot today about the culture at General Motors and the change in the culture.

Can I ask you about the culture at GM in your years there?

Was there a culture at GM at any time that you have worked there about avoiding -- a culture of discouraging bad news about the company?

MS. BARRA: I think the culture wasn't always as welcoming of bad news. You know, again, it was not across the whole company, but

in pockets it wasn't always as welcomed as it should have been.

SENATOR RUBIO: But certainly at senior management positions in light of, for example, the bankruptcy and the subsequent need for the federal government to intervene and bail out the company for it to survive, did you notice that that was exacerbated during that time, that at that point in time there was a particular amount of resistance towards any sort of bad news about the company like, for example, faulty ignition switches?

MS. BARRA: I wouldn't draw that conclusion.

SENATOR RUBIO: So you were never involved, you never saw any conversations with regards to the need to diminish the amount of bad news about the company or anything that would be disruptive, even if it involved safety issues?

MS. BARRA: No. No.

SENATOR RUBIO: So let me ask you this

question now, leading to the next point, and I think -- I just want to ask it, and I know your answer is going to be that there's an ongoing investigation, but I think its important to ask it.

From what you know now, from the documents you have been able to review and the conversations you've had, I would imagine this issue has captured the attention and perhaps consumed much of your time and the time of senior management at GM; is that right?

This is probably the central issue confronting the company right now, so just based on what you know over the last few weeks having dealt with this issue, can you tell us whether General Motors intentionally misled its customers and federal regulators when someone decided to delay disclosing or fixing the faulty ignition switch?

MS. BARRA: I don't know. That's why we're doing the investigation.

SENATOR RUBIO: But you won't rule

that out?

MS. BARRA: Mr. Valukas has the reins to go wherever the facts take him, and the facts are the facts, and we'll deal with those.

SENATOR RUBIO: So if, in fact, it turns out that there are individuals who made decisions, is the purpose of this investigation to deduce two things:

First, the process that led to these decisions to be made, how was it this decision was made so that you never do that again? That's the first part of the investigation.

The second part -- and the one that I think is important, because this is not just about General Motors, there are other companies out there making all sorts of products, and what we never want to do is live in a country where companies can decide that as a business model, we will decide not to make fixes to things, despite the fact that they are dangerous because it costs too much money to

fix it. That's a dangerous precedent.

I heard the Ford Pinto was mentioned earlier -- because we would never tolerate that.

You know, if I owned a restaurant and poison was part of my ingredients, and I decided not to change the recipe because it cost too much money and someone died, I wouldn't -- they wouldn't just close down my restaurant, I would go to jail.

So my second question is as part of this investigation to decide who made these decisions, who, in fact, decided -- or what group of people decided not to disclose these flaws and to do something about them in a timely manner as part of investigation to identify those individuals who made those decisions.

MS. BARRA: If there were decisions made by individuals that were inappropriate, and some of the things that I've seen I'm very troubled by, as Mr. Valukas completes his

findings, the GM -- my team, my leadership team, we will take steps, and if that means there is disciplinary actions up to and including termination, we will do that.

We demonstrated that already when we dealt with our India Tavera issue last year.

SENATOR RUBIO: But certainly if someone was negligent, if someone said we have this information, we don't think it's a big deal, we shouldn't do anything about it, that is negligence, and certainly someone like that should not continue to work for the company.

But will you also look for evidence in that investigation that, in fact, people knew that this was a problem, but decided that the costs weren't worth it, are you also in search of that, to see if, in fact, there were individuals or a culture in the company created by a group of individuals that encouraged employees to make these sorts of cost benefit analyses based on economics and not on customer safety?

MS. BARRA: As I've said, that type of analysis on a safety issue or a safety defect is not acceptable, it's not the way we're going to do business, and that is not the culture.

We will -- We will make sure that that is not the culture we have going forward.

SENATOR RUBIO: But again my question is if, in fact you discover, or will you look to see if, in fact, whether there was a decision made by a group of individuals not to move forward on this because of its costs?

MS. BARRA: Yes.

SENATOR RUBIO: You want to know the answer to that question, and that would be -- we will know the names of these people, and we will know the process by which they made that decision as well?

MS. BARRA: We will work on the process. In raising the names, I have to make sure that I stay consistent with employer laws that I have, but trust me, we acted swiftly when we had issues with individuals who are no

longer with the company in the past.

SENATOR RUBIO: And I would follow up talking to your counsel and ours as well, but I am not sure there are any laws that allow companies to shield an individual who made at that point what appears to be a criminal decision not to move forward on a safety item because of some sort of internal economic consideration.

MS. BARRA: I guess we need to complete the investigation and have the facts in front of us, and we will act not only from a company perspective, but if there is issues beyond that that have to be dealt with, we will deal with those.

SENATOR RUBIO: I have one last question, my time is up.

Will you fully cooperate with the Justice Department if they want to conduct a concurrent investigation alongside the internal one?

MS. BARRA: We will fully cooperate

with the Justice Department.

SENATOR RUBIO: Thank you.

CHAIRMAN McCASKILL: Senator Johnson.

SENATOR JOHNSON: Thank you, Madame Chair.

Ms. Barra, like Senator Klobuchar, I met with the stepfather and mother of Natasha Weigel, and that accident occurred in Wisconsin, so this hits pretty close to home.

Your background is electrical engineer, correct?

MS. BARRA: Correct.

SENATOR JOHNSON: And you say you have been with GM for 33 years. In that capacity I would imagine General Motors has been a real leader in terms of total quality management in their manufacturing -- in their manufacturing process?

MS. BARRA: We have improved our quality over the last several years.

SENATOR JOHNSON: I've got a

manufacturing background myself, I ran a plant for 31 years.

In your engineering capacity I would imagine you dealt with the quality management system in pretty robust fashion, correct?

MS. BARRA: Correct. In the manufacturing arena, yes.

SENATOR JOHNSON: Okay. I want to drill down a little bit in terms of where Chairman McCaskill's and Senator Ayotte went on the change of that part number.

I have gone through a lot of quality audits and of course the reason you have different numbers for different parts is for traceability, correct?

MS. BARRA: Correct. It has -- A number of reasons, but that being a key one.

SENATOR JOHNSON: A real key one. So if there is a problem or there is a defect in the manufacturing process, you can trace back exactly where that happened.

So that's not -- You called that not good engineering principle. That's really just a total violation of a total quality management system, correct?

MS. BARRA: Correct.

SENATOR JOHNSON: And again, total quality management has been part of GM for how many decades?

MS. BARRA: For I would say at least my career and it's been improving along the way.

SENATOR JOHNSON: And the engineering departments in particular are totally focused on those TQM principles, correct?

MS. BARRA: Correct.

SENATOR JOHNSON: Wouldn't there be -- When you change a part, okay, there is going to be an awful lot of engineering that goes into changing that part, correct?

There are going to be subparts that go within a part.

MS. BARRA: It depends on the change

in the part.

SENATOR JOHNSON: Well, let's say the ignition switch. How many -- just there are multiple parts to the ignition switch, correct?

MS. BARRA: Correct.

SENATOR JOHNSON: So when you redesign that, there are going to be different parts combined with that part?

MS. BARRA: And then the part number that General Motors uses as the subassembly comes to us have a unique and individual part number.

SENATOR JOHNSON: So it would be very difficult within a total quality management system to have multiple changes in part numbers combined in an assembled part and then not have that part number changed in a completely --

MS. BARRA: I agree.

SENATOR JOHNSON: Almost impossible.

MS. BARRA: It's wrong.

SENATOR JOHNSON: Which means it wasn't just a mistake, somebody had to

proactively make sure that that part number did not change, correct?

MS. BARRA: That's why we're investigating, to learn exactly why that happened.

SENATOR JOHNSON: But again, within a total quality management system, with everything that goes into changing a part, an assembled part, so there are going to be different parts numbers combining into that part, there is almost -- there is really no conceivable way within a total quality management system, with computers as they are today, with the types of controls you put in a total quality management system, that within that system a new assembled part would not have a different part number?

MS. BARRA: I agree with you and that's why I find it so disturbing.

SENATOR JOHNSON: So basically the conclusion would be that process, that procedure, that computer system was

purposefully overridden?

MS. BARRA: That is why we're doing the investigation.

SENATOR JOHNSON: Okay. Well, again, that's the assumption to make, right?

Now, also within that traceability part of the total quality management system, we should be able to quickly identify who or what departments were involved in that, correct?

MS. BARRA: And we are doing that.

SENATOR JOHNSON: Okay. Now, again I'm no attorney, I can't really speak to criminality, but it's going to be pretty important to find out who was responsible for overriding the quality system to change that part?

MS. BARRA: I want to understand why those actions were taken.

SENATOR JOHNSON: And the only reason anybody would make sure in a total quality management system that a part number didn't

change would be to hide the fact that that part changed for some reason, correct?

MS. BARRA: And I would like the complete investigation to be completed before I start making assumptions.

SENATOR JOHNSON: Okay. I have no further questions. Thank you.

CHAIRMAN McCASKILL: Senator Markey.

SENATOR MARKEY: Thank you, Madame Chair.

This is Chevy Cobalt 2006 ignition switch. This is the same design that failed, shutting off vehicle airbags and killing innocent victims.

We now know that the difference between this switch and one that would have worked was the difference between life and death.

And do you know the other difference, the other thing that we now know, that it would only cost $2.00 to repair, $2.00. And that's how little this ignition switch

would have cost.

And it was apparently $2.00 too much for General Motors to act despite a decade of warnings, accident reports, and deaths, and while a number of investigations are ongoing to determine exactly how many times this evidence was covered up by GM or ignored by NHTSA, there is one clear conclusion that we can make, and that is it is much more difficult to cover up evidence that is publicly available.

Ms. Barra, if I have a car accident and decide to report the details to NHTSA, NHTSA puts that information into a public consumer complaint database.

But if I made the very same complaint to General Motors instead of to NHTSA, GM can deem all the details of my complaint to be confidential business information, and it does that every single time.

You told Senator Coats that you would have all of the information, that you

would share anything and everything related to GM's Cobalt situation.

My question to you is this:

Will you commit publicly to disclosing all documents, including accident reports, notices that a fatal accident could have been caused by a safety defect, and all details of consumer complaints GM receives about all of its vehicles going forward, Cobalts or any other vehicle?

MS. BARRA: I understand there is different things being looked at to see what we should be reporting to NHTSA, and we will actively support looking at what we think would be useful to help speed the process of understanding a defect or understanding why something happened.

We will work cooperatively. I understand there is legislation underway and we'd be happy to review and provide input.

SENATOR MARKEY: So let's reach the legislation, because it's clear that if you're

not going to commit to doing it voluntarily, we need legislation that mandates it.

The families are here, the victims are here. They want to be vindicated themselves, but they don't want other families to ever suffer what they have suffered.

So Senator Blumenthal and I have introduced legislation, an early warning reporting system.

Let me ask you this:

Our bill would require automakers to submit the documents that first alerts them to fatal accidents involving their vehicles to the searchable early warning reporting system.

Would you support that legislation?

MS. BARRA: And that legislation is being reviewed by our team; we're providing input. We need to review the entire legislation.

SENATOR MARKEY: Number 2, it would require the Transportation Department to

publish materials it receives about safety incidents that are currently kept secret.

Can you support that for families across America?

MS. BARRA: Senator, as this bill is put forward, we'd like to review it in its entirety and provide input and then we will comply with whatever legislation is passed and we will work proactively with NHTSA to try and make sure the most helpful information is brought forward.

SENATOR MARKEY: Number 3, it would require the Transportation Department to upgrade its databases to give consumers the tools they need to protect the members of their family.

Can you support that?

MS. BARRA: The answer -- Again, we will look at -- I'd like to look at the legislation in its entirety and provide input and work with NHTSA to make sure the appropriate information that would be most

helpful is what's made available.

SENATOR MARKEY: Fourth, it would require the Transportation Department to use the information it has to better identify fatal defects before they claim more innocent lives.

Can you support that legislation for every auto company in America?

MS. BARRA: Again, I would like to look at the legislation in its entirety, look at what makes the most sense working with NHTSA to make sure the most valuable information is put forward.

SENATOR MARKEY: I am very troubled that you are not willing to commit to ending this culture of secrecy at General Motors.

MS. BARRA: I didn't say that.

SENATOR MARKEY: Yes, you have. Okay. And I know this, okay, but I have tried year after year for more than ten years to have legislation passed that would require the disclosure of all of this information, and it was the automobile industry that killed my

legislation year after year.

And this is the moment now for you to say more than that you're sorry, but that you're going to commit that families get the information to make sure that it never affects any other family in America again.

And you should be in position right now, Ms. Barra, I am telling you this, to say we will disclose this information, we will make it available.

You've had more than two months now to make this decision. You had more than two months to think about what went wrong.

You've had have more than two months to think about why you work to kill legislation as a corporation for years that provided a consumer database so that individual families knew that their families could be harmed and yet you still do not have an answer.

You still do not understand what the American public wants. They need the information to protect their families, and it

is important for everyone to know that General Motors is still not giving us the yes, the American people want, to that question.

CHAIRMAN McCASKILL: Ms. Barra, how many lawsuits relating to the defect, both pending and closed as well as settlements, has GM been a defendant or a co-defendant?

MS. BARRA: I don't have that information. I can provide it to the committee.

CHAIRMAN McCASKILL: I am assuming you've had some briefing from your counsel about your exposure on this defect?

MS. BARRA: We have not talked about exposure. We're -- We have -- It's very important once we realized the situation, we immediately hired Anton Valukas.

We don't want to have multiple investigations. We thought it most important to have --

CHAIRMAN McCASKILL: I'm not asking about investigations. I'm saying as the CEO of

General Motors, you have not had a briefing by your general counsel about the litigation that is ongoing against your company concerning this defect? You've not had that conversation?

MS. BARRA: I have been focused on getting the parts for customers.

CHAIRMAN McCASKILL: We would like to know how many cases have been filed, we would like to know how many cases have been completed, we would like to know how many are settled, and most importantly, how many of those required confidentiality, how much whack-a-mole has been going on in terms of trying to deal with these lawsuits on one off basis and leveraging what a lawyer wants to do for their client with the requirement of secrecy.

Has Mr. DiGiorgio been fired?

MS. BARRA: As the investigation has only been going on for couple weeks, we have already made process steps.

As I return to the office, we

will start to look at the people implications.

CHAIRMAN McCASKILL: So he has not been fired?

MS. BARRA: No.

CHAIRMAN McCASKILL: Is he still working there every day?

MS. BARRA: Yes.

CHAIRMAN McCASKILL: And you know that he lied under oath?

MS. BARRA: The data that's been put in front of me indicates that, but I am waiting for the full investigation. I want to be fair.

CHAIRMAN McCASKILL: Okay. Let me help you here. He said several times he had no idea these changes had been made. Here is a document that he signed under his name, Mr. Ray DiGiorgio. He signed it on April 26, 2006 approving of the change.

Now, it is hard for me to imagine you would want him anywhere near engineering anything at General Motors under these circumstances, and I for life of me can't

understand why he still has his job.

I think it is -- I know you want to be methodical, I know you want to be thorough, I know you want to get this right, but I think it sends exactly the wrong message, that somebody who perjures repeatedly under oath. He wasn't just asked the question only once, he was asked the question over and over and over again.

Now, here's the really important question:

This document, which is completely relevant to any lawsuit that is filed against GM around these crashes, would have been included in any document request from any lawyer representing a family. This document was not given to Mr. Cooper. This document was withheld from the lawyer representing the family of Brooke Melton.

He didn't even find out about this document until after his case had been settled.

How do you justify withholding a key piece of documentary evidence in a litigation concerning a part that was changed without a part number change that is spelled out in this document for anyone to read? How does that happen?

MS. BARRA: I cannot -- I don't condone not providing information when requested, you know, in a legal proceeding, and if that was done, we will deal with the individuals accountable for that.

CHAIRMAN McCASKILL: Well, I think it's very important that we find out how many cases this document was provided to counsel in when it was requested as clearly within the scope.

I guarantee you there is not a request for documents being made of GM around these cases that the scope of the request did not include this document, and I want to know how many cases they buried this document because this is what happens in America.

Corporations think they can get away with hiding documents from litigants and that there will be no consequences, and I want to make sure there is consequences for hiding documents because this is hiding the truth from families that need to know, and it's outrageous and it needs to stop.

Last week, last month, the Department of Justice announced a $1.2 billion settlement in a criminal case against Toyota.

It resulted in a massive recall, unintended acceleration; we have talked about it in these hearings.

What is particularly relevant to you, and I want to put this on the record, is the facts around the redesign of a part in that criminal case, and I'm going to quote from the facts of that settlement.

Toyota redesigned a part using, quote, a designation that entailed no part number change, end of quote.

Department of Justice said that

Toyota engineers did this explicitly to, quote, prevent their detection from NHTSA.

And I know this is gone over with you time and time again, but I wanted to make sure we got that in the record, that we have had it occur with another car manufacturer.

Finally, I want to talk just for a minute about the nature of the defect. I'm confused about this.

When I was going through all the documents preparing for this hearing, in his testimony, Acting Administrator Friedman said that GM's own technical specifications for the Cobalt call for the airbag system to contain an independent power source that is armed and ready to fire for up to 60 seconds after the vehicle's power is cut off.

That's in GM's specifications to NHTSA.

Is that an accurate description of the technical specifications?

MS. BARRA: I don't know. I would

have to go back and review that, and I can provide that information.

CHAIRMAN McCASKILL: Because there seems to be a problem here because if the specifications say that airbag deploys when power is off, and we know these airbags are not deploying when power is off, then we've got a much bigger problem.

That means we could have airbags across the entire automobile industry that did not have the appropriate sensors in there that allow for deployment even when the power has gone off during some kind of collision or in this case because of a defective part.

That would be information we would also like you to follow up on.

MS. BARRA: Okay.

CHAIRMAN McCASKILL: Finally, two things for the record.

Will you commit to coming back in front of this committee when you can answer the questions?

MS. BARRA: Yes.

CHAIRMAN McCASKILL: And, secondly, all the information you are providing to NHTSA on Friday, would you be so kind as to provide a copy of all that information to this committee?

MS. BARRA: Yes.

CHAIRMAN McCASKILL: Thank you.

Senator Heller.

SENATOR HELLER: Thank you, Chairman.

You've answered most of the questions with the response that there is an ongoing investigation, you want to see the results of that.

Do you have a target date for when that review will be complete?

MS. BARRA: I'll have to have that done within 45 to 60 days tops.

SENATOR HELLER: I think that's important for us to know.

MS. BARRA: And I have asked Mr. Valukas to go as quickly as he possibly can, but not sacrifice accuracy for speed.

SENATOR HELLER: What opportunities will we have to review that?

MS. BARRA: As I said before, any information related to safety, anything related to this incident, anything we think would help, you know, from NHTSA, broader, we will provide it. Anything related --

The only thing we won't is issues of competitiveness or if there is privacy issues, we have to comply.

SENATOR HELLER: How broad will this review be?

MS. BARRA: I have asked Mr. Valukas to -- There is boundaries and there are no sacred cows.

I want to make sure we have a complete understanding because only with a complete understanding can we make all the changes we need to make from both a people and a process perspective.

SENATOR HELLER: Is Delphi a vendor or a subsidiary?

MS. BARRA: Delphi is a supplier, not a subsidiary.

SENATOR HELLER: Okay. Okay. Will this overview include looking at Delphi and their participation in this?

MS. BARRA: To the extent that Mr. Valukas goes in that direction, and we get information from them, yes.

SENATOR HELLER: I think it makes some sense to talk to people at Delphi and find out in their words, and perhaps bring them to this committee, to find out what their understanding and make -- to determine, you know, their involvement in this particular case.

Can you -- Can you tell us whether or not this is a one-time occurrence?

MS. BARRA: This is -- As I look at it, I see it as a very extraordinary situation.

There have been many, many cases where we have been quick to act from a safety recall process.

And as I mentioned before, often

we are known to do more recalls of smaller population, because we want to get to issues as quickly as we can.

SENATOR HELLER: So you have no recall of whether or not a similar situation has occurred in the past where a part, two different parts had the same part number?

MS. BARRA: I am not aware of that. That is bad engineering.

SENATOR HELLER: Do you think it was an oversight on Delphi?

MS. BARRA: I don't know. And that's what I hope to learn with the investigation.

I want to understand all the parties involved and if they -- what they did, what was wrong, what was not following process, et cetera.

SENATOR HELLER: What would you consider the financial stability of GM in 2005, 2006 and 2007 just before the taxpayers bailed them out?

MS. BARRA: Poor.

SENATOR HELLER: What would you have -- What do you think would have been the damage done to the public image if the company initiated a recall of these cars in 2005?

MS. BARRA: I can't -- I can't, you know, guess what that would have been.

Obviously it would have been less than it is now and it would have been much better to have this issue resolved because it clearly took too long.

SENATOR HELLER: Do you think GM would have survived if they would have recalled these cars in 2005?

MS. BARRA: I can't guess.

SENATOR HELLER: Do you think the company took that into consideration?

MS. BARRA: I did not take that into consideration and know of no one who did.

SENATOR HELLER: That perhaps GM would have gone under had they initiated a recall in 2005?

MS. BARRA: I don't know.

SENATOR HELLER: All right. Thank you, Mr. Chairman.

CHAIRMAN McCASKILL: Senator Boxer.

SENATOR BOXER: Ms. Barra, I really hate to say this, but if this is the new GM leadership, it's pretty lacking, and maybe this round you can change my mind, I'll give you another chance to.

But leadership means stepping out with a fresh start, and I don't see it.

For example, you had Mr. Blumenthal, Senator Blumenthal, show you the recall notice and you still won't say that everybody who has these cars should get rid of it, even though the recall notice says if your keychain is heavy or you go over rough roads.

Have you seen this winter? In Vermont they had 94 occasions of snow. You know what that does to the infrastructure?

Look, you should have said you're right.

Then Mr. Markey, Senator Markey,

who is a great leader on this, says will you support just making transparent the reports of the company that there is a problem with the car, put it out there.

Oh, no, you can't -- you can't answer that either.

So then my question in March '05, your GM people said it cost too much to fix these cars. The code words, quote, none of the solutions represents an acceptable business case.

Now, that was a public document. GM gave that document over. Oh, you can't even talk to that. You don't know anything about anything.

And Madame Chairman, who is not here, I am going to ask unanimous consent to place in the record more pictures of Mary Theresa Ruddy's car and what kind of a death follows that kind of a crash. You can see from that.

So without objection I will put

that in.

Now, it's my understanding you are recalling many of your cars now, not all of them, you're giving -- But if people want to, they can say please pay for a loaner.

Is that correct?

MS. BARRA: That is correct.

SENATOR BOXER: Well, that is the right thing to do, but are you -- do you support a law that would say recalled cars like yours can no longer be rented or loaned?

Do you support a law like that?

MS. BARRA: If there is a safety issue on the vehicle, and we made sure on these vehicles that all -- that they're grounding all of these vehicles --

SENATOR BOXER: No, no. Do you support a proposed law by Senator McCaskill and myself that would say recalled cars like yours can no longer be rented or loaned?

We have a law. Do you support that law, that proposal, that bill?

MS. BARRA: I'd like to read the whole bill before I say if I support it or not.

SENATOR BOXER: You'd like to read it? You haven't read it?

MS. BARRA: No, I have not.

SENATOR BOXER: Well, it's been out a long time.

Are you aware that recalled cars can be rented or loaned? Are you aware of that?

MS. BARRA: I know --

SENATOR BOXER: So you can send your owner of one of these cars to a rental place or get a loaner, and they could lease and they could get a defective car.

Are you aware of that, that there is no law that says --

MS. BARRA: I know that, because I have checked for the vehicles here that they are grounded.

SENATOR BOXER: Say that again.

MS. BARRA: I -- For this specific

issue, one of the first things we did is made sure that the rental agencies --

SENATOR BOXER: I'm not asking that. I'm asking you: Do you support a law that Senator McCaskill and I and Schumer and others have proposed that would say if a car is recalled, it cannot be leased or loaned?

MS. BARRA: My understanding is the rental community is voluntarily complying with that.

SENATOR BOXER: Do you support a law --

MS. BARRA: Conceptually --

SENATOR BOXER: -- yes or no?

MS. BARRA: Conceptually it makes sense. I would like to understand it better.

SENATOR BOXER: Well, conceptually is not the question.

Do you support the bill?

MS. BARRA: I haven't read it.

SENATOR BOXER: Well, you should since you were the CEO of GM when we got an e-mail

from your organization that you're a part of, the auto -- the manufacturers alliance opposing the bill. So you already were CEO, this is the new GM, and you oppose a law.

Now, you should know that my constituent Cally Houck, lost her two daughters, Rachel, 24, and Jacquie, 20, in a tragic accident caused by an unrepaired safety defect in a rental car they were driving.

So Senators Schumer and McCaskill, we wrote the Rachel and Jacqueline Houck Safe Rental Car Act and you know what? The rental car people support it, but you don't. The automobile manufacturers don't.

So you are essentially bragging today, if I may use the word, that you're telling your people, oh, go get another car, but at the same time your lobbying organization is opposing a bill that would make sure that no one, no one, would die the way they died.

So I would say, Madame Chairman, I am so grateful to you and Senator Heller for

this hearing. These issues run deep, and we have work to do, and I am very disappointed. Really. As a woman to woman. I am very disappointed because the culture that you are representing here today is a culture of the status quo.

Thank you.

CHAIRMAN McCASKILL: Senator Klobuchar.

SENATOR KLOBUCHAR: Thank you, Madame Chairman. I just have a few specific follow-up questions, Ms. Barra.

In your testimony you mentioned the steps GM has taken in terms of this recall, and because the recall focuses on model year vehicles built way back from 2003 to 2007, I wonder how many of these vehicles are now on their second and third owners and if this is creating challenges to reach these owners and if there is anything more that can be done.

MS. BARRA: One of things that we would very much support is some type of

database, I don't know the right agency to manage it, where we would have the latest owners attached to the VINs.

What we do when we have this issue, because we want to get second, third, however many owners there are, is we go to Polk, where registration data is kept, and that's how we get the latest information, but if there was something that allowed that, you know, there was a master database as such that you always knew what VIN and who was the registered owner, that would be incredibly helpful.

SENATOR KLOBUCHAR: Okay. And this would be something from the Department of Transportation or --

MS. BARRA: Or NHTSA, I'm not sure which agency would do that, but that would be something I think would be very beneficial.

SENATOR KLOBUCHAR: Okay. Well, we should approach them about that on -- with the next questions.

Ms. Barra, GM received, and I think some of my colleagues have gone over this, but consumer complaints related to the faulty switch for years evidenced back to 2011.

Internally what we've learned is that the company conducted reviews, issued service bulletins to dealers on how to advise customers on the problem, and even approved redesigns of the ignition switches, but none of this was ever made public.

And, as we know, we didn't get this formal investigation by 2011.

Was it that GM management felt that they could handle this internally and make these changes?

And I know you're doing this investigation but --

MS. BARRA: I'm trying to understand it as well because it took way too long. I understand if it had been handled more quickly, there -- Once there is a safety issue, it should never have a business case that goes

against it in making any part of decision making, and we go forward now, there isn't any, so I am as disturbed as you, I want to understand, and I commit to you I will make change, both people and process.

SENATOR KLOBUCHAR: Delphi Automotive, the company that produced the ignition switches that are linked to this defect, has informed congressional investigators that GM approved the original part in 2002 even though it didn't meet GM specifications for torque performance.

Do you think it met those specifications?

MS. BARRA: It -- I understand there is documentation that exists that says it didn't, and that's what I have to understand, why that happened.

SENATOR KLOBUCHAR: And then last, in your testimony you mentioned you had named a new Vice President for Global Vehicle Safety.

I think that sounds like a pretty good idea right now, but I was surprised there

wasn't already a person high up in the company dedicated solely to safety.

Will the person in the position be involved with key decisions related to safety that are made by upper management?

MS. BARRA: This person will have free rein and have input, have a team and access to all information across.

We're going to be investing more resources for this individual so they can use the right data analytic tools to sometimes put the pieces together more quickly.

He will sit on -- or head of vehicle development for the entire globe, his staff, and he will meet with me on a monthly basis and meet with our board on a quarterly basis.

SENATOR KLOBUCHAR: And how are you going to measure if it's working or not, what, you know, his success is in that position?

MS. BARRA: Again, I will look to make sure how quickly -- when we learn of an issue

how quickly we understand it and implement change and work with NHTSA and take the necessary steps all the way up to and including a safety recall.

SENATOR KLOBUCHAR: And do other automobile companies have a person in place like this, a position like this?

MS. BARRA: I haven't done a read across of other OEM's to look at that.

SENATOR KLOBUCHAR: Okay. Well, I'm going to put the letter in the record from our constituent who perished in the car crash named Natasha Weigel, and I think, just as many of these other senators, my thoughts and prayers are with her family as they pursue justice, and all the families behind you, and obviously there is a lot more work to do, so thank you for appearing today.

CHAIRMAN McCASKILL: Senator Blumenthal.

SENATOR BLUMENTHAL: Thank you, Madame Chairman, and thank you for committing to

continue these hearings.

Ms. Barra, we were talking about the recall notice, and I was pointing out that you said there is no risk as long as people don't add keys to the ignition key.

Is that correct?

MS. BARRA: I said that there's been extensive engineering analysis and testing done that demonstrates that the weight of the key or the key and just the ring --

SENATOR BLUMENTHAL: Who has done the analysis?

MS. BARRA: General Motors engineers.

SENATOR BLUMENTHAL: Would you commit to making them available to us?

MS. BARRA: Yes.

SENATOR BLUMENTHAL: And would you commit to providing documents that support that analysis, any documents in connection with that analysis?

MS. BARRA: Yes.

SENATOR BLUMENTHAL: Thank you. Now,

are you saying the recall notice is wrong, because the recall notice says risk increases with rough roads or jarring events.

MS. BARRA: I think it was trying to capture the elements of what's --

SENATOR BLUMENTHAL: Well, do you agree or disagree?

MS. BARRA: I'm sorry.

SENATOR BLUMENTHAL: I apologize for interrupting.

Are you saying that the recall notice is wrong?

MS. BARRA: No.

SENATOR BLUMENTHAL: So that people should not drive on rough roads or with jarring events using one of the recalled unrepaired automobiles?

MS. BARRA: I think the notice was trying to be descriptive of the situation where it's most likely to occur, but again the testing is related to the key.

SENATOR BLUMENTHAL: What would it

take to change your view that people should not be driving these unrepaired recalled cars?

If I came to you with a hundred events of people finding that they lose power and control of their cars, would that persuade you?

MS. BARRA: It wouldn't take a hundred events. I mean --

SENATOR BLUMENTHAL: It would take ten?

MS. BARRA: It wouldn't -- It would take -- I mean, my understanding is with the key or the key and the ring, the incident -- this phenomenon that caused these issues will not occur. If it was anything more than that --

SENATOR BLUMENTHAL: But if I came to you with those events, and there are those events, would that persuade you?

MS. BARRA: I'm not aware of any events where it was just the key or the key ring where that occurred.

SENATOR BLUMENTHAL: If I came to you --

MS. BARRA: Yes, it would.

SENATOR BLUMENTHAL: If I came to you with the death of a young woman who went to school not far from here who was driving one of these cars unrepaired and was killed when her airbag was disabled because of this defect, would it change your view?

MS. BARRA: Senator Blumfeld (sic), my response is in two -- if it's just the key or the key and the ring, that's the analysis we have done to indicate that these vehicles are safe to drive.

SENATOR BLUMENTHAL: I know you've done that analysis, but would it change your view on whether you would recommend to your customers that this car is fine to drive, no risk, so long as you don't add keys to the ignition?

MS. BARRA: I guess I'm not clear on what you're asking me.

SENATOR BLUMENTHAL: I'm asking whether that additional information, you're an engineer --

MS. BARRA: Well, but --

SENATOR BLUMENTHAL: -- based on --

MS. BARRA: -- what additional information are you providing?

SENATOR BLUMENTHAL: About deaths or loss of power and control over cars, those kinds of events in cars that have this defect and encounter rough roads or jarring events.

MS. BARRA: Senator, if I had any data, any incidence, where with just the key or the key and the ring there was any risk, I would not have -- I would ground these vehicles across -- across the country.

SENATOR BLUMENTHAL: Have you ever been in a car that has lost control over power steering, brakes?

MS. BARRA: I've been in a vehicle that lost power steering and power brakes.

SENATOR BLUMENTHAL: Driving

privately, not in a test vehicle?

MS. BARRA: I was driving on public roads, so it wasn't a test vehicle. It was a motor -- a safe vehicle to be on the roads.

SENATOR BLUMENTHAL: Pretty frightening.

MS. BARRA: It's -- it can be startling.

SENATOR BLUMENTHAL: And have you -- Have you spoken to families?

MS. BARRA: I did speak to the families on Monday night.

SENATOR BLUMENTHAL: And you've mentioned GM's civic responsibility.

Don't you believe it has a moral responsibility here to advise more strongly its customers about these potential risks?

MS. BARRA: We are going on multi-dimension communications, letters to people, we're monitoring social media, we have a dedicated website.

We are working multiple channels

to make sure we communicate with the individuals that would own these vehicles or drive these vehicles.

SENATOR BLUMENTHAL: Let me just say, because my time has expired, again first my thanks for facing these questions.

This GM is not the old GM, it's not even the pre-2014 GM.

What you're doing now is incurring both legal and moral responsibility for the actions that you're taking or failing to take, and I will tell you that the more I hear and see in these documents, the more I learn about what happened before the reorganization and in connection with the reorganization, the more convinced I am that GM has a real exposure to criminal liability.

In fact, I think it's likely and appropriate that GM will face prosecution based on this evidence.

And I think the more that you can do as a leader of GM to come forward and do the

right thing now the better it will be for the future of the company.

So I hope to continue to work with you and hope that you review the legislation that's been offered because going forward it can make a real difference.

Thank you, Madame Chairman.

CHAIRMAN McCASKILL: Senator Ayotte.

SENATOR AYOTTE: Thank you, Madame Chair.

As I understand it, at this point nobody within GM has been fired as a result of the issue that comes before us today on the ignition switch and obviously this long pattern of having information and not providing disclosure and recall to the public.

Is that true, nobody yet has been fired?

MS. BARRA: I think it's important to do a complete investigation, but we will take the appropriate action, but, yes, that's true.

SENATOR AYOTTE: So one thing, you've

hired Mr. Valukas to conduct this internal investigation, and I assume GM is paying Mr. Valukas, correct?

MS. BARRA: Correct.

SENATOR AYOTTE: Now, I am aware of his qualifications and certainly I think that he is a very qualified individual; however it seems to me, how will you guarantee that basically all of the individuals who -- or maybe not all of them, maybe some of them are no longer with the company, but I think we can guess that many of the individuals who were involved in the decisions that led us to where we are today are still at GM or potentially could be at GM, and we already have the situation that the Chair mentioned with regard to the failure to disclose in the litigation documentation that was directly relevant to the litigation that showed the change in terms of the part and the failure to create a new number for the change in the defective ignition switch, and I guess -- I guess I'm -- I'm very

concerned how are you as CEO going to guarantee that no documents are withheld from not only Mr. Valukas, but also investigations that are being conducted by the government, and how are you going to ensure that given that the people that Mr. Valukas is going to be focused on, I think many of them are going to be worried about their own future and liability, whether its civil or criminal liability, that you actually can get to the bottom of this with this internal investigation?

MS. BARRA: Again, Mr. Valukas I think is very experienced in doing this.

He has several decades worth of experience and has the highest integrity.

I certainly know he is not going to compromise his reputation for General Motors, and I have confidence based on the fact he has done investigations in the past, and we have acted -- gotten to the truth by, you know, going to multiple -- multiple sources to get to the truth and we will act on it, and we have

demonstrated that we would up to and including discharging people.

SENATOR AYOTTE: And I have no doubt, as I've said, about Mr. Valukas' qualifications.

Will you -- Have you already segregated all the documents and put them aside that are related to this issue because -- and evidence that you are aware of now so that Mr. Valukas at least has that set aside?

Because at the moment, you know, given the potential liability that we're facing, it seems to me, and you're potentially facing, that this is a very important issue to ensure that no one can interfere with that at this point?

MS. BARRA: I agree with you, it is a very important investigation and that's one of reasons we only have one independent person doing that investigation.

And there are, I believe, over 200 people who already have, you know, document

litigation hold, so we are doing everything that we can to make sure he has access to everything and anyone he wants.

SENATOR AYOTTE: So you have actually already set aside to ensure that that these documents are preserved and anyone that he needs access to is -- he is able to have access to?

MS. BARRA: I would say anyone he wants to have access to, he will have access to.

When you use the term "set aside", again everybody has been placed, that is remotely in connection on litigation on hold so they cannot, you know, the documents exist and they're on notice that they cannot do anything with their documents.

SENATOR AYOTTE: Well, it seems me that they may not be on notice they cannot do anything with their documents, but I would hope that you as CEO would be making sure that it's not just you're telling that to people, but you

actually are ensuring that these documents can't be interfered with beforehand or undertakes his investigation.

And my question to you would be when this investigation is conducted, I appreciate that you said you're willing to come back to the committee -- and we thank you for that -- will you make Mr. Valukas available to this committee?

MS. BARRA: I think that would be Mr. Valukas' option, not my decision to make for him.

SENATOR AYOTTE: Well, you've hired him --

MS. BARRA: I --

SENATOR AYOTTE: -- and as far as I know, when you hire someone to conduct an investigation, because I've done it before as attorney general of our state, one of the terms that I would want to work out up front is will you be willing to present the results of your investigation and to whom would you be willing

to present them to.

So you have not come to that agreement with him?

MS. BARRA: I would share the results of the investigation.

As I've further -- as I've already said, I would share with this committee, with Congress, with NHTSA, and with our employees and customers.

SENATOR AYOTTE: Well, I guess I think that if you're going to have confidence, and you've said multiple times in this hearing, that you're confident with Mr. Valukas, I don't question his credentials, he's got exemplary credentials, and it seems to me that we would want to hear -- obviously appreciate your testimony as the CEO and certainly want to hear what steps you're taking to address this issue, but I would think it would be important for this committee actually to hear directly from Mr. Valukas on the investigation itself and what the scope of his

investigation was.

So thank you.

CHAIRMAN McCASKILL: Thank you, Ms. Barra.

I know if I go back and review this hearing I will say to myself, you got too excited and you went too hard, but the passion is real on this side of the table, so to the extent that this has been rough day for you, it is coming from the right place.

It is coming from a deep commitment that many of us have to these families and to automobile safety in this great country of ours.

You had a great company and you've got an enormous responsibility to get this right.

We appreciate you being here, and I can't promise that the next time you're here I will not get as aggressive as I have today, but I do think it's important that we point out the many problems that these facts present to

you and your company and to the legacy of General Motors going forward.

This is an incredibly important moment in your corporate history and you are -- you're in charge and you've got to make some very tough decisions going forward.

And we will be monitoring all those decisions and we will look forward to having you back here to testify when you can go into the details of investigation.

And I would ask that you make sure that your investigator look at a pattern of -- legal counsel in your corporation, how are they cooperating with litigation, why are they requiring confidential settlements.

I think that is something that we need to understand because it is, in fact, because of those confidential settlements that many of these problems do not get the light of air that they should, and I am just glad that in this instance Mr. Cooper and his engineer, Mr. Hood, did what they did because they

performed the valuable service to this country that should have been performed by your company and by the federal regulators.

Thank you very much for being here.

(WHEREUPON, a short recess was taken.)

CHAIRMAN McCASKILL: I want to thank you very much, Mr. Friedman, who is the Acting Administrator of the National Traffic Highway Safety Administration, and Mr. Calvin Scovel, Inspector General of the U.S. Department of Transportation. I thank you both for being here today. We look forward to your testimony.

And we will begin with you, Mr. Friedman.

DAVID FRIEDMAN,

called as a witness herein, testified before the Subcommittee as follows:

MR. FRIEDMAN: Thank you, Chairman.

Chairman McCaskill, Ranking Member Heller, members of the committee, thank

you for the opportunity to appear before you today.

To begin, I would like to say that on behalf of everyone at NHTSA, we are deeply saddened by the lives lost in crashes involving the General Motors ignition switch defect.

The victims, families and friends, several of whom I know were at the hearing yesterday, and some whom may be here today, have suffered greatly, and I am deeply sorry for their loss.

Safety is NHTSA's top priority and our own employees go to work every day trying to prevent tragedies like this.

Our work reducing dangerous behaviors behind the wheel, improving the safety of vehicles and addressing safety defects has helped reduce highway fatalities to historic lows not seen since 1950.

In the case of the recently recalled General Motors vehicles, we are first

focused on safety and ensuring that General Motors identifies all vehicles with a defective ignition switch, fixes these vehicles quickly and is doing all it can to inform consumers about how to keep themselves safe.

We are also investigating whether General Motors met its responsibilities to report and address this defect as required under federal law.

If it failed to do so, we will hold General Motors accountable, as we have in other cases over the last five years, which have led to record fines on automakers.

Internally at NHTSA and the department, we have already begun a review of our actions and assumptions in this case to further our ability to address potential defects.

Today I will share what I have learned so far.

In this case, NHTSA used consumer complaints and early warning data, three

special crash investigations on the Cobalt, industry website and agency expertise on airbag technology.

Some of that information did raise concerns about airbag non-deployments in these vehicles, so in 2007 we convened an expert panel to review that information.

Our consumer complaint data on injury crashes with airbag non-deployments showed that neither the Cobalt nor the Ion stood out when compared to similar vehicles.

The two SCI crash reports we reviewed at the time were inconclusive on the cause of non-deployment.

The reports noted that the airbags did not deploy and the power mode was in accessory mode, but these crashes involved unbelted occupants and off-road conditions that began with relatively small collisions where, by design, airbags are less likely to deploy in order to avoid doing more harm than good.

Further, power loss is not

uncommon in crashes where airbags deploy and did not stand out as a reason for non-deployment.

In light of these factors, NHTSA did not open an investigation.

We continued monitoring the data, however, and in 2010 found that the related consumer complaint rate for the Cobalt had decreased by nearly half since the 2007 review.

Based on our engineering expertise and our processes, the data available for NHTSA at the time was not sufficient to warrant opening a formal investigation, so the question we're all asking is:

What does this all mean?

From my perspective it means that NHTSA was concerned and engaged on this issue.

This was a difficult case where we used tools and expertise that over the last decade have successfully resulted in 1,299 recalls, including 35 recalls on airbag non-deployments alone.

Those tools and expertise have served us well, and we will continue to rely on them, but also to improve them.

For example, we have already invested in advanced computer tools to improve our ability to spot defects and trends and are planning to expand that effort.

But what we know, what we now know, also clearly means that we need to challenge our assumptions and look at how we handle difficult cases like this going forward.

So we are looking to better understand how manufacturers deal with vehicle power loss and airbags, especially when the ignition switch is turned.

We are also considering ways to improve the use of crash investigations in identifying defects.

We are reviewing ways to address what appear to be remote defect possibilities and evaluating our approach to engaging manufacturers in all stages of our defects

process.

Between these efforts and those of the department's Inspector General, I know that we will continue to improve our ability to identify vehicle defects and ensure they are fixed.

But now I want to close on one important note:

Our ability to find defects also requires automakers to act in good faith and provide information on time.

General Motors has now provided new information definitively linking airbag non-deployment to faulty ignition switches, identifying a part change and indicating potentially critical supplier conversations on airbags.

Had this information been available earlier, it would have likely changed NHTSA's approach to this issue.

The reality, however, is both NHTSA and the auto industry as a whole must

look to improve.

Madame Chairman, Ranking Member, members of the committee, I greatly appreciate the opportunity to testify before you today. Thank you.

CHAIRMAN McCASKILL: Thank you, Mr. Friedman.

Mr. Scovel.

CALVIN SCOVEL,

called as a witness herein, testified before the Subcommittee as follows:

MR. SCOVEL: Chairman McCaskill, Ranking Member Heller, members of the subcommittee, thank you for inviting me to testify at this important hearing on vehicle safety.

Since 2002 our office has identified opportunities for NHTSA to improve its efforts to address safety defects.

Today I will focus on NHTSA's actions to address major weaknesses we reported in 2011.

I will also discuss how our work can help lead to strong actions against automakers that choose to withhold critical safety data from NHTSA.

In 2011 we reported that NHTSA's Office of Defects Investigation needed improvement in four key areas.

The first area concerns one of ODI's most critical functions, to determine when to investigate allegations of safety defects.

ODI did not adequately track its disposition of consumer complaints or document decisions about whether to investigate, leaving its decisions open to interpretation and subject to questions after-the-fact.

NHTSA completed actions to address the three recommendations we made to improve ODI's process for recommending investigations, including modifying its central database for safety defect information to track its reviews of consumer complaints.

We identified similar process weaknesses in ODI's documentation of open investigations.

Some investigation files did not include sufficient information on meetings with manufacturers, consumer complaint identification numbers or a determination of testing needs.

In one investigation ODI did not sufficiently document the basis for its decision to close the case.

Consistent with our recommendation to strengthen controls, NHTSA developed a standard checklist for documenting the evidence investigators collect.

ODI also lacked a systematic process for determining when to use third-party assistance to test for potential mechanical or electronic defects and to validate information manufacturers provide.

In response to our recommendation, NHTSA established the framework

for determining when third-party assistance should be used.

Finally, NHTSA lacked processes for ensuring an adequate and well-trained investigative work force.

In response to our recommendations, NHTSA developed a formal training program to help ensure its investigators stay current on technology advancements in the automotive industry and plans to complete by the end of May a work force assessment to determine the number and most effective mix of staff needed to achieve ODI's objectives.

We believe NHTSA's enhanced processes will put the agency in a better position to identify and investigate vehicle safety defects; however, the success of these process improvements will depend on how effectively ODI uses and applies them when conducting its analyses and investigations.

At the secretary's request, we

will initiate an audit building on our previous reviews of NHTSA's efforts to identify and investigate vehicle safety defects.

Despite the department's best efforts to improve its safety defect analyses and investigations, vehicle safety will remain a concern if automakers conceal vital information.

The Toyota case perfectly demonstrates the risk involved when automakers withhold critical safety data and fail to report defects to NHTSA.

Our investigators participated in the multi-agency criminal probe of Toyota, reviewing approximately 400,000 documents and interviewing more than 100 individuals.

Last month Toyota forfeited $1.2 billion for intentionally concealing information on vehicle defects from NHTSA.

This penalty, the largest of its kind, sends a clear message to auto manufacturers; safety is and will remain DOT's

and OIG's highest priority.

To this end we expect the industry to be vigilant and forthcoming to keep the public safe.

We will continue to assess NHTSA's efforts to identify and investigate vehicle safety defects and stand ready to investigate allegations of wrongdoing by auto manufacturers.

Finally, Chairman McCaskill, with your permission I would like to offer these words to the families and friends of those who have been lost in crashes involving GM's defective ignition switches. I offer you my deepest sympathy.

My staff, and the Office of Inspector General and I, are resolved to determine what NHTSA knew of this safety defect, when it knew it, and what actions NHTSA took to address it.

We will also examine NHTSA's current safety defect investigation processes

and make recommendations for improvement.

The secretary has asked us for this, the Congress expects this of us, and you, the family and friends and victims, deserve this of us.

I give you my word: We will do our duty.

This concludes my prepared statement. I'll be happy to answer any questions you or other members of the subcommittee may have.

CHAIRMAN McCASKILL: Thank you, very much, Mr. Scovel.

I know that there was a $1.2 billion settlement in conjunction with the criminal investigation, actually technically it was a wire fraud charge that the forfeiture occurred around, but the failure to give information to NHTSA or to lying to NHTSA, that is capped at $35 million, so if you don't have a situation that the facts lend themselves to a criminal prosecution, but rather it's a

withholding of information -- which, by the way, would be a negligent withholding of information it wouldn't have to be an intentional withholding of information -- is $35 million enough?

I mean, is that really a deterrent to -- to companies like General Motors or Toyota or Chrysler or any of the companies that are supposed to be giving this data?

MR. FRIEDMAN: Senator, when we find evidence that automakers have not acted in a timely manner, we will fine them to the maximum extent allowed by law.

In the last Congress we did support increasing that fine to $300 million.

CHAIRMAN McCASKILL: And do you believe that's necessary, too, Mr. Scovel?

MR. SCOVEL: Senator McCaskill, I believe that's a policy consideration for the administration and for the Congress.

In considering the purposes

behind such -- such penalties, whether it be those that can be similarly related to the basis for sentencing in criminal proceeding, retribution, prevention, deterrents, rehabilitation, simply deterrents is one factor that the Congress and the department ought to consider in deciding whether to raise the penalty from $35 million to any figure above that, whether it's a question of is $35 million regarded by some automakers as simply a cost of doing business, that can certainly be a conclusion that some may draw from it.

There may well be information that an inspector general or the government accountability office may be able to derive through an audit process to help the Congress and the department make that determination.

CHAIRMAN McCASKILL: I know you mentioned the work force assessment that's ongoing.

I think I was struck when going through the materials for this hearing because

I asked the question about your budget, Mr. Friedman, especially for defect investigations.

Your budget has been at $10 million for defect investigations for a decade.

Now, this is a decade that has seen major changes in automobile manufacturing, it has seen a much more complicated engineering scenario where we have interdependence of computers.

You know, it is -- it is -- the complexity has gone up exponentially over the last decade.

Do you believe that $10 million is adequate to spend in this country for defects investigation for the entire automobile industry?

MR. FRIEDMAN: Senator, the president has requested an increase in our budget across NHTSA in order to better increase our abilities to address the wide variety of challenges we

face.

In 2012 alone, 33,561 lives were lost on our highways due to a variety of factors, whether it was impaired driving, not wearing seatbelts, safety technology that hadn't yet been brought into the fleet, as well as a smaller portion of that associated with defects.

We have been asking to increase our budget because each one of those lives lost is a tragedy and --

CHAIRMAN McCASKILL: But within your budget, Mr. Friedman, you are not asking for an increase in the defects investigation.

I mean, the budget that's been submitted doesn't show an increase.

MR. FRIEDMAN: I believe --

CHAIRMAN McCASKILL: The money is going other places in your agency.

MR. FRIEDMAN: I believe we have asked for some -- some increases in resources, certainly some increases in staff, and part of

what we have been doing is investing -- using our resources to invest in technology to make our effort significantly more efficient.

One of the things that we have done is invest in a new computer tool that's derived from IBM's Watson technology in order to enhance our ability to find patterns, to quickly get to those patterns, to connect information, and we do have plans to continue expanding that effort.

We need to put more tools in place to be able to sift through the data that we have so that we can find these patterns or examples of defects and get them fixed.

CHAIRMAN McCASKILL: In 2007 you considered opening an investigation into airbag non-deployment, as you mentioned in your testimony; you choose not to.

Was that -- Was the basis of that decision recorded anywhere?

MR. FRIEDMAN: I don't believe we have complete records of that. This goes back to

one of the findings --

CHAIRMAN McCASKILL: Right.

MR. FRIEDMAN: -- in the Inspector General's report.

Frankly, it is something that is -- that is currently hamstringing our ability to fully pull together all of what happened.

However, I do have staff actively working on making sure we understand what happened, but that is something that has changed and it is something that we will have going forward, already have and will continue to have going forward that hopefully a case like this will not happen again, but if it does, we will have better resources to be able to understand exactly what happened.

CHAIRMAN McCASKILL: I think we need to have the resources and the expertise at NHTSA to find these defects and then obviously we've got to have a transparency of the process that is available to the public and available

to anyone who wants to see it, and part of the complaints I hear about NHTSA is that it is very difficult sometimes to get information out of NHTSA by safety advocates that are trying to do their work in the public arena in terms of safety, and I think we will continue to follow up on that.

Senator Heller.

SENATOR HELLER: Thank you, Madame Chairman. Thanks for this hearing and thanks for those that are testifying for being here today.

Mr. Friedman, I have to admit that I am a little frustrated with your administration.

We -- I had sent a letter in -- in anticipation of getting the results to questions prior to this hearing, and I think I was assured that it would come before today, last night in particular, and of course that didn't happen.

So with the Chairman's

permission, I will submit the questions and the letter to the record, if there is no objections, and I believe I have no other alternative but to ask you the questions here and now if I can't get it in writing.

So the first question I have:

Did GM report all consumer complaints related to the stalling incidents and airbag failures that it considered in the recall to NHTSA?

MR. FRIEDMAN: Senator, first, if I may apologize, I'm sorry we're not able to get you the answers to your questions.

I know the same is the case with several other members.

Our focus on making sure that we were addressing the safety issues and responding to the committee has taken up a significant amount of our time, but I will get you a letter -- a response to your letter this week.

But in terms of your question,

General Motors reports to us the counts of complaints, but they do not provide to us the detailed complaints themselves.

SENATOR HELLER: So what actions do you take based on that information?

MR. FRIEDMAN: Well, we use that information, the number of their complaints, along with a wide variety of other pieces of information, both that they provide and that we gather ourselves through our complaint data base, through our special crash investigations, through industry websites and other resources, we look at that data.

We have an Early Warning Division that is focused exclusively on looking at the early warning data, which would include complaint numbers and other data.

And we have a Defects Assessment Division that focuses on consumer complaints and compiling the information.

We gather that data, and in this case we did.

There were clear warning signs and concerns and, therefore, an expert panel was convened based on those concerns to determine after looking more deeply into the issue whether or not there was sufficient information to open up and investigate.

SENATOR HELLER: Any conclusions from that expert panel?

MR. FRIEDMAN: In that expert panel the decision was made not to open the investigation based on a couple of key factors.

The first is that the Cobalt and Ion did not stand out when it came to airbag non-deployment complaints compared to their peers. They were a little bit above average, but they did not stand out.

Second, in looking at the detailed crash investigations, the two that were available at the time, they were inconclusive as to the cause of airbag non-deployment.

Airbags are -- Understandably

many people expect airbags to deploy in any frontal crash, for example, but they are actually designed to only deploy when they will help the occupant and not cause more harm than good.

SENATOR HELLER: When were those conclusions made?

MR. FRIEDMAN: In 2007, that was the first time we looked.

SENATOR HELLER: Okay. So share with me what the threshold -- What threshold does NHTSA use to determine whether a complaint like this warrants further investigation?

MR. FRIEDMAN: Senator, we don't have a specific threshold; each case is different.

In cases where a defect is clear, all it takes is one, and we will act on that one case if there is clear evidence of a defect.

If there is not, we look for further evidence, we look for trends, but we consciously do not have a specific threshold

because each case is different.

If there is a vehicle where only 5,000 are sold per year, and we see one incident, that may be sufficient to open an investigation.

If there is a vehicle where there is 500,000 sold in a year, if there is 1 incident that's a clear defect, we will open.

But if there is a larger number, and it's not a clear defect trend, we may not open.

It does depend on the facts of the case.

SENATOR HELLER: So you're saying in this particular case that you couldn't tell me how many additional incidents or reports would be necessary in order for NHTSA to take further action?

MR. FRIEDMAN: We rely on a combination of our engineering expertise, data indicating whether or not there is a significant trend, so if the number of

complaints had gone up significantly that would have caused us to act.

In fact, what happened when we looked at this again in 2010, the complaint rate overall went down.

SENATOR HELLER: Okay. I will hold off for additional questions.

Senator Blumenthal.

CHAIRMAN McCASKILL: Go ahead.

SENATOR BLUMENTHAL: Thank you. Thank you both for being here, Mr. Friedman and General Scovel.

I, first of all, want to thank you for your service to our nation and thank you for your service at NHTSA as Inspector General and thank you, Mr. Friedman, for your service at NHTSA.

Let me ask you, Mr. Friedman, I take it from what you said yesterday and what you say -- what you have said here, is that GM concealed material significant information from NHTSA, is that correct?

MR. FRIEDMAN: We are very concerned that they didn't provide us with sufficient information of the -- the --

SENATOR BLUMENTHAL: Well, I know you are concerned; we are all concerned. Did they conceal information so far as you know?

MR. FRIEDMAN: That is -- that is exactly the subject of an open investigation that we have into General Motors, and if we find that they did violate their responsibilities to report information and to act quickly, we will hold them accountable, but because that's an open investigation -- I don't want to pre-judge that, but I am very concerned that they did not provide us with part number changes.

I'm concerned that they had conversations with suppliers about the algorithms, and that we weren't aware of it.

SENATOR BLUMENTHAL: In your view was the faulty ignition switch a defect?

MR. FRIEDMAN: With what we know now,

very clearly it was a defect.

SENATOR BLUMENTHAL: Was it a design defect?

MR. FRIEDMAN: I'm not sure -- It was clearly a defect. It was a defect that represents an unreasonable risk to safety.

The key itself -- and it's -- From my understanding of the situation, it's a combination of factors.

The key itself with low torque could turn, and there is clearly something about their algorithm that would -- appears to disable the airbags in that case.

That to be honest doesn't make sense to me because if the vehicle is moving --

SENATOR BLUMENTHAL: It would shut off the car, which in turn would disable the airbag; is that correct?

MR. FRIEDMAN: I don't know if that's -- We're actually asking them very specific questions to understand that.

Power loss in a vehicle in a

crash is not uncommon.

There are capacitors built into these airbag systems to ensure that they have power in the case of losing power.

SENATOR BLUMENTHAL: Well, I have -- I have limited time, so let me just ask you very directly:

It is your testimony today that it was a defect?

MR. FRIEDMAN: Based on what we know now, absolutely.

SENATOR BLUMENTHAL: And defects are supposed to be reported, correct?

MR. FRIEDMAN: Absolutely.

SENATOR BLUMENTHAL: Let me ask you, general, I know that you've made various recommendations about changes and reforms at NHTSA, and looking at your testimony, I understand that many of those recommendations have been made, correct?

MR. SCOVEL: Yes, Senator, the recommendations have been made.

NHTSA has taken steps to address nearly all of those.

The most significant one still outstanding has to do with work force assessment.

SENATOR BLUMENTHAL: Right. But I noted that in one of the paragraphs of your testimony, Page 6, you say:

We believe the enhanced processes NHTSA put in place to address our 2011 recommendations will put the agency in a better position to identify and investigate vehicle safety defects to the extent that ODI uses and applies these process enhancements when conducting its analysis and investigation.

The way I interpret that sentence is you know they said they adopted the recommendation, but you don't know, in fact, whether they are doing them.

MR. SCOVEL: Precisely. We don't know how effective these new process enhancements will be.

We believe, based on our assessment of NHTSA's processes as of the 2010, 2011 timeframe, using the Toyota case as a case study, if you will, assessing NHTSA's processes and what we recommended to improve those, that the steps that NHTSA took should help.

Now, are they the silver bullet? Would they have avoided or prevented any of the problems that we might see with GM? That we don't know.

But what we do want to answer now is the mail from the secretary where he asks us specifically whether NHTSA acted in an expeditious and timely manner to identify and pursue safety defects covered by the GM recalls and whether NHTSA had and currently has sufficient resources, processes and data available to it to fulfill its safety function with respect to the recall.

So we want to see how it's being applied.

SENATOR BLUMENTHAL: Are you involved,

as you were in Toyota, in a criminal investigation of GM?

MR. SCOVEL: Senator, I can't confirm or deny that a criminal investigation is underway. Based on our Toyota experience --

SENATOR BLUMENTHAL: You were involved in the Toyota criminal investigation?

MR. SCOVEL: Absolutely. We were critical to the -- to the criminal investigation of Toyota.

Our agents were identified by name a couple of weeks ago by the Attorney General at his press conference where he announced the forfeiture.

And we are -- we have gained a tremendous amount of expertise in this area.

SENATOR BLUMENTHAL: And let me ask you, finally I'd ask both of you to support the legislation that Senator Markey and I have introduced.

Are you willing to do so?

MR. FRIEDMAN: Senator, I am very open

to working with yourself and Senator Markey on how to make sure that we can best move forward and how we can improve, and very open to further discussions on your legislation.

MR. SCOVEL: Sir, if I may -- and my response is a little more complicated, and I'll apologize in advance.

I'm sure you appreciate that as an inspector general, my presumption is that more transparency is almost always better than less.

By virtue of the fact that I serve as DOT Inspector General, by statute and by executive order, I serve on the Recovery, Accountability and Transparency Board, the Government Accountability and Transparency Board, so transparency is literally our middle name.

However, I am fully cognizant of the policy factors, the considerations on the other side, regarding confidential business information and so forth.

SENATOR BLUMENTHAL: Thank you. Thank you very much.

CHAIRMAN McCASKILL: Senator Klobuchar.

SENATOR KLOBUCHAR: Thank you very much, Madame Chair.

Mr. Friedman, maybe you heard earlier about the case of the three young women in the car in Wisconsin, two were killed, one of them was one my constituents, Natasha Weigel, and following the crash, NHTSA opened up an investigation and found incidences of similar ignition switch problems, but was unable to determine what was causing the problem.

The report found that -- this is a quote: "Such a determination would most likely require an analysis of the airbag system to determine if, in fact, the airbag is capable of deploying when the ignition is switched from the on position to the accessory position. Such an undertaking is beyond the scope of this

investigation."

Mr. Friedman, do you think that this report should have raised enough red flags to trigger further investigations into this question?

MR. FRIEDMAN: This report was one of the pieces of information that did raise concerns and that the panel did consider.

At that time our understanding of airbags indicated that, first of all, power loss in a crash was not uncommon and that airbag systems were designed to be able to function in those circumstances.

Based on that expertise and based on the information we had available it was determined that it wasn't sufficient information to open up at the time.

This is, frankly, one of the clear lessons that we are learning from this, a lesson that clearly comes too late, that we needed to question that assumption, and, going forward, one of the things that I have talked

to my staff about and that we are looking at is how can we better consider remote defect possibilities, how can we better integrate these special crash investigations even further.

They are already part of the process, but how do we better integrate them into this process.

This was a tragedy that --

SENATOR KLOBUCHAR: And this report I think was -- the crash was one of the first where they barreled 71 miles per hour into a grove of trees, it was one of the first to be linked to the faulty ignition switch.

So do you think if you had something better in place there is a potential for trying to prevent these tragedies in the future?

MR. FRIEDMAN: Well, that is without a doubt my goal.

One of the challenges in this specific instance was that, as you noted, the

vehicle hit trees.

The first set of trees that it hit was kind of a softer strike with an unbelted occupant, which is the exact kind of condition where airbags are often -- are designed to often not deploy, because if the driver or passenger is moving forward as the airbag is expanding, sadly it could do more harm than good.

More than 200 lives had been lost previously because of that challenge.

And so our understanding of the system indicated that under those conditions, the conditions of the crash were the more likely reason for non-deployment, but, clearly, as I said, we need to relook at our assumptions and relook at our understanding of these systems, and we are actively doing that.

We are -- we are talking to automakers to understand -- to better understand their algorithms and if there is a problem out there.

SENATOR KLOBUCHAR: Investigators as you know are still gathering the recall data and records to understand what actually happened here with GM, but based on the records we have so far, one thing we know is that NHTSA is very dependent on the automobile companies for the data and the context that's needed to tell whether something is, in fact, an isolated event or a dangerous trend or a defect.

Is it your view that NHTSA has to rely too heavily on auto manufacturers to get this information?

MR. FRIEDMAN: Senator, we rely on auto manufacturers for some information, but we also have significant resources of information that have nothing do with automakers.

One of the most important pieces of our database are consumer complaints.

Right now we get about 45,000 of those a year, which we look through each and every one.

I would like to see that number

grow.

We have plans and efforts underway to try and get more and more consumers when they see problems to report them to us.

There is added data that we get from automakers, and we do use that as part of the process.

I don't think we're too dependent on them, because we try to make sure, and in this case we did rely on our expertise and our data as part of the process.

SENATOR KLOBUCHAR: In other words, you got about 260 complaints about the faulty ignition, is that about right?

MR. FRIEDMAN: I believe that's one of the numbers that was reported on the ignition switch.

At the time what we were trying to understand, what we were looking at, was airbag non-deployments.

At the time we did not have the information directly linking it.

SENATOR KLOBUCHAR: You didn't know -- Well, I know we're going to find all this out, I hope very soon, but you didn't know that it was about ignition switches, you just thought it was some -- you were looking at the airbags instead of the --

MR. FRIEDMAN: At the time our focus was trying to understand why airbags may not have been deployed.

There was -- There were these added complaints about ignition switches, or stalling.

I believe the 260 number may have been all stalling complaints. I would have to check on that to be sure.

It's not clear that all of those were related to the ignition switch. There are many causes of stalls.

SENATOR KLOBUCHAR: Did the airbags not deploy because it was not a traditional crash right away, it just shut down, so then the airbags don't deploy?

MR. FRIEDMAN: The dynamics of these crashes to the investigators, to our crash investigators, indicated that that was the more likely reason.

But it's very possible now that we know what we know, that the ignition switch being in the accessory position was the problem.

We now have that definitive link from General Motors, a link that if we had had earlier, we would have been able to act.

SENATOR KLOBUCHAR: Mr. Scovel, you looked like you wanted to respond.

MR. SCOVEL: Yes, thank you. Thank you, Senator.

I have something that may help the committee understand this point, too, and I have in front of me a copy of the special crash investigation report that I know you are referring to, Senator, because you read from the last sentence or two of the -- of the main paragraph on Page 7.

It's encouraging to hear the administrator talk about re-examining processes, and specifically he used the term integrating special crash investigation reports, because we clearly need to under -- we, my office, need to understand how the agency intends to do that, because we've identified that on the basis of certainly this one piece of evidence that you've cited as a key concern.

The administrator has spoken to at least the preliminary finding or assessment that the airbags didn't deploy because of the nature of the impact against softly yielding trees.

In fact, the expert engineers conducting the special crash investigation about a year later submitted an amendment to the report that removed that as their initial assessment and said that they couldn't tell whether it might be that or it might be the loss of power through the ignition system, but

then such an undertaking was beyond the scope of the investigation, and they pointed out that it would require further analysis.

SENATOR KLOBUCHAR: So they actually looked at maybe they were wrong and it may have been the ignition switch and --

MR. SCOVEL: Right. Right.

SENATOR KLOBUCHAR: But that's not what they were asked to investigate, is that what it is?

MR. SCOVEL: It's --

SENATOR KLOBUCHAR: It seems so strange, wouldn't you want to --

MR. SCOVEL: It does, but it's properly beyond the scope of how NHTSA has laid out what it wants to get from a special crash investigation.

SENATOR KLOBUCHAR: Okay. Is there a way you could change that where you say we don't know what happened here, this is very odd that these girls were just driving down the road and suddenly they 71 miles-per-hour surge

into some trees? I mean --

MR. SCOVEL: Well, part of --

MR. FRIEDMAN: The purpose of special crash investigations is to better understand the circumstance of crashes of interest.

We were very concerned about airbag non-deployments, which is exactly why we were having special crash investigators go out and gather data and information on these crashes.

I do believe that that is a good process, that is the right process.

We also make sure that the special crash investigators and ODI talk to each other.

It is the job of the investigators to try to understand whether or not there is a defect, so SCI is a great tool for gathering the data, but we then also need our experts engaged in the process to translate and understand that data.

SENATOR KLOBUCHAR: Okay. I have one

last call on the recall process -- one last question, if that's all right.

Manufacturers can voluntarily initiate recalls without waiting for NHTSA to order it, or NHTSA can order manufacturers, right --

MR. FRIEDMAN: That's correct.

SENATOR KLOBUCHAR: -- to initiate a recall; however, if they're going to do that, if they're actually going to order one, they need this lengthy process that includes holding a public hearing, completing the investigation, giving the manufacturer time to file a detailed response, and perhaps even defending a recall in federal court.

Mr. Friedman, by taking so long to order a recall here, the recall of these cars which seem to be rolling out a different one every day, are we shortchanging Americans and jeopardizing safety?

And, in other words, when lives are at stake and when manufacturers may be

reluctant, as appears to be in this case, to initiate a recall -- if you go back through time on their own -- is the length of time for NHTSA to order a recall a problem?

MR. FRIEDMAN: Senator, the good news here is that we very, very rarely ever have to go that length.

We are actually potentially involved in such a situation with a car seat manufacturer who has resisted moving forward with some infant seats, but the vast majority of the time, almost every single time the industry does act, but sometimes it does take extra pressure.

What I would like to see, frankly, is when we provide evidence to an automaker that there is a defect that they act right away.

I would like to see quicker action from automakers, but to be clear, the vast majority of the time we do not have to go through that whole process; we can get the

recalls much earlier in the process, and we very often do.

SENATOR KLOBUCHAR: Thank you.

CHAIRMAN McCASKILL: Mr. Friedman, first, do you monitor the legal claims against manufacturers?

MR. FRIEDMAN: The legal claims are one of the pieces of information that does come into NHTSA through the early warning system, through our early warning data system; however, depending on the -- where those claims are in the process in terms of litigation, whether or not that litigation or the findings are sealed, we may not have all the access to that information.

CHAIRMAN McCASKILL: So but you're monitoring -- It's very easy to find -- I mean, I could go on my iPad right now and Google lawsuits against General Motors and pull up hundreds of them I'm sure in fairly quick order.

Do you all do that, so you know

if a complaint's been filed on a defect on an automobile?

Because what I'm trying to do is harness the great work that clearly is going on, since it was a lawyer who figured this out, harness that work for your agency, and I don't get the sense that you all are paying that close of attention to these cases.

MR. FRIEDMAN: Well, we are paying very close attention to these cases.

We -- we get death and injury reports, which includes claims, unsubstantiated claims in some cases, associated with these vehicles.

So we -- we get those reports, and when we see some that raise concern, we do reach out and ask for additional details.

In this case with the Cobalt and other vehicles, if my number is correct, I believe we reached out 98 times to follow up on various claims, death and injury claims, associated with these vehicles.

We looked at that data and that information as part of that process.

I -- I have --

CHAIRMAN McCASKILL: So I would be interested to know the specifics of that, those 98 claims, when you looked at them, how many of them had been settled, how many of them were tried, how many went to a jury verdict, what were the verdicts, if you actually did that, I would like to see that documentation.

My next question is if you look and you find one of those cases that's been settled and it's confidential, do you have the legal authority to ask that manufacturer to give you the details of that lawsuit?

MR. FRIEDMAN: I don't know the exact details of our legal authority.

I do know that, for example, if it hasn't been sealed, depending on the case, we can ask for additional information.

CHAIRMAN McCASKILL: Let's assume it's been sealed. Let's assume that General Motors

or Toyota or Chrysler, any of them, insist that they will not settle with the client, with the victim, unless there is an agreement of confidentiality.

Do you have the ability, independent of the confidentiality between the victim and the defendant, do you have the ability to go directly to the defendant and get that information?

MR. FRIEDMAN: I will have to verify with my team, but I do not believe we have the ability to request sealed documents.

I also --

CHAIRMAN McCASKILL: You have subpoenas. You can subpoena, right?

MR. FRIEDMAN: Thank you. Yes.

CHAIRMAN McCASKILL: Okay. That worries me you didn't know.

MR. FRIEDMAN: It worries me as well.

CHAIRMAN McCASKILL: So how often have you utilized the subpoena power of NHTSA to get more information from automobile manufacturers?

MR. FRIEDMAN: That's something I will definitely get back to you on the record.

CHAIRMAN McCASKILL: Okay. I would be very interested in that.

And then, finally, I am a little worried about this whole deployment of airbags, power on, power off.

As you have said, your testimony said, that you believe the specifications were that if the power was off, the airbag would still deploy.

We are now learning that the reason the airbag didn't deploy is because the power was off.

This is a problem.

MR. FRIEDMAN: Well, and it may even be more complicated than that actually, and that's one of the questions that we actually have in our timeliness query to General Motors.

It is possible that it is not simply that the power was off, but a much more complicated situation where the very specific

action of moving from on to the accessory mode is what didn't turn off the power, but may have disabled the algorithm.

That to me, frankly, doesn't make sense from my perspective.

If a vehicle -- certainly if a vehicle is moving the airbag algorithm should require those airbags to deploy.

Even if the -- even if the vehicle is stopped and you turn from on to accessory, I believe the airbags should be able to deploy, so it --

This is exactly why we're asking General Motors this question, to understand is it truly a power issue or is there something embedded in their algorithm that is causing this, something that should not have been there in their algorithm.

CHAIRMAN McCASKILL: Yeah. Well, it's pretty important we figure that out, and then what you need to do is you need to look across the entire manufacturing spectrum --

MR. FRIEDMAN: We've already begun.

CHAIRMAN McCASKILL: -- on this issue because either an airbag is dependent on power or it isn't, and if it is dependent on power, we've got an issue.

MR. FRIEDMAN: Yes, Senator, in fact, I've already directed my staff several days -- well, at least days if not more than a week ago, when we were -- as we were digging into this, to reach out to automakers and to suppliers, because I have the same concern you have.

And I want to make sure that we fully understand this issue so that Americans driving around on our roads are safe. Safety must always be our top priority.

CHAIRMAN McCASKILL: Okay. Senator Heller.

SENATOR HELLER: Thank you.

Mr. Friedman, how long have you been the acting director?

MR. FRIEDMAN: I have been the acting

administrator just over two months.

SENATOR HELLER: What was your prior experience with NHTSA?

MR. FRIEDMAN: Prior to that I was the deputy administrator for about eight months.

SENATOR HELLER: Okay. Anything prior to that with NHTSA?

MR. FRIEDMAN: Prior to that I worked for a non-profit organization, and we engaged on fuel economy and fuel economy and safety-related issues where they overlapped. I worked there for about --

SENATOR HELLER: I'm just trying to get your history with NHTSA. All right.

Probably one of the biggest complaints I get when I go home talking to businesses and companies is, you know, government interference and the strong hand of government themselves and some of the regulations.

Could you describe to me what the relationship between NHTSA and GM has been in

the past?

MR. FRIEDMAN: Our relationship has been a relationship you'd expect between a regulator and a regulated entity.

Our -- our goal, as part of that relationship, is to ensure that we are catching any defects involved, that we are discussing with them possible safety technologies, and that we are ensuring that they are providing information to us, and we are raising concerns to them when appropriate.

SENATOR HELLER: Are you comfortable with the relationship?

MR. FRIEDMAN: I would like to see from all automakers increased efforts to be responsive when NHTSA reaches out on -- on defects issues.

I would like to -- to have the confidence that they are all sharing all the information that they have.

SENATOR HELLER: Do you have that confidence today?

MR. FRIEDMAN: I think clearly the Toyota case indicates that no, I should not fully have -- have that confidence because that is a clear case where, in fact, there was a part number change, a part change, that was not revealed.

It's also one of the reasons why I'm concerned in this case, and one of the reasons why we have opened an investigation into the automakers.

In fact, over the last five years we have issued record fines against automakers, not just Toyota, but Ford as well and at least one other manufacturer, because we were concerned that they did not act properly under the law, and they didn't -- we found that they did not act properly under the law.

SENATOR HELLER: Is the Secretary of Transportation consulted with decisions regarding its investigations?

MR. FRIEDMAN: That's -- that's a very broad question. In terms of -- there are some

investigations that the Secretary of Transportation is made aware of, but certainly in the defects assessment panels or the defects panels, the Secretary of Transportation is not involved in that decision making process, no.

SENATOR HELLER: Was he involved in this one?

MR. FRIEDMAN: No.

SENATOR HELLER: He was not.

MR. FRIEDMAN: No. And just to be clear, there were -- there were -- there was a panel that happened in 2007, that's -- that's the panel that we're discussing, and absolutely not.

SENATOR HELLER: Was anyone in the secretary's office consulted?

MR. FRIEDMAN: No.

SENATOR HELLER: Let me ask you another question.

Did any -- did any government official, outside the Department of Transportation, consult or provide input on

the decision not to move forward in 2007 or 2010?

MR. FRIEDMAN: Not that I am aware of, no, that would not be our standard process.

SENATOR HELLER: Mr. Scovel, let me ask you the same question:

In your investigation did you check to see, or was that part of your broad scope of things, to find out what influence may or may not have occurred in 2007, 2010?

MR. SCOVEL: Senator, it was not part of the audit that we conducted in the 2010-2011 timeframe, which was prompted most immediately by the Toyota problems.

Going forward I can tell you that in the current audit, which the secretary has requested us to do, we will be looking at everything that NHTSA knew, what it didn't know, when it knew it, and what actions it took in response to that.

Should we come across any documentation, and our auditors are trained and

will be instructed to be on the lookout for such -- such matters, we will take them --

SENATOR HELLER: Including --

MR. SCOVEL: -- under cognizance and we will refer them to the proper authorities.

SENATOR HELLER: Including other government influence on decision making process?

MR. SCOVEL: Yes, sir.

SENATOR HELLER: Very good. Thank you, Mr. Chairman.

CHAIRMAN McCASKILL: I want to thank both of you for being here today. I think we've had a productive day and have learned a lot, and there will be follow-up hearings and we'll be calling on you particularly, Mr. Friedman, to give us more information as your investigation continues.

Thank you both.

MR. FRIEDMAN: Thank you.

(Which were all the
proceedings on the
videotaped recording.)

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STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

I, Christine M. Vitosh, a Certified Shorthand Reporter, do hereby certify that I transcribed the proceedings from the videotaped recording of the hearing and that the foregoing, Pages 1 through 194, inclusive, is a true, correct and complete computer-generated transcript of the proceedings had at the time and place aforesaid.

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