

# KING & SPALDING

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August 8, 2014

**VIA E-MAIL TRANSMISSION  
AND ECF FILING**

The Honorable Robert E. Gerber  
United States Bankruptcy Judge  
United States Bankruptcy Court  
Southern District of New York  
Alexander Hamilton Custom House  
One Bowling Green  
New York, New York 10004

**Re: In re Motors Liquidation Company, et al.  
Case No. 09-50026 (REG)**

**Letter Regarding Update on Related Proceedings**

Dear Judge Gerber:

King & Spalding LLP is co-counsel with Kirkland & Ellis LLP for General Motors LLC (“**New GM**”) in the above-referenced matter. We write to update the Court regarding developments in proceedings relating to New GM’s Motions to Enforce, particularly with respect to developments in MDL 2543.

First, on July 21, 2014, pursuant to Judge Furman’s Order No. 1 § X.A (attached hereto for the Court’s convenience as Exhibit 1), Temporary Lead Counsel for Plaintiffs (“TLC”) and New GM submitted letters to Judge Furman regarding the status of MDL cases and related actions. Copies of TLC’s and New GM’s letters are attached hereto as Exhibits 2 and 3, respectively.

Second, on July 28, 2014, pursuant to Judge Furman’s Order No. 1 § X.B, TLC and New GM submitted a joint proposed agenda for the initial conference to be held by Judge Furman on August 11, 2014, as well as the parties’ respective positions regarding the issues raised in the proposed agenda. A copy of TLC’s and New GM’s joint letter is attached hereto as Exhibit 4.

Third, on August 4, 2014, Gary Peller, counsel for plaintiffs Ishmail Sesay, Joanne Yearwood, Lawrence Elliott, Celestine Elliott, and Berenice Summerville, submitted to Judge

Honorable Robert E. Gerber  
August 8, 2014  
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Furman a Notice of Developments in Related Proceedings Between Parties Establishing an Adversarial Relationship with the Plaintiffs' Group and an Associated Failure to Protect the Common Interest Privilege after Plaintiffs' Leadership Disclosed Confidential Communications Among Plaintiffs' Counsel to GM's Opposing Counsel. A copy of Mr. Peller's notice is attached hereto as Exhibit 5.

Fourth, on August 5, 2014, New GM submitted a letter to Judge Furman regarding developments in the Motion to Enforce Proceedings pending before the Court as well as an update on matters raised in New GM's July 21 letter. A copy of New GM's August 5 letter is attached hereto as Exhibit 6.

Finally, on August 7, 2014, Judge Furman issued Order No. 7, setting out his preliminary views on the issues raised in the parties' July 28, 2014 joint letter, as well an agenda for the August 11, 2014 initial conference. A copy of Order No. 7 is attached hereto as Exhibit 7.

Respectfully submitted,

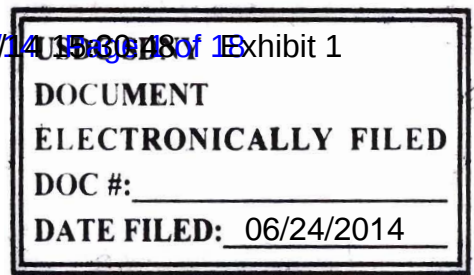
*/s/ Arthur Steinberg*

Arthur Steinberg

AJS/sd  
Encl.

cc: Edward S. Weisfelner  
Howard Steel  
Elihu Inselbuch  
Peter Van N. Lockwood  
Sander L. Esserman  
Jonathan L. Flaxer  
S. Preston Ricardo  
Matthew J. Williams  
Lisa H. Rubin  
Keith Martorana  
Daniel Golden  
Deborah J. Newman  
Jamison Diehl

# **Exhibit 1**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)  
14-MC-2434 (JMF)

*This Document Relates To All Actions*  
-----x

**ORDER NO. 1**

JESSE M. FURMAN, United States District Judge:

It appearing that the civil actions listed on Schedule A, attached hereto — which were transferred to this Court by the June 9 and 20, 2014 Orders of the Judicial Panel on Multidistrict Litigation (“JPML”) (Docket Nos. 1, 17; MDL Docket Nos. 266, 291 (“MDL”)), or consolidated with the MDL by this Court’s June 20, 2014 Order (Docket No. 18) — merit special attention as complex litigation, it is hereby ORDERED that:

**I. APPLICABILITY OF THIS ORDER**

The provisions of this Order shall govern the practice and procedure in those actions:

(1) transferred to this Court by the JPML pursuant to its June 9, 2014 Order; (2) all related actions involving General Motors LLP (“General Motors”) and concerning actions for economic damages stemming from an alleged defect relating to the ignition switch in certain General Motors vehicles that are filed in the Southern District of New York and have previously been or will be transferred to MDL-2543; and (3) any “tag-along” actions later filed in, removed to, or transferred to this Court. The Clerk will send a copy of this Order to counsel for any plaintiffs or newly named defendants in any case newly filed or transferred to this Court.

**II. CONSOLIDATION**

The civil actions listed on Schedule A are consolidated for pretrial purposes. Any “tag-along” actions later removed to or transferred to this Court, or directly filed in the Southern

District of New York, will automatically be consolidated with this action without the necessity of future motions or orders. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she, or it has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

**III. DIRECT FILING OF CASES**

Defense counsel shall confer and advise the Court, no later than **July 7, 2014**, by joint letter, **not to exceed three pages**, whether they will stipulate that they will not object, based on improper venue, to the filing directly in the Southern District of New York of related cases that emanate from other districts and that would appropriately be included in this MDL, on the understanding that upon completion of all pretrial proceedings applicable to a case directly filed in this Court pursuant to this provision, this Court, pursuant to 28 U.S.C. § 1404(a), will transfer that case to a federal district court of proper venue, as defined in 28 U.S.C. § 1391, after considering the recommendations of the parties to that case.

**IV. CAPTION**

All orders, pleadings, motions, and other documents served or filed in 14-MD-2543 shall bear the following caption:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)

*This Document Relates To [“All Actions” or specify by title  
and case number the individual applicable case(s) if the document  
relates to fewer than all of the consolidated cases]*

-----x

All papers filed in any of these cases shall be docketed on the MDL docket and on the docket of each individual case to which it pertains.

**V. FILING AND SERVICE OF DOCUMENTS**

All counsel are required to promptly register for and participate in this Court's CM/ECF filing system. That system gives each counsel immediate access to all electronically filed documents and obviates the need to make personal service on the individual parties. Unless otherwise ordered, all documents shall be filed electronically via the Court's CM/ECF system and must be filed in accordance with the Southern District of New York's Local Rules, the Southern District of New York ECF Rules and Instructions, and this Court's Individual Rules and Practices for Civil Cases.

The Court will serve all orders through the ECF system. Upon their appointment, Plaintiffs' lead and/or liaison counsel shall be responsible for providing copies of any order, pleading, motion, letter, or other document to any party/counsel who does not receive service of the order through the ECF system.

In accord with Rule 2.1(c) of the Rules of Procedure of the JPML, all counsel appearing in any of the actions listed in Schedule A prior to their transfer to this district need not enter a notice of appearance or submit a *pro hac vice* application to practice before this Court, and need not obtain local counsel. All counsel who did not appear in a related action prior to the Transfer Order are directed to enter a notice of appearance on 14-MD-2543. Those counsel who are not a member of the Bar of this Court shall be deemed admitted *pro hac vice* upon the proper filings with the Clerk as provided by the Local Rules. All counsel are directed to apply for an ECF password, which can be obtained by visiting the Court's website at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov) and

completing the on-line registration form. For assistance with the ECF filing system, counsel should contact the Court's Help Desk, at 212-805-0800.

#### **VI. MASTER CASE FILE**

In the Court's view, a master case file limited to filings of significance to the MDL as a whole or a substantial number of member cases would be advantageous. Accordingly, the Clerk of Court is directed to open a master case file bearing docket number 14-MC-2543. Any filing fees associated with opening the master case file docket are waived. The caption shall read "In re: General Motors LLC Ignition Switch Litigation." For administrative purposes only, in 14-MC-2543, Plaintiffs shall be listed as "GM Ignition Switch MDL Plaintiffs," and Defendants shall be listed as "GM Ignition Switch MDL Defendants." There will be no appearances entered unless and until the Court orders otherwise.

The master case file will be limited to the Court's case management orders and other orders of significance and substantive filings by the parties that relate to all actions (e.g., master pleadings, motion papers). It will not include *pro hac vice* motion papers, the Court's standing orders, conditional transfer orders, notices of appearance, and the like. Parties should file documents on the master case file (in addition to, not in lieu of, the MDL docket) **if but only if** they are (1) master pleadings that apply to most or all member cases; (2) substantive motions that apply to most or all member cases; and (3) directed to do so by the Court. (If counsel is uncertain about whether to file something on the master case file, counsel should call Chambers to inquire.) Papers filed inappropriately will be stricken from the docket. The Court will transfer any and all relevant documents filed in 14-MD-2543 to 14-MC-2543.

The Clerk of Court is directed to transfer Docket No. 1 (Transfer Order) from 14-MD-2543 to 14-MC-2543, to be followed by this Order (Order No. 1). This Order shall also be docketed in 14-MD-2543, and all matters consolidated therewith.

This Order and all subsequent entries docketed in 14-MC-2543 are to be docketed simultaneously in 14-MD-2543.

## **VII. VACATUR OF COMPLEX CIVIL CASE PILOT PROJECT DESIGNATIONS**

Some member cases were previously designated for inclusion in the Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York. (Docket Numbers 2-16). Although those cases plainly qualify as complex civil cases, the Court plans to adopt case management practices and procedures based on, and tailored to, the specific circumstances of the MDL. Accordingly, the Clerk of Court is directed to de-designate all member cases from inclusion in the Pilot Project and is directed not to designate any cases transferred to or made part of the MDL in the future for inclusion in the Pilot Project.

## **VIII. INITIAL CONFERENCE**

The Court will conduct an Initial Conference on **August 11, 2014, at 11 a.m.**, in **Courtroom 110** at the Thurgood Marshall Courthouse, 40 Centre Street, New York, New York. (Please note that this is *not* Judge Furman's regular courtroom.) Counsel shall check in with the Courtroom Deputy at least fifteen minutes in advance. Counsel should arrive at the Courthouse with sufficient time to go through security. Seats in the courtroom may not be reserved.

### ***A. Familiarity with Annotated Manual for Complex Litigation and the Court's Individual Rules and Practices***

Counsel are expected to familiarize themselves with (1) the *Manual for Complex Litigation, Fourth Edition* ("MCL Fourth"), available at <https://public.resource.org/scribd/8763868.pdf>; (2) the Local Rules for the Southern District of New York, available at <https://>



[nysd.uscourts.gov/rules/rules.pdf](http://nysd.uscourts.gov/rules/rules.pdf); and (3) this Court's Individual Rules and Practices for Civil Cases, available at [http://www.nysd.uscourts.gov/cases/show.php?db=judge\\_info&id=759](http://www.nysd.uscourts.gov/cases/show.php?db=judge_info&id=759), in advance of the conference, and to be prepared to suggest procedures that will facilitate expeditious, economical, and just resolution of this litigation.

***B. Personal Appearance Not Required***

Each party represented by counsel shall appear at the initial conference through his or her attorney, who will have primary responsibility for the party's interest in this litigation. Should a party not represented by counsel appear in this MDL, that party must appear at future conferences in person, unless otherwise ordered. To minimize costs and facilitate a manageable conference, parties with similar interests may, to the extent practicable, agree to have an attending attorney represent their interests at the conference. A party will not, by so designating an attorney to represent his/her interests at the conference, be precluded from other representation during the litigation. Attendance at the conference will not waive objections to jurisdiction, venue, or service.

**IX. APPOINTMENT OF COUNSEL**

The Court presently intends to appoint Plaintiffs' lead counsel and liaison counsel from among counsel who have filed an action in this litigation. The duties of lead and liaison counsel are enumerated in the MCL Fourth Section 10.22. The Court is interested, however, in the parties' views on (1) how lead counsel and liaison counsel should be structured — that is, whether a single set of lead counsel and liaison counsel should be appointed for all Plaintiffs or whether multiple sets (for example, in light of differences in state law or differences between vehicles) are necessary or prudent; (2) the best process for selecting lead counsel and liaison counsel; and (3) whether the Court should await a ruling by the United States Bankruptcy Court

for the Southern District of New York on General Motors's motion to enforce before appointing lead and liaison counsel or proceed now (with the possibility that the Court would amend the appointments in the event the Bankruptcy Court rules that some, but not all, of the claims now pending here may be asserted).

***A. Temporary Lead Counsel***

To facilitate the Court's consideration of those issues, the Court hereby designates the following as *temporary* lead counsel for Plaintiffs ("Temporary Lead Counsel"):

Steve W. Berman  
Hagens Berman Sobol Shapiro LLP (Seattle)  
1918 8th, Avenue  
Suite 3300  
Seattle, WA 98101  
206-268-9320  
Fax: 206-623-0594  
Email: [steve@hbsslaw.com](mailto:steve@hbsslaw.com)

Elizabeth Joan Cabraser  
Lieff Cabraser Heimann and Bernstein LLP  
Embarcadero Center West  
275 Battery Street 29th Floor  
San Francisco, CA 94111-3339  
415-956-1000  
Fax: 415-956-1008  
Email: [ecabraser@lchb.com](mailto:ecabraser@lchb.com)

Mark P. Robinson , Jr  
Robinson Calcagnie Robinson Shapiro Davis Inc  
19 Corporate Plaza Drive  
Newport Beach, CA 92660  
949-720-1288  
Fax: 949-720-1292  
Email: [mrobinson@rcrlaw.net](mailto:mrobinson@rcrlaw.net)

Those temporary designations are not a precursor of future appointments, but simply a means to initiate the process. All counsel should have a full opportunity to participate in the discussion and the status letters that the Court requests herein.

***B. Joint Letter Regarding the Appointment of Lead and Liaison Counsel***

Temporary Lead Counsel shall confer with other Plaintiffs' counsel and, no later than **July 7, 2014**, submit a letter to the Court, **not to exceed five pages**, setting forth the following information in separate sections:

- (1) Counsels' views on the necessity and desirability (or lack thereof) of lead and liaison counsel;
- (2) Counsel's views on the necessity and desirability (or lack thereof) of a Plaintiffs' steering committee or other committees, as defined and discussed in the MCL Fourth Section 10.221. Counsel should explain in their submission (and be prepared to discuss at the initial conference) the necessity and desirability of such committees, as well their size, composition, and scope;
- (3) A proposed structure for lead and liaison counsel, including the need for any steering committee or other committee;
- (4) A proposed method and schedule for the Court to appoint lead and liaison counsel — through open applications, nominations, or another process; and
- (5) Whether the Court should await a ruling by the Bankruptcy Court on the motion to enforce before appointing lead and liaison counsel or proceed now.

If Defendants wish to be heard on these matters, they may jointly file a letter in response, no later than **July 14, 2014**, and **not to exceed five pages**. Temporary Lead Counsel and defense counsel shall file these letters in **both 14-MD-2543 and 14-MC-2543**.

***C. Compensation and Time and Expense Records***

Any counsel who anticipates seeking an award of attorneys' fees and reimbursement expenditures from the Court shall comply with the directives contained in the MCL Fourth Section 14.213 regarding the maintenance and filing of contemporaneous records reflecting the services performed and the expenses incurred.

**X. ADDITIONAL PRE-CONFERENCE SUBMISSIONS**

**A. *Status Letters***

No later than **July 21, 2014**, Plaintiffs (through Temporary Lead Counsel) and Defendants shall submit to the Court status letters (that is, one letter on behalf of all Plaintiffs and one letter on behalf of all Defendants) setting forth the following information in separate paragraphs:

- (1) A brief statement of the nature of the action and/or the principal defenses thereto, including any critical legal issues involved in the case(s);
- (2) A statement of all existing deadlines, due dates, and/or cut-off dates;
- (3) A brief description of any outstanding motions;
- (4) A brief statement with respect to whether a single consolidated complaint (or multiple consolidated complaints) can or should be filed in this action;
- (5) A brief description of any discovery that has already taken place (including, but not limited to, any discovery that has taken place in connection with the proceedings before the United States Bankruptcy Court for the Southern District of New York) and of any discovery that is necessary for the parties to engage in meaningful settlement negotiations;
- (6) A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any;
- (7) A brief statement with respect to whether court-ordered mediation would be useful and, if so, whether such mediation should be conducted by the assigned Magistrate Judge, through the Court's mediation program, or by a privately retained mediator and when such mediation should be conducted;
- (8) A list of all related cases pending in state or federal court, together with their current status, including (a) discovery taken to date and pending motions, to the extent known; and (b) whether the cases have been stayed pending a decision on General Motors's motion to enforce filed in the United States Bankruptcy Court for the Southern District of New York on April 21, 2014;
- (9) A list of all parents, subsidiaries, and companies affiliated with the corporate parties and of all counsel associated in the litigation to help the Court identify any problems of recusal or disqualification; and

- (10) Any other information that the parties believe may assist the Court in advancing the case to settlement or trial, including, but not limited to, a description of any dispositive issue or novel issue raised by the case.

Each letter shall **not exceed ten single-spaced pages** (exclusive of the lists, which may be provided as attachments) and shall be filed as a letter on ECF in accordance with Paragraph 2.B of the Court's Individual Rules and Practices, which are available at <http://nysd.uscourts.gov/judge/Furman>. Counsel shall file the letters in **both 14-MD-2543 and 14-MC-2543**.

***B. Initial Conference Agenda***

Temporary Lead Counsel and counsel for Defendants shall confer in advance of the initial conference to discuss: (1) a proposed agenda for the initial conference; (2) a proposed schedule for pretrial activities, including discovery and motions; (3) whether, and to what extent, discovery (or anything else in this action) should be coordinated with the proceedings now pending or contemplated before the United States Bankruptcy Court for the Southern District of New York; and (4) the extent to which proceedings in this Court should proceed before rulings by the Bankruptcy Court, on the one hand, or should be deferred pending such rulings, on the other. The items listed in MCL Fourth Sections 22.6, 22.7, and 22.8, to the extent applicable to these actions, shall constitute a tentative agenda for the conference. Counsel for General Motors shall file a letter, **not to exceed five pages**, by **July 28, 2014**, setting forth the parties' proposals on these issues. Counsel shall file the letter in **both 14-MD-2543 and 14-MC-2543**.

**XI. EXTENSION AND STAY**

This Order vacates any case management or scheduling order issued by a court prior to the transfer of a case to 14-MD-2543, except that any order staying a case in light of General Motors's motion to enforce pending before the United States Bankruptcy Court for the Southern

District of New York remains in effect unless and until this Court or the Bankruptcy Court (in each case with respect to its order) orders otherwise.

Pending the Initial Conference and further orders of this Court, all deadlines in this action (except those set forth herein), including defendants' time to respond to any of the complaints and all discovery deadlines, are stayed. This Order does not, however, preclude the provision of voluntary discovery by any party.

Any and all pending motions in the transferor courts are denied without prejudice, and will be adjudicated under procedures set forth in this Order and subsequent orders issued by this Court.

## **XII. DISCOVERY**

Pending the development of a fair and efficient schedule, all outstanding discovery proceedings are suspended until further order of this Court, and no further discovery shall be initiated. This directive does not (1) preclude informal discovery regarding the identification and location of relevant documents and witnesses; (2) preclude parties from stipulating to the conduct of a deposition that already has been scheduled; (3) prevent a party from voluntarily responding to an outstanding discovery request under Federal Rules of Civil Procedure 33, 34, or 36; (4) authorize a party to suspend its efforts in gathering information needed to respond to a request under Federal Rules of Civil Procedure 33, 34, or 36; or (5) preclude any discovery that is agreed or ordered to facilitate matters in the Bankruptcy Court, *provided that* to the extent any discovery is undertaken in the Bankruptcy Court, it shall be coordinated with this Court. Relief from this stay may be granted for good cause shown, such as the ill health of a proposed deponent.

Pursuant to Federal Rule of Civil Procedure 5(d), discovery requests and responses will not be filed with the Court except when specifically so ordered by the Court or to the extent needed in connection with a motion.

All parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things in the possession, custody, and control of parties to this action, and any employees, agents, contractors, carriers, bailees, or other nonparties who possess materials reasonably anticipated to be subject to discovery in this action. "Documents, data, and tangible things" is to be interpreted broadly to include writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, electronic messages, voice mail, e-mail, telephone message records or logs, computer and network activity logs, hard drives, backup data, removable computer storage media such as tapes, discs and cards, printouts, document image files, Web pages, databases, spreadsheets, software, books, ledgers, journals, orders, invoices, bills, vouchers, checks, statements, worksheets, summaries, compilations, computations, charts, diagrams, graphic presentations, drawings, films, charts, digital or chemical process photographs, video, phonographic, tape or digital recordings or transcripts thereof, drafts, jottings and notes, studies or drafts of studies, or other similar such material. Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, and metadata, is also included in this definition. Until the parties reach an agreement on a preservation plan or the Court orders otherwise, each party shall take reasonable steps to preserve all documents, data and tangible things containing information potentially relevant to the subject matter of this litigation. Counsel is under an obligation to the Court to exercise all reasonable efforts to identify and notify parties and nonparties, including employees of corporate or institutional parties, of this directive.

**XIII. MOTIONS**

No motion shall be filed under Rule 11, Rule 37, or Rule 56 without the Court’s approval. To obtain such approval, the movant shall file a letter-motion on ECF seeking a pre-motion conference with the Court.

No motion (other than under Rule 12) shall be filed unless it includes a certification that the movant has conferred with opposing parties and made a good faith effort to resolve the matter without court action.

**XIV. SUMMARY OF DEADLINES**

For ease of reference, the following chart summarizes the submissions to be made in advance of the August 11, 2014 initial conference:

<b>Deadline</b>	<b>Submission</b>	<b>Party or Parties</b>	<b>Maximum Length</b>
July 7, 2014	Letter regarding direct filing of cases (Section III)	Defense counsel	Three pages
July 7, 2014	Letter regarding Lead and Liaison Counsel appointment (Subsection IX.B)	Temporary Lead Counsel	Five pages
July 14, 2014	Optional letter responding to Plaintiffs’ letter regarding Lead and Liaison Counsel appointment (Subsection IX.B)	Defense counsel	Five pages
July 21, 2014	Status letters providing requested information (Subsection X.A)	Temporary Lead Counsel and defense counsel (separately)	Ten pages
July 28, 2014	Joint letter setting forth a proposed initial conference agenda and schedule for pretrial activities (Subsection X.B)	Temporary Lead Counsel and defense counsel (jointly)	Five pages

As noted above, all of those submissions shall be filed in **both 14-MD-2543 and 14-MC-2543**.



**XV. SERVICE OF THIS ORDER**

As of today's date, all actions listed on Schedule A have not yet been transferred to this Court. Accordingly, it is hereby ORDERED that, no later than **June 30, 2014**, counsel for General Motors LLC shall serve this Order electronically on counsel for all parties in all such actions and file proof of such service forthwith.

**XVI. FURTHER AMENDMENT**

Matters addressed in this order may be reconsidered, upon the motion of any party or on this Court's own motion, to the extent necessary or desirable to address any rulings by the Bankruptcy Court or any higher court exercising appellate authority over the Bankruptcy Court's decision. Counsel for General Motors is ORDERED to promptly advise the Court by letter of any ruling by the Bankruptcy Court that may affect the MDL.

SO ORDERED.

Dated: June 24, 2014  
New York, New York

  
\_\_\_\_\_  
JESSE M. FURMAN  
United States District Judge

**SCHEDULE A**

- *Ponce v. General Motors LLC*, No. 2:14-cv-02161 (C.D. Cal.)
- *Ramirez v. General Motors LLC*, No. 2:14-cv-02344 (C.D. Cal.)
- *Ratzlaff v. General Motors LLC*, No. 2:14-cv-02424 (C.D. Cal.)
- *Benton v. General Motors LLC*, No. 5:14-cv-00590 (C.D. Cal.)
- *McConnell v. General Motors LLC*, No. 8:14-cv-00424 (C.D. Cal.)
- *Kelley v. General Motors Company*, No. 8:14-cv-00465 (C.D. Cal.)
- *Satele v. General Motors LLC*, No. 8:14-cv-00485 (C.D. Cal.)
- *Heuler v. General Motors LLC*, No. 8:14-cv-00492 (C.D. Cal.)
- *Maciel v. General Motors, LLC*, No. 4:14-cv-01339 (N.D. Cal.)
- *Woodward v. General Motors LLC*, No. 1:14-cv-01877 (N.D. Ill.)
- *Jawad v. General Motors LLC*, No. 4:14-cv-11151 (E.D. Mich.)
- *Jones v. General Motors LLC*, No. 4:14-cv-11197 (E.D. Mich.)
- *Deluco v. General Motors LLC*, No. 2:14-cv-2713 (S.D.N.Y.)
- *Groman v. General Motors LLC*, No. 2:14-cv-2458 (S.D.N.Y.)
- *Mazzocchi v. General Motors LLC*, No. 1:14-cv-2714 (S.D.N.Y.)
- *Phaneuf v. General Motors LLC*, No. 1:14-cv-3298 (S.D.N.Y.)
- *Skillman v. General Motors LLC*, No. 1:14-cv-3326 (S.D.N.Y.)
- *Shollenberger v. General Motors, LLC*, No. 1:14-cv-00582 (M.D. Pa.)
- *Brandt v. General Motors, LLC*, No. 2:14-cv-00079 (S.D. Tex.)
- *Silvas v. General Motors, LLC*, No. 2:14-cv-00089 (S.D. Tex.)
- *Ashworth v. General Motors LLC*, No. 2:14-cv-00607 (N.D. Ala.)

- *Phillip v. General Motors LLC*, No. 3:14-cv-08053 (D. Ariz.)
- *Higginbotham v. General Motors LLC*, 4:14-cv-00306 (E.D. Ark.)
- *Nettleton Auto Sales Inc. v. General Motors LLC*, 4:14-cv-00318 (E.D. Ark.)
- *Balls v. General Motors LLC*, 2:14-cv-02475 (C.D. Cal.)
- *Robinson v. General Motors LLC*, 2:14-cv- 02510 (C.D. Cal.)
- *Cox v. General Motors LLC*, 2:14-cv- 02608 (C.D. Cal.)
- *Hurst v. General Motors Company*, 2:14-cv-02619 (C.D. Cal.)
- *Brown v. General Motors, LLC*, 2:14-cv-02828 (C.D. Cal.)
- *LaReine v. General Motors LLC*, 2:14-cv-03112 (C.D. Cal.)
- *Dinco v. General Motors LLC*, 2:14-cv-03638 (C.D. Cal.)
- *Darby v. General Motors LLC* , 5:14-cv-00676 (C.D. Cal.)
- *Deushane v. General Motors LLC*, 8:14-cv-00476 (C.D. Cal.)
- *Malaga v. General Motors LLC*, 8:14-cv-00533 (C.D. Cal.)
- *Camlan Inc. v. General Motors LLC*, 8:14-cv-00535 (C.D. Cal.)
- *Saclo v. General Motors, LLC*, 8:14-cv-00604 (C.D. Cal.)
- *Favro v. General Motors LLC*, 8:14-cv-00690 (C.D. Cal.)
- *Nava v. General Motors, LLC*, 8:14-cv-00755 (C.D. Cal.)
- *Gordon Hair v. General Motors LLC*, 8:14-cv-00792 (C.D. Cal.)
- *Spangler v. General Motors Corporation LLC*, 8:14-cv-00816 (C.D. Cal.)
- *Stafford v. General Motors, LLC*, 3:14-cv-01702 (N.D. Cal.)
- *Grumet v. General Motors LLC*, 3:14-cv-00713 (S.D. Cal.)
- *Santiago v. General Motors, LLC*, 1:14-cv-21147 (S.D. Fla.)

- *Espineira v. General Motors, LLC*, 1:14-cv-21417 (S.D. Fla.)
- *Knetzke v. General Motors LLC*, 1:14-cv-21673 (S.D. Fla.)
- *Emerson et al v. General Motors LLC*, 1:14-cv-21713 (S.D. Fla.)
- *Levine v. General Motors, LLC*, 1:14-cv-21752 (S.D. Fla.)
- *Markle v. General Motors LLC*, 1:14-cv-21788 (S.D. Fla.)
- *Duarte v. General Motors LLC*, 1:14-cv-21815 (S.D. Fla.)
- *Harris v. General Motors LLC*, 1:14-cv-21919 (S.D. Fla.)
- *Lannon v. General Motors LLC*, 1:14-cv-21933 (S.D. Fla.)
- *Edwards v. General Motors, LLC*, 1:14-cv-21949 (S.D. Fla.)
- *DeSutter v. General Motors, LLC*, 9:14-cv-80497 (S.D. Fla.)
- *Taylor v. General Motors Company*, 9:14-cv-80618 (S.D. Fla.)
- *Van Pelt v. General Motors, LLC*, 1:14-cv-01081 (N.D. Ga.)
- *Arnold v. General Motors LLC*, 1:14-cv-02882 (N.D. Ill.)
- *Roach v. General Motors LLC*, 3:14-cv-00443 (S.D. Ill.)
- *Detton v. General Motors Corporation LLC*, 3:14-cv-00500 (S.D. Ill.)
- *Bender v. General Motors LLC*, 1:14-cv-00134 (N.D. Ind.)
- *Lewis v. General Motors LLC*, 1:14-cv-00573 (S.D. Ind.)
- *Fugate v. General Motors, LLC*, 7:14-cv-0071 (E.D. Ky.)
- *McCarthy v. General Motors LLC*, 2:14-cv-00895 (E.D. La.)
- *Lavell v. General Motors LLC*, 2:14-00901 (E.D. La.)
- *Coleman v. General Motors LLC*, 3:14-cv00220 (M.D. La.)
- *Elliott v. General Motors, LLC.*, 1:14-cv-11982 (D. Mass.)

- *Bedford Auto Wholesale, Inc. v. General Motors LLC*, 2:14-cv-11544 (E.D. Mich.)
- *Biggs v. General Motors LLC*, 4:14-cv-11912 (E.D. Mich.)
- *Roush v. General Motors LLC*, 2:14-cv-04095 (W.D. Mo.)
- *Witherspoon v. General Motors LLC*, 4:14-cv-00425 (W.D. Mo.)
- *Ruff v. General Motors LLC*, 3:14-cv-02375 (D.N.J.)
- *Ross v. General Motors LLC*, 1:14-cv-02148 (E.D.N.Y.)
- *Foster v. General Motors LLC*, 1:14-cv-00844 (D. Ohio)
- *Powell v. General Motors, LLC*, 1:14-cv-00963 (D. Ohio)
- *Burton v. General Motors LLC*, 5:14-cv-00396 (W.D. Okla.)
- *Forbes v. General Motors, LLC*, 2:14-cv-02018 (E.D. Pa.)
- *Salerno v. General Motors LLC*, 2:14-cv-02132 (E.D. Pa.)
- *Villa v. General Motors, LLC*, 2:14-cv-02548 (E.D. Pa.)
- *DePalma v. General Motors LLC*, 1:14-cv-00681 (M.D. Pa.)
- *Deighan v. General Motors LLC*, 2:14-cv-00458 (W.D. Pa.)
- *Ashbridge v. General Motors LLC*, 2:14-cv-00463 (W.D. Pa.)
- *Letterio v. General Motors LLC*, 2:14-cv-00488 (W.D. Pa.)
- *Holliday v. General Motors LLC*, 1:14-cv-00271 (E.D. Tex.)
- *Henry v. General Motors LLC*, 4:14-cv-00218 (E.D. Tex.)
- *Salazar v. General Motors LLC*, 5:14-cv-00362 (W.D. Tex.)

# **Exhibit 2**



July 21, 2014

**Via Electronic Filing**

Hon. Jesse M. Furman  
United States District Court, Southern District of New York

RE: *In Re: General Motors LLC Ignition Switch Litigation*, 14-MD-2543  
(JMF); 14-MC-2434 (JMF)

Your Honor:

Plaintiffs, through Temporary Lead Counsel, respectfully submit this Status Letter, which responds to the categories of information requested in Order No. 1.

**1. Brief statement of the nature of the action and/or the principal defenses thereto, including any critical legal issues involved in the case.**

The putative class actions largely present claims for economic loss, asserting violations of state consumer protection laws, breach of implied warranties and violation of the federal Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.*, consumer fraud, fraudulent concealment, and claims arising under the Racketeer Influence and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961, *et seq.* The common thread tying all claims and all cases together is whether GM made misrepresentations and omissions concerning the safety of its vehicles and as a result caused economic injury to the Plaintiffs and whether New GM’s course of conduct regarding the now-recalled vehicles violates these federal and state laws.

New GM’s principal defense to the action to date is whether and to what extent the 2009 bankruptcy reorganization and “Sale Order” may shield it from liability arising from the conduct of Old GM. But Plaintiffs believe that, as a matter of due process, the Sale Order and the anti-suit injunction in the Sale Order cannot be applied to the ignition switch claimants because Old GM failed to provide class members with notice of their claims. If the Bankruptcy Court agrees with Plaintiffs, they will proceed with successor liability claims against New GM in this Court. But even if the Sale Order applies to Plaintiffs, it cannot bar claims based solely on the conduct of New GM that did not occur until after the Sale Order, including vehicle models manufactured and sold thereafter and New GM’s recall-related conduct, including its deferral of recalls from 2009 to 2014.<sup>1</sup> Even if they are limited to claims based solely upon the conduct of New GM, Plaintiffs’ claims will be strong because New GM retained many, if not most, of Old GM’s employees (including those who knew of the defect), inherited all of Old GM’s files, knew long

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<sup>1</sup> For example, the ignition switch recalls include the 2010 Saturn Sky, the 2009-10 Pontiac Solstice, the 2009-10 Pontiac G5, the 2009-11 Chevy HHR, and the 2009-10 Chevy Cobalt. Plaintiffs believe the Court should withdraw these claims from the Bankruptcy Court forthwith.

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before the recalls that the defects existed, and failed in its duty to disclose its knowledge of the defects to NHTSA. Furthermore, New GM explicitly assumed the responsibility to report safety defects with respect to vehicles sold by Old GM.

Plaintiffs also expect New GM to also raise a variety of defenses usually asserted in automobile litigation, such as preemption, lack of privity, failure to present a warranty claim pre-suit, lack of actual defect manifestation in certain vehicles, no misrepresentations or omissions, lack of causation, and various challenges to class certification. Plaintiffs believe that New GM's defenses will fail.

New GM was recently forced to disclose that it had been concealing a staggering and unprecedented number of known safety defects in GM-branded vehicles, due in large measure to GM's focus on cost-cutting over safety, its affirmative efforts to discourage employees from raising safety issues, and its campaign to train employees to avoid using language such as "stalls," "defect," or "safety issue" in order to avoid attracting the attention of regulators.

In February and March of 2014, New GM issued three recalls for a combined total of 2.19 million vehicles with a dangerous ignition switch defect that causes vehicles to shut down during ordinary driving conditions, causing stalls, power-steering and power-brake loss, and the failure of airbags to deploy in a collision. Approximately the same 2.19 million vehicles were recalled again in April 2014 for another ignition-related defect. Then, throughout June and July 2014, New GM announced recalls for an additional 10.8 million vehicles for similar ignition switch defects, bringing total ignition switch-related recalls to roughly 13 million vehicles. For years before it was finally forced to act, New GM knew about this highly dangerous defect that has caused at least 13 deaths – and probably many more. On May 16, 2014, New GM entered a Consent Order with NHTSA in which it admitted that it violated the TREAD Act (49 U.S.C. §§ 30101-30170) by not disclosing the ignition switch defect, and agreed to pay the maximum available civil penalties for its violations. GM's now highly publicized campaign of deception in connection with the ignition switch defect sent shockwaves throughout the country, and began a continuing erosion of consumer confidence in the GM brand.

Unfortunately for all owners of vehicles sold by GM, the ignition switch defect was only one of a seemingly never-ending parade of recalls in the first half of 2014 – many concerning safety defects that had been long known to GM. New GM has been forced to recall over 25.6 million vehicles in some 51 recalls covering various defects during the first seven months of 2014 – approximately 60% more recalls than in a normal complete year and 30 times more cars recalled than during the same period in 2013.

New GM breached its obligations and duties to its customers to make truthful and full disclosures concerning its vehicles – particularly, the safety and reliability of its vehicles and the importance of safety to the Company. GM's false representations of the safety and reliability of its vehicles, and its concealment of a plethora of known safety defects plaguing its vehicles and its brand, caused Plaintiffs and the Class to purchase GM vehicles under false pretenses. Plaintiffs and putative class members therefore purchased vehicles for more than they otherwise would have (or would not have purchased those vehicles at all), and they were injured and/or put at risk of injury in vehicles they did not know (or have reason to know) were defective. As New



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GM's Chief Executive Officer, Mary Barra, has admitted: "Something went wrong with our process..., and terrible things happened."

**2. Statement of all existing deadlines, due dates, and/or cut-off dates.**

Temporary Lead Counsel asked all Plaintiffs' Counsel to report on any outstanding deadlines and due dates in their cases. As a result of stays and of the MDL centralization process, there appear to be no operative deadlines, due dates, and/or cut-off dates in the MDL cases. For purposes of clarification, an Order of this Court vacating all such dates may be desirable in order to create a clean slate for the management of these proceedings.

**3. Brief description of any outstanding motions.**

The plaintiffs in *Benton v. General Motors LLC*, Case No. 5:14-CV-00590 (C.D. Cal.) (transferred to this Court on June 11, 2014) filed a motion for a preliminary injunction and provisional class certification to force GM to provide free rental cars to owners of recalled vehicles until those cars are repaired. Although GM promised dealers and Congress that the free rental car program would be available, GM has failed to describe or even mention the option in its recall notices to consumers in violation of California, Connecticut, and Virginia statutes that explicitly require auto manufacturers to fully disclose in recall notices all aspects of available "adjustment programs." Many customers have been told loaner cars are not available, while the recalls are delayed for lack of replacement parts. The motion was stayed before *Benton* was transferred by the MDL Panel. Counsel intend to renew this motion.

In addition, there was a motion for expedited discovery in the *Maciel, et al. v. General Motors LLC* matter (Case No. 4:14-cv-01339-JSW (N.D. Cal.)) (transferred to this Court on June 9, 2014) that was denied "without prejudice to refile before MDL or this Court after stay is lifted." The motion sought the documents that GM had produced to governmental agencies for purposes of discovery into the adequacy of the recalls. Temporary Lead Counsel believe that this motion need not be presented because the Court should order the immediate production of all such documents plus documents provided to the Valukas team as an initial step in this MDL.

**4. Brief statement with respect to whether a single consolidated complaint (or multiple consolidated complaints) can or should be filed in this action.**

In *Toyota*, Judge Selna first ordered the production of all documents that Toyota produced to Congress. So that plaintiffs' lead counsel could review this material prior to filing a consolidated complaint. Plaintiffs' lead counsel were then given the task of reviewing all of the existing complaints and deciding what claims should be asserted by the class or classes. As the Court can imagine, the hundreds of complaints that had been filed pursued a wide variety of claims, some of which were duplicative, obsolete, or unreflective of developing facts and some were simply not well taken as a matter of law. After the consolidated complaint was filed, counsel who believed that their claims should have been included, but were not, were provided a deadline in which to object and attempt to convince the Court that their claims should be included.

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Temporary Lead Counsel recommend that the same procedure be followed here. All documents produced by GM to the government and made available to the Valukas team should be produced immediately. The Plaintiffs' leadership team and our experts can then review these documents and all existing complaints and theories, make much more informed decisions, and file a consolidated class action complaint on behalf of all appropriate classes and/or subclasses and for all appropriate claims. Plaintiffs' counsel would then have 15 days thereafter to object if their claims are not included.

**5. Brief description of any discovery that has already taken place (including, but not limited to, any discovery that has taken place in connection with the proceedings before the United States Bankruptcy Court) and of any discovery that is necessary for the parties to engage in meaningful settlement negotiations.**

Temporary Lead Counsel asked all Plaintiffs' Counsel to report on the status of motions and discovery in their cases. There has been no formal discovery of which we are aware in any of the actions that have been transferred to this Court, nor any discovery in the bankruptcy proceedings.

However, GM has produced significant "discovery" in other forums. For example, GM has produced voluminous discovery to the federal government. At last count in mid-June, GM had produced several-hundred-thousand pages of documents to the House Energy & Commerce Committee, but most have not yet been publicly released. We also believe that GM has produced significant discovery to a Senate committee investigating various GM product recalls. And GM has recently provided documents to NHTSA on its various defective ignition system recalls.

GM retained attorney Anton Valukas to conduct an internal investigation of GM's conduct in connection with the February/March 2014 ignition switch defect recall. In announcing the retention, GM's CEO stated:

I've asked former U.S. Attorney Anton Valukas to conduct a thorough and unimpeded investigation of the actions of General Motors. He has free rein to go where the facts take him, regardless of the outcome. The facts will be the facts. Once they are in, my management team and I will use his findings to help assure this does not happen again. We will hold ourselves fully accountable.<sup>2</sup>

Mr. Valukas's team conducted the investigation over an approximate 70-day period, interviewed approximately 230 witnesses, and had access to over 40 million documents. In her prepared

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<sup>2</sup> See Written Testimony of General Motors Chief Executive Officer Mary Barra Before the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations "The GM Ignition Switch Recall: Why Did It Take So Long?", April 1, 2014.

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remarks before Congress on June 17, 2014, CEO Barra acknowledged fulfilling her pledge to share Mr. Valukas's findings with Congress, the company's regulators, NHTSA, and the courts.<sup>3</sup> Plaintiffs should be given access to the documents as well as the factual statements contained in the notes of the witnesses interviewed by Mr. Valukas and his team that underlie the report's findings.

All of GM's pre-discovery disclosures should be produced here immediately. It would not burden GM, which has already gathered the documents, and immediate production will undoubtedly streamline and substantially advance the litigation.<sup>4</sup> GM continues to publicly reaffirm its commitment to transparency, most recently in Ms. Barra's July 17 testimony to Congress.<sup>5</sup> Accordingly, production of documents and the discovery process should be unencumbered by onerous protective orders, privilege battles, or other disputes. Federal Rule of Evidence 502 provides additional protections that should eliminate inappropriate privilege claims as an impediment to expeditious and comprehensive production. Further, the production and review of these documents will facilitate the planning of depositions of key witnesses.

Meaningful settlement talks would require production of the foregoing information, which can occur swiftly and without undue burden or cost, and production of (i) data sufficient to identify class size and composition for each type of claim alleged; (ii) data sufficient to allow rough estimations of Defendants' gains from the lease and sale of the vehicles at issue and of diminution in value calculations; (iii) internal documentation relating to the alleged defects and the degree of timing of defendants' knowledge of the defects, including internal audits and tests; (iv) documents relating to the conduct and progress of Defendants' recalls, including repair protocols and actual data tracking the timing and scope of repairs; and (v) any other information typically encompassed by Rule 26(a) Initial Disclosures.

**6. List of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any.**

We are aware of no settlement discussions relating to the allegations in the class actions that have been, or are being, transferred and centralized in this Court.

GM has publicly announced its commitment to provide compensation to injury victims regardless of the bankruptcy and has appointed attorney Ken Feinberg to develop and administer a resolution protocol. The protocol was announced on June 30, 2014, and the GM Ignition Compensation Claims Resolution Facility will accept claims beginning August 1, 2104. Claims

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<sup>3</sup> <http://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2014/June/0617-barra-testimony.html>.

<sup>4</sup> See MANUAL FOR COMPLEX LITIGATION (FOURTH) at § 11.13.

<sup>5</sup> See <http://www.c-span.org/video/?320418-2/hearing-gm-recalls-corporate-culture-part-2>.

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will be paid at Mr. Feinberg's sole discretion. The protocol is available on the GM protocol website, [www.GMIgnitioncompensation.com](http://www.GMIgnitioncompensation.com).

Prior to the June 30 announcement, Mr. Feinberg engaged in informal discussions with Plaintiffs' counsel who represented clients with a significant number of death and injury claims (including counsel who also represent class action plaintiffs), and who made recommendations regarding the scope of vehicles to be included, the procedures to be utilized, and the benefits to be provided, in the protocol. Some but not all of these suggestions are reflected in the current protocol. While the current protocol offers a path to resolution for some death and injury claims, it does not include all of the vehicles on GM's list of recalled vehicles that are the subject of this litigation, and the protocol does not provide compensation for all of the injuries that have occurred. The protocol seems to be lagging behind the ignition system recall: less than 1/3 of the recalled vehicles are included. We do not know whether the protocol will be expanded to be more inclusive; Plaintiffs' counsel will continue to advocate for such expansion, and for other improvements and refinements to the protocol.

Given that the protocol is not comprehensive, Temporary Lead Counsel expect that death and injury complaints will continue to be filed and prosecuted, and those suits filed in or removed to federal court will continue to be identified by GM as tag-along components of this MDL.

**7. Statement with respect to whether court-ordered mediation would be useful and, if so, whether such mediation should be conducted by the assigned Magistrate Judge, through the Court's mediation program, or by a privately retained mediator and when such mediation should be conducted.**

At this time, mediation of the class action claims is premature. We respectfully submit that Court-ordered mediation, through a private mediator or special master appointed by the Court, should occur at the end of core discovery in this matter. Early discovery will enable the parties to engage in mediation on an informed basis and is essential if a settlement is presented to the Court for approval under Rule 23(e). And early resolution (among other benefits) may enable faster repair protocols in the interests of public safety; provide much-needed economic assistance to clients who have suffered personal injuries in particular; and expedite the commencement of potential injunctive or programmatic relief (including, for example, potential monitoring of internal quality control, safety, and reporting protocols) that would ensure similar problems do not recur.

Regarding mediator selection, Plaintiffs suggest that the Court appoint a private mediator from a suggested list compiled by the parties if the parties cannot agree on a mediator. We have no doubt that the Magistrate Judges of this District are qualified to lead mediation efforts, but their other duties may preclude the intensive involvement that may be essential to a productive mediation process here. Plaintiffs believe that given the scope and complexity of the litigation (*e.g.*, the inclusion of both economic loss and personal injury claims in the case, the added complexity of the bankruptcy, and the unusual wrinkle that, unlike in most large auto defect cases, the recalls and revelations of multiple ignition system defects are continuing and overlapping), it is essential to have a mediator that is familiar with the resolution of large

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complex litigations (and preferably large auto defect litigation) and also has the time necessary to be an active coordinator of multiple mediation sessions and inter-session conferences with the parties.

**8. List of all related cases pending in state or federal court, together with their current status, including (a) discovery taken to date and pending motions, to the extent known; and (b) whether the cases have been stayed pending a decision on General Motors' motion to enforce filed in the Bankruptcy Court on April 21, 2014.**

Temporary Lead Counsel for the Ignition Switch MDL Plaintiffs have reached out and conferred with plaintiff's counsel throughout the country and GM's counsel in an effort to provide the Court with a list of all related cases pending in state or federal court not already in the MDL, including status of discovery, motions, and whether the cases have been stayed. The parties have agreed that GM shall provide this information in their submission, and Plaintiffs respectfully refer the Court to GM's status conference statement.

**9. List of all parents, subsidiaries, and companies affiliated with the corporate parties and of all counsel associated in the litigation to help the Court identify any problems of recusal or disqualification.**

With respect to the corporate parties, Temporary Lead Counsel assumes that this information will be provided by counsel for the corporate party defendants, as required by Fed. R. Civ. P. 7.1(a), (b)(1). However, according to Fed. R. Civ. P. 7.1 disclosure statements previously filed by GM, *see* Dkt. No. 90 (filed Apr. 18, 2014), Defendant General Motors LLC is a Delaware limited liability company with its principal place of business in Michigan. General Motors LLC is 100% owned by General Motors Holdings LLC, which is a Delaware limited liability company with its principal place of business in Michigan and is 100% owned by General Motors Company. General Motors LLC and General Motors Holdings LLC are subsidiaries of General Motors Company, which is a Delaware corporation with its principal place of business in Michigan. No publicly held entity owns 10% or more of the stock of General Motors Company.

Delphi Automotive PLC previously filed a corporate disclosure statement stating that it has no parent corporations, and that no publicly held corporation owns 10% or more of its stock.<sup>6</sup>

There are other corporate defendants in the economic loss and injury/wrongful death cases, including car dealerships,<sup>7</sup> but Plaintiffs do not believe that any such entities have any

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<sup>6</sup> *See* Dkt. No. 86.

<sup>7</sup> *See, e.g.,* Bedford Auto Wholesale, Inc., Dkt. No. 65.

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parent corporations or that any publicly held corporations own 10% or more of their stock. All known counsel for Plaintiffs and Defendants are listed in Exhibit 1.

**10. Other information that the parties believe may assist the Court in advancing the case to settlement or trial, including, but not limited to, a description of any dispositive issue or novel issue raised by the case.**

**a. The Court should closely coordinate with the Bankruptcy Court and quickly identify the discovery and substantive issues that should move forward here.**

These cases raise issues of coordination between this Court and the Bankruptcy Court, among the most important being preserving in this Court the oversight and control of all legal and factual issues that underlie the cases transferred here to ensure that all discovery takes place here and substantive motions that relate in any way to the issues raised in the actions be decided in this Court. Indeed, the MANUAL FOR COMPLEX LITIGATION explains that it is “especially important for the bankruptcy and district judges handling the various aspects of the bankruptcy case to have frequent communications so that the matters can proceed in a coordinated fashion.”<sup>8</sup> The MANUAL even describes a procedure under 28 U.S.C. § 157(d) for partially withdrawing a bankruptcy reference in mass tort cases, or for placing jurisdictional limitations on the bankruptcy court’s authority on certain issues.<sup>9</sup>

In scheduling orders and comments at both of the status conferences, Judge Gerber has recognized the need for coordination and the importance of resolving bankruptcy threshold issues (*e.g.*, whether Plaintiffs’ due process rights were violated in connection with the Sale Motion and the Sale Order and Injunction, or alternatively, whether Plaintiffs’ procedural due process rights would be violated if the Sale Order and Injunction is enforced against them).<sup>10</sup>

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<sup>8</sup> MANUAL FOR COMPLEX LITIGATION (FOURTH) at § 22.52.

<sup>9</sup> *Id.*

<sup>10</sup> See May 16, 2014 Scheduling Order (Dkt. No. 12697) at 2 (ordering that no discovery take place with respect to the Motion, the Objection or the Adversary Proceeding until further order of this Court); July 11, 2014 Supp. Scheduling Order (Dkt. No. 12770) at 4-5 (declining to authorize discovery); 7/2/2014 Tr. at 13:11-15 (“I also have an obligation to the system and to Judge Furman to keep this train moving on schedule and to try to reach an expeditious resolution here. And our challenge is going to be finding the sweet spot where we accomplish both goals.”); 7/2/2014 Tr. at 48:23-49:4 (“Because we have parallel proceedings in the District Court on the one hand and in this Court on the other. And I think you would understand and respect that each Court’s instinct at least would be to try and minimize the extent to which it steps on the toes on the other and, also, to try to make things as easy as it could for the other.”); 7/2/2014 Tr. at 57:20-58:2 (“I think doing as much as we can on stipulated facts is hugely important because, as I indicated, deferring these matters to rate discovery would materially, dramatically, seriously keep adding adverts. I think it’s all really bad, slowed things down before me and, as a corollary, before Judge Furman. So we’re going to do as much as we can to keep things moving forward as quickly as possible consistent with getting the result that’s just.”); 5/2/2014 Tr. at 96:25-97:4 (“As a general matter, we’re going to get as far as we can without discovery. And notwithstanding what my case management

*Footnote continued on next page*



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Plaintiffs respectfully submit that it is appropriate for this Court, as an Article III Court and Section 1407 – Transferee Court, to identify the issues that may move forward here before the Bankruptcy Court decides the threshold issues – a process that Judge Gerber has indicated will take the balance of the year. Pursuant to the 2009 GM Bankruptcy 363 Sale Order, New GM agreed to be responsible for complying with the TREAD Act, the Safety Act, Lemon Laws, and California Health & Safety Code regarding any and all GM vehicles made before or after said Order. Under this agreement, New GM would be responsible for its failures to comply with above-said responsibilities. Temporary Lead Counsel believe that the Court should decide whether cases that assert claims involving only New GM’s conduct and/or pertain only to New GM vehicles should be immediately withdrawn from the Bankruptcy Court.

**b. Questions about the ongoing and ever-expanding recalls demonstrate the need for prompt Court supervision of GM.**

In Congressional testimony last week, GM’s General Counsel blamed his in-house attorneys for GM’s failure to act to correct an internally known safety hazard. The Valukas Report blamed the GM corporate structure and culture. GM’s CEO has made similar public admissions. These statements provide a roadmap for depositions, which can and should commence promptly after receipt of and procession of the Valukas and government documents. The Judicial Panel on Multidistrict Litigation noted the pendency of the bankruptcy proceedings in this District, and Your Honor’s prior determination of GM bankruptcy appeals, in its finding that transfer here would enable the advancement of “these complex proceedings expeditiously.” 6/9/2014 Transfer Order. Production of documents and conduct of depositions on common questions of facts is a core function of Section 1407 proceedings and the assigned role of this Court. Centering these activities in the MDL will also assist, as necessary, any determinations to be made by the Bankruptcy Court that require discovery.

There have been six separate ignition system-related recalls in 2014 (one as recent as July 3) implicating more than 13 million cars, and issues relating to the recall cannot be divorced from the litigation. The repairs are proceeding extremely slowly, millions of owners are being inconvenienced and endangered daily, and Plaintiffs believe that prompt Court supervision over the process is warranted. GM sponsored a recent *Wall Street Journal* ad telling ignition defect consumers that, while they wait for repairs, they should remove all items from their key rings because “the weight of a single key can’t move the switch to the wrong position.” This suggests further delays. Thus, GM has substituted a “one key” ad campaign for prompt and effective replacement of its faulty systems.<sup>11</sup> The threat to safety remains, and crashes continue. In addition, as these recalls are ongoing they raise issues of evidence preservation that the MDL

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*Footnote continued from previous page*

order otherwise provides, there will be no discovery in either the adversary proceeding or the contested matter until and unless I order otherwise.”).

<sup>11</sup> Plaintiffs also note that they will seek discovery relating to the testing GM undertook to supports its new safety assertions about using a single key.

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court needs to address and supervise now. Temporary Lead Counsel intend to suggest that ongoing preservation needs to be among the first topics to be addressed as part of the MDL. This case is markedly different from a typical single-defect recall case, where the principal issues are economic remedies with a discrete, singular recall proceeding outside the scope of the litigation. The GM ignition system debacle is unfolding in real time, and this Court has a unique opportunity to monitor, supervise, and improve the process, to avoid or mitigate both economic and physical harm, to expedite the recalls, and to conserve the resources of the parties while holding GM accountable, as is fair, for the conduct it has acknowledged.

Respectfully,

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# Exhibit 1

CASE	PLAINTIFFS' COUNSEL
<b>Adams v. General Motors LLC</b>	Mark Lanier Eugene Egdorf Ryan D. Ellis <b>The Lanier Law Firm, P.C.</b> 6810 FM 1960 West Houston, TX 77069
<b>Andrews v. General Motors LLC</b>	Elaine T. Byszewski <b>Hagens Berman Sobol Shapiro LLP</b> 301 North Lake Avenue, Suite 203 Pasadena, CA 91101  Steve W. Berman Andrew M. Volk <b>Hagens Berman Sobol Shapiro LLP</b> 1918 Eighth Avenue, Suite 3300 Seattle, WA 98101  Robert B. Carey Michella A. Kras <b>Hagens Berman Sobol Shapiro LLP</b> 11 West Jefferson Street, Suite 1000 Phoenix, AZ 85003  Mark P. Robinson, Jr. Kevin F. Calcagnie Scot D. Wilson <b>Robinson Calcagnie Robinson Shapiro Davis, Inc.</b> 19 Corporate Plaza Newport Beach, CA 92660
<b>Arnold v. General Motors LLC</b>	Robert A. Clifford Shannon M. McNulty Kristofer S. Riddle <b>Clifford Law Offices</b> 120 N. LaSalle, Ste 3100 Chicago, IL 60602  G. Patrick Murphy Patricia S. Murphy <b>Murphy &amp; Murphy LLC</b>

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<b><i>Ashbridge v. General Motors LLC</i></b>	Alfred G. Yates, Jr. Gerald L. Rutledge <b>Law Offices of Alfred G. Yates, Jr.</b> 429 Forbes Avenue 519 Allegheny Building Pittsburgh, PA 15219
<b><i>Ashworth v. General Motors</i></b>	Gregory O. Wiggins Kevin W. Jent Robert F. Childs, Jr. Rocco Calamusa, Jr. <b>Wiggins Childs Quinn &amp; Pantazis</b> The Kress Building 301 19th Street, North Birmingham, AL 35203-3204
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<p><b>Brandt v. General Motors LLC</b></p>	<p>Robert C. Hilliard                      Marion Reilly                      Kimberly Wilson Schock                      Rudy Gonzales, Jr.                      John Brandon Martinez                      Catherine Danielle Tobin  <b>Hilliard Munoz Gonzales LLP</b>                      719 S Shoreline Ste 500                      Corpus Cristi TX 78401</p> <p>Thomas J. Henry                      Gregory A. Teeter  <b>Law Office of Thomas Henry</b>                      521 Starr Street                      Corpus Cristi, TX 78401</p> <p>Thomas Christopher Pinedo                      4550 Jericho Road                      Corpus Cristi, TX 78413</p>

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<b><i>Emerson v. General Motors LLC</i></b>	Adam M. Moskowitz Harley Shepard Tropin Thomas A. Tucker Ronzetti Tal J. Lifshitz <b>Kozyak Tropin &amp; Throckmorton</b> 2525 Ponce De Leon Boulevard, 9th Floor Coral Gables, FL 33134  Gregory O. Wiggins Kevin W. Jent <b>Wiggins, Childs, Quinn &amp; Pantazis, LLC</b> The Kress Building

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<b><i>Foster v. General Motors LLC</i></b>	Jack Landskroner Drew Legando <b>Landskroner Grieco Merriman LLC</b> 1360 West 9th Street, Suite 200 Cleveland, Ohio 44113  Elizabeth J. Cabraser Todd A. Walberg <b>Leiff Cabraser Heimann &amp; Bernstein LLP</b> 275 Battery Street, 29th Floor San Francisco CA 94111-3339  Jonathan Selbin Sudarsana Srinivasan <b>Leiff Cabraser Heimann &amp; Bernstein LLP</b> 250 Hudson Street, 8th Floor New York, NY 10013  Robin L. Greenwald James Bilsborrow <b>Weitz &amp; Luxenberg PC</b> 700 Broadway New York, NY 10003  Benjamin L. Bailey Eric B. Snyder <b>Bailey &amp; Glasser LLP</b> 209 Capitol Street



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<b><i>Gebremariam v. General Motors LLC</i></b>	Mary E. Alexander Jennifer L. Fiore <b>Mary Alexander &amp; Associates, PC</b> 44 Montgomery St., Ste 1303 San Francisco CA 94104
<b><i>Groman v. General Motors LLC</i></b>	Alexander H. Schmidt Malcom T. Brown <b>Wolf Haldenstein Adler Freeman &amp; Herz LLP</b> 270 Madison Avenue New York, NY 10016  Jonathan Laurence Flaxer <b>Golenbock Eiseman Assor Bell &amp; Peskoe LLP</b> 437 Madison Avenue New York, NY 10022
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<b><i>Hamid v. General Motors LLC</i></b>	Brian D. Gonzales <b>THE LAW OFFICES OF BRIAN D. GONZALES, PLLC</b> 123 North College Avenue, Suite 200 Fort Collins, Colorado 80524
<b><i>Harris v. General Motors LLC</i></b>	Adam M. Moskowitz Harley Shepard Topin Robert J. Neary Thomas A. Tucker Ronzetti Tal J. Lifshitz <b>Kozyak Tropin &amp; Throckmorton</b> 2525 Ponce De Leon Boulevard, Suite 900 Coral Gables, FL 33134
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<b><i>Levine v. General Motors LLC</i></b>	Brett Elliott Von Borke David Buckner Seth Eric Miles Grossman Roth, PA 2525 Ponce De Leon Blvd, Suite 1150 Miami, FL 33134
<b><i>Lewis v. General Motors LLC</i></b>	Irwin B. Levin Richard E. Shevitz Vess A. Miller Lynn A. Toops <b>Cohen &amp; Malad LLP</b> One Indiana Square, Suite 1400 Indianapolis, IN 46204  Elizabeth J. Cabraser <b>Lieff Cabraser Heimann &amp; Bernstein</b> 275 Battery Street, 29th Floor San Francisco, CA 94111

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CASE	PLAINTIFFS' COUNSEL
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<p><b>Melton v. General Motors, LLC</b></p>	<p>Lance A. Cooper                      Patrick A. Dawson  <b>The Cooper Firm</b>                      531 Roselane St., Ste. 200                      Marietta, GA 30060</p> <p>Benjamin E. Baker                      J. Greg Allen                      J. Code Portis                      Jere L. Beasley  <b>Beasley Allen Crow Methvin Portis &amp; Miles-AL</b>                      P.O. Box 4160                      218 Commerce Street                      Montgomery, AL 36103-4160</p> <p>Kenneth Ray Bernard, Jr.  <b>Sherrod &amp; Bernard, P.C.</b>                      P.O. Box 1154                      8470 Price Avenue                      Douglasville, GA 30133-1154</p>

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<b><i>Nettleton Auto Sales Inc. v. General Motors LLC</i></b>	David Slade James Allen Carney, Jr. Joseph Henry Bates, III Randall Keith Pulliam <b>Carney Bates &amp; Pulliam, PLLC</b> 11311 Arcade Drive, Suite 200 Little Rock, AR 72212
<b><i>Parenteau v. General Motors LLC</i></b>	Payam Shahian Larry Chae Karen Nakon <b>Strategic Legal Practices, APC</b> 1875 Century Park East, Suite 700 Los Angeles, California 90067



CASE	PLAINTIFFS' COUNSEL
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<b><i>Powell v. General Motors LLC</i></b>	Michele L. Kranz <b>Zoll, Kranz &amp; Borgess</b> 6620 Central Avenue, Suite 100 Toledo, OH 43617  Jasper D. Ward IV <b>JONES WARD PLC</b> Marion E. Taylor Building 312 South Fourth Street, Sixth Floor Louisville, Kentucky 40202
<b><i>Powell v. General Motors LLC</i></b>	Gregory T. Racette <b>Hopkins &amp; Heubner</b> 2700 Grand Avenue, Ste. 111 Des Moines, IA 50312
<b><i>Precht v. General Motors Corporation</i></b>	Jon Michael Herskowitz <b>Baron &amp; Herskowitz</b> One Datran Center 9100 S. Dadeland Blvd Ste 1704 Miami FL 33156-1619  William H. Anderson <b>Cuneo Gilbert &amp; LaDuca, LLP</b> 507 C Street, NE Washington, DC 20002

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<b>Rousch v. General Motors LLC</b>	<p>Matthew Lee Dameron                      Michael A. Williams                      Eric L. Dirks  <b>Williams Dirks Damron LLC</b>                      1100 Main St Ste 2600                      Kansas City MO 64105</p>
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CASE	PLAINTIFFS' COUNSEL
<p><b>Stafford v. General Motors LLC</b></p>	<p>Francis "Casey" J. Flynn Tiffany M. Yiatras <b>Carey Danis &amp; Lowe, LLC</b> 8235 Forsyth Boulevard, Suite 11 00 Saint Louis, Missouri 63105</p> <p>Michael F. Ram <b>Ram, Olson, Cereghino &amp; Kopczynski LLP</b> 555 Montgomery Street Suite 820 San Francisco, CA 94111</p> <p>Beth E. Terrell <b>Terren Marsban Daudt &amp; Willie PLLC</b> 936 North 34th Street, Suite 300 Seattle, WA 98103-8869</p>
<p><b>Stafford-Chapman v. General Motors LLC</b></p>	<p>John R. Climaco Scott D. Simpkins <b>CLIMACO, WILCOX, PECA, TARANTINO &amp; GAROFOLI CO., LPA</b> 55 Public Square, Suite 1950 Cleveland, Ohio 44113</p> <p>James R. Dugan, II David B. Franco Chad J. Primeaux <b>THE DUGAN LAW FIRM, APLC</b> One Canal Place 365 Canal Street, Suite 1000 New Orleans, Louisiana 70130</p> <p>Mitchell A. Toups <b>WELLER, GREEN, TOUPS TERRELL, LLP</b> 2615 Calder Ave., Suite 400 Beaumont, TX 77702</p> <p>James W. Flood, III <b>FLOOD LAW GROUP, LLP</b> 1101 Pennsylvania Ave. NW, Suite 600 Washington, DC 20004</p>

CASE	PLAINTIFFS' COUNSEL
<b><i>Sumners v. General Motors LLC</i></b>	<p>Lance A. Cooper Patrick A. Dawson <b>The Cooper Firm</b> 531 Roselane St., Ste. 200 Marietta, GA 30060</p> <p>Benjamin E. Baker D. Michael Andrews Jere L. Beasley <b>Beasley Allen Crow Methvin Portis &amp; Miles</b> P.O. Box 4160 218 Commerce Street Montgomery, AL 36103-4160</p> <p>Kenneth Ray Bernard, Jr. <b>Sherrod &amp; Bernard, P.C.</b> P.O. Box 1154 8470 Price Avenue Douglasville, GA 30133-1154</p> <p>Blair Pierson Durham <b>Law Office of Blair P. Durham</b> 404 James Robertson Parkway 1714 Parkway Towers Nashville, TN 37219</p>
<b><i>Taylor v. General Motors Company</i></b>	<p>Curtis Bradley Miner <b>Colson Hicks Eidson</b> 255 Alhambra Circle Coral Gables, FL 33134</p>

CASE	PLAINTIFFS' COUNSEL
<p><b><i>The People of State of CA v. General Motors LLC</i></b></p>	<p>Steve W. Berman                      Andrew M. Volk  <b>Hagens Berman Sobol Shapiro LLP</b>                      1918 Eighth Avenue, Suite 3300                      Seattle, WA 98101</p> <p>Mark P. Robinson, Jr.                      Kevin F. Calcagnie                      Scot D. Wilson  <b>Robinson Calcagnie Robinson Shapiro Davis, Inc.</b>                      19 Corporate Plaza                      Newport Beach, CA 92660</p> <p><b>ORANGE COUNTY DISTRICT ATTORNEY</b>                      Tony Rackauckas, District Attorney                      Joseph D'Agostino, Senior Assistant District Attorney                      401 Civil Center Drive                      Santa Ana, CA 92701-4575</p>
<p><b><i>Van Pelt v. General Motors</i></b></p>	<p>Lance Alan Cooper  <b>Cooper Jones &amp; Cooper</b>                      701 Whitlock Avenue, S.W.                      Building J - Suite 43                      Marietta, GA 30064</p> <p>Patrick Alan Dawson  <b>The Cooper Firm</b>                      Suite 200                      531 Roseland Street                      Marietta, GA 30060-6970</p> <p>Benjamin E. Baker  <b>Beasley Allen Crow Methvin Portis &amp; Miles-AL</b>                      P.O. Box 4160                      218 Commerce Street                      Montgomery, AL 36103-4160</p>

CASE	PLAINTIFFS' COUNSEL
<b><i>Villa v. General Motors LLC</i></b>	<p>Jeanne A. Markey Gary L. Azorsky <b>Cohen Milstein Sellers &amp; Toll</b> 3 Logan Square 1717 Arch Street, Suite 3610 Philadelphia, PA 19103</p> <p>Andrew N. Friedman Kit A. Pierson <b>Cohen Milstein Sellers &amp; Toll, PLLC</b> 1100 New York Ave. NW Washington, DC 20005</p> <p>Theodore J. Leopold Diana L. Martin <b>Cohen Milstein Sellers &amp; Toll, PLLC</b> 2925 PGA Blvd., Ste. 200 Palm Beach Gardens, FL 33410</p>
<b><i>Wilson v. General Motors LLC</i></b>	<p>Mark Lanier Eugene Egdorf Ryan D. Ellis <b>The Lanier Law Firm, P.C.</b> 6810 FM 1960 West Houston, TX 77069</p>
<b><i>Witherspoon v. General Motors LLC</i></b>	<p>Patrick J. Stueve Todd E. Hilton Bradley T. Wilders Norman Eli Siegel <b>Stueve Siegel Hanson LLP</b> 460 Nichols Rd Ste 200 Kansas City MO 64112</p> <p>Don M. Downing <b>Gray Ritter &amp; Graham</b> 701 Market St Ste 800 St. Louis MO 63101</p>
<b><i>Woodward v. General Motors LLC</i></b>	<p>Daniel A. Edelman Cassandra P. Miller Cathleen M. Combs James O. Latturner <b>Edelman, Combs, Latturner &amp; Goodwin LLC</b></p>

<b>CASE</b>	<b>PLAINTIFFS' COUNSEL</b>
	120 South LaSalle St 18th Floor Chicago IL 60603
<b><i>Yagman v. General Motors Company</i></b>	Joseph Reichmann Marion R. Yagman <b>Yagman Yagman and Reichmann</b> 723 Ocean Front Walk Venice, CA 90291
<b><i>Yingling v. General Motors LLC</i></b>	Victor H. Pribanic <b>Pribanic &amp; Pribanic, LLC</b> 1735 Lincoln Way White Oak, PA 15131  Matthew R. Doeblner <b>Pribanic &amp; Pribanic, LLC</b> 513 Court Place Pittsburgh, PA 15219

# **Exhibit 3**

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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July 21, 2014

The Honorable Jesse M. Furman  
United States District Court for the  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

**Re: *In re: General Motors LLC Ignition Switch Litigation,***  
14-MD-2543 (JMF); 14-MC-2543

Dear Judge Furman:

Counsel for defendants have conferred and submit this joint letter pursuant to Section X of the Court's Order No. 1. General Motors LLC ("New GM"), Delphi Automotive Systems, LLC ("Delphi"), Delphi Automotive PLC, Don McCue Chevrolet, Inc., Continental Automotive Systems, Inc., and AutoFair Chevrolet, LLC (the "Defendants") provide this letter to assist the Court in its consideration of the status items set forth in Section X of Order No. 1.

## **1. The Nature Of This Action And Principal Defenses Thereto**

### **A. Plaintiffs' Claims in MDL 2543**

Nearly all of the actions in this MDL assert claims for alleged economic damages relating to vehicles, ignition switches, and other parts manufactured and sold by General Motors Corporation ("Old GM"), the entity that filed for Chapter 11 bankruptcy in June 2009. Currently, there are 101 actions—filed on behalf of 358 plaintiffs—that have been transferred to this Court. Ninety-one of these actions are filed as putative class actions and ten are filed as individual actions.<sup>1</sup> The plaintiffs in most, if not all, of the actions in this MDL make allegations and claims relating to vehicles and ignition switches manufactured and/or sold by Old GM.<sup>2</sup>

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<sup>1</sup> All cases that have been transferred to MDL 2543 as of the date of this letter are listed in Exhibit A hereto. The nine actions asserting personal injury or wrongful death claims, as well as an economic loss putative class action that also seeks to represent a subclass of personal injury claimants, are identified with an asterisk (\*) in Exhibit A.

<sup>2</sup> In two of the actions, plaintiffs also include allegations related to other parts manufactured by Old GM or New GM for various model year vehicles, including power steering, airbags, brake lights, shift cables, safety belts, ignition lock cylinders, ignition keys, front axle shafts, windshield wipers, brake rotors, etc. (*See* footnote 7, *infra*.)

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In general, the complaints at issue in MDL 2543 assert various causes of action under federal and state law, including strict products liability; negligence; breach of express and implied warranty; fraud and fraudulent concealment; unjust enrichment; violation of state consumer protection, unfair competition, false advertising, and deceptive trade practices statutes; violation of federal and state lemon laws; and violations of federal and state RICO statutes.

As the Court knows, on April 21, 2014, New GM filed in the United States Bankruptcy Court for the Southern District of New York a Motion to Enforce that Court's July 5, 2009 Sale Order and Injunction against plaintiffs whose claims have been brought seeking to hold New GM liable for alleged economic losses relating to vehicles and/or parts (*i.e.*, the ignition switches) manufactured and/or sold by Old GM (the "Economic Loss Motion to Enforce"). The Economic Loss Motion to Enforce seeks to bar, in whole or in large part, the claims asserted against New GM by almost all of the plaintiffs in MDL 2543. Currently, plaintiffs in 90 of the actions in this MDL (representing 89% of all cases) allege economic damage claims that are the subject of New GM's Economic Loss Motion to Enforce.

In addition, New GM intends—prior to the August 11, 2014 Initial Conference—to file in the Bankruptcy Court (i) a Motion to Enforce that Court's Sale Order and Injunction against claims asserted by plaintiffs which seek to hold New GM liable for alleged economic losses relating to vehicles and/or non-ignition switch parts manufactured and/or sold by Old GM (the "Non-Ignition Switch Motion to Enforce"), and (ii) a Motion to Enforce that Court's Sale Order and Injunction against claims asserted by plaintiffs for personal injuries arising from any accident or incident that occurred prior to the July 10, 2009 closing on the sale of Old GM's assets pursuant to 11 U.S.C. § 363 (the "Pre-Closing Accident Motion to Enforce").<sup>3</sup> New GM's Non-Ignition Switch Motion to Enforce and its Pre-Closing Accident Motion to Enforce will seek to bar, in whole or in large part, plaintiffs' claims in additional actions pending in this MDL as well as in other related cases. Upon filing of these motions, New GM will provide the Court with courtesy copies and notice of the filings.

Further, if the plaintiffs do not dismiss their claims against Delphi, Delphi intends to assert all available defenses and may take other appropriate actions, such as seeking bankruptcy-related relief similar to that being sought by New GM from Judge Gerber. Delphi has refrained from seeking such relief because (i) it may never be necessary, and (ii) if necessary, it can be addressed far more expeditiously, and with less duplication of effort, after certain legal issues have been addressed in the New GM proceedings before Judge Gerber. Regardless of how they

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<sup>3</sup> Plaintiffs asserting claims for personal injury arising from a pre-closing accident may be eligible to participate in the GM Ignition Compensation Claims Resolution Facility administered by Kenneth Feinberg. Information regarding this Facility is publicly available at [www.GMIgnitionCompensation.com](http://www.GMIgnitionCompensation.com).



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may apply to Delphi's distinct facts, Judge Gerber's forthcoming rulings should be relevant to any similar request for relief by Delphi, and should aid in the prompt disposition thereof.

In sum, New GM's Economic Loss Motion to Enforce, Non-Ignition Switch Motion to Enforce, and Pre-Closing Accident Motion to Enforce will address almost all of the claims in this MDL. Threshold issues identified by the Bankruptcy Court related to New GM's Economic Loss Motion to Enforce are currently scheduled to be heard by the Bankruptcy Court on or after October 10, 2014. (7/14/14 Letter from R. Godfrey and A. Bloomer to Hon. Jesse M. Furman (ECF No. 57) at 2.) New GM's forthcoming Non-Ignition Switch Motion to Enforce and Pre-Closing Accident Motion to Enforce will also be heard and decided by the Bankruptcy Court, possibly on a similarly expedited schedule. Defendants respectfully submit that critical legal issues presented by claims asserted in this MDL will be decided by the Bankruptcy Court. At a minimum, Defendants believe that the decisions of that Court will materially aid and advance the litigation in this Court, and assist this Court in organizing this MDL proceeding.

### **B. Defendants' Principal Defenses**

Defendants intend to vigorously defend against the claims asserted against them in this MDL. New GM's principal threshold defenses include that plaintiffs' claims, and the relief sought, are subject to the jurisdiction and venue of the Bankruptcy Court, and are barred in whole or in large part by that Court's 2009 Sale Order and Injunction. Independently, New GM and the other Defendants have various affirmative and other defenses to plaintiffs' claims, many of which can be raised and adjudicated, if necessary, at the appropriate time by way of motions to dismiss, for judgment on the pleadings, or for summary judgment. For example, one of New GM's and Delphi's multiple defenses that may be asserted at an early stage is that plaintiffs' claims are predicated upon a successor liability theory that is neither legally nor factually viable. Defendants have other principal procedural and substantive defenses, some of which are individual to each Defendant and some of which may be asserted collectively by some or all of the Defendants. These other defenses include, but are not limited to: failure of plaintiffs to state a claim for which relief can be granted; failure to allege a manifested defect causing injury or damage; failure to allege a defect or defective design in various vehicles; non-liability of component part suppliers for alleged defects in a finished product; lack of privity; absence of a duty to warn; the applicable statutes of limitations and repose; the economic loss doctrine; the terms of applicable written warranties and limitations and exclusions therein; the primary jurisdiction and actions of the National Highway Traffic Safety Administration ("NHTSA"); the provisions of the National Traffic and Motor Vehicle Safety Act and regulations promulgated by NHTSA pursuant to that Act; and plaintiffs' failure to demonstrate any basis or need for injunctive or equitable relief.

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Defendants have other principal procedural and substantive defenses that include, but are not limited to: the claims asserted by plaintiffs cannot properly or legally be pursued as class actions; Defendants did not commit violations of federal and state laws as alleged by plaintiffs; Defendants did not commit fraud, misrepresentation, or concealment; Defendants did not commit any alleged act of racketeering or engage in any alleged conspiracy; and plaintiffs have no recoverable damages or losses.

Finally, Defendants provide the above information in response to the Court's request in Section X.A(1) of Order No. 1 for a "brief" statement of principal defenses to the claims in this MDL and to inform the Court of the nature of those principal defenses at this time. Defendants do not understand the Court's request to require the listing of every possible defense that Defendants have or may have in this litigation, and therefore Defendants have not endeavored to do so. In addition, one or more Defendants may have other defenses not addressed above or that arise or become known in the future. If the Court believes additional information regarding the defenses would be helpful, Defendants will provide it.

### **2. Existing Deadlines, Due Dates, And/Or Cut-Off Dates**

There are no existing deadlines, due dates and/or cut-off dates involving cases or claims in MDL 2543 except those that have been established by agreement of the parties in the Bankruptcy Court, or by this Court in its Orders. As set forth in Defendants' July 14, 2014 letter to the Court, the Bankruptcy Court's May 16, 2014 Scheduling Order and July 11, 2014 Supplemental Scheduling Order (as agreed to and jointly submitted by New GM and plaintiffs) establish procedures and a schedule for adjudicating New GM's Economic Loss Motion to Enforce, and preclude discovery by any party unless ordered by the Bankruptcy Court. (ECF No. 57 at 2.)<sup>4</sup> At present, plaintiffs in 86 actions in MDL 2543 have voluntarily agreed to Stay Stipulations pursuant to the Bankruptcy Court's Scheduling Order that stay "all proceedings" in their cases unless the Bankruptcy Court ends or grants relief from the stay after September 1, 2014,<sup>5</sup> with the limited exception of transfer proceedings before the Judicial Panel on

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<sup>4</sup> Much of the status letter submitted by Temporary Lead Counsel is dedicated to the argument that New GM should immediately begin production of documents that it provided to Congress and governmental agencies, as well as documents provided to Anton Valukas in connection with his investigation of the ignition switch recall. (ECF No. 72 at 3-6, 9). TLC's discovery request, however, directly conflicts with the Stay Stipulations entered into by TLC, their clients, and almost every other plaintiff in the MDL. It also contravenes the Bankruptcy Court's May 16 Scheduling Order and July 11 Supplemental Scheduling Order, both of which were agreed to by TLC and other plaintiffs' counsel.

<sup>5</sup> Plaintiffs in an additional action, *Phaneuf, et al. v. General Motors LLC*, No. 1:14-cv-3298 (S.D.N.Y.), were stayed by the Bankruptcy Court after briefing and a hearing. (See Case No. 09-50026 (REG), Adv. Pro. No. 14-01929 (REG), 7/2/14 Hr'g Tr. 91:12-21.)

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Multidistrict Litigation (“JPML”) and this Court’s appointment of lead, liaison counsel and steering/coordinating committees in the MDL.<sup>6</sup> Under the Bankruptcy Court’s Supplemental Scheduling Order, briefing on threshold issues related to New GM’s Economic Loss Motion is scheduled to be complete by September 30, 2014 and the Bankruptcy Court will hold a hearing on such issues on or after October 10, 2014. (*Id.*)

### 3. Outstanding Motions

Except as described above, the only outstanding motions filed in cases pending in MDL 2543 are the plaintiffs’ Motions for Entry of Preliminary Injunction and Provisional Certification of Classes in *Benton v. General Motors LLC*, No. 5:14-cv-00590 (C.D. Cal.), and *Kelley v. General Motors Company*, No. 8:14-cv-00465 (C.D. Cal.), both of which were stayed (along with the *Benton* and *Kelley* cases) by order of the Central District of California court on April 16, 2014 (*see Benton* ECF No. 35; *Kelley* ECF No. 38). Under this Court’s Order No. 1, these motions “are denied without prejudice, and will be adjudicated under procedures set forth in this Order and subsequent orders issued by this Court.” (Order No. 1 (ECF No. 19) § XI, at 11.)

### 4. Whether A Single Consolidated Complaint (Or Multiple Consolidated Complaints) Can Or Should Be Filed In This Action

Defendants believe that, depending on the Bankruptcy Court’s resolution of New GM’s Economic Loss Motion to Enforce (as well as New GM’s forthcoming Non-Ignition Switch Motion to Enforce and Pre-Closing Accident Motion to Enforce), and the nature and extent of the claims (if any) that remain following that resolution, consolidated or master complaints may be appropriate in this MDL. Defendants see two potential categories or bundles for organizing the types of claims currently asserted by plaintiffs.

First, nearly all of plaintiffs’ actions are for alleged economic losses relating to the ignition switch, and those cases assert substantially similar, if not identical, causes of action.<sup>7</sup>

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<sup>6</sup> This Court’s Order No. 1 vacates any case management and scheduling order issued by a court prior to transfer of that case to MDL 2543, “except that any order staying a case in light of General Motors’s motion to enforce pending before the United States Bankruptcy Court for the Southern District of New York remains in effect unless and until this Court or the Bankruptcy Court (in each case with respect to its order) orders otherwise.” (Order No. 1 (ECF No. 19) § XI, at 10-11.) Order No. 1 also stays all deadlines in this action (except as provided in that Order), including Defendants’ time to respond to complaints and obligation to respond to discovery, pending the August 11, 2014 Initial Conference and further orders of this Court. (*Id.* at 11; *see also id.* § XII, at 11 (“Pending the development of a fair and efficient schedule, all outstanding discovery proceedings are suspended until further order of this Court, and no further discovery shall be initiated.”).)

<sup>7</sup> There are currently two actions in the MDL that assert claims for alleged economic losses relating to recalls and purported defects other than the ignition switch. *See Andrews v. General Motors LLC*, No. 5:14-cv-1239 (C.D.

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Depending on the outcome of the proceeding before the Bankruptcy Court, it may be appropriate to have a single consolidated or master complaint that addresses all claims and causes of action for alleged economic losses. Defendants believe that one such pleading could address nearly every claim in this MDL, promoting the efficient and orderly administration of pretrial proceedings in this litigation.

Second, at present there are only nine actions in the MDL alleging claims for personal injury or wrongful death relating to the ignition switch. Given this small number, and the claims and circumstances alleged in these cases, Defendants do not believe at this time that a consolidated or master complaint for personal injury and wrongful death claims would meaningfully promote efficient pretrial administration of this litigation. Rather, the plaintiffs in these cases can proceed on their own pleadings but should otherwise be subject to coordinated and consolidated pretrial proceedings, including any discovery, with the other actions in the MDL.

Consistent with the position expressed in their July 14, 2014 letter to the Court, Defendants respectfully submit that any determination regarding consolidated or master complaints should await the Bankruptcy Court's resolution of New GM's Economic Loss Motion to Enforce, as well as its Non-Ignition Switch Motion to Enforce and Pre-Closing Accident Motion to Enforce. Judge Gerber's decisions as to whether the claims of most, if not all, of the plaintiffs in this MDL are subject to and barred by the Bankruptcy Court's Sale Order and Injunction will guide and clarify the scope of these proceedings and the nature of the claims at issue.

### **5. Discovery That Has Already Taken Place (Including, But Not Limited To, Any Discovery That Has Taken Place In Connection With The Proceedings Before The Bankruptcy Court) And Any Discovery That Is Necessary For The Parties To Engage In Meaningful Settlement Negotiations.**

No discovery has taken place in actions pending in MDL 2543 although New GM has responded to a small number of letters from various plaintiffs' counsel on discrete topics. In addition, at the April 4, 2014 hearing on plaintiffs' Emergency Motion for a Mandatory Injunction and Relief Under 28 U.S.C. § 1651(a) to Compel Defendants to Issue a "Park It Now" Alert in the Interest of Public Welfare and Safety in *Silvas, et al. v. General Motors LLC*, No. 2:14-cv-00089 (S.D. Tex.), which Judge Ramos denied, counsel for New GM provided the Court

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Cal.), First Am. Class Action Cplt. ¶¶ 3, 10 (alleging 35 separate defects); *Sauer v. General Motors LLC, et al.*, No. 2:14-cv-04080 (D.N.J.), Cplt. ¶¶ 3-10 (alleging key system and airbag defects in Chevrolet Camaros). Given the overlapping allegations and substantial similarity of these cases to the ignition switch-only actions, Defendants do not believe at this time that they require different treatment from a consolidated or master complaint perspective.

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and plaintiffs' counsel with copies of drawings demonstrating the function of the ignition switch and videos of certain testing conducted by New GM.

Plaintiffs in a related case, *Melton, et al. v. General Motors LLC* (State Court of Cobb County Georgia, No. 14A-1197-4), have served massive discovery requests on New GM that, if allowed to proceed, will potentially conflict with the schedules to be set by this Court and/or the Bankruptcy Court. *Melton* had been conditionally transferred to this MDL by CTO-3 after New GM removed the action to the United States District Court for the Northern District of Georgia. On July 18, however, and before the conditional transfer order became final, the District Court for the Northern District of Georgia remanded the *Melton* case to the Georgia state court. After remand, New GM filed a motion to dismiss the *Melton* action, which, for now, automatically stays discovery while the motion is pending unless the *Melton* court allows discovery to proceed despite the pending dismissal motion. New GM will keep the Court advised of the status of the *Melton* case, particularly with respect to discovery issues. The *Melton* plaintiffs' counsel, The Cooper Firm and Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., are also counsel of record for several plaintiffs in this MDL. (See, e.g., *Van Pelt, et al. v. General Motors LLC*, No. 1:14-cv-01081 (N.D. Ga.); *Sumners v. General Motors LLC*, No. 1:14-cv-00070 (M.D. Tenn.); *Maciel, et al. v. General Motors LLC*, No. 4:14-cv-01339 (N.D. Cal.); *Saclo, et al. v. General Motors LLC, et al.*, No. 8:14-cv-00604 (C.D. Cal.); *Ramirez, et al. v. General Motors LLC, et al.*, No. 2:14-cv-02344 (C.D. Cal.); *Ross, et al. v. General Motors LLC, et al.*, No. 1:14-cv-02148 (E.D.N.Y.); *Salerno v. General Motors LLC, et al.*, No. 2:14-cv-02132 (E.D. Pa.); *Ruff, et al. v. General Motors LLC, et al.*, No. 3:14-cv-02375 (D.N.J.); and *Foster v. General Motors LLC, et al.*, No. 3:14-cv-02375 (N.D. Ohio).)

Defendants do not believe that any potential settlement negotiations would be meaningful or productive until the parties and this Court know what claims, if any, remain to be litigated after the Bankruptcy Court decides the matters before it. Given the Stay Stipulations voluntarily entered into by nearly all of the plaintiffs, as well as the parties' agreement, embodied in the Bankruptcy Court's scheduling orders, that there will be no discovery relating to New GM's Economic Loss Motion to Enforce unless ordered by Judge Gerber, Defendants do not foresee the need for any discovery for the purpose of potential settlement negotiations at the current time. While Defendants do not see a basis or need for settlement discussions at present, each of the Defendants will of course consider and respond to good faith offers of compromise or settlement to determine whether it is possible to resolve a particular matter rather than continue litigating it.

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**6. Prior Settlement Discussions, Including The Date, The Parties Involved, And The Approximate Duration Of Such Discussions**

Other than a discussion, through counsel, with one plaintiff regarding the potential resolution of that plaintiff's individual claims, New GM has not engaged in any settlement discussions in actions that have been finally transferred to MDL 2543. The settlement discussion referred to above occurred on July 1, 2014 and did not result in any settlement or resolution of the plaintiff's individual claims. New GM considers this settlement discussion to be confidential but will provide any additional information regarding same *in camera* if requested by the Court. None of the other Defendants has engaged in settlement discussions in any action pending in MDL 2543. Finally, on June 30, 2014, Kenneth Feinberg announced the GM Ignition Compensation Claims Resolution Facility, which is available to eligible automobile accident victims killed or physically injured as a result of defective ignition switches in certain GM vehicles. (See GM Ignition Compensation Claims Resolution Facility, available at [www.GMIgnitionCompensation.com](http://www.GMIgnitionCompensation.com).) Participation in the facility, which is administered by Mr. Feinberg and funded by New GM, is voluntary.

**7. Whether Court-Ordered Mediation Would Be Useful And, If So, Whether Such Mediation Should Be Conducted By The Assigned Magistrate Judge, Through The Court's Mediation Program, Or By A Privately Retained Mediator And When Such Mediation Should Be Conducted.**

For the reasons set forth in response to item 5, above, Defendants do not believe that court-ordered mediation would be useful or productive at this time.

**8. All Related Cases Pending In State Or Federal Court, Together With Their Current Status, Including (A) Discovery Taken To Date And Pending Motions, To The Extent Known; And (B) Whether The Cases Have Been Stayed Pending A Decision On New GM's Motion To Enforce Filed In The Bankruptcy Court.**

Defendants respectfully refer the Court to Exhibit B attached hereto, which contains the requested information. In addition, Exhibit B provides information regarding cases against New GM that, as filed, did not contain ignition switch allegations or claims, but in which plaintiffs (i) have served or seek discovery regarding the ignition switch recall and related issues and/or (ii) intend to amend their pleading to assert ignition switch allegations or claims.



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**9. All Parents, Subsidiaries, And Companies Affiliated With The Corporate Parties And Of All Counsel Associated In The Litigation To Help The Court Identify Any Problems Of Recusal Or Disqualification.**

Defendants respectfully refer the Court to Exhibit C attached hereto, which provides the requested information for each Defendant. Defendants and Temporary Lead Counsel have agreed that plaintiffs will provide the requested information for plaintiffs in their submission.

**10. Any Other Information That The Parties Believe May Assist The Court In Advancing The Case To Settlement Or Trial, Including, But Not Limited To, A Description Of Any Dispositive Issue Or Novel Issue Raised By The Case.**

**A. Dispositive Issues and Motion Practice**

Defendants submit that, depending on the Bankruptcy Court's resolution of the matters brought before it, early motion practice concerning the claims that are to be litigated in this MDL will promote the prompt and efficient administration of this litigation. Specifically, and as indicated in item 1.B., above, most, if not all, of the claims alleged in plaintiffs' complaints raise legal issues that are amenable to, and can be resolved by, threshold motions such as motions to dismiss or for judgment on the pleadings. These issues include, among other things, whether plaintiffs can state any claim under federal or state Racketeer Influenced and Corrupt Organizations Acts; whether plaintiffs can state viable claims relating to vehicles that have not manifested a defect causing injury or damage; whether plaintiffs can assert claims related to vehicles that have undergone the recall repair; whether various of plaintiffs' claims are subject to and precluded by NHTSA's primary jurisdiction and actions; whether plaintiffs' claims or alleged damages are barred by the terms of the applicable written warranties; etc. Early motion practice on these and other legal issues that may remain following the Bankruptcy Court's ruling on New GM's Economic Loss Motion to Enforce (and Non-Ignition Switch Motion to Enforce, and Pre-Closing Accident Motion to Enforce), as well as any similar enforcement ruling that may be sought by Delphi, will streamline these proceedings, shape the need for and scope of discovery, and advance the resolution of disputed claims in an efficient and cost-effective manner.

**B. Preservation Issues**

This Court's Order No. 1 addresses, among other things, the parties' duty to preserve evidence that "may be relevant to this action." (Order No. 1 (ECF No. 19) § XII, at 12.) The potential breadth of the Court's Order raises practical, cost, and burden issues for New GM with respect to its preservation obligations under the Order. Specifically, the Order could be read as requiring New GM to preserve millions of parts in connection with recall-related repairs,

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regardless of whether named plaintiffs' claims concerning those parts are limited to seeking economic damages, to the extent those parts may be relevant to this MDL.

Prior to the entry of Order No. 1, in connection with potential and actual ignition switch litigation relating to NHTSA Recall No. 14V047000, New GM requested that all GM dealerships submitting recall repair reimbursement claims to it return replaced ignition switches to New GM. New GM is preserving the returned ignition switches. The number of parts returned, and the cost of New GM's preservation efforts, is staggering. To date, New GM has received and is storing more than 244,500 ignition switch parts, while another 150,000-plus ignition switch parts are in the process of being returned to New GM. Currently, New GM has spent more than \$8.6 million to process and preserve recalled ignition switch parts returned by dealers. That figure will soon increase to more than \$14 million for ignition switch parts that are in the process of being returned to New GM and will further increase as additional parts are returned.

New GM believes that its preservation efforts, and the cost and undue burden associated with them, exceed what the law requires or permits and is concerned that this cost and burden could multiply exponentially if Order No. 1 required it to preserve each and every part (or even a significant percentage of parts) at issue in this MDL. For example, in the *Andrews v. General Motors LLC* case pending in this MDL, plaintiffs assert claims for alleged economic damages based on 35 claimed defects. See *Andrews* First Am. Class Action Cplt. ¶¶ 3, 10, 249, 269, 282-83, 285-86. Defendants respectfully submit that, given the large number of ignition switch and other parts at issue in cases pending in this MDL, the Court should promptly institute and oversee a procedure under which the parties seek to reach an agreement on an evidence preservation protocol that balances the plaintiffs' right to obtain potentially relevant evidence against the undue burden and expense to New GM of unnecessarily preserving large numbers of parts that have been the subject of recalls. Counsel for New GM has begun consultations with Temporary Lead Counsel on this issue for the purpose of preparing the Initial Conference agenda pursuant to Section X.B. of Order No. 1. Defendants believe the issue of evidence preservation should be addressed now and that prompt entry of an agreed-to or other order setting forth a reasonable evidence preservation protocol applicable to all parties will aid the administration of coordinated and consolidated pretrial proceedings, including discovery, in this MDL.

Respectfully submitted,

Richard C. Godfrey, P.C.  
Andrew B. Bloomer, P.C.

*Counsel for Defendant General Motors LLC*



**KIRKLAND & ELLIS LLP**

The Honorable Jesse M. Furman  
July 21, 2014  
Page 11

cc: Mark E. Howard (counsel for AutoFair Chevrolet, LLC)  
Michele R. Sowers (counsel for Continental Automotive Systems, Inc.)  
Eugene A. Schoon (counsel for Delphi Automotive PLC and Delphi Automotive Systems, LLC)  
Michael T. Navigato (counsel for Don McCue Chevrolet, Inc.)  
Steve W. Berman (Temporary Lead Counsel for Plaintiffs)  
Elizabeth Joan Cabraser (Temporary Lead Counsel for Plaintiffs)  
Mark P. Robinson, Jr. (Temporary Lead Counsel for Plaintiffs)

# Exhibit A

**Exhibit A: Cases Whose Transfer To MDL 2543 Has Been Finalized**

Andrews v. General Motors LLC, No. 5:14-cv-01239-ODW-AJW (C.D. Cal.)

Arnold, et al. v. General Motors LLC, et al., No. 1:14-cv-2882-RMD (N.D. Ill.)

Ashbridge v. General Motors LLC, et al., No. 2:14-cv-00463-RCM (W.D. Pa.)

Ashworth, et al. v. General Motors LLC, No. 2:14-cv-00607-JHE (N.D. Ala.)

Balls, et al. v. General Motors LLC, No. 2:14-cv-02475-JVS-AN (C.D. Cal.)

Bedford Auto v. General Motors LLC, No. 2:14-cv-11544-GCS-DRG (E.D. Mich.)

Bender v. General Motors LLC, No. 1:14-cv-00134-TLS-RBC (N.D. Ind.)

Benton v. General Motors LLC, No. 5:14-cv-00590-JVS-AN (C.D. Cal.)

Biggs v. General Motors LLC, et al., No. 2:14-cv-11912-PDB-MKM (E.D. Mich.)

Brandt, et al. v. General Motors LLC, No. 2:14-cv-00079 (S.D. Tex.)

Brown, et al. v. General Motors LLC, No. 2:14-cv-02828-JVS-AN (C.D. Cal.)

Burton v. General Motors LLC, et al., No. 5:14-cv-00396-R (W.D. Okla.)

Camlan, Inc., et al. v. General Motors LLC, No. 8:14-cv-00535-JVS-AN (C.D. Cal.)

Childre v. General Motors LLC, et al., No. 2:14-cv-01320-KDE-MBN (E.D. La.)

Coleman v. General Motors LLC, No. 3:14-cv-00220-BAJ-SCR (M.D. La.)

Corbett, et al. v. General Motors LLC, No. 7:14-cv-00139-D (E.D.N.C.)

Cox v. General Motors LLC, et al., No. 2:14-cv-02608-JVS-AN (C.D. Cal.)

Darby v. General Motors LLC, et al., No. 5:14-cv-00676-JVS-AN (C.D. Cal.)

Dawson v. General Motors LLC, No. 1:14-cv-01459-DCN (N.D. Ohio)\*

Deighan v. General Motors LLC, et al., No. 2:14-cv-00458-RCM (W.D. Pa.)

DeLuco v. General Motors LLC, No. 1:14-cv-02713-JMF (S.D.N.Y.)

DePalma, et al. v. General Motors LLC, et al., No. 1:14-cv-00681-YK (M.D. Pa.)

DeSutter, et al. v. General Motors LLC, No. 9:14-cv-80497-DMM (S.D. Fla.)

Detton, et al. v. General Motors LLC, et al., No. 3:14-cv-00500-MJR-PMF (S.D. Ill.)

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\* Action asserts personal injury or wrongful death claims.

**Exhibit A: Cases Whose Transfer To MDL 2543 Has Been Finalized**

Deushane v. General Motors LLC, et al., No. 8:14-cv-00476-JVS-AN (C.D. Cal.)

Dinco, et al. v. General Motors LLC, No. 2:14-cv-03638-JVS-AN (C.D. Cal.)

Duarte v. General Motors LLC, et al., No. 1:14-cv-21815-JAL (S.D. Fla.)

Edwards, et al. v. General Motors LLC, et al., No. 1:14-cv-21949-MGC (S.D. Fla.)

Elliott v. General Motors, LLC, et al., No. 1:14-cv-11982-WGY (D. Mass)

Emerson, et al. v. General Motors LLC, et al., No. 1:14-cv-21713-UU (S.D. Fla.)

Espineira v. General Motors LLC, et. al., No. 1:14-cv-21417-FAM (S.D. Fla.)

Favro v. General Motors LLC, No. 8:14-cv-00690-JVS-AN (C.D. Cal.)

Forbes v. General Motors LLC, No. 2:14-cv-02018-GP (E.D. Pa.)

Foster v. General Motors LLC, et al., No. 1:14-cv-00844-SO (N.D. Ohio)

Fugate v. General Motors LLC, No. 7:14-cv-00071-ART (E.D. Ky.)

Gebremariam v. General Motors LLC, No. 8:14-cv-00627-JVS-AN (C.D. Cal.)

Groman v. General Motors LLC, No. 1:14-cv-02458-JMF (S.D.N.Y.)

Grumet, et al. v. General Motors LLC, No. 3:14-cv-00713-JM-BGS (S.D. Cal.)

Hair, et al. v. General Motors LLC, No. 8:14-cv-00792-JLS-RNB (C.D. Cal.)\*

Harris, et al. v. General Motors LLC et al., No. 1:14-cv-21919-JAL (S.D. Fla.)

Henry, et al. v. General Motors LLC, et al., No. 4:14-cv-00218-DDB (E.D. Tex.)

Heuler v. General Motors LLC, No. 8:14-cv-00492-JVS-AN (C.D. Cal.)

Higginbotham v. General Motors LLC, et al., No. 4:14-cv-00306-JM (E.D. Ark.)

Holliday, et al. v. General Motors LLC, et al., No. 1:14-cv-00271-ZJH (E.D. Tex.)

Hurst v. General Motors Co., No. 2:14-cv-02619-JVS-AN (C.D. Cal.)

Irvin v. General Motors LLC, et al., No. 1:14-cv-00090-JAR (E.D. Mo.)\*

Jawad v. General Motors LLC, No. 4:14-cv-11151-MAG-DRG (E.D. Mich.)

Johnson v. General Motors LLC, No. 3:14-cv-477 HTW-LRA (S.D. Miss.)

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\* Action asserts personal injury or wrongful death claims.

**Exhibit A: Cases Whose Transfer To MDL 2543 Has Been Finalized**

Jones v. General Motors LLC, No. 4:14-cv-11197-MAG-DRG (E.D. Mich.)

Jones v. General Motors LLC, No. 1:14-cv-01052-CRC (D.D.C.)\*

Kelley, et al. v. General Motors Co., et al., No. 8:14-cv-00465-JVS-AN (C.D. Cal.)

Klussendorf v. General Motors LLC, et al., No. 1:14-cv-05035 (S.D.N.Y.)

Knetzke v. General Motors LLC, et al., No. 1:14-cv-21673-JAL (S.D. Fla.)

Lambeth v. General Motors LLC, No. 1:14-cv-00546-WO-LPA (M.D.N.C.)\*

Lannon, et al. v. General Motors LLC, et al., No. 1:14-cv-21933-KMM (S.D. Fla.)

LaReine, et al. v. General Motors LLC, et al., No. 2:14-cv-03112-JVS-AN (C.D. Cal.)

Letterio v. General Motors LLC, et al., No. 2:14-cv-00488-RCM (W.D. Pa.)

Leval v. General Motors LLC, No. 2:14-cv-00901-KDE-DEK (E.D. La.)

Levine v. General Motors LLC, No. 1:14-cv-21752-JAL (S.D. Fla.)

Lewis v. General Motors LLC, et al., No. 1:14-cv-00573-WTL-DKL (S.D. Ind.)

Maciel, et al. v. General Motors LLC, No. 4:14-cv-01339-JSW (N.D. Cal.)

Malaga et al. v. General Motors LLC, No. 8:14-cv-00533-JVS-AN (C.D. Cal.)

Markle v. General Motors LLC, et al., No. 1:14-cv-21788-FAM (S.D. Fla.)

Mazzocchi v. General Motors LLC, et al., No. 7:14-cv-02714-NSR (S.D.N.Y.)

McCarthy v. General Motors LLC, et al., No. 2:14-cv-00895-MLCF-KWR (E.D. La.)

McConnell v. General Motors LLC, No. 8:14-cv-00424-JVS-AN (C.D. Cal.)

Nava v. General Motors LLC, et al., No. 8:14-cv-00755-JVS-AN (C.D. Cal.)

Nettleton v. General Motors LLC, et al., No. 4:14-cv-00318-DPM (E.D. Ark.)

Phaneuf, et al. v. General Motors LLC, No. 1:14-cv-3298-JMF (S.D.N.Y.)

Phillip, et al. v. General Motors LLC, No. 3:14-cv-08053-DGC (D. Ariz.)

Ponce v. General Motors LLC, No. 2:14-cv-02161-JVS-AN (C.D. Cal.)

Powell v. General Motors LLC, No. 1:14-cv-00963-DAP (N.D. Ohio)

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\* Action asserts personal injury or wrongful death claims.

**Exhibit A: Cases Whose Transfer To MDL 2543 Has Been Finalized**

Ramirez, et al. v. General Motors LLC, et al., No. 2:14-cv-02344-JVS-AN (C.D. Cal.)

Ratzlaff, et al. v. General Motors LLC, No. 2:14-cv-02424-JVS-AN (C.D. Cal.)

Roach v. General Motors LLC, et al., No. 3:14-cv-00443-DRH-DGW (S.D. Ill.)

Robinson, et al. v. General Motors LLC, et al., No. 2:14-cv-02510-JVS-AN (C.D. Cal.)

Ross, et al. v. General Motors LLC, et al., No. 1:14-cv-02148-KAM-JO (E.D.N.Y.)

Ross v. General Motors LLC, et al., No. 2:14-cv-03670-ADS-ARL (E.D.N.Y.)\*

Roush, et al. v. General Motors LLC, No. 2:14-cv-04095-NKL (W.D. Mo.)

Ruff, et al. v. General Motors LLC, et al., No. 3:14-cv-02375-PGS-DEA (D.N.J.)

Saclo et al. v. General Motors LLC, et al., No. 8:14-cv-00604-JVS-AN (C.D. Cal.)

Salazar v. General Motors LLC, et al., No. 5:14-cv-00362-FB (W.D. Tex.)

Salerno v. General Motors LLC, et al., No. 2:14-cv-02132-JD (E.D. Pa.)

Santiago v. General Motors LLC, No. 1:14-cv-21147-KMW (S.D. Fla.)

Satele, et al. v. General Motors LLC, No. 8:14-cv-00485-JVS-AN (C.D. Cal.)

Sauer, et al. v. General Motors, et al., No. 2:14-cv-04080-SDW-MCA (D.N.J.)

Shollenberger v. General Motors LLC, No. 1:14-cv-00582-YK(M.D. Pa.)

Shotwell v. General Motors LLC, No. 2:14-cv-00094-KS-MTP (S.D. Miss.)\*

Silvas v. General Motors LLC, No. 2:14-cv-00089 (S.D. Tex.)

Skillman v. General Motors LLC, et al., No. 1:14-cv-03326-UA (S.D.N.Y.)

Smith v. General Motors LLC, et al., No. 3:14-cv-00120-SA-SAA (N.D. Miss.)

Spangler v. General Motors LLC, No. 8:14-cv-00816-PSG-RNB (C.D. Cal.)

Stafford v. General Motors LLC, No. 3:14-cv-01702-THE (N.D. Cal.)

Stafford-Chapman v. General Motors LLC, et al., No. 1:14-cv-00474-MRB (S.D. Ohio)

Sumners, et al. v. General Motors LLC, et al., No. 1:14-cv-00070 (M.D. Tenn.)\*

Taylor v. General Motors Company, No. 9:14-cv-80618-DMM (S.D. Fla.)

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\* Action asserts personal injury or wrongful death claims.

**Exhibit A: Cases Whose Transfer To MDL 2543 Has Been Finalized**

Van Pelt, et al. v. General Motors LLC, No. 1:14-cv-01081-RWS (N.D. Ga.)\*

Villa, et al. v. General Motors LLC, et al., No. 2:14-cv-02548-JCJ (E.D. Pa.)

Witherspoon v. General Motors LLC, et al., No. 4:14-cv-00425-HFS (W.D. Mo.)

Woodward v. General Motors LLC, et al., No. 1:14-cv-01877 (N.D. Ill.)

Yingling, et al. v. General Motors LLC, No. 3:14-cv-00116-KRG (W.D. Pa.)\*

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\* Action asserts personal injury or wrongful death claims.

# Exhibit B



**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

(8) A list of all related cases pending in state or federal court, together with their current status, including (a) discovery taken to date and pending motions, to the extent known; and (b) whether the cases have been stayed pending a decision on New GM's Motion to Enforce filed in the United States Bankruptcy Court for the Southern District of New York on April 21, 2014.

**I. Related Ignition Switch Civil Actions**

- *Ackerman v. General Motors*, No. 14-L-489 (St. Clair County, Ill.)<sup>αβ</sup>  
(No Judge Assigned)
  - Personal injury action alleging ignition switch defects in 2006 Chevrolet Cobalt.
- *Adams v. General Motors LLC, et al.*, No. 201419403-7-189 (Harris County, Tex.)<sup>αβ</sup>  
(Hon. Bill Burke, 713-368-6300)
  - Personal injury action alleging ignition switch defects in 2007 Pontiac Solstice.
    - Stayed by order granting New GM's Emergency Motion for Stay pending determination by the Texas Judicial Panel on Multidistrict Litigation ("Texas Panel") of New GM's motion for consolidation and transfer to a pretrial court for consolidated or coordinated pretrial proceedings ("Texas MDL").
- *Alexander v. ESIS/General Motors LLC, et al.*, No. 2013-29761 (Harris County, Tex.)<sup>β</sup>  
(Hon. Ken Wise, 713-368-6500)
  - Personal injury action filed in May 2013 alleging power steering defect in 2007 Chevrolet Cobalt. After New GM filed motion for summary judgment in March 2014, plaintiff filed a response, contending the vehicle's ignition switch was defective and attaching the recall. Plaintiff subsequently filed a second amended petition in July 2014 to formally allege an ignition switch defect.
    - New GM will shortly file with the Texas Panel an amended case list and move for a stay pending Texas MDL determination.
- *Beckwith v. General Motors Company, et al.*, No. 13CECG03298 (Fresno County, Cal.)<sup>β</sup>  
(Hon. Donald Black, 559-457-6319)
  - Personal injury action filed in October 2013 alleging power steering defect in 2008 Chevrolet Cobalt.
    - Plaintiff seeks to amend complaint to include ignition switch allegations and a claim for punitive damages.
      - Hearing on Plaintiff's motion for leave to amend on July 30, 2014.
    - Plaintiff served discovery regarding ignition switch defects in June 2014, to which New GM objected in July 2014.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Bogle v. General Motors LLC, et al.*, No. 16-2014-CA-002731 (Duval County, Fla.)<sup>αβ</sup>  
(Hon. Virginia Norton, 904-255-1300)
  - Wrongful death suit alleging ignition switch defects in 2007 Chevrolet Cobalt.
  
- *Boyd, et al. v. General Motors LLC*, No. 4:14-cv-01205 (E.D. Mo.)<sup>β</sup>  
(Hon. Henry E. Autrey, 314-244-7450)
  - Economic loss, personal injury, and wrongful death suit alleging New GM fraudulently concealed ignition switch defects in 2008 Chevrolet HHR, 2011 Chevrolet HHR, 2007 Chevrolet Cobalt, and 2006 Chevrolet Cobalt.
    - No discovery taken to date.
    - Plaintiffs' motion to remand is pending.
    - Conditionally transferred to MDL 2543 in MDL 2543 CTO-7.
    - GM filed motion to stay pending JPML determination.
  
- *Cull, et al. v. General Motors LLC, et al.*, No. 10C02-1404-CT-000060 (Clark County, Ind.)<sup>αβ</sup>  
(Hon. Jerry Jacobi, 812-285-6333)
  - Personal injury action alleging ignition switch defects in 2006 Chevrolet Cobalt.
  
- *Duncan v. General Motors LLC*, No. 4:14-cv-00597 (W.D. Mo.)<sup>αβ</sup>  
(Hon. Ortrie D. Smith, 816-512-5645)
  - Personal injury action alleging ignition switch defects in 2007 Chevrolet Impala.
    - Conditionally transferred to MDL 2543 in MDL 2543 CTO-7.
  
- *Elliott, et al. v. General Motors LLC*, No. 1:14-cv-00691 (D.D.C.)<sup>α</sup>  
(Hon. Ketanji Brown Jackson, 202-354-3350)
  - Putative class action filed on behalf of owners of a 2006 Chevrolet Cobalt and a 2010 Chevrolet Cobalt seeking economic loss damages for New GM's alleged fraudulent concealment of ignition switch and fuel pump defects.
    - Then-*pro se* plaintiffs executed Bankruptcy Stay Stipulation in May 2014; after plaintiffs retained counsel, Judge Gerber permitted plaintiffs to file a late "No Stay Pleading" on July 11.
      - New GM response due July 21.
    - New GM moved to transfer action to MDL 2543 on July 1.
      - Plaintiffs' response to transfer motion due July 23.
    - Judge Jackson stayed action pending Bankruptcy and JPML determinations.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Frank v. General Motors LLC*, No. 1:14-cv-21652 (S.D. Fla.)<sup>α</sup>  
(Hon. Marcia G. Cooke, 305-523-5150)
  - Putative class action filed on behalf of owner of 2008 Saturn Aura that seeks economic loss damages for New GM's alleged fraudulent concealment of power steering defect and diminished value of putative class vehicles due to New GM's purported ignition switch defects.
    - Action stayed pending resolution of New GM's Motion to Enforce.
- *Gebremariam v. General Motors LLC*, No. 8:14-cv-00627 (C.D. Cal.)<sup>α</sup>  
(Hon. James V. Selna, 714-338-2848)
  - Putative class action filed on behalf of owner of 2014 Chevrolet Cruze that seeks economic loss damages for New GM's alleged fraudulent concealment of ignition switch and front axle right half shaft defects.
    - JPML transferred ignition switch claims to MDL 2543 but severed and remanded front axle right half shaft claims.
    - Action stayed pending resolution of New GM's Motion to Enforce.
- *Gilbert v. General Motors LLC, et al.*, No. 140500140 (Philadelphia County, Pa.)<sup>αβ</sup>  
(No Judge Assigned)
  - Personal injury action alleging ignition switch defects in 2010 Chevrolet Cobalt.
- *Homer v. General Motors LLC, et al.*, No. 14/7662 (Monroe County, N.Y.)<sup>αβ</sup>  
(No Judge Assigned)
  - Wrongful death suit alleging ignition switch defects in 2006 Chevrolet Cobalt.
- *Ibanez, et al. v. General Motors LLC*, No. 2:14-cv-05238 (C.D. Cal.)<sup>α</sup>  
(Hon. Otis D. Wright, II, 213-894-8266)
  - Putative class action filed on behalf of owner of 2008 Chevrolet Impala that seeks economic loss damages for New GM's alleged fraudulent concealment of ignition switch defects.
    - Conditionally transferred to MDL 2543 in MDL 2543 CTO-7.
    - Action will be included in and subject to New GM's Motion to Enforce.
- *Kandziora v. General Motors LLC, et al.*, No. 2:14-cv-00801(E.D. Wis.)  
(Hon. Aaron E. Goodstein, 414-297-3963)
  - Individual action filed on behalf of owner of 2010 Chevrolet Cobalt that seeks economic damages arising out of GM's alleged fraudulent concealment of ignition switch defects.
    - No discovery taken to date.
    - New GM filed motion to dismiss, which is pending.
    - Conditionally transferred to MDL 2543 in MDL 2543 CTO-7.
    - Action will be included in and subject to New GM's Motion to Enforce.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Largent v. General Motors LLC, et al.*, No. 14-006509-NP (Wayne County, Mich.)<sup>αβ</sup>  
(Hon. Edward Ewell, Jr., 313-224-5195)
  - Personal injury action alleging ignition switch defects in 2006 Saturn Ion.
- *Longpre, et al. v. General Motors LLC*, No. 49D14-1406-CT-021621 (Marion County, Ind.)<sup>αβ</sup>  
(Hon. James Osborne, 317-327-0440)
  - Wrongful death suit alleging ignition switch defects in 2012 Chevrolet Impala.
- *Melton, et al. v. General Motors LLC, et al.*, No. 14A-1197-4 (Cobb County, Ga.)<sup>αβ</sup>  
(Hon. Kathryn J. Tanksley, 770-528-1701)
  - Wrongful death suit alleging ignition switch defects in 2005 Chevrolet Cobalt.
    - Plaintiffs have served ignition switch discovery.
    - Plaintiffs' motion for sanctions and GM's motion to dismiss are pending.
- *Morgan, et al. v. General Motors LLC*, No. 5:14-cv-01058 (W.D. La.)<sup>αβ</sup>  
(Hon. S. Maurice Hicks, 318-676-3055)
  - Putative class action filed on behalf of Chevrolet Cruze owners seeking economic loss damages arising out of New GM's alleged concealment of ignition switch and other defects.
    - Listed as a potential tag-along action in MDL 2543.
- *Nelson v. General Motors LLC, et al.*, No. D140141-C (Orange County, Tex.)<sup>αβ</sup>  
(Hon. Buddie Hahn, 409-882-7095)
  - Personal injury action alleging ignition switch defects in 2003 Saturn Ion.
    - Stayed by order granting GM's Emergency Motion for Stay pending Texas MDL determination by Texas Panel.
- *Phillips/Powledge v. General Motors LLC*, No. 3:14-cv-00192 (S.D. Tex.)<sup>α</sup>  
(Hon. David Hittner, 713-250-5511)
  - Wrongful death suit alleging ignition switch, brake light, and power steering defects in a 2004 Chevrolet Malibu.
    - Plaintiff's motion to remand is pending.
    - New GM will move to dismiss plaintiff's amended complaint.
    - Action will be included in and subject to New GM's forthcoming Pre-Closing Accident Motion to Enforce.
- *People of California v. General Motors LLC* No. 30-2014-00731038-CU-BT-CXC  
(Orange County, Cal.)<sup>α</sup>  
(Hon. Kim Dunning, 657-622-5304)
  - Civil action filed by Orange County, California District Attorney alleging New GM fraudulently concealed ignition switch and other defects.
    - Action will be included in and subject to New GM's Motion to Enforce.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Precht v. General Motors LLC*, No. 1:14-cv-20971 (S.D. Fla.)<sup>α</sup>  
(Hon. Paul C. Huck, 305-523-5520)
  - Putative class action brought on behalf of owner of 2011 Chevrolet Traverse that seeks economic loss damages arising out of New GM's purported fraudulent concealment of an airbag defect.
    - Action will be included in and subject to New GM's Non-Ignition Switch Motion to Enforce.
- *Smith v. General Motors LLC, et al.*, No. 41-CV-2014-900140.00 (Lauderdale County, Ala.)<sup>β</sup>  
(Hon. Gilbert P. Self, 256-760-5822)
  - Wrongful death suit alleging ignition switch defects in 2006 Chevrolet Cobalt.
    - GM's responses to Plaintiff's June 2014 discovery requests due August 25, 2014.
- *Spencer, et al. v. General Motors LLC, et al.*, No. D-1-GN-14-001337 (Travis County, Tex.)<sup>αβ</sup>  
(Hon. Lora Livingston, 512-854-2484)
  - Wrongful death suit alleging ignition switch defects in 2008 Chevrolet Cobalt.
    - Stayed by order granting GM's Emergency Motion for Stay pending Texas MDL determination by Texas Panel.
- *Stevenson v. General Motors LLC*, No. 1:14-cv-05137 (S.D. N.Y.)<sup>α</sup>  
(No Judge Assigned)
  - Putative class action filed on behalf of owner of 2007 Saturn Ion which seeks economic loss damages arising out of GM's alleged fraudulent concealment of a power steering defect.
    - Plaintiff direct-filed in S.D.N.Y. and filed statement of related cases identifying the case as related to MDL 2543.
    - Action will be included in and subject to New GM's Motion to Enforce.
- *Stoneham v. General Motors LLC, et al.*, No. 201422646 (Harris County, Tex.)<sup>αβ</sup>  
(Hon. Jaclanel McFarland, 713-368-6200)
  - Wrongful death suit alleging ignition switch defects in 2010 Chevrolet Camaro.
    - New GM will shortly file with the Texas Panel an amended case list and move for a stay pending Texas MDL determination.
- *Szatkowski, et al. v. General Motors LLC, et al.*, No. N/A (Luzerne County, Pa.)<sup>αβ</sup>  
(No Judge Assigned)
  - Personal injury action alleging ignition switch defects in 2006 Pontiac Solstice.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Tyre v. General Motors LLC, et al.*, No. GD-14-010489 (Allegheny County, Pa.)<sup>αβ</sup>  
(No Judge Assigned)
  - Wrongful death suit alleging ignition switch defects in 2005 Chevrolet Cobalts
- *Wilson v. General Motors LLC, et al.*, No. 201429914 (Harris County, Tex.)<sup>αβ</sup>  
(Hon. R.K. Sandill, 713-368-6161)
  - Personal injury action alleging ignition switch defects in 2006 Chevrolet Cobalt.
    - New GM will shortly file with the Texas Panel an amended case list and move for a stay pending Texas MDL determination.
- *Yagman v. General Motors Company, et al.*, No. 2:14-cv-04696 (C.D. Cal.)<sup>α</sup>  
(Hon. Michael W. Fitzgerald, 213-894-1527)
  - Putative class action brought by the owner of a 2006 Buick Lucerne that alleges breaches of warranty.
    - Action will be included in and subject to New GM's Motion to Enforce.

**II. Related Ignition Switch Securities And Derivatives Actions**

- *Pio v. General Motors Company, et al.*, No. 2:14-cv-11191 (E.D. Mich.)  
(Hon. Linda V. Parker, 313-234-5105)
  - Economic loss securities class action suit alleging violation of federal securities laws by New GM and damages for purchasers of New GM securities between November 17, 2010 and March 10, 2014.
    - Time to answer or otherwise plead in response to complaint extended until after lead counsel appointment has been ruled upon; hearing set for August 20, 2014; no discovery taken to date.
- *In re: General Motors Company Shareholder Derivative Litigation*, No. 2014-004611-CZ (Wayne County, Mich.)  
(Hon. Brian R. Sullivan, 313-224-2447)
  - Consolidated economic loss shareholder/derivative suit alleging breaches of fiduciary duties, corporate waste and aiding and abetting breaches of fiduciary duties by current and former officers and directors of the Company.
    - Cases were consolidated on June 18, 2014; New GM to answer or otherwise plead to the *Wietschner* complaint by August 2, 2014; no discovery taken to date.
- *In re: General Motors Company Shareholder Derivative Litigation*, No. 2:14-cv-11277 (E.D. Mich.)  
(Hon. Robert H. Cleland, 313-234-5525)
  - Consolidated economic loss shareholder/derivative suit alleging breaches of fiduciary duties, corporate waste and aiding and abetting breaches of fiduciary duties by current and former officers and directors of the Company.
    - Cases were consolidated on May 27, 2014; plaintiffs to file a consolidated complaint by August 21, 2014; New GM to answer or otherwise plead by October 2, 2014; no discovery taken to date.



**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *In re: General Motors Derivative Litigation*, No. 9627-VCG (Del. Court of Chancery) (Hon. Sam Glasscock, 302-856-5424)
  - Consolidated economic loss shareholder/derivative suit alleging breaches of fiduciary duties, corporate waste and aiding and abetting breaches of fiduciary duties by current and former officers and directors of the Company.
    - Cases were consolidated on June 20, 2014; the *Newspaper Union* case was also consolidated into this matter on July 18, 2014; plaintiffs to file an amended consolidated complaint by August 11, 2014; New GM answer date has not been set by the Court; no discovery taken to date.

**III. Unrelated Actions Seeking Ignition Switch-Related Discovery<sup>1</sup>**

- *Butcher v. General Motors Company, et al.*, No. 2:14-cv-00353 (W.D. Pa.) (Hon. Mark. R. Hornak, 412-208-7433)
  - Personal injury action alleging airbag defects in 2008 Saturn Astra.
    - Plaintiff's interrogatories seek Cobalt/Ion ignition switch related discovery.
- *Clarke v. General Motors Company LLC*, No. 4:14-cv-00006 (N.D. Tex.) (Hon. Reed C. O'Connor, 214-753-2650)
  - Personal injury action alleging the 2001 Saturn SL2 was defective and unreasonably dangerous in the following respects: (1) defective roof structure; (2) driver's seatbelt failed to restrain its occupant; and (3) failure to incorporate electronic stability control.
    - Plaintiff seeks a corporate representative deposition on the Valukas report dated May 29, 2014.
- *Mathes v. General Motors LLC*, No. CL12001623-00 (Augusta Co. Cir. Ct., Va.) (No judge assigned)
  - Personal injury action alleging airbag and seat belt defects in a 2002 Chevrolet Impala.
    - Plaintiff seeks a corporate representative deposition on the Valukas report dated May 29, 2014.

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<sup>1</sup> Counsel for New GM will update the Court regarding non-related cases that seek ignition switch-related discovery as additional such cases and requests are identified.

# Exhibit C



**Exhibit C: Corporate Disclosures And Associated Counsel**

**I. General Motors LLC, General Motors Holdings LLC, and General Motors Company**

General Motors LLC is a Delaware limited liability company with its principal place of business in Michigan. General Motors LLC is owned 100% by General Motors Holdings LLC, which is a Delaware limited liability company with its principal place of business in Michigan. General Motors Holdings LLC, in turn, is owned 100% by General Motors Company, which is a Delaware corporation with its principal place of business in Michigan. No publicly-held entity owns 10% or more of the stock of General Motors Company.

General Motors LLC, General Motors Holdings LLC, and General Motors Company (collectively, "New GM") are represented in these proceedings by Kirkland & Ellis LLP and Hartline Dacus Barger Dreyer LLP. The following law firms have also made appearances on behalf of New GM in the underlying cases that have been transferred to MDL 2543: Bingham McCutchen LLP; Bowman & Brooke LLP; Bryan Cave LLP; Butler Snow LLP; Dinsmore & Shohl LLP; Honigman Miller Schwartz and Cohn LLP; Jones Day LLP; Jones Walker; King & Spalding LLP; Lewis, Thomason, King, Krieg & Waldrop, P.C.; Lightfoot Franklin & White LLC; McAfee & Taft Mcelroy, Deutsch, Mulvaney & Carpenter, LLP; Moore Ingram Johnson & Steele, LLP; Ricci Tyrrell Johnson & Grey PLLC; Riley Bennett & Egloff LLP; Rumberger Kirk & Caldwell; and Turner, Reid, Duncan, Loomer & Patton, P.C.

**II. Delphi Automotive Systems, LLC and Delphi Automotive PLC**

Delphi Automotive Systems, LLC is a Delaware limited liability company with its principal place of business in Michigan. Delphi Automotive PLC is a public limited company formed in the United Kingdom under the laws of Jersey, with its principal place of business in the United Kingdom. Their parents, affiliates, and affiliated companies include Delphi Automotive Holdings Limited; Delphi Automotive LLP; Delphi Automotive Holdings US Limited; Delphi Corporation; Delphi Holdings, LLC; Delphi Holdfi UK Limited; and Delphi Financial Holdings, LLC.

Delphi Automotive Systems, LLC and Delphi Automotive PLC are represented in these proceedings by Sidley Austin LLP; Porter, Wright, Morris & Arthur LLP; Wilmer & Lee; and the Law Offices of R. Patrick Parker.

**III. Continental Automotive Systems, Inc.**

Continental Automotive Systems, Inc. is a Delaware corporation with its principal place of business in Michigan. Continental Automotive, Inc. owns 45% of Continental Automotive Systems, Inc. and Continental Automotive Systems Holding US, Inc. owns 55% of Continental Automotive Systems, Inc. Continental Automotive Systems Holding US, Inc. is wholly owned by Continental Automotive, Inc., which is wholly owned by Continental Automotive Holding Netherlands B.V., which is wholly owned by CGH Holding B.V., which is wholly owned by CAS-One Holdinggesellschaft mbH, which is wholly owned by Continental Caoutchouc-Export-GmbH, which is owned 51% by Continental Automotive GmbH and 49% by Continental AG.

**Exhibit C: Corporate Disclosures And Associated Counsel**

No publicly-held company owns 10% or more of Continental Automotive Systems, Inc. However, Continental Automotive Systems, Inc. is an indirect subsidiary of Continental AG, a German public corporation.

Continental Automotive Systems, Inc. is represented in these proceedings by Husch Blackwell LLP. The following firm also made an appearance on behalf of Continental Automotive Systems, Inc. in an underlying case that has been transferred to MDL 2543: Yoka & Smith LLP.

**IV. Don McCue Chevrolet, Inc.**

Don McCue Chevrolet, Inc. (“Don McCue”) is a Wisconsin corporation with its principal place of business in Illinois. Don McCue does not have any affiliates or subsidiaries and no publicly-held entity owns 10% or more of its stock.

Don McCue is represented in these proceedings by Bochte, Kuzniar & Navigato, LLP.

**V. AutoFair Chevrolet, LLC**

AutoFair Chevrolet, LLC (“AutoFair”) was a Delaware limited liability company between 2007 and 2008, with its principal place of business in Tennessee. AutoFair Investors, L.P. and AutoFair Automotive Management, LLC each held a 50% ownership interest. No publicly-held entity owned 10% or more of AutoFair Chevrolet, LLC.

AutoFair is represented in these proceedings by Howard & Ruoff, P.L.L.C.

# **Exhibit 4**

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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July 28, 2014

The Honorable Jesse M. Furman  
United States District Court for the  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

**Re: *In re: General Motors LLC Ignition Switch Litigation,***  
14-MD-2543 (JMF); 14-MC-2543

Dear Judge Furman:

In accordance with this Court's Order No. 1 (ECF No. 19), Temporary Lead Counsel for Plaintiffs ("TLC") and counsel for Defendants conferred on July 22, 2014, regarding the matters set forth by the Court for discussion in Section X.B. of Order No. 1. As requested, General Motors LLC ("New GM") submits this letter to provide the Court with the parties' respective proposals and positions on each of the items in Section X.B.

## **1. Proposed Agenda For The August 11, 2014 Initial Conference.**

The parties submit the following list of issues to be addressed at the Initial Conference:

(i) the stay of proceedings, including motion practice and discovery, pursuant to the Bankruptcy Court's May 16, 2014 Scheduling Order and July 11, 2014 Supplemental Scheduling Order, and the Stay Stipulations agreed and entered into by Plaintiffs in nearly 90 actions transferred to this MDL;

(ii) the appointment of Lead and Liaison Counsel under this Court's Order No. 5 (ECF No. 70) and coordination of pretrial proceedings—including whether and when discovery should take place in this MDL—with ignition switch-related discovery requested by plaintiffs in state court actions, such as *Melton, et al. v. General Motors LLC*, No. 14A-1197-4 (State Court of Cobb County Georgia), particularly where the plaintiffs in the State Court are also appearing before Your Honor in this MDL;

(iii) the need for a single consolidated or master complaint that addresses all claims and causes of action for alleged economic losses, and the timing of such given proceedings in the Bankruptcy Court; and

## KIRKLAND & ELLIS LLP

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July 28, 2014  
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(iv) the oversight of procedures leading to the prompt entry of an order setting forth a reasonable evidence and preservation protocol applicable to all parties.<sup>1</sup>

### **2. The Parties' Respective Proposals On Order No. 1 Section X.B(2)-(4) Issues.**

The parties set forth below their respective positions regarding the issues in Order No. 1 § X.B(2)-(4), with TLC's proposal presented first, followed by Defendants' proposal. No party concedes the factual or legal accuracy of any assertion made by any other party and all parties expressly reserve the right to address the others' contentions as appropriate (and as requested by the Court) at the August 11 Initial Conference.

#### **A. Plaintiffs' Proposal**

##### **1. Discovery**

As set forth in Plaintiffs' July 21, 2014 letter, Plaintiffs believe that the first step in case management should be the production of certain documents produced by New GM in other contexts. Such production will aid in the advancement of the litigation and the preparation of the consolidated complaint. This exact process was utilized by Judge Selna in *Toyota* and TLC believe it contributed to the orderly advancement of the litigation.

New GM has produced significant "discovery" in other forums including to the federal government. At last count in mid-June, New GM had produced several-hundred-thousand pages of documents to the House Energy & Commerce Committee. New GM has produced significant discovery to a Senate committee investigating various New GM product recalls. And New GM has recently provided documents to NHTSA on its various defective ignition system recalls.

New GM retained attorney Anton Valukas to conduct an internal investigation of New GM's conduct. Mr. Valukas's team conducted the investigation over an approximate 70-day period and had access to over 40 million documents.

All of the foregoing New GM's pre-discovery disclosures should be produced here immediately. It would not burden New GM, which has already gathered the documents, and immediate production will undoubtedly streamline and substantially advance the litigation.<sup>2</sup>

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<sup>1</sup> The parties are discussing preservation procedures and are endeavoring to reach an agreed preservation protocol that they can present to the Court in connection with the Initial Conference.

<sup>2</sup> See Manual for Complex Litigation (Fourth) ("MCL 4th") at § 11.13.

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In addition, Plaintiffs believe that safety-related discovery is appropriate. This would include documents relating to any vehicle crashes involving cars subject to the recall that have not yet been repaired and documents concerning the effectiveness of the ignition repair.

Plaintiffs believe that document production and discovery should be actively coordinated between federal and state courts, with shared access to documents and a single, expedited schedule for common depositions.

### 2. Consolidated Complaint

Plaintiffs believe that a consolidated complaint should be filed 60 days after the initial production described above is completed.

### 3. Motions Regarding The Scope Of Issues Before The Bankruptcy Court

Plaintiffs respectfully submit that it is appropriate for this Court, as an Article III Court and Section 1407 – Transferee Court, to identify the issues that may move forward here before the Bankruptcy Court decides the threshold issues – a process that Judge Gerber has indicated will take the balance of the year. Pursuant to the 2009 GM Bankruptcy 363 Sale Order, New GM agreed to be responsible for complying with the TREAD Act, the Safety Act, Lemon Laws, and California Health & Safety Code regarding any and all General Motors vehicles made before or after said Order. Under this agreement, New GM would be responsible for its failures to comply with above-said responsibilities. TLC believe that the Court should decide whether cases that assert claims involving only New GM’s conduct and/or pertain only to New GM vehicles should be immediately withdrawn from the Bankruptcy Court. By way of example on July 22, 2014, New GM issued stop delivery orders on 2003-2013 Cadillac CTS. Plaintiffs believe that it is preposterous to have claims made for cars made by New GM (2010-2013 models) to even touch the bankruptcy court. Thus, Plaintiffs wish to file motions on the scope of the bankruptcy court’s jurisdiction.

## **B. Defendants’ Proposal**

### 1. Proposed Schedule For Pretrial Activities

Given the unique nature of this MDL, including the Bankruptcy Court’s July 2009 Sale Order and Injunction and the pending Motion to Enforce, the *Toyota* litigation is an inappropriate benchmark for pretrial proceedings, including discovery. As set forth in their July 14 and 21 letters, Defendants respectfully submit that the proposed schedule for pretrial activities should await the Bankruptcy Court’s resolution of New GM’s current and forthcoming Motions to Enforce. Plaintiffs already have agreed to this as the proper procedure in the Bankruptcy Court

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by entering into Stay Stipulations. Judge Gerber's resolution of the Motions to Enforce will clarify the scope of the claims that might remain in this MDL. It also will allow Lead Counsel appointed by this Court to draft any master or consolidated complaint that may be appropriate. As a practical and legal matter, no such pleading can be drafted unless and until any claims not barred by the Sale Order and Injunction (if any) are known.<sup>3</sup> Depending on the Bankruptcy Court's rulings, the claims that remain to be litigated, if any, may be subject to various state and/or federal laws. As MCL 4th § 22.634 instructs, "[d]ifferences in the substantive law governing liability and damages may substantially affect discovery, trial, and settlement." The parties and the Court will not know what claims might remain—or what the differences in substantive law will be—until the Bankruptcy Court resolves the various Threshold Issues pending before it.

Likewise, under the Federal Rules, discovery is based on and framed by the claims at issue between the parties.<sup>4</sup> Initial discovery cannot properly proceed until the claims are known by the parties and the Court. Plaintiffs' request for immediate discovery in this MDL contravenes the Sale Order and Injunction and is simply an inefficient and inappropriate means of evading the agreed-upon Bankruptcy Court Scheduling Orders and Stay Stipulations. Proceeding now with discovery and motion practice will likely result in unnecessary or duplicative activities and costs, needless conflict with the Bankruptcy Court's proceedings and rulings, and misuse of the parties' and judiciary's resources. Moreover, it is not as simple as Plaintiffs suggest to simply turn over the documents reviewed, for example, in connection with the Valukas Report, or even those produced to Congress or NHTSA. There are cost, confidentiality, burden, and privilege issues associated with any possible production—and none of those expenses and burdens should be undertaken by or imposed until the Bankruptcy Court has first resolved the determinative Threshold Issues before it in the Motions to Enforce.

### 2. Coordination With The Bankruptcy Court Proceedings

The MCL 4th recognizes the Bankruptcy Court's "authority to enjoin litigation against nondebtors pending in other courts so long as that litigation is at least related to the bankruptcy case." MCL 4th § 22.545.<sup>5</sup> With the agreement of TLC and other Plaintiffs' counsel, the

<sup>3</sup> The MCL 4th also cautions against Plaintiffs' proposal to file a master or consolidated complaint prior to the Bankruptcy Court's ruling. *See* MCL 4th § 22.2 (warning against "aggregating claims or cases... [before] learning first about the nature of the litigation and whether the issues are appropriate even for pretrial aggregation").

<sup>4</sup> *See also* MCL 4th § 22.8 (noting that "particularly in multidistrict litigation, judges direct initial discovery toward matters bearing on defendants' liability to all plaintiffs").

<sup>5</sup> Additionally, the Bankruptcy Court has previously exercised its exclusive jurisdiction to enforce its Sale Order and Injunction with respect to actions filed against New GM.

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Bankruptcy Court has established Scheduling Orders and procedures (including the possible timing of discovery) for addressing New GM's Economic Loss Motion to Enforce. Although Plaintiffs agree that the Bankruptcy Court and MDL proceedings must be coordinated, their proposal ignores that the Bankruptcy Court is the proper (and only) court that can interpret its Sale Order and Injunction, subject to an appeal from its rulings on that question. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995) (“[T]he rule is “well-established” that “persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.”). The proceedings in this Court should avoid unnecessary entanglement and/or conflict with the Bankruptcy Court's carefully crafted Scheduling Orders and procedures, including a stay on discovery, which are designed to resolve whether Plaintiffs' claims are barred by the Sale Order and Injunction. Because proceeding with discovery and motion practice in the MDL would undermine the Bankruptcy Court's process for interpreting and applying its Sale Order and Injunction, those pretrial activities should await the Bankruptcy Court's rulings.

### 3. Deferring These Proceedings Pending Bankruptcy Court Rulings

For the reasons outlined above, Defendants submit that proceedings in this Court should be deferred pending the Bankruptcy Court's rulings on the Motions to Enforce, except for: procedures for entry of a preservation protocol<sup>6</sup> and coordination by the Court and Lead and Liaison Counsel with related state cases seeking ignition switch discovery, such as the *Melton* action.<sup>7</sup>

Respectfully submitted,

Richard C. Godfrey, P.C.  
Andrew B. Bloomer, P.C.

*Counsel for Defendant General Motors LLC*

cc: Steve W. Berman (Temporary Lead Counsel for Plaintiffs)  
Elizabeth Joan Cabraser (Temporary Lead Counsel for Plaintiffs)  
Mark P. Robinson, Jr. (Temporary Lead Counsel for Plaintiffs)

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<sup>6</sup> See MCL 4th § 22.86 (“In cases alleging product design or manufacturing defects in models, makes, or lots that may have changed over time, such orders should be entered early in the case.”).

<sup>7</sup> See MCL 4th § 20.312 (encouraging frequent cooperation and communication between federal and state court judges to coordinate discovery in mass tort cases).



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Mark E. Howard (counsel for AutoFair Chevrolet, LLC)  
Michele R. Sowers (counsel for Continental Automotive Systems, Inc.)  
Eugene A. Schoon (counsel for Delphi Automotive PLC and Delphi Automotive  
Systems, LLC)  
Michael T. Navigato (counsel for Don McCue Chevrolet, Inc.)

# **Exhibit 5**

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

-----X  
**IN RE:**  
**GENERAL MOTORS LLC IGNITION SWITCH LITIGATION**  
**14-MD-2543 (JMF)**

-----X  
-----X  
**ISHMAIL SESAY et al**  
**Plaintiffs,**  
**v.**  
**14-cv-6018 (JMF)**

**GENERAL MOTORS LLC, et al**  
**Defendants.**

-----X  
**LAWRENCE AND CELESTINE ELLIOTT et al**  
**Plaintiffs,**  
**v.**  
**14-cv-00691 (KBJ)**  
**GENERAL MOTORS LLC, et al**  
**Defendants.**  
**14-mdl-2543 (U.S.J.P.M.L.)**

-----X

**NOTICE OF DEVELOPMENTS IN RELATED PROCEEDINGS BETWEEN THE  
PARTIES ESTABLISHING AN ADVERSARIAL RELATIONSHIP WITHIN THE  
PLAINTIFFS' GROUP AND AN ASSOCIATED FAILURE TO PROTECT THE  
COMMON INTEREST PRIVILEGE AFTER PLAINTIFFS' LEADERSHIP  
DISCLOSED CONFIDENTIAL COMMUNICATIONS AMONG PLAINTIFFS'  
COUNSEL TO GM'S OPPOSING COUNSEL**

Plaintiffs Ishmail Sesay, Joanne Yearwood,<sup>1</sup> Lawrence Elliott, Celestine Elliott, and  
Berenice Summerville,<sup>2</sup> hereby notify the Court of developments in related proceedings that

<sup>1</sup>Mr. Sesay and Ms. Yearwood are the named Plaintiffs in the putative class action, *Sesay et al v. General Motors, LLC, et al*, 1:14-md-2543 (1:14-cv-6018) (JMF).

evidence an actual conflict of interest within the Plaintiffs' group as described in the Court's Order No. 5, note 1. Doc. No. 70.

Each of the five above identified Plaintiffs (hereafter "non-bankruptcy Plaintiffs") assert third-party claims against New GM, a non-debtor, that rest solely and exclusively on alleged breaches by New GM of independent, non-derivative duties that it owed to non-bankruptcy Plaintiffs and those they seek to represent, and that, non-bankruptcy Plaintiffs allege, New GM breached, causing legally cognizable harm to non-bankruptcy Plaintiffs. None of the non-bankruptcy Plaintiffs alleged claims could conceivably be traced to Old GM's liability. Such a technical<sup>3</sup> statement of the duties New GM allegedly breached clarifies that, because their lawsuits assert no breach of any duty allegedly owed by Old GM, the Bankruptcy Court lacks subject matter jurisdiction over the non-bankruptcy Plaintiffs' claims, under applicable Second Circuit authority that no party disputes.<sup>4</sup>

The non-bankruptcy Plaintiffs are, therefore, in a different position than those Plaintiffs asserting alternative or additional claims that may rest upon duties originally owed to them by Old GM ("hereafter "the bankruptcy Plaintiffs) – at least with respect to the Bankruptcy Court's assertion of jurisdiction and its aggressive exercise of its stay power in the proceedings with which this Court has endeavored to coordinate.<sup>5</sup>

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<sup>2</sup> Mr. and Mrs. Elliott are co-named Plaintiffs in the putative class action, *Elliott et al v. General Motors, LLC, et al*, 14-mdl-2543 (14-cv-00691) (KBJ). They have consented, with co-plaintiff Berenice Summerville, to the consolidation and transfer of their ignition switch claims to this Court.

<sup>3</sup> See Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 Yale L.J. 16, 28-59 (1913).

<sup>4</sup> See *In re Johns Manville Corp.*, 517 F.3d 52, 66 (2s Cir. 2008) ("Manville II"), vacated and remanded on other grounds, 129, S. Ct. 2195, 174 L. Ed. 2d 99 (2009), aff'g in part & rev'g in part, 600 F. 3d 135, 2010 U.S. Ap. LEXIS 5877, 2010 WL 1007832 (2d Cir. Mar. 22, 2010) ("Manville III").

<sup>5</sup> See Order Staying and Restraining Lawrence and Celestine Elliott and their Counsel (*In re Motors Liquidation Co.*, 1:09-bk-50026 (Bankr. S.D.N.Y. Jun 01, 2009) (hereafter "*Motors*"), Doc. No. 12763, July 8, 2014) (purporting to require that the Elliotts withdraw pleadings under active consideration by an Article III court).

Most lawsuits in these consolidated proceedings, like those filed by each of the Temporary Lead Counsel and the candidates for permanent leadership, may be subject to the jurisdiction of the Bankruptcy Court because they *do* assert derivative, successor, or fraudulent concealment claims that ultimately rest on the liability of Old GM. Even if they *also* assert claims like those of the non-bankruptcy Plaintiffs, the Bankruptcy Court may have “related to” jurisdiction over their claims implicating Old GM, and supplemental jurisdiction over the remaining claims. Apparently conceding the Bankruptcy Court’s subject matter jurisdiction over their lawsuits, the Temporary Leadership, in conjunction with their own bankruptcy counsel and in coordination with Designated Counsel in the Bankruptcy proceedings,<sup>6</sup> each entered “voluntary stay stipulations” to suspend the prosecution of their cases pending determinations of certain threshold issues in those proceedings. Eighty-seven of eighty-eight original lawsuits entered into such voluntary stay stipulations.<sup>7</sup> GM has announced to this Court its intention to broaden the Bankruptcy proceedings dramatically beyond the “ignition switch actions” currently defining its scope by seeking to enforce its 2009 Sale Order protections against lawsuits regardless of whether they allege an ignition switch risk or *any* of the many other dangerous characteristics that GM has, over the past few months, admitted millions of GM vehicles possess.<sup>8</sup>

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<sup>6</sup> Leadership later agreed to GM-proposed procedures in which, simply by listing actions in bulk schedules it periodically files, GM may bring new actions into that forum just – as it did with the Elliotts’ action – without any demonstration that the actions “relate to” those proceedings. *See* Endorsed Order (*Motors*, Doc. No. 12771, July 11, 2014). Plaintiffs are given three days to agree to stay their cases or file a “No Stay Pleading,” although the Bankruptcy Court has identified or recognized no basis for any exception to its determination to stay all actions before it pending disposition of “threshold issues” and so no lawsuit may proceed ahead of any other. *See* Written Opinion with Respect to No Stay Pleading (*Motors*, Doc. No. 12791, July 30, 2014). Plaintiffs in cases stayed in the Bankruptcy proceeding have no ability to seek the temporary, preliminary or other interim injunctive relief to which they and putative class members they hope to represent may be entitled.

<sup>7</sup> *See* Scheduling Order (*Motors*, Doc. No. 12697, May 16, 2014), *see also* Supplemental Scheduling Order (*Motors*, Doc. No. 12770, July 11, 2014).

<sup>8</sup> *See* General Motors LLC’s Reply in Support of its Motion to Transfer Tag-Along Action for Consolidated Pretrial Proceedings (*In re: General Motors Ignition Switch Litigation*, MDL No. 2543 (U.S.J.P.M.L March 24, 2014), Doc. No. 390, July 30, 2014, at note 5).

It is no coincidence that such different bankruptcy and non-bankruptcy lawsuits are represented in the consolidated lawsuits in this proceeding. Temporary leadership, and almost all leadership candidates, filed lawsuits soon after GM publicly admitted that it had failed to disclose the dangers posed by millions of GM vehicles, but before GM initiated its purported enforcement proceedings before Judge Gerber. The lawsuits of non-bankruptcy plaintiffs, and probably many more that will be brought here in the next few weeks as “tag-along” actions, were drafted with knowledge of GM’s Bankruptcy contentions, and took care not to trigger the jurisdiction of that forum.

Notably, none of the stays agreed to by Plaintiff’s leadership and entered in the bankruptcy proceedings includes an exception for a public safety emergency or for emergency relief applications to allow those still driving dangerous vehicles to seek interim relief, although each lawsuit alleges that the need for such relief currently exists. Contrastingly, after considering the interests of others they seek to represent and their own urgent needs to obtain safe interim transportation until GM repairs their dangerous vehicles, non-bankruptcy Plaintiffs decided to limit the claims they assert to those outside the stay power of the Bankruptcy Court and the associated closure of judicial avenues for emergency, temporary, and preliminary relief.

The conflict, then, is between the lawsuits, like those filed by non-bankruptcy Plaintiffs, which are not subject to the Bankruptcy Court’s jurisdiction and thereby provide means to obtain relief from the safety dangers immediately faced by millions of consumers, and those bankruptcy lawsuits, like those filed by Temporary leadership and virtually all candidates for permanent leadership in these proceedings, that are subject to the power of the Bankruptcy Court and consequently parties to those lawsuits are prevented from obtaining relief for at least the next several months. Whatever arguments for delaying the prosecution of ignition switch cases

against New GM may exist regarding lawsuits subject to the stay power of the Bankruptcy Court,<sup>9</sup> no such arguments are available to justify the delay of lawsuits, and applications for interim relief, that have nothing to do with the Bankruptcy proceedings.

In the view of non-bankruptcy Plaintiffs, such a difference of position in relation to the Bankruptcy Court's power need not have resulted in a conflict between Plaintiffs and non-bankruptcy Plaintiffs. Non-bankruptcy Plaintiffs believe there is a common interest among all Plaintiffs in establishing that the Bankruptcy Court lacks jurisdiction over, and may not use its stay power to bar or delay, meritorious claims against New GM that would obtain substantial relief for many plaintiffs.

Unfortunately, an actual conflict has in fact developed.<sup>10</sup> Temporary leadership in these proceedings, in conjunction with the Designated Counsel leadership in the Bankruptcy proceedings, have taken an adversarial posture to non-bankruptcy Plaintiffs and have given non-bankruptcy Plaintiffs reasonable grounds to believe that they no longer share a common interest privilege, regardless of the common interests they might otherwise share.

On July 11, 2014, Lawrence Elliott and Celestine Elliott moved the Bankruptcy Court for an order of dismissal based on the lack of subject matter jurisdiction.<sup>11</sup> They sought the support of Designated Counsel and Temporary Lead Counsel for their motion because it would help establish the limits of GM's ability to bar plaintiffs from suing GM for its wrongdoing, benefiting the Plaintiffs' group as a whole and assuring an avenue through which to seek the

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<sup>9</sup> See Letter addressed to Judge Jesse M. Furman from Andrew B. Bloomer (Doc. No. 114, July 28, 2014)

<sup>10</sup> Counsel emphasize that this is not a conventional conflict of interest in which the conflict is identified by inconsistent legal positions that otherwise aligned parties take. There seems to be no such substantive conflict between the claims asserted by various Plaintiffs. Rather, there is an *actual* conflict, evidenced by the Plaintiffs' leadership joining with GM against non-bankruptcy Plaintiffs, with no readily apparent, *legitimate*, reason for such actions.

<sup>11</sup> See Motion to Dismiss Plaintiffs for Lack of Subject Matter Jurisdiction (*Motors*, Doc. No. 12772, July 11, 2014).

interim relief that may be necessary to prevent additional death and serious bodily injury to Plaintiffs and putative class members.<sup>12</sup>

In response to such requests for support, on August 1, 2014, Designated Counsel Edward Weisfelner declared to non-bankruptcy Plaintiffs' counsel that Designated Counsel will not support the motion, and, in fact, Plaintiffs' leadership actively opposes the motion. *Mr. Weisfelner will appear at the hearing on the motion on August 5, 2014, to speak, purportedly on behalf of the Plaintiffs' group generally, against its consideration by Judge Gerber.* Counsel for non-bankruptcy Plaintiffs then sought the advice of Temporary Lead Counsel, who confirmed that Designated Counsel spoke for them. The unseemly appearance of fellow Plaintiffs' counsel joining with GM and speaking before the Bankruptcy Court in favor of GM's attempt to bar non-bankruptcy Plaintiffs from suing GM reflects the adversarial posture taken by leadership toward non-bankruptcy Plaintiffs. Non-bankruptcy Plaintiffs hesitate to identify this as a formal conflict of interest. From the viewpoint of the legal interests involved, all Plaintiffs share an interest in avoiding the "haircut" GM would like Judge Gerber to perform before those claims go forward.

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<sup>12</sup> The Elliotts appealed to leadership to no avail when GM first threatened to hold them and their counsel in contempt for failing to comply with an Order of the Bankruptcy Court that would have prejudiced the Elliotts' lawsuit – interfering with the integrity of the adjudicative process by requiring the Elliotts to withdraw pleadings under active consideration by Judge Jackson of the United States District Court for the District of Columbia. Judge Jackson issued an Order mooting that threat by granting the Elliotts motion to amend their *pro se* papers without awaiting GM's response. *See Order Granting Plaintiffs' Motion to Amend the Complaint (Elliott v. General Motors LLC, 1:14-cv-00691 (D.D.C. Apr. 23, 2014), Doc. No. 20, July 16, 2014).* Because of the continued threat by GM to hold the Elliotts in contempt, *see Response by General Motors LLC to No Stay Pleading Filed by the Elliott Plaintiffs (Motors, Doc. No. 12782, July 21, 2014),* the Elliotts' motion to dismiss for lack of subject matter jurisdiction is particularly important to their interests. *See Letter to Honorable Robert E Gerber from Gary Peller, (Motors, Doc. No. 12783, July 23, 2014)* (stating that the Elliotts are not required to obey the orders of a court lacking subject matter jurisdiction over their action). The Elliotts also believe that the Bankruptcy Court, with Designated Leadership's acquiescence, has treated the Elliotts abusively in other ways, including setting of unrealistic deadlines for them to present complex constitutional arguments about the limits of that forum's jurisdiction, and the imposition of Orders designed to punish them for seeking to join together with and represent other consumers in their lawsuits. *See Order Staying and Restraining Lawrence and Celestine Elliott and their Counsel (Motors, Doc. No. 12763, July 08, 2014).*



In response to an inquiry to co-Designated Counsel Elihu Inselbruch whether he, too, would appear at the hearing to oppose the Elliotts' motion, Mr. Inselbruch responded "No. We will leave the matter to be addressed by General Motors counsel."

While such a statement may not be an unequivocal adoption of an adversarial posture towards the interests of non-bankruptcy Plaintiffs, Mr. Inselbruch confirmed his intent to identify common interests with GM, and not to identify common interests with non-bankruptcy Plaintiffs, by adding GM's Chief Bankruptcy counsel, Arthur Steinberg, to the electronic mail address-to list that had to that point included exclusively various plaintiffs' counsel. The disclosure was particularly egregious because Mr. Steinberg is the GM lawyer who will argue for GM against the Elliotts' motion at the upcoming hearing on the matter

Mr. Inselbruch dispatched his electronic mail and thereby disclosed to Mr. Steinberg his reply to non-bankruptcy Plaintiffs' counsel containing the statement noted above. In addition, because Mr. Inselbruch did not delete the electronic communication to which he was responding before attaching his reply, he also disclosed the extensive communication from non-bankruptcy Plaintiffs' counsel, intended only for disclosure to Plaintiffs' counsel sharing the Plaintiffs' common interest privilege, to Mr. Steinberg. Accordingly, Mr. Inselbruch disclosed to opposing GM counsel information counsel for non-bankruptcy Plaintiffs' had reasonably assumed were confidential attorney communications exclusively between and among Plaintiffs' counsel – communications protected by the common interest or joint prosecution privilege.

When counsel for non-bankruptcy Plaintiffs objected to Mr. Inselbruch's inclusion of GM's counsel on confidential communications between and among Plaintiffs' counsel and requested that Mr. Inselbruch take effective measures to assert and protect the common interest privilege, Mr. Inselbruch instead made only a partial request for retraction and took no additional

measure to protect the privilege or even acknowledge its existence. He requested retraction of his reply but not the remainder of the communication between Plaintiffs' counsel that he had disclosed. Mr. Inselbruch did not identify the communication to Mr. Steinberg as an inadvertent disclosure of a privileged communication, he did not take reasonable measures to protect privileged communications after disclosure he did not request that Mr. Steinberg destroy the communication and all copies, and he did not direct that Mr. Steinberg not use the communication for any purpose.<sup>13</sup>

Most notably, Mr. Inselbruch did not assert the privilege in his purported retraction, a precondition to any claim of inadvertent disclosure. To the contrary, he indicated to GM's counsel that he thought the existence of the privilege was subject to "debate." He represented to Mr. Steinberg that he was only asking to retract his communication because "[Peller] objects..."<sup>14</sup>

**From:** Elihu Inselbuch  
**Sent:** Saturday, August 02, 2014 10:05 AM  
**To:** Steinberg, Arthur (ASteinberg@KSLAW.com)  
**Subject:** Peller

Please let me retract the copy of my response to Peller just sent to you. He objects that it was a violation of the common interest privilege. Rather than have a debate, I accept that it was an error to send it to you. Thanks.

Non-bankruptcy Plaintiffs' counsel immediately informed Temporary Lead counsel of Mr. Inselbruch's refusal to make an effective assertion of a common interest privilege and to take effective acts to protect such a privilege, and of the concomitant threat to the common interest privilege counsel reasonably assumed they had shared. Counsel requested that Designated Counsel and Temporary Lead counsel identify any other communications of Plaintiffs' counsel that leadership disclosed to GM's counsel – or others not sharing the common interest of

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<sup>13</sup> After concluding that Mr. Inselbruch would not comply with requests to take measures to assert and protect the privilege, non-bankruptcy Plaintiff's counsel sent such a notice to Mr. Steinberg. Counsel expresses no opinion on the effectiveness of such an assertion of privilege in the face of Mr. Inselbruch's communication to Mr. Steinberg.

<sup>14</sup> Mr. Inselbruch inserted the subject line "Peller".

Plaintiffs. Counsel requested that each leadership group in the coordinated proceedings confirm whether or not they recognized a common interest privilege with non-bankruptcy Plaintiffs, or with other subgroups within the Plaintiffs group. Counsel also requested that each leadership group assist him in communicating with fellow Plaintiffs' counsel to warn them of the risk that their reasonable assumptions of a common interest privilege may be incorrect with respect to the understanding of Designated Counsel and Temporary Lead Counsel. As of the filing of this Notice, counsel has not received communication from any member of Plaintiffs' leadership regarding this matter.

Because of the pendency of permanent appointments to leadership positions in this proceeding, non-bankruptcy Plaintiffs believe it prudent to notify the Court that, as soon as is feasible, they intend to formally request that the Court delay that selection process until the issues described herein can be resolved and Plaintiffs' counsel generally can be heard as to whether present circumstances require the establishment of a separate track within this proceeding – with independent leadership – for claims, like those of non-bankruptcy Plaintiffs, that do not implicate Bankruptcy jurisdiction and may, therefore, proceed despite the commitment of bankruptcy Plaintiffs to claims that may derive from the liability of Old GM. While no *substantive* conflict between the various claims asserted by Plaintiffs seems to warrant consideration of such an extraordinary remedy, the adversarial stance adopted by leadership toward non-bankruptcy Plaintiffs' lawsuits may make such a step imperative to protect the interests of all Plaintiffs in the fair and efficient treatment of their claims in these proceedings.

Non-bankruptcy Plaintiffs have no present intention of seeking relief from the Court with respect to the leadership's failure to recognize and take measures to protect the common interest privilege to date. They are notifying the Court because of its relevance to the divisions currently

existing within the Plaintiffs' group, and because the failure to assert and protect the privilege may reflect Plaintiffs' leadership's belief that no common interest actually exists between Plaintiffs groups, at least regarding this particular divide.

Respectfully submitted,

*/s/ Gary Peller*

Gary Peller (*Pro Hac Vice* Pending)  
Counsel for Non-Bankruptcy Plaintiffs  
600 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
(202) 662-9122 (voice)  
(202) 662-9680 (facsimile)  
peller@law.georgetown.edu

**CERTIFICATE OF SERVICE**

I hereby certify that on August 4, 2014, I caused this Notice Of Developments In Related Proceedings Between The Parties Evidencing An Adversarial Relationship Within The Plaintiffs' Group And An Associated Failure To Assert The Common Interest Privilege After Plaintiffs' Leadership Disclosed Confidential Communications Among Plaintiffs' Counsel To GM's Opposing Counsel to be filed and served upon all parties receiving notice via the Court's ECF system.

Dated: August 04, 2014

*/s/ Gary Peller*

600 New Jersey Avenue, NW  
Washington, DC, 20001  
(202) 662 9122  
peller@law.georgetown.edu  
Counsel for Non-Bankruptcy Plaintiffs

# **Exhibit 6**

## KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Andrew B. Bloomer, P.C.  
To Call Writer Directly:  
(312) 862-2482  
andrew.bloomer@kirkland.com

300 North LaSalle  
Chicago, Illinois 60654  
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August 5, 2014

The Honorable Jesse M. Furman  
United States District Court for the  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

**Re: *In re: General Motors LLC Ignition Switch Litigation,***  
14-MD-2543 (JMF); 14-MC-2543

Dear Judge Furman:

Pursuant to this Court's Order No. 1 § XVI<sup>1</sup> and further to Defendants' July 21, 2014 Status Letter (ECF No. 73), we write on behalf of General Motors LLC ("New GM") to inform the Court of developments in proceedings related to MDL 2543.

First, on August 4, 2014, Judge Gerber denied the *Phaneuf* plaintiffs' No Stay Pleading for the reasons set forth in his July 30, 2014 Decision. Copies of Judge Gerber's August 4 Order and July 30 Decision are attached hereto as Exhibits 1 and 2, respectively. Additionally, at a hearing held on August 5, 2014, Judge Gerber denied the *Elliott* plaintiffs' No Stay Pleading.

Second, on Friday, August 1, 2014, New GM filed in the Bankruptcy Court the two additional motions to enforce identified on page 2 of the Defendants' July 21 Status Letter. Copies of New GM's Non-Ignition Switch Motion to Enforce and Pre-Closing Accident Motion to Enforce are attached hereto as Exhibits 3 and 4, respectively.

Third, the Defendants' July 21 Status Letter reported that New GM had petitioned the Texas Judicial Panel on Multidistrict Litigation ("Texas Panel") to consolidate several ignition switch actions pending in Texas state court. (ECF No. 73-2 at 2.) On July 30, 2014, the Texas Panel granted New GM's motion and assigned the ignition switch actions consolidated in the Texas MDL to the Honorable Robert Schaffer, presiding judge of the 152nd District Court of Harris County. Copies of the Texas Panel Opinion and Appointment Order are attached hereto as Exhibit 5.

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<sup>1</sup> See Order No. 1 (ECF No. 19) § XVI, at 14 ("Counsel for General Motors is ORDERED to promptly advise the Court by letter of any ruling by the Bankruptcy Court that may affect the MDL.").

KIRKLAND & ELLIS LLP

The Honorable Jesse M. Furman  
August 5, 2014  
Page 2

Fourth, in the Defendants' July 21 Status Letter, New GM stated that it would "keep the Court advised of the status of the *Melton* case" pending in Cobb County State Court in Georgia. (ECF No. 73 at 7.) The judge presiding in that case, the Honorable Kathryn J. Tanksley, has scheduled an August 9, 2014 hearing on New GM's motion to dismiss the plaintiffs' complaint.

Finally, pursuant to Order No. 1 § X.8, the Defendants' July 21 Status Letter included an Exhibit A listing all cases consolidated to date in MDL 2543, as well as an Exhibit B listing all related cases pending in state or federal court, together with their current status. For the Court's convenience, updated versions of Exhibits A and B are attached hereto as Exhibit 6.

Respectfully submitted,

Richard C. Godfrey, P.C.  
Andrew B. Bloomer, P.C.

*Counsel for Defendant General Motors LLC*

cc: Steve W. Berman (Temporary Lead Counsel for Plaintiffs)  
Elizabeth Joan Cabraser (Temporary Lead Counsel for Plaintiffs)  
Mark P. Robinson, Jr. (Temporary Lead Counsel for Plaintiffs)  
Mark E. Howard (counsel for AutoFair Chevrolet, LLC)  
Michele R. Sowers (counsel for Continental Automotive Systems, Inc.)  
Eugene A. Schoon (counsel for Delphi Automotive PLC and Delphi Automotive Systems, LLC)  
Michael T. Navigato (counsel for Don McCue Chevrolet, Inc.)



# Exhibit 1

09-50026-reg Doc 12811 Filed 08/04/14 Entered 08/04/14 09:48:07 Main Document  
Pg 1 of 2

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In re:

Chapter 11

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

Case No.: 09-50026 (REG)

Debtors.

(Jointly Administered)  
-----x

**ORDER DENYING THE RELIEF REQUESTED BY  
THE PHANEUF PLAINTIFFS IN THEIR NO STAY PLEADING**

Upon the *No Stay Pleading* (“**Phaneuf No Stay Pleading**”) filed by Lisa Phaneuf, et al. (“**Phaneuf Plaintiffs**”), dated May 27, 2014 [Dkt. No. 12713]; and upon the *Response by General Motors LLC to No Stay Pleading Filed in Connection with the Court’s May 16, 2014 Scheduling Order*, filed by General Motors LLC on June 13, 2014 [Dkt. No. 12724] (“**Response**”); and a hearing (the “**Hearing**”) having been held with respect to the Phaneuf No Stay Pleading and the Response on July 2, 2014; and upon the record of the Hearing, the Court having orally found and determined that the relief requested in the Phaneuf No Stay Pleading should be denied (“**Oral Ruling**”); and upon the Court issuing its *Decision with Respect to No Stay Pleading (Phaneuf Plaintiffs)* on July 30, 2014 [Dkt. No. 12791] (“**Decision**”), memorializing and amplifying the Oral Ruling issued at the Hearing; and after due deliberation and sufficient cause appearing therefore, it is hereby

**ORDERED** that the relief requested in the Phaneuf No Stay Pleading is denied in its entirety for the reasons set forth in the Decision; and it is further

**ORDERED** that the Phaneuf Plaintiffs’ claims will be treated the same as those in the other 87 Ignition Switch Actions. The stay already imposed by the injunctive provisions of

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Pg 2 of 2

Paragraphs 8 and 47 of the Sale Order (and that the Court may also impose by preliminary injunction) will remain in place insofar as it affects the Phaneuf Plaintiffs' complaint—subject to the right, shared by all of the other plaintiffs in the Ignition Switch Actions, to ask that the Court revisit the issue after September 1; and it is further

**ORDERED** that the Bankruptcy Court shall retain jurisdiction to interpret and enforce this Order.

Dated: New York, New York  
August 4, 2014

s/ Robert E. Gerber  
UNITED STATES BANKRUPTCY JUDGE

# Exhibit 2

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

DECISION WITH RESPECT TO NO STAY  
PLEADING (PHANEUF PLAINTIFFS)<sup>1</sup>

APPEARANCES:

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    Scott I. Davidson, Esq.

KIRKLAND & ELLIS LLP  
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By: Richard C. Godfrey, Esq.  
    Andrew B. Bloomer, Esq.

BLOCK & LEVITON LLP  
*Attorneys for Phaneuf Plaintiffs*  
155 Federal Street, Suite 400  
Boston, Massachusetts 02110  
By: Jeffrey C. Block, Esq. (argued)  
    Joel A. Fleming, Esq.

---

<sup>1</sup> This written decision memorializes and amplifies on the oral decision that I issued after the close of oral argument at the hearing on this matter on July 2, 2014 (the “**July 2 Hearing**”). Because it had its origins in the originally dictated decision, it has a more conversational tone. As a general matter, it speaks as of the time I issued the original decision, though by footnote (*see* n.8), I’ve updated it to describe an event that took place after I dictated the original decision.

FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP

*Attorneys for Phaneuf Plaintiffs*

1279 Route 300

Newburg, New York 12551

By: Todd Garber, Esq.

ROBERT E. GERBER

UNITED STATES BANKRUPTCY JUDGE:

In February 2014, General Motors LLC (“**New GM**”) announced ignition switch defects in Chevy Cobalts and Pontiac G5s going back to the 2005 model year—at least seemingly in material part before the chapter 11 filing of Reorganized Debtor General Motors Corporation, now called Motors Liquidation Corp. (“**Old GM**”), from whom New GM purchased the bulk of Old GM assets in a section 363 “free and clear” sale<sup>2</sup> in July 2009.<sup>3</sup> The 2014 announcement came many years after ignition switch issues were first discovered by at least some personnel at Old GM. Very nearly immediately after New GM’s announcement, a large number of class actions (and to a lesser extent, individual lawsuits) relating to those defects, referred to here as the “**Ignition Switch Actions**,” were commenced against New GM.

At the time of the 363 Sale, New GM assumed many, but much less than all, of Old GM’s liabilities.<sup>4</sup> Focusing on that distinction, in April 2014, New GM filed a

<sup>2</sup> I approved the sale—referred to here as the “**363 Sale**”—by order dated July 5, 2009 (the “**Sale Order**”) (ECF No. 2968), and the sale closed a few days thereafter.

<sup>3</sup> In a February 2014 letter to the National Traffic and Highway Administration, New GM made reference to 2005–2007 model year Chevy Cobalts, and 2007 model year Pontiac G5s. Defective ignition switches, manufactured at a time yet to be determined (before the 363 Sale, after the 363 Sale, or both), may also have been installed in other vehicles, including those in other (and possibly later) model years, including some after the 363 Sale. I make no findings as to any of these matters at this point in time; I merely identify them as matters that may eventually need to be stipulated to or otherwise resolved.

<sup>4</sup> The Old GM liabilities assumed by New GM, on the one hand, and not assumed, on the other, were described in the 363 Sale’s underlying sale agreement, captioned “Amended and Restated Master Purchase and Sale Agreement,” often referred to by the parties as the “**ARMSPA**,” “**MPA**,” or “**MSPA**.” As in the past—because, as I’ve repeatedly noted, all but the most common acronyms are singularly unhelpful to those who haven’t been living with a case—I instead use the

motion before me (the “**Motion to Enforce**”)<sup>5</sup> to enforce the free and clear provisions of the Sale Order—contending (though these contentions are disputed) that most, if not all, of the claims in the Ignition Switch Actions related to vehicles or parts manufactured and sold by Old GM; that the Ignition Switch Actions assert liabilities not assumed by New GM; and that the Sale Order’s free and clear provisions proscribe such claims. At very nearly the same time, counsel for one group of plaintiffs—the “**Groman Plaintiffs**”—commenced a class action adversary proceeding in this Court (the “**Groman Adversary**”)<sup>6</sup> seeking a declaration that their claims were not so proscribed.

In this jointly administered proceeding in which I address issues in New GM’s Motion to Enforce and the Groman Adversary,<sup>7</sup> I must determine whether one out of 88 Ignition Switch Actions—brought by a group of plaintiffs (the “**Phaneuf Plaintiffs**”), suing on their own behalf and on behalf of a purported class—should be allowed to proceed when the plaintiffs in every other Ignition Switch Actions agreed to stay their actions while the issues in the Motion to Enforce were being litigated.<sup>8</sup>

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more descriptive term “**Sale Agreement**.” See, e.g., *Castillo v. Gen. Motors LLC (In re Motors Liquidation Co.)*, 2012 Bankr. LEXIS 1688, at \*13 n.25, 2012 WL 1339496, at \*5 n.25 (Bankr. S.D.N.Y. Apr. 17, 2012) (Gerber, J.), *aff’d*, 500 B.R. 333 (S.D.N.Y. 2013) (Furman, J.) (“The Sale Agreement was more formally entitled ‘Amended and Restated Master Purchase and Sale Agreement,’ and referred to more than occasionally as the ‘ARMSPA.’ By reason of the Court’s dislike of acronyms, which rarely are helpful to anyone lacking intimate familiarity with the subject, the Court simply says ‘Sale Agreement’”).

<sup>5</sup> ECF No. 12620.

<sup>6</sup> Adv. No. 14-01929.

<sup>7</sup> I determined early on that the largely overlapping issues in the contested matter that resulted from New GM’s Motion to Enforce and the Groman Adversary should be heard together in this Court. For brevity I’ll hereafter refer to the Motion to Enforce as a shorthand means to collectively refer to both.

<sup>8</sup> At the time I orally ruled with respect to the Phaneuf Plaintiffs’ issues at the July 2 Hearing, they were the only plaintiff group that had declined to stipulate to stay its Ignition Switch Action. In proceedings later that day, I granted leave to two initially *pro se* individual plaintiffs (the “**Elliott Plaintiffs**”), who had so stipulated but later retained counsel, to be relieved of the stipulation they had agreed to while *pro se*. Thus, after having delivered my oral decision on this matter, I now have one more group of plaintiffs seeking to proceed before all of the others.

Some of the issues that I'll later need to decide may turn out to be difficult, but those here are not. I rule that the Phaneuf Plaintiffs should be treated no differently than those in the 87 other Ignition Switch Actions who agreed to voluntary stays, with adherence to the orderly procedures in this Court that were jointly agreed to by counsel for those other plaintiffs and New GM. The Phaneuf Plaintiffs' complaint alleges matters that, on their face, involve matters preceding Old GM's chapter 11 filing and 363 sale, with respect to which the Sale Order's "free and clear" injunctive provisions, at least in the first instance, apply. And the Phaneuf Plaintiffs would not be prejudiced at all, much less materially, by litigating their needs and concerns along with the other New GM consumers raising substantially identical claims. Though injunctive provisions are already in place and thus a preliminary injunction is unnecessary, New GM has also shown an entitlement to a preliminary injunction staying the Phaneuf Plaintiffs from proceeding with their litigation elsewhere while the issues here are being determined.

My Findings of Fact, Conclusions of Law, and bases for the exercise of my discretion follow.

#### Findings of Fact

As previously noted, very nearly immediately after New GM's public announcement of the ignition switch defects, a very large number of Ignition Switch Actions were commenced against New GM. Although back in 2009, New GM had voluntarily undertaken to assume liability for death, personal injury, and property damage arising from accidents and incidents after the 363 Sale, these lawsuits were for something else—for "economic loss," which I understand to cover (possibly among things) claims for alleged diminishment in value of affected vehicles, out of pocket expenses, inconvenience, and, additionally, punitive damages, RICO damages, and attorneys fees.



*A. The Context of this Controversy*

Very shortly after it filed its Motion to Enforce, New GM sought a conference with me to establish procedures to manage the litigation of its motion. With the Groman Adversary also having been filed, and with additional similar litigation foreseeable, I granted new GM's request for the conference. I solicited comments from interested parties with respect to the agenda for that conference, and held an on-the-record conference on May 2 (the "**May 2 Conference**"). By the time of the May 2 Conference, I understood there to be about 65 Ignition Switch Actions; I'm informed that their number has now reached 88.

To deal with the very large number of plaintiffs' attorneys who might be impacted by any rulings I might issue, I asked them to designate a smaller group of their number who'd speak on their behalf. The plaintiffs' lawyers community did so. They designated the law firms of Brown Rudnick, LLP; Caplin & Drysdale, Chartered; and Stutzman, Bromberg, Esserman & Plifka, PC (whose practices include the representation of tort and asbestos plaintiffs in bankruptcy courts) to speak on their behalf; those three firms came to be known as the "**Designated Counsel**." And at the May 2 Conference, it became apparent that this controversy had the potential to impact prepetition creditors of Old GM, who, under Old GM's reorganization plan, had become unit holders ("**Unit Holders**") in a General Unsecured Creditors Trust—referred to colloquially as the "**GUC Trust**"—which, among other things, would quarterback objections to claims on behalf of Old GM unsecured creditors, whose recoveries might be diluted by others' claims against Old GM. Thus I determined that I should give counsel for the GUC Trust and Unit Holders the opportunity to be heard as well. Though I provided means for other plaintiffs' counsel to be heard to the extent that the Designated Counsel didn't

satisfactorily present the others’ views, I ruled that I should primarily hear from Designated Counsel to avoid duplication and to allow the issues to be decided in an orderly manner.

At the May 2 Conference, with knowledge of the injunctive provisions of the Sale Order, I determined that while the litigation process was underway in this Court, plaintiffs in Ignition Switch Actions would either

(i) agree to enter into a stipulation (“**Stay Stipulation**”) with New GM staying the Ignition Switch Actions they’d brought elsewhere, or

(ii) file with the Bankruptcy Court a “**No Stay Pleading**”—as later defined in a heavily negotiated scheduling order (the “**May 16 Order**”) I signed after the May 2 Conference—setting forth why they believed their Ignition Switch Actions should not be stayed.

The May 16 Order further provided that after September 1, any party may request that I “modify the stay for cause shown, including based on any rulings in this case, or any perceived delay in the resolution of the Threshold Issues.”<sup>10</sup>

<sup>9</sup> ECF No. 12697.

<sup>10</sup> The “Threshold Issues” are:

- a. Whether Plaintiffs’ procedural due process rights were violated in connection with the Sale Motion and the Sale Order and Injunction, or alternatively, whether Plaintiffs’ procedural due process rights would be violated if the Sale Order and Injunction is enforced against them (“**Due Process Threshold Issue**”);
- b. If procedural due process was violated as described in (a) above, whether a remedy can or should be fashioned as a result of such violation and, if so, against whom (“**Remedies Threshold Issue**”);
- c. Whether any or all of the claims asserted in the Ignition Switch Actions are claims against the Old GM bankruptcy estate (and/or the GUC Trust) (“**Old GM Claim Threshold Issue**”); and

On June 9, the Ignition Switch Actions, which were brought in many judicial districts in the United States, were transferred, under 28 U.S.C. § 1407, upon a decision of the Judicial Panel on Multidistrict Litigation<sup>11</sup> to the United States District Court for the Southern District of New York. They're now pending in this district for pretrial purposes before the Hon. Jesse Furman, United States District Judge. Each of Judge Furman and I has granted comity to the other, and he has entered a scheduling order in his court that accomplishes his needs while respecting mine.<sup>12</sup> By a subsequent MDL Panel order, the Phaneuf Plaintiffs' action is before Judge Furman too.

Plaintiffs in 87 out of 88 Ignition Switch Actions agreed to enter into stay stipulations.<sup>13</sup> But the Phaneuf Plaintiffs declined to do so. Instead, they filed a No Stay Pleading, contending that they are asserting only post-sale claims, and thus that their claims should be treated differently. They argue that they should be allowed to proceed with their action even while the Motion to Enforce is pending.

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d. If any or all of the claims asserted in the Ignition Switch Actions are or could be claims against the Old GM bankruptcy estate (and/or the GUC Trust), should such claims or the actions asserting such claims nevertheless be disallowed/dismissed on grounds of equitable mootness (“**Equitable Mootness Threshold Issue**”).

<sup>11</sup> See *In re General Motors LLC Ignition Switch Litigation*, --- F.Supp.2d ---, 2014 U.S. Dist. LEXIS 79713, 2014 WL 2616819 (J.P.M.L June 9, 2014) (“**JPML Decision**”).

<sup>12</sup> Order No. 1, *In re General Motors LLC Ignition Switch Litigation*, No. 14-MC-2543 (S.D.N.Y. June 24, 2014), ECF No. 3 (the “**June 24 Order**”).

<sup>13</sup> But see n.8 above, with respect to the Elliott Plaintiffs' request, which I granted, to withdraw from their earlier stipulation.

*B. The Sale Agreement and Sale Injunctions*

As noted above, the Sale Agreement and Sale Order set out Old GM liabilities that New GM would assume and not assume.<sup>14</sup> Under the Sale Agreement, New GM did not assume liability for most “**Product Liability Claims**” (as there defined).<sup>15</sup> But New GM expressly assumed responsibility for claims for death, personal injury or damage to property caused by “accidents or incidents” first occurring after the 363 Sale,<sup>16</sup> even if such might otherwise be claims against Old GM.<sup>17</sup>

Under the Sale Agreement (and the Sale Order, which had corresponding provisions), New GM also took on, as additional Assumed Liabilities, some, but not all, claims other than for death, personal injury or property damage caused by accidents or incidents. In addition, the Sale Order included several injunctive provisions. Relevant provisions of the Sale Order follow.

*1. Sale Order Provisions re Assumed Liabilities*

Under the Sale Order (and as described with greater precision there), New GM assumed Old GM’s obligations under express warranties (colloquially referred to as the “glove box” warranty) that had been delivered in connection with the sale of vehicles and

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<sup>14</sup> Liabilities New GM agreed to assume were called “**Assumed Liabilities**,” in each of the Sale Agreement and Sale Order. Those New GM did not assume (and that Old GM retained) were called “**Retained Liabilities**.”

<sup>15</sup> See Sale Agreement § 2.3(a)(ix) (as amended on June 30, 2009 (see pages 111–12 of ECF No. 2968-2)).

<sup>16</sup> *Id.*

<sup>17</sup> See generally *In re Motors Liquidation Co.*, 447 B.R. 142, 149 (Bankr. S.D.N.Y. 2011) (Gerber, J.) (“*GM-Deutsch*”) (construing the “incidents” portion of the “accidents or incidents” language (in the context of claims against New GM by the estate of a consumer who had been in an accident before the 363 Sale, but died thereafter) as covering more than just “accidents,” but covering things that were similar, such as fires, explosions, or other definite events that caused injuries and resulted in the right to sue).

vehicle parts prior to the 363 Sale.<sup>18</sup> But New GM did not assume responsibility for other alleged warranties, including implied warranties and statements in materials such as individual customer communications, owner’s manuals, advertisements, and other promotional materials.<sup>19</sup>

The Sale Order also provided that except for the Assumed Liabilities expressly set forth in the Sale Agreement, New GM would not “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.”<sup>20</sup> And it went on to say that:

The Purchaser [New GM] shall not be deemed, as a result of any action taken in connection with the MPA [Sale Agreement] 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.

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<sup>18</sup> See Sale Order ¶ 56. New GM also assumed Old GM obligations under state “lemon law” statutes—which generally 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. *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Sale Order ¶ 46.

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.<sup>21</sup>

The Sale Order also provided:

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 [Old GM and its Debtor subsidiaries] 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.<sup>22</sup>

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<sup>21</sup> Sale Order ¶ 46 (reformatted for readability).

<sup>22</sup> Sale Order ¶ 48 (reformatted for readability).

2. *Sale Order Injunctive Provisions*

Importantly for this matter, the Sale Order also included injunctive provisions.

The first of them provided, in relevant part:

Except as expressly permitted or otherwise specifically provided by the MPA or this Order,

all persons and entities, including, but not limited to . . . litigation claimants . . .

holding . . . claims . . . of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against . . . a Seller . . .

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' . . . claims . . . , including rights or claims based on any successor or transferee liability.<sup>23</sup>

The second injunctive provision provided, in relevant part:

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

<sup>23</sup> Sale Order ¶ 8 (reformatted for readability).

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 . . . 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;

. . . .

(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 . . . .<sup>24</sup>

*C.. The Phaneuf Plaintiffs' Claims*

The Phaneuf Plaintiffs' complaint alleges that after the 363 Sale (which it will be recalled took place in July 2009), at various times in the period from November 2009 to September 2010, Phaneuf Plaintiffs:

- Lisa Phaneuf purchased a 2006 Chevy HHR;
- Adam Smith purchased a 2007 Pontiac Solstice; and

<sup>24</sup> Sale Order ¶ 47 (reformatted for readability).



- Catherine and Joseph Cabral purchased a 2007 Chevy Cobalt.<sup>25</sup>

Each was a vehicle manufactured by Old GM.<sup>26</sup>

But the Phaneuf Plaintiffs' Ignition Switch Action was brought against New GM. New GM was sued as alleged "successor in interest" to Old GM,<sup>27</sup> and the Phaneuf Plaintiffs repeatedly rely on alleged conduct of Old GM, in part by referring to the two entities collectively,<sup>28</sup> and in part by specific reference to acts undertaken by Old GM before New GM was created. In seven places in their complaint, the Phaneuf Plaintiffs speak of acts that took place in February 2005,<sup>29</sup> April 2005,<sup>30</sup> June 2005,<sup>31</sup> March

<sup>25</sup> See Phaneuf Compl. ¶¶ 8, 9, 15, ECF No. 12698-10 ("Compl.").

<sup>26</sup> The Phaneuf Plaintiffs' Complaint suggests that others in their group—Mike Garcia, who bought a 2010 Cobalt; Javier Delacruz, who bought a 2009 Cobalt (in September 2009, which conceivably could have been manufactured after the July 2009 363 Sale); Steve Sileo, who bought a 2010 Cobalt; Steven Bucci, who bought a 2009 Cobalt (in November 2009, which, like Delacruz's Cobalt, conceivably could have been manufactured after the July 2009 363 Sale); and David Padilla, who purchased a 2010 Cobalt (*see* Compl. ¶¶ 10–14)—might have purchased vehicles manufactured by New GM, rather than Old GM, and that they thus might have factual circumstances that distinguish them from Phaneuf, Smith, and the Cabrals. But all of the Phaneuf Plaintiffs sue under a common complaint. In the briefing to follow, Garcia, Delacruz, Sileo, Bucci and Padilla, like others, will be free to flesh out the facts with respect to the manufacture of their vehicles, and to point out any factual distinctions that might be warranted.

<sup>27</sup> See Compl. at page 1, before the beginning of numbered paragraphs ("Plaintiffs . . . allege the following against Defendant General Motors LLC ('New GM') *successor-in-interest* to General Motors Corporation ('Old GM') (collectively, the 'Company,' or 'GM')") (emphasis added).

<sup>28</sup> The Phaneuf Plaintiffs' effort to treat Old GM and New GM as a single entity is inappropriate, as a matter of bankruptcy law, if not as a matter of other law as well. As if it cures the deficiency, the Phaneuf Plaintiffs continue, in a footnote:

Any reference to "GM" relating to a date before July 10, 2009 means Old GM. Any reference to "GM" relating to a date after July 10, 2009 means New GM. Any reference to "GM" that does not related to a specific date means Old GM and New GM, collectively.

Compl. n.2. That tactic underscores the Phaneuf Plaintiffs' efforts to muddy the distinctions between the two entities, and to impose liability on New GM based on Old GM's conduct.

<sup>29</sup> See Compl. ¶ 26 ("In 2005, for example, GM launched the 'Only GM' advertising campaign. . . . 'Safety and security' were the first two features highlighted in the Company's February 17, 2005 press release describing the campaign.")

<sup>30</sup> *Id.* ¶ 27 ("Similarly, an April 5, 2005 press release about the 'Hot Button marketing program' stated that the 'Value of GM's Brands [Was] Bolstered By GM's Focus On Continuous Safety' and explained that the Hot Button program was 'intended to showcase the range of GM cars,

2005;<sup>32</sup> November 2005;<sup>33</sup> April 2006;<sup>34</sup> and as early as 2003.<sup>35</sup> Each of those acts took place before the formation of New GM, and would have been more candidly described in the Phaneuf Plaintiffs' complaint if, in each instance, the reference to "GM" were to "Old GM." The allegations do not describe actions taken by New GM.

I don't now make any finding as to any respects in which New GM might be liable for its own post-sale conduct, or whether the Sale Order (or any part of it) should be invalidated, by reason of due process concerns or any of the other matters that Designated Counsel will be briefing in the upcoming weeks.<sup>36</sup> But I do find the Phaneuf Plaintiffs' efforts to merge pre- and post-sale acts, and to place reliance on the alleged conduct of Old GM, especially collectively, are much more than sufficient for me to find that the Phaneuf Plaintiffs place material reliance on Old GM actions that took place before the Sale Order, and assert claims with respect to vehicles that were manufactured before the 363 Sale. Thus I find as a fact, or mixed question of fact and law, that the

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trucks and SUVs that offer drivers continuous safety-protection before, during and after a vehicle collision.”) (hyphen in original).

<sup>31</sup> *Id.* ¶ 28 (“On June 14, 2005, GM issued a press release stating that ‘Safety [Was The] No. 1 Concern For Women At The Wheel’ . . .”).

<sup>32</sup> *Id.* ¶ 29 (“In a statement aired on Good Morning America on March 7, 2005, a GM spokesperson stated that ‘the [Chevrolet] Cobalt exceeds all Federal safety standards that provide – significant real-world safety before, during, and after a crash.’” (alteration and hyphen in original).

<sup>33</sup> *Id.* (“ In November 2005, GM ran radio advertisements stating that ‘One of the best things to keep you [and your] family safe is to buy a Chevy equipped with OnStar . . . from Cobalt to Corvette there’s a Chevy to fit your budget.’”) (alterations in original).

<sup>34</sup> *Id.* ¶ 41 (“In April 2006, GM attempted to fix the Ignition Defect by replacing the original detent spring and plunger with a longer detent spring and plunger.”).

<sup>35</sup> *Id.* ¶ 45 (“[I]n 2003, a GM service technician observed the Ignition Defect while he was driving”).

<sup>36</sup> I likewise don't make a finding now as to the significance of the pre- or post-sale timing of the design or manufacture of *parts* that might have gone into vehicles that were built pre- or post-sale. I assume that issues of that character will be addressed by Designated Counsel, New GM, and others in the briefing in the upcoming weeks, and those parties deserve to be heard before I make any decisions in that regard.

threshold applicability of the Sale Order—and its injunctive provisions—has easily been established in the first instance, at least for the purposes of the Phaneuf Plaintiffs’ claims.<sup>37</sup>

Discussion

In that factual context, I rule that the Phaneuf Plaintiffs’ claims will be treated the same as those in the other 87 Ignition Switch Actions. The stay already imposed by the injunctive provisions of Paragraphs 8 and 47 of the Sale Order (and that I may also impose by preliminary injunction) will remain in place insofar as it affects the Phaneuf Plaintiffs’ complaint—subject to the right, shared by all of the other plaintiffs in the Ignition Switch Actions, to ask that I revisit the issue after September 1.

*A. Applicability of the Sale Order*

Paragraph 8 of the Sale Order provides, among other things, that all persons and entities “are . . . enjoined . . . from asserting against the Purchaser [New GM] . . . such persons’ or entities’ . . . claims . . . , including rights or claims based on any successor or transferee liability.”

Similarly, Paragraph 47 of the Sale Order provides, among other things, that all persons and entities “are . . . enjoined from commencing or continuing in any manner any action or other proceeding . . . against the Purchaser . . . 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 . . . .”

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<sup>37</sup> That is not to say, of course, that what the Sale Order says will be the end of the inquiry, either in the Phaneuf Plaintiffs’ case or in the case of the other 87 Ignition Switch Actions. By reason of the due process contentions that the other litigants will address, or otherwise, the Sale Order may turn out to have exceptions or self-destruct. But for now it’s in place.

I've found as a fact—based on the Phaneuf Plaintiffs' complaint's express reference to New GM as the “successor in interest” to Old GM,<sup>38</sup> and the facts that at least three of them purchased cars manufactured before the 363 Sale;<sup>39</sup> that their complaint (apparently intentionally) merges pre- and post-sale conduct by Old GM and New GM;<sup>40</sup> and that their complaint places express reliance on at least seven actions by Old GM, before New GM was formed<sup>41</sup>—that at least much of the Phaneuf Plaintiffs' complaint seeks to impose liability on New GM based on Old GM's pre-sale acts. Efforts of that character are expressly forbidden by the two injunctive provisions just quoted. Though I can't rule out the possibility that a subset matters the Phaneuf Plaintiffs might ultimately show would not similarly be forbidden, at this point the Sale Order injunctive provisions apply. And it need hardly be said that I have jurisdiction to interpret and enforce my own orders,<sup>42</sup> just as I've previously done, repeatedly, with respect to the very Sale Order here.<sup>43</sup>

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<sup>38</sup> See page 13 & n.27 above.

<sup>39</sup> See pages 12–13 & n.25 above.

<sup>40</sup> See page 13 & n.28 above.

<sup>41</sup> See pages 13–14 & nn.29–35 above.

<sup>42</sup> See *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (“**Travelers**”) (“[A]s the Second Circuit recognized . . . the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders”); see also *In re Lyondell Chem. Co.*, 445 B.R. 277, 287 (Bankr. S.D.N.Y. 2011) (Gerber, J.) (same).

<sup>43</sup> See *Castillo v. Gen. Motors LLC (In re Motors Liquidation Co.)*, 2012 Bankr. LEXIS 1688, at \*17, 20, 31, 50, 2012 WL 1339496, at \*6–7, 9, 14 (Bankr. S.D.N.Y. April 17, 2012) (Gerber, J.), *aff'd*, 500 B.R. 333 (S.D.N.Y. 2013) (Furman, J.) (interpreting the Sale Order, among other extrinsic evidence bearing on the intent of Old GM and New GM in entering into the Sale Agreement, to aid in determining whether New GM assumed Old GM's settlement with the Castillo Plaintiffs); *Trusky v. Gen. Motors LLC (In re Motors Liquidation Co.)*, 2013 Bankr. LEXIS 620, at \*4, 11–24, 2013 WL 620281, at \*1, 4–8 (Bankr. S.D.N.Y. Feb. 19, 2013) (Gerber, J.) (construing the Sale Order, and then remanding the remainder of a controversy, involving issues unrelated to the Sale Order, to the Eastern District of Michigan); *GM-Deutsch*, discussed at n.17 above.

Other judges in the Southern District of New York, at both the District Court and Bankruptcy Court levels, have recognized this as well. See, e.g., *In re Grumman Olson Indus., Inc.*, 467 B.R.

Thus unless and until I rule, after hearing from counsel in the other 87 Ignition Switch Actions, that I should not enforce the Sale Order, in whole or in part (or that with respect to any particular matters, the Sale Order does not apply), the Phaneuf Plaintiffs remain enjoined under it. As the Supreme Court held in *Celotex*,<sup>44</sup> persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.

Then even assuming (though this is debatable) that I could deprive New GM of the benefits of the Sale Order's injunctive provisions in the exercise of my discretion, I am not prepared to do so now. I have 88 Ignition Switch Actions before me—in most of which parties are likely to make similar contentions. Under section 105(d) authority<sup>45</sup>

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694 (S.D.N.Y. 2012) (Oetken, J.), *aff'g*, 445 B.R. 243, 247–50 (Bankr. S.D.N.Y. 2011) (Bernstein, C.J.) (“*Grumman Olson*”) (confirming that a bankruptcy judge can interpret the scope and effect of his or her court's prior sale order, post-confirmation, and as between non-debtors (citing *Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 228–31 (2d Cir.2002) (holding that Bankruptcy Court could exercise continuing postconfirmation jurisdiction over non-debtor parties, in part because “the dispute . . . was based on rights established in the sale order” and noting that a “bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders”)); *In re Old Carco LLC*, 505 B.R. 151, 159 & 163 n.17 (Bankr. S.D.N.Y. 2014) (Bernstein, C.J.) (“the Court retains bankruptcy jurisdiction under 28 U.S.C. § 1334 to interpret its prior sale order even when the dispute involves non-debtor third parties”); *see also Moelis Co. LLC v. Wilmington Trust FSB (In re Gen. Growth Props., Inc.)*, 460 B.R. 592, 595 (Bankr. S.D.N.Y. 2011) (Gropper, J.) (“[a] bankruptcy court always has jurisdiction to interpret its own orders. It does not matter that the State Court Action is purportedly between two non-debtors or the Chapter 11 Cases have been confirmed.”) (citation omitted).

<sup>44</sup> *Celotex Corp. v. Edwards*, 514 U.S. 300, 306–07 (1995).

<sup>45</sup> Bankruptcy Code section 105(d) provides:

The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically . . . .

given to me by Congress, I established an orderly process, with input from Designated Counsel and counsel for New GM, the Groman Adversary Plaintiffs, the GUC Trust and others by which I can fairly address these issues. It would be grossly unfair to the plaintiffs in the 87 Ignition Switch Actions who stipulated to stay their cases to give a single litigant group leave to proceed on its own. My efforts to manage 88 cases, with largely overlapping issues, require that they proceed in a coordinated way.

There is no basis in law or equity, or logic, for the notion that I should except one plaintiff group from the process to which the other 87 litigant groups are bound. Making an exception for the Phaneuf Plaintiffs would be monumentally bad case management. During the July 2 Hearing, we had lengthy discussion as to what would make the most sense in managing the issues in this case—which are in many respects difficult ones. Except for the limited purpose of having concluded that the Phaneuf Plaintiffs’ complaint raises contentions forbidden, in the first instance, by the Sale Order, I need to minimize piecemeal rulings now, by me or by any other judge—assuming that he or she would disregard express provisions in the Sale Order giving me exclusive jurisdiction to decide the matters before me now.<sup>46</sup> Nor should I simply let the Phaneuf Plaintiffs’ claims proceed without the scrutiny that all of the other Ignition Switch Action claims will undergo.

I’ve determined that the Sale Order applies in the first instance. The procedures established by my earlier orders are necessary to ensure the fair adjudication of the issues before me. The Phaneuf Plaintiffs have not come close to making a sufficient showing as

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<sup>46</sup> See Sale Order ¶ 71 (“This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA, . . . and each of the agreements executed in connection therewith, . . . including, but not limited to, retaining jurisdiction to . . . (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein . . .”).

to why I should make an exception for them—nor for allowing them to proceed ahead of the other 87 Ignition Switch Actions.

### *B. Preliminary Injunction*

Additionally, I determine that even if the Sale Order lacked the injunctive provisions it has, it would be appropriate to enter a preliminary injunction protecting New GM from the need now to defend claims that, under the Sale Agreement and Sale Order, it did not assume, and preventing the piecemeal litigation of the Phaneuf Plaintiffs' claims ahead of all of the other lawsuits similarly situated.

The standards for entry of a preliminary injunction in the Second Circuit, as set out in its well-known decision in *Jackson Dairy*<sup>47</sup> and its progeny,<sup>48</sup> are well established. As stated in *Jackson Dairy*, “the standard in the Second Circuit for injunctive relief clearly calls for a showing of (a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.”<sup>49</sup> Those requirements are easily met here.

#### *1. Irreparable Harm*

Here, irreparable injury, in terms of the case management concerns and prejudice to the litigants in the other 87 actions, has been established. It's foreseeable, if not obvious, that at least many of the 87 other litigants will present issues that the Phaneuf Plaintiffs now present.

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<sup>47</sup> *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70 (2d Cir. 1979) (“*Jackson Dairy*”).

<sup>48</sup> See, e.g., *Christian Louboutin S.A. v. Yves Saint Laurent Am. Holdings, Inc.*, 696 F.3d 206, 215 (2d Cir. 2012) (applying the *Jackson Dairy* standard, though not citing *Jackson Dairy* directly); *UBS Fin. Servs., Inc. v. W. Va. Univ. Hosps., Inc.*, 660 F.3d 643, 648 (2d Cir. 2011) (citing *Jackson Dairy*); *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (same).

<sup>49</sup> *Jackson Dairy*, 596 F.2d at 72.



And when actions raise overlapping issues, even if they're not wholly congruent, coordinated disposition is essential.<sup>50</sup> The facts that the Phaneuf Plaintiffs present may not appear in every one of those 88 cases. But the chances that similar facts will not be present in at least many of them are remote. I well understand the desires of litigants to get their cases moving as quickly as possible. But those desires are insufficient to trump the normal case management concerns that I and most other judges have.

Indeed, these concerns underlie why MDL proceedings, like the one before Judge Furman, come into being. For reasons that would be obvious to most, the MDL Panel determined that Ignition Switch Actions should be handled by a single judge for coordinated or consolidated pretrial proceedings. Irreparable injury in terms of case management concerns, for each of me and Judge Furman (not to mention prejudice to the litigants in the other 87 actions), would plainly occur if I were to allow the Phaneuf Plaintiffs to proceed before all of the others.

Judge Furman's case management concerns were apparent in his June 24 Order,<sup>51</sup> which, among other things, set up his cases for adjudication in an orderly way,<sup>52</sup> just as I

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<sup>50</sup> Exemplifying this is the Phaneuf Plaintiffs' reliance on the Bankruptcy Court and District Court decisions in *Grumman Olson*, see n.43 above, 445 B.R. 243 (Bankr. S.D.N.Y. 2011) (Bernstein, C.J.), and 467 B.R. 694 (S.D.N.Y. 2012) (Oetken, J.), respectively. I have no doubt whatever that in the subsequent proceedings before me in connection with the other 87 Ignition Switch Actions, Designated Counsel will place reliance on one or both of those cases, and that New GM will argue, in contrast, that in respects relevant here, those cases are distinguishable or wrongly decided. (The GUC Trust may also wish to be heard on the *Grumman Olson* cases, though its likely position is less obvious.) That is exactly why the Phaneuf Plaintiffs' contentions should not be heard on their own, and why I should not be making early judgments on the merits of the issues now—especially before Designated Counsel, New GM, the GUC Trust and any others with differing views have had a chance to be heard.

<sup>51</sup> See n.12 above.

<sup>52</sup> See, e.g., June 24 Order at Section XI, regulating motion practice (providing that “[a]ny and all pending motions in the transferor courts are denied without prejudice, and will be adjudicated under procedures set forth in this Order and subsequent orders issued by this Court”); *id.* at Section XII, regulating discovery (providing that “[p]ending the development of a fair and efficient schedule, all outstanding discovery proceedings are suspended until further order of this Court, and no further discovery shall be initiated,” but further providing that the June 24 Order



did. Each of us recognizes the need for coordinated proceedings in a matter of this size and complexity.

*2. Sufficiently Serious Questions Going to the Merits*

But I don't need to, and should not, make a finding of likelihood of success on the merits. That would require me to decide too much at this time, to the potential prejudice of the plaintiffs in the other 87 Ignition Switch Actions, New GM, and the GUC Trust. I need not address likelihood of success because, as I've previously noted, serious questions going to the merits provide an alternate basis for the entry of a preliminary injunction, when coupled with the requisite tipping of hardships.

New GM has easily shown serious issues going to the merits with respect to relief from this Court, though it is premature for me to go beyond such a narrow finding. It now appears, from the preceding discussion, that at least many of the Phaneuf Plaintiffs' claims were not assumed by New GM. It's possible that the Phaneuf Plaintiffs or others could eventually establish that a subset of their claims would fall outside of the Sale Order's scope, but New GM has already made at least a prima facie showing that it did not assume a significant portion of the Phaneuf Plaintiffs' claims. Similarly, while we know that other Ignition Switch Action plaintiffs will want to be heard on whether due process concerns place constraints on New GM's ability to rely on the Sale Order, the starting point is the Sale Order itself. New GM has shown serious issues going to the merits with respect to the protection it was granted under the express language of that order, which would remain unless and until due process (or other) concerns make some or all of the Sale Order's protections drop out of the picture.

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would not "preclude any discovery that is agreed or ordered to facilitate matters in the Bankruptcy Court, *provided that* to the extent any discovery is undertaken in the Bankruptcy Court, it shall be coordinated with this Court." (italics in original).

### 3. *Balance of Hardships*

Finally, I turn to the balance of hardships. That too weighs in New GM's favor.

The hardship to New GM if it were forced to litigate against the Phaneuf Plaintiffs on one track, and the other 87 actions, on another, would be significant. New GM would have to defend largely similar claims in multiple forums, thus exposing it to both unnecessary expense and the possibility of inconsistent results. And New GM, the non-bankruptcy court and I would all be prejudiced by confusion with respect to which issues could be decided in the non-bankruptcy court, and which would have to be decided here. There also could be prejudice to the plaintiffs in the other 87 Ignition Switch Actions, who might be affected (presumably not by *res judicata* or collateral estoppel, but still by *stare decisis*) by adverse rulings in the non-bankruptcy court. And there would be significant prejudice to my case management needs, as the extensively negotiated coordinated mechanism for dealing with 88 separate actions, with coordinated briefing of threshold issues, was cut away.

By contrast, by being treated the same as the plaintiffs in the other 87 actions, the Phaneuf Plaintiffs would not be harmed in any material respect. Their effort to proceed going it alone rests on the notion that another federal judge—here, Judge Furman—would consider it productive to allow one plaintiff group to move forward in its action while 87 others are stayed, pending the determination in this Court of critical threshold issues that will determine what claims may, and what claims may not, be asserted in light of the Sale Order. That premise is unrealistic.

Reasons cited by the Multidistrict Panel in sending the Ignition Switch Actions to New York included its recognition that I “already [have] been called upon by both General Motors and certain plaintiffs to determine whether the 2009 General Motors

bankruptcy Sale Order prohibits plaintiffs' ignition switch defect lawsuits."<sup>53</sup> Proceeding without regard to the agreed-on mechanisms for determining those issues in this Court would frustrate the purpose for which the Ignition Switch Actions were sent here. And there is little or no basis for the Phaneuf Plaintiffs' assumption (or hope) that Judge Furman would deprive me of the ability to do my job.

To the contrary, Judge Furman has been highly sensitive to the Bankruptcy Court's needs and concerns. His first order provided that while he might appoint lead and liaison counsel before I ruled, he would be open to consideration as to whether such appointment should be amended if "the Bankruptcy Court rules that some, but less than all, of the claims now pending here may be asserted."<sup>54</sup> He asked counsel appearing before him to address, among other things, "the extent to which proceedings in this Court should proceed before rulings by the Bankruptcy Court, on the one hand, or should be deferred pending such rulings, on the other."<sup>55</sup> He provided, as I have, for an initial suspension of discovery, but provided further that his directive would not "preclude any discovery that is agreed or ordered to facilitate matters in the Bankruptcy Court, *provided that* to the extent any discovery is undertaken in the Bankruptcy Court, it shall be coordinated with this Court."<sup>56</sup> And he expressly provided that matters addressed in his order could be reconsidered "to the extent necessary or desirable to address any rulings

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<sup>53</sup> *JPML Decision*, --- F.Supp.2d at ---, 2014 U.S. Dist. LEXIS 79713, at \*4, 2014 WL 2616819, at \*2.

<sup>54</sup> June 24 Order Section IX.

<sup>55</sup> *Id.* Section X(B).

<sup>56</sup> *Id.* Section XII (italics in original).

by the Bankruptcy Court or any higher court exercising appellate authority over the Bankruptcy Court’s decision.”<sup>57</sup>

Given the respect evidenced by each of the Multidistrict Panel and Judge Furman of the Bankruptcy Court’s responsibility to determine matters pending here, there is no reasonable basis for a conclusion that Judge Furman would want—or allow—the Phaneuf Plaintiffs’ action, which has been added to the lengthy list of cases before him, to proceed on its own.

Thus, even if I had not already found that the Sale Order’s injunctive provisions already apply, New GM would be entitled to a preliminary injunction in its favor until I’ve ruled on the Threshold Issues.

Conclusion

For the above reasons, the Phaneuf Plaintiffs’ Ignition Switch Action, like the others, will be stayed pending further rulings in the matters before me, or my further order.

This decision is without prejudice to the rights of the plaintiffs in all of the other 87 Ignition Switch Actions, and of any other parties (including, without limitation, New GM and the GUC Trust) who might hereafter want to be heard on issues before me.

New GM is to settle an order in accordance with this ruling.

Dated: New York, New York  
July 30, 2014

*s/Robert E. Gerber*  
United States Bankruptcy Judge

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<sup>57</sup> *Id.* Section XVI.

# Exhibit 3

**Hearing Date and Time: To Be Determined**  
**Objection Deadline: To Be Determined**  
**Reply Deadline: To Be Determined**

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

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

**MOTION OF GENERAL MOTORS LLC PURSUANT  
TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE  
COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION  
(MONETARY RELIEF ACTIONS, OTHER THAN IGNITION SWITCH ACTIONS)**

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## INTRODUCTION

In June 2009, General Motors LLC (“**New GM**”) was a newly formed entity, created by the U.S. Treasury, to purchase substantially all of the assets of Motors Liquidation Company, formerly known as General Motors Corporation (“**Old GM**”). Through a bankruptcy-approved sale process, New GM acquired Old GM’s assets, free and clear of all liens, claims, liabilities and encumbrances, other than liabilities that New GM expressly assumed under a June 26, 2009 Amended and Restated Master Sale and Purchase Agreement (“**Sale Agreement**”).<sup>1</sup> The Bankruptcy Court approved the sale (“**363 Sale**”) from Old GM to New GM and the terms of the Sale Agreement in its “**Sale Order and Injunction**,” dated July 5, 2009.<sup>2</sup>

This Motion does not address the approximately 90 lawsuits (“**Ignition Switch Actions**”) against New GM that seek monetary relief (*i.e.*, where there was no accident causing personal injury, loss of life, or property damage) relating to allegedly defective ignition switches (“**Ignition Switch**”) in certain vehicle models. New GM previously filed a motion with this Court on April 21, 2014 (“**Ignition Switch Motion to Enforce**”) seeking to enforce the Sale Order and Injunction with respect to the Ignition Switch Actions, the Court held Scheduling Conferences on May 2, 2014 and July 2, 2014 with respect to that Motion, and the initial phase of that contested proceeding is being governed by Scheduling Orders entered by the Court on May 16, 2014 and July 11, 2014 (“**Scheduling Orders**”).<sup>3</sup>

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<sup>1</sup> A copy of the Sale Agreement is annexed hereto as Exhibit “A.”

<sup>2</sup> The full title of the Sale Order and Injunction is “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 by the Court on July 5, 2009.” A copy of the Sale Order and Injunction is annexed hereto as Exhibit “B.”

<sup>3</sup> As New GM did when it filed the Ignition Switch Motion to Enforce, New GM will seek a conference before the Court upon filing this Motion to Enforce to discuss procedural issues raised by the relief sought herein, including the possibility of consolidating this Motion with the Ignition Switch Motion to Enforce.

At the time the Ignition Switch Motion to Enforce was filed, New GM had recently instituted a recall (“**Ignition Switch Recall**”) covering vehicles that had an allegedly defective Ignition Switch, and New GM subsequently was named as a defendant in numerous lawsuits that referenced the Ignition Switch Recall. New GM later instituted various other recalls regarding vehicles and/or parts designed, manufactured and/or sold by Old GM. Like the plaintiffs in the actions that are covered by the Ignition Switch Motion to Enforce, other plaintiffs have filed actions against New GM based on these later recalls. These lawsuits were served on New GM beginning in late May 2014, and could not have been included in the Ignition Switch Motion to Enforce.

The timing of the filing of this Motion is dictated by the Scheduling Orders which set forth specific deadlines for the development of agreed upon factual stipulations, and the briefing of Threshold Issues (as defined in the Scheduling Orders). Generally, the Plaintiffs’ counsel related to this Motion are already involved in the Ignition Switch Motion to Enforce.<sup>4</sup> However, to the extent there is not complete overlap, and to ensure that all parties in interest have an opportunity to address common issues before the Court, this Motion is being filed now.

This Motion to Enforce also does not address any litigation involving an accident or incident causing personal injury, loss of life or property damage. Any such lawsuits against New GM that concern accidents or incidents that occurred prior to the closing of the 363 Sale are the subject of a separate motion filed by New GM at this time.<sup>5</sup>

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<sup>4</sup> It is significant, and unexplainable that, in connection with the Ignition Switch Actions, Plaintiffs’ attorneys entered into Voluntary Stay Stipulations recognizing the Court’s exclusive jurisdiction to decide issues relating to the Sale Order and Injunction. Yet the same counsel continue to file law suits against New GM in other courts for Retained Liabilities as if the Sale Order and Injunction does not exist (thus necessitating the filing of this Motion and other motions to enforce).

<sup>5</sup> Liabilities related to accidents or incidents that occurred after the closing of the 363 Sale that allegedly caused personal injury, loss of life or property damage were assumed by New GM pursuant to the Sale Order and

Furthermore, New GM has committed to repairing (at no cost to the owners) such vehicles that are the subject of a recalls conducted by New GM under the supervision of the National Highway Traffic Safety Administration (“NHTSA”). This Motion does not involve those repairs or costs.

Instead, this Motion to Enforce involves *only* litigation in which Plaintiffs seek economic losses, monetary and other relief against New GM relating to an Old GM vehicle or part (other than the Ignition Switch). Like the Ignition Switch Actions, liabilities for these types of claims were never assumed by New GM and are barred by the Court’s Sale Order and Injunction.<sup>6</sup>

Under the Sale Agreement approved by the Court, New GM assumed only three expressly defined categories of liabilities for vehicles and parts sold by Old GM: (a) post-sale accidents involving Old GM vehicles causing personal injury, loss of life or property damage; (b) repairs provided for under the “Glove Box Warranty”— a specific written warranty, of limited duration, that only covers repairs and replacement of parts; and (c) Lemon Law<sup>7</sup> claims essentially tied to the failure to honor the Glove Box Warranty. All other liabilities relating to vehicles and parts sold by Old GM were “Retained Liabilities” of Old GM. *See* Sale Agreement § 2.3(b).

New GM’s assumption of just these limited categories of liabilities was based on the independent judgment of U.S. Treasury officials as to which liabilities, if paid, would best

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Injunction, and the Sale Agreement. Lawsuits based on such circumstances are not the subject of this or any other motion filed by New GM with the Bankruptcy Court.

<sup>6</sup> To the extent the lawsuits that are the subject of this Motion to Enforce concern vehicles that were manufactured solely by New GM, and do not concern any allegedly defective parts manufactured by Old GM or concern Old GM conduct, those portions of such lawsuits are not implicated by this Motion to Enforce.

<sup>7</sup> *See* Sale Agreement § 1.1, at p. 11 (defining “Lemon Laws” as “a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.”).

position New GM for a successful business turnaround. It was an absolute condition of New GM's purchase offer that New GM not take on all of Old GM's liabilities. That was the bargain struck by New GM and Old GM, and approved by the Court as being in the best interests of Old GM's bankruptcy estate and the public.

The primary objections to the 363 Sale were made by prepetition creditors who essentially wanted New GM to assume their liabilities. But the Court found that, if not for New GM's purchase offer, which provided for a meaningful distribution to prepetition unsecured creditors, Old GM would have liquidated its assets and those unsecured creditors would have received nothing. Indeed, had the objectors been successful in opposing the Sale Order and Injunction, it would have been a pyrrhic victory, and disaster not only for them but for thousands of others who relied on the continued viability of the assets being sold to New GM. Judge Lewis Kaplan aptly summarized the point: "No sentient American is unaware of the travails of the automobile industry in general and of General Motors Corporation ([Old] GM) in particular. As the Bankruptcy Court found, [Old] GM will be forced to liquidate — with appalling consequences for its creditors, its employees, and our nation — unless the proposed sale of its core assets to a newly constituted purchaser is swiftly consummated." *In re Gen. Motors Corp.*, No. M 47 (LAK), 2009 WL 2033079, at \*1 (S.D.N.Y. July 9, 2009).

One of the groups that objected most vigorously to the 363 Sale was a coalition representing Old GM vehicle owners. That group included State Attorneys General, individual accident victims, the Center for Auto Safety, Consumer Action, and other consumer advocacy groups. The gist of their objections was: as long as New GM was assuming any of Old GM liabilities, then it should assume *all* vehicle-owner liabilities as well. In particular, the objectors argued, unsuccessfully, that New GM should assume successor liability claims, all warranty

claims (express and implied), economic damages claims based upon defects in Old GM vehicles and parts, and tort claims, in addition to the limited categories of claims that New GM already agreed to assume.

A critical element of protecting the integrity of the bankruptcy sale process, however, was to ensure that New GM, as the good faith purchaser for substantial value, received the benefit of its Court-approved bargain. This meant that New GM would be insulated from lawsuits by Old GM's creditors based on Old GM liabilities it did not assume. The Sale Agreement and the Sale Order and Injunction were expressly intended to provide such protections. The Order thus enjoined such proceedings against New GM, and expressly reserved exclusive jurisdiction to this Court to ensure that the sale transaction it approved would not be undermined or collaterally attacked.

As this Court may be aware, New GM recently sent various recall notices to NHTSA concerning issues in certain vehicles and parts, many of which were manufactured by Old GM. Shortly after New GM issued these recall notices, various Plaintiffs sued New GM for claimed economic losses, monetary and other relief allegedly resulting from the issues addressed by the recalls. These lawsuits, in part, concern Old GM vehicles and/or parts—the very type of claims retained by Old GM for which New GM has no liability.

This Motion to Enforce, thus, presents the very same issue that the Court is addressing in the Ignition Switch Motion to Enforce:

**May New GM be sued in violation of this Court's Sale Order and Injunction for economic losses, monetary and other relief relating to vehicles and parts manufactured and/or sold by Old GM?**

As is the case in the Ignition Switch Actions, Plaintiffs in the cases based on the later recalls assert claims, either in whole or in part, for liabilities that Old GM retained under the Sale

Order and Injunction. Plaintiffs apparently decided to not appear in this Court to challenge the Sale Order and Injunction; and with good reason: they know that this Court has previously enforced the Sale Order and Injunction, and they were seeking to evade this Court's injunction that bars them from suing New GM on account of liabilities retained by Old GM.

Simply put, Plaintiffs cannot ignore the Court's Sale Order and Injunction, and proceed in other courts as though it never existed. The law is settled that persons subject to a Court's injunction do not have that option. As the United States Supreme Court explained in *Celotex Corp. v. Edwards*, the rule is "well-established" that "persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." 514 U.S. 300, 306 (1995).

Based on this Court's prior proceedings and Orders, New GM has brought this Motion to Enforce to require the plaintiffs (collectively, the "**Plaintiffs**") in the actions listed in Schedule 1 attached hereto ("**Monetary Relief Actions**") to comply with the Court's Sale Order and Injunction by directing Plaintiffs to (a) cease and desist from further prosecuting against New GM claims that are barred by the Sale Order and Injunction, (b) dismiss with prejudice those void claims brought in violation of the Sale Order and Injunction, and (c) specifically identify which claims against New GM they believe are not otherwise barred by the Sale Order and Injunction.<sup>8</sup>

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<sup>8</sup> At this time, the following Monetary Relief Actions have been commenced against New GM: (i) *Yagman v. General Motors Company, et al.* (a copy of the *Yagman* Complaint is annexed hereto as Exhibit "C"); (ii) *Andrews v. General Motors LLC* (a copy of the *Andrews* Complaint is annexed hereto as Exhibit "D"); (iii) *Stevenson v. General Motors LLC* (a copy of the *Stevenson* Complaint is annexed hereto as Exhibit "E"); and (iv) *Jones v. General Motors LLC* (a copy of the *Jones* Complaint is annexed hereto as Exhibit "F").

New GM reserves the right to supplement the list of Monetary Relief Actions contained in Schedule 1 in the event additional cases are brought against New GM that implicate similar provisions of the Sale Order and Injunction.



**BACKGROUND STATEMENT OF FACTS**

1. In June 2009, in the midst of a national financial crisis, Old GM was insolvent with no alternative other than to seek bankruptcy protection to sell its assets. New GM, a newly created, government-sponsored entity, was the only viable purchaser, but it would not purchase Old GM’s assets unless the sale was free and clear of all liens and claims (except for the claims it expressly agreed to assume). The Court approved this sale transaction, which set the framework for New GM to begin its business operations. During the last five years, New GM has operated its business based on the fundamental structure of the Sale Agreement and Sale Order and Injunction — a new business enterprise that would not be burdened with liabilities retained by Old GM. The Monetary Relief Actions represent a collateral attack on this Court’s Sale Order and Injunction. The Plaintiffs may not rewrite, years later, the Court-approved sale to a good faith purchaser, which was affirmed on appeal, and which has been the predicate ever since for literally millions of transactions between New GM and third parties.

**I. OLD GM FILED FOR PROTECTION UNDER THE BANKRUPTCY CODE IN JUNE 2009.**

2. On June 1, 2009, Old GM and certain of its affiliates filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Old GM simultaneously filed a motion seeking approval of the original version of the Sale Agreement (“**Original Sale Agreement**”), pursuant to which substantially all of Old GM’s assets were to be sold to New GM (“**Sale Motion**”). The Original Sale Agreement (like the Sale Agreement) provided that New GM would assume only certain specifically identified liabilities (*i.e.*, the “**Assumed Liabilities**”); all other liabilities would be retained by Old GM (*i.e.*, the “**Retained Liabilities**”).

**A. Objectors to the Sale Motion Argued that New GM Should Assume Additional Liabilities of the Type Plaintiffs Now Assert in the Monetary Relief Actions.**

3. Many objectors, including various State Attorneys General, certain individual accident victims (“**Product Liability Claimants**”), the Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizens (collectively, the “**Consumer Organizations**”), the Ad Hoc Committee of Consumer Victims, and the Official Committee of Unsecured Creditors challenged various provisions in the Original Sale Agreement relating to actual and potential tort and contract claims held by Old GM vehicle owners. These objectors argued that the Court should not approve the Original Sale Agreement unless New GM assumed additional Old GM liabilities (beyond the Glove Box Warranty), including those now being asserted by the Plaintiffs in the Monetary Relief Actions.

4. The Original Sale Agreement was amended so that New GM would assume Lemon Law claims, as well as personal injury, loss of life and property damage claims for accidents taking place after the closing of the 363 Sale.<sup>9</sup> Product Liability Claimants and the Consumer Organizations were not satisfied and pressed their objections, arguing that New GM should assume broader warranty-related claims as well as successor liability claims.<sup>10</sup> Representatives from the U.S. Treasury declined to make further changes. *See* Hr’g Tr. 151:1 – 10, July 1, 2009. The Court found that New GM would not have consummated the “[t]ransaction (i) if the sale . . . was not free and clear of all liens, claims, encumbrances, and

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<sup>9</sup> Assumption of the Glove Box Warranty was provided for in the Original Sale Agreement.

<sup>10</sup> Numerous State Attorneys General also objected, seeking to expand the definition of New GM’s Assumed Liabilities to include implied warranty claims. *Castillo v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09–00509, 2012 WL 1339496, at \*5 (Bankr. S.D.N.Y. April 17, 2012), *aff’d*, 500 B.R. 333 (S.D.N.Y. 2013). The *Castillo* decision has been appealed to the Second Circuit and that appeal remains pending.

other interests . . . , including rights or claims based on any successor or transferee liability or (ii) if [New GM] 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.” *See* Sale Order and Injunction ¶ DD. The Court ultimately overruled the objectors on these issues. *See id.*, ¶ 2.

**B. The Court Issued Its Sale Order And Injunction, And The Product Liability Claimants And Others Appealed Because They Objected To The Fact That New GM Was Not Assuming *Their* Liabilities.**

5. The Court held a three-day hearing on the Sale Motion, then issued its Sale Decision on July 5, 2009, finding that the only alternative to the immediate sale to New GM pursuant to the Sale Agreement was a liquidation of Old GM, in which case unsecured creditors, such as the Plaintiffs now suing New GM, would receive nothing. *See In re Gen. Motors Corp.*, 407 B.R. 463, 474 (Bankr. S.D.N.Y. 2009). The Court analyzed the law of successor liability at length (*see id.* at 499-506), and ruled that: “[T]he law in this Circuit and District is clear; the Court will permit [Old] GM’s assets to pass to the purchaser [New GM] *free and clear of successor liability claims*, and in that connection, will issue the requested findings and associated injunction.” *Id.* at 505-06 (emphasis added).

6. In approving the 363 Sale, the Court specifically found that New GM was a “good faith purchaser, for sale-approval purposes, and also for the purpose of the protections section 363(m) provides.” *Id.* at 494 (citing 11 U.S.C. § 363(m)). The Sale Order and Injunction expressly enjoined parties (like the Plaintiffs in the Monetary Relief Actions) from proceeding against New GM with respect to Retained Liabilities at any time in the future. *See* Sale Order and Injunction, ¶¶ 8, 47. The Court recognized that if a Section 363 purchaser like New GM did not obtain protection from claims against Old GM, like successor liability claims, it would pay

less for the assets because of the risks of known and unknown liabilities. *Id.* at 500; *see* 11 U.S.C. § 363. The Court further recognized that, under the law, a Section 363 purchaser could choose which liabilities of the debtors to assume (*id.* at 496), and that the U.S. Treasury, on New GM's behalf, could rightfully condition its purchase offer on its refusal to assume the liabilities now being asserted by Plaintiffs in the Ignition Switch Actions.

7. Old GM, the proponent of the asset sale transaction, presented evidence establishing that if the Sale Agreement was not approved, Old GM would have liquidated. In a liquidation, objecting creditors seeking incremental recoveries would have ended up with nothing, given that the book value of Old GM's global assets was \$82 billion, the book value of its global liabilities was \$172 billion (*see Gen. Motors*, 407 B.R. at 475), and that, in a liquidation, the value of Old GM's assets was probably less than 10% of stated book value (*id.*).

8. Objectors also presented evidence that the book value of certain contingent liabilities was about \$934 million. *Id.* at 483. The Court noted that contingent liabilities were "difficult to quantify." *Id.* And, if the book value of all contingent liabilities was understated, that simply meant Old GM was even more insolvent—an even greater reason for New GM to decline to assume the liabilities retained by GM.

9. Whether Old GM presented evidence regarding a particular claim or specific defect was not germane to this Court's approval of the Sale Order and Injunction. Indeed, as the Court found in the Sale Order and Injunction, the proper analysis for approving the asset sale was whether Old GM obtained the "highest or best" available offer for the Purchased Assets. *See* Sale Order and Injunction, ¶ G. In contrast, the quantification of liabilities left behind with Old GM (*i.e.*, the Retained Liabilities) was pertinent to a different phase of the bankruptcy case (the claims process) which did not involve New GM.

10. New GM's refusal to assume a substantial portion of Old GM's liabilities was fundamental to the sale transaction and was widely disclosed by Old GM to all interested parties. Indeed, the Product Liability Claimants objected to and appealed the Sale Order and Injunction to specifically challenge this aspect of the sale. *See Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010). On appeal, although the District Court focused on the appellants' failure to seek a stay of the Sale and on equitable mootness principles, it also found that this Court had jurisdiction to enjoin successor liability claims. *See id.* at 59-60. Indeed, the Sale Order and Injunction was affirmed on appeal by two different District Court Judges. *Id.* ; *Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65 (S.D.N.Y. 2010). There were no further appeals.<sup>11</sup>

**C. Upon Approval Of The Sale Agreement And Issuance Of The Sale Order And Injunction, New GM Assumed Certain Narrowly Defined Liabilities, But The Bulk Of Old GM's Liabilities Remained With Old GM.**

11. Under the Sale Agreement and the Sale Order and Injunction, New GM became responsible for "Assumed Liabilities." *See* Sale Agreement § 2.3(a). These included liability claims for post-sale accidents and Lemon Law claims, as well as the Glove Box Warranty—a written warranty of limited duration (typically three years or 36,000 miles, whichever comes first) provided at the time of sale for repairs and replacement of parts. The Glove Box Warranty expressly excludes economic damages. New GM assumed no other Old GM warranty obligations, express or implied:

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

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<sup>11</sup> The Product Liability Claimants appealed the District Court's decision, but pursuant to a stipulation so-ordered by the Second Circuit Court of Appeals on September 23, 2010, the appeal was withdrawn. The *Parker* decision was also appealed, but that appeal was dismissed as equitably moot because the appellant had not obtained a stay pending appeal. *See Parker v. Motors Liquidation Company*, Case No. 10-4882-bk (2d Cir. July 28, 2011).

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.***

Sale Order and Injunction, ¶ 56 (emphasis added).

12. Independent of the Assumed Liabilities under the Sale Agreement, New GM covenanted to perform Old GM’s recall responsibilities under federal law. *See* Sale Agreement ¶ 6.15(a). But there were no third party beneficiary rights granted under the Sale Agreement with respect to that covenant (*see* Sale Agreement § 9.11), and there is no private right of action for third parties to sue for a breach of a recall obligation. *See Ayers v. Gen. Motors*, 234 F.3d 514, 522-24 (11th Cir. 2000); *Handy v. Gen. Motors Corp.*, 518 F.2d 786, 787-88 (9th Cir 1975). Thus, New GM’s recall covenant provides no basis for the Plaintiffs to sue New GM for economic losses, monetary or other relief relating to a vehicle or part sold by Old GM.

13. All liabilities of Old GM not expressly defined as Assumed Liabilities constituted “Retained Liabilities” that remained obligations of Old GM. *See* Sale Agreement §§ 2.3(a), 2.3(b). Retained Liabilities include economic losses and other monetary relief relating to vehicles and parts manufactured by Old GM (the primary claims asserted by the Plaintiffs in the Monetary Relief Actions) such as:

- (a) liabilities “arising out of, relating 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.” Sale Agreement § 2.3(b)(xvi), *see also id.* ¶ 6.15(a). This would include liability based on state consumer statutes, except Lemon Law claims.
- (b) All liabilities (other than Assumed Liabilities) of Old GM based upon contract, tort or any other basis. Sale Agreement § 2.3(b)(xi). This covers claims based on negligence, concealment and fraud.

- (c) All liabilities relating to vehicles and parts sold by Old GM with a design defect.<sup>12</sup>
- (d) All Liabilities based on the conduct of Old GM including any allegation, statement or writing attributable to Old GM. This covers fraudulent concealment type claims. *See* Sale Order and Injunction, ¶ 56.
- (e) All claims based on the doctrine of “successor liability.” *See, e.g.*, Sale Order and Injunction, ¶ 46.

**D. The Court’s Sale Order And Injunction Expressly Protects New GM From Litigation Over Retained Liabilities.**

14. On July 10, 2009, the parties consummated the Sale. New GM acquired substantially all of the assets of Old GM free and clear of all liens, claims and encumbrances, except for the narrowly defined Assumed Liabilities. In particular, paragraphs 46, 9, and 8 of the Sale Order and Injunction provide that New GM would have no responsibility for any liabilities (except for Assumed Liabilities) relating to the operation of Old GM’s business, or the production of vehicles and parts before July 10, 2009:

Except for the Assumed Liabilities expressly set forth in the [Sale Agreement] . . . [New GM] . . . shall [not] 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 [Old GM] . . . prior to the Closing Date . . . . Without limiting the foregoing, [New GM] shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity . . . and products . . . liability, *whether known or unknown* as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated.

Sale Order and Injunction, ¶ 46 (emphasis added); *see also id.*, ¶ 9(a) (“(i) no claims other than Assumed Liabilities, will be assertable against the Purchaser; (ii) the Purchased Assets [are] transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances) . . . .”); and *id.*, ¶ 8 (“All persons and entities . . . holding claims against [Old GM]

<sup>12</sup> *See* Sale Order and Injunction, ¶ AA; *see also Trusky v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09–09803, 2013 WL 620281, at \*2 (Bankr. S.D.N.Y. Feb. 19, 2013).



or the Purchased Assets arising under or out of, in connection with, or in any way relating to [Old GM], the Purchased Assets, ***the operation of the Purchased Assets*** prior to the Closing . . . are forever barred, estopped, and permanently enjoined . . . from asserting [such claims] against [New GM]. . . .”) (emphasis added).

15. Anticipating the possibility that New GM might be wrongfully sued for Retained Liabilities, the Sale Order and Injunction permanently enjoins claimants from asserting claims of the type made in the Monetary Relief Actions:

[A]ll persons and entities . . . holding liens, claims and encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against [Old GM] 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 [Old GM], the Purchased Assets, the operation of the Purchased Assets prior to the Closing . . . are forever barred, estopped, and permanently enjoined . . . from asserting against [New GM]. . . such persons’ or entities’ liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.***

Sale Order and Injunction, ¶ 8 (emphasis added); *see also id.*, ¶ 47.

16. The Court specifically found that the provisions of the Sale Order and Injunction, as well as the Sale Agreement, were binding on all creditors, ***known and unknown*** alike. *See* Sale Order and Injunction, ¶ 6 (“This [Sale] Order and [Sale Agreement] “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 . . . .”) (emphasis added)); *see also id.*, ¶ 46. In short, except for Assumed Liabilities, claims based on Old GM vehicles and parts remained the legal responsibility of Old GM, and are not the responsibility of New GM.



17. Finally, paragraph 71 of the Sale Order and Injunction makes this Court the gatekeeper to enforce its own Order. It provides for this Court's *exclusive jurisdiction* over matters and claims regarding the 363 Sale, including jurisdiction to protect New GM against any Retained Liabilities of Old GM:

*This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the [Sale Agreement], all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, . . . , in all respects, including, but not limited to, retaining jurisdiction to . . . (c) resolve any disputes arising under or related to the [Sale Agreement], 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 . . . .*  
(Emphasis added.)

## **II. NEW GM HAS RECALLED CERTAIN VEHICLES AND IN RESPONSE, PLAINTIFFS HAVE FILED MONETARY RELIEF ACTIONS.**

18. Consistent with its obligations under the Sale Order and Injunction, New GM, over the last several months, has informed NHSTA of certain issues in various vehicles and parts, including those manufactured by Old GM, and that New GM would conduct recalls to remedy the problems (at no cost to the owners). New GM sent NHTSA-approved recall notices to all vehicle owners subject to the recalls. All of the recalls are underway and New GM already has started to fix the vehicles identified by the recalls. NHTSA, as the government agency responsible for overseeing the technical and highly-specialized domain of automotive safety defects and recalls, administers the rules concerning the content, timing, and means of delivering a recall notice to affected motorists and dealers. *See* 49 C.F.R. § 554.1; 49 U.S.C. § 30119.

19. Since the various recalls were announced, Monetary Relief Actions have been filed against New GM related to these recalls, including recalls of vehicles and parts sold or manufactured by Old GM (*see* Schedule 1, attached to this Motion); additional similar cases will likely be filed in the future. At this time, these cases include four class actions.

20. The non-ignition switch Monetary Relief Actions assert claims that are barred by the Sale Agreement and the Sale Order and Injunction. The claims at issue that are the subject of this Motion to Enforce are for economic losses, monetary and other relief premised on alleged defects in vehicles and components manufactured and/or sold by Old GM, which are unrelated to any accident causing personal injury, loss of life or property damage. In their complaints, the Plaintiffs, at times, conflate Old GM and New GM, but the Sale Order and Injunction is clear that New GM is a separate entity from Old GM (*see* Sale Order and Injunction, ¶ R), and is not liable for successor liability claims (*see, e.g., id.*, ¶¶ 46, 47). To be sure, the claims asserted by the Plaintiffs in the Monetary Relief Actions are varied, and in some instances, because of the imprecise factual allegations, it is unclear whether there might be a viable cause of action (of the many) being asserted against New GM. What is clear, however, is that the crux of certain of the Plaintiffs' claims is a problem in vehicles and/or parts manufactured and/or sold by Old GM. Claims based on that factual predicate are Retained Liabilities and may not be brought against New GM.<sup>13</sup>

21. This Court is uniquely situated to enforce its own Order and interpret what the parties to the Sale Agreement agreed to, and what issues were raised and resolved in connection with the 363 Sale. This Motion to Enforce requests that the Court enforce the Sale Order and Injunction by directing Plaintiffs to cease and desist from pursuing claims against New GM for Retained Liabilities of Old GM, direct Plaintiffs to dismiss with prejudice those void claims that are barred by the Sale Order and Injunction, and direct Plaintiffs to specifically identify which

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<sup>13</sup> The allegations and claims asserted in the Monetary Relief Actions include Retained Liabilities, such as implied warranty claims, successor liability claims, and miscellaneous tort and statutory claims premised in whole or in part on the alleged acts or omissions of Old GM. *See* Schedule 2 annexed hereto for a sample of such statements, allegations and/or causes of action.

claims they may properly pursue against New GM that are not in violation of the Court’s Sale Order and Injunction.

**NEW GM’S ARGUMENT TO ENFORCE THE COURT’S SALE ORDER AND INJUNCTION**

22. The Plaintiffs do not have the choice of simply ignoring the Court’s Sale Order and Injunction. As the Supreme Court expressed in its *Celotex* decision:

If respondents believed the Section 105 Injunction was improper, they should have challenged it in the Bankruptcy Court, like other similarly situated bonded judgment creditors have done . . . Respondents chose not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court’s Section 105 Injunction in the federal courts in Texas. This they cannot be permitted to do without seriously undercutting the orderly process of the law.

514 U.S. at 313. These settled principles bind Plaintiffs in the Monetary Relief Actions. Those who purchased vehicles or parts manufactured by Old GM, whether they were a known or unknown creditor at the time, are subject to the terms of the Court’s Sale Order and Injunction, and are barred by this Court’s Injunction from suing New GM on account of Old GM’s Retained Liabilities.

**I. THIS COURT’S SALE ORDER AND INJUNCTION SHOULD BE ENFORCED.**

23. It is well settled that a “Bankruptcy Court plainly ha[s] jurisdiction to interpret and enforce its own prior orders.” *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *In re Wilshire Courtyard*, 729 F.3d 1279, 1290 (9th Cir. 2013) (affirming bankruptcy court’s post-confirmation jurisdiction to interpret and enforce its orders; “[i]nterpretation of the Plan and Confirmation Order is the only way for a court to determine the essential character of the negotiated Plan transactions in a way that reflects the deal the parties struck in chapter 11 proceedings”); *In re Cont’l Airlines, Inc.*, 236 B.R. 318, 326 (Bankr. D. Del. 1999) (“In the bankruptcy context, courts have specifically, and consistently, held that the bankruptcy court retains jurisdiction, *inter alia*, to enforce its confirmation order.”); *U.S. Lines, Inc. v. GAC*

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

24. Consistent with these authorities, this Court retained subject matter jurisdiction to enforce its Sale Order and Injunction. Indeed, this is not the first time that this Court has been asked to enforce its injunction against plaintiffs improperly seeking to sue New GM for Old GM’s Retained Liabilities. *See In re Motors Liquidation Co.*, No. 09-50026 (REG), 2011 WL 6119664 (Bankr. S.D.N.Y. 2011) (ordering various plaintiffs to dismiss with prejudice civil actions in which they had brought claims against New GM that are barred by the Sale Order and Injunction); *Castillo v. Gen. Motors Co. (In re Motors Liquidation Co.)*, Adv. Proc. No. 09-00509 (Bankr. S.D.N.Y.), Hr’g Tr. 9:3-9:14, May 6, 2010 (“when you are looking for a declaratory judgment on an agreement that I approved [*i.e.*, the Sale Agreement] that was affected by an order that I entered [*i.e.*, the Sale Order and Injunction], and with the issues permeated by bankruptcy law as they are, and which also raise issues as to one or more injunctions that I entered, ***how in the world would you have brought this lawsuit in Delaware Chancery Court. I’m not talking about getting in personam jurisdiction or whether you can get venue over a Delaware corporation in Delaware. I’m talking about what talks and walks and quacks like an intentional runaround of something that’s properly on the watch of the***”

*U.S. Bankruptcy Court for the Southern District of New York.*”) (emphasis added); *Castillo*, 2012 WL 1339496 (entering judgment in favor of New GM) (affirmed by 500 B.R. 333, 335 (S.D.N.Y. 2013)); *see also Trusky*, 2013 WL 620281, at \*2 (finding that “claims for design defects [of 2007-2008 Chevrolet Impalas] may not be asserted against New GM and that “New GM is not liable for Old GM’s conduct or alleged breaches of warranty”).

25. This Court is also presently addressing New GM’s Ignition Switch Motion to Enforce, which raises issues that overlap and are indistinguishable from the issues raised herein. Specifically, both this Motion to Enforce and the Ignition Switch Motion to Enforce concern Retained Liabilities stemming from vehicles and/or parts manufactured and/or sold by Old GM. This Court has exercised jurisdiction over the issues raised in the Ignition Switch Motion to Enforce; the Court should do the same here.

26. Contrary to New GM’s bargained for rights under the Sale Agreement and the Court’s Sale Order and Injunction, Plaintiffs in the Monetary Relief Actions are suing New GM, in part, for defects in Old GM vehicles and/or parts in various courts. As in the Ignition Switch Actions, Plaintiffs may not simply ignore the Court’s injunction through these collateral attacks, especially when the Sale Order and Injunction is a final order no longer subject to appeal. *See Celotex Corp.*, 514 U.S. at 306, 313 (“persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed”) (quoting *GTE Sylvania, Inc. v. Consumers Union of U. S., Inc.*, 445 U.S. 375, 386 (1980)); *Pratt v. Ventas, Inc.*, 365 F.3d 514, 520 (6th Cir. 2004) (applying doctrine to dismiss suits filed in violation of injunction in confirmation order entered by bankruptcy court); *In re McGhan*, 288 F.3d 1172, 1180-81 (9th Cir. 2002) (applying doctrine to enforce discharge order in favor of debtors and holding that only the bankruptcy court could grant relief from the order); *see also In re Gruntz*,



2010 Saturn Skys, whose vehicles were recalled for an ignition switch defect.” Id., ¶ 25. There are no other specific exclusions from the purported class of plaintiffs and, thus, such class necessarily includes vehicles manufactured by Old GM.

30. In connection with the Ignition Switch Motion to Enforce, this Court addressed similar allegations by a group of plaintiffs (*i.e.*, the *Phaneuf* Plaintiffs) in an Ignition Switch Action. The *Phaneuf* Plaintiffs argued that the Sale Order and Injunction did not apply to them because the class was also limited to individuals who purchased GM vehicles after July 10, 2009. However, because the vehicles in question were not limited to New GM vehicles, but included Old GM vehicles as well, this Court ruled

that the sale order now applies, though it is possible, without prejudging any issues, that, after I hear from the other 87 litigants, I might ultimately rule that it does not apply to some kinds of claims and that, even if the sale order didn't apply, that New GM would be entitled to a preliminary injunction temporarily staying the *Phaneuf* plaintiffs' action from going forward, pending a determination by me on the other 87 litigants' claims under the standards articulated by the circuit in *Jackson Dairy* and its progeny.

Hr'g Tr. 91:12-21, July 2, 2014. Accordingly, as was the case with the *Phaneuf* Plaintiffs, the Sale Order and Injunction applies to the *Andrews* Action in the first instances, subject to the rights of the *Andrews* Plaintiff – in this Court -- to argue that it should not apply.

31. Similarly, as in the Ignition Switch Actions, certain Plaintiffs attempt to impose “successor” liability upon New GM, but New GM is not a successor to Old GM and did not assume any liabilities in connection with successor or transferee liability. This is expressly provided by the Court's Sale Order and Injunction:

***The Purchaser shall not be deemed***, as a result of any action taken in connection with the [Sale Agreement] 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***







statements attributed to New Chrysler state or imply that it assumed liability to pay consequential or other damages based upon pre-existing defects in vehicles manufactured and sold by Old Carco.”).<sup>14</sup> Finally, as a practical matter, New GM will make the necessary repairs as part of the various on-going recalls, which is all that the Glove Box Warranty would have required. Hence, any claims, if they existed, are moot.

34. Similarly, the Sale Agreement and the Sale Order and Injunction provide that the implied warranty and other implied obligation claims that Plaintiffs assert here are Retained Liabilities for which New GM is not responsible. *See* Sale Order and Injunction, ¶ 56 (New GM “is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, ***including implied warranties*** and statements in materials such as, without limitation, individual customer communications, owner’s manuals, advertisements, and other promotional materials, catalogs and point of purchase materials.” (emphasis added)); *see also* Sale Agreement § 2.3(b)(xvi) (one of the Retained Liabilities of Old GM was any liabilities “arising out of, related to or in connection with any (A) ***implied warranty*** or other ***implied obligation arising under statutory or common law*** without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to [Old GM].” (emphasis added)).

35. In short, any breach of warranty claims Plaintiffs pursue relating to Old GM vehicles or parts (whether express or implied) improperly seek damages against New GM in violation of the Sale Order and Injunction.

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<sup>14</sup> *See also Tulacro v. Chrysler Group LLC, et al.*, Adv. Proc. No. 11-09401 (Bankr. S.D.N.Y. Oct. 28, 2011) [Dkt. No. 18] (Exhibit “G” annexed hereto); *Tatum v. Chrysler Group LLC*, Adv. Proc. No. 11-09411 (Bankr. S.D.N.Y. Feb. 15, 2012) [Dkt. No. 73] (Exhibit “H” annexed hereto).



nonconformity substantially impairs the use or value of the vehicle, and (3) the nonconformity continues to exist after a reasonable number of repair attempts.<sup>15</sup>

Judge Bernstein ultimately found that the claimants there did “not plead that any of the[m] brought their vehicles in for servicing, or that New Chrysler was unable to fix the problem after a reasonable number of attempts.” *Id.* at 407. As was the case in *Old Carco*, none of the Plaintiffs here have pled that they brought their vehicles in to be fixed and, after a reasonable number of attempts, that they could not be fixed. They merely base their claims on the recall notices and letters to owners that New GM previously issued.

### CONCLUSION

39. New GM was created to purchase the assets of Old GM pursuant to the Sale Agreement. The limited category of liabilities that New GM agreed to assume as part of the purchase was the product of a negotiated bargain, which was approved by this Court in July 2009. Plaintiffs in the Monetary Relief Actions have essentially ignored this; they wrongfully treat New GM and Old GM interchangeably and are pursuing Old GM claims that they cannot lawfully pursue against New GM.

40. Schedule 2 provides examples of allegations that on their face relate to the Retained Liabilities asserted by the Plaintiffs in the Monetary Relief Actions. Set forth below are illustrations of what Plaintiffs have improperly alleged in such Actions.

- (a) **Implied Warranty.** *See, e.g., See, e.g., Yagman Compl.*, ¶ 16 (“defendants and each of them violated the warranty of merchantability . . . .”); *id.*, ¶ 17 (“defendants violated the warranty of fitness for a particular use of their product”); *Stevenson Compl.*, ¶ 185 (“Old GM breached the implied warranty of

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<sup>15</sup> *Old Carco*, 492 B.R. at 406 (citing *Sipe v. Fleetwood Motor Homes of Penn., Inc.*, 574 F. Supp. 2d 1019, 1028 (D. Minn. 2008); *McLaughlin v. Chrysler Corp.*, 262 F. Supp. 2d 671, 679 (N.D.W. Va. 2002); *Baker v. Chrysler Corp.*, Civ. A. No. 91-7092, 1993 WL 18099, at \*1-2 (E.D. Pa. Jan. 25, 1993); *Palmer v. Fleetwood Enterp., Inc.*, Nos. C040161, C040765, 2003 WL 21228864, at \*4 (Cal. Ct. App. May 28, 2003); *Iams v. DaimlerChrysler Corp.*, 174 Ohio App. 3d 537, 883 N.E.2d 466, 470 (2007); *DiVigence v. Chrysler Corp.*, 345 N.J. Super. 314, 785 A.2d 37, 48 (App. Div. 2001)).

merchantability by manufacturing and selling Defective Vehicles containing defects leading to the potential safety issues during ordinary driving conditions.”).

- (b) **Implied Obligations under Statute or Common Law.** *See, e.g., Andrews* Compl. (asserting causes of action under California Consumer Legal Remedies Act and California Unfair Competition Law); *Stevenson* Compl. (asserting causes of action under California Consumer Legal Remedies Act and California Unfair Competition Law); *Jones* Complaint (asserting causes of action under States’ consumer protection statutes).
- (c) **Successor Liability.** *See, e.g., Yagman* Compl. (not differentiating between Old GM and New GM); *Andrews* Compl., ¶ 59 (“GM inherited from Old GM a company that valued cost-cutting over safety . . . .”); *id.*, ¶ 24 (alleging that New GM knew “[f]rom its inception” about many of the defects that existed in Old GM vehicles); *Stevenson* Compl., ¶¶ 65, 72-74 (allegations discussing Old GM’s conduct).
- (d) **Design Defect.** *See, e.g., Yagman* Compl., ¶ 12 (“Defendant GM manufactured a defective vehicle”); *id.*, ¶ 13 (“Defendant GM sold a defective vehicle.”); *Andrews* Compl., ¶¶ 17-21 (alleging that vehicles manufactured by Old GM were sold with a defect); *id.*, ¶ 232 (asserting as a common class question “[w]hether numerous GM vehicles suffer from serious defects”).
- (e) **Tort, Contract or Otherwise.** *See, e.g., Andrews* Compl. (asserting a cause of action based on fraudulent concealment); *Stevenson* Compl. (asserting causes of action based on fraudulent concealment and tortious interference with contract); *Jones* Complaint (asserting causes of action based on fraudulent concealment and tortious interference with contract).
- (f) **The Conduct of Old GM.** *See, e.g., Yagman* Compl., ¶ 14 (“Defendant GM knew the vehicle [*i.e.*, a 2007 Buick Lucerne] was defective at the time it was put into the stream of commerce for sale and was sold); *Andrews* Compl., ¶ 3 (“GM enticed Plaintiff and all GM vehicle purchasers [not differentiating between purchasers who bought from Old GM and New GM] to buy vehicles that have now diminished in value as the truth about the GM brand has come out, and a stigma has attached to all GM-branded vehicles.”); *Stevenson* Compl., ¶¶ 65, 72-74 (allegations discussing Old GM’s conduct); *Jones* Compl., ¶¶ 65, 72-74 (allegations discussing Old GM’s conduct).

41. New GM has no liability or responsibility for these Retained Liability claims and, under the Sale Order and Injunction, Plaintiffs in the Monetary Relief Actions are enjoined from bringing them against New GM, and their pursuit of these claims violates the Court’s injunction. *See, e.g., Sale Order and Injunction*, ¶¶ 8, 47. Accordingly, the Court should enforce the terms

of its Sale Order and Injunction by ordering Plaintiffs to promptly dismiss all of their claims that violate the provisions of that Order, to cease and desist from all efforts to assert such claims against New GM that are void because of the Sale Order and Injunction, and to specifically identify which claims, if any, they might have which are not barred by this Court's Sale Order and Injunction.

#### **NOTICE AND NO PRIOR REQUESTS**

42. Notice of this Motion to Enforce has been provided to (a) counsel for Plaintiffs in each of the Monetary Relief Actions, (b) Designated Counsel and other lead counsel involved in the Ignition Switch Motion to Enforce, (c) counsel for Motors Liquidation Company General Unsecured Creditors Trust, and (d) the Office of the United States Trustee. New GM submits that such notice is sufficient and no other or further notice need be provided.

43. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, New GM respectfully requests that this Court: (i) enter an order substantially in the form set forth as Exhibit "I" annexed hereto, granting the relief sought herein; and (ii) grant New GM such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
August 1, 2014

Respectfully submitted,

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# Exhibit 4

**Hearing Date and Time: TO BE DETERMINED**  
**Objection Deadline: TO BE DETERMINED**  
**Reply Deadline: TO BE DETERMINED**

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

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

**MOTION OF GENERAL MOTORS LLC PURSUANT  
 TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THIS COURT'S  
 JULY 5, 2009 SALE ORDER AND INJUNCTION AGAINST  
 PLAINTIFFS IN PRE-CLOSING ACCIDENT LAWSUITS**





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## INTRODUCTION

In June 2009, General Motors LLC (“**New GM**”) was a newly-formed entity, created by the U.S. Treasury, to purchase substantially all of the assets of Motors Liquidation Company, formerly known as General Motors Corporation (“**Old GM**”). Through a bankruptcy-approved sale process, New GM acquired Old GM’s assets, free and clear of all liens, claims, liabilities and encumbrances of Old GM, other than a limited and defined set of liabilities that New GM expressly assumed under a June 26, 2009 Amended and Restated Master Sale and Purchase Agreement (“**Sale Agreement**”).<sup>1</sup> The Bankruptcy Court approved the sale from Old GM to New GM (“**363 Sale**”) and the terms of the Sale Agreement in its “**Sale Order and Injunction,**” dated July 5, 2009.<sup>2</sup>

This Motion does not address the approximately 90 lawsuits (“**Ignition Switch Actions**”) against New GM that seek economic losses (*i.e.*, where there was no post-363 Sale accident causing personal injury, loss of life, or property damage) against New GM relating to allegedly defective ignition switches in certain vehicle models. New GM previously filed a motion with this Court on April 21, 2014 (“**Ignition Switch Motion to Enforce**”) seeking relief with respect to the Ignition Switch Actions, the Court held Scheduling Conferences on May 2, 2014, and July 2, 2014, with respect to that Motion, and the initial phase of that contested

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<sup>1</sup> A copy of the Sale Agreement is annexed hereto as Exhibit “A.”

<sup>2</sup> The full title of the Sale Order and Injunction is “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 by the Court on July 5, 2009. A copy of the Sale Order and Injunction is annexed hereto as Exhibit “B.”

proceeding is being governed by Scheduling Orders entered by the Court on May 16, 2014, and July 11, 2014 (collectively, the “**Scheduling Orders**”)<sup>3</sup>

This Motion also does not concern any litigation involving an accident that occurred *after* the closing of the 363 Sale that caused personal injury, loss of life, or property damage; New GM assumed such liabilities pursuant to the Sale Agreement and is addressing issues respecting those claims in appropriate non-bankruptcy forums.

Instead, this Motion involves *only* litigation in which Plaintiffs are asserting claims against New GM that emanate from an accident that occurred *prior to* the closing of the 363 Sale. Such claims do not involve New GM in any way, were never assumed by New GM as part of the Sale Agreement, and are barred by the Court’s Sale Order and Injunction.

The subject matter of this Motion was not included in the Ignition Switch Motion to Enforce because, at the time that Motion was filed, New GM already had announced that it had retained Kenneth Feinberg to develop and design a protocol (“**Feinberg Protocol**”)<sup>4</sup> for the submission, evaluation, and settlement of death or physical injury claims resulting from accidents allegedly caused by defective ignition switches in certain vehicles. New GM delayed filing this Motion so that the Feinberg Protocol could be developed, formally announced, and implemented. By filing this Motion in conjunction with the launch of the Feinberg Protocol, GM has provided eligible Plaintiffs with an alternative (*i.e.*, a source of recovery under the Feinberg Protocol) to the enforcement of the Sale Order and Injunction against them. Participation in the

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<sup>3</sup> As New GM did when it filed the Ignition Switch Motion to Enforce, New GM will seek a conference before the Court upon filing this Motion to Enforce to discuss procedural issues raised by the relief sought herein, including the possibility of consolidating this Motion and the Monetary Relief Motion to Enforce (as herein defined and discussed *infra*) with the Ignition Switch Motion to Enforce.

<sup>4</sup> A copy of the Feinberg Protocol is attached hereto as Exhibit “C”. It can also be accessed at: <http://www.gmignitioncompensation.com/docs/FINAL%20PROTOCOL%20June%2030%202014.pdf>. The Feinberg Protocol encompasses claims resulting from accidents that occurred both before and after the closing of the 363 Sale that allegedly were caused by defective ignition switches in certain vehicles.

Feinberg Protocol is voluntary, and if eligible claimants decline to participate, New GM seeks by this Motion to enforce the Sale Order and Injunction against them.

The timing of the filing of this Motion is also dictated by the Scheduling Orders which set forth specific deadlines for the development of agreed upon factual stipulations, and the briefing of Threshold Issues (as defined in the Scheduling Orders). Generally, the Plaintiffs' counsel related to this Motion are already involved in the Ignition Switch Motion to Enforce.<sup>5</sup> However, to the extent there is not complete overlap, and to ensure that all parties in interest have an opportunity to address common issues before the Court at the same time, this Motion is being filed now.

It is also for this reason that, simultaneously with the filing of this Motion, New GM is filing a motion ("**Monetary Relief Motion to Enforce**") to enforce the Sale Order and Injunction with respect to other litigations brought against New GM for Retained Liabilities (as defined in the Sale Order and Injunction) of Old GM, that are unrelated to the alleged ignition switch issue. Since announcing the Ignition Switch recalls, New GM has announced other recalls unrelated to the alleged ignition switch defect with respect to vehicles manufactured and sold by Old GM. Notwithstanding the Sale Order and Injunction, New GM has been sued in other courts for such Retained Liabilities. Again, generally, counsel in those litigations are already involved in the Ignition Switch Motion to Enforce. But, to the extent there is not complete overlap, and to ensure that all parties in interest have an opportunity to address

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<sup>5</sup> It is significant and unexplainable that, in connection with the Ignition Switch Actions, Plaintiffs' attorneys entered into Voluntary Stay Stipulations recognizing the Court's exclusive jurisdiction to decide issues relating to the Sale Order and Injunction. Yet, the same counsel continue to file law suits against New GM in other courts for Retained Liabilities as if the Sale Order and Injunction does not exist (thus necessitating the filing of this Motion and the Monetary Relief Motion to Enforce).



unsecured creditors, Old GM would have liquidated and those unsecured creditors—like the Plaintiffs that are the subject of this Motion—would have received nothing. Indeed, had the objectors been successful in opposing the Sale Order and Injunction, it would not only have been a pyrrhic victory for them, but a disaster for many thousands of others who relied on the continued viability of the assets being sold to New GM. Judge Lewis Kaplan aptly summarized the point:

No sentient American is unaware of the travails of the automobile industry in general and of General Motors Corporation ([Old] GM) in particular. As the Bankruptcy Court found, [Old] GM will be forced to liquidate — with appalling consequences for its creditors, its employees, and our nation — unless the proposed sale of its core assets to a newly constituted purchaser is swiftly consummated.

*In re Gen. Motors Corp.*, No. M 47 (LAK), 2009 WL 2033079, at \*1 (S.D.N.Y. July 9, 2009).

One of the groups that most vigorously objected to Old GM’s asset sale motion was a coalition representing Old GM vehicle owners. That group included State Attorneys General, individual accident victims, the Center for Auto Safety, Consumer Action and other consumer advocacy groups. The gist of their objections was: as long as New GM was assuming any of Old GM liabilities, then it should assume *all* vehicle owner liabilities as well. In particular, the objectors argued, unsuccessfully, that New GM should assume pre-363 Sale accident claims, based upon defects in Old GM vehicles and parts, in addition to the limited categories of claims that New GM already agreed to assume.

A critical element of protecting the integrity of the bankruptcy sale process was to ensure that New GM, as the good faith purchaser for substantial value, received the benefit of its Court-approved bargain. This meant that New GM would be insulated from lawsuits by Old GM’s creditors based on Old GM liabilities that it did not assume. The Sale Agreement and the Sale Order and Injunction were expressly intended to provide such protections. The Order thus enjoined such proceedings against New GM, and expressly reserved exclusive jurisdiction to this



Court to ensure that the sale transaction it approved would not be undermined or collaterally attacked.

As has been widely reported (and as discussed in the Ignition Switch Motion to Enforce), beginning in February, 2014, New GM sent notices to NHTSA concerning problems with ignition switches and ignition switch repairs in certain vehicles and parts manufactured by Old GM. New GM has also recently issued recalls concerning other defects in other Old GM vehicles. Shortly after New GM issued the recall notices, Plaintiffs sought to use the recalls as a basis to commence actions against New GM for damages arising from accidents that occurred prior to the closing of the 363 Sale—claims expressly retained by Old GM for which New GM has no liability.

Thus, the issue to be addressed in this Motion is:

**May New GM be sued, in clear violation of this Court’s Sale Order and Injunction, for damages relating to vehicles sold by Old GM that were involved in accidents that occurred *prior* to the closing of the 363 Sale?**

A review of the Sale Agreement and previous decisions of this Court provide the unambiguous answer: Under the Sale Order and Injunction, all such claims were retained by Old GM, and not assumed by New GM. Plaintiffs’ tactical decision to not appear in this Court to challenge the Sale Order and Injunction is telling: they know that this Court previously has enforced the Sale Order and Injunction, and they are seeking to evade this Court’s injunction that bars them from suing New GM on account of pre-363 Sale accidents involving Old GM vehicles and parts.

Simply put, Plaintiffs cannot ignore the Court’s Sale Order and Injunction, and proceed in other courts as though the Sale Order and Injunction never existed. The law is settled that persons subject to a Court’s injunction simply do not have that option. As the United States Supreme Court explained in *Celotex Corp. v. Edwards*, the rule is “well-established” that “persons subject to an injunctive order issued by a court with jurisdiction are expected to obey

that decree until it is modified or reversed, even if they have proper grounds to object to the order.” 514 U.S. 300, 306 (1995). Plaintiffs and their counsel are bound by this rule of law and were required to seek and obtain relief from this Court before commencing any lawsuits against New GM. They did not.

Accordingly, based on this Court’s prior proceedings and Orders, New GM brings this Motion to enforce the Sale Order and Injunction by:

- (a) directing the Plaintiffs (“**Plaintiffs**”) in lawsuits (“**Pre-Closing Accident Lawsuits**”)<sup>6</sup> commenced against New GM that concern damages arising from accidents that occurred prior to the closing of the 363 Sale, to cease and desist from further prosecuting against New GM, or otherwise pursuing against New GM, the claims asserted in the Pre-Closing Accident Lawsuits, and
- (b) directing Plaintiffs to dismiss the Pre-Closing Accident Lawsuits with prejudice immediately.

### **BACKGROUND STATEMENT OF FACTS**

1. In June 2009, in the midst of a national financial crisis, Old GM was insolvent with no alternative other than to seek bankruptcy protection to sell its assets. New GM, a newly

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<sup>6</sup> The Pre-Closing Accident Lawsuits, at this time, include: (i) *Phillips, et al. v. General Motors Corporation, et al.*, pending in the United States District Court for the Southern District of Texas (“**Phillips Action**”); (ii) *Boyd, et al. v. General Motors LLC*, pending in the United States District Court for the Eastern District of Missouri (“**Boyd Action**”); (iii) *Vest v. General Motors LLC, et al.*, pending in the Circuit Court of Mercer County, West Virginia (“**Vest Action**”); and (iv) *Abney et al. v. General Motors LLC*, pending in the Southern District of New York (“**Abney Action**”). A copy of the complaint or petition in the foregoing Actions are annexed hereto as Exhibits “D” through “G” respectively.

Certain other lawsuits were previously commenced against New GM that related to accidents that occurred prior to the closing of the 363 Sale. The Plaintiffs have voluntarily dismissed those lawsuits, without prejudice, pending their review of the relief available to them under the Feinberg Protocol. These other lawsuits are not referenced herein because of such dismissal.

New GM reserves the right to supplement the list of Pre-Closing Accident Lawsuits set forth above in the event additional cases are brought against New GM that implicate similar provisions of the Sale Order and Injunction, including without limitation those lawsuits which have previously been dismissed without prejudice if they are re-filed in any court, and the Purported Edwards Plaintiffs discussed *infra*.

created, government-sponsored entity, was the only viable purchaser, but it would not purchase Old GM's assets unless the sale was free and clear of all liens and claims (except for the claims it expressly agreed to assume). After a contested hearing, the Court approved this sale transaction, which set the framework for New GM to begin its business operations. During the last five years, New GM has operated its business based on the fundamental structure of the Sale Agreement and Sale Order and Injunction — that its new business enterprise would not be burdened with liabilities retained by Old GM. The Pre-Closing Accident Lawsuits represent an impermissible collateral attack on this Court's Sale Order and Injunction. The Plaintiffs may not rewrite, years later, the Court-approved sale to a good faith purchaser, which was affirmed on appeal, and has been the predicate for literally millions of transactions between New GM and third parties.

**A. Old GM Filed For Protection Under The Bankruptcy Code In June 2009**

2. On June 1, 2009 ("**Petition Date**"), Old GM and certain of its affiliates filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Old GM simultaneously filed a motion seeking approval of the original version of the Sale Agreement ("**Original Sale Agreement**"), pursuant to which substantially all of Old GM's assets were to be sold to New GM ("**Sale Motion**"). The Original Sale Agreement (like the Sale Agreement) provided that New GM would assume only certain specifically identified liabilities (*i.e.*, the "**Assumed Liabilities**"); all other liabilities would be retained by Old GM (*i.e.*, the "**Retained Liabilities**").

**B. Objectors To The Sale Motion Argued That New GM Should Assume Additional Liabilities Of The Type Plaintiffs Now Assert In The Pre-Closing Accident Lawsuits**

3. Many objectors, including various State Attorneys General, certain individual accident victims (“**Product Liability Claimants**”), the Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizens (collectively, the “**Consumer Organizations**”), the Ad Hoc Committee of Consumer Victims, and the Official Committee of Unsecured Creditors challenged various provisions in the Original Sale Agreement relating to actual and potential tort and contract claims held by Old GM vehicle owners. These objectors argued that the Court should not approve the Original Sale Agreement unless New GM assumed additional Old GM liabilities, including those now being asserted by Plaintiffs in the Pre-Closing Accident Lawsuits.

4. The Original Sale Agreement was amended so that New GM would assume liabilities for personal injury, loss of life, and property damage claims for *accidents taking place after the closing of the 363 Sale* that concern vehicles manufactured and sold by Old GM. The Original Sale Agreement provided that New GM would only assume such liabilities for vehicles *delivered* to consumers after the closing of the 363 Sale. This change was negotiated with the State Attorneys General after the Petition Date, who sought the inclusion of additional liabilities as Assumed Liabilities. The U.S. Treasury agreed to make this change (and to assume Lemon Law claims), but would not go further. *See* Hr’g Tr. 194:13 – 18, July 2, 2009 (when discussing improvements to the Sale Agreement, counsel for the State Attorneys General referred to a change to “the assumption of the future product liability claims. Obviously, we -- you know, in a perfect world, we would not be distinguishing between those two categories, but certainly that’s better than none of them. And it certainly goes a ways to addressing issues that were raised by the state Attorney Generals.”).



7. In approving the 363 Sale, the Court specifically found that New GM was a “good faith purchaser, for sale-approval purposes, and also for the purpose of the protections section 363(m) provides.” *Id.* at 494 (citing 11 U.S.C. § 363(m)). The Sale Order and Injunction expressly enjoined parties (like Plaintiffs in the Pre-Closing Accident Lawsuits) from proceeding against New GM with respect to Retained Liabilities at any time in the future. *See* Sale Order and Injunction, ¶¶ 8, 47. This Court well understood that accident victims—like Plaintiffs in the Pre-Closing Accident Lawsuits—would recover only modest amounts on their claims from Old GM if they could not look to New GM as an additional source of recovery. *See Gen. Motors*, 407 B.R. at 505.

8. But the Court also recognized that if a Section 363 purchaser like New GM did not obtain protection against claims against Old GM, like successor liability claims, it would pay less for the assets because of the risks of known and unknown liabilities. *Id.* at 500. The Court further recognized that, under the law, a Section 363 purchaser could choose which liabilities of the debtors to assume, and not assume (*id.* at 496), and that the U.S. Treasury, on New GM’s behalf, could rightfully condition its purchase offer on its refusal to assume the liabilities now being asserted by Plaintiffs in the Pre-Closing Accident Lawsuits.

9. Old GM, the proponent of the asset sale transaction, presented evidence establishing that if the Sale Agreement was not approved, Old GM would have liquidated. If it did, objecting creditors seeking incremental recoveries would have ended up with nothing, given that the book value of Old GM’s global assets was \$82 billion, the book value of its global liabilities was \$172 billion (*see Gen. Motors*, 407 B.R. at 475), and that, in a liquidation, the value of Old GM’s assets was probably less than 10% of stated book value (*id.*).

10. Objectors also presented evidence that the book value of certain contingent liabilities was about \$934 million. *Id.* at 483. As discussed at the trial, these contingent

liabilities concerned product liability claims, including both “reported cases” and “incurred but not reported cases.” Hr’g Tr. 161:23 – 162:8, June 30, 2009. The Court noted in its Sale Decision that contingent liabilities were “difficult to quantify.” *Gen. Motors*, 407 B.R. at 483. And, if the book value of all contingent liabilities was understated, that simply meant Old GM was even more insolvent—an even greater reason for New GM to decline to assume the liabilities retained by GM.

11. Whether Old GM presented evidence regarding a particular claim or specific defect was not germane to this Court’s approval of the Sale Order and Injunction. Indeed, as the Court found in the Sale Order and Injunction, the proper analysis for approving the asset sale is whether Old GM obtained the “highest or best” available offer for the Purchased Assets. *See* Sale Order and Injunction, ¶ G. In contrast, the quantification of liabilities left behind with Old GM (*i.e.*, the Retained Liabilities) was only relevant to a different phase of the bankruptcy case (the claims process) which did not involve New GM.

12. New GM’s refusal to assume a substantial portion of Old GM’s liabilities was fundamental to the sale transaction and was widely disclosed by Old GM to all interested parties. Indeed, the Product Liability Claimants objected to and appealed the Sale Order and Injunction to specifically challenge this aspect of the 363 Sale. *See Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010). On appeal, although the District Court focused on the appellants’ failure to seek a stay of the 363 Sale and on equitable mootness principles, it also found that this Court had jurisdiction to enjoin successor liability claims. *See id.* at 59-60. In its decision, the District Court further noted that the Sale Agreement and Sale Order and Injunction “made clear that [New GM] would not pursue the 363 Transaction unless the assets were sold free and clear of those liabilities [New GM] had not agreed to assume,

including the Existing Products Claims of Appellants . . . .” *Id.* at 48 (citing to Sale Order and Injunction, ¶ DD).

13. The Sale Order and Injunction was affirmed on appeal by two different District Court Judges. *Id.*; *Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65 (S.D.N.Y. 2010). There were no further appeals.<sup>7</sup>

**D. Upon Approval Of The Sale Agreement And Issuance Of The Sale Order And Injunction, New GM Assumed Certain Narrowly Defined Liabilities, But The Bulk Of Old GM’s Liabilities Remained With Old GM**

14. Under the Sale Agreement and the Sale Order and Injunction, New GM only became responsible for “Assumed Liabilities.” *See* Sale Agreement § 2.3(a). These included liability claims for *post-363 Sale accidents*, as well as the Glove Box Warranty, a warranty of limited duration (typically three years or 36,000 miles, whichever comes first) provided at the time of sale for repairs and replacement of parts. New GM assumed no other Old GM warranty obligations, express or implied:

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.*

Sale Order and Injunction, ¶ 56 (emphasis added).

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<sup>7</sup> The Product Liability Claimants appealed the District Court’s decision, but pursuant to a stipulation so-ordered by the Second Circuit Court of Appeals on September 23, 2010, the appeal was withdrawn. The *Parker* decision was also appealed, but that appeal was dismissed as equitably moot because the appellant had not obtained a stay pending appeal. *See Parker v. Motors Liquidation Company*, Case No. 10-4882-bk (2d Cir. July 28, 2011).



15. Independent of the Assumed Liabilities under the Sale Agreement, New GM covenanted to perform Old GM's recall responsibilities under federal law. *See* Sale Agreement ¶ 6.15(a). But, with respect to pre-363 Sale accidents, there was nothing for New GM to recall.<sup>8</sup> Thus, New GM's recall covenant does not create a basis for Plaintiffs to sue New GM for damages relating to a vehicle sold by Old GM that was involved in an accident prior to the closing of the 363 Sale—events that predated New GM's very existence.

16. All liabilities of Old GM that were not expressly defined as Assumed Liabilities constituted "Retained Liabilities" that remained obligations of Old GM. Sale Agreement §§ 2.3(a), 2.3(b). Retained Liabilities include the claims asserted by Plaintiffs in the Pre-Closing Accident Lawsuits such as:

- i. "[A]ll Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date." Sale Agreement, § 2.3(b)(ix).
- ii. [L]iabilities "arising out of, relating 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." Sale Agreement § 2.3(b)(xvi), *see also id.* ¶ 6.15(a). This would include liability based on implied warranty and state consumer statutes (except Lemon Law claims).
- iii. All liabilities (other than Assumed Liabilities) of Old GM based upon contract, tort or any other basis. Sale Agreement § 2.3(b)(xi). This covers claims based on, among others, negligence, conspiracy, concealment and fraud.
- iv. All liabilities relating to vehicles sold by Old GM with a design defect.<sup>9</sup>

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<sup>8</sup> In any event, there are no third-party beneficiary rights granted under the Sale Agreement with respect to the covenant to comply with NHTSA (*see* Sale Agreement § 9.11), and there is no private right of action for third parties to sue for a breach of a recall obligation. *See Ayers v. Gen. Motors*, 234 F.3d 514, 522-24 (11th Cir. 2000); *Handy v. Gen. Motors Corp.*, 518 F.2d 786, 787-88 (9th Cir 1975). Thus, New GM's recall covenant does not create any basis for the Plaintiffs to sue New GM.

<sup>9</sup> *See* Sale Order and Injunction, ¶ AA; *see also Trusky v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09-09803, 2013 WL 620281, at \*2 (Bankr. S.D.N.Y. Feb. 19, 2013).

- v. All Liabilities based on the conduct of Old GM including any allegation, statement or writing attributable to Old GM. This covers fraudulent concealment type claims. *See* Sale Order and Injunction, ¶ 56.
- vi. All claims based on the doctrine of “successor liability.” *See, e.g.,* Sale Order and Injunction, ¶ 46.

**E. The Court’s Sale Order And Injunction Expressly Protects New GM From Litigation Over Retained Liabilities, And The Injunction Expressly Bars Plaintiffs From Initiating And Pursuing Litigation Against New GM.**

17. On July 10, 2009, the parties consummated the Sale. New GM acquired substantially all of the assets of Old GM free and clear of all liens, claims and encumbrances, except for the narrowly defined Assumed Liabilities. In particular, paragraphs 46, 9, and 8 of the Sale Order and Injunction provide that New GM would have no responsibility for any liabilities (except for Assumed Liabilities) relating to the operation of Old GM’s business, or the production of vehicles and parts before July 10, 2009:

Except for the Assumed Liabilities expressly set forth in the [Sale Agreement] . . . [New GM] . . . shall [not] 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 [Old GM] . . . prior to the Closing Date . . . . Without limiting the foregoing, [New GM] shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity . . . and products . . . liability, *whether known or unknown* as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated.

Sale Order and Injunction, ¶ 46 (emphasis added); *see also id.*, ¶ 9(a) (“(i) no claims other than Assumed Liabilities, will be assertable against the Purchaser; (ii) the Purchased Assets [are] transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances) . . .”); and *id.*, ¶ 8 (“All persons and entities . . . holding claims against [Old GM] or the Purchased Assets arising under or out of, in connection with, or in any way relating to [Old GM], the Purchased Assets, *the operation of the Purchased Assets* prior to the Closing . . .

are forever barred, estopped, and permanently enjoined . . . from asserting [such claims] against [New GM]. . . .” (emphasis added).

18. Anticipating the possibility that New GM might be wrongfully sued for Retained Liabilities, the Sale Order and Injunction permanently enjoins claimants from asserting claims of the type made in the Pre-Closing Accident Lawsuits:

[A]ll persons and entities . . . holding liens, claims and encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against [Old GM] 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 [Old GM], the Purchased Assets, the operation of the Purchased Assets prior to the Closing . . . are forever barred, estopped, and permanently enjoined . . . from asserting against [New GM] . . . such persons’ or entities’ liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.*

Sale Order and Injunction, ¶ 8 (emphasis added); *see also id.*, ¶ 47.

19. The Court specifically found that the provisions of the Sale Order and Injunction, as well as the Sale Agreement, were binding on all creditors, *known and unknown* alike. *See* Sale Order and Injunction, ¶ 6 (“This [Sale] Order and [Sale Agreement] “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 . . . .” (emphasis added)); *see also id.*, ¶ 46.

20. Because the Plaintiffs in the *Phillips* Action commenced a lawsuit against Old GM prior to the Petition Date, they were known creditors of Old GM and received notice of the Sale Motion and the relief requested therein.<sup>10</sup> *See* Certificate of Service, filed on June 15, 2009

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<sup>10</sup> The Plaintiffs in the *Phillips* Action also filed four proofs of claim in Old GM’s bankruptcy case and, after mediation, entered into a settlement with Old GM resolving those claims. Under the settlement, the Court

[Dkt. No. 973]. Upon information and belief, the Plaintiffs in the other Pre-Closing Accident Lawsuit had not filed a lawsuit against Old GM prior to the Petition Date, they were not listed as creditors on Old GM's books and records, and therefore they received notice of the 363 Sale by publication.

21. In short, except for Assumed Liabilities, claims based on Old GM vehicles remained the legal responsibility of Old GM, and are not the responsibility of New GM.

22. Finally, paragraph 71 of the Sale Order and Injunction makes this Court the gatekeeper to enforce its own Order. It provides for this Court's *exclusive jurisdiction* over matters and claims regarding the Sale, including jurisdiction to protect New GM against any Retained Liabilities of Old GM:

*This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the [Sale Agreement], all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, . . . , in all respects, including, but not limited to, retaining jurisdiction to . . . (c) resolve any disputes arising under or related to the [Sale Agreement], 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 . . . .*  
(Emphasis added.)

**F. New GM Has Recalled Certain Vehicles  
And In Response, Plaintiffs Have Filed  
The Pre-Closing Accident Lawsuits**

23. New GM informed NHTSA of a recall on February 7, 2014, of 2005-2007 model year (MY) Chevrolet Cobalt and 2007 Pontiac G5 vehicles. GM expanded this ignition switch recall on February 25, 2014 to include 2006-2007 MY Chevrolet HHR and Pontiac Solstice, 2003-2007 MY Saturn Ion, and 2007 MY Saturn Sky vehicles, and on March 27, 2014 to include certain Ignition & Start Switch service parts and Ignition & Start Switch Housing Kits that may

retained exclusive jurisdiction with respect to any claims thereunder. As part of their current lawsuit, the Plaintiffs in the *Phillips* Action are seeking to undo the settlement with Old GM.

have been installed during repairs in some 2008-2011 MY Chevrolet HHR, 2008-2010 MY Pontiac Solstice, 2008-2010 MY Pontiac G5, and 2008-2010 MY Saturn Sky vehicles (collectively referred to as the “**Cobalt/Ion Recall**”). This recall pertains to a problem with ignition switches in the above identified vehicles and parts manufactured by Old GM. Pursuant to the Cobalt/Ion Recall, New GM is to replace the ignition switches (at no cost to the owners). New GM sent recall notices approved by NHTSA to all vehicle owners subject to this recall.

24. The Cobalt/Ion Recall is underway and New GM already has started to replace the ignition switches. NHTSA, as the government agency responsible for overseeing the technical and highly-specialized domain of automotive safety defects and recalls, administers the rules concerning the content, timing, and means of delivering a recall notice to affected motorists and dealers. *See* 49 C.F.R. § 554.1; 49 U.S.C. § 30119. Other governmental agencies and Congress are also examining various issues relating to the Cobalt/Ion Recall.

25. Three of the four Pre-Closing Accident Lawsuits (as well as many of the Purported Edwards Plaintiffs (as defined below)) that are the subject of this Motion concerns vehicles that are the subject of the Cobalt/Ion Recall, and the Feinberg Protocol.

26. In addition to the Cobalt/Ion Recall, New GM has also instituted recalls for other model vehicles that concern different issues. The vehicle at issue in the *Phillips* Action is subject to a different ignition switch recall that is not eligible for the Feinberg Protocol. Moreover, while the Plaintiffs in the *Phillips* Action assert that the subject 2004 Chevrolet Malibu Classic was subject to recalls related to electric power steering and increased resistance in the Body Control Module, these recalls are inapplicable to the subject model vehicle. Even so, given the date of the accident in question, the Phillips’ vehicle has not been in use since before the 363 Sale closed.

27. After the Cobalt/Ion Recall was announced, the Plaintiffs filed the Pre-Closing Accident Lawsuits against New GM, each of which has its genesis in accidents that occurred prior to the closing of the 363 Sale. It is expected that the number of Pre-Closing Accident Lawsuits will increase.

28. The Pre-Closing Accident Lawsuits assert claims that are barred by the Sale Agreement and the Sale Order and Injunction. Each of the Pre-Closing Accident Lawsuits are premised on an accident involving a vehicle manufactured and sold by Old GM that occurred prior to the closing of the 363 Sale. In their complaints, the Plaintiffs conflate Old GM and New GM, but the Sale Order and Injunction is clear that New GM is a separate entity from Old GM (*see* Sale Order and Injunction, ¶ R), and is not liable for successor liability claims (*see, e.g., id.*, ¶¶ 46, 47). Claims based on that factual predicate are Retained Liabilities and may not be brought against New GM.

29. This Court is uniquely situated to enforce its own Order. By this Motion, New GM requests that the Court enforce the Sale Order and Injunction by directing Plaintiffs (i) to cease and desist from pursuing claims for Retained Liabilities of Old GM against New GM, and (ii) to dismiss with prejudice the Pre-Closing Accident Lawsuits immediately.

**G. The Pre-Closing Accident Lawsuits**

30. While the Plaintiffs in the Pre-Closing Accident Lawsuits contort allegations in an effort to frame a cause of action against New GM, their efforts are futile. As demonstrated in the chart below, each of the complaints/petitions in the Pre-Closing Accident Lawsuits concern (i) a vehicle manufactured and sold *by Old GM, and not New GM*, and (ii) an accident that occurred *prior to the Closing Date of the 363 Sale*:<sup>11</sup>

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<sup>11</sup> As noted above, certain similar lawsuits not listed in the chart have been voluntarily dismissed, without prejudice, by the Plaintiffs, pending their review of the Feinberg Protocol.

	<u>Plaintiff Name</u>	<u>Date of Accident</u> <sup>12</sup>	<u>Vehicle Year and Model</u>
1	Phillips	October 18, 2005	2004 Chevy Malibu Classic
2	Boyd <sup>13</sup>	January 22, 2008 (Marino) September 13, 2008 (Suarez-Marquez)	2007 Chevy Cobalt 2006 Chevy Cobalt
3	Vest	May 2, 2006	2005 Chevy Cobalt
4	Abney <sup>14</sup>	July 4, 2009 (Gray) July 6, 2009 (Page, A.) July 6, 2009 (Page, S.) July 9, 2009 (Stivers)	2006 Chevy Cobalt 2008 Chevy Cobalt 2009 Chevy Cobalt 2006 Chevy Cobalt

31. In addition to the Plaintiffs set forth in the chart above, a group of over 150 would-be plaintiffs (collectively, the “**Purported Edwards Plaintiffs**”), who are represented by counsel already involved in the Ignition Switch Motion to Enforce and in the Multi-District Litigation (“**MDL**”) currently pending in the Southern District of New York relating to the Ignition Switch Actions, filed a motion (“**Motion for Leave**”) on July 31, 2014 with the MDL court – and *not* this Court -- seeking leave to file a consolidated complaint against New GM based on claims that emanate from accidents that occurred *prior to* the closing of the 363 Sale.

32. Also on July 31, 2014, the Purported Edwards Plaintiffs filed with this Court a *Notice of Filing of Motion for Leave to File Omnibus Complaint with MDL Court* [Dkt. No. 12796] (“**Notice of Filing**”), which discusses the Motion for Leave, but does not seek relief

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<sup>12</sup> Names in parentheses denote the individual plaintiffs that were in the referenced accidents.

<sup>13</sup> The *Boyd* Action concerns four different accidents, two that occurred prior to the closing of the 363 Sale and two that occurred after the closing of the 363 Sale. This Motion to Enforce concerns only the two accidents that occurred prior to the closing of the 363 Sale, and which are referenced in the chart above.

<sup>14</sup> The *Abney* Action was filed on behalf of 658 plaintiffs and concerns hundreds of different accidents, four of which occurred prior to the closing of the 363 Sale; the remainder occurred after the closing of the 363 Sale. This Motion to Enforce concerns only the four accidents that occurred prior to the closing of the 363 Sale, and which are referenced in the chart above.



from this Court.<sup>15</sup> In their Notice of Filing, the Purported Edwards Plaintiff clearly recognize that their purported claims are subject to the injunction provisions contained in the Sale Order and Injunction. *See* Notice of Filing, ¶ 3 (asserting that the Purported Edwards Plaintiffs are “mindful of this Court’s sale order, plan injunction and various stay stipulations” and that if the Motion for Leave was granted, the Purported Edwards Plaintiffs “expect to enter into a stay stipulation” with respect to their claims so this Court can conduct an “orderly and coordinated process”). Yet, instead of filing the Motion for Leave in this Court – which would have been the proper procedure in view of the Court’s exclusive jurisdiction over this issue -- they inexplicably filed the Motion for Leave with the MDL court. Given their actions, the Purported Edwards Plaintiffs are, for purposes herein, included within the defined term “Plaintiffs.”

33. The Plaintiffs in the Pre-Closing Accident Lawsuits allege various facts based on New GM’s recent recalls of various models of pre-closing date vehicles. However, such recalls do not change the fact that New GM did not assume these liabilities. All of the accidents and injuries at issue in these lawsuits occurred prior to the closing date of the 363 Sale and therefore relate solely to Old GM’s conduct. Plaintiffs have not, and cannot, allege any cognizable facts against New GM that would form the basis of valid claims against New GM.

**H. New GM Has Adopted the Feinberg Protocol**

34. On April 1, 2014, New GM announced that it retained Kenneth Feinberg as a consultant to explore and evaluate actions it may take to assist families of accident victims whose vehicles were the subject of the Cobalt/Ion Recall. Mr. Feinberg was asked to consider, in an independent, balanced and objective manner, the options available to New GM for

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<sup>15</sup> A copy of the Notice of Filing is annexed hereto as Exhibit “H.”



addressing issues related to the Cobalt/Ion Recall and possible compensation for accident victims.

35. On or about June 30, 2014, Mr. Feinberg presented his protocol to the public. The Feinberg Protocol sets forth the eligibility and process requirements for individual claimants to submit and settle claims alleging that a defective ignition switch subject to the Cobalt/Ion Recall caused a death or physical injury in an automobile accident. The individual on whose behalf a claim is filed must have been the driver, a passenger, a pedestrian, or the occupant of another vehicle in an accident involving one of the “Eligible Vehicles” (as defined in the Feinberg Protocol). Pursuant to the Feinberg Protocol, claims will be accepted beginning August 1, 2014.

36. The Feinberg Protocol creates a Claims Resolution Facility (“**Facility**”) under which Mr. Feinberg (as an independent administrator) will process and evaluate claims to determine: (i) whether a submitted claim meets the eligibility requirements under the Feinberg Protocol, and (ii) the compensation to be paid for eligible claims. The Facility is authorized to process **only** those eligible claims involving death or physical injury (as defined in the Feinberg Protocol) caused by a defective ignition switch in an Eligible Vehicle. No claims for economic injury or other allegations of damage (whether based on a defective ignition switch or otherwise) are eligible under the Feinberg Protocol.

37. Accident victims who are eligible under the Feinberg Protocol may choose to participate in that program and, if their claims are accepted, will be compensated in an amount determined by the Facility. Claimant eligibility and compensation awards under the Feinberg Protocol are decided by Mr. Feinberg in his sole discretion. Eligible accident victims who fail or decline to opt into the Feinberg Protocol, and other parties who are not eligible under the

Feinberg Protocol, are barred pursuant to the Sale Order and Injunction from asserting claims against New GM that are based on Retained Liabilities of Old GM.<sup>16</sup>

**NEW GM’S ARGUMENT TO ENFORCE THE COURT’S  
SALE ORDER AND INJUNCTION AGAINST THE  
PLAINTIFFS IN THE PRE-CLOSING ACCIDENT LAWSUITS**

38. The Plaintiffs in the Pre-Closing Accident Lawsuits do not have the choice of simply ignoring the Court’s Sale Order and Injunction. As the Supreme Court expressed in its *Celotex* decision:

If respondents believed the Section 105 Injunction was improper, they should have challenged it in the Bankruptcy Court, like other similarly situated bonded judgment creditors have done . . . Respondents chose not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court’s Section 105 Injunction in the federal courts in Texas. This they cannot be permitted to do without seriously undercutting the orderly process of the law.

514 U.S. at 313. These settled principles bind Plaintiffs in the Pre-Closing Accident Lawsuits. Those who purchased vehicles from Old GM and were involved in accidents that occurred before the 363 Sale are subject to the terms of the Court’s Sale Order and Injunction, whether they were known or unknown by Old GM at the time, and are barred by this Court’s Injunction from suing New GM on account of Old GM’s Retained Liabilities.

**A. This Court’s Sale Order And Injunction Should Be Enforced**

39. It is well settled that a “Bankruptcy Court plainly ha[s] jurisdiction to interpret and enforce its own prior orders.” *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *In re Wilshire Courtyard*, 729 F.3d 1279, 1290 (9th Cir. 2013) (affirming bankruptcy court’s post-confirmation jurisdiction to interpret and enforce its orders; “[i]nterpretation of the Plan and

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<sup>16</sup> The Plaintiffs in the *Boyd*, *Vest* and *Abney* Actions, as well as many of the Purported Edwards Plaintiffs, may be eligible under the Feinberg Protocol. While the Plaintiffs in the *Philips* Action are not eligible under the Feinberg Protocol (as their accident did not concern an Eligible Vehicle), they have already received compensation from the Old GM bankruptcy estate pursuant to their previous settlement with Old GM.

Confirmation Order is the only way for a court to determine the essential character of the negotiated Plan transactions in a way that reflects the deal the parties struck in chapter 11 proceedings”); *In re Cont'l Airlines, Inc.*, 236 B.R. 318, 326 (Bankr. D. Del. 1999) (“In the bankruptcy context, courts have specifically, and consistently, held that the bankruptcy court retains jurisdiction, inter alia, to enforce its confirmation order.”); *U.S. Lines, Inc. v. GAC Marine Fuels, Ltd. (In re McClean Indus., Inc.)*, 68 B.R. 690, 695 (Bankr. S.D.N.Y. 1986) (“[a]ll courts, whether created pursuant to Article I or Article III, have inherent contempt power to enforce compliance with their lawful orders. The duty of any court to hear and resolve legal disputes carries with it the power to enforce the order.”). In addition, Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out” the Bankruptcy Code’s provisions, and this section “codif[ies] the bankruptcy court’s inherent power to enforce its own orders.” *Back v. LTV Corp. (In re Chateaugay Corp.)*, 213 B.R. 633, 640 (S.D.N.Y. 1997); 11 U.S.C. § 105(a).

40. Consistent with these authorities, this Court retained subject matter jurisdiction to enforce its Sale Order and Injunction. Indeed, this is not the first time that this Court has been asked to enforce its injunction against plaintiffs improperly seeking to sue New GM for Old GM’s Retained Liabilities. See *In re Motors Liquidation Co.*, No. 09-50026 (REG), 2011 WL 6119664 (Bankr. S.D.N.Y. 2011) (ordering various plaintiffs to dismiss with prejudice civil actions in which they had brought claims against New GM that are barred by the Sale Order and Injunction); *Castillo v. Gen. Motors Co. (In re Motors Liquidation Co.)*, Adv. Proc. No. 09-00509 (Bankr. S.D.N.Y.), Hr’g Tr. 9:3-9:14, May 6, 2010 (“when you are looking for a declaratory judgment on an agreement that I approved [*i.e.*, the Sale Agreement] that was affected by an order that I entered [*i.e.*, the Sale Order and Injunction], and with the issues permeated by bankruptcy law as they are, and which also raise issues as to one or more



F.3d 1172, 1180-81 (9th Cir. 2002) (applying doctrine to enforce discharge order in favor of debtors and holding that only the bankruptcy court could grant relief from the order); *see also In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (applying this doctrine in the context of an automatic stay entered by the bankruptcy court); *Spartan Mills v. Bank of Am. Ill.*, 112 F.3d 1251 (4th Cir. 1997) (applying doctrine to bankruptcy court order approving sales of assets free and clear of liens).

**B. New GM Is Not Liable For Damages Arising From Accidents That Took Place Prior to the Closing Of The 363 Sale**

43. The Sale Order and Injunction could not be more clear. Retained Liabilities of Old GM for which New GM has no liability expressly include “all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date.” Sale Agreement, § 2.3(b)(ix). “Product Liabilities” was defined by the Sale Agreement as

all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, “Product Liabilities”) . . .

Sale Agreement, § 2.3(a)(ix).

44. In its objection to the 363 Sale, the Ad Hoc Committee of Consumer Victims recognized that while New GM was agreeing to assume certain liabilities of Old GM, it was not agreeing to assume “Product Liabilities” arising out of accidents that took place prior to the 363 Sale. The Ad Hoc Committee of Consumer Victims argued, among other things, that New GM’s refusal to “assume successor for pre-closing product liability claims . . . [was] not in good faith.” Objection to 363 Sale by Ad Hoc Committee of Consumer Victims [Dkt. No. 1997], ¶ 33. As noted, the Court considered that and other objections, and after a contested hearing, overruled all

objections to the Sale Motion, including those raised by the Ad Hoc Committee of Consumer Victims.<sup>17</sup> See Sale Order and Injunction, ¶ 2.

45. In addition, the Court previously was asked to decide whether a claim against New GM that was based on a prepetition accident was barred by the Sale Order and Injunction. Specifically, after the Estate of Beverly Deutsch (“**Deutsch**”) commenced a state court action against New GM that arose from an accident in June, 2007, New GM asked this Court to enjoin Deutsch from prosecuting the state court action because it was barred by the terms of the Sale Agreement and Sale Order and Injunction. While the issue in Deutsch concerned an interpretation of the difference between “accident” and “incident” (as Deutsch argued that the accident occurred before the 363 Sale, but the death of the driver was a separate “incident” that occurred after the 363 Sale), the end result is applicable here. Deutsch did not have a claim against New GM because the accident occurred prior to the closing of the 363 Sale.<sup>18</sup>

46. Like the claimant in Deutsch, Plaintiffs have no claims against New GM. The claims asserted by the Plaintiffs in each of the Pre-Closing Accident Lawsuits (i) concern a vehicle manufactured and sold by Old GM; (ii) arise directly from an accident that occurred prior to the Closing Date; and (iii) arise from the vehicles’ operation or performance. Accordingly, Plaintiffs’ claims in the Pre-Closing Accident Lawsuits fit squarely within the definition of Retained Liabilities in Section 2.3(b)(ix) of the Sale Agreement. Such claims were not assumed by New GM as part of the 363 Sale but were, for all purposes, retained by Old GM. Thus, Plaintiffs’ prosecution against New GM of the Pre-Closing Accident Lawsuits is a direct

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<sup>17</sup> The Ad Hoc Committee of Consumer Victims had “more than 300 members who each have product liability tort claims involving personal injuries (including derivative claims and wrongful death claims) against GM.” Objection to 363 Sale by Ad Hoc Committee of Consumer Victims, ¶ 4.

<sup>18</sup> See “Decision on New GM’s Motion to Enforce Section 363 Order With Respect To Product Liability Claim of Estate of Beverly Deutsch,” dated January 5, 2011 [Dkt. No. 8383] (“**Deutsch Decision**”). A copy of the Deutsch Decision is annexed hereto as Exhibit “I.”

violation of the Sale Order and Injunction, and Plaintiffs should be barred from continuing to prosecute those cases.

**C. New GM Cannot Be Held Liable For Old GM's Alleged Conduct, Either Directly Or As Old GM's Alleged "Successor"**

47. Each of the Pre-Closing Accident Lawsuits involve vehicles manufactured and sold by Old GM prior to the Sale Order and Injunction. *See Chart, supra*, at ¶ 30. The complaints in the Pre-Closing Accident Lawsuits are similar, and while they reflect an effort to plead around the Court's Sale Order and Injunction, they in fact all make the same allegations concerning Old GM: it designed and sold vehicles with a defect that caused personal injuries prior to the closing of the 363 Sale. Additionally, they all seek to hold New GM liable for damages based on Old GM's conduct—claims that are prohibited by the Sale Order and Injunction. In short, as this Court previously held, New GM did not assume any liabilities based on Old GM's conduct or design defects in any of Old GM's vehicles. *See Trusky*, 2013 WL 620281, at \*2.

48. Similarly, by conflating Old GM and New GM, Plaintiffs attempt to impose "successor" liability upon New GM, but New GM is not a successor to Old GM and did not assume any liabilities in connection with successor or transferee liability. This is expressly provided by the Court's Sale Order and Injunction:

The Purchaser shall not be deemed, as a result of any action taken in connection with the [Sale Agreement] 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 (New GM) shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability,

de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated.

Sale Order and Injunction ¶ 46; *see also id.*, ¶¶ AA, BB, DD, 6, 7, 8, 10 and 47; Sale Agreement § 9.19.

49. Plaintiffs' successor liability allegations are simply a violation of this Court's Sale Order and Injunction. But whether or not they expressly allege successor liability, Plaintiffs' claims against New GM based on Old GM's conduct are essentially successor liability claims cast in a different way and are precluded by that Order.

**D. Plaintiffs' Warranty Assertions Do Not Enable Them To Circumvent The Court's Sale Order And Injunction**

50. The Glove Box Warranty is for a limited duration and all of the vehicles that are the subject of the Pre-Closing Accident Lawsuits were sold considerably more than three years ago (the most recent accident occurred almost six years ago). Thus, the Glove Box Warranty for each vehicle at issue has expired. In any event, the Glove Box Warranty provides only for repairs and replacement parts.

51. This distinction is not unique to Old GM's Sale. In the *Chrysler* bankruptcy case, the court likewise found that the assumed liabilities were limited to the standard limited warranty of repair issued in connection with sales of vehicles. *See, e.g., Burton v. Chrysler Group, LLC (In re Old Carco LLC)*, 492 B.R. 392, 404 (Bankr. S.D.N.Y. 2013) ("New Chrysler did agree to honor warranty claims — the Repair Warranty. None of the statements attributed to New Chrysler state or imply that it assumed liability to pay consequential or other damages based upon pre-existing defects in vehicles manufactured and sold by Old Carco.").

52. Similarly, the Sale Agreement and the Sale Order and Injunction provide that the implied warranty claims asserted by Plaintiffs here are Retained Liabilities for which New GM is



not responsible. *See* Sale Order and Injunction, ¶ 56 (New GM “is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner’s manuals, advertisements, and other promotional materials, catalogs and point of purchase materials.” (emphasis added)); *see also* Sale Agreement § 2.3(b)(xvi) (one of the Retained Liabilities of Old GM was any liabilities “arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to [Old GM].” (emphasis added)).

53. In short, any breach of warranty claims Plaintiffs pursue relating to Old GM vehicles (whether express or implied) improperly seek damages against New GM in violation of the Sale Order and Injunction.

### CONCLUSION

54. New GM was created to purchase the assets of Old GM pursuant to the Sale Agreement. The limited category of liabilities it agreed to assume as part of the purchase was the product of a negotiated bargain, which was approved by this Court in July 2009. Plaintiffs in the Pre-Closing Accident Lawsuits have completely ignored this; they improperly treat New GM and Old GM interchangeability and are pursuing Old GM claims that they cannot lawfully pursue against New GM; and they wrongfully have filed suit in violation of this Court’s Sale Order and Injunction.

55. New GM has no liability or responsibility for the Retained Liability claims asserted in the Pre-Closing Accident Lawsuits and, under the Sale Order and Injunction, Plaintiffs in such Actions are enjoined from bringing them against New GM. *See, e.g.*, Sale Order and Injunction, ¶¶ 8, 47. Accordingly, the Court should enforce the terms of its Sale Order

and Injunction by ordering Plaintiffs to promptly dismiss the Pre-Closing Accident Lawsuits, and to cease and desist from all efforts to assert such claims against New GM that are barred by the Sale Order and Injunction. Of course, as noted, those Plaintiffs eligible to participate in the Feinberg Protocol may do so.

**NOTICE AND NO PRIOR REQUESTS**

56. Notice of this Motion has been provided to (a) counsel for Plaintiffs in each of the Pre-Closing Accident Lawsuits, (b) counsel for Motors Liquidation Company General Unsecured Creditors Trust, and (c) the Office of the United States Trustee. New GM submits that such notice is sufficient and no other or further notice need be provided.

57. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, New GM respectfully requests that this Court: (i) enter an order substantially in the form set forth as Exhibit “J” hereto, granting the relief sought herein; and (ii) grant New GM such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
August 1, 2014

Respectfully submitted,

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# Exhibit 5

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MDL No. 14-0399  
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IN RE GENERAL MOTORS IGNITION SWITCH LITIGATION  
=====  
ON REVIEW BY THE MULTIDISTRICT LITIGATION PANEL  
=====

**OPINION**

Justice Harvey Brown delivered the opinion of the MDL panel.

General Motors LLC and Delphi Automotive Systems LLC ask us to transfer four product liability lawsuits against them to a single pretrial court for consolidated or coordinated pretrial proceedings.<sup>1</sup> Each of the lawsuits involves personal injury or wrongful death claims alleged to have resulted from defects in a GM vehicle’s ignition switch.

GM has issued recalls for vehicle ignition switch problems for the models of the vehicles involved in each of these four crashes, as well as numerous other models, and has already produced numerous documents and a report to Congress about the ignition switch problems. These four product liability lawsuits are pending in four separate counties and prosecuted by four different law firms. Defendants assert that they have good reason to believe that numerous additional lawsuits that are similar “will be filed soon in various Texas state courts.”

In federal court litigation arising out of economic losses from the same claimed ignition switch defect, Plaintiffs in 15 lawsuits have agreed that consolidated pretrial proceedings are appropriate.<sup>2</sup> Also, 73 personal injury actions involving allegedly faulty GM ignition switches have been transferred to a federal MDL court.<sup>3</sup>

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<sup>1</sup> See TEX. GOV’T CODE ANN. §§ 74.161–.164 (West 2013); TEX. R. JUD. ADMIN. 13.

<sup>2</sup> *In re Gen. Motors Ignition Switch Litig.*, MDL No. 2543, 2014 WL 2616819, at \*1 (J.P.M.L. June 9, 2014).

<sup>3</sup> The following cases were transferred to a federal MDL court under *In re Gen. Motors Ignition Switch Litig.*, MDL No. 2543, 2014 WL 2616819 (J.P.M.L. June 9, 2014): *Van Pelt v.*

Regarding the four suits that are the subject of this motion to transfer, Plaintiffs in two cases have agreed to the transfer,<sup>4</sup> Plaintiffs in the third case have opposed the transfer,<sup>5</sup> and Plaintiffs in the fourth case did not file any opposition after initially indicating that they were undecided on the matter.

Having concluded that these four products liability suits are related and that transfer would result in more efficient pre-trial of the related cases, we grant the motion to transfer these four Texas cases.

### **FIRST PRONG: RELATEDNESS**

Texas Rule of Judicial Administration 13 authorizes the MDL panel to transfer “related” cases to a single pretrial judge if “transfer would be for the convenience of the parties and witnesses and would promote the just and efficient conduct of the cases.”<sup>6</sup> The threshold question under Rule 13.3 is whether the cases are “related.”<sup>7</sup> The relatedness inquiry examines whether the cases involve “one or more common questions of fact.”<sup>8</sup>

Plaintiffs opposing the motion to transfer assert that the existence of a defective ignition switch in a GM vehicle is an undisputed fact, as demonstrated by the recalls and the testimony and documents provided by GM to Congress. Plaintiffs contend that these undisputed facts “cannot support” a motion to transfer, and that individualized liability and

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*Gen. Motors LLC*, No. 14–01081 (N.D. Ga.); *Hair v. Gen. Motors LLC*, No. 14–00792 (C.D. Cal.); *Buzard v. Gen. Motors LLC*, No. 14–03633 (E.D. Penn.); see MDL No. 2543, ECF No. 271 (“Conditional Transfer Order–1”) (filed June 12, 2014); MDL No. 2543, ECF No. 280 (“Conditional Transfer Order–3”) (filed June 18, 2014).

<sup>4</sup> One candidly conceded that the lawsuits “assert a number of similar allegations, present common questions of fact, and are right for MDL treatment” and will result in “consistent rulings on pretrial matters.”

<sup>5</sup> Counsel in that case has subsequently filed a second lawsuit in a fifth county.

<sup>6</sup> TEX. R. JUD. ADMIN. 13.3(a)(2).

<sup>7</sup> TEX. R. JUD. ADMIN. 13.3; *In re Deepwater Horizon Incident Litig.*, 387 S.W.3d 127, 128 (Tex. M.D.L. Panel 2011) (“Relatedness is a threshold question.”).

<sup>8</sup> See TEX. R. JUD. ADMIN. 13.2(f); TEX. GOV’T CODE ANN. § 74.162 (West 2013).

damage issues “will predominate” because “the cases involve different plaintiffs who suffered different injuries, at different times, in different places, in different makes, models and years of GM vehicles, while engaging in different activities.” Plaintiffs rely on *In re Delta Lloyds Insurance Co. of Houston*, 339 S.W.3d 384 (Tex. M.D.L. Panel 2008) and *In re Personal Injury Litigation Against Great Lakes Dredge & Dock, Co.*, 283 S.W.3d 547 (Tex. M.D.L. Panel 2007). Both of these cases are distinguishable.

In *Great Lakes*, we denied the motion to transfer because the plaintiff maritime workers “were injured at different times, in different states, on different vessels, while engaging in different activities, resulting in different injuries.”<sup>9</sup> The common liability issue was insufficient to show relatedness. Then, in *Delta Lloyds*, we observed that a common origin or common event—there a hurricane—does not by itself make cases “related” under Rule 13. But in products liability cases alleging a common defect, “relatedness [is] supplied by the common product, not by a common event” or a common liability issue.<sup>10</sup> “By their nature, product liability cases are related.”<sup>11</sup> Indeed, we have recognized “there will be common liability questions at the core of each case,” including questions of knowledge of the defect, testing of the product, and the timeliness of the recall.<sup>12</sup> These product liability issues are certain to arise in the GM litigation switch cases as well.

Plaintiffs identify a number of individualized issues that will have to be resolved in the cases, such as whether an ignition switch caused the accident, and the extent of the plaintiffs’ injuries and damages. Because complex products cases will always involve

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<sup>9</sup> *In re Deepwater Horizon Incident Litig.*, 387 S.W.3d at 129 (discussing *Great Lakes Dredge & Dock, Co.*, 283 S.W.3d at 548).

<sup>10</sup> *In re Wellington Ins. Co. Hailstorm Litig.*, 427 S.W.3d 581, 583 n.9 (Tex. M.D.L. Panel 2014).

<sup>11</sup> *In re Toyota Unintended Acceleration Litig.*, 398 S.W.3d 892, 895 (Tex. M.D.L. Panel 2010).

<sup>12</sup> *Id.* at 895.

individual issues of fact, the transfer rule does not require identity of parties or issues. Indeed, it does not even require common issues to predominate.<sup>13</sup> Therefore, we have “granted MDL motions in product liability cases involving different events at different times linked by claims that a product was defective.”<sup>14</sup> Further, in cases involving allegedly defective vehicles, we have held that “it is irrelevant that the cases involve vehicles of differing make, model, and year.”<sup>15</sup>

Plaintiffs also argue that individual cases will involve separate issues regarding the culpability of different local dealerships and their owners and the culpability of drivers. The presence of other defendants does not, however, destroy relatedness.<sup>16</sup>

We conclude that these cases are related; the unique facts presented by the individual accidents and plaintiffs are less significant than the fact that these actions share core issues of fact concerning the design and testing of GM’s vehicles.

## **SECOND PRONG: EFFICIENCY**

We next consider whether transfer to a single pretrial judge would “serve the convenience of the parties and witnesses” and “promote the just and efficient conduct of the litigation.”<sup>17</sup> Rule 13 aims to further the goals of convenience, efficiency, and justice by (1) eliminating duplicative and repetitive discovery, (2) minimizing conflicting

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<sup>13</sup> *In re State Farm Lloyds Hidalgo Cnty Hail Storm Litig.*, No. 14-01689, 2014 WL 2885699, at \*2 (Tex. M.D.L. Panel May 13, 2014)

<sup>14</sup> *In re Wellington Ins. Co. Hailstorm Litig.*, 427 S.W.3d at 583. *Cf. In re Firestone/Ford Litig.*, 166 S.W.3d 2 (Tex. M.D.L. Panel 2004) (transferring personal injury cases involving tread separation defects).

<sup>15</sup> *In re Toyota Unintended Acceleration Litig.*, 398 S.W.3d at 894; *see also In re DaimlerChrysler AG CLK430Litig.*, 216 S.W.3d 81, 82 (Tex. M.D.L. Panel 2006) (transferring cases involving allegedly defective vehicles from model years 2000-03).

<sup>16</sup> *See In re Toyota Unintended Acceleration Litig.*, 398 S.W.3d at 894 (recognizing claims were related even though some of the cases involved “local issues like breach of warranty and misrepresentation by local dealerships.”).

<sup>17</sup> *In re State Farm Lloyds Hurricane Litig.*, 387 S.W.3d 130, 133 (Tex. M.D.L. 2012) (quoting *In re Ad Valorem Tax Litig.*, 216 S.W.3d 83, 84 (Tex. M.D.L. Panel 2006)).



demands on witnesses, (3) preventing inconsistent decisions on common issues, (4) reducing unnecessary travel, and (5) creating judicial efficiency through the use of a single judge.<sup>18</sup> Plaintiffs assert that “transfer will not promote the efficient conduct of the litigation.” We disagree and conclude that all five of these goals would be satisfied by transfer.

Discovery in these cases is likely to overlap. The common pretrial discovery disputes are more efficiently resolved by a single judge instead of multiple hearings in multiple courts. Moreover, multiple courts are likely to have different approaches to resolving discovery disputes, creating the risk of conflicting pretrial rulings. Plaintiffs contend that the liability discovery “will likely embrace the information and materials GM has already gathered and provided to the government in the ongoing investigations” but do not offer to bypass all other discovery.<sup>19</sup> Moreover, even if the document production largely encompasses the documents already produced to the government, other discovery—such as interrogatories and depositions—would be outside of that production and any disputes related to that discovery would benefit from efficient resolution by a single judge. Also, consolidated discovery will minimize conflicting demands upon witnesses and reduce unnecessary travel.

Plaintiffs respond that it will not be convenient for party witnesses to have to travel for “discovery-related matters” or hearings if the cases are transferred. But transfer and consolidation do not require that individual witnesses be deposed in the county of the MDL court. As for hearings, we have previously observed, “parties and witnesses rarely need to attend pretrial hearings in person . . . .”<sup>20</sup>

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<sup>18</sup> See *In re State Farm Lloyds Hurricane Ike Litig.*, 392 S.W.3d 353, 355–56 (Tex. M.D.L. Panel 2012); *In re Digitek Litig.*, 387 S.W.3d 115, 116–17 (Tex. M.D.L. Panel 2009).

<sup>19</sup> One of the Plaintiffs not opposing the motion to transfer observes that “many”—but not all—of the documents have already been produced.

<sup>20</sup> *In re Toyota Unintended Acceleration Litig.*, 398 S.W.3d at 895.

Finally, we observe that consolidation will not only conserve the resources of the parties and their counsel, but also the judiciary. For example, the opposing Plaintiffs are seeking to depose Michael Millikin, the Executive Vice President and General Counsel for General Motors Company, the parent company of GM. GM objects on grounds of privilege. Rather than multiple courts addressing this issue, it is much more efficient for one court to decide it for the entire state.

### CONCLUSION

We conclude that Defendants have shown that the cases listed in their motion are “related” within the meaning of Rule 13 and that transferring them to one pretrial court would serve the convenience of the parties and witnesses and the efficient conduct of the litigation. Accordingly, Defendants’ motion to transfer these cases and all related cases to a pretrial court is granted.

Presiding Judge PEEPLES, Chief Justices STONE, and McCLURE, and Justice LANG-MEIRS join.

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HARVEY BROWN,  
JUSTICE

**OPINION ISSUED: July 30, 2014**

## **ORDER OF MULTIDISTRICT LITIGATION PANEL**

Order Pronounced July 30, 2014

### APPOINTMENT OF PRETRIAL JUDGE IN THE FOLLOWING MULTIDISTRICT LITIGATION CASE:

14-0399        IN RE GENERAL MOTORS IGNITION SWITCH LITIGATION

Defendants' Motion to Transfer pursuant to Rule 13 of the Texas Rules of Judicial Administration, filed on May 20, 2014, is granted. The cases listed in the First Amended Appendix A, and all tag-along cases if any, are hereby transferred to The Honorable Robert Schaffer, presiding judge of the 152<sup>nd</sup> District Court of Harris County.

Justice Harvey Brown delivered the opinion of the MDL Panel.

# Exhibit 6

**Exhibit A: Cases Whose Transfer To MDL 2543 Has Been Finalized**

Andrews v. General Motors LLC, No. 5:14-cv-01239-ODW-AJW (C.D. Cal.)

Arnold, et al. v. General Motors LLC, et al., No. 1:14-cv-02882-RMD (N.D. Ill.)

Ashbridge v. General Motors LLC, et al., No. 2:14-cv-00463-RCM (W.D. Pa.)

Ashworth, et al. v. General Motors LLC, No. 2:14-cv-00607-JHE (N.D. Ala.)

Balls, et al. v. General Motors LLC, No. 2:14-cv-02475-JVS-AN (C.D. Cal.)

Bedford Auto v. General Motors LLC, No. 2:14-cv-11544-GCS-DRG (E.D. Mich.)

Bender v. General Motors LLC, No. 1:14-cv-00134-TLS-RBC (N.D. Ind.)

Benton v. General Motors LLC, No. 5:14-cv-00590-JVS-AN (C.D. Cal.)

Biggs v. General Motors LLC, et al., No. 2:14-cv-11912-PDB-MKM (E.D. Mich.)

Brandt, et al. v. General Motors LLC, No. 2:14-cv-00079 (S.D. Tex.)

Brown, et al. v. General Motors LLC, No. 2:14-cv-02828-JVS-AN (C.D. Cal.)

Burton v. General Motors LLC, et al., No. 5:14-cv-00396-R (W.D. Okla.)

Camlan, Inc., et al. v. General Motors LLC, No. 8:14-cv-00535-JVS-AN (C.D. Cal.)

Childre v. General Motors LLC, et al., No. 2:14-cv-01320-KDE-MBN (E.D. La.)

Coleman v. General Motors LLC, No. 3:14-cv-00220-BAJ-SCR (M.D. La.)

Corbett, et al. v. General Motors LLC, No. 7:14-cv-00139-D (E.D.N.C.)

Cox v. General Motors LLC, et al., No. 2:14-cv-02608-JVS-AN (C.D. Cal.)

Darby v. General Motors LLC, et al., No. 5:14-cv-00676-JVS-AN (C.D. Cal.)

Dawson v. General Motors LLC, No. 1:14-cv-01459-DCN (N.D. Ohio)\*

Deighan v. General Motors LLC, et al., No. 2:14-cv-00458-RCM (W.D. Pa.)

DeLuco v. General Motors LLC, No. 1:14-cv-02713-JMF (S.D.N.Y.)

DePalma, et al. v. General Motors LLC, et al., No. 1:14-cv-00681-YK (M.D. Pa.)

DeSutter, et al. v. General Motors LLC, No. 9:14-cv-80497-DMM (S.D. Fla.)

Detton, et al. v. General Motors LLC, et al., No. 3:14-cv-00500-MJR-PMF (S.D. Ill.)

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\* Action asserts personal injury or wrongful death claims.

**Exhibit A: Cases Whose Transfer To MDL 2543 Has Been Finalized**

Deushane v. General Motors LLC, et al., No. 8:14-cv-00476-JVS-AN (C.D. Cal.)

Dinco, et al. v. General Motors LLC, No. 2:14-cv-03638-JVS-AN (C.D. Cal.)

Duarte v. General Motors LLC, et al., No. 1:14-cv-21815-JAL (S.D. Fla.)

Duncan v. General Motors LLC, No. 4:14-cv-00597-ODS (W.D. Mo.)\*

Edwards, et al. v. General Motors LLC, et al., No. 1:14-cv-21949-MGC (S.D. Fla.)

Elliott v. General Motors, LLC, et al., No. 1:14-cv-11982-WGY (D. Mass)

Emerson, et al. v. General Motors LLC, et al., No. 1:14-cv-21713-UU (S.D. Fla.)

Espineira v. General Motors LLC, et. al., No. 1:14-cv-21417-FAM (S.D. Fla.)

Favro v. General Motors LLC, No. 8:14-cv-00690-JVS-AN (C.D. Cal.)

Forbes v. General Motors LLC, No. 2:14-cv-02018-GP (E.D. Pa.)

Foster v. General Motors LLC, et al., No. 1:14-cv-00844-SO (N.D. Ohio)

Fugate v. General Motors LLC, No. 7:14-cv-00071-ART (E.D. Ky.)

Gebremariam v. General Motors LLC, No. 8:14-cv-00627-JVS-AN (C.D. Cal.)

Groman v. General Motors LLC, No. 1:14-cv-02458-JMF (S.D.N.Y.)

Grumet, et al. v. General Motors LLC, No. 3:14-cv-00713-JM-BGS (S.D. Cal.)

Hair, et al. v. General Motors LLC, No. 8:14-cv-00792-JLS-RNB (C.D. Cal.)\*

Harris, et al. v. General Motors LLC et al., No. 1:14-cv-21919-JAL (S.D. Fla.)

Henry, et al. v. General Motors LLC, et al., No. 4:14-cv-00218-DDB (E.D. Tex.)

Heuler v. General Motors LLC, No. 8:14-cv-00492-JVS-AN (C.D. Cal.)

Higginbotham v. General Motors LLC, et al., No. 4:14-cv-00306-JM (E.D. Ark.)

Holliday, et al. v. General Motors LLC, et al., No. 1:14-cv-00271-ZJH (E.D. Tex.)

Hurst v. General Motors Co., No. 2:14-cv-02619-JVS-AN (C.D. Cal.)

Ibanez, et al. v. General Motors LLC, No. 2:14-cv-05238-JVS-AN (C.D. Cal.)

Irvin v. General Motors LLC, et al., No. 1:14-cv-00090-JAR (E.D. Mo.)\*

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\* Action asserts personal injury or wrongful death claims.

**Exhibit A: Cases Whose Transfer To MDL 2543 Has Been Finalized**

Jawad v. General Motors LLC, No. 4:14-cv-11151-MAG-DRG (E.D. Mich.)

Johnson v. General Motors LLC, No. 3:14-cv-477 HTW-LRA (S.D. Miss.)

Jones v. General Motors LLC, No. 1:14-cv-01052-CRC (D.D.C.)\*

Jones v. General Motors LLC, No. 4:14-cv-11197-MAG-DRG (E.D. Mich.)

Jones v. General Motors LLC, No. 1:14-cv-0850-JMF (S.D.N.Y.)

Kelley, et al. v. General Motors Co., et al., No. 8:14-cv-00465-JVS-AN (C.D. Cal.)

Klussendorf v. General Motors LLC, et al., No. 1:14-cv-05035 (S.D.N.Y.)

Knetzke v. General Motors LLC, et al., No. 1:14-cv-21673-JAL (S.D. Fla.)

Lambeth v. General Motors LLC, No. 1:14-cv-00546-WO-LPA (M.D.N.C.)\*

Lannon, et al. v. General Motors LLC, et al., No. 1:14-cv-21933-KMM (S.D. Fla.)

LaReine, et al. v. General Motors LLC, et al., No. 2:14-cv-03112-JVS-AN (C.D. Cal.)

Letterio v. General Motors LLC, et al., No. 2:14-cv-00488-RCM (W.D. Pa.)

Leval v. General Motors LLC, No. 2:14-cv-00901-KDE-DEK (E.D. La.)

Levine v. General Motors LLC, No. 1:14-cv-21752-JAL (S.D. Fla.)

Lewis v. General Motors LLC, et al., No. 1:14-cv-00573-WTL-DKL (S.D. Ind.)

Maciel, et al. v. General Motors LLC, No. 4:14-cv-01339-JSW (N.D. Cal.)

Malaga et al. v. General Motors LLC, No. 8:14-cv-00533-JVS-AN (C.D. Cal.)

Markle v. General Motors LLC, et al., No. 1:14-cv-21788-FAM (S.D. Fla.)

Mazzocchi v. General Motors LLC, et al., No. 7:14-cv-02714-NSR (S.D.N.Y.)

McCarthy v. General Motors LLC, et al., No. 2:14-cv-00895-MLCF-KWR (E.D. La.)

McConnell v. General Motors LLC, No. 8:14-cv-00424-JVS-AN (C.D. Cal.)

Nava v. General Motors LLC, et al., No. 8:14-cv-00755-JVS-AN (C.D. Cal.)

Nettleton v. General Motors LLC, et al., No. 4:14-cv-00318-DPM (E.D. Ark.)

Phaneuf, et al. v. General Motors LLC, No. 1:14-cv-03298-JMF (S.D.N.Y.)

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\* Action asserts personal injury or wrongful death claims.

**Exhibit A: Cases Whose Transfer To MDL 2543 Has Been Finalized**

Phillip, et al. v. General Motors LLC, No. 3:14-cv-08053-DGC (D. Ariz.)

Ponce v. General Motors LLC, No. 2:14-cv-02161-JVS-AN (C.D. Cal.)

Powell v. General Motors LLC, No. 1:14-cv-00963-DAP (N.D. Ohio)

Ramirez, et al. v. General Motors LLC, et al., No. 2:14-cv-02344-JVS-AN (C.D. Cal.)

Ratzlaff, et al. v. General Motors LLC, No. 2:14-cv-02424-JVS-AN (C.D. Cal.)

Roach v. General Motors LLC, et al., No. 3:14-cv-00443-DRH-DGW (S.D. Ill.)

Robinson, et al. v. General Motors LLC, et al., No. 2:14-cv-02510-JVS-AN (C.D. Cal.)

Ross, et al. v. General Motors LLC, et al., No. 1:14-cv-02148-KAM-JO (E.D.N.Y.)

Ross v. General Motors LLC, et al., No. 2:14-cv-03670-ADS-ARL (E.D.N.Y.)\*

Roush, et al. v. General Motors LLC, No. 2:14-cv-04095-NKL (W.D. Mo.)

Ruff, et al. v. General Motors LLC, et al., No. 3:14-cv-02375-PGS-DEA (D.N.J.)

Rukeyser v. General Motors LLC, No. 1:14-cv-05715-JMF (S.D.N.Y.)

Saclo et al. v. General Motors LLC, et al., No. 8:14-cv-00604-JVS-AN (C.D. Cal.)

Salazar v. General Motors LLC, et al., No. 5:14-cv-00362-FB (W.D. Tex.)

Salerno v. General Motors LLC, et al., No. 2:14-cv-02132-JD (E.D. Pa.)

Santiago v. General Motors LLC, No. 1:14-cv-21147-KMW (S.D. Fla.)

Satele, et al. v. General Motors LLC, No. 8:14-cv-00485-JVS-AN (C.D. Cal.)

Sauer, et al. v. General Motors, et al., No. 2:14-cv-04080-SDW-MCA (D.N.J.)

Shollenberger v. General Motors LLC, No. 1:14-cv-00582-YK(M.D. Pa.)

Shotwell v. General Motors LLC, No. 2:14-cv-00094-KS-MTP (S.D. Miss.)\*

Silvas v. General Motors LLC, No. 2:14-cv-00089 (S.D. Tex.)

Skillman v. General Motors LLC, et al., No. 1:14-cv-03326-UA (S.D.N.Y.)

Smith v. General Motors LLC, et al., No. 3:14-cv-00120-SA-SAA (N.D. Miss.)

Spangler v. General Motors LLC, No. 8:14-cv-00816-PSG-RNB (C.D. Cal.)

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\* Action asserts personal injury or wrongful death claims.



**Exhibit A: Cases Whose Transfer To MDL 2543 Has Been Finalized**

Stafford v. General Motors LLC, No. 3:14-cv-01702-THE (N.D. Cal.)

Stafford-Chapman v. General Motors LLC, et al., No. 1:14-cv-00474-MRB (S.D. Ohio)

Stevenson v. General Motors LLC, No. 1:14-cv-05137-UA (S.D.N.Y.)

Sumners, et al. v. General Motors LLC, et al., No. 1:14-cv-00070 (M.D. Tenn.)\*

Taylor v. General Motors Company, No. 9:14-cv-80618-DMM (S.D. Fla.)

Turpyn, et al. v. General Motors LLC, et al., No. 1:14-cv-5328-JMF (S.D.N.Y.)

Van Pelt, et al. v. General Motors LLC, No. 1:14-cv-01081-RWS (N.D. Ga.)\*

Villa, et al. v. General Motors LLC, et al., No. 2:14-cv-02548-JCJ (E.D. Pa.)

Witherspoon v. General Motors LLC, et al., No. 4:14-cv-00425-HFS (W.D. Mo.)

Woodward v. General Motors LLC, et al., No. 1:14-cv-01877 (N.D. Ill.)

Yingling, et al. v. General Motors LLC, No. 3:14-cv-00116-KRG (W.D. Pa.)\*

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\* Action asserts personal injury or wrongful death claims.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

(8) A list of all related cases pending in state or federal court, together with their current status, including (a) discovery taken to date and pending motions, to the extent known; and (b) whether the cases have been stayed pending a decision on New GM's Motion to Enforce filed in the United States Bankruptcy Court for the Southern District of New York on April 21, 2014.

**I. Related Ignition Switch Civil Actions**

- *Abney, et al. v. General Motors LLC*, No. 14-cv-5810 (S.D.N.Y.)  
(No Judge Assigned)
  - Wrongful death and personal injury action alleging ignition switch defects accidents involving 29 deaths and 629 personal injuries certain vehicles that are subject to an ignition switch recall campaign and to certain vehicles that are not.
    - No discovery taken to date.
    - Action included in New GM's Pre-Closing Accident Motion to Enforce.
    - Plaintiffs' filed a letter on August 5, 2014, seeking leave to file a corrected Exhibit A to remove inadvertently listed Plaintiffs.
- *Ackerman v. General Motors*, No. 14-L-489 (St. Clair County, Ill.)<sup>αβ</sup>  
(Hon. Vincent Lopinot, 618-825-2338)
  - Personal injury action alleging ignition switch defects in 2006 Chevrolet Cobalt.
- *Adams v. General Motors LLC, et al.*, No. 201419403-7-189 (Harris County, Tex.)<sup>αβ</sup>  
(Hon. Robert Schaffer, 713-368-6040)
  - Personal injury action alleging ignition switch defects in 2007 Pontiac Solstice.
    - Stayed by order granting New GM's Emergency Motion for Stay pending determination by the Texas Judicial Panel on Multidistrict Litigation ("Texas Panel") of New GM's motion for consolidation and transfer to a pretrial court for consolidated or coordinated pretrial proceedings ("Texas MDL").
    - The Texas Panel granted New GM's motion to transfer and assigned the Honorable Robert Schaffer to preside over the Texas MDL.
- *Alexander v. ESIS/General Motors LLC, et al.*, No. 2013-29761 (Harris County, Tex.)<sup>β</sup>  
(Hon. Robert Schaffer, 713-368-6040)
  - Personal injury action filed in May 2013 alleging power steering defect in 2007 Chevrolet Cobalt. After New GM filed motion for summary judgment in March 2014— which is still pending— Plaintiff filed a response, contending the vehicle's ignition switch was defective and attaching the recall. Plaintiff subsequently filed a second amended petition in July 2014 to formally allege an ignition switch defect.
    - The Texas Panel granted New GM's Motion to Transfer and assigned the Honorable Robert Schaffer to preside over the Texas MDL.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Beckwith v. General Motors Company, et al.*, No. 13CECG03298 (Fresno County, Cal.)<sup>β</sup> (Hon. M. Bruce Smith, 559-457-6318)
  - Personal injury action filed in October 2013 alleging power steering defects in 2008 Chevrolet Cobalt.
    - Plaintiff seeks to amend complaint to include ignition switch allegations and a claim for punitive damages.
      - Hearing on Plaintiff's motion for leave to amend on July 30, 2014.
    - Plaintiff served discovery regarding ignition switch defects in June 2014, to which New GM objected in July 2014.
- *Bogle v. General Motors LLC, et al.*, No. 16-2014-CA-002731 (Duval County, Fla.)<sup>αβ</sup> (Hon. Virginia Norton, 904-255-1300)
  - Wrongful death suit alleging ignition switch defects in 2007 Chevrolet Cobalt.
- *Boyd, et al. v. General Motors LLC*, No. 4:14-cv-01205 (E.D. Mo.) (Hon. Henry E. Autrey, 314-244-7450)
  - Economic loss, personal injury, and wrongful death suit alleging New GM fraudulently concealed ignition switch defects in 2008 Chevrolet HHR, 2011 Chevrolet HHR, 2007 Chevrolet Cobalt, and 2006 Chevrolet Cobalt.
    - No discovery taken to date.
    - Plaintiffs' motion to remand and New GM's motion to stay pending JPML determination are fully briefed.
    - Conditionally transferred to MDL 2543 in MDL 2543 CTO-7.
      - New GM's response to Plaintiffs' motion to vacate due August 25.
- *Cecchini v. General Motors LLC*, No. BC549604 (Los Angeles County, Cal.)<sup>α</sup> (Hon. Susan Bryant-Deason, 213-974-5677)
  - Individual action filed on behalf of owner of 2006 Saturn Ion that seeks economic damages arising out of New GM's purported breach of contract and/or breach of warranty related to alleged ignition housing and ignition cylinder, headlamps, brake system, and window defects.
    - Action will be included in and subject to New GM's Ignition Switch Motion to Enforce.
- *Chaplin v. General Motors Corporation A/K/A General Motors LLC, et al.*, No. 2014-CP-18-1378 (Dorchester County, S.C.)<sup>αβ</sup> (No Judge Assigned)
  - Personal injury action alleging ignition switch defects in 2007 Chevrolet HHR.
- *Cull, et al. v. General Motors LLC, et al.*, No. 10C02-1404-CT-000060 (Clark County, Ind.)<sup>αβ</sup> (Hon. Jerry Jacobi, 812-285-6333)
  - Personal injury action alleging ignition switch defects in 2006 Chevrolet Cobalt.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Elliott, et al. v. General Motors LLC*, No. 1:14-cv-00691 (D.D.C.)<sup>α</sup>  
(Hon. Ketanji Brown Jackson, 202-354-3350)
  - Putative class action filed on behalf of owners of a 2006 Chevrolet Cobalt and a 2010 Chevrolet Cobalt seeking economic loss damages for New GM's alleged fraudulent concealment of ignition switch and fuel pump defects.
    - Then-*pro se* Plaintiffs executed Bankruptcy Stay Stipulation in May 2014; after Plaintiffs retained counsel, Judge Gerber permitted Plaintiffs to file a late "No Stay Pleading" on July 11, which Judge Gerber denied at an August 5 hearing.
    - New GM moved to transfer action to MDL 2543 on July 1.
      - New GM's transfer motion fully briefed.
    - Judge Jackson stayed action pending Bankruptcy and JPML determinations.
- *Frank v. General Motors LLC*, No. 1:14-cv-21652 (S.D. Fla.)<sup>α</sup>  
(Hon. Marcia G. Cooke, 305-523-5150)
  - Putative class action filed on behalf of owner of 2008 Saturn Aura that seeks economic loss damages arising out of New GM's alleged fraudulent concealment of a power steering defect and diminished value of putative class vehicles due to New GM's purported ignition switch defects.
    - Action stayed pending resolution of New GM's Ignition Switch Motion to Enforce.
- *Gbremariam v. General Motors LLC*, No. 8:14-cv-00627 (C.D. Cal.)<sup>α</sup>  
(Hon. James V. Selna, 714-338-2848)
  - Putative class action filed on behalf of owner of 2014 Chevrolet Cruze that seeks economic loss damages for New GM's alleged fraudulent concealment of ignition switch and front axle right half shaft defects.
    - JPML Clerk transferred ignition switch claims to MDL 2543 but severed and remanded front axle right half shaft claims.
    - Action stayed pending resolution of New GM's Ignition Switch Motion to Enforce.
- *Gilbert v. General Motors LLC, et al.*, No. 140500140 (Philadelphia County, Pa.)<sup>αβ</sup>  
(No Judge Assigned)
  - Personal injury action alleging ignition switch defects in 2010 Chevrolet Cobalt.
- *Graves Sr., et al. v. General Motors LLC, et al.*, No. 25,715 (Gonzales County, Tex.)<sup>αβ</sup>  
(Hon. William Old, III, 830-303-4188)
  - Personal injury suit alleging ignition switch defects in 2014 GMC Sierra.
    - New GM expects to "tag" this case as a related action for the Texas MDL.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Green, et al. v. General Motors LLC, et al.*, No. 14-cv-11557 (Giles County, Tenn.)<sup>αβ</sup>  
(No Judge Assigned)
  - Wrongful death suit alleging ignition switch defects in 2005 Cobalt.
    - New GM's responses to Plaintiffs' July 2014 discovery requests are due September 4.
- *Homer v. General Motors LLC, et al.*, No. 14/7662 (Monroe County, N.Y.)<sup>αβ</sup>  
(No Judge Assigned)
  - Wrongful death suit alleging ignition switch defects in 2006 Chevrolet Cobalt.
- *Johnson v. General Motors LLC*, No. BC550606 (Los Angeles County, Cal.)<sup>α</sup>  
(Hon. Deirdre Hill, 213-974-5671)
  - Individual action filed on behalf of owner of 2008 Chevrolet HHR that seeks economic damages arising out of New GM's purported breach of contract and/or warranty related to alleged ignition switch, catalytic converter, suspension system, throttle body, and other defect.
    - Action will be included in and subject to New GM's Ignition Switch Motion to Enforce.
- *Kandziora v. General Motors LLC, et al.*, No. 2:14-cv-00801(E.D. Wis.)  
(Hon. Aaron E. Goodstein, 414-297-3963)
  - Individual action filed on behalf of owner of 2010 Chevrolet Cobalt that seeks economic damages arising out of New GM's alleged fraudulent concealment of ignition switch defects.
    - No discovery taken to date.
    - New GM's motion to dismiss and Plaintiff's motion to remand are pending.
    - Conditionally transferred to MDL 2543 in MDL 2543 CTO-7.
      - New GM's response to Plaintiff's motion to vacate due August 25.
    - Action included in and subject to New GM's Ignition Switch Motion to Enforce.
- *Kosovec v. General Motors LLC, et al.*, No. 3:14-cv-00354-RS-EMT (N.D. Fla.)<sup>αβ</sup>  
(Hon. Richard Smoak, 850-785-9761)
  - Putative class action brought by the owner of a 2008 Chevrolet Cobalt seeking economic loss damages arising out of New GM's alleged fraudulent concealment of ignition switch defects.
    - Action will be included and subject to New GM's Ignition Switch Motion to Enforce.
- *Largent v. General Motors LLC, et al.*, No. 14-006509-NP (Wayne County, Mich.)<sup>αβ</sup>  
(Hon. Edward Ewell, Jr., 313-224-5195)
  - Personal injury action alleging ignition switch defects in 2006 Saturn Ion.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Linder v. Jim Taylor Chevrolet, LLC, et al.*, No. 43,703c (Franklin Parish, La.)<sup>αβ</sup>  
(No Judge Assigned)
  - Personal injury suit alleging electrical system defects in 2011 Chevrolet Silverado.
- *Longpre, et al. v. General Motors LLC*, No. 49D14-1406-CT-021621 (Marion County, Ind.)<sup>αβ</sup>  
(Hon. James Osborne, 317-327-0440)
  - Wrongful death suit alleging ignition switch defects in 2012 Chevrolet Impala.
- *Melton, et al. v. General Motors LLC, et al.*, No. 14A-1197-4 (Cobb County, Ga.)<sup>αβ</sup>  
(Hon. Kathryn J. Tanksley, 770-528-1701)
  - Wrongful death suit alleging ignition switch defects in 2005 Chevrolet Cobalt.
    - Plaintiffs have served ignition switch discovery.
    - Plaintiffs' motion for sanctions and GM's motion to dismiss are fully briefed.
      - Judge Tanksley set an August 9 hearing on New GM's motion to dismiss.
- *Morgan, et al. v. General Motors LLC*, No. 5:14-cv-01058 (W.D. La.)<sup>αβ</sup>  
(Hon. S. Maurice Hicks, 318-676-3055)
  - Putative class action filed on behalf of Chevrolet Cruze owners seeking economic loss damages arising out of New GM's alleged concealment of ignition switch and other defects.
    - Conditionally transferred to MDL 2543 in CTO-8.
      - Plaintiffs' motion to vacate due August 11; New GM's response due September 2.
- *Nelson v. General Motors LLC, et al.*, No. D140141-C (Harris County, Tex.)<sup>αβ</sup>  
(Hon. Robert Schaffer, 713-368-6040)
  - Personal injury action alleging ignition switch defects in 2003 Saturn Ion.
    - Stayed by order granting GM's Emergency Motion for Stay pending Texas MDL determination by Texas Panel.
    - The Texas Panel granted New GM's Motion to Transfer and assigned the Honorable Robert Schaffer to preside over the Texas MDL.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Phillips/Powledge v. General Motors LLC*, No. 3:14-cv-00192 (S.D. Tex.)<sup>α</sup>  
(Hon. David Hittner, 713-250-5511)
  - Wrongful death suit alleging ignition switch, brake light, and power steering defects in a 2004 Chevrolet Malibu.
    - Plaintiff's motion to remand and New GM's motion to dismiss are fully briefed.
    - New GM's motion to transfer to MDL 2543 pending.
      - Plaintiff's response is due August 15.
      - New GM's reply is due August 22.
    - Action included in and subject to New GM's Pre-Closing Accident Motion to Enforce.
- *People of California v. General Motors LLC* No. 30-2014-00731038-CU-BT-CXC (Orange County, Cal.)<sup>α</sup>  
(Hon. Kim Dunning, 657-622-5304)
  - Civil action filed by Orange County, California District Attorney alleging New GM fraudulently concealed ignition switch and other defects.
    - Action will be included in and subject to New GM's Ignition Switch Motion to Enforce.
- *Precht v. General Motors LLC*, No. 1:14-cv-20971 (S.D. Fla.)<sup>α</sup>  
(Hon. Paul C. Huck, 305-523-5520)
  - Putative class action brought on behalf of owner of 2011 Chevrolet Traverse that seeks economic loss damages arising out of New GM's purported fraudulent concealment of airbag defects.
    - Action included in and subject to New GM's Non-Ignition Switch Motion to Enforce.
- *Sesay, et al. v. General Motors, et al.*, No. 14-cv-6018 (S.D.N.Y.)<sup>α</sup>  
(No Judge Assigned)
  - Putative class action filed on behalf of owners of 2007 Chevrolet Impala and 2010 Chevrolet Cobalt that seeks economic loss damages arising out of New GM's alleged fraudulent concealment of an ignition switch defect.
    - Action will be included in and subject to New GM's Ignition Switch Motion to Enforce.
- *Smith v. General Motors LLC, et al.*, No. 41-CV-2014-900140.00 (Lauderdale County, Ala.)<sup>β</sup>  
(Hon. Gilbert P. Self, 256-760-5822)
  - Wrongful death suit alleging ignition switch defects in 2006 Chevrolet Cobalt.
    - No pending motions.
    - New GM's responses to Plaintiff's June 2014 discovery requests due August 25.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.



**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Spencer, et al. v. General Motors LLC, et al.*, No. D-1-GN-14-001337 (Harris County, Tex.)<sup>αβ</sup>  
(Hon. Robert Schaffer, 713-368-6040)
  - Wrongful death suit alleging ignition switch defects in 2008 Chevrolet Cobalt.
    - Stayed by order granting GM's Emergency Motion for Stay pending Texas MDL determination by Texas Panel.
    - The Texas Panel granted New GM's Motion to Transfer and assigned the Honorable Robert Schaffer to preside over the Texas MDL.
- *Stoneham v. General Motors LLC, et al.*, No. 201422646 (Harris County, Tex.)<sup>αβ</sup>  
(Hon. Jaclanel McFarland, 713-368-6200)
  - Wrongful death suit alleging ignition switch defects in 2010 Chevrolet Camaro.
    - New GM expects to "tag" this case as a related action for the Texas MDL.
- *Szatkowski, et al. v. General Motors LLC, et al.*, No. N/A (Luzerne County, Pa.)<sup>αβ</sup>  
(No Judge Assigned)
  - Personal injury action alleging ignition switch defects in 2006 Pontiac Solstice.
- *Tyre v. General Motors LLC, et al.*, No. GD-14-010489 (Allegheny County, Pa.)<sup>αβ</sup>  
(No Judge Assigned)
  - Wrongful death suit alleging ignition switch defects in 2005 Chevrolet Cobalt.
- *Vest v. General Motors LLC, et al.*, No. 14-C-437 (Mercer County, W.V.)<sup>α</sup>  
(Hon. Omar J. Aboulhosn, 304-431-8500)
  - Wrongful death action alleging ignition switch defects in 2005 Chevrolet Cobalt.
    - Action included in and subject to New GM's Pre-Closing Accident Motion to Enforce.
- *Wilson, et al. v. General Motors LLC*, No. 14-A-2092-2 (Cobb County, Ga.)<sup>αβ</sup>  
(No Judge Assigned)
  - Wrongful death suit alleging ignition switch defects in 2007 Buick LaCrosse.
- *Wilson v. General Motors LLC, et al.*, No. 201429914 (Harris County, Tex.)<sup>αβ</sup>  
(Hon. Robert Schaffer, 713-368-6040)
  - Personal injury action alleging ignition switch defects in 2006 Chevrolet Cobalt.
    - New GM will shortly file with the Texas Panel an amended case list and move for a stay pending Texas MDL determination.
    - The Texas Panel granted New GM's Motion to Transfer and assigned the Honorable Robert Schaffer to preside over the Texas MDL.

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<sup>α</sup> No discovery taken to date and no pending motions.

<sup>β</sup> Not currently subject to a New GM Motion to Enforce the Sale Order and Injunction.



**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Yagman v. General Motors Company, et al.*, No. 2:14-cv-04696 (C.D. Cal.) (Hon. Michael W. Fitzgerald, 213-894-1527)
  - Putative class action brought by the owner of a 2007 Buick Lucerne that alleges breaches of warranty.
    - No discovery taken to date.
    - New GM's motion to dismiss pending.
      - Plaintiff's response was due August 4.
      - New GM's reply due August 11.
    - Action will be included in and subject to New GM's Non-Ignition Switch Motion to Enforce.

**II. Related Ignition Switch Securities And Derivatives Actions**

- *Boso, et al v. Solso, et al*, No. 9925-VCG (Del. Court of Chancery) (Hon. Sam Glasscock, 302-856-5424)
  - Shareholder derivative suit alleging breaches of fiduciary duties, corporate waste and aiding and abetting breaches of fiduciary duties by current and former officers and directors of the Company.
    - There is a pending Motion to Consolidate this action with *In re: General Motors Derivative Litigation*, No. 9627-VCG (Del. Court of Chancery); no discovery taken to date.
- *Pio v. General Motors Company, et al.*, No. 2:14-cv-11191 (E.D. Mich.) (Hon. Linda V. Parker, 313-234-5105)
  - Securities class action suit under §10(b) of the Securities Exchange Act of 1934, alleging violation of federal securities laws by New GM and damages for purchasers of New GM securities between November 17, 2010 and March 10, 2014.
    - Time to answer or otherwise plead in response to complaint extended until after lead counsel appointment has been ruled upon; hearing set for August 20, 2014; no discovery taken to date.
- *In re: General Motors Company Shareholder Derivative Litigation*, No. 2014-004611-CZ (Wayne County, Mich.) (Hon. Brian R. Sullivan, 313-224-2447)
  - Shareholder derivative suit alleging breaches of fiduciary duties, corporate waste and aiding and abetting breaches of fiduciary duties by current and former officers and directors of the Company.
    - Cases were consolidated on June 18, 2014; all deadlines extended until resolution of the motion to dismiss the shareholder derivative action pending in the Eastern District of Michigan; no discovery taken to date.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *In re: General Motors Company Shareholder Derivative Litigation*, No. 2:14-cv-11277 (E.D. Mich.)  
(Hon. Robert H. Cleland, 313-234-5525)
  - Shareholder derivative suit alleging breaches of fiduciary duties, corporate waste and aiding and abetting breaches of fiduciary duties by current and former officers and directors of the Company.
    - Cases were consolidated on May 27, 2014; Plaintiffs to file a consolidated complaint by August 21, 2014; New GM to answer or otherwise plead by October 2, 2014; no discovery taken to date.
- *In re: General Motors Derivative Litigation*, No. 9627-VCG (Del. Court of Chancery)  
(Hon. Sam Glasscock, 302-856-5424)
  - Shareholder derivative suit alleging breaches of fiduciary duties, corporate waste and aiding and abetting breaches of fiduciary duties by current and former officers and directors of the Company.
    - Cases were consolidated on June 20, 2014 and July 18, 2014; Plaintiffs to file an amended consolidated complaint by August 11, 2014; New GM's answer date has not been set by the Court; no discovery taken to date.

**III. Unrelated Actions Seeking Ignition Switch-Related Discovery<sup>1</sup>**

- *Butcher v. General Motors Company, et al.*, No. 2:14-cv-00353 (W.D. Pa.)  
(Hon. Mark. R. Hornak, 412-208-7433)
  - Personal injury action alleging airbag defects in 2008 Saturn Astra.
    - Plaintiff's interrogatories seek Cobalt/Ion ignition switch related discovery.
- *Clarke v. General Motors Company LLC*, No. 4:14-cv-00006 (N.D. Tex.)  
(Hon. Reed C. O'Connor, 214-753-2650)
  - Personal injury action alleging the 2001 Saturn SL2 was defective and unreasonably dangerous in the following respects: (1) defective roof structure; (2) driver's seatbelt failed to restrain its occupant; and (3) failure to incorporate electronic stability control.
    - Plaintiff seeks a corporate representative deposition on the Valukas report dated May 29, 2014.
- *Mathes v. General Motors LLC*, No. CL12001623-00 (Augusta Co. Cir. Ct., Va.)  
(No judge assigned)
  - Personal injury action alleging airbag and seat belt defects in a 2002 Chevrolet Impala.
    - Plaintiff seeks a corporate representative deposition on the Valukas report dated May 29, 2014.

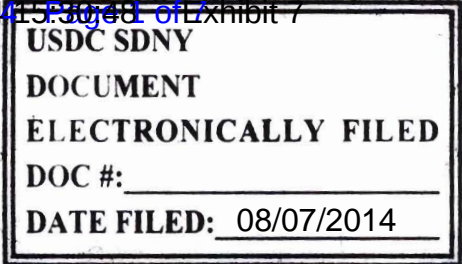
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<sup>1</sup> Counsel for New GM will update the Court regarding non-related cases that seek ignition switch-related discovery as additional such cases and requests are identified.

**Exhibit B: Pending Related Cases Not Consolidated In MDL 2543**

- *Nguyen, et al. v. General Motors LLC*, No. 3:14-cv-01102 (N.D. Tex.)  
(Hon. Jorge A Solis, 214-753-2342)
  - Personal injury action alleging fuel, exhaust and emission system defects in a 2002 Chevrolet Avalanche.
    - Plaintiff requests production of materials and information related to the Valukas report and investigation. New GM's responses are due Aug. 7.

# **Exhibit 7**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)  
14-MC-2543 (JMF)

*This Document Relates To All Actions*  
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**ORDER NO. 7**

JESSE M. FURMAN, United States District Judge:

The Court thanks counsel for their helpful status letters (14-MD-2543, Docket Nos. 72-73) and joint letter regarding the agenda for the conference to be held on August 11, 2014 (14-MD-2543, Docket No. 114), which were submitted in response to Order No. 1 (14-MD-2543, Docket No. 19). Having reviewed those letters, and other submissions in the multidistrict litigation (“MDL”) and member cases, the Court issues this Order (1) to share its preliminary views on some of the matters discussed in the parties’ letters; and (2) to assist the parties in preparing for the August 11, 2014 conference.

**I. PRELIMINARY VIEWS**

*First*, the Court is of the preliminary view that some discovery should proceed now, notwithstanding the motions to enforce pending before the United States Bankruptcy Court and the related stay orders. In particular, the Court is inclined to agree with Temporary Lead Counsel (“TLC”) that General Motors (“GM”) (and other Defendants, to the extent applicable) should be required to produce any and all relevant and non-privileged materials that have been (or are later) provided to (1) Congress, the National Highway Traffic Safety Administration, or other government agencies; and (2) the investigative team led by Anton Valukas (including, perhaps, factual statements contained in the notes of witnesses interviewed by Valukas and his

team). The Court is disinclined, however, to allow depositions at this time, except as necessary to preserve the testimony of a witness who may become unavailable.

In the Court's current view, allowing for such limited discovery would serve to streamline and advance this litigation and would facilitate any settlement discussions at the appropriate time, without unduly burdening Defendants or interfering with the proceedings before the Bankruptcy Court. (Indeed, such limited discovery might even facilitate those proceedings.) The Court is mindful that some cases and claims in the MDL are likely to survive any ruling by the Bankruptcy Court. (As the Court understands it, for example, GM has represented that it does not intend to seek to bar claims relating to accidents or incidents that occurred after entry of the Sale Order.) In addition, allowing limited discovery at this time would put the parties in a better position to proceed expeditiously with the amendment of pleadings and full discovery once the Bankruptcy Court resolves the threshold issues currently under consideration.

*Second*, the Court is inclined to agree that Plaintiffs (through Lead Counsel, once appointed) should file a consolidated or master complaint with respect to the economic loss claims and cases, but that consolidated pleadings are not necessary or prudent with respect to personal injury and wrongful death claims. In the Court's current view, however, Plaintiffs should not — as TLC suggest — wait until they have received and reviewed any limited discovery to file a consolidated complaint, as that would result in undue delay. Instead, the Court is inclined to believe that Lead Counsel should — sooner rather than later — review all existing complaints (and the facts already in the public record, including but not limited to the Valukas Report), and file a consolidated or master complaint with claims on behalf of the class

or classes, as appropriate. After doing so, any counsel who believed that their claims should have been included, but were not, would have an opportunity to object.

In the Court's current view, having a consolidated or master complaint sooner rather than later would streamline and clarify the claims and help eliminate those that are duplicative, obsolete, or unreflective of developing facts or current law. That would not only help advance this litigation, but would also presumably facilitate litigation of the issues currently pending before the Bankruptcy Court. Those advantages would be lost (or reduced) if Plaintiffs were to wait until after they have received and reviewed discovery. Moreover, Plaintiffs may always seek leave to amend the consolidated or master complaint based on their review of discovery (or rulings by the Bankruptcy Court or any other material development).

*Third*, the Court is preliminarily disinclined to withdraw the reference with respect to any claims or proceedings currently pending before the Bankruptcy Court. The Court recognizes that some claims may not ultimately be subject to the Sale Agreement or Sale Order, but given the complexities involved, and the interrelated nature of the different claims, the Court is inclined to believe that the Bankruptcy Court should rule, in the first instance, on matters relating to its prior orders and the bankruptcy generally. Withdrawing the reference as to any of the claims or proceedings before the Bankruptcy Court risks prejudging complicated issues and may result in undue complications later in the litigation.

*Finally*, the Court notes that GM raises valid concerns with respect to the scope and expense of its preservation obligations given the ongoing nature of the recalls and repairs. The Court preliminarily believes that it should enter a preservation order that properly balances the right of Plaintiffs to obtain potentially relevant evidence against the undue burden and expense to GM of preserving large numbers of parts that have been the subject of recalls or other evidence.

The Court hopes (and assumes) that counsel can amicably negotiate the terms of a preservation order that strikes the right balance. In the absence of agreement, the Court is inclined to adopt an order after giving each side an opportunity to be heard.

The Court emphasizes — again — that the foregoing views are merely preliminary, and are shared only to facilitate and streamline discussion of the issues at the initial conference. The Court will keep an open mind and give counsel an opportunity to be heard on all of the foregoing issues before making any final decisions. Counsel should, of course, be prepared to address all of the foregoing issues, as well as the other matters discussed below, at the conference.

## **II. INITIAL CONFERENCE AGENDA**

As noted in Order No. 1, the Initial Conference will be held on August 11, 2014, at 11 a.m., in Courtroom 110 at the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York. (Please note that this is not Judge Furman's regular courtroom.) **The Court intends to begin the initial conference promptly at 11 a.m.** To that end, the Court reminds counsel that they must check in with the Courtroom Deputy **at least fifteen minutes in advance.** (The Court will not take appearances in the Courtroom, but will invite counsel to state their appearances each time they speak.) Moreover, counsel should arrive at the Courthouse with sufficient time to go through security. Seats in the courtroom may not be reserved.

At the conference, TLC and counsel for Defendants should be prepared to address and/or update the Court with respect to the following issues (in order):

1. Whether, and to what extent, there are claims or cases that are not within the scope of the litigation pending before the Bankruptcy Court (such as personal injury and wrongful death cases relating to accidents or incidents postdating the Sale Order).



2. The nature and status of claims against Defendants other than GM, including but not limited to claims against Delphi (and their relationship, if any, to any prior rulings or orders of the Bankruptcy Court) and claims against DPH-DAS LLC (14-MD-2543, Docket No. 25).
3. Whether the Court should withdraw the reference with respect to any claims or proceedings currently pending before the Bankruptcy Court.
4. The issues raised by the “Notice of Conflict within the Plaintiffs’ Group” filed by Gary Peller (14-MD-2543, Docket No. 195), with respect to which the Court will also give Mr. Peller an opportunity to be heard.
5. Any issues arising from those cases that involve parts other than ignition switches. *See, e.g.*, Defendants’ Letter of July 21, 2014 (14-MD-2543, Docket No. 73) at 5 n.7.
6. The status of any related cases that are not currently part of the MDL, including but not limited to any cases pending in state court (such as *Melton v. General Motors*, No. 14-A-1197-4 (Ga. Cobb Cnty. Ct.)) and any cases pending transfer to the MDL.
7. A process for review of cases filed directly in this District to ensure that they are properly included in the MDL.
8. Suggested procedures for coordination of the MDL with the Bankruptcy Court litigation and related state-court litigation.
9. Whether and, if applicable, to what extent and when Plaintiffs should file a consolidated or master complaint, and how and when counsel should be given an opportunity to object if claims are omitted from the consolidated pleading.
10. Whether, and to what extent, the Court should allow discovery pending a ruling from the Bankruptcy Court and, if applicable, the development of a comprehensive

discovery plan, including establishment of an electronic document depository and databases and the appointment of discovery masters.

11. Adoption of a preservation protocol that balances the right of Plaintiffs to obtain potentially relevant evidence against the undue burden and expense to GM of preserving large numbers of parts that have been the subject of recalls or other evidence.
12. A briefing schedule and process for adjudicating motions or appeals from orders of the Bankruptcy Court, including but not limited to (1) the motion to remand filed in *Sumners v. General Motors, LLC*, 14-CV-5461 (JMF) (14-MD-2543, Docket No. 182); (2) the motion for leave to file an omnibus complaint (14-MD-2543, Docket No. 188); (3) the notice of appeal from the Decision With Respect to No Stay Pleading (Phaneuf Plaintiffs), *In re Motors Liquidation Co.*, 09-50026 (REG) (Bankr. S.D.N.Y. July 30, 2014) (Docket No. 12791); and (4) any other motions that counsel anticipate, such as the motions for a preliminary injunction and provisional class certification previously filed in *Benton v. General Motors LLC*, 14-CV-4268 (JMF) and *Kelley v. General Motors Company*, 14-CV-4272 (JMF).
13. Settlement, including the timing and process for appointment of a private mediator or special master.
14. The need, if any, for regular conferences or regular updates from counsel.

After hearing from TLC and counsel for Defendants, the Court will give other Plaintiffs' counsel an opportunity to be heard on those issues or on any other issues with respect to which they feel TLC does not adequately represent their interests. The Court encourages multiple proponents of a common position to designate one lawyer to address the Court.

After addressing the issues referenced above, the Court will hear from applicants for Plaintiffs' leadership positions. Per Order No. 5, the Court will hear from all applicants who have requested an opportunity to supplement their applications with an oral presentation. The Court will hear such applicants in alphabetical order (followed by any applicants who submitted applications on August 7 or 8, 2014, pursuant to Order No. 6). The Court will allot each applicant no more than five minutes. The Court will draw no adverse inference if counsel conclude that they would like to rest on the strength of their written submissions, or if multiple counsel wish to address the Court through a single spokesperson.

SO ORDERED.

Dated: August 7, 2014  
New York, New York

  
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JESSE M. FURMAN  
United States District Judge