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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. : **(Jointly Administered)**
: :
Debtors. : :
-----X

**OBJECTION BY GENERAL MOTORS LLC TO PLAINTIFFS'
FIRST AMENDED RULE 60(b)(6) MOTION FOR RELIEF FROM
AUGUST 9, 2010 STIPULATION AND SETTLEMENT RESOLVING CLAIM
NO. [44614], OR ALTERNATIVELY, RULE 60(d) MOTION TO SET ASIDE**

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General Motors LLC (“**New GM**”), by its undersigned counsel, hereby submits this objection (“**Objection**”) to *Plaintiffs’ First Amended Rule 60(b)(6) Motion For Relief From August 9, 2010 Stipulation And Settlement Resolving Claim No. [44614], Or Alternatively, Rule 60(d) Motion To Set Aside*, dated February 23, 2015 (“**Motion**”),¹ filed by Phillips (as defined in the Motion),² and, in support thereof, represents as follows:

INTRODUCTION

1. The Motion appears to have a two-fold purpose: to set aside the Settlement Agreement so that (i) Phillips can seek an increased claim from the bankruptcy estate of General Motors Corporation (now known as Motors Liquidation Company) (“**Old GM**”), and (ii) Phillips can maintain an action against New GM, unburdened by the Settlement Agreement, in the event the Court rules that the Sale Order and Injunction does not apply to her pre-363 Sale Accident.

2. The first purpose of the Motion is an Old GM issue, and New GM will generally defer to the Motors Liquidation Company General Unsecured Creditors Trust to demonstrate why Phillips should not be permitted to vacate the Settlement Agreement to seek an increased claim against the Old GM bankruptcy estate. However, as explained herein, there are glaring reasons why the relief sought by the Motion is improper, procedurally and substantively, both for this purpose and the second purpose discussed below.

¹ The title of the Motion indicates that relief is sought from the Settlement Agreement in connection with Proof of Claim No. 44614 (filed by Phillips) (“**Claim 44614**”). There is no mention of the three other proofs of claim resolved by the Settlement Agreement. Accordingly, the Motion presumably does not seek relief for such other claimants.

² Phillips originally filed the *Plaintiffs’ Rule 60(b)(6) Motion For Relief From August 9, 2010 Stipulation And Settlement Resolving Claim No. [44614], Or Alternatively, Rule 60(d) Motion To Set Aside* [Dkt. No. 13071] (“**Original Motion**”) on February 2, 2015.

3. With respect to the second purpose of the Motion, it is clear that any claim Phillips may have arises from the pre-363 Sale Accident and as such, her claim is barred by the June 26, 2009 Amended and Restated Master Sale and Purchase Agreement (“**Sale Agreement**”) between Old GM and New GM, which was approved by an Order of this Court dated July 5, 2009 (“**Sale Order and Injunction**”). The Sale Agreement and Sale Order and Injunction clearly provide that liabilities based on accidents that occurred prior to the closing of the sale from Old GM to New GM (“**363 Sale**”) are “Retained Liabilities” of Old GM, and not “Assumed Liabilities” of New GM. *See* Sale Agreement, §§ 2.3(a)(ix), 2.3(b)(ix). By taking the following actions after the 363 Sale: (a) filing Claim 44614 against Old GM, (b) bargaining for a settlement with Old GM with respect to Claim 44614, and (c) bargaining for a distribution from Old GM on account of Claim 44614, Phillips has conceded that she always understood that any liability with respect to the Accident remained with Old GM, and was not assumed by New GM.

4. The fact that any claim Phillips may have based on the Accident is a Retained Liability has now been reaffirmed by this Court’s *Decision on Motion to Enforce Sale Order*, dated April 15, 2015 [Dkt. No. 13109] (“**Motion to Enforce Decision**”),³ wherein the Court expressly held that successor liability claims are barred pursuant to the Sale Order and Injunction and claimants, like Phillips, who were involved in pre-363 Sale accidents are bound by the provisions of the Sale Order and Injunction. *See* Motion to Enforce Decision, 2015 WL 1727285, at *6, *45-*46. Accordingly, there is no meaningful relief being sought in the Motion against New GM. To be treated the same as the other plaintiffs (“**Pre-Closing Accident Plaintiffs**”) that commenced lawsuits against New GM after the 2014 recalls were announced based on accidents that occurred prior to the closing of the 363 Sale (“**Pre-Closing Accident**

³ The Motion to Enforce Decision is published at *In re Motors Liquidation Co.*, Case No. 09-50026, 2015 WL 1727285 (Bankr. S.D.N.Y. April 15, 2015).

Lawsuits”), simply means that Phillips (like the other Pre-Closing Accident Plaintiffs) has no claim against New GM.

5. Moreover, as shown below, Phillips is dissimilar to other Pre-Closing Accident Plaintiffs in important, material respects such that, based on additional circumstances, she is not entitled to the relief sought in the Motion.

6. By way of background: (i) Phillips commenced a lawsuit against Old GM in September 2007 (“**Pre-Petition Phillips Lawsuit**”), almost two years prior to the closing of the 363 Sale, based on an accident (“**Accident**”) that occurred almost four years prior to the closing of the 363 Sale; (ii) Phillips received direct mail notice of Old GM’s motion seeking approval of the 363 Sale; (iii) Phillips had the opportunity to, but did not file an objection to the 363 Sale—she was unquestionably on notice that any claims based on the Accident would be Retained Liabilities of Old GM, and that New GM would be acquiring substantially all of the assets of Old GM, free and clear of successor liability claims; and (iv) Phillips received notice of the bar date for filing proofs of claim against Old GM, and in fact timely filed Claim 44614.

7. The actions and events described in the preceding paragraph are typical of what occurred in the *Old GM* bankruptcy case. Pre-363 Sale accident claimants who were in active litigation with Old GM as of Old GM’s bankruptcy filing date received direct mail notice from Old GM of the 363 Sale and later on, Old GM’s claims bar date notice.

8. But the Phillips’ situation is *sui generis* in the following material respects: (a) after the 363 Sale, Phillips participated in a mediation with Old GM (New GM was not a party) with respect to her filed claim; (b) Phillips entered into the Settlement Agreement which fixed her allowed claim against Old GM and released any other claims, including claims

unknown to her at the time and successor-based claims;⁴ (c) Phillips *unconditionally and irrevocably transferred, assigned, and sold Claim 44614 to a third party shortly after the Settlement Agreement was signed* and, therefore, is not now the holder of Claim 44614, and has not been the holder of that claim for almost five years; and (d) multiple distributions, spanning years, have been made by Old GM to the holder of Claim 44614.⁵ Based on these additional circumstances, New GM does not believe it has any liability with respect to the relief requested in the Motion.

9. New GM notes that the Motion is flawed and should be denied on other grounds, including the following:

- (i) The relief requested pursuant to Federal Rule 60(b)(6) (a) is inappropriate because the relief sought falls under other time-barred provisions of Federal Rule 60(b), and (b) is unavailable because Phillips cannot demonstrate extraordinary circumstances to justify such relief;
- (ii) The relief requested pursuant to Federal Rule 60(b)(3) is time barred because it was not sought within one year of the date of the Settlement Agreement; and
- (iii) The relief requested pursuant to Federal Rule 60(d)(3) should be denied because no court approved the Settlement Agreement and thus, there could be no “fraud on the court” since no Court action was taken with respect to the Settlement Agreement. In addition, Phillips failed to satisfy the extremely high burden placed on her for proving fraud on the Court, and has not pled fraud with particularity in accordance with Federal Rule 9(b).

10. For all of these reasons, as more fully explained below, the relief requested in the Motion should be denied.

⁴ New GM does not believe it is a successor to Old GM. However, since the Accident occurred prior to the 363 Sale, any claim that Phillips would assert against New GM would have to be predicated on a “successor liability” theory. As noted, this type of claim was not only barred by the Sale Order and Injunction, but also by the Settlement Agreement. This Court reiterated that ruling in the Motion to Enforce Decision.

⁵ The Motion is silent about whether the holder of Claim 44614 intends to keep the distributions already made to it by Old GM.

BACKGROUND

A. The Sale Of Assets To New GM

11. On June 26, 2009, Old GM and certain of its affiliates (collectively, the “**Debtors**”) entered into the Sale Agreement with New GM. On July 5, 2009, the Court entered the Sale Order and Injunction, and on July 10, 2009, the Debtors consummated the 363 Sale. Pursuant to the 363 Sale, New GM acquired substantially all of the assets of the Debtors free and clear of all of Old GM’s liabilities pursuant to Section 363(f) of the Bankruptcy Code, except for certain, specifically-defined Assumed Liabilities. The scope and limitations of New GM’s responsibilities with respect to Old GM’s liabilities are defined in the Sale Agreement and the Sale Order and Injunction. The Sale Order and Injunction is a final, binding Order and not subject to appeal.

12. Specifically, the Sale Order and Injunction provides that, with the exception of certain limited liabilities expressly assumed under the relevant agreements (*i.e.*, “Assumed Liabilities”), the assets acquired by New GM were transferred “free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever” Sale Order and Injunction, ¶ 7.⁶

13. Pre-363 accident claims were not Assumed Liabilities; they were expressly defined as Retained Liabilities.⁷ Section 2.3(b) of the Sale Agreement provided that “Retained Liabilities” included (but were not limited to) the following:

⁶ Many of the facts and arguments relating to the impact of the Sale Order and Injunction on Pre-Closing Accident Lawsuits are set forth in more detail in the briefing of the Threshold Issues with respect to the Motions to Enforce. While, for the sake of brevity, New GM is not restating those facts and arguments herein, it does seek to incorporate such facts and arguments to the extent required for the Court to decide the Motion.

⁷ The Sale Order and Injunction permanently enjoined claimants from attempting to enforce liabilities against New GM other than Assumed Liabilities. *See e.g.*, Sale Order and Injunction, ¶¶ 8, 9, 46, 47.

- (ix) all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date;
- ...
- (xi) all Liabilities to third parties for Claims based upon Contract, tort or any other basis;

14. In addition, the Sale Order and Injunction stated that, except for Assumed Liabilities, all claims arising in connection with Old GM's actions or omissions (*i.e.*, Old GM's conduct) may not be asserted against New GM. *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). This Court recently confirmed these holdings in its Motion to Enforce Decision. *See* Motion to Enforce Decision, 2015 WL 1727285, at *8 ("New GM is right that it expressly declined to assume any liabilities based on Old GM's wrongful conduct, and that these were 'retained liabilities' to be satisfied by Old GM.").

B. The Pre-Petition Phillips Lawsuit Against Old GM

15. The vehicle at issue in this matter is a 2004 Chevrolet Malibu Classic ("**Vehicle**"). Although Phillips alleges that the 2004 Malibu Classic was subject to multiple recalls in 2014, this model Vehicle was in fact the subject of only one recall, *i.e.*, NHTSA Recall Number 14V400,⁸ that occurred on or about July 2014. The other recalls referred to in the Motion concern a different model, the Chevrolet Malibu (among other models), and not the Chevrolet Malibu Classic, which was a different vehicle manufactured by Old GM under a different platform.

16. The Accident that underlies the Motion occurred on October 18, 2005, more than three and half years before Old GM's bankruptcy filing.

⁸ *See Recalls Results Look-up by VIN*, attached hereto as **Exhibit "A"** which was obtained from NHTSA's website by inputting the vehicle identification number for the Vehicle.

17. Phillips filed the Pre-Petition Phillips Lawsuit on or about September 6, 2007. Old GM defended the Pre-Petition Phillips Lawsuit, which was ultimately stayed pursuant to Old GM's bankruptcy filing. From a review of the exhibits attached to the Motion, all of the discovery referenced by Phillips in the Motion occurred prior to the closing of the 363 Sale and, thus necessarily concerned the conduct of Old GM. For example, (i) the expert report attached as Exhibit "5" to the Motion is dated July 14, 2008; (ii) the Oral Deposition of Stephan Richard Syson attached as Exhibit "6" to the Motion is dated March 29, 2009; (iii) each of the Requests for Production of Documents, and the one response thereto is from 2008 (*see* Exhibits "7" through "11," and Exhibit "15"); (iv) the Engineer Report attached as Exhibit "13" to the Motion is dated February 18, 2009, and (v) the Videotaped Deposition of Linda Paige Gilman attached as Exhibit "14" to the Motion is dated October 9, 2008.

C. Phillips Was Provided Direct Mail Notice Of The 363 Sale, And Filed A Timely Proof Of Claim That Was Settled And Allowed Against Old GM

18. Phillips was provided timely direct mail notice of the 363 Sale by Old GM,⁹ and did not file any objections. In addition, Phillips timely filed Claim 44614 in connection with the Accident and the Pre-Petition Phillips Lawsuit.¹⁰

19. Phillips and Old GM mediated Claim 44614. New GM was not a party to the mediation. Ultimately, Phillips and Old GM settled Claim 44614 pursuant to a *Stipulation and Settlement Resolving Claim No. [44614, 44615, 44616, 44617]*, dated August 9, 2010 ("**Settlement Agreement**"). New GM did not negotiate the settlement and is not a party to the Settlement Agreement.¹¹

⁹ *See Certificate of Service* filed by Jeffrey S. Stein of The Garden City Group, filed on June 15, 2009 [Dkt. No. 973]. Relevant excerpts of this Certificate of Service are annexed hereto as **Exhibit "B."**

¹⁰ A copy of Claim 44614 is annexed hereto as **Exhibit "C."**

¹¹ A copy of the Settlement Agreement is annexed hereto as **Exhibit "D."**

20. Under the Settlement Procedures Order (as defined in the Settlement Agreement), Old GM was authorized to settle disputes related to proofs of claim without Court authorization if the settled amounts were within certain limits and the Creditors Committee consented. The Settlement Agreement fit those parameters. Accordingly, the Settlement Agreement was not approved by this or any other Court.

21. The Settlement Agreement did not specifically address the dismissal of the Pre-Petition Philips Lawsuit. Ultimately that litigation was dismissed by the Texas State Court, *sua sponte*, for want of prosecution.¹²

22. Pursuant to the Settlement Agreement, Claim 44614 was allowed in a liquidated dollar amount, and multiple distributions have been made on account of that claim.

23. Shortly after the Settlement Agreement was signed, on August 25, 2010, an “Evidence of Transfer of Claim,” dated August 20, 2010, was filed with the Court [Dkt. No. 6793] stating that Claim 44614 was “unconditionally and irrevocably [sold], transfer[ed] and assign[ed] unto: DOVER MASTER FUND II, L.P.”¹³

24. In addition to fixing the allowed amount of Claim 44614, the Settlement Agreement contains the following provisions that are relevant to this Motion:

4. With respect to the Claims, other than the right to receive distributions on account of the Allowed Claims under the Plan, the Claimant and its affiliates, successors and assigns, and its past, present and future members, officers, directors, partners, principals, agents, insurers, servants, employees, representatives, administrators, executors, trustees and attorneys (collectively, the “**Claimant Parties**”), shall have no further right to payment from the Debtors, their affiliates, their estates or their respective *successors* or assigns (collectively, the “**Debtor Parties**”). With respect to the Claims, except as set forth in this Stipulation and

¹² See Order, dated August 7, 2012, entered by the Texas State Court, a copy of which is annexed hereto as **Exhibit “E.”**

¹³ A copy of the “Evidence of Transfer of Claim” is annexed hereto as **Exhibit “F.”**

Settlement, the Claimant Parties hereby irrevocably waive any and all claims (as defined in section 101(5) of the Bankruptcy Code) against any of the Debtor Parties, and are hereby barred from asserting any and all claims whatsoever, *whether known or unknown, presently existing, whether or not asserted, and whether found in fact or law or in equity, in existence as of the execution of this Stipulation and Settlement by the Parties.*

...

8. Each person who executes this Stipulation and Settlement represents that he or she is duly authorized to do so on behalf of the respective Parties hereto *and that each such party has full knowledge and has consented to this Stipulation and Settlement.*

...

THE UNDERSIGNED WARRANT THAT THEY HAVE READ THE TERMS OF THIS STIPULATION AND SETTLEMENT, HAVE HAD THE ADVICE OF COUNSEL OR THE OPPORTUNITY TO OBTAIN SUCH ADVICE IN CONNECTION WITH READING, UNDERSTANDING AND EXECUTING THE AGREEMENT, AND HAVE FULL KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS STIPULATION AND SETTLEMENT.

(Emphasis added.)

D. The Pre-Closing Accident Motion To Enforce And The Phillips 2014 Lawsuit

25. In response to recalls of Old GM vehicles instituted by New GM in 2014, various plaintiffs began filing Pre-Closing Accident Lawsuits against New GM asserting claims based on, among other things, Product Liabilities (as defined in the Sale Agreement) arising from accidents that occurred prior to the closing of the 363 Sale. Phillips filed such a lawsuit on or about April 28, 2014 in the Texas State Court ("**Phillips 2014 Lawsuit**").¹⁴

26. Because the claims raised in the Pre-Closing Accident Lawsuits were expressly barred by the Sale Agreement and the Sale Order and Injunction, on August 1, 2014, New GM

¹⁴ A copy of Phillips' *Original Petition for Bill of Review and Original Petition*, Cause No. 14-CV-0477 ("**Original Petition**"), filed in the District Court of Galveston County, Texas ("**Texas State Court**") is annexed hereto as **Exhibit "G."**

filed with this Court its *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* (“**Pre-Closing Accident Motion to Enforce**”) [Dkt. No. 12807], seeking to enforce the Sale Agreement and the Sale Order and Injunction against Pre-Closing Accident Plaintiffs (including the Phillips 2014 Lawsuit).¹⁵

27. This Court heard oral argument in February 2015 concerning various threshold issues (“**Threshold Issues**”) that relate to the Motions to Enforce. Among those issues is whether the Sale Order and Injunction should be enforced against the Pre-Closing Accident Lawsuits. The Court ruled on the Pre-Closing Accident Motion to Enforce in the Motion to Enforce Decision, expressly barring such claims from proceeding against New GM.

OBJECTION

A. Phillips' Claims Are Barred By The Sale Order And Injunction

28. Phillips was provided direct mail notice of the 363 Sale and had an opportunity to object, but she did not. Consequently, she is bound by the Sale Order and Injunction, which approved the Sale Agreement.

29. As the Motion to Enforce Decision confirmed, the Sale Agreement contains unambiguous provisions that clearly set forth that claims based on accidents that pre-date the closing of the 363 Sale and claims based on Old GM conduct are Retained Liabilities of Old GM, not Assumed Liabilities of New GM. Accordingly, regardless of whether Phillips could set

¹⁵ In addition to the Pre-Closing Accident Motion to Enforce, New GM also previously filed (i) the *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* on April 21, 2014 [Dkt. No. 12620] (“**Ignition Switch Motion to Enforce**”), seeking to enforce the Sale Order and Injunction against plaintiffs who are asserting economic loss claims against New GM that emanate out of recalls concerning an allegedly defective ignition switch manufactured by Old GM, and (ii) the *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)* [Dkt. No. 12808] (“**Non-Ignition Switch Motion to Enforce**”), and with the Pre-Closing Accident Motion to Enforce, the “**Motions to Enforce**”), against plaintiffs who are asserting economic loss claims against New GM that emanate out of recalls concerning alleged defects in Old GM vehicles, other than the ignition switch manufactured by Old GM.

aside the Settlement Agreement, any claim that she may have based on the Accident would only be assertable against Old GM, not New GM.¹⁶

B. Phillips Is Bound By The Settlement Agreement

30. Phillips would have this Court believe that she does “not seek special treatment,” and that she merely “want[s] to be treated like all other pre-sale accident plaintiffs.” Motion, at ¶ 49. While she is like other Pre-Closing Accident Plaintiffs insofar as she is barred from asserting any claims that originate from the Accident against New GM, Phillips is not like other Pre-Closing Accident Plaintiffs because her claims are also barred by a valid settlement agreement. Phillips (i) filed a proof of claim against Old GM after the 363 Sale, (ii) mediated her claims with Old GM after the 363 Sale, (iii) settled all claims—known and unknown, and successor based—related to the Accident, as reflected in the Settlement Agreement, (iv) had her claim allowed and distributions were made thereon by Old GM, and (v) sold her claim to a third party. Given these undisputed facts, Phillips *is* seeking special treatment: she wants this Court to ignore these outcome-determinative facts that distinguish her from other Pre-Closing Accident Plaintiffs.¹⁷

1. Phillips Released All Claims Related To The Accident, Including Unknown Claims and Successor Liability Claims

31. When general language is used in a release, “the release is to be construed *most strongly against the releaser.*” *Middle E. Banking Co. v. State Street Bank Int’l*, 821 F.2d 897, 907 (2d Cir. 1987) (internal citation omitted) (emphasis added). “[T]he *burden is on the releaser to establish that the release should be limited.*” *Id.* (emphasis added). Thus, the party

¹⁶ As New GM was not involved in any litigation regarding Claim 44614, including being a party to the mediation between Phillips and Old GM, any claims based on the conduct of Old GM during the litigation and mediation would also not be claims against New GM.

¹⁷ Pre-Closing Accident Plaintiffs generally have no claims against New GM for the reasons set forth in Section A, *supra*.

seeking relief from a general release bears the burden to show both that the claim was “unknown at the time of the release and that the release was limited rather than general, in order to establish that the parties had not intended the literal effect of the release.” *Calavano v. N.Y.C. Health & Hosps. Corp.*, 667 N.Y.S.2d 351, 353 (1st Dept. 1998); *see also Vornado Realty Trust v. Marubenmi Sustainable Energy, Inc.*, 987 F. Supp. 2d 267, 277 (E.D.N.Y. 2013).

32. Phillips’ sole ground for setting aside the Settlement Agreement are alleged discovery violations allegedly by Old GM concerning the Pre-Petition Phillips Lawsuit which she says she did not learn about until later. But Phillips released all claims—including, specifically, *unknown claims and successor-based claims*—she had in connection with Claim 44614, which related to the Accident. *See* Settlement Agreement, ¶ 4. “When a party makes a deliberate, strategic choice to settle, a court cannot relieve him of that choice simply because his assessment of the consequences was incorrect.” *Powell v. Omnicon*, 497 F.3d 124, 128 (2d Cir. 2007) (citing *U.S. v. Bank of N.Y.*, 14 F.3d 756, 759 (2d Cir. 1994)); *see also McEachin v. Northland Group, Inc.*, No. 12 Civ. 3283(CM), 2012 WL 6582423, at *9 (S.D.N.Y. Dec. 14, 2012) (quoting *Powell*).

33. Accordingly, any claims (including unknown claims and successor-based claims) that Phillips had regarding the Accident were waived and released pursuant to the terms of the Settlement Agreement.

2. Phillips Lacks Standing To Seek Relief From The Settlement Agreement

34. An unequivocal and complete assignment extinguishes all rights against the obligor . . . , and leaves the assignor . . . without standing to sue.” *Macondo’s Profit Corp. v. Motorola Commc’ns & Elec., Inc.*, 863 F. Supp. 148, 149 (S.D.N.Y. 1994); *Compagnie Noga d’Importation et d’Exportation S.A. v. Russian Fed’n*, No. 00 Civ. 0632(WHP), 2008 WL

3833257, at *6 (S.D.N.Y. Aug. 15, 2008) (“A party that has assigned its entire interest in a claim lacks standing to bring suit on that claim.”); *see also* Fed. R. Bankr. P. 3001(e)(2) (“If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.”). As stated by the court in *In re Kreisler*, 331 B.R. 364 (Bankr. N.D. Ill. 2005)

Pursuant to Bankruptcy Rule 3001(e)(2), a transferee of a proof of claim that has already been filed must file evidence of the transfer. *In re Wilson*, 96 B.R. 257, 261 (9th Cir. BAP 1988). ***Such evidence puts the trustee on notice that the original holder of the claim against the estate is no longer an interested party with respect to that claim.*** *In re Ellington*, 151 B.R. 90, 96 (Bankr. W.D. Tex. 1993).

Id. at 376 (emphasis added).

35. Shortly after she signed the Settlement Agreement, Phillips also executed an “Evidence of Transfer of Claim,” wherein she “***unconditionally and irrevocably*** [agreed to] sell, transfer and assign unto [Dover Master Fund II, L.P.] . . . all rights, title and interest in and to the claim of Seller” *See Exhibit “F”* attached hereto (emphasis added). Because Phillips unconditionally and irrevocably transferred Claim 44614, she lacks standing to seek relief with respect to that Claim now.

3. Federal Rule 60(b)(6) Relief Is Unavailable

36. Rule 60(b) provides for “extraordinary judicial relief,” which may only be granted in “exceptional circumstances”, that will “not impose undue hardship on other parties.” *See In re Old Carco LLC*, 423 B.R. 40, 45 (Bankr. S.D.N.Y. 2010), *aff’d*, 2010 WL 3566908 (S.D.N.Y. Sept. 14, 2010), *aff’d*, *Mauro Motors Inc. v. Old Carco LLC*, 420 F. App’x 89 (2d Cir. 2011).

37. Phillips fails to meet her burden of demonstrating that (i) the supporting evidence is “highly convincing;” (ii) there is good cause for her failure to act sooner; and (iii) granting Rule 60(b) relief will not impose undue hardship on other parties. *Id.* “[F]inal judgments should not ‘be lightly reopened.’ . . . The Rule may not be used as a substitute for a timely appeal.”

Nemaizer v. Baker, 793 F.2d 58, 61 (2d Cir. 1986) (citations omitted). Moreover, “[w]here the parties have submitted to an agreed-upon disposition rather than seeking a resolution on the merits, the burden to obtain Rule 60(b) relief is heavier than if one party proceed(ed) to trial, lost, and failed to appeal.” *Vasquez v. Carey*, No. 03 Civ. 3905 (RJH), 2010 WL 1140850, at *6 (S.D.N.Y. Mar. 24, 2010). Here, Phillips entered into the Settlement Agreement, which resolved Claim 44614. She has an extremely heavy burden to undo her consensual agreement, and she has not met such burden.

a. Phillips’ Allegations Of Newly Discovered Evidence, Fraud Or Misconduct Cannot Form The Basis For Relief Pursuant To Federal Rule 60(b)(6)

38. In the Motion, Phillips claims to seek relief under Rule 60(b)(6). To substantiate her argument, however, Phillips accuses Old GM of defrauding her during the mediation by not complying with its pre-363 Sale discovery obligations. In other words, Phillips attempts to bolster her request for Rule 60(b)(6) relief by essentially arguing that newly discovered evidence (addressed in Rule 60(b)(2)) and/or fraud, misrepresentation, or misconduct by Old GM (addressed in Rule 60(b)(3)) have changed the landscape. By law, however, relief under Rule 60(b)(6) cannot be granted based upon other subsections of Federal Rule 60(b):

[I]n order for a court to grant relief from a final judgment under this provision [Federal Rule 60(b)(6)], the movant must show that there are extraordinary circumstances justifying relief, the judgment works an extreme hardship, ***and the asserted grounds for relief are not recognized in subsections (1)-(5) of the Rule.***

Alvarado v. Manhattan Worker Career Center, No. 01 Civ. 9288(CBM), 2003 WL 22462032, at *3 (S.D.N.Y. Oct. 30, 2003) (emphasis added); *see also, e.g., U.S. v. Mason*, 477 F. App’x 846, 847 (2d Cir. 2012) (“Although Mason failed to carry her burden of proof under Rule 60(b)(3), there is no question that her reasons for seeking relief from judgment fell within that specific clause, precluding her from seeking relief alternatively under Rule 60(b)(6).”).

39. Phillips essentially concedes that she is making fraud and misconduct allegations against Old GM when she seeks alternative relief in the Motion under Federal Rule 60(b)(3). The Federal Rule 60(b)(3) allegations are the same as the arguments regarding Federal Rule 60(b)(6). This is impermissible, and Phillips' request for relief based on Federal Rule 60(b)(6) should be denied as the relief she seeks more appropriately falls under other sections of Federal Rule 60(b), each of which is now time barred.

b. Phillips Has Not Demonstrated Extraordinary Circumstances Justifying Relief Pursuant To Federal Rule 60(b)(6)

40. Even if (i) Phillips had standing to seek the requested relief (she does not), and (ii) the grounds for her Rule 60(b)(6) relief did not fall under Rule 60(b)(2) or (3) (they do), the Motion would still lack merit because Phillips has failed to demonstrate that "extraordinary circumstances" justify the relief sought. As stated by the Second Circuit, "Clause (6) of Rule 60(b) provides that relief may be granted for 'any other reason justifying relief from the operation of the judgment. This portion of the Rule is properly invoked only when there are extraordinary circumstances justifying relief, when the judgment may work an extreme and undue hardship, and when the asserted grounds for relief are not recognized in clauses (1)-(5) of the Rule.'" *Nemaizer v. Baker*, 793 F.2d 58, 63 (2d Cir. 1986) (citations omitted); *see also Whitehead v. City of New York*, 953 F.Supp.2d 367, 378 (E.D.N.Y. 2012) ("The standard for granting a motion brought under Rule 60(b)(6) is 'strict,' and such a motion 'should be granted only in extraordinary circumstances.'" (citations and internal quotations omitted)). "In addition, the moving party's burden to obtain Rule 60(b) relief is greater '[w]hen the parties submit to an agreed-upon disposition instead of seeking a resolution on the merits . . . than if one party proceeded to trial, lost, and failed to appeal.'" *Rivera v. Fed. Bureau of Prisons*, No. 08 Civ.

5590(SAS), 2013 WL 5052153, at *2 (S.D.N.Y. Sept. 12, 2013) (quoting *Nemaizer*, 793 F.2d at 63).

41. Here, Phillips' only argument for seeking relief from the Settlement Agreement is that Old GM allegedly did not comply with its discovery obligations during the Pre-Petition Phillips Lawsuit.

42. Contrary to Phillips' allegations, there is only one recall that was instituted in 2014 that concerns the Vehicle—NHTSA Recall Number 14V400. The alleged "Control Module" defect that Phillips repeatedly references in her Motion was the subject of a *different* recall (NHTSA Recall Number 14V-252). The Vehicle at issue in the Phillips' lawsuit was a Chevrolet Malibu Classic. The vehicles at issue for NHTSA Recall 14V-252 were the 2004-2007 Malibu Maxx vehicles and 2005-2010 Pontiac G6 vehicles (each manufactured during a specific time period). Accordingly, Phillips' Vehicle was not even subject to many of the recalls she complains about.

43. Moreover, the facts here demonstrate that Phillips believed that the Vehicle was the subject of a defect, and actively litigated that issue in both Texas State Court and in mediation in the Bankruptcy Court. Phillips disputed Old GM's theory of the case for years, and she used documents produced by Old GM, as well as the opinions of her retained experts, to develop her theory of the case. After three years of litigating against Old GM, Phillips decided to settle her case, agreeing to accept a significant allowed claim in Old GM's bankruptcy case in exchange for a release of all claims. Only Phillips and her counsel are privy to the reasons why she chose to enter into the Settlement Agreement with Old GM in August 2010. *See Mangini v. McClurg*, 301 N.Y.S.2d 508, 566 (N.Y. 1969) ("There are many reasons, including doubtful liability, the willingness to take a calculated risk, the desire to obtain an earlier rather than a later

settlement, and perhaps others, why releasers may wish to effect a settlement and intend to give the release a discharge of liability for any unknown injuries—in short to bargain for general peace.”). Revisiting those reasons nearly five years after Phillips entered into the Settlement Agreement does not warrant a finding of “extraordinary circumstances” to vacate the Settlement Agreement.

4. Any Relief Requested Pursuant To Federal Rule 60(b)(3) Is Untimely

44. Alternatively, Phillips invokes Federal Rule 60(b)(3), which provides relief from an order, judgment or proceeding for “fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.” But Phillips conveniently ignores the one-year limitation in Rule 60(c)(1): “[A] motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.” “This one-year limitations period is ‘absolute’” *Buffalo Teachers Fed’n v. Tobe*, 514 F. App’x 57, 58 (2d Cir. 2013); *see also Gache v. Hill Realty Assocs., LLC*, No. 13–CV–1650 (CS), 2014 WL 5048336, at *7 n.11 (S.D.N.Y. Sept. 22, 2014) (“Plaintiff’s Fed. R. Civ. P. 60 motion is time-barred because Fed. R. Civ. P. 60(b)(3) motions are subject to a one-year statute of limitations [under Fed. R. Civ. P. 60(c)(1)].”).

45. Phillips signed the Settlement Agreement on August 9, 2010—more than four years before she filed her Original Motion. Consequently, her Motion, to the extent it relies upon Federal Rule 60(b)(3), is untimely. For this additional reason, the Motion must be denied.

5. Phillips Has Not Satisfied Her Heavy Burden Under Federal Rule 60(d)

46. Federal Rule 60(d)(3) provides, in relevant part, that a court can “set aside a judgment for fraud on the court.” While Federal Rule 60(b) motions are closely scrutinized and rarely granted, relief under Federal Rule 60(d)(3) “is reserved for only the most egregious misconduct, and requires a showing of an unconscionable plan or scheme which is designed to

improperly influence the court in its decision.” *Wilson v. Johns-Manville Sales Corp.*, 873 F.2d 869, 872 (5th Cir. 1989); *State Street Bank & Trust, Co. v. Inversions Errazuriz Limitada*, 374 F.3d 158, 176 (2d Cir. 2004).

47. A “fraud on the court” under Fed. R. Civ. P. 60(d)(3) relates to:

only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.

Kupferman v. Consol. Research & Mfg. Corp., 459 F.2d 1072, 1078 (2d Cir. 1972) (quotation marks omitted); *Hedges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1325 (2d Cir. 1995); *Transaero, Inc. v. La Fuerza Area Boliviana*, 24 F.3d 457, 460 (2d Cir.) *on reh’g in part sub nom. Transaero, Inc. v. La Fuerza Aerea Boliviana*, 38 F.3d 648 (2d Cir. 1994); *Gleason v. Jandrucko*, 860 F.2d 556, 558 (2d Cir. 1988); *Serzysko v. Chase Manhattan Bank*, 461 F.2d 699, 702 (2d Cir. 1972).

48. As this Court just found in the Motion to Enforce Decision, “fraud on the court” “turns on the knowledge and intent of *those actually interfacing with the Court*. In each of those respects, and its application otherwise, establishing a fraud on the Court requires a knowing and purposeful effort to subvert the judicial process.” Motion to Enforce Decision, 2015 WL 1727285, at *9 (emphasis in original). Importantly, the Court also found “that establishing a fraud on the Court requires defrauding the *court*, as contrasted to a non-judicial victim (such as a vehicle owner).” *Id.* (emphasis in original).

49. The burden of proof in establishing fraud upon the court is on the movant. The threshold for the burden is “clear and convincing” evidence. *King v. First American Investigations, Inc.*, 287 F.3d 91, 95 (2d Cir. 2002). Here, Federal Rule 60(d)(3)—which, on its

face, concerns relief from a judgment—does not even apply simply because the Settlement Agreement was never approved by this or any other court.

50. In all events, Phillips has completely failed to satisfy her burden of demonstrating a fraud on the Court, and has not satisfied the Federal Rule 9(b) standards for pleading fraud with particularity. See *Morgenstein v. Motors Liquidation Company (In re Motors Liquidation Company)*, 462 B.R. 494, 505-508 (Bankr. S.D.N.Y. 2012)(dismissing Federal Rule 60(d) claim based, *inter alia*, on failure to satisfy the “more stringent requirements” of Federal Rule 9(b));¹⁸ *Space Hunters, Inc. v. U.S.*, No. 10 Civ. 6335(CM), 2011 WL 1899627, at *5 (S.D.N.Y. May 17, 2011) (“Even if Plaintiffs’ Rule 60(d) action were not barred by res judicata and *Gleason*, Plaintiffs’ complaint is nevertheless dismissed because Plaintiffs do not allege facts that give rise to a strong inference of fraudulent intent as required by Rule 9(b).”). All that Phillips has done in the Motion with respect to Federal Rule 60(d)(3) is refer the Court to briefs filed in connection with the Threshold Issues. However, those briefs only set forth the parties’ views of the **legal standard** for “fraud on the Court.” There is absolutely no application of this legal standard to any facts. In addition, nowhere in those briefs has the legal standard been applied to the facts surrounding Phillips’ individual situation. Nothing has been pleaded by Phillips, much less fraud with particularity.

51. Moreover, since the Settlement Agreement was not approved by this or any other court, it is axiomatic that Rule 60(d) does not apply to this situation. Simply put, you cannot have a fraud committed on a court when nothing was presented to the court for judicial action.

¹⁸ In *Morgenstein*, the plaintiffs alleged that, to obtain the Court’s approval of Old GM’s bankruptcy plan, Old GM concealed from the plaintiffs and the Court design defects in 2007 and 2008 Chevy Impalas that were allegedly known to Old GM prior to the formulation of its liquidation plan. 462 B.R. at 505-08. They argued that the plan confirmation order should be partially revoked, or not apply to them pursuant to Federal Rule 60(d)(3). The Court’s decision in *Morgenstein* was upheld on appeal. See *Morgenstein v. Motors Liquidation Co.*, Order, 12 Civ. 01746 (AJN) (S.D.N.Y. Aug. 9, 2012) [Dkt. No. 21].

See Motion to Enforce Decision, 2015 WL 1727285, at *66 (“The *Leber-Krebs* factors bring into the analysis, among other things, requirements of an interface with the court; an injury to the court or the judicial system (as contrasted to an injury to one or more individuals)[.] . . . There must be a direct nexus between the knowledge and intent of any wrongdoer and communications to the court.”).

52. Furthermore, typical examples of “fraud on the court” include bribery of a judge or members of a jury, or fabrication of evidence by a party in which an attorney, as an officer of the court, is involved. *Weese v. Schukman*, 98 F.3d 542, 552-53 (10th Cir. 1996); *U.S. v. Int’l Tel. & Tel. Corp.*, 349 F. Supp. 22, 29 (D. Conn. 1972), *aff’d mem. sub. nom.*, *Nader v. U.S.*, 410 U.S. 919 (1973). Phillips has not made any allegations sufficient to support her argument of a “fraud on the court.”

53. In addition, Phillips fails to meet the Rule 60 standard for relief. Even if adequately alleged or proven (which it is not), the failure to disclose pertinent facts relating to a controversy before the court, whether to an adverse party or to the court, does not, without more, constitute “fraud upon the court,” nor does it merit relief under Federal Rule 60(d)(3). *See, e.g., Gleason*, 860 F.2d at 559-60; *In re Hoti Enters., LP*, No. 12-CV-5341 (CS), 2012 WL 6720378, at * 3-4 (S.D.N.Y. Dec. 27, 2012). Instead, such conduct would only be covered by Federal Rule 60(b)(3) (*see Gleason*, 860 F.2d at 559-60), and, as noted above, any relief requested under that subsection of Rule 60(b) would be time-barred. The facts and circumstances surrounding the Phillips’ matter do not satisfy the extremely high burden of proving a fraud on the Court. Accordingly, any relief requested pursuant to Rule 60(d) should be denied.

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

Dated: New York, New York
April 20, 2015

Respectfully submitted,

/s/ Arthur Steinberg
Arthur Steinberg
Scott Davidson
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Attorneys for General Motors LLC

Exhibit A

Recalls Results Look-up by VIN

[Print](#)

VIN: 1G1ND52F34M598780

Year: 2004 **Make:** Chevrolet **Model:** Malibu Classic

Number of Open Recalls: 1

NHTSA Recall Number: [14V400](#)

Recall Date: August 12, 2014

Manufacturer Recall Number: N140350

SUMMARY:

General Motors has decided that a defect which relates to motor vehicle safety exists in 2000-2005 MY Chevrolet Impala and Monte Carlo, 1997-2003 MY Chevrolet Malibu, 2004-2005 MY Chevrolet Malibu Classic, 1999-2004 MY Oldsmobile Alero, 1998-2002 MY Oldsmobile Intrigue, 1999-2005 MY Pontiac Grand Am, and 2004-2008 MY Pontiac Grand Prix vehicles. If the key ring is carrying added weight and the vehicle goes off road or experiences some other jarring event, it may unintentionally move the key away from the "run" position. If this occurs, engine power, power steering and power braking may be affected, increasing the risk of a crash.

SAFETY RISK:

The timing of the key movement out of the run position, relative to the activation of the sensing algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes. Until the recall has been performed, it is very important that customers remove all items from their key ring, leaving only the vehicle key. The key fob (if applicable), should also be removed from the key ring.

REMEDY:

Dealers are to install two key rings and an insert in the key slot or a cover over the key head on all ignition keys, free of charge.

RECALL STATUS: Recall **INCOMPLETE**

MANUFACTURER NOTES:

Visit manufacturer website at <https://my.gm.com/recalls> for more information.

THIS RECALL DATA LAST REFRESHED: Apr 15, 2015

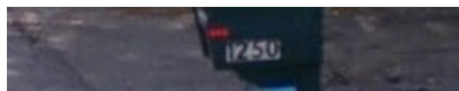
Additional Safety Information

Besides the VIN search tool you just used, NHTSA offers additional safety information based on a vehicle's make, model, and model year and not tied to any particular VIN. A search by vehicle make, model, and model year gives you access to information about technical service bulletins, NHTSA investigations, and owner complaints, as well as safety recalls on aftermarket equipment that is often not linked to a particular VIN or even to your vehicle's manufacturer.

To search NHTSA's safety information based on your vehicle's make, model, and model year, please go to the [Safety Issues section](#) and follow the instructions there.

Recall information for this manufacturer is only available going back to August 20, 1999. If your vehicle was manufactured before this date, please contact the manufacturer for possible additional recall information.

Enter another VIN here:



Type the text

[Privacy & Terms](#)

Submit

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

CERTIFICATE OF SERVICE

STATE OF NEW YORK :
 : ss:
 COUNTY OF SUFFOLK :

Jeffrey S. Stein, being duly sworn, deposes and states:

1. I am a Vice President, Business Reorganization, with The Garden City Group, Inc., the proposed claims and noticing agent for the debtors and debtors-in-possession (the “Debtors”) in the above-captioned proceeding. Our business address is 105 Maxess Road, Melville, New York 11747.

2. On June 5, 2009, at the direction of Weil, Gotshal & Manges LLP (“Weil Gotshal”), proposed counsel for the Debtors, I caused true and correct copies of the following documents to be served by first class mail on the parties set forth on Exhibit A (various equity holders) attached hereto:

- **Notice of Interim Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors’ Estates;**
- **Interim Order Pursuant to Sections 105(a) and 362 of the Bankruptcy Code (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors’ Estates, and (II) Scheduling a Final Hearing (Docket No. 286); and**
- **Notice of Sale Hearing to Sell Substantially All of Debtors’ Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser.**

3. On June 5, 2009, at the direction of Weil Gotshal, I caused true and correct copies of the following documents to be served by first class mail on the parties set forth on Exhibit B (retirees) attached hereto:

- **Notice of Sale Hearing to Sell Substantially All of Debtors’ Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser;**
- **Notice of Chapter 11 Bankruptcy Cases, Meeting of Creditors, & Deadlines; and**
- **Letter to UAW GM Retirees.**

4. On June 5, 2009, at the direction of Weil Gotshal, I caused true and correct copies of the following documents to be served by first class mail on the parties set forth on Exhibit C (all creditors and identified bondholders) attached hereto:

- **Notice of Sale Hearing to Sell Substantially All of Debtors' Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser; and**
- **Notice of Chapter 11 Bankruptcy Cases, Meeting of Creditors, & Deadlines.**

5. On June 5, 2009, at the direction of Weil Gotshal, I caused true and correct copies of the following document to be served by first class mail on the parties set forth on Exhibit D (as described in Paragraph 9(a) thereof) attached hereto:

- **Order Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006 (I) Approving Procedures for Sale of Debtors' Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser; (II) Scheduling Bid Deadline and Sale Hearing Date; (III) Establishing Assumption and Assignment Procedures; and (IV) Fixing Notice Procedures and Approving Form of Notice (Docket No. 274).**

6. On June 5, 2009, at the direction of Weil Gotshal, I caused true and correct copies of the following document to be served by first class mail on the parties set forth on Exhibit E (certain counterparties to potentially assumable executory contracts) attached hereto:

- **Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Amounts Related Thereto.**

7. On June 5, 2009, at the direction of Weil Gotshal, I caused true and correct copies of the following documents to be served by first class mail on the parties set forth on Exhibit F (master service list and all parties who filed a notice of appearance) attached hereto:

- **Notice of Interim Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates;**
- **Interim Order Pursuant to Sections 105(a) and 362 of the Bankruptcy Code (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates, and (II) Scheduling a Final Hearing (Docket No. 286);**
- **Notice of Sale Hearing to Sell Substantially All of Debtors' Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser; and**
- **Notice of Chapter 11 Bankruptcy Cases, Meeting of Creditors, & Deadlines.**

8. I certify under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

/s/ Jeffrey S. Stein
Jeffrey S. Stein.

Name	Address1	Address2	Address3	Address4	City	State	Zip
POWLEDGE ADAM	POWLEDGE, DORIS	5473 BLAIR RD STE 200			DALLAS	TX	75231-4168
POWLEDGE ADAM	POWLEDGE, RACHAEL	5473 BLAIR RD STE 200			DALLAS	TX	75231-4168
POWLEDGE ADAM	MELTON, JACOB	5473 BLAIR RD STE 200			DALLAS	TX	75231-4168
POWLEDGE ADAM	POWLEDGE, ADAM	5473 BLAIR RD STE 200			DALLAS	TX	75231-4168
POWLEDGE ADAM	POWLEDGE, AMBER	5473 BLAIR RD STE 200			DALLAS	TX	75231-4168
POWLEDGE ADAM	POWLEDGE, AUSTIN	5473 BLAIR RD STE 200			DALLAS	TX	75231-4168
POWLEDGE ADAM	POWLEDGE, CHRISTIAN	5473 BLAIR RD STE 200			DALLAS	TX	75231-4168
POWLEDGE ADAM	POWLEDGE, DORIS	104 21ST STREET			GALVESTON	TX	77550
POWLEDGE ADAM	POWLEDGE, ISAAC	5473 BLAIR RD STE 200			DALLAS	TX	75231-4168
POWLEDGE ADAM	POWLEDGE, RONALD ALTON	5473 BLAIR RD STE 200			DALLAS	TX	75231-4168
POWLEDGE, ADAM	APT 314	18711 EGRET BAY BOULEVARD			HOUSTON	TX	77058-3823
POWLESS DEBRA L	PO BOX 280				HIGHLAND PARK	IL	60035-0280
POWLESS, JON D.	3135 SOUTH STATE ROAD 103				NEW CASTLE	IN	47362-9697
POWLISON, DARRYL T	4113 MORGAN RD				LAKE ORION	MI	48359-1949
POWLISON, RACHEL	8830 NORTHEAST SAINT PAUL HWY				NEWBERG	OR	97132-7149
POWLUS, HARRIET J	16 POND VIEW DR				SAGINAW	MI	48609-5141
POWNELL, ALBERT A	3555 LYNTZ				LORDSTOWN	OH	44481
POWNELL, DANNY J	1617 OAKDALE DR NW				WARREN	OH	44485-1831
POWR LITE ELECTRIC SUPPLIES INC	1333 MAGNOLIA ST				BOWLING GREEN	KY	42104-3050
POWTAK, JEFFREY M	1098 OAK RIDGE RD				GAFFNEY	SC	29341-5020
POXON, MATTHEW S	2088 GULLIVER DR				TROY	MI	48085-1032
POYFAIR, DOUGLAS M	6863 SLAYTON SETTLEMENT RD				LOCKPORT	NY	14094-9414
POYMA, BERNARD W	3263 HILLTOP DRIVE				CLEVELAND	OH	44134-5246
POYNER & SPRUILL LLP	3600 GLENWOOD AVE				RALEIGH	NC	27612
POYNER, DALE RALPH	13281 MARVIN DR				FENTON	MI	48430-1025
POYNER, DANNY EARNIE	11189 TIPSICO LAKE RD				FENTON	MI	48430-8411
POYNOR, CHAD E	305 FORREST DR				COLUMBIA	TN	38401-6512
POYNTER CHEVROLET-OLDSMOBILE-BUICK-	1209 E TIPTON ST				SEYMOUR	IN	47274-3531
POYNTER CHEVROLET-OLDSMOBILE-BUICK-	1209 E TIPTON ST				SEYMOUR	IN	47274-3531
POYNTER CHEVROLET-OLDSMOBILE-BUICK-	ROBERT POYNTER	1209 E TIPTON ST			SEYMOUR	IN	47274-3531
PONTIAC-CADILLAC-GMC TRUCK, INC.							
POYNTER DORALEE	95 STANLEY STREET				NEWPORT	OH	45768
POYNTER, CRYSTAL	ADDRESS NOT IN FILE						
POYNTER, EDWARD E	36718 THINBARK CT				WAYNE	MI	48184-1146
POYNTER, LINDA							
POYNTER, MELANIE A	6609 PARK LANE				HILLSBORO	OH	45133-9398
POYNTER, RAYMOND C	7228 S 400 W				TRAFALGAR	IN	46181-8958
POYNTER, RONALD							
POYNTON	PO BOX 8000				BUFFALO	NY	14267-0002
POYSER, PATRICIA L	1801 AZALEA BAY				HUDSON	WI	54016-7272
POZEGA, DOUGLAS TIPTON	36754 SPANISH OAK DR				WESTLAND	MI	48186-3407
POZEGA, JANE LIZABETH	36754 SPANISH OAK DR				WESTLAND	MI	48186-3407
POZEGA, PAULETTE M	515 HAZEL STREET				GIRARD	OH	44420-4420
POZEGA, ROSE M	533 MURRAY HILL DRIVE				YOUNGSTOWN	OH	44505-1547
POZEHL, TERRY W	15194 KARA BLVD				STERLING HTS	MI	48312-5792
POZEN, LEONID V	30885 RUNNING STRM APT 22				FARMINGTON HILLS	MI	48334-1283
POZIEMSKI, STANLEY E	24440 PATRICIA AVE				WARREN	MI	48091-5609
POZNIAK, MICHAEL J	11837 GERALDINE # DOWN				CLEVELAND	OH	44111
POZNIAK, RAYMOND THOMAS	3913 STANNARD DR				TOLEDO	OH	43613-4121
POZNIAK, STEVEN J	6185 STRATFORD DR				PARMA HEIGHTS	OH	44130-2362
POZSGAY, DANIEL L	925 COLUMBIAVILLE RD				COLUMBIAVILLE	MI	48421-9701
POZZANGHERA, MICHAEL A	15 B GREEN LEAF MEADOWS				ROCHESTER	NY	14612-4338
POZZI, BARBARA HELEN	5405 N ELMS RD				FLUSHING	MI	48433-9057
POZZUTO'S AUTO & TRUCK SERVICE	2644 LINCOLN WAY				WHITE OAK	PA	15131-2804
PPG ARCHITECTUAL FINISHES INC	PO BOX 536864				ATLANTA	GA	30353-6864

Exhibit C



UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor (Check Only One) <input checked="" type="checkbox"/> Motors Liquidation Company (f/k/a General Motors Corporation) <input type="checkbox"/> MLCS LLC (f/k/a Saturn, LLC) <input type="checkbox"/> MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation) <input type="checkbox"/> MLC of Harlem, Inc (f/k/a Chevrolet-Saturn of Harlem, Inc.)		Case No 09-50026 (REG) 09-50027 (REG) 09-50028 (REG) 09-13558 (REG)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9) (see Item # 5). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property) Doris Powledge		
Name and address where notices should be sent Angel Hagmaier Attorney at Law 211 E. Parkwood Ave., Suite 107 Friendswood, TX 77546		
Telephone number (281) 818-0777 Email Address angel@angelhagmaier.com		
Name and address where payment should be sent (if different from above) <p style="text-align: center;">FILED - 44614 MOTORS LIQUIDATION COMPANY F/K/A GENERAL MOTORS CORP SDNY # 09-50026 (REG)</p>		
<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim Court Claim Number _____ (If known) Filed on _____		If an amount is identified above you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor you do not need to file this proof of claim form, EXCEPT AS FOLLOWS. If the amount shown is listed as DISPUTED, UNLIQUIDATED or CONTINGENT a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions you need not file again.
<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.		
1 Amount of Claim as of Date Case Filed June 1, 2009 \$250,000,000.00 (If all or part of your claim is secured, complete item 4 below, however, if all of your claim is unsecured do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim is asserted pursuant to 11 U.S.C. § 503(b)(9) complete item 5.) <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
2 Basis for Claim Wrongful Death Cause No. 07-cv-1040 (See instruction #2 on reverse side) 10th District Court, Galveston County, TX		
3 Last four digits of any number by which creditor identifies debtor 1040 3a Debtor may have scheduled account as _____ (See instruction #3a on reverse side)		5 Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5) <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal family, or household use - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Value of goods received by the Debtor within 20 days before the date of commencement of the case - 11 U.S.C. § 503(b)(9) (§ 507(a)(2)) <input checked="" type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(1) 0 Amount entitled to priority \$250,000,000.00 *Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
4 Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Describe _____ Value of Property \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any \$ _____ Basis for perfection _____ Amount of Secured Claim \$ _____ Amount Unsecured \$ _____		
6 Credits The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7 Documents Attach redacted copies of any documents that support the claim such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain in an attachment.		
Date 11/23 2009	Signature The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. Angel Hagmaier	FOR COURT USE ONLY

Exhibit D

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

Attorneys for Debtors and
Debtors in Possession

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

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

**STIPULATION AND SETTLEMENT RESOLVING CLAIM NO. [44614, 44615, 44616,
44617]**

¶ This Stipulation and Settlement (the "Stipulation and Settlement") is entered into as of 8/3/2010 (the "Effective Date") by and among Motors Liquidation Company ("MLC") and its affiliated debtors, as debtors and debtors in possession (collectively, the "Debtors"), on the one hand, and Doris Powledge, Amber Powledge, Austin Powledge and Mary Powledge (the "Claimants", and together with the Debtors, the "Parties"), on the other hand.

RECITALS:

WHEREAS, on June 1, 2009 (the "Commencement Date"), certain of the Debtors (the "Initial Debtors") commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") before the United States Bankruptcy Court for the Southern District of New York (the "Court"), Case No. 09-50026 (REG);

WHEREAS, on September 16, 2009, the Court entered the Order Pursuant to Section 502(b)(9) of the Bankruptcy Code and Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") Establishing the Deadline for Filing Proofs of Claim (Including Claims Under Bankruptcy Code Section 503(b)(9)) and Procedures Relating Thereto and Approving the Form and Manner of Notice Thereof (the "Bar Date Order")

establishing November 30, 2009 at 5:00 p.m. (Eastern Time) as the deadline to file proofs of claim against the Initial Debtors based on prepetition claims;

WHEREAS on October 6, 2009, the Court entered that certain Order pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) Authorizing the Debtors to (i) File Omnibus Claims Objections and (ii) Establish Procedures for Settling Certain Claims (the "Settlement Procedures Order");

WHEREAS pursuant to the Settlement Procedures Order, the Debtors are authorized, with certain exceptions, to settle any and all claims asserted against the Debtors without prior approval of the Court or other party in interest whenever (i) the aggregate amount to be allowed for an individual claim (the "Settlement Amount") is less than or equal to \$1 million or (ii) the Settlement Amount is within 10 percent of the noncontingent, liquidated amount listed on the Debtors' schedules of assets and liabilities so long as the difference in amount does not exceed \$1 million (any settlement amount within (i) or (ii) being a "*De Minimis Settlement Amount*");

WHEREAS pursuant to Settlement Procedures Order, if the Settlement Amount is not a *De Minimis Settlement Amount* but is less than or equal to \$50 million, the Debtors must submit the proposed settlement to the official committee of unsecured creditors appointed in these chapter 11 cases (the "Creditors' Committee"). Within five business days of receiving the proposed settlement, the Creditors' Committee may object or request an extension of time within to object. If there is a timely objection made by the Creditors' Committee, the Debtors may either (a) renegotiate the settlement and submit a revised notification to the Creditors' Committee or (b) file a motion with the Court seeking approval of the existing settlement under Bankruptcy Rule 9019 on no less than ten days' notice. If there is no timely objection made by the Creditors' Committee or if the Debtors receive written approval from the Creditors' Committee of the proposed settlement prior to the objection deadline (either of such events hereafter defined as "Committee Consent"), then the Debtors may proceed with the settlement;

WHEREAS, Claimants filed the following proofs of claim (the "Claims");

<u>Date of Filing</u>	<u>Claim Number</u>	<u>Filed Amount</u>	<u>Claim Amount Cap</u>
11/24/2009	44614	250,000,000	55,000,000
11/24/2009	44615	250,000,000	5,000,000
11/24/2009	44616	250,000,000	5,000,000
11/24/2009	44617	250,000,000	5,000,000

WHEREAS after good-faith, arms'-length negotiations, the Parties have reached an agreement (the "Settlement") to resolve the Claims;

NOW, THEREFORE, in consideration of the foregoing, it is hereby stipulated and agreed that:

1. The Claims shall be treated as allowed general unsecured claims against **Motors Liquidation Company** in the amounts set forth below (the "Allowed Claims"), which Allowed Claims shall not be subject to any defense, counterclaim, right of setoff, reduction,

avoidance, disallowance (including under Section 502(d) of the Bankruptcy Code) or subordination.

Claim Number
44614
44615
44616
44617

Total

Allowed Amount DoF
Ob ~~2,849,572.74~~ \$2,849,074.08
490,740.74
490,740.74
2,444,444.44
3,475,000.00

2. The Claimant shall receive distributions on account of the Allowed Claims in the form set forth in and pursuant to the terms of a confirmed chapter 11 plan or plans in these chapter 11 cases (the "Plan").

3. Upon receipt of such distributions on account of the Allowed Claims as set forth in the Plan, the Claims shall be deemed satisfied in full.

4. With respect to the Claims, other than the right to receive distributions on account of the Allowed Claims under the Plan, the Claimant and its affiliates, successors and assigns, and its past, present and future members, officers, directors, partners, principals, agents, insurers, servants, employees, representatives, administrators, executors, trustees and attorneys (collectively, the "Claimant Parties"), shall have no further right to payment from the Debtors, their affiliates, their estates or their respective successors or assigns (collectively, the "Debtor Parties"). With respect to the Claims, except as set forth in this Stipulation and Settlement, the Claimant Parties hereby irrevocably waive any and all claims (as defined in section 101(5) of the Bankruptcy Code) against any of the Debtor Parties, and are hereby barred from asserting any and all claims whatsoever, whether known or unknown, presently existing, whether or not asserted, and whether found in fact or law or in equity, in existence as of the execution of this Stipulation and Settlement by the Parties.

5. The Debtors' claims agent shall be authorized and empowered to adjust the claims register to reduce and allow Proof of Claim Nos. 44614, 44615, 44616 and 44617 to reflect the Allowed Claims.

6. This Stipulation and Settlement contains the entire agreement between the Parties as to the subject matter hereof and supersedes all prior agreements and undertakings between the Parties relating thereto. This Stipulation and Settlement is subject in all respects to Creditor Committee Consent, and if such consent is not obtained by the Debtors, then the Debtors may determine in their sole discretion whether to proceed forward with seeking Court approval of the Stipulation and Settlement in accordance with the Settlement Procedures Order or abandon the Stipulation and Settlement.

7. This Stipulation and Settlement may not be modified other than by signed writing executed by the Parties hereto or by order of the Court.

8. Each person who executes this Stipulation and Settlement represents that he or she is duly authorized to do so on behalf of the respective Parties hereto and that each such party has full knowledge and has consented to this Stipulation and Settlement.

9. This Stipulation and Settlement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation and Settlement to present any copy, copies, or facsimiles signed by the Parties hereto to be charged.

10. This Stipulation and Settlement shall be exclusively governed by and construed and enforced in accordance with the laws of the state of New York, without regard to conflicts of law principles thereof. The Court shall retain exclusive jurisdiction over any and all disputes arising out of or otherwise relating to this Stipulation and Settlement.

THE UNDERSIGNED WARRANT THAT THEY HAVE READ THE TERMS OF THIS STIPULATION AND SETTLEMENT, HAVE HAD THE ADVICE OF COUNSEL OR THE OPPORTUNITY TO OBTAIN SUCH ADVICE IN CONNECTION WITH READING, UNDERSTANDING AND EXECUTING THE AGREEMENT, AND HAVE FULL KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS STIPULATION AND SETTLEMENT.

MOTORS LIQUIDATION COMPANY AND AFFILIATED DEBTORS Doris Powledge

By: Carrienne Baster By: Doris Powledge

Print Name: Carrienne Baster Print Name: Doris Powledge
Title: Vice President Title: _____

Dated: 8/9/10

Dated: 8/9/10

Amber Powledge

By: Amber Powledge

Print Name: Amber Powledge
Title: _____

Dated: 8/9/10

Austin Powledge

By: Austin Powledge

Print Name: Austin Powledge
Title: _____

Dated: 8/9/10

Mary Powledge

By: Mary Powledge

Print Name: MARY L. Powledge
Title: _____

Dated: 8/9/10

Exhibit E

Donis Powledge, Indiv, etc., et al

IN THE DISTRICT COURT

VS

GALVESTON COUNTY, TEXAS

General Motors Corp.

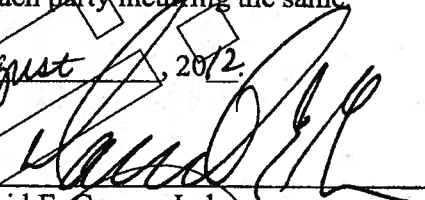
10TH JUDICIAL DISTRICT

ORDER

On the 7th day of August, 2012, the above style and numbered case, having been placed on the Dismissal Docket for the 10th Judicial District Court, Galveston County, Texas, and no party appearing to contest Dismissal of this cause, the Court hereby orders this case DISMISSED for Want of Prosecution.

Court costs are hereby assessed against each party incurring the same.

Signed this the 7th day of August, 2012.



David E. Garner, Judge
10th Judicial District Court

07-CV-1040
DCORDWOP
Order Dismissal for Want of Prosecution DWOP
457450



Exhibit F

EVIDENCE OF TRANSFER OF CLAIM

Exhibit B

TO: United States Bankruptcy Court
Southern District of New York

AND TO: MOTORS LIQUIDATION COMPANY
(F/K/A GENERAL MOTORS CORPORATION) ("Debtor")
Case No. 09-50026

Claim # 44614

DORIS POWLEDGE, its successors and assigns ("Seller"), for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, does hereby unconditionally and irrevocably sell, transfer and assign unto:

DOVER MASTER FUND II, L.P.
c/o Longacre Management, LLC
810 Seventh Avenue, 33rd Floor
New York, NY 10019
Attn: Vladimir Jelisavcic

its successors and assigns ("Buyer"), all rights, title and interest in and to the claim of Seller, including all rights of stoppage in transit, replevin and reclamation, in the principal amount of \$55,000,000.00 ("Claim") against the Debtor in the Bankruptcy Court, or any other court with jurisdiction over the bankruptcy proceedings of the Debtor.

Seller hereby waives any objection to the transfer of the Claim to Buyer on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Seller acknowledges, understands and agrees, and hereby stipulates that an order of the Bankruptcy Court may be entered without further notice to Seller transferring to Buyer the Claim and recognizing the Buyer as the sole owner and holder of the Claim.

You are hereby directed to make all future payments and distributions, and to give all notices and other communications, in respect of the Claim to Buyer.

IN WITNESS WHEREOF, the undersigned has duly executed this Evidence of Transfer of Claim by its duly authorized representative dated August 20, 2010.

DORIS POWLEDGE

DOVER MASTER FUND II, L.P.
By Longacre Management, LLC, its General Partner

By: Doris Powledge
Name: Doris Powledge
Title: Seller

By: [Signature]
Name: Vladimir Jelisavcic
Title: Manager

Exhibit G

4/29/2014 2:31:36 PM
JOHN D. KINARD
District Clerk
Galveston County, Texas

PROXY

CAUSE NO. 14-CV-0477

DORIS PHILLIPS, f/k/a DORIS
POWLEDGE, INDIVIDUALLY AND
AS REPRESENTATIVE OF THE
ESTATE OF ADAM POWLEDGE,
DECEASED, THE ESTATE OF
RACHEL POWLEDGE, DECEASED,
THE ESTATE OF ISAAC POWLEDGE,
DECEASED, THE ESTATE OF
CHRISTIAN POWLEDGE,
DECEASED, AND THE ESTATE OF
JACOB POWLEDGE, DECEASED,
Petitioner-Plaintiff,

VS.

GENERAL MOTORS CORPORATION,
Respondent-Defendant,

AND

DORIS PHILLIPS, f/k/a DORIS
POWLEDGE, INDIVIDUALLY AND
AS REPRESENTATIVE OF THE
ESTATE OF ADAM POWLEDGE,
DECEASED, THE ESTATE OF
RACHEL POWLEDGE, DECEASED,
THE ESTATE OF ISAAC POWLEDGE,
DECEASED, THE ESTATE OF
CHRISTIAN POWLEDGE,
DECEASED, AND THE ESTATE OF
JACOB POWLEDGE, DECEASED,
Plaintiff,

VS.

GENERAL MOTORS CORPORATION,
AND GENERAL MOTORS LLC.
Defendants.

IN THE DISTRICT COURT OF

Galveston County - 10th District Court

GALVESTON COUNTY, TEXAS

____ JUDICIAL DISTRICT COURT

inability to steer.” Such a significant malfunction, according to GM, was implausible given that “[Dori] cannot demonstrate any defect and any alleged ‘recall’” of the 2004 Malibu that would have contributed to the accident.

A cornerstone of GM’s legal defense to the 2007 lawsuit was a particularly nefarious accusation—that Adam Powledge was not the victim of a GM defect, but was a murderer and intended to kill himself and his children.¹ This defense was used throughout the litigation as a means of undermining Dori’s case.

We now know that GM was aware that the power steering system on the 2004 Malibu—identical to the 2004-2007 Saturn Ion and part of the March 31, 2014 recall—could cause a loss of control. But GM put off a recall and never disclosed this information during the 2007 litigation. Years later, after bankruptcy forced Dori and other tort plaintiffs to accept penny-on-the-dollar settlements, GM finally disclosed information that supports Dori’s theory of the case. Rather than a lack of evidence concerning “any defect and any alleged ‘recall,’” GM had mountains of evidence that demonstrate its drive-by-wire electrical systems—including the power steering and cruise control systems—were harming thousands of GM customers nationwide.

But GM fraudulently concealed this information, and lied under oath regarding related electrical failures. In the course of this fraud, GM conspired in bankruptcy, waiting to disclose this information until well after the bankruptcy sale. In hindsight, the financial collapse of 2008-2009 created the perfect opportunity for GM to shed the many

¹ Exhibit A, correspondence from A. Zambrano dated July 27, 2010 at pp. 7; Exhibit B, Expert Report of S. Syson dated July 14, 2008, pp. 5 - 15; and Exhibit C, Rebuttal Assessment Report of S. Syson, pp. 2, 5, and 6; See also Exhibit D, Report of B. Bowman dated February 18, 2009, pp. 3.

JURISDICTION AND VENUE

This Court has jurisdiction over this controversy because the damages sought by Plaintiffs are within the jurisdictional limits of this Court. Plaintiffs seek damages between \$50 million and \$300 million.

Venue is proper in this county because all or a substantial part of the actions giving rise to this lawsuit occurred in Galveston County. TEX. CIV. PRAC. & REM. CODE §15.015.

VERIFIED PETITION FOR BILL OF REVIEW

The affidavit of Dori Powledge Phillips in support of a petition for bill of review is filed with this Original Petition For Bill Of Review as Exhibit E, and is incorporated herein by reference for all purposes.

FACTUAL BACKGROUND

On October 18, 2005 Adam Powledge was driving his four children, Isaac, Rachel, Christian, and Jacob to school in the family's 2004 Chevrolet Malibu. As Adam approached the 4600 Block of I-45 North near the intersection of Holland Road, he lost control of the vehicle. Witnesses described the Malibu traveling at a high rate of speed, even as other vehicles began slowing for approaching traffic. As the Malibu drove off the interstate and onto the median it made a straight-line that was so direct in its trajectory that there is one explanation for its course—a vehicle malfunction.

Adam, Rachel, Isaac, Christian and Jacob died at the scene. The wreckage was so severe that valuable evidence was lost. As traumatic as the accident was, GM's subsequent actions have caused further trauma to Plaintiffs.

murder his children.

Plaintiffs bring their Original Petition for Bill of Review and Original Petition to right this incredible wrong.

PETITION FOR BILL OF REVIEW

Plaintiffs filed suit against GM on September 6, 2007, *Doris Powledge, et al. v. General Motors Corp.* The parties litigated—believing GM was conducting itself as a forthright litigant—for almost 2-years. Then, on June 1, 2009 GM filed for bankruptcy in United States Bankruptcy Court in New York.³ Shortly after GM's bankruptcy the 2007 Lawsuit was transferred to the bankruptcy court.

The parties subsequently reached a settlement in bankruptcy. This settlement was based on several factors, most significantly that GM was in bankruptcy and was vigorously defending itself. GM hired multiple experts in its defense, and accused Adam Powledge of negligent and purposeful actions that caused the wreck.

GM has committed a fraud on the public for over a decade. That fraud has been acutely felt by the Powledge family.

In the prior suit GM wrongfully and fraudulently withheld evidence that prohibited Plaintiffs from fully and fairly making their claims.⁴ The underlying settlement was based on GM's extrinsic fraud and the settlement should be overturned. Plaintiffs stand ready to deposit the settlement proceeds into the registry of the Court.

³ **Exhibit G**, *In re General Motors Corp.*, Cause No. 09-50026, filed June 1, 2009.

⁴ **Exhibit H**, "Sending Alerts Instead, G.M. Delayed Car Recalls," *New York Times*, April 19, 2014; <http://www.nytimes.com/2014/04/20/business/sending-alerts-gm-delayed-recall-of-cars.html? r=0>.

ORIGINAL PETITION

Claims

FRAUD

Plaintiffs expected—and had the right to expect—that GM would adhere to due process and would respect the litigation process, this Court, and act lawfully in defending itself against Plaintiffs' claims. GM had actual knowledge of the evidence it was withholding, and withheld that evidence purposefully. The intentional misrepresentations, including lying under oath and withholding key documents that would prove Plaintiffs' claims and undermine GM's defense that Adam Powledge acted purposefully demonstrates an intent to deceive Plaintiffs. Plaintiffs relied upon GM as—at a minimum—a litigant that would not violate the law as it litigated with Plaintiffs.

GM and its agents, made numerous misrepresentations. GM's representations were known to be false when made or made recklessly without knowledge of the truth and were made as positive assertions. GM made material misrepresentations to Plaintiffs or failed to disclose material facts to Plaintiffs concerning GM's knowledge of the causes of the underlying accident.

GM intended that Plaintiffs rely on these false or unknowing statements to their detriment and injury upon the false statements and impressions of fact being made, and on the presumption that no material facts of the contrary existed. Plaintiffs relied to their detriment upon the false statements and impressions of fact purposely created by GM. As a result, Plaintiffs have been damaged in an amount within the jurisdictional limits of the Court.

Ultimately, Plaintiffs will ask a jury of their peers to assess a fair and reasonable amount of money damages as compensation for its economic and non-economic injuries, physical pain and mental anguish, loss of society, medical expenses, as well as punishment for GM's actions. Additionally, Plaintiffs seek pre- and post-judgment interest and costs of court, and attorneys' fees.

EXEMPLARY DAMAGES

GM's actions as described above were intentional and made with knowing disregard for Plaintiffs' rights and/or with malice towards Plaintiffs. Plaintiffs pray for punitive damages in addition to compensatory damages.

PRAYER

WHEREFORE, Plaintiffs pray that General Motors Corporation and General Motors LLC be duly cited to appear and answer herein and that upon final trial the Court order that the Final Judgment in Cause No. 07-CV-1040, styled *Powledge, et al. v. General Motors Corp.*, be set aside and vacated; that the Court enter judgment for Plaintiffs as outlined above, and for such other and further relief at law or in equity to which Plaintiffs may be justly entitled.

EXHIBIT

A

WEIL, GOTSHAL & MANGES LLP

Mary Burdin, Esq.
July 27, 2010
Page 2

hired new counsel. While Claimants now distance themselves from such agreement, it is important to note that the expert report of Stephen Syson, upon which Claimants rely for virtually every assertion made in their Opening Statement, is exactly the same analysis that was presented before the \$375,000 settlement agreement was reached. This is an important consideration to MLC's posture and position for mediation.

There is no doubt that a judge or jury will sympathize with the Claimants and their loss, but they will also require them to prove the vehicle was defective. To do so, there would need to be a finding that the cruise control system malfunctioned, the brakes failed, the brake electrical disconnect switch failed, and the steering stopped working, *all* at the same time. When consideration is given to how the vehicle actually works, none of these claims are credible, much less all of them.

II. FACTUAL BACKGROUND

A. The Accident

On October 18, 2005, Adam Powledge ("Powledge"), was driving his 2004 Chevrolet Malibu, VIN 1G1ND52F34M598780,¹ at approximately the 4600 block of Interstate 45, and near the intersection of Holland Road, in Texas City, Galveston County, Texas. (*See* Pls. Fourth Am. Pet., attached hereto as Exhibit A, ¶ 1.) According to witnesses, Mr. Powledge sideswiped another vehicle before going off the road and onto the grass shoulder/median between the freeway and the access road. He entered the median at a shallow angle, then came back down into the center of the median, where he drove a considerable distance in a straight line, at high speed, directly into a large support post for an overhead highway sign. (*See* photographs attached as Exhibit B.)

Witnesses say Mr. Powledge made no apparent attempt to maneuver the Malibu back onto the road or to slow down or stop. Linda Paige Gilman, the driver of the car that was sideswiped, testified in her deposition that she watched the car the whole time, and the brake lights never came on. (*See* Gilman Dep. 19:4-20, attached hereto as Exhibit C.)

Due to the speed and location of the impact, the Malibu split in half and caught fire. All occupants died from blunt force trauma, including head injuries and multiple fractures. It is unknown why Mr. Powledge drove into the pole without steering or braking to avoid it. What is

¹ Plaintiff Doris A. Powledge ("Mrs. Powledge") purchased the Malibu used from Norman Frede Chevrolet in Houston, Texas on January 21, 2005. At the time, the vehicle had 22,682 miles on it. The vehicle previously was registered in California to Alamo Rent-A-Car, which had purchased the vehicle new from Prospect Motors in Jackson, California. At no time during its history of usage did anyone report a problem with the acceleration, steering, or braking control systems of the car.

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The former venue of the Action prior to the chapter 11 filing was the 10th Judicial District Court in Galveston County, Texas (the "Texas State Court"), and the Action was pending before the Honorable David E. Garner.

C. The Chapter 11 Filing

On June 1, 2009, GM commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The bankruptcy stayed all proceedings relating to the Action. Shortly after filing, GM filed a motion to essentially sell its assets and transfer certain liabilities to Vehicle Acquisition Holdings, LLC, which has now changed its name to General Motors Company ("New GM"). New GM is a Delaware corporation. On July 5, 2009, the Bankruptcy Court issued an order approving the asset-sale motion ("Sale Order"). Liability for all claims or causes of action asserted in this Action against MLC have been retained by MLC.

On September 16, 2009, the Bankruptcy Court entered the Order Pursuant to Section 502(b)(9) of the Bankruptcy Code and Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") Establishing the Deadline for Filing Proofs of Claim (Including Claims Under Bankruptcy Code Section 503(b)(9)) and Procedures Relating Thereto and Approving the Form and Manner of Notice Thereof establishing November 30, 2009 at 5:00 p.m. (Eastern) as the deadline to file proofs of claim against MLC based on prepetition claims.

On November 24, 2009, four proofs of claim based on the Action were filed by Angel Hagmaier, Esq. ("Hagmaier") with the Bankruptcy Court on behalf of Plaintiffs Mrs. Powledge and Amber, Austin, and Mary Powledge and assigned claims number 44614, 44615, 44616, and 44617 (the "Proofs of Claim"), each asserting a claim for \$250,000,000.

On February 23, 2010, the Bankruptcy Court entered the Order Pursuant to 11 U.S.C. § 1050(a) and General Order M-390 Authorizing Implementation of Alternate Dispute Procedures, Including Mandatory Mediation (the "ADR Order") [Docket No. 5037]. (See ADR Order, attached hereto as Exhibit F.) The ADR Order provides a mechanism whereby MLC can designate a claim for mediation by requesting that a Claimant "cap" their claim at a fixed amount. Specifically, the ADR Order states that "if the claim Amount Cap is accepted by [MLC], the Claim Amount Cap will become binding on the Designated Claimants, and the ultimate value of his or her Unliquidated/Litigation Claim will not exceed the Claim Amount Cap." (ADR Order (Ex. F) at 4-5.)⁴

⁴ If the "cap" is accepted by MLC, MLC may then be responsible for all or a portion of the fees and costs associated with any subsequent mediation, as consideration for the "cap" forever barring a claimant from seeking recovery above this "cap."

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area. Following the deposition of Plaintiffs' expert and the exchange of the reports and test data prepared by defense experts (as discussed below), a settlement was negotiated with Mr. Tracy in which it was agreed that Claimants would settle all claims for the sum of \$375,000. This agreement was reached in mid-April, 2009. Although Mr. Tracy advised that he had been given full authority to negotiate a settlement, Mrs. Powledge refused to follow through with the settlement agreed to by counsel. On April 24, 2009, Mr. Tracy and Mr. Buzbee filed their Unopposed Motion to Withdraw as Counsel of Record. On June 25, 2009, the Texas Court granted the motion.

The chapter 11 filing occurred shortly thereafter. On June 15, 2009, Plaintiffs filed their Designation of Attorney-in-Charge appointing Hagmaier as new counsel for Plaintiffs. On June 25, 2010, Dax O. Faubus filed his Notice of Appearance with the Bankruptcy Court, joining in Hagmaier as counsel for the Plaintiffs. (See Notice of Appearance, attached hereto as Exhibit M.)

III. MLC'S POSITION

A. Claimants Cannot Prove That the Crash Was Caused By a Product Defect

Claimants' assertion that MLC is strictly liable for the car accident fails because Claimants cannot prove that the crash was caused by a product defect. (See Pet. ¶ 14.) Texas has adopted section 402A of the Restatement (Second) of Torts, providing for strict liability for the sale of dangerously defective products. See *McKisson v. Sales Affiliates, Inc.*, 416 S.W.2d 787, 788-89 (Tex. 1967). The essential elements of a strict liability case are: (1) a product defect; (2) that existed at the time the product left the manufacturer's hands; (3) the defect made the product unreasonably dangerous; and (4) the defect was a producing cause of plaintiff's injuries. See *Rourke v. Garza*, 530 S.W.2d 794, 798, 801 (Tex. 1975), *abrogated on other grounds by, Ford Motor Co. v. Ledesma*, 242 S.W.3d 32 (Tex. 2007); *Parsons v. Ford Motor Co.*, 85 S.W.3d 323, 330 (Tex. App.—Austin 2002, pet. denied).

Here, Claimants have no evidence of any actual product defect. This is fatal to their case, under any theory of recovery. At best, Claimants have a set of mismatched *theories*, none of which have been substantiated by scientific evidence or testing on the part of their expert, and all of which have either been rebutted by videotaped testing performed by MLC, or disavowed in Claimants' own expert's deposition testimony.

Numerous entirely independent defects are alleged in Claimants' effort to make out a claim that the car was somehow responsible for this tragic incident. For all of these claims, Claimants rely upon the report of Mr. Stephen Syson (the "Claimants' Expert"). What they overlook is that the Claimants' Expert gave a deposition at which he admitted that he had no actual evidence to support the assertions contained in his report. Claimants further ignore the fact that the Claimants' Expert's theories were rebutted by actual vehicle testing. The testing is described in detail in the reports of four defense experts: (1) electrical engineer David G.

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Accordingly, Claimants' claims fail because they cannot demonstrate that there was any defect in the vehicle. *See Rourke*, 530 S.W.2d at 798; *Parsons*, 85 S.W.3d at 330.

Moreover, Claimants' reliance on alleged vehicle recalls and consumer complaints is not persuasive. Claimants' Opening Statement, in the section titled "The Defective Car," places great emphasis upon a list of recalls taken from the National Highway Traffic Safety Administration ("NHTSA") website and upon complaints allegedly made to the NHTSA by drivers or passengers of other vehicles. None of this information is admissible in court, much less persuasive. The reliance upon recalls is entirely misplaced. (See Opening Statement at 8 and attachments C and D.) Claimants neglect to mention that Claimants' Expert himself admitted under oath at deposition that not a single one of the recalls applies to the car at issue. (See Dep. of Stephen Syson, 18:6-12, excerpts attached hereto as Exhibit R.) The recalls cited by the Claimants' Expert are simply irrelevant and would not be admissible at trial.

Similarly, statements allegedly made by other consumers are unreliable, inadmissible hearsay. This is well established under Texas law:

Complaint letters in a manufacturer's files may be true, but they also may be accusatory and self-serving; they are rarely under oath and never subject to cross-examination. As they are necessarily out-of-court statements, they are hearsay if offered to prove the truth of the assertions therein – that the incidents complained of occurred as reported . . . Thus, consumer complaints in a company's files are generally hearsay within hearsay, and require their own exception in addition to that for business records generally.

Nissan Motor Co. Ltd. v. Armstrong, 145 S.W.3d 131, 139-140 (Tex. 2004). While the law grants certain exemptions to the hearsay rule to "data, findings, and reports" made by government agencies, those exemptions do not apply to "out-of-court complaints" sent to the government from third parties who are not under oath. *Id.* at 142 (emphasis added). Thus, because Claimants cannot demonstrate any defect and any alleged "recalls" or consumer statements are irrelevant and inadmissible, Claimants' claims will fail at trial.

B. Plaintiff's Burden of Proof in an Unintended Acceleration Case

It is important to note that Plaintiffs will bear the burden of proof at trial. The proof required in an unintended acceleration case has been clearly stated by the Texas Supreme Court:

In all [unintended acceleration] cases, it was not enough that a vehicle accelerated when claimants swore they had done nothing. Instead, we have consistently required competent expert testimony and objective proof

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Under the facts of this case, there is ample evidence from which it could be found that Mr. Powledge was negligent. Eye witness, Linda Paige Gilman, testified in her deposition that she watched the Powledge car the whole time from when it passed her until it hit the overhead sign support pole. The car drove in a straight line into the pole, and she is "absolutely certain" that the brake lights never came on. (See Dep. of Linda Paige Gilman, 19:4-20:1, Ex. C.) The evidence will also show that after the crash, the throttle was found to be held in an open position. Claimants' own expert conceded when his deposition was taken that, at best, the condition of the throttle post-crash only proves the throttle was applied at impact. (See Dep. of Stephen Syson, 117:1-18, Ex. R.) This is exactly what would occur if the driver's foot was on the gas pedal at impact. This evidence supports the conclusion that the crash was caused entirely by driver error. At the very least, it constitutes comparative fault that would reduce or bar recovery.

D. Claimants Will No Longer Have Access to a "More Favorable" State Forum

Claimants imply that if mediation is not successful, they will benefit from a favorable state court forum—the Texas Court. However, any determination regarding the allowance or disallowance of Claimants' claims is a core proceeding to be determined by the Bankruptcy Court, not the Texas Court.

Cases or proceedings "arising under" or "arising in" a case under title 11 are considered core proceedings.⁵ By filing a proof of claim, a creditor renders his claims core proceedings and necessarily becomes a party under the bankruptcy court's core jurisdiction and submits himself to the "equitable power of the bankruptcy court to disallow its claim." *Gulf States Exploration Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods. Corp.)*, 896 F.2d 1384, 1389 (2d Cir. 1990) (citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989)); see *S.G. Phillips Constructors, Inc. v. City of Burlington (In re S.G. Phillips Constructors, Inc.)*, 45 F.3d 702, 705 (2d Cir. 1995). (See Proofs of Claim, attached hereto as Exhibit S.)

⁵ Although section 157(b)(2) of title 28 of the United States Code specifically excludes from the definition of core the "liquidation or estimation of contingent or unliquidated personal injury or wrongful death claims against the estate for purposes of distribution in a case under title 11" (28 U.S.C. § 157(b)(2)), this exclusion is of no moment because this matter does not concern "the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims" so as to implicate Section 157(b)(2)(B), but rather merely concerns the allowance or disallowance of timely filed Proofs of Claim as a matter of law. *In re Alper Holdings USA*, 386 B.R. 441, 450 (Bankr. S.D.N.Y.) (stating that in personal injury action the courts in the Second Circuit have repeatedly held that proceedings to determine the allowance or disallowance of claims are core matters), *aff'd*, 398 B.R. 736 (S.D.N.Y. 2008); see also *In re Chateaugay Corp.*, 111 B.R. 67, 76 (Bankr. S.D.N.Y. 1990) ("the bankruptcy court must have jurisdiction to make the threshold determination of whether as a matter of law, a claim exists which can be asserted against the debtor, even if that claim sounds in personal injury or wrongful death"), *aff'd*, 146 B.R. 339 (S.D.N.Y. 1992).

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Royal Dutch Airlines, 454 F. Supp. 425 (S.D.N.Y. 1978). However, in situations where the recovery of punitive damages by some creditors depletes the recovery afforded to other creditors, courts have regularly exercised their equitable power pursuant to section 105 of the Bankruptcy Code to disallow or subordinate punitive damage claims. See, e.g., *In re Johns-Marville*, 68 B.R. at 627; *In re A.H. Robins Co., Inc.*, 89 B.R. 555, 562 (E.D. Va. 1988). Awarding punitive damage claims to certain unsecured creditors in cases where all unsecured creditors are not receiving full satisfaction of their claims in effect forces those impaired creditors to pay for the debtor's wrongful conduct. See *In re Johns-Marville Corp.*, 68 B.R. 618, 627-28 (Bankr. S.D.N.Y. 1986) (stating "it is well within the authority of this court to disallow a claim for punitive damages . . . where allowing such a claim would ill serve the policy of such awards").

Punitive damage claims are particularly inappropriate in instances such as this one, where the debtor is liquidating, as there is no deterrent purpose in awarding punitive damages. Notably, in chapter 7 liquidations, punitive damages are subject to statutory subordination and relegated to a fourth level in the distribution scheme—below that of unsecured claims—because they may be cut off when available funds are insufficient to pay even compensatory damages. 11 U.S.C. § 726(a)(4).⁷

Here, Claimants appear to seek punitive damages based on MLC's alleged "tradition" of placing unreasonably dangerous products on the market, specifically the Malibu. (See Opening Statement at 9.) However, MLC is liquidating. Further, under MLC's anticipated chapter 11 plan, unsecured creditors will not receive full value on account of their claims.⁸ Thus, it is very unlikely that Claimants would be able to recover punitive damages against MLC even if they had evidence to support such claims, which they do not.⁹

2. Damages Recoverable in a Wrongful Death Claim Are Limited

Moreover, the Claimants' claims for conscious pain and suffering lack factual support. "In Texas, only pain consciously suffered and experienced is compensable." *Ruiz v.*

⁷ Although section 726(a)(4) of the Bankruptcy Code is not directly applicable to chapter 11 cases, in addition to the court's equitable authority under section 105 of the Bankruptcy Code, courts have also contemplated that section 510(c) of the Bankruptcy Code provides statutory authority for the subordination of punitive damage claims in chapter 11 cases. See *In re Colin*, 44 B.R. 806, 810 (Bankr. S.D.N.Y. 1984) ("the [] trustee's claim for punitive damages against the estate shall, pursuant to § 510(c) of the [Bankruptcy] Code, be accorded a status inferior to all general nonsubordinated unsecured claims."); *In re Johns-Marville Corp.*, 68 B.R. at 627 ("Finally, it should be observed that arguably under § 510 of the [Bankruptcy] Code, bankruptcy courts have the statutory power to subordinate claims for punitive damages.").

⁸ The most Claimants could hope to receive would be punitive damages that would be equitably subordinated to unsecured claims.

⁹ Even if Claimants somehow were able to obtain an award for punitive damages in state court—and they cannot—the Bankruptcy Court would have to examine such award.

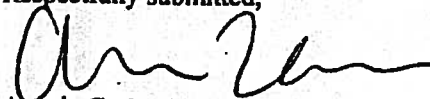
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IV. CONCLUSION

We appreciate your services as mediator and look forward to seeing you in your office on August 9, 2010. In the meantime, if you have any questions, please call us.

Respectfully submitted,


Angela C. Zambrano

*With permission
CK*

cc: Angel Hagmaier, Esq.
Dax O. Faubus, Esq.
Kent B. Hanson, Esq.
Joseph H. Smolinsky, Esq.



**SYSON-HILLE
and
ASSOCIATES**

Engineering Services
Since 1982

The Tracy Law Firm
5473 Blair Road, #200
Dallas, TX 75231

July 14, 2008

Attn: Mr. E. Todd Tracy

Re: **POWLEDGE vs. GENERAL MOTORS CORPORATION**

Dear Mr. Tracy.

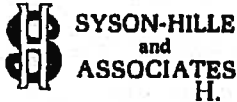
I. ASSIGNMENT

- A. Since my education, training, and experience encompasses almost all aspects of automobile design and engineering, my task in this case was to try and determine, based upon a reasonable degree of probability, whether or not a defect existed in the subject vehicle, and whether such a defect "most likely" caused the accident and the resulting deaths to the Powledge family. I say "most likely" because, although the evidence may be strong and overwhelming on a particular point, still, we may never know with "certainty" what occurred in the Powledge vehicle before the impact.
- B. In ascertaining whether a defect was present in the subject vehicle, naturally, I had to first determine whether other causes of the accident existed. Although one could come up with a number of scenarios which "possibly" could have occurred, the most "probable" other such causes would have been: (1) whether this accident was intentionally caused by Mr. Powledge (i.e., whether he was committing suicide); (2) whether Mr. Powledge unintentionally caused the accident because of some physical ailment (i.e., stroke, heart attack, seizure, etc.); (3) whether the accident was caused by something inside the vehicle, like a floor mat/stuck pedal/pedal misapplication; and (4) whether an environmental, mechanical, or electrical defect existed in the vehicle that caused unwanted acceleration.

II. QUALIFICATIONS

- B. My curriculum vita is attached as **Attachment A**.

REPORT OF STEPHEN R. SYSON - PAGE 1



If a component fails during developmental testing, the responsible design engineer would be expected to take corrective action to control or eliminate the causes of the failure.

- I. Failure during controlled testing, if not corrected, is predictive of failure under field conditions.

III. DESIGN EXPERIENCE

During my almost 40-year career, I have:

- A. Designed the following prototype hardware while working for General Motors:
 1. The upward deploying air cushion passive restraint system "air pillow" used on many of today's automobiles (US Patent: 3,801,126);
 2. The steering column mounting system for the GM do Brasil Opala;
 3. The prototype steering column mounting system for the GM X body (US Patent: 4,241,937).
- B. Participated in the analysis, testing and development of structural designs for the following GM vehicles:
 1. 1976-1997 G (full size) van;
 2. 1977-1990 B-C (full size) car;
 3. 1978-1986 A-G (intermediate) car; and
 4. 1980-1984 X (compact) car.
- C. Analyzed the structural performance and overall crash safety assessment for the "Competitive Car Program." As part of that program I reviewed the crash test data and high speed motion pictures of both front and rear crash tests of vehicles from auto manufacturers in the US, Japan and Europe.
- D. Represented General Motors on the SAE (Society of Automotive Engineers) impact simulation subcommittee.
- E. Represented the GM Safety Research and Development Laboratory at the 1979 E body (sport luxury) Project Center.
- F. Performed the structural analysis and testing for the Large Research Safety Vehicle (LRSV) structure at Minicars. (Struble, 1981)
- G. Supervised the development of new restraint systems for the Volvo 240 series vehicle under NHTSA contract. (Foster, 1981) and presented the design proposals to Volvo for approval. Volvo adopted the design proposals and there were NO driver fatalities in 240 series vehicles on US highways for several years after their release into production. (Insurance Institute for Highway Safety, 1995)

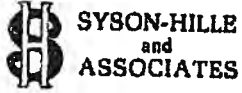


**SYSON-HILLE
and
ASSOCIATES
V.**

**ANALYSIS OF AN INTENTIONAL ACTION BY MR. POWLEDGE CAUSING
THE ACCIDENT**

- A. My analysis began with a study of the facts and physical evidence, including:
1. The police accident report, police video and scene photographs;
 2. Scene photographs and video by Michael Williams taken on October 25, 2005;
 3. Scene photographs and scene diagram by Scientific Analysis taken on October 30, 2005;
 4. Scene photographs and video by Dr. Mike Andrews and Kirk Parks taken April 17, 2008;
 5. The Galveston County Medical Examiner's Reports;
 6. National Weather Service data;
 7. The Malibu Classic at issue, an undamaged exemplar Malibu Classic, and an undamaged Malibu;
 8. Discovery materials, including depositions from this and other cases;
 9. Literature regarding brake systems, speed controls, cruise controls, and other causes of stuck throttle;
 10. NHTSA customer reports for other vehicle speed control failures;
 11. NHTSA recalls on cruise control systems; and
 12. Medical / Employment records of Adam Powledge.
- B. Examination of the above facts and physical evidence leads to several conclusions and comments:
1. Mr. Adam Powledge was driving the Malibu Classic, Jacob Powledge was the right front passenger, and Isaac, Rachel and Christian Powledge were riding in the back seat. All occupants were wearing their seatbelts.
 2. The Malibu Classic was traveling at a high rate of speed on southbound Interstate 45 in Texas City, Texas.
 3. The following is Corporal Rich's description of the collision:

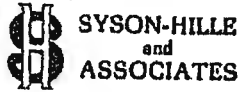
INVESTIGATOR'S NARRATIVE OPINION OF WHAT HAPPENED (ATTACH SHEETS IF NECESSARY)
Unit #1 had struck another unit while southbound, damaging the other unit's passenger side rearview mirror while on the freeway. TCCPD case #05-10163.
Unit #1 then drove onto the grass median between the main lanes of the freeway and the two lane feeder road. Unit #1 drove 1,410 feet in the grass median from the time it left the main lanes of the freeway until it struck a steel support beam for a traffic direction sign owned by the Texas Department Of Transportation.
The vehicle split in half and caught fire killing all of the occupants.
It's unknown why the driver drove in the median for such a long time.
 4. The accident scene was inspected by Dr. Mike Andrews and Kirk Parks at my request on April 17, 2008. Cones were put up to replicate the measurement information from the police investigation. Following the replication of the police measurements, police photographs were used to place chalk paint marks in the vehicle tire pathways that could be seen and utilized from the police photographs.



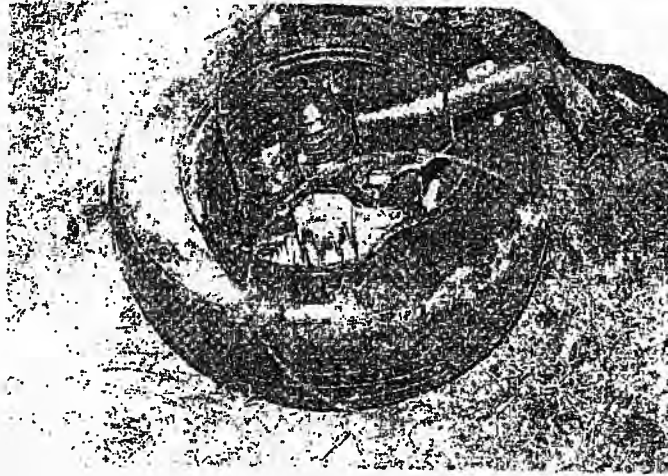
- E. The eyewitnesses indicated that the Malibu Classic was traveling 80-90 mph as it left the travel lane shoulder and entered the median. The impact damage to the vehicle supports that it was traveling at a high rate of speed. I believe that it would be impossible to accurately determine a closing speed or delta velocity using any type of crush measurements because the vehicle is simply too damaged. In fact, the vehicle was literally in pieces after the accident and upon being towed away from the scene. Further, there is no pole impact testing with a vehicle traveling at speeds approaching 80 mph that have been conducted on the subject vehicle. Therefore, there is no test data to correlate with the vehicle damage seen in the photographs prior to its removal from the scene. Lastly, using any type of computer program for this accident requires too many subjective variable inputs that can improperly influence the outcome.
- F. Mr. Powledge was able to steer and control his vehicle and thus avoided striking several vehicles that were on I-45. He managed only to slightly sideswipe another Malibu side mirror to side mirror before leaving the travel lane of I-45 and entering the grass median. Damage to the other Malibu is shown below:



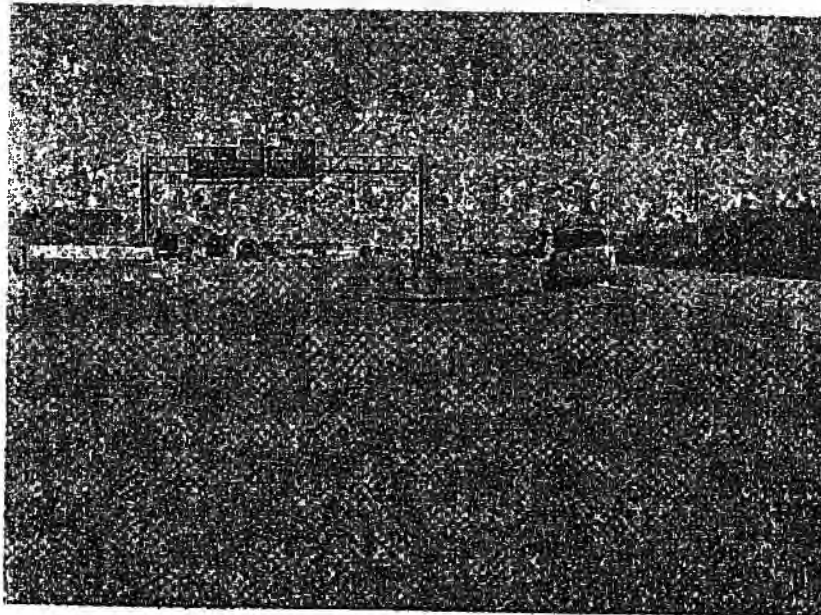
- G. After his departure from the southbound travel lanes of I-45 into the grass median, Mr. Powledge was able to steer and control his vehicle such that he managed to avoid a guardrail, a large electric box, a reflector post, and a traffic information sign pillar by moving toward the opposite side of the median. Based on the initial travel path of the Powledge vehicle after the vehicle left I-45, it appears that Mr. Powledge was trying to get onto the feeder road.

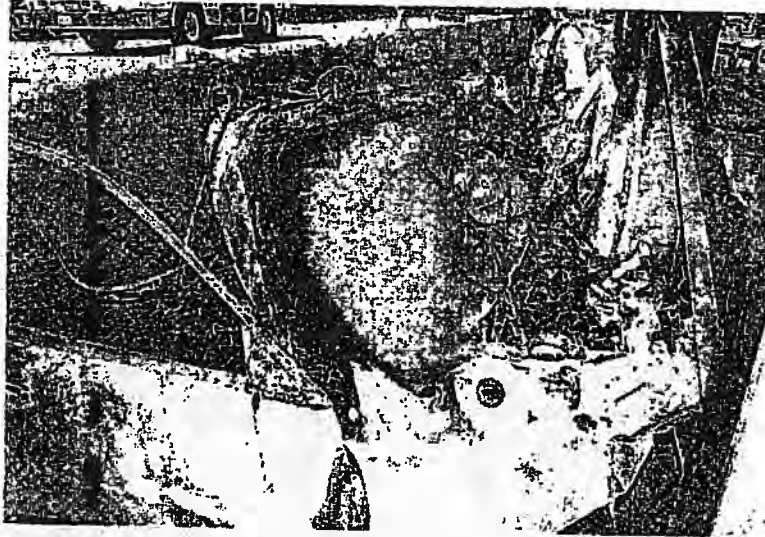
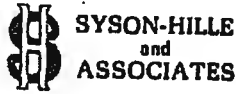


- J. The contact with the drainage culvert is evident in a police photograph where there is clearly a "curb strike" type dent in the rim and a large cut in the tire at the same position. This event would have rapidly deflated his left front drive tire and immediately pulled the Powledge vehicle back to the left (toward the middle of the grass median).

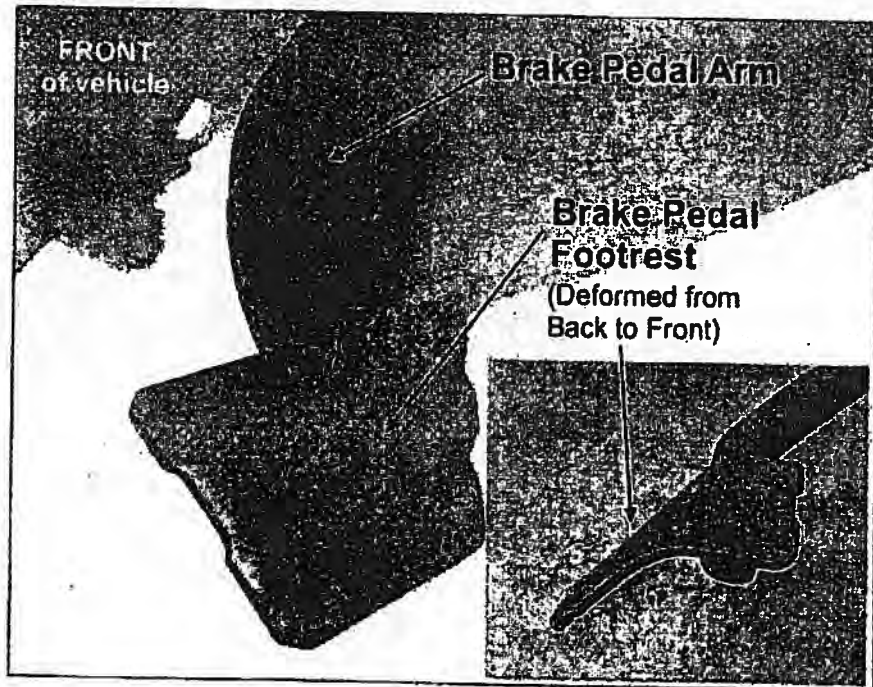


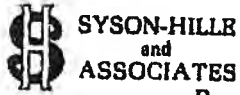
- K. Scene measurements by Scientific Analysis regarding the grass median include: width 50'; west side slope is 7 degrees; east side slope is 10 degrees; depth is 2'; flow line is 24' wide. The sloped sides would re-direct Mr. Powledge's vehicle back to the center of the grass median and make steering even more difficult to the right (toward the feeder road).





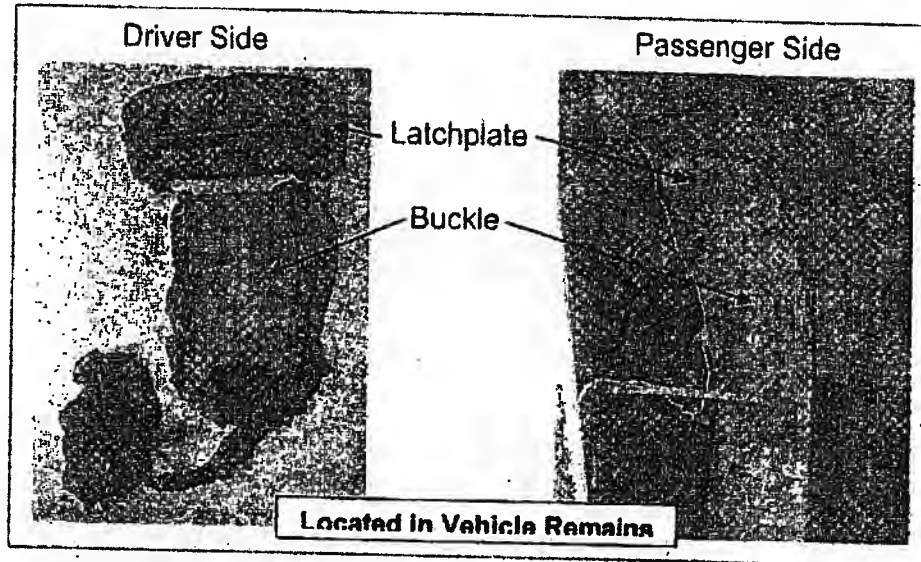
- O. During one of my many inspections of the subject vehicle, the brake pedal was located. The brake pedal has significant deformation in the forward direction. In other words, the flat part of the pedal that your foot applies pressure to is bent from the rear to the front of the vehicle. This almost conclusively proves that Mr. Powledge had his foot on the brake pedal at the time of the impact. If Mr. Powledge was trying to commit suicide, it does not make sense that he would be applying his brakes at the moment of impact.



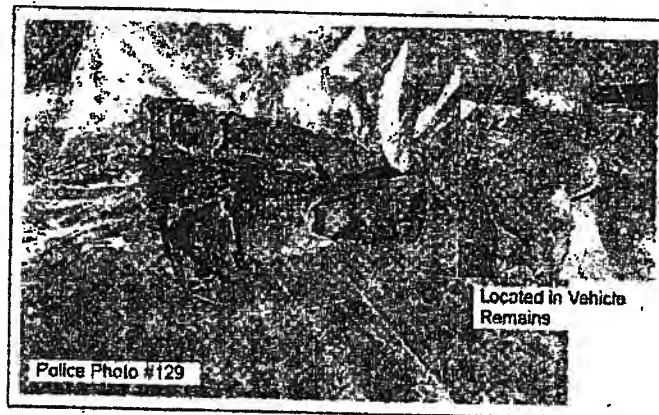


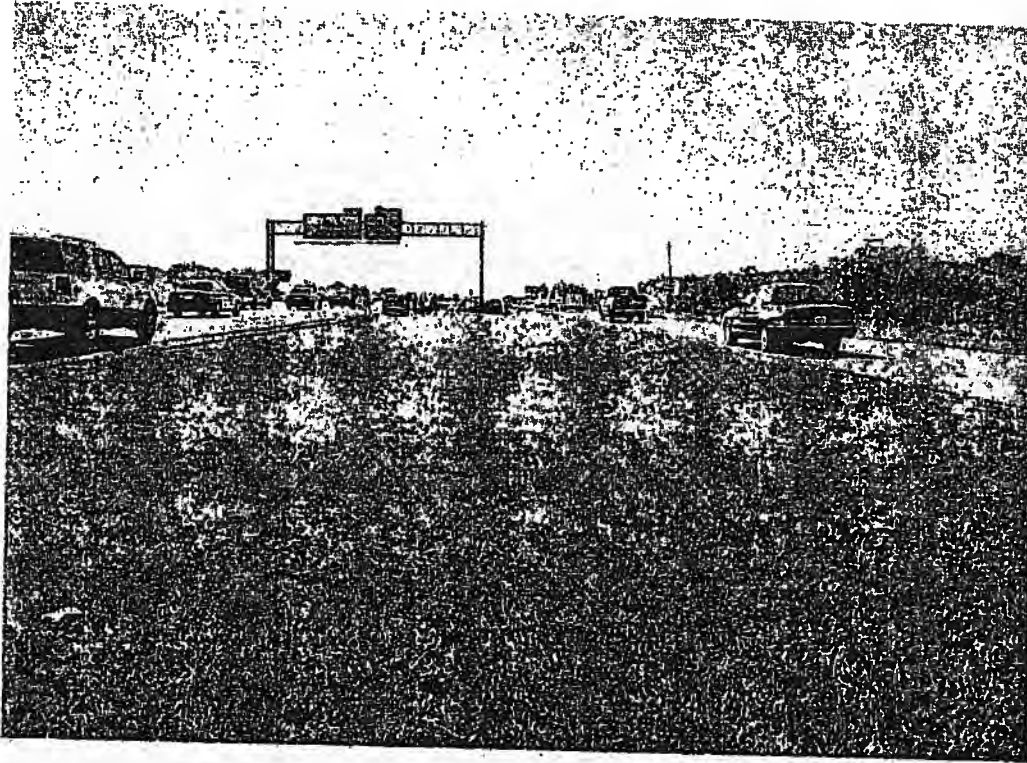
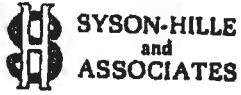
**SYSON-HILLE
and
ASSOCIATES**

R. The driver's latch plate and buckle was located among the debris. The driver's latch plate is still in its respective buckle. It does not make sense that a person predisposed to killing himself in a vehicle crash would buckle up for safety before killing himself.

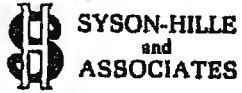


- S. Further, the buckle from the right front and one buckle from the rear seat were located in the debris. The latch plates were likewise in place in each of these buckles. Photographs taken by the police have the other two rear seat buckles documented. Again, the latch plates are inserted. It does not make sense that a man intent on killing all of his children would make them buckle up for safety before he killed them in a vehicle crash.
- T. The police report indicates that seat belt status was "unknown." However, the evidence proves that all 5 occupants had their seat belts buckled at the time of the accident.





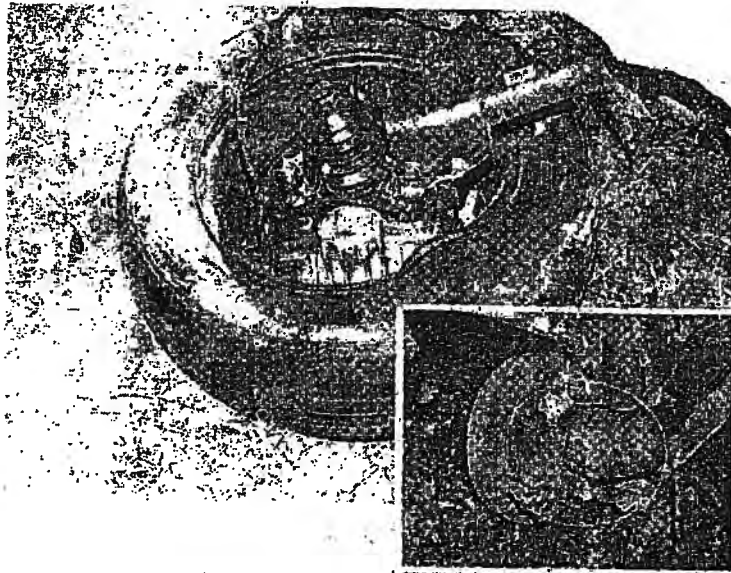
- W. I pulled the National Weather Service data for rainfall in the area to determine if the tire marks from the Powledge vehicle that were photographed by the police and the Williams' could have been due to wet ground. According to the two reporting stations for the National Weather Service for this area, there was no precipitation from October 11-18. (Attachment B). As such, the tire marks in the grass median cannot be attributed to wet ground conditions.
- X. Knowing that there were at least three other vehicles that were clearly in the grass median, this begs the question, why didn't these other vehicles leave any tire marks in the grass median when the Powledge vehicle left such well-defined tire marks? The answer is simple. The Powledge vehicle's rear tires were braking while the front tires were accelerating. The other vehicles' in the grass median did not experience a similar condition as the Powledge vehicle. The fact that these tire marks are still present 12 days (date Scientific Analysis photographed scene) after this accident reinforce the dramatic nature in which the tire marks were made.
- Y. Based on a reasonable degree of engineering probability, the totality of the evidence proves that this accident was not intentionally caused by Mr. Powledge.



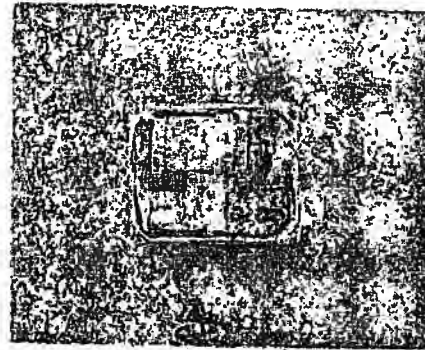
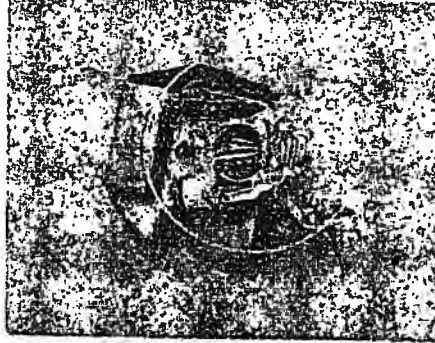
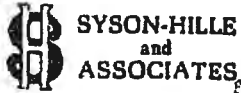
- E. Pedal misapplication can also be ruled out due to the brake pad spalling and disrupted grass and soil in the median.
- F. The totality of evidence supports proper brake pedal application, not improper gas pedal misapplication.

VIII. ANALYSIS OF A MECHANICAL/ELECTRICAL FAILURE OR ENVIRONMENTAL CONDITION CAUSING THE ACCIDENT

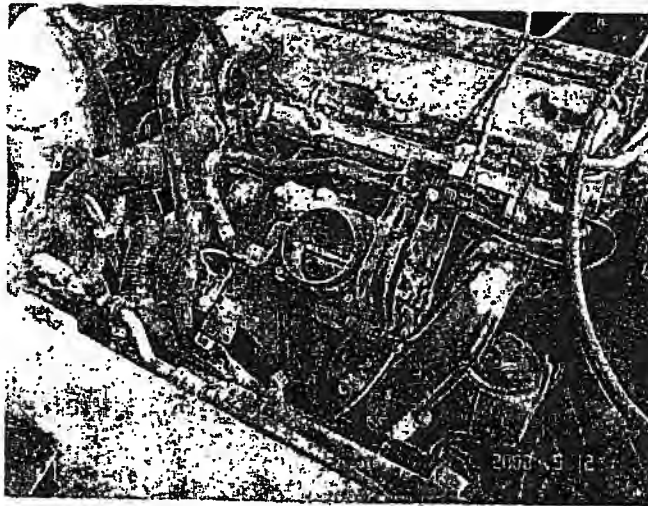
- A. Based on the tire marks in the grass median, the evidence is overwhelming that Mr. Powledge was braking at the time of the impact, and that he had been for a lengthy period of time before the impact. Naturally, the question becomes: why did his vehicle not stop?
- B. Contrary to GM's position in its build sheet for this particular vehicle, and in its answers to discovery, the subject vehicle clearly does have ABS components in place. These components are only used on ABS systems and were connected to the vehicle's wiring harness.



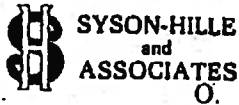
- C. In fact, the service manual for this vehicle shows that Malibu Classic vehicles with hub mounted speed sensors have anti-lock brake systems.
- D. So why would the vehicle's engine be racing when the brakes were being applied hard enough to bend the brake pedal, overheat the brake pads and leave defined tire braking marks?



- J. I then inspected the power train of an exemplar 2004 Malibu Classic. The throttle was controlled by two cables. One cable attached to the throttle pedal, while the other attached to a stepper-motor type cruise control.



- K. The 2004 Malibu Service Manual also indicates that, when a Malibu Classic is equipped with a cruise control, both accelerator pedal and cruise control input to the throttle are through pull-type cables. However, it should be noted that an exemplar 2004 Malibu built just 3 months prior to this Malibu Classic had drive by wire throttle system and integrated electronic cruise control.
- L. There is a number of customer complaints from other Ecotec engine based vehicles indicating that this design occasionally results in an unwanted acceleration condition. (Attachment C.) Some of the complaints demonstrate that the throttle return spring, or other device to close the throttle (if the throttle cable, or throttle control electro-mechanical systems fail), is inadequate to close the throttle and prevent a runaway vehicle.



A throttle control system, like that on the subject Chevrolet Malibu Classic, which does not meet FMVSS 124 is defective and unreasonably dangerous.

P. The cruise control for the subject vehicle was also studied to evaluate its propensity to fail. The vehicle industry has had numerous recalls for mechanical and electrical cruise control failures dating back to the mid-1980's.

- 1984 Oldsmobile Cutlass- cruise control cable may separate from the conduit end fitting;
- 1984 Corvette- cruise control vacuum solenoid valves may malfunction;
- 1984 Toyota Camry- cruise control computer malfunctions due to continuous exposure to cold ambient temperature.

Q. The subject vehicle uses a stepper motor type cruise control. The stepper motor cruise control has had numerous failures over its design and service life. GM stepper motor cruise controls have been reported to the NHTSA for unwanted acceleration problems. In fact, I downloaded the NHTSA database for reports on GM vehicles that have stepper motors and similar cable attachments as the subject vehicle where a complaint was registered for unwanted acceleration. (Attachment C). Many of these complaints sound eerily similar to the Powledge accident.

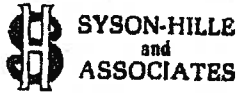
R. Stepper motor cruise controls are subject to intermittent electromechanical failure modes that have been documented for years. These include exposure to excessive heat and cold, moisture, open intermittent circuits and short circuits as well as failures associated with Electromagnetic Interference (EMI) and Radio Frequency Interference (RFI).

S. The vehicle industry has known for years that sudden acceleration can occur when intermittent electrical malfunctions happen. A 1988 Japanese government study on unwanted acceleration found that "*continued analysis of and investigation of malfunctioning of the electronic devices taking into consideration not only electromagnetic noise but environmental conditions such as temperature, humidity, and vibration are needed.*"

T. Intermittent electronic failures are recognized by the *Electronic Troubleshooting Handbook*:

Whenever too much heat is applied to electrical or electronic devices, problems occur. Heat increases resistance of circuits, which in turn increases the current. Heat will cause the materials to expand, dry out, crack, blister, and wear down much more quickly; sooner or later, the device will break down.

Moisture (water and other liquids) causes expansion, warping, quicker wear, and abnormal current flow (short circuits).



Use of vehicular electronic stability controls is growing. A new quartz MEMS gyroscope can handle the harsh under-hood environment, where temperatures exceed 125°C and shock and vibration are significant.

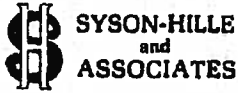
Apr 1 2007
By: Leon E. Costello, Systems Engineer/Automotive
Sensors

sensors

- Y. Failing to properly locate, shield, protect and/or insulate a cruise control module is a defect that renders the vehicle unreasonably dangerous because the circuitry can be corrupted, which affects performance.
- Z. Based on a reasonable degree of probability, I believe that a mechanical/electrical or environmental failure in the design of the throttle body and/or cruise control system occurred which caused the Powledge vehicle to experience unwanted acceleration. A manufacturing defect also existed in that improper testing, analysis, evaluation and real world environmental impact study was not conducted as I discuss in section XI below.
- AA. The brake system was then incapable of stopping the vehicle while its engine raced out of control. In reviewing the NHTSA database, many people have reported that their vehicle accelerated out of control after the brakes were applied. Still others reported that the engine continued to accelerate after the brakes were applied, and others reported that the brakes did not stop the vehicle properly during an unwanted acceleration. (Attachments C, D).
- BB. This unwanted acceleration and inability to stop was the producing cause of the loss of control of the vehicle and its ultimate accident.

IX. ALTERNATIVE DESIGNS RE ENVIRONMENTAL/MECHANICAL/ELECTRICAL FAILURES

- A. Throttle control system that actually meets FMVSS 124.
- B. Drive by wire and integrated cruise control module, as used on the Malibu that preceded this vehicle by 3 months.
- C. Ignition cutoff under panic braking conditions.
- D. Fuel cutoff or fuel restrictor device.
- E. Relocate cruise control module so that it is free from EMI / RFI contacts, hot and cold temperature fluctuations as well as moisture and pollutants.
- F. Redundant fail safe designs so in the event of a failure, there is a "work around" system to prevent loss of system control.
- G. Speed sensitive acceleration cruise control based on European Patent 1375233A1.



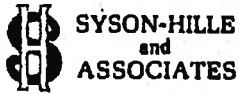
2. Accelerated stress test planning including load detection, failure detection, and response monitoring analysis;
 3. Overstress limits are explored in a vehicle environment;
 4. Accelerated life testing based on step 3; and
 5. Correlate accelerated stress tests results to field life estimates.
- I. I have seen no PoF analysis conducted by GM of the speed control system, cruise control module or braking system for the subject vehicle.

XI. CONCLUSIONS

- A. The Ecotec power train, like that used in the 2004 Malibu Classic, is unreasonably susceptible to vehicle speed control failures, which dealers are often unable to diagnose or cure. (Attachments C and D).
- B. Since the subject 2004 Chevrolet Malibu Classic engine's throttle control system is presently stuck 70 to 80% open, the throttle control system fails to meet FMVSS 124. Failure to comply with FMVSS 124 is negligence per se.
- C. The cruise control on the subject vehicle is mounted so close to the engine and engine components, exposure to all of the heat, moisture, and excessive vibration can create just the type of environment to produce a failure. That failure may be inoperability or a permanent opening of the throttle body in a multi-mode failure. This location, lack of shielding/insulation can cause an environmental, mechanical or electrical failure.
- D. The brakes are incapable of stopping the vehicle when the throttle, speed control or cruise control malfunctions and the vehicle experiences unwanted acceleration.
- E. The brake system, throttle control, vehicle speed control and cruise control system is defectively designed and manufactured for the reasons stated above.

XII. SUMMARY

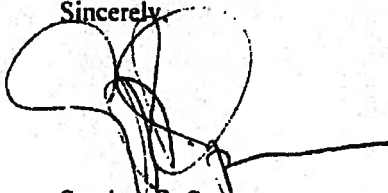
- A. A vehicle throttle control system, speed control and/or cruise control that experiences unwanted acceleration makes a vehicle defective and unreasonably dangerous. Failing to properly test, evaluate, analyze and study the components in real life vehicle environments is a manufacturing defect.
- B. A vehicle whose brakes fail to timely stop the vehicle when unwanted acceleration occurs is defective and unreasonably dangerous.
- C. The driver has limited time and control options. For example, he could turn off the ignition, leaving a vehicle that is very hard to brake and steer, and has limited electrical power.



- H. If the subject vehicle was tested under real world conditions, the components discussed in this report would fail to comply with even these mediocre safety standards.

This report is subject to amendment and supplementation subject to a review of additional documents to be produced by the defendant in this matter. Further, I would like the opportunity to comment on any reports provided by the defendant in this matter.

Sincerely,



Stephen R. Syson
Syson-Hille & Associates

ATTACHMENTS:

- A. Curriculum Vita
- B. Weather Service Data
- C. Stuck Throttle Database from NHTSA
- D. NHTSA recalls on speed control defects
- E. Other supporting materials referenced in the report

REFERENCES:

Anderson, A.F., "Reliability in Electromagnetic Systems: The role of electrical contact resistance in maintaining automobile speed control system integrity." IET Colloquium on Electromagnetic Systems, May 24, 2007.

Anderson, Antony, "A Note on Automobile Cruise Control Faults and Sudden Acceleration [or Unintended Acceleration]," January 16, 2002.

Carlsen, Kjell, "Sneak Analysis: Boeing's Electrical Systems Engineering Quality Program Applied To The Automotive Industry," 1988.

Gunnhed, Mats, "Risk Assessment of Cruise Control." Swedish Defence Research Establishment, FOA report E 30010-3.3. May 1988.

Kinseng, K., Hoit, M., Tiwari, N., and Pecht, M., "Physics-of-failure assessment of a cruise control module," Microelectronics Reliability v. 39, pgs. 1423-1444, 1999.

EXHIBIT

C

Dr. James W. Lighthall

Dr. Lighthall comments on eyewitness testimony, "*No brake lights were observed on the Powledge vehicle that would indicate braking prior to impact.*" Dr. Lighthall implies that the testimony is only consistent with Mr. Powledge not applying his brakes. There are other equally likely explanations, including the fact that the witnesses were not in a suitable position to observe the Malibu's brake lights, that they weren't paying close attention, that the movement of the vehicle distracted their attention from the brake lights, or that the electro-mechanical problem causing the vehicle's throttle to stick open was affecting the brake lights, as indicated by several GM throttle control recalls.

Eyewitness testimony is often difficult to treat as reliable. Mr. Rick Accurso, for example, states on page 23 of his deposition that he wasn't even looking for brake lights. His wife, Linda Gilman, says on page 19 of her deposition that she's certain there were no brake lights, while on page 20, despite that certainty, she failed to observe Mr. Powledge steering around at least two objects in the median. She also indicates that the Powledge Malibu was so far ahead of her that she couldn't see his license plate, yet she had a clear view of his brake lights. Mr. Klibert says in his deposition that he didn't see any brake lights, but he also has Mr. Powledge striking the wrong side of the Gilman/Accurso vehicle. Ms. Gilman describes Mr. Powledge as being in the vehicle, while Mr. Klibert describes him as being thrown out. Mr. Klibert says there was lots of traffic, while Ms. Gilman describes traffic as being light. Mr. Klibert indicates that Mr. Powledge slowed after striking the Gilman vehicle, but Ms. Gilman and Mr. Accurso describe no such slowing. Mr. Klibert, like Ms. Gilman, fails to observe Mr. Powledge steering around various objects in the median.

Dr. Lighthall says in his report, "*Emergency braking concomitant to a severe frontal impact results in fracture/dislocation of the ankle and displacement of the bones of the ankle into the lower leg. The forces associated with this type of displacement cause the bones of lower leg, the tibia and fibula, to fracture. The resultant lower leg injury is a segmental spiral fracture termed a Pylon fracture. There is inconsistent information in the coroner's report; regardless, there is no indication in the report of an ankle fracture or fractures of the lower leg.*" Mr. Powledge's lower right and part of his upper right leg was separated. The right lower leg (the part which might be fractured) is missing.

Dr. Lighthall says, "*Photographs of the path of travel of the Powledge vehicle taken at the accident scene are straight and true, indicating the driver did not attempt to make any evasive maneuver, either through braking or steering, to avoid impact.*" This statement is so clearly false as to render any further statements by Dr. Lighthall moot. It is obvious, based on the fact that he failed to note Mr. Powledge's injury pattern in the scene photos, that Dr. Lighthall did not look at the scene photographs carefully. As noted above, the police photographs and accident diagram clearly show Mr. Powledge driving around obstacles, until impact with a drain damages his left front wheel and tire.

The remainder of Dr. Lighthall's report serves only to speculate why Mr. Powledge drove in a "straight" path, based on his erroneous interpretation of the scene evidence.

Numerous GM vehicles have similar features. Many have stepper motor cruise controls. There are 14 recalls of GM vehicles with cruise controls since 1988. Only one relates to a problem that would not affect proper stepper motor cruise operation. GM uses stepper motor cruise controls in millions of vehicles, but hundreds of thousands have been recalled. Therefore, one cannot conclude, based on the presence of features in the throttle control system that don't always work, using a microprocessor that is not recommended for such uses, that the throttle control system did not malfunction in the Powledge case.

Karl Stopchinski

Mr. Stopchinski makes a number of statements in his report that are inconsistent. On page 3 for example, he makes two statements that are not in complete agreement. First, he states, *"Another group of objects in the grassy median along the vehicle path is comprised of an access panel, a concrete bordered drain, and reflector post that are about 700 feet from the final impact point. The Powledge vehicle drove along the west side of these objects while remaining in the grassy median."*

On that same page he contradicts that statement, *"The vehicle then travelled (sic) another approximately 700 feet, crossed the concrete drain...."* On page 4, he compounds the inconsistency, *"Police photographs showing their condition reveal minor localized deformation of wheel on the inboard flange and adjacent abrasions and/or cuts on the tire. There was nothing along the vehicle's path prior to impact that would cause this type of damage."* The wheel damage is certainly more than minor, and it was clearly caused by impacting the drain some 700 feet prior to impact.

Mr. Stopchinski also makes comments about the throttle being stuck in the open position, *"A section of the throttle body including the throttle valve and lever that had been broken free from the vehicle was inspected. It was not burned. The throttle section was fractured from the intake manifold and a portion of the inlet tube was attached. This inlet tube was removed and photographed. The throttle valve shaft was deformed and the throttle lever was broken from the shaft. The throttle valve was found fixed in an open position greater than full throttle. In my opinion, no conclusion can be made about the position of the throttle at impact based upon its current position. The extreme vehicle damage and movement of the throttle body and connected components that occurred during the impact likely forced the throttle lever/valve past the fully open position, deforming and pinning it in place. The return springs remained approximately in place and would have forcefully acted on the throttle lever to close the throttle in its normal operating condition. The cable mounting bracket was attached and deformed and a portion of the accelerator pedal cable remains attached to the bracket. The accelerator cable was ripped apart in the crash."* This statement makes no engineering sense. Since the throttle shaft is bent, the throttle must have been open, when the damage occurred. Besides, there are no stock Malibu vehicles that I am aware of that can travel 80 to 90 miles per hour without the throttle plate being open.

Neither a medical problem nor suicidal tendencies is consistent with Mr. Powledge's driving for more than half of the vehicle's off-road excursion. Then, the only injury producing contact occurs after the left front wheel and tire are damaged, and the vehicle becomes less controllable.

Safer alternative designs, such as a vacuum reservoir or electrically driven vacuum pump were readily available, and would have made the vehicle ACTUALLY perform the way the defense experts CLAIM it would.

Bowman Consulting LLC
4660 Fenton Road
Hartland, Michigan 48353

Engineering Report
Powledge v. General Motors Corporation
February 18, 2009

I am a mechanical engineer with over 36 years of experience in automotive engineering. I received a Bachelor of Science Degree from Rochester Institute of Technology in 1971 and a Master of Science Degree from Stanford University in 1972. I have completed the Traffic Accident Reconstruction course at Northwestern University. My Curriculum Vitae is attached.

Material Reviewed

I have reviewed the following documents relating to this case:

- Texas Accident Report # 05-10172
- Deposition of Corporal C. Rich
- Deposition of B. Quiroga
- Deposition of R. Klibert
- Report by Mr. S. Syson
- 80 MPH video of path
- Photographs of exemplar throttle body
- Photographs of scene by Dr. Andrews
- Photographs of exemplar cruise control
- Photographs of exemplar throttle cable
- Photographs by Texas City Police
- Photographs by Texas City Fire Marshal
- Photographs by M. Byrd
- Photographs by D. McKendry
- Photographs of vehicle-source unknown
- Video of scene by L. Williams
- Photographs of scene by L. Williams
- Photographs by Scientific Analysis

Additionally, I have inspected the subject vehicle involved in this accident and have inspected the accident scene.

I inspected the subject vehicle on December 11, 2008. I specifically inspected the brake system. I disassembled the rear wheels, tires and brake drum. The keepers were still on both rear drums. The rear brakes were intact and showed no adverse wear or heat degradation. The right front brake assembly was covered in melted aluminum and I did not attempt to disassemble the right front brake. I took photographs of the previously disassembled left front brake pads and measured the thickness (inboard 0.360-0.376, outboard 0.430-0.440 inches). I photographed the throttle body which was stored separate from the vehicle. I located and photographed the brake pedal assembly.

Design

The brake system on the 2004 Chevrolet Malibu Classic is vacuum power assisted dual piston hydraulic master cylinder with front disc and rear drum brakes. Some vehicles were manufactured with antilock brake system (ABS) and some were manufactured without ABS. The subject vehicle was not manufactured with ABS. All of these vehicles were manufactured with a diagonal split brake system.

Discussion

My inspection revealed that the only brake system concern is that the left front brake pads were worn beyond the replacement thickness. This is poor owner maintenance but still provided maximum braking capability. The subject vehicle did not have an ABS brake system even though the wheel bearings had ABS wheel speed sensors. This is because it is less expensive and higher quality control to manufacture all of these vehicles with ABS wheel bearings, than to have two different kinds (ABS and non-ABS). I found no evidence of overheating of either the front or rear brakes. I have run many vehicles, including an exemplar in this matter, to the point of brake failure due to overheating. This vehicle has none of the characteristics of overheating.

Mr. Syson states that the front brakes of the subject vehicle did not operate due to overheat. One of the demonstrations shows that when the front brakes overheat, the rear brakes do not work. This is because the brake system is a diagonal split. The left front and right rear brakes work off the same chamber of the master cylinder; while the right front and left rear work off the other chamber. Therefore, when the front brakes fail due to overheat the rear brakes also fail.

CURRICULUM VITAE

BRUCE R. BOWMAN

Automotive Engineer with expertise in the design, testing, processing, manufacturing, and service maintenance of passenger cars and trucks. Primary areas include brake systems, front drive, rear axles, suspension, trailer towing, windshield wipers, engines, and carburetor. Additional expertise is in accident reconstruction and human factors of traffic accidents and driver reaction.

EDUCATION

Stanford University - Master of Science in Mechanical Engineering 1972
 Rochester Institute of Technology - B.S. in Mechanical Engineering 1971
 Williamsport Technical Institute - Diploma in Diesel Mechanics 1966
 Cornell University - Courses in Agriculture 1964
 General Motors - various courses in testing and mechanics
 Northwestern University - Traffic Accident Reconstruction 1990

PROFESSIONAL ORGANIZATIONS

Society of Automotive Engineers - SAE International
 Automotive Service Excellence - ASE certified mechanic

WORK HISTORY

July 2001 to Present Bowman Consulting LLC
 Product Liability Consultant

General Motors Corporation
 Product Analysis – Apr. 1989 to June 2001 Senior Consultant
 Investigation of concerns of General Motors products, non-litigation and litigation.
 Provide technical support, investigation, consultation, experimentation, analysis, and expert testimony concerning products.

Engineering Investigation – Oct. 1985 to Apr. 1989 Staff Project Engineer
 Investigation of field concerns of General Motors products. Provide technical investigation, experimentation, analysis and recommendations to various engineering groups within General Motors. This was not generally involved with litigation.

Brake and Bearing Systems – Oct. 1982 to Oct. 1985 Staff Project Engineer
 Testing and analysis of new and experimental brake systems, including antiflock.

Vehicle Emission Laboratory – Sept. 1972 to Oct. 1982 Project Engineer
 Testing and analysis of all phases of vehicle exhaust emission technology including development of computer controlled engine parameters.

Rochester Products Division – Jan. 1966 to Sept. 1972 Technician/Mechanic
 Testing and development of carburetors, fuel injection, evaporative canisters, and air injection systems.

August 2008

AFFIDAVIT OF DORI POWLEDGE PHILLIPS

STATE OF TEXAS §
 §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, personally appeared Dori Powledge Phillips, who being duly sworn, deposed as follows:

“My name is Dori Powledge Phillips, I am over 18 years of age and of sound mind. I declare under penalty and perjury that the following is within my personal knowledge and is true and correct.

I have read Plaintiffs’ Original Petition for Bill of Review and Original Petition. The facts contained in Plaintiffs’ Original Petition for Bill of Review and Original Petition are true and correct. GM accused my husband of murdering my children and killing himself by intentionally crashing our 2004 Malibu. We now know that GM was engaging in a massive corporate lie designed to hide the very evidence that would have proven my case.”

FURTHER AFFIANT SAYETH NAUGHT.

Dori Powledge Phillips

Dori Powledge Phillips

SUBSCRIBED AND SWORN TO BEFORE ME on this the 28th day of April, 2014, to certify which, witness my hand and seal of office.

Kelly A. Meza

Notary Public, State of Texas



CAUSE NO. 07-CV 1040

DORIS POWLEDGE, INDIVIDUALLY
AND AS REPRESENTATIVE OF THE
ESTATE OF ADAM POWLEDGE,
DECEASED, THE ESTATE OF RACHEL
POWLEDGE, DECEASED, THE ESTATE
OF ISAAC POWLEDGE, DECEASED,
THE ESTATE OF CHRISTIAN
POWLEDGE, DECEASED, AND THE
ESTATE OF JACOB POWLEDGE,
DECEASED;
AND CONNIE MCNEIL AS NEXT
FRIEND TO AUSTIN POWLEDGE,
A MINOR;
AND AMBER POWLEDGE
AND MARY LOU POWLEDGE,
INDIVIDUALLY,

Plaintiffs,

and

RONALD ALTON POWLEDGE,

Intervenor,

VS.

GENERAL MOTORS CORPORATION,

Defendant.

IN THE DISTRICT COURT

2009 JUL -3 AM 10:59
District Clerk
GALVESTON COUNTY, TX

10th JUDICIAL DISTRICT

GALVESTON COUNTY, TEXAS

PLAINTIFFS' FOURTH AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DORIS POWLEDGE, both in her individual capacity and as representative of the ESTATE OF ADAM POWLEDGE, deceased, the ESTATE OF RACHEL POWLEDGE, deceased, the ESTATE OF ISAAC POWLEDGE, deceased, the ESTATE OF CHRISTIAN POWLEDGE, deceased, and the ESTATE OF JACOB POWLEDGE, deceased; CONNIE MCNEIL, as next friend to AUSTIN POWLEDGE, a minor; and AMBER POWLEDGE and MARY LOU POWLEDGE, individually

Coded
SF

III. Facts

7. On or about October 18, 2005, Adam Powledge was driving a 2004 Chevrolet Malibu (VIN# 1G1ND52F34M598780) at approximately the 4600 Block of IH45 North, and near the intersection of Holland Road, in Texas City, Galveston County, Texas. According to the police report, at some point in time, his vehicle apparently struck another vehicle while southbound. Mr. Powledge's vehicle then apparently drove on the grass median until it struck a steel support beam, at which point it split in half and caught fire, killing all of the occupants.

8. At the time of the accident, Jacob Powledge was the right-front passenger, Christian Powledge was the back-right passenger, Rachel Powledge was the back-middle passenger, and Isaac Powledge was the back-left passenger.

9. At the time of the accident, all of the occupants of the vehicle were properly seated and properly wearing their 3-point seat belts.

10. However, despite being properly restrained, Adam Powledge, Jacob Powledge, Christian Powledge, Rachel Powledge, and Isaac Powledge all sustained fatal injuries when their vehicle failed to protect them.

IV. Cause(s) of Action as to Defendant General Motors Corporation

11. It was entirely foreseeable to and well-known by the Defendant that accidents and incidents involving its vehicles, such as occurred herein, would on occasion take place during the normal and ordinary use of said vehicle.

12. The injuries and damages complained of herein occurred because the vehicle in question was not reasonably crashworthy, and was not reasonably fit for unintended, but clearly foreseeable, accidents. The vehicle in question was unreasonably dangerous in the event it should be involved in an incident such as occurred herein.

q. The vehicle's cruise control failed stuck or malfunctioned.

14. Defendant was negligent in the design, manufacture, assembly, marketing, and/or testing of the vehicle in question.

15. The foregoing acts and/or omissions of Defendant were a producing and/or proximate cause of the Plaintiffs' damages.

16. The foregoing acts and/or omissions of Defendant were a producing and/or proximate cause of the fatal injuries to Plaintiffs Adam Powledge, Jacob Powledge, Christian Powledge, Rachel Powledge, and Isaac Powledge.

V. Damages To Plaintiffs

17. As a result of the acts and/or omissions of Defendant, Plaintiff Adam Powledge suffered disfigurement, conscious physical and emotional pain, torment, mental anguish, and/or emotional distress prior to his death, and these injuries survive his death through his estate.

18. As a result of the acts and/or omissions of Defendant, Plaintiff Jacob Powledge suffered disfigurement, conscious physical and emotional pain, torment, mental anguish, and/or emotional distress prior to his death, and these injuries survive his death through his estate.

19. As a result of the acts and/or omissions of Defendant, Plaintiff Christian Powledge suffered disfigurement, conscious physical and emotional pain, torment, mental anguish, and/or emotional distress prior to his death, and these injuries survive his death through his estate.

20. As a result of the acts and/or omissions of Defendant, Plaintiff Rachel Powledge suffered disfigurement, conscious physical and emotional pain, torment,

and society, loss of consortium, and mental anguish as a result of the fatal injuries to his father, Adam Powledge.

26. As a result of the acts and/or omissions of Defendant, Plaintiff Austin Powledge has suffered a loss of inheritance of the assets that Adam Powledge, in reasonable probability, would have added to the estate and left at natural death to Plaintiff.

27. As a result of the acts and/or omissions of Defendant, Plaintiff Amber Powledge has suffered past and future: loss of care, maintenance, support, services, advice, counsel, reasonable contributions of a pecuniary value, loss of companionship and society, loss of consortium, and mental anguish as a result of the fatal injuries to her father, Adam Powledge.

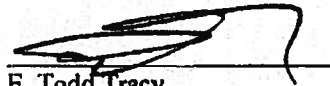
28. As a result of the acts and/or omissions of Defendant, Plaintiff Amber Powledge has suffered a loss of inheritance of the assets that Adam Powledge, in reasonable probability, would have added to the estate and left at natural death to Plaintiff.

29. As a result of the acts and/or omissions of Defendant, Plaintiff Mary Lou Powledge has suffered past and future: loss of care, maintenance, support, services, advice, counsel, reasonable contributions of a pecuniary value, loss of companionship and society, loss of consortium, and mental anguish as a result of the fatal injuries to her son, Adam Powledge.

30. The above and foregoing acts and/or omissions of Defendant, resulting in the fatal injuries to Plaintiffs Adam Powledge, Jacob Powledge, Christian Powledge, Rachel Powledge, and Isaac Powledge, have caused actual damages to Plaintiffs in an amount in excess of the minimum jurisdictional limits of this Court.

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing has been sent to all counsel of record on this 1st day of July, 2008, in accordance with the Texas Rules of Civil Procedure.



E. Todd Tracy
Andrew G. Counts

Karen M. Wilson
DISTRICT CLERK
GALVESTON COUNTY, TX
JUL -3 AM 08:59

(Official Form 1231) 09-50026-reg Doc 1 Filed 06/01/09 Entered 06/01/09 07:57:51 Main Document United States Bankruptcy Court of 24 Southern District of New York		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): GENERAL MOTORS CORPORATION		Name of Joint Debtor (Spouse) (Last, First, Middle): N/A
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): See Schedule 1 Attached		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names): N/A
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 38-0572515		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): N/A
Street Address of Debtor (No. and Street, City, and State): 300 Renaissance Center Detroit, Michigan		Street Address of Joint Debtor (No. and Street, City, and State): N/A
ZIP CODE 48265-3000		ZIP CODE
County of Residence or of the Principal Place of Business: Wayne County		County of Residence or of the Principal Place of Business: N/A
Mailing Address of Debtor (if different from street address): ZIP CODE		Mailing Address of Joint Debtor (if different from street address): N/A ZIP CODE
Location of Principal Assets of Business Debtor (if different from street address above): 767 Fifth Avenue, New York, New York		ZIP CODE 10153
Type of Debtor (Form of Organization) (Check one box.) <input type="checkbox"/> Individual (includes Joint Debtors) See Exhibit D on page 2 of this form. <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (if debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input checked="" type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other Automotive Manufacturing Tax-Exempt Entity (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	Chapter of Bankruptcy Code Under which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding Nature of Debts (Check one box) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(B) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts. Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,190,000. Check all applicable boxes <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(B).
Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay for except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		
Statistical/Administrative Information <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors (on a Consolidated Basis) <input type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input checked="" type="checkbox"/> Over 100,000		
Estimated Assets (on a Consolidated Basis) <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input checked="" type="checkbox"/> More than \$1 billion		
Estimated Liabilities (on a Consolidated Basis) <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input checked="" type="checkbox"/> More than \$1 billion		

Official Form 1 (1/08) FORM BI, Page 3	
Voluntary Petition <i>(This page must be completed and filed in every case.)</i>	
Signatures	
<p>Signature(s) of Debtor(s) (Individual/Joint)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X _____ Signature of Debtor</p> <p>X _____ Signature of Joint Debtor</p> <p>_____ Telephone Number (if not represented by attorney)</p> <p>_____ Date</p>	<p>Name of Debtor(s): GENERAL MOTORS CORPORATION</p> <p>Signature of a Foreign Representative</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.</p> <p>(Check only one box.)</p> <p><input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.</p> <p><input type="checkbox"/> Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.</p> <p>X _____ (Signature of Foreign Representative)</p> <p>_____ (Printed Name of Foreign Representative)</p> <p>_____ Date</p>
<p>Signature of Attorney*</p> <p>X <u>/s/ Stephen Karotkin</u> Signature of Attorney for Debtor(s)</p> <p><u>Stephen Karotkin</u> Printed Name of Attorney for Debtor(s)</p> <p><u>Weil, Gotshal & Manges LLP</u> Firm Name</p> <p><u>767 Fifth Avenue</u> Address</p> <p><u>New York, New York 10153</u></p> <p><u>(212) 310-8000</u> Telephone Number</p> <p><u>June 1, 2009</u></p> <p><small>* In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.</small></p>	<p>Signature of Non-Attorney Bankruptcy Petition Preparer</p> <p>I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(b) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19B is attached.</p> <p>_____ Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____ Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)</p> <p>_____ Address</p> <p>X _____</p> <p>_____ Date</p> <p>Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.</p> <p>Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><i>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.</i></p>
<p>Signature of Debtor (Corporation/Partnership)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X <u>/s/ Frederick A. Henderson</u> Signature of Authorized Individual</p> <p><u>Frederick A. Henderson</u> Printed Name of Authorized Individual</p> <p><u>President and Chief Executive Officer</u> Title of Authorized Individual</p> <p><u>June 1, 2009</u> Date</p>	

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

-----X
In re :
: Chapter 11 Case No.
:
GENERAL MOTORS CORPORATION, : 09- _____ ()
:
:
Debtor. :
-----X

**CONSOLIDATED LIST OF CREDITORS
HOLDING 50 LARGEST UNSECURED CLAIMS¹**

Following is the consolidated list of the creditors of General Motors Corporation and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"), holding the 50 largest noncontingent unsecured claims as of May 31, 2009.

Except as set forth above, this list has been prepared in accordance with Rule 1007(d) of the Federal Rules of Bankruptcy Procedure and Rule 1007-1 of the Local Rules of Bankruptcy Procedure. This list does not include persons who come within the definition of "insider" set forth in section 101(31) of chapter 11 of title 11 of the United States Code.

¹ The information herein shall not constitute an admission of liability by, nor is it binding on, the Debtors. All claims are subject to customary offsets, rebates, discounts, reconciliations, credits, and adjustments, which are not reflected on this Schedule.

Name of creditor and complete mailing address including zip code	Name, telephone number and complete mailing address, including zip code, of employee, agent, or other department of creditor familiar with claim who may be contacted	Nature of claim (trade debt, bank loan, government contract, etc.)	Indicate if claim is contingent, unliquidated, disputed or subject to setoff	Amount of claim [if secured also state value of security]
<p>4. International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers – Communications Workers of America (IUE-CWA)</p> <p>3461 Office Park Drive Kettering, OH 45439 United States</p>	<p>Attn: Mr. James Clark</p> <p>Phone: (937) 294-9764 Fax: (937) 298-633</p> <p>2701 Dryden Road Dayton, OH 45439 United States</p>	Employee Obligations		\$2,668,600,000 ⁴
<p>5. Bank of New York Mellon</p> <p>One Wall Street New York, NY 10286 United States</p>	<p>Attn: Gregory Kinder</p> <p>Phone: (212) 815-2576 Fax: (212) 815-5595</p> <p>Global Corporate Trust, 101 Barclay, 7W New York, NY 10286 United States</p>	Bond Debt		\$175,976,800
<p>6. Starcom Mediavest Group, Inc.</p> <p>35 W. Wacker Drive Chicago, IL 60601 United States</p>	<p>Attn: Laura Desmond</p> <p>Phone: (312) 220-3550 Fax: (312) 220-6530</p> <p>35 W. Wacker Drive Chicago, IL 60601 United States</p>	Trade Debt		\$121,543,017
<p>7. Delphi Corp.</p> <p>5725 Delphi Drive Troy, MI 48098 United States</p>	<p>Attn: Rodney O'Neal</p> <p>Phone: (248) 813-2557 Fax: (248) 813-2560</p> <p>5725 Delphi Drive Troy, MI 48098 United States</p>	Trade Debt		\$110,876,324

⁴ This liability estimated as the net present value at a 9% discount rate.

Name of creditor and complete mailing address including zip code	Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted	Nature of claim (trade debt, bank loan, government contract, etc.)	Indicate if claim is contingent, unliquidated, disputed or subject to setoff	Amount of claim (if secured also state value of security)
<p>12. Johnson Controls, Inc.</p> <p>5757 N. Green Bay Avenue Glendale, WI 53209 United States</p>	<p>Attn: Stephen A. Roell</p> <p>Phone: (414)-524-2223 Fax: (414)-524-3000</p> <p>5757 N. Green Bay Avenue Milwaukee, WI 53201 United States</p>	Trade Debt		\$32,830,356
<p>13. Denso Corp.</p> <p>24777 Denso Drive Southfield, MI 48086 United States</p>	<p>Attn: Haruya Maruyama</p> <p>Phone: (248) 350-7500 Fax: (248) 213-2474</p> <p>24777 Denso Drive Southfield, MI 48086 United States</p>	Trade Debt		\$29,229,047
<p>14. TRW Automotive Holdings, Corp.</p> <p>12025 Tech Center Dr. Livonia, MI 48150 United States</p>	<p>Attn: John Plant</p> <p>Phone: (734) 855-2660 Fax: (734) 855-2473</p> <p>12001 Tech Center Drive Livonia, MI 48150 United States</p>	Trade Debt		\$27,516,189
<p>15. Magna International, Inc.</p> <p>337 Magna Drive Aurora, ON L4G 7K1 Canada</p>	<p>Attn: Don Walker</p> <p>Phone: (905) 726-7040 Fax: (905) 726-2593</p> <p>337 Magna Drive Aurora, ON L4G 7K1 Canada</p>	Trade Debt		\$26,745,489
<p>16. American Axle & Mfg Holdings, Inc.</p> <p>One Dauch Drive Detroit, MI 48211-1198 United States</p>	<p>Attn: Richard Dauch</p> <p>Phone: (313) 758-4213 Fax: (313) 758-4212</p> <p>One Dauch Drive Detroit, MI 48211 United States</p>	Trade Debt		\$26,735,957

Name of creditor and complete mailing address including zip code	Name, telephone number, and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted	Nature of claim (trade debt, bank loan, government contract, etc.)	Indicate if claim is contingent, unliquidated, disputed or subject to setoff	Amount of claim [if secured also state value of security]
<p>22. Tenneco Inc.</p> <p>500 North Field Drive Lake Forest, IL 60045 United States</p>	<p>Attn: Gregg Sherrill</p> <p>Phone: (847) 482-5010 Fax: (847) 482-5030</p> <p>500 North Field Drive Lake Forest, IL 60045 United States</p>	Trade Debt		\$14,837,427
<p>23. Yazaki Corp.</p> <p>6801 Haggerty Road Canton, MI 48187 United States</p>	<p>Attn: George Perry</p> <p>Phone: (734) 983-5186 Fax: (734) 983-5197</p> <p>6801 Haggerty Road, 48E Canton, MI 48187 United States</p>	Trade Debt		\$13,726,367
<p>24. International Automotive Components</p> <p>5300 Auto Club Drive Dearborn, MI 48126 United States</p>	<p>Attn: James Kamsickas</p> <p>Phone: (313) 253-5208 Fax: (313) 240-3270</p> <p>5300 Auto Club Drive Dearborn, MI 48126 United States</p>	Trade Debt		\$12,083,279
<p>25. Avis Rental Car</p> <p>6 Sylvan Way Parsippany, NJ 07054 United States</p>	<p>Attn: Robert Salerno</p> <p>Phone: (973) 496-3514 Fax: (212) 413-1924</p> <p>6 Sylvan Way Parsippany, NJ 07054 United States</p>	Trade Debt		\$12,040,768
<p>26. FMR Corp.</p> <p>82 Devonshire St Boston, MA 02109 United States</p>	<p>Attn: Robert J. Chersi</p> <p>Phone: (617)563-6611 Fax: (617) 598-9449</p> <p>82 Devonshire St Boston, MA 02109 United States</p>	Trade Debt		\$11,980,946

Name of creditor and complete mailing address including zip code	Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted	Nature of claim (trade debt, bank loan, government contract, etc.)	Indicate if claim is contingent, unliquidated, disputed or subject to setoff	Amount of claim [if secured also state value of security]
<p>32. Arcelor Mittal</p> <p>19, Avenue De La Liberte Luxembourg, L-2930 Luxembourg</p>	<p>Attn: Lakshmi Mittal</p> <p>Phone: 44 20 7543 1131 Fax: (44 20) 7 629-7993</p> <p>Berkley Square House, 7th Floor Berkley Square House London, England W1J6DA</p>	Trade Debt		\$9,549,212
<p>33. AK Steel Holding, Corp.</p> <p>9227 Centre Pointe Drive Westchester, OH 45069 United States</p>	<p>Attn: Jim Wainscott</p> <p>Phone: (513) 425-5412 Fax: (513) 425-5815</p> <p>9227 Centre Pointe Drive Westchester, OH 45069 United States</p>	Trade Debt		\$9,116,371
<p>34. CSX Corp.</p> <p>500 Water Street, 15th Floor Jacksonville, FL 32202 United States</p>	<p>Attn: Oscar Muñoz</p> <p>Phone: (904) 359-1329 Fax: (904) 359-1859</p> <p>500 Water Street, 15th Floor Jacksonville, FL 32202 United States</p>	Trade Debt		\$8,884,846
<p>35. Hertz Corporation</p> <p>14501 Hertz Quail Springs Parkway Oklahoma City, OK 73134 United States</p>	<p>Attn: Elyse Douglas</p> <p>Phone: (201) 450-2292 Fax: (866) 444-4763</p> <p>225 Brae Boulevard Park Ridge, NJ 07656 United States</p>	Trade Debt		\$8,710,291

Name of creditor and complete mailing address including zip code	Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted	Nature of claim (trade debt, bank loan, government contract, etc.)	Indicate if claim is contingent, unliquidated, disputed or subject to setoff	Amount of claim [if secured also state value of security]
<p>41. Exxon Mobil Corp.</p> <p>5959 Las Colinas Boulevard Irving, TX 75039 United States</p>	<p>Attn: James P. Hennessy</p> <p>Phone: (703) 846-7340 Fax: (703) 846-6903</p> <p>3225 Gallows Road Fairfax, VA 22037 United States</p>	Trade Debt		\$6,248,959
<p>42. Hitachi Ltd.</p> <p>955 Warwick Road P.O. Box 510 Harrodsburg, KY 40330 United States</p>	<p>Attn: Yasuhiko Honda</p> <p>Phone: (81 34) 564-5549 Fax: (81 34) 564-3415</p> <p>Akihabara Daibiru Building 18-13, Soto-Kanda, 1-Chome Chiyoda-Ku, Tokyo, 101-8608 Japan</p>	Trade Debt		\$6,168,651
<p>43. Mando Corp.</p> <p>4201 Northpark Drive Opelika, AL 36801 United States</p>	<p>Attn: Zung Su Byun</p> <p>Phone: (82 31) 680-6114 Fax: (82 31) 681-6921</p> <p>343-1, Manho-Ri, Poseung-Myon, Pyongtaek Kyonggi, South Korea, Korea</p>	Trade Debt		\$5,459,945
<p>44. General Physics Corp.</p> <p>1500 W. Big Beaver Rd. Troy, MI 48084 United States</p>	<p>Attn: Sharon Esposito Mayer</p> <p>Phone: (410) 379-3600 Fax: (410) 540-5302</p> <p>6095 Marshalee Drive, St. 300 Elkridge, MD 21075 United States</p>	Trade Debt		\$5,208,070
<p>45. Sun Capital Partners, Inc.</p> <p>5200 Town Center Circle, Suite 600 Boca Raton, FL 33486 United States</p>	<p>Attn: Mr. Kevin</p> <p>Phone: (561) 948-7514 Fax: (561) 394-0540</p> <p>5200 Town Center Circle, Suite 600 Boca Raton, FL 33486 United States</p>	Trade Debt		\$4,747,353

DECLARATION UNDER PENALTY OF PERJURY:

I, the undersigned authorized officer of the corporation named as Debtor in this case, declare under penalty of perjury that I have reviewed the foregoing Consolidated List of Creditors Holding the 50 Largest Unsecured Claims and that the list is true and correct to the best of my information and belief.

Dated: June 1, 2009

/s/ Frederick A. Henderson

Signature

NAME: Frederick A. Henderson

TITLE: President and Chief Executive Officer

- e. Number of shares of common stock: 2,000,000,000 shares authorized,
800,937,541 shares issued, and 610,505,273 shares outstanding, all as of March
31, 2009.
3. Brief description of debtor's business: The debtor, together with its affiliates, is
engaged in the manufacturing, marketing, and distribution of cars and trucks
worldwide.
4. List the names of any person who directly or indirectly owns, controls, or holds, with
power to vote, 5% or more of the voting securities of debtor: State Street Bank
and Trust Company (17.0%)

necessary, proper, or desirable to enable such Filing Subsidiary to carry out the filing in Bankruptcy Court contemplated hereby;

RESOLVED, that the Board sees no objection to a filing by GMCL, if determined to be appropriate by the Board of Directors of GMCL, for protection from its creditors under the Companies' Creditors Arrangement Act (the "CCAA") or to any actions taken by GMCL as are necessary, proper, or desirable to enable GMCL to carry out such filing;

EXECUTION OF MASTER SALE AND PURCHASE AGREEMENT

RESOLVED, that the Board finds that the sale of substantially all of the assets of the Corporation to Auto Acquisition Corp., a new entity formed by the United States Department of the Treasury, in accordance with the Purchase Agreement (as defined below), is expedient and in the best interests of the Corporation;

RESOLVED, that the form, terms and provisions of the proposed Master Sale and Purchase Agreement (the "Purchase Agreement") by and among the Corporation, the Filing Subsidiaries and Vehicle Acquisition Holdings LLC., in substantially the form reviewed by the Board, are hereby approved, and the sale of substantially all of the assets of the Corporation set forth in the Purchase Agreement on the terms set forth in the Purchase Agreement be, and hereby is, authorized and approved;

RESOLVED, that each of the Proper Officers, or any of them, is hereby authorized and directed to execute and deliver the Purchase Agreement, with such changes therein or revisions thereto as the Proper Officer or Officers executing and delivering the same may in his or their sole and absolute discretion approve consistent with these Resolutions and with the advice of the Corporation's Legal Staff, and to cause the Corporation to carry out the terms and provisions thereof;

RESOLVED, that each of the Proper Officers, or any of them, is hereby authorized and directed to approve, execute and deliver from time to time such amendments, changes or modifications to the Purchase Agreement as any such Proper Officer shall, consistent with these Resolutions and with the advice of the Corporation's Legal Staff, deem necessary, proper or advisable;

RESOLVED, that if the Corporation determines no later than the due date (including any extensions) of the Corporation's tax return for the taxable year in which the sale contemplated by the Purchase Agreement is closed that an Agreed G Transaction (as defined in the Purchase Agreement) has occurred, (i) the Purchase Agreement will be deemed to constitute a "plan" of the Corporation for purposes of Sections 368 and 354 of the Internal Revenue Code of 1986, as amended (the "Tax Code"), and (ii) the Corporation shall treat the transactions contemplated in the Purchase Agreement, in combination with the subsequent liquidation of the Corporation and the Filing Subsidiaries (as defined in the Purchase Agreement), as a tax-free reorganization pursuant to Section 368(a)(1)(G) of the Tax Code (with any actual or deemed distribution by the Corporation qualifying solely under Sections 354 and 356 of the Tax Code but not under Section 355 of the Tax Code);

EXECUTION OF LOAN FACILITIES – U.S. AND CANADA

RESOLVED, that in connection with the commencement of the Chapter 11 case by the Corporation, each of the Proper Officers, or any of them, is hereby authorized to

RESOLVED, that the Corporation's guarantee of certain obligations of GMCL under the Canadian Credit Agreement secured by the pledge of some or all of its ownership interest in GMCL is approved on terms to be approved by the CFO, which may include the Corporation's participation in the Canadian Credit Agreement as a borrower, consistent with the advice of the Corporation's Legal Staff;

RESOLVED, that the Corporation's guarantee of GMCL's obligations under the April EDC Credit Agreement as approved at the meeting of the Board on April 24, 2009 will continue to be valid, binding and enforceable until the effectiveness of the Canadian Credit Agreement, and in connection with the foregoing, the Proper Officers, or any Proper Officer, is authorized to execute and deliver a Confirmation and Acknowledgment (the "Acknowledgment") stating that the April EDC Credit Agreement may be modified or supplemented by EDC and GMCL without the Corporation's participation;

RESOLVED, that the Proper Officers, or any Proper Officer, is hereby authorized to execute and deliver the guaranty and any other agreements or documents to which the Corporation is a party or to take any other actions that he determines are necessary, appropriate or advisable to consummate the transactions contemplated by the Canadian Credit Agreement;

GENERAL AUTHORIZATION AND RATIFICATION

RESOLVED, that each Proper Officer is authorized and directed, consistent with these Resolutions and with the advice of the Corporation's Legal Staff: (i) to negotiate, execute, deliver, certify, file and/or record, and perform, any and all of the agreements, documents, and instruments referenced herein, and such other agreements, documents, and instruments and assignments thereof as may be required or as such Proper Officer deems appropriate or advisable, or to cause the negotiation, execution, and delivery thereof, as the case may be, in such form and substance as such Proper Officer may approve, together with such changes and amendments to any of the terms and conditions thereof as such Proper Officer may approve, (ii) to negotiate, execute, deliver, certify, file and/or record, and perform any agreements, documents, certificates, consents, filings, and applications relating to the Resolutions adopted and matters ratified or approved herein and the transactions contemplated thereby, and amendments and supplements to any of the foregoing, and to take such other action as may be required or as such Proper Officer deems appropriate or advisable in connection therewith, and (iii) to do such other things as may be required, or as may in such Proper Officer's judgment be necessary, proper, or desirable, to carry out the intent and effectuate the purposes of the Resolutions adopted and matters ratified or approved herein and the consummation of the transactions contemplated hereby; and

RESOLVED, that all actions taken by the Proper Officers, or any of them, prior to the date of the foregoing Resolutions adopted at this meeting and within the authority conferred, are hereby ratified, confirmed, approved in all respects as the act and deed of the Corporation.

* * * * *

EXHIBIT H

cars or being unable to maneuver them to the side of the road.

“There’s no question that service bulletins have been used where recalls should have been,” said Joan Claybrook, a former head of the National Highway Traffic Safety Administration, the federal agency that regulates auto safety, speaking of the auto industry as a whole. “It’s highly inappropriate.”

When told of the findings by The Times about G.M., Ms. Claybrook said, “I’m shocked. I can see it happening occasionally, but not as a routine. Seven is a lot.”

Companies send out thousands of technical service bulletins each year. They allow an automaker to tell dealers, and sometimes car owners, about low-level problems like a faulty interior light or air conditioner. They can also act as alerts about issues the automaker does not fully understand and continues to research. But the service bulletins, which are typically directed at dealerships’ service departments, are not intended to address serious safety issues, which by law must be handled by recalls monitored by the safety agency.

“A manufacturer must address a safety defect by conducting a safety recall, which requires the manufacturer to notify consumers and remedy the defect,” said Nathan Naylor, a spokesman for the highway safety agency.

An Attempt to Be Discreet

Service bulletins can be an inexpensive substitute for a recall. In January 2013, for example, G.M. engineers estimated that it would cost \$41.3 million to change the ignition switches in more than 778,000 vehicles, including Cobalts and Pontiac G5s. While there is no data available on the cost of repairs that resulted from the letter to dealers and owners, experts say the financial costs and the hit to the company’s reputation were likely to be softer with the relatively discreet bulletins.

The Times analysis of service bulletins was limited to General Motors. The safety agency declined to comment on how G.M. compared with other automakers, but its top defects investigator, Frank Borris, last year scolded G.M. over its lack of responsiveness on safety issues, in contrast to its peers.

“The general perception is that G.M. is slow to communicate, slow to act, and, at times, requires additional effort,” Mr. Borris wrote to Carmen Benavides,

we've been quick to act from a safety recall process.”

Series of Service Bulletins

The review by The Times found multiple instances in which the company used service bulletins instead of immediately recalling cars, with the gap between a bulletin and a recall ranging from six months to nine years.

In the case of the Saturn Ion, which had a power steering system that could suddenly turn off, there were at least three service bulletins issued over a period of nine years before G.M. finally issued a recall last month.

Just last August, Sharon Luers said, she was driving to a friend's house in Shrewsbury, Pa., in her 2004 Ion when she heard a chime and saw a warning light flash for the power steering. Almost immediately, she lost control of her car. “It took all my strength to pull over,” she said.

A few days later, it happened again.

Beginning in 2005, General Motors issued service bulletins alerting technicians at dealerships that “some customers may comment that the steering wheel is hard to turn and that a message of ‘PWR STR’ is displayed,” as one 2009 bulletin read.

In March 2010, G.M. recalled nearly 1.1 million Cobalts and Pontiac G5s for faulty power steering systems, but the Ion was not recalled, even though it used the same steering system.

By September 2011, G.M. had informed the auto safety agency — which had begun to investigate problems with the Ion — of 3,489 customer reports claiming a sudden loss of power steering in 2004-7 Ions, as well as two crash claims indicating that drivers had been injured, according to regulatory filings. It is not known if any deaths resulted from the problem.

The following month, Ms. Barra, who was then vice president for global product development, received an email from a senior G.M. engineer, telling her that the Ion might have the same power steering problems that led to the recall of the Cobalt and G5.

“Mary,” the email said, “during the initial Cobalt case, the Ion data did not justify being included. The situation has been evolving. We will meet and understand the latest data.”

suggesting that they tell drivers to remove objects attached to ignition keys. Only this year did the company order a recall of the cars.

Although it is G.M.'s responsibility to report safety problems, Ms. Claybrook, the former N.H.T.S.A. official, said the agency was somewhat culpable for not detecting abuses in service bulletins.

"Part of the problem is that N.H.T.S.A. is so grossly underfunded that it doesn't have time to read them as they come in," she said.

The safety agency said that it looks at every technical service bulletin it receives and may open an investigation when appropriate. The Times analysis found that car companies issue thousands of the notices each year and that safety-related bulletins may be lumped in among notices for less serious issues.

Still, automakers are required to act on serious safety problems with a recall. And when they do, it hurts them financially, and more important, in their reputation, said Daniel G. Hill, a crisis expert at Ervin Hill Strategy, a communications firm in Washington, who is familiar with the technical notices.

"But you hope that calculus hasn't been factored into the decision-making process," he said.

Christopher Jensen contributed reporting.

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Next in Business Day Despite Big Ambitions, New York's Tech Scene Is Still Starting Up

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