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William P. Weintraub
Gregory W. Fox
GOODWIN PROCTER LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018
T: 212-813-8800
E: wweintraub@goodwinprocter.com
E: gfox@goodwinprocter.com

Counsel for Turner & Associates, P.A. and Butler Wooten & Peak LLP

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

OBJECTION BY STATE COURT PLAINTIFFS TO MOTION BY GENERAL MOTORS LLC PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE BANKRUPTCY COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION, AND THE RULINGS INCONNECTION THEREWITH

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Turner & Associates, P.A. (the "**Turner Firm**"), as counsel to the plaintiffs in the Chapman Lawsuit[1] pending in the Arkansas State Court and the Tibbetts Lawsuit pending in the New Mexico State Court,[2] and Butler Wooten & Peak LLP ("**BW&P**"), as counsel to the plaintiff in the Fox Lawsuit pending in the Georgia State Court, by and through undersigned counsel hereby respectfully submit this objection (the "**Objection**") to the *Motion by General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Bankruptcy Court's July 5, 2009 Sale Order and Injunction, and the Rulings In Connection Therewith*, which was filed on June 1, 2016 [Docket No. 13634] (the "**Motion**"). In support of this Objection, the Turner Firm and BW&P (together, the "**Objecting Firms**") respectfully state as follows:

PRELIMINARY STATEMENT

The Objecting Firms represent the State Court Plaintiffs, each of whom were injured or killed after the July 10, 2009 closing of the 363 Sale in incidents involving vehicles manufactured by Old GM. None of the vehicles at issue in the State Court Lawsuits were among the models of vehicles containing the "Ignition Switch Defect"[3] and none of the State Court

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion (defined below).

[2] The Turner Firm also represents the Plaintiff in the Lemus Lawsuit pending before the New Mexico State Court, which was referenced in New GM's Motion. As of the date hereof, the Lemus Lawsuit has been settled and is no longer at issue in these proceedings. Moreover, after meeting and conferring with counsel to New GM, the Turner Firm has filed amended complaints in the Tibbetts Lawsuit and the Chapman Lawsuit to assuage New GM's concerns regarding certain wording in those complaints expressed in paragraphs 57 through 62 of the Motion. Those revised complaints are attached hereto as **Exhibit A**. BW&P, as Plaintiff's counsel in the Fox Lawsuit pending in Georgia State Court, has likewise been conferring with counsel to New GM, have filed a First Recast & Amended Complaint, to which counsel for New GM has commented, and have offered to file a Second Recast & Amended Complaint. Those discussions continue. Accordingly, this Objection shall only focus on New GM's argument that the State Court Plaintiffs cannot pursue punitive damages or Independent Claims (defined below).

[3] The term "Ignition Switch Defect" was defined in Judge Gerber's April 2015 Decision as follows: "In March 2014, New GM announced to the public, for the first time, serious defects in ignition switches that had been installed in Chevy Cobalts and HHRs, Pontiac G5s and Solstices,

Plaintiffs' complaints seeks to hold New GM liable for acts of Old GM on a theory of successor liability. To the contrary, the claims the State Court Plaintiffs assert against New GM all constitute (i) "Product Liabilities"[4] that New GM expressly assumed under the Sale Agreement approved by this Court on July 5, 2009 or (ii) claims seeking to hold New GM liable on theories of negligence and failure to warn/recall for New GM's own actions and inactions following its acquisition of Old GM's assets, employees, and books and records upon the closing of the 363 Sale (*i.e.*, "**Independent Claims**").[5] In connection with their Independent Claims against New GM, the State Court Plaintiffs seek punitive damages (in addition to compensatory damages) from New GM.[6]

As explained below, this Court ruled in 2015 that the 2009 Sale Order was never meant to absolve New GM from its own wrongful post-sale conduct, even if such conduct related to vehicles manufactured by Old GM. This Court also ruled in 2015 that parties denied due process in 2009 in connection with the 363 Sale could pursue Independent Claims against New GM

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and Saturn Ions and Skys (the "**Ignition Switch Defect**"), going back to the 2005 model year." *In re Motors Liquidation Co.*, 529 B.R. 510, 521 (Bankr. S.D.N.Y. 2015).

[4] As defined in the Sale Agreement, "Products Liability" means "all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by [Old GM] ("**Product Liabilities**"), which arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date and arising from such motor vehicles' operation or performance." *See* Motion at Ex. A (Sale Order), at First Amendment to Sale Agreement, dated as of June 30, 2009 at § 2.3(a)(ix).

[5] As defined in the December 2015 Judgment, an "Independent Claim" is "a claim or cause of action asserted against New GM that is based solely on New GM's own independent post-Closing acts or conduct" and does not include "(a) Assumed Liabilities, or (b) Retained Liabilities, which are any Liabilities that Old GM had prior to the closing of the 363 Sale that are not Assumed Liabilities." December 15 Judgment at ¶ 4 n.3.

[6] BW&P and counsel to New GM are currently in discussions regarding additional potential revisions to the Fox Complaint that may include dropping any punitive damages claim. If any changes to the Fox Complaint are made, counsel will alert the Court prior to the hearing on the Motion and provide a copy of the amended complaint (and a redline).

notwithstanding language in the Sale Order that purportedly gave New GM sanctuary from its own future post-sale misconduct. Indeed, this Court recognized in 2015 that it had overstepped its bounds in 2009 by (arguably) giving New GM prospective immunity from laws and obligations that would otherwise apply to it. Thus, this Court held in its April 2015 Decision on the "four threshold issues" that Independent Claims could be asserted by certain plaintiffs whose vehicles were manufactured with the Ignition Switch Defect. In so ruling, Judge Gerber agreed that the language he used in the Sale Order was "flawed" and "overbroad." *Motors Liquidation*, 529 B.R. at 575

Just as Judge Gerber held for the only parties before him at the time he issued the April 2015 Decision and associated June 2015 Judgment, the State Court Plaintiffs were also denied due process in connection with the 363 Sale under either (or both) of the *Manville* line and/or *Grumman* line of cases because these plaintiffs were not given the opportunity to object to the overbroad language of the Sale Order at the time of its entry.[7]

Significantly, the issue of whether due process failures occurred in 2009 as to claimants with post-sale personal injury claims against New GM involving vehicles manufactured by Old GM that did not contain the Ignition Switch was never before the Court, has not yet been adjudicated, and Judge Gerber's prior opinions and judgments expressly contemplate a future opportunity for such plaintiffs to raise their due process arguments. The State Court Plaintiffs oppose the Motion and request that, consistent with Judge Gerber's prior rulings, they be treated no differently than the economic damage and post-sale personal injury plaintiffs whose vehicles

[7] The April 2015 Decision and the June 2015 Judgment only addressed the claims of two specific groups of plaintiffs whose vehicles contained the Ignition Switch Defect: those asserting economic loss due to the Ignition Switch Defect; and Ignition Switch Pre-Closing Accident Plaintiffs. The State Court Plaintiffs, who did not yet hold claims and, therefore, were future claimants in 2009, have sued New GM for damages relating to defects other than the Ignition Switch Defect.

had the Ignition Switch Defect and further request that their Independent Claims against New GM (including punitive damage claims) be allowed proceed in state court.

OBJECTION

I. THIS COURT'S PRIOR RULINGS PERMIT THE STATE COURT PLAINTIFFS TO ASSERT INDEPENDENT CLAIMS AGAINST NEW GM IF THEY CAN SHOW A DUE PROCESS VIOLATION IN CONNECTION WITH THE 363 SALE (AN ISSUE THAT WAS NEVER BEFORE THIS COURT)

This Court has already ruled that a plaintiff may assert an Independent Claim against New GM for New GM's own post-sale conduct if the plaintiff can show it was denied due process in connection with the entry of the Sale Order. The proceedings that were held in 2015 on New GM's first two Motions to Enforce were limited as to scope (*i.e.*, limited to the "four threshold issues") and affected only a subset of plaintiffs (*i.e.*, Ignition Switch Economic Loss Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs (each defined below and, in each case, limited to vehicles with the Ignition Switch Defect)).

Even in those limited proceedings, the Court ruled that certain plaintiffs were denied due process in connection with the 363 Sale and could assert Independent Claims against New GM relating to vehicles manufactured by Old GM; namely, plaintiffs asserting Independent Claims against New GM for economic damages relating to the Ignition Switch Defect. Moreover, in those proceedings, and in subsequent proceedings that were held in late 2015, the Court did not foreclose the possibility that others could prove a due process violation and likewise pursue Independent Claims against New GM relating to vehicles manufactured by Old GM. Indeed, the Court's opinions and judgments contemplate future proceedings to permit plaintiffs such as the State Court Plaintiffs their day in court.[8]

[8] As will be shown below in Section II below, as "future claimants" whose Independent Claims had not yet arisen as of the entry of the Sale Order, the State Court Plaintiffs were not provided due process of the Sale Hearing. Accordingly, under this Court's prior rulings, the State Court

A. The 2014 Motions to Enforce and April 2015 Decision

In 2014, five years after the closing of the 363 Sale, New GM announced a series of recalls of millions of vehicles manufactured by Old GM with the Ignition Switch Defect embedded in each of the vehicles. This startling revelation resulted in hundreds of lawsuits seeking to hold New GM responsible for personal injuries and wrongful deaths resulting from Ignition Switch Defect-related car wrecks and economic damages allegedly suffered by owners of Old GM vehicles as a result of the Ignition Switch Defect and the associated recalls.[9]

In response to these lawsuits, New GM filed its 2014 Motions to Enforce.[10] New GM contended that the claims asserted against it violated the free and clear provisions of the Sale Orders which, according to New GM, barred claims against it for (i) economic damages, and (ii) personal injuries suffered in pre-sale crashes.[11] In order to attempt to resolve the 2014 Motions to Enforce in an expeditious manner without unduly interfering with the prerogatives of the many trial courts involved or the multi-district litigation (the "MDL") pending in the United States District Court for the Southern District of New York (the "District Court"), this Court

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Plaintiffs should not be bound by the overbroad language of the Sale Order and should be allowed to pursue their Independent Claims against New GM in state court.

[9] Generally speaking, vehicle owners that had not had a crash sued New GM to be compensated for the devaluation of their vehicles. These are sometimes referred to as the "economic loss" plaintiffs.

[10] *See* (i) *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*, dated April 21, 2014 [Docket No. 12620], (ii) *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Courts July 5, 2009 Sale Order and Injunction (Monetary Relief Actions, Other Than Ignition Switch Actions)*, dated August 1, 2014 [Docket No.12808]; and (iii) *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Courts July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits*, dated August 1, 2014 [Docket No. 12807].

[11] As New GM acknowledges, the Sale Agreement this Court approved in 2009 provided that New GM would assume liabilities for post-sale car crashes that caused personal injury, loss of life or property damage (*i.e.*, Product Liabilities).

established a limited procedure to address "four threshold issues" on a stipulated set of facts and without discovery. *Motors Liquidation Co.*, 529 B.R. at 529 n.17, 539-40. These issues were briefed and argued between November 2014 and February 2015. Notably, the proceedings were targeted at a specific set of plaintiffs: those asserting due process violations relating to the non-disclosure or concealment of the Ignition Switch Defect.

The claims at issue in connection with New GM's 2014 Motions to Enforce were the following:

> (i) "**Ignition Switch Plaintiffs**" … plaintiffs that … commenced a lawsuit against New GM ***asserting economic losses based on or arising from the Ignition Switch in the Subject Vehicles*** (each term as defined in the Agreed and Disputed Stipulations of Fact Pursuant to the Court's Supplemental Scheduling Order, Dated July 11, 2014, filed on August 8, 2014 [Dkt. No. 12826], at 3);[12]
>
> (ii) "**Pre-Closing Accident Plaintiffs**" … plaintiffs that … commenced a lawsuit against New GM based on an accident or incident that ***occurred prior to the closing of the 363 Sale***;
>
> (iii) "**Ignition Switch Pre-Closing Accident Plaintiffs**" … that subset of the Pre-Closing Accident Plaintiffs that had the Ignition Switch in their Subject Vehicles;
>
> (iv) "**Non-Ignition Switch Pre-Closing Accident Plaintiffs**" …that subset of Pre-Closing Accident Plaintiffs that are not Ignition Switch Pre-Closing Accident Plaintiffs; and
>
> (v) "**Non-Ignition Switch Plaintiffs**"…plaintiffs that have commenced a lawsuit against New GM ***asserting economic***

[12] Judge Gerber used the defined term "Economic Loss Plaintiffs" to describe the "Ignition Switch Plaintiffs" in his April 2015 Decision. *See Motors Liquidation Co.*, 529 B.R. at 521. This Objection shall refer to these plaintiffs by the fully-descriptive term "**Ignition Switch Economic Loss Plaintiffs**". These plaintiffs had not been involved in crashes and only sought to recover for loss in resale value of their vehicles.

> ***losses based on or arising from an alleged defect, other than the Ignition Switch***, in an Old GM vehicle.[13]

June 2015 Judgment at 1 n.1 (emphasis added).

Independent Claims by post-sale accident victims such as the State Court Plaintiffs were never part of those proceedings. Judge Gerber made this abundantly clear when he wrote:

> There may be misunderstandings as to the matters now before the Court. New GM has already undertaken to satisfy claims for death, personal injury, and property damage in accidents occurring after the 363 Sale—involving vehicles manufactured by New GM and Old GM alike. Except for the *pre*-Sale accidents that are the subject of the Pre-Closing Accident Plaintiffs' contentions, addressed below (where those plaintiffs wish to sue New GM in lieu of Old GM), **this controversy does not involve death, personal injury, or property damage arising in accidents**. Instead it involves only *economic losses* allegedly sustained with respect to Old GM vehicles or parts.

Motors Liquidation, 529 B.R. at 521 n.4 (italics in original; underscoring added). Thus, the case and controversy before the Court that resulted in the April 2015 Decision and the June 2015 Judgment did not include the State Court Plaintiffs' Independent Claims.

The relevant case and controversy raised by the 2014 Motions to Enforce was whether Ignition Switch Pre-Closing Accident Plaintiffs and/or the Ignition Switch Economic Loss Plaintiffs could pursue successor liability claims against New GM notwithstanding the Sale Order's bar on such claims. Generally speaking, the issue under consideration was whether these plaintiffs were denied due process in connection with the 363 Sale as a result of defective notice of the 363 Sale and the failure to disclose the existence of the Ignition Switch Defect to the owners of affected vehicles. *Id.* at 523 ("In this Court, the first two groups of Plaintiffs [*i.e.*, the

[13] This Objection shall refer to these plaintiffs by the fully-descriptive term "**Non-Ignition Switch Economic Loss Plaintiffs**" to avoid confusion with plaintiffs (such as the State Court Plaintiffs) who assert claims against New GM for personal injury (not economic loss) suffered in car crashes that did not involve the Ignition Switch Defect.

Ignition Switch Economic Loss Plaintiffs and the Ignition Switch Pre-Closing Accident Plaintiffs], whose issues the Court could consider on a common set of stipulated facts and is in major respects considering together, contend that by reason of Old GM's failure to send out recall notices, they never learned of the Ignition Switch Defect, and that the Sale Order is unenforceable against them.").

Based on the stipulated record before it, the Court held that the Ignition Switch Economic Loss Plaintiffs and the Ignition Switch Pre-Closing Accident Plaintiffs were deprived of constitutionally sufficient notice of the 363 Sale because of the failure to disclose the existence of the Ignition Switch Defect. *Id.* at 525 ("Because owners of cars with Ignition Switch Defects received neither the notice required under the Safety Act nor any reasonable substitute … they were denied the notice that due process requires."). That said, Judge Gerber ruled these affected parties were only entitled to relief from the "free and clear" provisions of the Sale Order to the extent such deprivation of constitutionally sufficient notice prejudiced them. *Id.* at 565 ("even where inadequate notice has been given, prejudice is an essential element for vacating or modifying an order implementing a 363 sale").

A specific area where the Court identified demonstrable prejudice was the inability of the Ignition Switch Economic Loss Plaintiffs to object to the breadth and scope of the Sale Order prior to its entry.

In particular, Judge Gerber stated at the outset of oral argument on the 2014 Motions to Enforce:

> [I]f we had a do-over, I'd likely have to consider whether a free-and-clear order in the form that I just issued it was over-broad.

> And, in this respect, the economic loss plaintiffs, though not Mr. Weintraub's guys,[14] would have the upper hand.
>
> This order, as I read it, not only blocks successor liability, but also blocks claims based on wholly post-sale events that involved Old GM or Old GM parts. This is one of the issues, if not the issue, that bothers me the most. And the issue is whether what I should have done, or would have done if the argument had been made to me then, was to add a new order that was narrower and said that people couldn't sue based on anything Old GM had done, but they could sue if it was based on what New GM had done, so long as … New GM wasn't blamed for Old GM's acts.

Tr. of Oral Arg. on Feb. 17, 2015 at 20:11-22:3 (relevant excerpt attached hereto as **Exhibit B**).

In his April 2015 Decision, Judge Gerber stayed with his initial inclination and acknowledged that he had made a mistake in the Sale Order by including overbroad language that could be argued to protect New GM from claims for its own acts following the closing of the 363 Sale:

> Here the Sale Order, in addition to barring successor liability (which for reasons discussed above, remains fully appropriate), also proscribed any claims involving vehicles and parts manufactured by Old GM, even if the claims might rely solely on wrongful conduct by New GM alone. By not having the opportunity to argue that such was inappropriate here (and to seek a proviso similar to the ones granted in *MagCorp* and for the environmental objectors here), the Economic Loss Plaintiffs were prejudiced. They thus established an actionable denial of due process with respect to Sale Order overbreadth.
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> * * *

[14] Judge Gerber's reference to "Mr. Weintraub's guys" is to the Ignition Switch Pre-Closing Accident Plaintiffs, whom Goodwin Procter represented in those proceedings as "designated counsel" (selected by the Co-Leads in the MDL to address the "four threshold issues" with respect to pre-closing accidents involving vehicles containing the Ignition Switch Defect). Because plaintiffs in this group were injured in car crashes that occurred prior to the existence of New GM, these plaintiffs did not have Independent Claims against New GM for New GM's post-sale conduct (other than claims against New GM for its failure to inform them of the Ignition Switch Defect prior to the Old GM bar date). The "bar date" claims (which are not relevant to the post-sale personal injury plaintiffs) were enjoined in the December 2015 Judgment and are currently on appeal to the District Court.

> But on the Plaintiffs' second principal matter of concern--the overbreadth of the Sale Order--the situation is different. There is a flaw in the order, protecting New GM from liability on claims that, while they involve Old GM vehicles or Old GM parts, do not rest on successor liability, and instead rely on New GM's alleged wrongful conduct alone. The Plaintiffs could have made overbreadth arguments if given appropriate notice before the 363 Sale hearing, and to that extent they were prejudiced. And for that the Plaintiffs should be entitled to remedial relief to the extent the law otherwise permits.
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> * * *
>
> What the Court would have done in the face of a Sale Order overbreadth objection is likewise not subject to speculation. The Court follows its own precedent. If the Plaintiffs had been heard to make the argument back in 2009 that they are making now -- that they should have the right to allege claims based on wrongful conduct by New GM alone, without any reliance on anything that Old GM might have done -- the Court would have entered a narrower order, as it did in similar situations. In this respect, the Economic Loss Plaintiffs were prejudiced.

Id. at 570, 575. *See also* June 2015 Judgment at ¶¶ 4-5.

Broadly speaking, Judge Gerber acknowledged that the Sale Order was never meant to protect New GM from Independent Claims for its own post-sale wrongful conduct and that, if this obvious flaw in the Sale Order had been brought to his attention in July 2009, he would not have approved a provision such as the one contained in the Sale Order. The State Court Plaintiffs contend that, as parties that also lacked constitutionally sufficient notice of the 363 Sale and the purported bar against their assertion of Independent Claims, they are in the same constitutional boat as the Economic Loss Ignition Switch Plaintiffs and likewise should not be bound by the overbroad language of the Sale Order.

B. <u>The June 2015 Judgment and September 3 Scheduling Order</u>

As contemplated under the Federal Rules of Civil Procedure, the Court entered the June 2015 Judgment to reflect the essential holdings contained in the April 2015 Decision. The

June 2015 Judgment established procedures for determining how the Court's rulings on the 2014 Motions to Enforce would impact existing litigation against New GM. The June 2015 Judgment generally tracked the defined terms used in the April 2015 Decision and on its face identified the universe of impacted plaintiffs, which did not include post-sale personal injury plaintiffs such as the State Court Plaintiffs. *See* June 2015 Judgment at 1 n.1. Moreover, none of the State Court Lawsuits were identified on the schedules to the June 2015 Judgment.

The June 2015 Judgment authorized New GM to serve the June 2015 Judgment and the April 2015 Decision on parties it believed were pursuing litigation violative of the Court's rulings in connection with the 2014 Motions to Enforce in order to afford such parties an opportunity to either amend their complaints to remove offending language or file a pleading with this Court to obtain a ruling that the language was not violative of the Court's rulings. *See* June 2015 Judgment at ¶¶ 8-18. After the Court entered its June 2015 Judgment, New GM sent letters to numerous plaintiffs under the procedures set forth in the June 2015 Judgment demanding amendments to their complaints and certain of those plaintiffs filed pleadings in this Court seeking resolution of the allegations by New GM that their complaints violated this Court's Rulings.

To consolidate these proceedings, the Court entered a Case Management Order on August 19, 2015 [Docket No. 13383] (the "**August 19 Case Management Order**") (*see* Motion at Ex. H) and, following a hearing on August 31, 2015, entered its September 3 Scheduling Order [Docket No. 13416] (*see* Motion at Ex. I). The September 3 Scheduling Order provided that "for all plaintiffs that have received a demand letter from New GM where the time period to file a No Strike, No Stay, and No Dismissal Pleading as set forth in the Judgment ("**Judgment Pleading**") had not expired as of the August 31 Conference, the briefing schedule set forth

herein shall supersede the requirement to file such Judgment Pleadings." September 3 Scheduling Order at 6.

Just like the June 2015 Judgment, the September 3 Scheduling Order did not mention or purport to address personal injury claims by plaintiffs injured in post-sale accidents unrelated to the Ignition Switch Defect ("**Non-ISD Post Sale Accident Plaintiffs**"). Instead, the Scheduling Order focused on (i) punitive damages, (ii) imputation of knowledge from Old GM to new GM, (iii) the complaints filed by the plaintiffs in the "Bellwether Cases" (*i.e.*, post-sale Ignition Switch Defect accident cases then pending before the District Court), (iv) the Second Amended Consolidated Complaint filed in the MDL by plaintiffs seeking economic damages from New GM, and (v) complaints filed by the states of California and Arizona seeking economic damages from New GM. *See* September 3 Scheduling Order at 1-4.[15] The September 3 Scheduling Order also authorized New GM to send a copy of the September 3 Scheduling Order "on plaintiffs in any lawsuit where New GM has previously sent a demand letter as authorized by the [June 2015] Judgment" with a cover note explaining the issues to be briefed and argued to the Court pursuant to the September 3 Scheduling Order. Finally, the September 3 Scheduling Order also provided that:

> in the event New GM believe [sic] there are issues to be decided by the Court in actions that received a demand letter that are not covered in paragraphs 1-5 above, New GM shall file with the Court and serve on counsel of record in such representative case(s) on or before September 23, 2015 (i) a marked-up version of their complaints ("**Other Plaintiffs' Complaints**"), showing which portions thereof New GM contends violate the Judgment, the Decision and/or the Sale Order and Injunction, and (ii) a letter, not to exceed three (3) single-spaced pages for the Other Plaintiffs' Complaints, setting forth New GM's position with respect to the

[15] In addition, certain "one-off" plaintiffs, including those represented by Gary Peller, whom had been active litigants since New GM filed its 2014 Motions to Enforce, submitted briefs on the issues identified in the September 3 Scheduling Order.

> Marked Other Plaintiffs' Complaints ("**New GM Marked Other Plaintiffs' Complaints Letter**").

September 3 Scheduling Order at 5.

Notwithstanding the fact that New GM had never previously sent a demand letter to counsel to the Fox Plaintiff prior to the entry of the September 3 Scheduling Order, New GM sent BW&P a demand letter on September 4, 2015 (the "**Fox September 4 Demand Letter**"). *See* Motion at Ex. J. In the Fox September 4 Demand Letter, New GM (misleadingly) stated that the September 3 Scheduling Order applied to the Fox Lawsuit and that, unless BW&P filed an objection in three days' time, it would be bound by the September 3 Scheduling Order. Appropriately confused by New GM's letter and demands, BW&P asked New GM to explain how the procedures set forth in the September 3 Scheduling Order applied to lawsuits by Non-ISD Post Sale Accident Plaintiffs for which no previous demand letter was sent. *See* Motion at Exs. K, L, and N. Rather than directly respond to these questions, counsel to New GM simply repeated the incorrect refrain that the September 3 Scheduling Order applied to the Fox Lawsuit and that "the Bankruptcy Court directed New GM to send a copy of the Scheduling Order as well as a specific cover note to plaintiffs or their counsel who received demand letters **(like yourself)**." *See* Motion at Ex. N (emphasis added) (email from Arthur Steinberg dated Sept. 28, 2015). Unconvinced that the September 3 Scheduling Order applied to the Fox Lawsuit, BW&P did not participate in the briefing or argument contemplated under that order.

New GM did send the Turner Firm demand letters in August 2015 with respect to the Chapman Lawsuit and the Tibbetts Lawsuit (*see* Motion at Ex. P).[16] In response to those letters, the Turner Firm asked counsel to New GM why they believed the complaints at issue sought

[16] Because none of the time periods set forth in the demand letters New GM had sent to the Turner Firm had expired as of August 31, 2015, the September 3 Scheduling Order superseded those letters by its express terms.

punitive damages from New GM based on Old GM conduct – which they did not – and to provide specific reference to the allegedly offensive portions of the complaint. *See* Motion at Ex. Q. Rather than respond directly to these legitimate questions, counsel to New GM merely served the Turner Firm with a copy of the September 3 Scheduling Order and told them that they could participate in these proceedings if they wished. *See* Motion at Ex. R. Having received no response on its inquiry about the specific ways in which New GM contended that the Turner Firm's complaints violated this Court's prior rulings and similarly unconvinced that the June 2015 Judgment or the procedures set forth in the September 3 Scheduling Order applied to Independent Claims by Non-ISD Post Sale Accident Plaintiffs, the Turner Firm also did not participate in the briefing or argument contemplated under the September 3 Scheduling Order.

It is also worth noting that prior to the completion of the proceedings contemplated under the September 3 Scheduling Order, New GM never served marked complaints on any of the State Court Plaintiffs or their counsel evidencing how those complaints purportedly violated this Court's prior rulings – even though this step was specifically required by this Court in both the August 19 Case Management Order (*see* ¶ 1(c), (d)) and the September 3 Scheduling Order (*see* p.5). Indeed, New GM did not serve a marked complaint reflecting its requested changes to the State Court Plaintiffs' complaints until May 2016, approximately 8 months after New GM's deadline to do so under the September 3 Scheduling order and almost 7 months after issuance of the November 2015 Decision. *See* Motion at Exs. S, T, V, and W.[17] Thus, New GM never

[17] New GM's filing of this Motion as to the Fox Plaintiff appears to be a litigation tactic aimed at delaying trial before the Georgia State Court. The original complaint in the Fox Lawsuit was filed on December 23, 2014, thus, the Fox Lawsuit has been pending against New GM for 19 months, fact discovery is complete, and the trial is set to commence on September 13, 2016. New GM agreed to that special trial setting on December 15, 2015. Despite its longstanding knowledge of the existence of the Fox Lawsuit and the claims asserted by the Fox Plaintiff, New GM only recently began communicating with BW&P about the issues raised in the Motion. The

joined the additional issue of whether the June 2015 Judgment applied to Independent Claims brought by the State Court Plaintiffs against New GM for post-sale personal injuries suffered in vehicles without the Ignition Switch Defect. It bears repeating that the non-ISD Post-Sale Accident Plaintiff was a category of plaintiff that, by design, was not covered in the April 2015 Decision, the June 2015 Judgment, or the September 3 Scheduling Order. [18]

C. The November 2015 Decision and December 2015 Judgment

Following briefing and oral argument on the issues set forth in the September 3 Scheduling Order, on November 9, 2015, this Court issued its November 2015 Decision. In that decision, the Court ruled in relevant part that personal injury plaintiffs with post-sale accidents relating to the Ignition Switch Defect (*i.e.*, the "Bellwether Plaintiffs") and Ignition Switch Economic Loss Plaintiffs could pursue Independent Claims and punitive damages against New GM for New GM's own post-sale conduct based on knowledge it "inherited" from Old GM (through the minds of transferred employees or the contents of the books and records transferred to New GM as part of the 363 Sale) and knowledge it acquired after the closing of the sale. *In re Motors Liquidation Co.*, 541 B.R. 104, 124 (Bankr. S.D.N.Y. 2015). In ruling that the Bellwether Plaintiffs could pursue Products Liability Claims (which New GM expressly assumed) and

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only apparent reason New GM has filed the Motion as to the Fox Plaintiff is because the Fox Lawsuit is specially set for trial on September 13, 2016. BW&P has filed four other lawsuits against New GM since the Old GM bankruptcy, seeking punitive damages in each of them. New GM has sent no letters complaining of alleged "violations" of this Court's orders with respect to any of those four cases. *Hinton-Jones v. New GM*, Superior Court of Muscogee County, Georgia, filed 2/15/2011; *Williams v. New GM*, United States District Court, Northern District of Georgia, filed 9/10/2014; *Eason v. New GM*, State Court of Cobb County, Georgia, filed 8/12/2015; *Reichwaldt v. NEW GM*, State Court of Cobb County, Georgia, filed 5/19/2016. Two of those cases were filed *before Fox v. New GM* was filed on 12/23/2014.

[18] It is also noteworthy that, to the extent the State Court Plaintiffs are an "Additional Party" under Paragraph 18(a) of the June 2015 Judgment (which the State Court Plaintiffs do not concede), the "remedy" is dismissal of the "offending claims" without prejudice. June 2015 Judgment at Paragraph 18(a).

Independent Claims against New GM for its post-sale conduct based on knowledge inherited from Old GM, the Court stated the following:

> On Product Liabilities Claims, the analysis is a little different, but the bottom line result is the same. New GM assumed liability for Product Liabilities claims, which (by definition) arose from accidents or incidents taking place after the Sale, and thereby became liable for compensatory damages for any Product Liabilities resulting from Old GM's action. And by the time any such accidents or incidents occurred, New GM already was in existence, and allegations that the post-Sale accident could have been avoided (or any resulting injury would have been reduced) if New GM had taken action based on any knowledge its employees had would also pass through the gate. Either way, it would not matter if that knowledge had first come into existence prior to the Sale—because it was still knowledge in fact of employees of New GM, and because New GM assumed responsibility for Product Liabilities Claims, which would make it liable for compensatory damages based on anything that even Old GM had done.

Id. at 115 n.30. Thus, the Court held in this context that the Bellwether Plaintiffs (all of whom had post-sale crashes involving the Ignition Switch Defect) could pursue Independent Claims and punitive damages against New GM for its failures of duties to warn and to recall – which are the same claims and theories the State Court Plaintiffs assert with respect to their non-Ignition Switch Defect post-sale personal injury claims. *Id.* at 127, 129.

For Non-Ignition Switch Economic Loss Plaintiffs, the Court ruled that such plaintiffs could not pursue Independent Claims against New GM unless and until they demonstrated a due process violation in connection with the Sale Order. Specifically, the Court wrote:

> [Ignition Switch Economic Loss Plaintiffs] may assert them, to the extent they are Independent Claims, under the April 15 Decision and Judgment. [Non-Ignition Switch Economic Loss Plaintiffs[19]] cannot. The latter could have tried to show the Court that they had

[19] In its November 2015 Decision, the Court used the defined term "Non-Ignition Switch Plaintiffs" as defined in the April 2015 Decision. *See id.* at 107 n.2. Again, this defined term was by its express terms limited to plaintiffs asserting economic damages claims, not personal injury claims.

> "known claims" and were denied due process back in 2009, but they have not done so. The Court ruled on this expressly in the Form of Judgment Decision. It then held:
>
> > The [Non-Ignition Switch Economic Loss Plaintiffs'] claims remain stayed, and properly so; those Plaintiffs have not shown yet, if they ever will, that they were known claimants at the time of the 363 Sale, and that there was any kind of a due process violation with respect to them. And unless and until they do so, the provisions of the Sale Order, including its injunctive provisions, remain in effect.
>
> That ruling stands. In the April Decision and resulting Judgment, the Court modified a Sale Order under which the buyer had a justifiable right to rely because a higher priority—a denial of due process, which was of Constitutional dimension—necessitated that. But without a showing of a denial of due process—and the [Non-Ignition Switch Economic Loss Plaintiffs] have not shown that they were victims of a denial of due process—the critically important interests of finality (in each of the 2009 Sale Order and the 2015 Form of Judgment Decision and Judgment) and predictability must be respected, especially now, more than 6 years after entry of the Sale Order.

Id. at 130 n.70 (internal citation omitted; emphasis added). In its December 2105 Judgment, the Court memorialized this ruling. *See* December 2015 Judgment at ¶ 14.

What the Court held in November and December 2015 was that the parties before it – who had previously been given the opportunity to successfully establish a due process violation as part of the litigation over the "four threshold issues" relating to the Ignition Switch Defect – were not bound by the overbroad language in the Sale Order that purported to absolve New GM for its own post-sale conduct. For plaintiffs whose claims were not based upon the Ignition Switch Defect (including those few who actively participated in the proceedings), the Court merely held that they would continue to be barred by the Sale Order's overbroad language until they could prove a due process violation in connection with the entry of the Sale Order.

Nowhere in the November 2015 Decision did the Court state that plaintiffs seeking to pursue Independent Claims and punitive damages against New GM were required to participate in the proceedings that resulted in the November 2015 Decision or the December 2015 Judgment in order to be able to attempt to prove a due process violation in connection with the 363 Sale. Similarly, the Court did not hold that any parties other than those with the Ignition Switch Defect ever had an opportunity to brief the due process issues determined in 2015. Nor did the Court anywhere hold that the Non-ISD Post-Sale Accident Plaintiffs had previously been given an appropriate opportunity to prove a due process violation. Indeed, the Court's June 2015 Judgment explicitly contemplates future proceedings in this Court if, as, and when Non-ISD Post Sale Accident Plaintiffs seek to establish a due process violation for purposes of pursuing claims against New GM. *See* June 2015 Judgment at ¶ 13(a). In sum, nowhere in the June 2015 Judgment, the September 3 Scheduling Order, the November 2015 Decision, the December 2015 Judgment, or otherwise, did the Court order that plaintiffs injured or killed in post-sale car crashes unrelated to the Ignition Switch Defect must assert that they were deprived of due process in connection with the 363 Sale as part of the proceedings scheduled by the September 3 Scheduling Order or be forever barred from doing so in the future.[20]

Based upon the foregoing, it is abundantly clear that the State Court Plaintiffs and all other Non-ISD Post Sale Accident Plaintiffs retain the ability to establish a due process violation and obtain relief from the Sale Order to pursue Independent Claims and punitive damages against New GM for New GM's own post-sale actions and inactions. As set forth below, whether viewed as parties that have retained the right to challenge the subject matter jurisdiction

[20] Indeed, as noted in footnote 18, above, the June 2015 Judgment provided that "Additional Parties" that did not respond to New GM's demands within the 17 day deadline would only have the allegedly non-compliant claims dismissed **without prejudice**.

of the Court to bar Independent Claims, or as "future claimants" at the time of the 363 Sale, the State Court Plaintiffs and those similarly situated were not provided due process of the proceeding that in July 2009 culminated in the entry of a "flawed" and "overbroad" Sale Order that impaired their future litigation rights. *Motors Liquidation*, 529 B.R. at 575.

II. BECAUSE THEIR ACCIDENTS HAD NOT YET OCCURRED AT THE TIME OF THE 363 SALE, THE STATE COURT PLAINTIFFS WERE NEVER GIVEN DUE PROCESS AND AN OPPORTUNITY TO PROTECT THEMSELVES FROM THE ENTRY OF AN OVERBROAD SALE ORDER THAT BARRED THEM FROM SUING NEW GM FOR NEW GM'S OWN POST-SALE CONDUCT

When a bankruptcy debtor seeks relief against third parties, due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). "[F]or due process reasons, a party that did not receive adequate notice of bankruptcy proceedings [can] not be bound by orders issued during those proceedings." *Morgan Olson L.L.C. v. Frederico (In re Grumman Olson Indus., Inc.)*, 467 B.R. 694, 706 (S.D.N.Y. 2012) ("***Grumman II***") (citing *Travelers Cas. & Sur. Co. v. Chubb Indem. Ins. Co. (In re Johns-Manville Corp.)*, 600 F.3d 135 (2d Cir. 2010) ("***Manville 2010***"). Due process has two components: the method of delivery and the content of the notice. *Mullane*, 339 U.S. at 314 ("The notice must be of such nature as reasonably to convey the required information"). Each are important. Here, as to the State Court Plaintiffs and their Independent Claims, the notice used by Old GM of the 363 Sale and the overbroad reach of the Sale Order flunked both requirements. The Sale Notice did not properly apprise future claimants such as the State Court Plaintiffs that their *in personam* claims against New GM were "at issue" at the Sale Hearing. Thus, The Sale Order was entered without any opportunity for them to be heard. *Id.* at 313 ("Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of

life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.").

As explained above, this Court held in its April 2015 Decision and June 2015 Judgment that the Ignition Switch Economic Loss Plaintiffs were denied the due process required under *Mullane* and its progeny in connection with the 363 Sale. Because the Court found that these plaintiffs were prejudiced as a result of the due process violation and the entry of a flawed and overbroad order that impaired their rights to sue New GM for New GM's own post-sale conduct, the Court ruled that those provisions of the Sale Order did not apply to those plaintiffs and they could pursue Independent Claims and punitive damages against New GM for New GM's own post-sale conduct. As part of the subsequent briefing under the September 3 Scheduling Order, the Court extended this ruling to personal injury plaintiffs injured in vehicles containing the Ignition Switch Defect. *In re Motors Liquidation Co.*, 541 B.R. at 123, 124.[21]

The State Court Plaintiffs are identically situated to the post-sale Ignition Switch Defect personal injury plaintiffs and similarly should be freed to pursue Independent Claims and punitive damages against New GM for New GM's own post-sale conduct. All of the State Court Plaintiffs were injured or killed in car wrecks that occurred years after the closing of the 363 Sale involving vehicles manufactured by Old GM.[22] Thus, at the time of the 363 Sale, the State Court Plaintiffs were "future claimants" and had no way of being notified of or knowing that there was a bankruptcy sale process that would purport to bar their future rights to sue the purchaser of Old

[21] In permitting post-sale Ignition Switch Defect personal injury plaintiffs to pursue Independent Claims and punitive damages against New GM for its own conduct, the Court did not analyze whether such plaintiffs suffered a due process violation or prejudice.

[22] The 363 Sale closed in July 2009. The Fox Plaintiff was injured on November 12, 2013. *See* Motion at Ex. B (Fox Complaint), at 1. The Chapman Plaintiff was injured on July 26, 2012. *See* Motion at Ex. D (Chapman Complaint), at 1. The Tibbetts Plaintiff was injured and killed on July 23, 2012. *See* Motion at Ex. E (Tibbetts Complaint), at 1.

GM's assets in the event the purchaser subsequently breached some duty owed to them or otherwise damaged them. Nothing in the Sale Notice was targeted to these future claimants and, in the unlikely and implausible event there was a hidden intention to target these future plaintiffs in order to bind them, the form of notice used was constitutionally inadequate to bind the State Court Plaintiffs. As uninjured parties, assuming arguendo the Sale Notice was sent to these plaintiffs by first class mail (it was not) or published in a newspaper these plaintiffs might have read, there was nothing in the form of Sale Notice that would have alerted the State Court Plaintiffs to any effort to bar future Independent Claims. [23]

Consequently, as future claimants, the State Court Plaintiffs cannot be bound by any aspect of the Sale Order that supposedly limits their ability to pursue Independent Claims and seek punitive damages from New GM for its own post-sale conduct.

The issue of whether a 363 sale order can strip away rights from future creditors was thoroughly addressed in the *Grumman* cases. *See Morgan Olson L.L.C. v. Frederico (In re Grumman Olson Indus., Inc.)*, 445 B.R. 243 (Bankr. S.D.N.Y. 2011) ("***Grumman I***" and, together with *Grumman II*, "***Grumman***"), *aff'd* 467 B.R. 694 (S.D.N.Y. 2012).[24] *Grumman*

[23] The published Sale Notice said nothing about independent claims or punitive damages against New GM being impacted by the 363 Sale. *See Order Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Fed. 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*, entered on June 2, 2009 [Docket No. 274], at Exhs. B (Form of Sale Notice served by mail) and C (Form of Publication Notice) (attached hereto as **Exhibit C**).

[24] Prior to the *Grumman* cases, the Second Circuit declined to address this issue. *See In re Chrysler LLC*, 576 F.3d 108, 127 (2d Cir. 2009), *vacated as moot sub. nom. Ind. State Police Pension Tr. v. Chrysler LLC*, 558 U.S. 1087, 130 S. Ct. 1015, 175 L. Ed. 2d 614 (2009) ("we decline to delineate the scope of the bankruptcy court's authority to extinguish future claims, until such time as we are presented with an actual claim for an injury that is caused by Old Chrysler, that occurs after the Sale, and that is cognizable under state successor liability law.").

involved a truck parts manufacturer that filed chapter 11 in this district and then sold its assets through a 363 "free and clear" sale. Years after the sale closed, a driver of a truck containing parts manufactured by the debtor was injured in a crash and brought suit against the purchaser of the debtor's assets on a successor liability theory. The purchaser commenced an adversary proceeding seeking to bar the lawsuit as violative of the court's sale order, which barred successor liability claims against the purchaser. On due process grounds, Bankruptcy Judge Bernstein and, on appeal, District Judge Oetken each denied the relief the purchaser requested.

In declining to enforce the sale order's free and clear language to these claims, the *Grumman* courts found that, because the plaintiff had not yet been injured as of the 363 sale, no notice could have been provided to her at the time of the sale to inform her that her rights to pursue claims against the purchaser for her future injuries were being taken away from her. Specifically, the district court held:

> The [personal injury plaintiffs] did not receive adequate notice of their potential claim in the Grumman bankruptcy proceedings because, at the time of the bankruptcy, there was no way for anyone to know that the [personal injury plaintiffs] ever would have a claim. Enforcing the Sale Order against the [personal injury plaintiffs] to take away their right to seek redress under a state law theory of successor liability when they did not have notice or an opportunity to participate in the proceedings that resulted in that order would deprive them of due process.

Grumman II, 467 B.R. at 708-09 (citing *Schwinn Cycling & Fitness Inc. v. Benonis*, 217 B.R. 790 (N.D. Ill. 1997) ("Allowing the provisions of the Bankruptcy Court's orders to limit the rights of injured parties . . . who had no notice, and no reason at the time, to present an interest in the bankruptcy proceedings or to take action in response to the threatened deprivation of their rights, would violate due process and bankruptcy notice concerns.")). Notably, Judge Gerber cited the *Grumman* cases favorably in the April 2015 Decision to support his determination that the Ignition Switch Economic Loss Plaintiffs were not bound by the overbroad language of the

Sale Order purportedly limiting claims against New GM for its own conduct. *See Motors Liquidation*, 529 B.R. at 580, 582-83.

Unlike the plaintiff in *Grumman*, the State Court Plaintiffs are not seeking to hold New GM liable for acts of Old GM on a successor liability theory. Instead, they are seeking to hold New GM liable for Products Liability Claims that New GM expressly assumed as part of the 363 Sale and Independent Claims for New GM's own post-sale actions and inactions. Holding New GM liable for its own conduct presents an even stronger case than seeking to hold it liable for its predecessor's conduct. Just like the plaintiff in *Grumman* (and the post-sale Ignition Switch Defect personal injury claimants in this case), the State Court Plaintiffs had no way of being informed in 2009 that their future rights to sue New GM for Independent Claims and ability to seek punitive damages were being stripped away as part of the 363 Sale. Using the same logic that Judge Gerber used in the April 2015 Decision, for due process reasons, the overbroad and improper language of the Sale Order should not apply to the State Court Plaintiffs.

III. UNDER SECOND CIRCUIT PRECEDENT, THE COURT LACKED SUBJECT MATTER JURISDICTION TO BAR THE STATE COURT PLAINTIFFS' *IN PERSONAM* CLAIMS AGAINST NEW GM FOR ITS OWN POST-SALE CONDUCT

Distilled to its essence, New GM is asking this Court to release New GM (a non-debtor) for its own post-sale tortious conduct towards the State Court Plaintiffs (also non-debtors). This "request" (if indeed made in 2009 as part of the 363 Sale) exceeds the subject matter jurisdiction of the bankruptcy court. The future post-sale misconduct of New GM does not (and in 2009, did not) involve a matter or proceeding that arises under or in, or that relates to, Old GM's chapter 11 case. 28 U.S.C. §1334. Try as it might, New GM cannot sustain credible argument that

Independent Claims relate to or could have any effect upon Old GM's bankruptcy estate. Any argument to the contrary is specious.[25]

Taken to its logical conclusion, New GM's position is that, even if New GM learned from the transferred employees or the books and records it acquired from Old GM that all of the vehicles manufactured by Old GM were set to explode at midnight on December 31, 2016, New GM could never be held liable to those injured or killed in the explosions for its own failure to warn them of the coming tragedy because this Court prospectively immunized New GM from any obligation to do so in 2009. As this Court recognized in its prior rulings, the question of whether New GM can be sued for its own post-sale actions and inactions is something that should get through the bankruptcy "gate" and the question of whether New GM is in fact liable or not should be determined by the non-bankruptcy court overseeing the lawsuit. *Motors Liquidation*, 541 B.R. at 123. The trigger for whether that "gate" should be opened for the assertion of an Independent Claim should not depend on whether the plaintiff can first prove that

[25] New GM has argued that claims fall into one of two buckets: "Assumed Liabilities" or "Retained Liabilities." New GM has further argued that unless a claim is an Assumed Liability, it must be a Retained Liability. From this faulty premise, New GM has argued that Independent Claims must be Retained Liabilities. This contention is illogical for two reasons. First, Judge Gerber implicitly (if not explicitly) recognized a third category of claims, namely Independent claims, in his April 2015 Decision and June 2015 Judgment. Second, an Independent Claim cannot logically be a Retained Liability because Retained Liabilities are nothing more than claims against Old GM. Thoughtlessly lumping Independent Claims into the category of Retained Liabilities arguably would make Old GM liable for New GM's post-sale conduct. The unsecured creditors would not have permitted such dilution at the time of the 363 Sale, or ever. Nor would the argument that Independent Claims are Assumed Liabilities make any sense. This is because the common denominator between Assumed Liabilities and Retained Liabilities is that each is a claim against Old GM, unlike Independent Claims that are, by Judge Gerber's definition, claims against New GM.

Old GM knew of the particular defect at issue at the time of the sale. Rather, the gate should be open because the 2009 Sale Order did not effectively or properly shut it in the first place[26]

It is well-established under the binding Second Circuit precedent that this Court did not have subject matter jurisdiction to grant New GM the third party release it now contends it was granted in 2009. Because the State Court Plaintiffs did not receive constitutionally sufficient notice that such release was being given, they are not bound by any purported (yet mistaken) assertion of subject matter jurisdiction by the Court and can challenge such jurisdiction now -- which they do.

The Second Circuit held in the *Manville* line of cases that the bankruptcy court lacks subject matter jurisdiction to enjoin a non-debtor's *in personam* claims against another non-debtor predicated on the defendant's alleged independent misconduct. *See Travelers Cas. & Sur. Co. v. Chubb Indem. Ins. Co. (In re Johns-Manville Corp.)*, 517 F.3d 52, 68 (2d Cir. 2008) ("***Manville 2008***"), *rev'd on other grounds, Travelers Indem. Co. v. Bailey*, 557 U.S. 137 (2009) ("***Bailey***").

In the *Manville* case, the bankruptcy court entered orders in 1986 as part of a settlement among Manville, certain of its insurers, and certain asbestos claimants that enjoined claims against the settling insurers, including Travelers Indemnity Company ("**Travelers**"). *Id.* at 57. As part of the settlement, Travelers contributed hundreds of millions of dollars to the debtor's estate in exchange for immunity from lawsuits relating to Manville and Manville's liability to

[26] In addition to the "future claimant" due process issue set forth above, although the State Court Plaintiffs strongly dispute that they need to demonstrate anything other than a due process violation as to the overbroad provisions of the Sale Order, the State Court Plaintiffs reserve all rights to, if necessary, take discovery and litigate whether Old GM knew of defects in their vehicles at the time it gave notice of the 363 Sale for purposes of establishing a due process violation based on being "known creditors" at the time such notice was provided.

persons injured by exposure to asbestos.[27] Years after entry of the 1986 orders, Travelers sought entry of a "clarifying order" to clarify that "direct" claims (i.e., "independent" claims) were among the claims against Travelers that were barred by the 1986 orders. Chubb Indemnity Insurance Co. ("**Chubb**"), one of the parties that Travelers contended was subject to the 1986 injunction, opposed entry of the "clarifying order" and argued that the bankruptcy court (and the district court that approved the orders) lacked subject matter jurisdiction to enjoin Chubb's *in personam* claims against Travelers. *Id.* at 60. The Second Circuit agreed with Chubb and reversed the bankruptcy court and the district court. The Second Circuit held that "the district court lacked subject matter jurisdiction to enjoin claims against Travelers that were predicated, as a matter of state law, on Travelers' own alleged misconduct and were unrelated to Manville's insurance policy proceeds and the res of the Manville estate." *Id.* at 68.

The United States Supreme Court in *Bailey* reversed *Manville 2008* on *res judicata* grounds (not on the grounds that the Second Circuit was incorrect that the lower courts lacked subject matter jurisdiction to bar Chubb's *in personam* claims against Travelers). In its reversal, the Supreme Court stated:

> [O]nce the 1986 Orders became final on direct review (whether or not proper exercises of bankruptcy court jurisdiction and power), they became res judicata to the "'parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other

[27] Almost two decades after entry of the 1986 orders, following the commencement of litigation against Travelers upon "direct" claims, Travelers returned to the bankruptcy court and argued that "direct" claims by plaintiffs against non-debtor insurance carriers such as Travelers for their independent wrongdoing (as opposed to claims derivative of the debtor's conduct and arising from its rights as an insured) were settled years ago as part of the 1986 orders. The gravamen of the "direct" claims was that insurers such as Travelers mislead the public about the dangers of asbestos. These direct claims were not based upon any policy of insurance issued by Travelers to Manville. The 2004 "clarifying order" was required under a further settlement with Travelers and was intended to confirm that the 1986 orders resolved and barred these direct claims. *Id.*

> admissible matter which might have been offered for that purpose.'"
> …
> So long as respondents or those in privity with them were parties to the Manville bankruptcy proceeding, and were given a fair chance to challenge the Bankruptcy Court's subject-matter jurisdiction, they cannot challenge it now by resisting enforcement of the 1986 Orders.

Bailey, 557 U.S. at 153 (internal citations omitted). The Supreme Court remanded the case to the Second Circuit to determine whether Chubb was provided due process in connection with entry of the bankruptcy court's injunctions. *Id.* at 155.

On remand, the Second Circuit determined that Chubb was indeed denied due process in connection with the entry of the 1986 orders that purported to bar its *in personam* claims against Travelers. The Second Circuit wrote:

> Under the unique circumstances of this case, there can be little doubt that the publication notice employed by the bankruptcy court in 1984 was insufficient to bind Chubb to the 2004 interpretation of the 1986 Orders.
>
> The bankruptcy court's August 2, 1984 Notice of Hearing to Consider Approval of Compromise and Settlement of Insurance Litigation indicated that the parties to the Manville Chapter 11 proceedings were seeking an order enjoining all claims, "whether or not presently known," against the Settling Insurers "based upon, arising out of or relating to any or all of the insurance policies" that the Settling Insurers had issued to Manville. **In order to comprehend that the contemplated channeling injunction would bar Chubb's *in personam*, non-derivative claims against Travelers, the recipient of this Notice would have to predict that the bankruptcy court would exceed its in rem jurisdiction in entering the 1986 Orders … [W]e cannot attribute to Chubb the sort of prescience that these predictions would have required, and the August 2, 1984 Notice was insufficient to communicate these issues.**

Manville 2010, 600 F.3d at 157 (emphasis added). In other words, in *Manville* 2010, the Second Circuit determined that it was correct in *Manville 2008* when it held that the bankruptcy court lacked jurisdiction to bar Chubb's *in personam* claims. In *Manville 2010* the Second Circuit also

held that, because Chubb received unconstitutionally inadequate notice of the proceedings that purported to bar Chubb's claims, those claims could proceed notwithstanding the Supreme Court's ruling in *Bailey* on *res judicata*.[28]

The *Manville* line of cases is directly on point. The Independent Claims are *in personam* claims. Just as in *Manville 2008* (as confirmed in *Manville 2010*), this Court lacked jurisdiction in 2009 to bar the State Court Plaintiffs' *in personam* claims against New GM as part of the Sale Order. Judge Gerber essentially acknowledged this to be the case in his April 2015 Decision by relieving certain plaintiffs from the "flawed" and "overbroad" provision of the order. The State Court Plaintiffs had no personal injury claims against Old GM or New GM at the time of the sale in July 2009 and the published notice of the 363 Sale gave no hint that this Court would exceed its jurisdiction and bar *in personam* claims against New GM for its own post-sale conduct. Thus, as was the case for Chubb in *Manville*, the State Court Plaintiffs were denied the opportunity to be heard in 2009 on the question of the bankruptcy's court's subject matter jurisdiction to bar Independent Claims and were likewise deprived of the opportunity in 2009 to oppose the overbroad provision of the Sale Order. The Sale Order cannot be applied to the State Court Plaintiffs on both jurisdictional and due process grounds.

[28] Having found that the notice given at time of the settlement approved by the 1986 orders was constitutionally inadequate to bind Chubb to the bankruptcy court's erroneous assertion of suspect matter jurisdiction, the Second Circuit held quite succinctly that:

> Chubb is therefore not bound by the terms of the 1986 Orders. Consequently, it may attack the Orders collaterally as jurisdictionally void. And, as we held in [Manville 2008], that attack is meritorious.

600 F.3d at 158.

IV. CONCLUSION

For the foregoing reasons, the Objectors respectfully request that this Court deny the relief New GM seeks in its Motion and permit them to prosecute the Fox Lawsuit, the Chapman Lawsuit, and the Tibbetts Lawsuit without requiring any further amendments to the complaints filed in those actions.

Dated: June 20, 2016

Respectfully submitted,

/s/ *William P. Weintraub*
William P. Weintraub
Gregory W. Fox
GOODWIN PROCTER LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Tel.: 212.813.8800
Fax: 212.355.3333
wweintraub@goodwinprocter.com
gfox@goodwinprocter.com

Counsel for Turner & Associates, P.A. and Butler Wooten & Peak LLP

CERTIFICATE OF SERVICE

I, William P. Weintraub, hereby certify that a copy of the foregoing Objection by State Court Plaintiffs to Motion by General Motors LLC to Enforce the Bankruptcy Court July 5, 2009 Sale Order and Injunction, filed through the CM/ECF System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on June 20, 2016.

/s/ *William P. Weintraub*

Exhibit A

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

CONSTANCE HAYNES-TIBBETTS, Individually and as Wrongful Death Personal Representative of the Estate of JON TIBBETTS, Plaintiffs, vs. ARMANDO SAENZ; INTEGRITY AUTOMOTIVE L.L.C.; GENERAL MOTORS, LLC; FORD MOTOR COMPANY. Defendants	No. D-202-CV-2015-04918

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff, CONSTANCE HAYNES-TIBBETTS, Individually and as Wrongful Death Personal Representative of the Estate of JON TIBBETTS, submits the following Complaint pursuant to New Mexico law, stating:

PREAMBLE

This is a product liability case involving a pre-bankruptcy vehicle and a post-bankruptcy crash. GM, LLC ("GM-LLC") is the only General Motors defendant because General Motors Corporation ("Old GM") no longer exists. Consistent with Bankruptcy Court rulings, Plaintiffs make no allegations whatsoever that GM-LLC is liable for misconduct as the "successor" of Old GM (e.g. allegations that refer to GM-LLC as the "successor of," a "mere continuation of," or a "de facto successor of" of Old GM). Any such allegation would be proscribed by the Sale Order, April Decision and June Judgment. Likewise, Any reference to Old GM, GM-branded vehicle, or similar phrases in this Amended Complaint are designed not to mix Old GM with GM-LLC, but are intended to make the context clear that any such reference only refers to GM-LLC, and

not designed to insinuate a blend of the periods during which vehicles were manufactured by Old GM and GM-LLC or imply a muddying of the distinctions between the two, but only to make crystal clear that GM-LLC purchased certain assets of Old GM; that GM-LLC assumed certain liabilities from Old GM, including responsibility for defective products and recalls; and that GM-LLC acquired specified knowledge from Old GM by virtue of the fact that GM-LLC came after Old GM as a company, including the same offices, equipment, real property, employees, records, and knowledge. Likewise, any allegation that GM-LLC manufactured or designed an Old GM Vehicle, or performed other conduct relating to an Old GM Vehicle before the Sale Order, are not intended to do anything except plead facts necessary under applicable pleading law that GM-LLC has assumed the position of the designer, manufacturer, assembler, marketer, and distributor of the Old GM vehicles, but not in any way intended to imply that GM was actually somehow personally involved at that point, which would obviously be impossible because GM-LLC did not exist at the time. Finally, as to any claim for punitive damages, any such claim, to the extent such a claim is included herein, is only directed at GM-LLC's conduct post-sale and is no way intended to assert or imply that GM-LLC is legally responsible for punitive damages based on Old GM's past misconduct.

PARTIES

1.

At the time of his death on July 23, 2012, Jon Tibbetts ("Decedent" or "Decedent Jon Tibbetts"), age 59, was a citizen and resident of Bernalillo County, New Mexico. The Decedent was employed full-time as the Fire Chief for Sandoval County, New Mexico.

2.

Plaintiff Constance Hayes-Tibbetts (hereinafter "Plaintiff Connie Tibbetts" or "Plaintiff") was a citizen and resident of Bernalillo, County New Mexico. Plaintiff Connie Tibbetts was the Decedent's spouse and is the duly-appointed Wrongful Death Personal Representative of Decedent's Estate. The Estate filed in Bernalillo County, New Mexico.

3.

Defendant Armando Saenz ("Defendant Saenz") is a citizen and resident of Bernalillo County, New Mexico. Defendant Saenz is over the age of majority, not on active duty in any branch of the United States Armed Forces, and is otherwise subject to jurisdiction of the Court.

4.

Defendant Integrity Automotive, L.L.C. d/b/a Integrity Automotive ("Defendant Integrity Automotive"), is a New Mexico for-profit corporation (LLC), with its principal business being the sale of pre-owned automobiles located at 9790 Coors Blvd NW, Albuquerque, New Mexico.

5.

Defendant General Motors, LLC ("GM-LLC") is a Delaware Limited Liability Company and the purchaser of certain assets of Old GM by virtue of Bankruptcy. More specifically, on July 10, 2009, Old GM's continuing operational assets were transferred to "Acquisition Holdings LLC", which assumed the name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, Old GM filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. Old GM filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009, with a plan to re-emerge as a less debt-burdened organization. The filing reported $82.29 billion in assets. The "new GM," or "GM-LLC" was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in GM. The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from Old GM. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company, marking the emergence of a new operation from the "pre-packaged" Chapter 11 reorganization. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the

complaint, GM-LLC formally accepted responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. Prior to June 1, 2009, Old GM, was authorized to conduct business in New Mexico, owed property in New Mexico, conducted business in New Mexico and derived significant revenue from its activities in New Mexico. Today, GM-LLC does precisely the same thing, and is therefore subject to be sued in New Mexico courts. At all times relevant to the complaint, Old GM was in the business of designing, developing, testing, manufacturing, marketing and distributing automobiles, including the defective truck that forms the subject matter of this litigation. GM-LLC has accepted legal responsibility for any defects in the subject vehicle and agreed to stand in Old GM's shoes for certain assumed liabilities, including product liability. GM-LLC has been served with process and appeared.

6.

Defendant FORD MOTOR COMPANY (hereinafter "*Ford*"), is a Delaware corporation with its principal place of business in Dearborn Michigan. *Ford* is authorized to conduct business in New Mexico; conducts business in New Mexico; and derives substantial economic profits from New Mexico. As such, *Ford* is subject to personal jurisdiction in this state. *Ford* is an American multinational automaker headquartered in Dearborn, Michigan, a suburb of Detroit. It was founded by Henry Ford and incorporated on June 16, 1903. The company sells automobiles and commercial vehicles under the Ford brand and luxury cars under the Lincoln brand. In 2011, *Ford* discontinued the Mercury brand, under which it had marketed entry-level luxury cars in the United States, Canada, Mexico, and the Middle East since 1938. In the past it has also produced heavy trucks, tractors and automotive components. *Ford* owns small stakes in Mazda of Japan and Aston Martin of the United Kingdom. It is listed on the New York Stock Exchange and is controlled by the Ford family, although they have minority ownership. *Ford* is the second-largest U.S.-based automaker and the fifth-largest in the world based on 2010 vehicle sales. At the end of 2010, *Ford* was the fifth largest automaker in Europe. *Ford* is the eighth-ranked overall American-based company in the 2010 Fortune 500 list, based on global revenues in 2009 of $118.3 billion. In 2008, *Ford* produced 5.532 million automobiles and employed about 213,000 employees at around 90 plants and facilities worldwide. *Ford*'s authorized agent

for service of process is CT Corporation System, 123 E. Marcy Street, Ste. 201, Santa Fe, NM 87501.

JURISDICTION AND VENUE

7.

This civil action is brought under theories of strict liability, negligence, breach of implied warranty, personal injury, and wrongful death.

8.

This Court has jurisdiction over the subject matter of this action and venue is proper in Bernalillo County because all or part of Plaintiff's cause of action arose in Bernalillo County, Defendants *GM-LLC* and *Ford* do business in Bernalillo County and maintain statutory agents in New Mexico upon which service of process may be had, and Plaintiff Connie Tibbetts and Defendant Armando Saenz are residents of Bernalillo County, State of New Mexico.

GENERAL ALLEGATIONS

9.

The defective 2005 Cadillac SRX (VIN: IGYEE63A950117981) which forms the basis for this suit, was designed, tested, manufactured, marketed, assembled, and/or distributed by Defendant Old GM. *GM-LLC* has assumed responsibility for the design, production, manufacture, and distribution and, as such, is considered the entity responsible for the design, manufacture, production, testing, marketing and distribution of the subject vehicle. The Cadillac SRX is a luxury mid-size crossover SUV produced by the Cadillac division since the 2004 model year. The SRX is manufactured at GM's Lansing Grand River Plant in Lansing, Michigan, as well as assembled overseas in Russia and China. It was designed from the Cadillac and Cadillac STS platform with the designation GMT-265 (Sigma platform). The SUV is designed with 116" wheelbase; 195" length; 73" width; and 68" height. The vehicle is equipped with a five or six-speed automatic transmission. Rear-wheel and four-wheel drive and MagneRide are available. The first generation SRX was available through the 2009 model year. The Insurance Institute for Highway Safety ("IIHS") found the 2005-08 SRX worst in its class for driver fatalities with a death rate of 63 compared to its class average of 23. For the 2010 model year, Cadillac introduced an all-new SRX based on the Provoq concept vehicle. The new version used its own unique platform with ties to Epsilon II.

10.

Defendant Integrity Automotive sold the defective 2005 Cadillac to Defendant Armando Saenz just days before the July 23, 2012, fatal collision.

11.

The defective 2004 Ford Explorer (VIN: 1FMZU73K64ZA14385) which forms the basis of this suit, was designed, tested, manufactured, marketed, assembled, and/or distributed by *Ford*. The Ford Explorer is a mid-size sport utility vehicle produced by Ford since 1990 (as 91 model year). Until 2010, the Explorer was formed from a traditional body-on-frame, mid-size SUV design. For the 2011 model year, Ford moved the Explorer to a more modern unibody, full-size crossover SUV/crossover utility vehicle platform, the same Volvo-derived platform the Ford Flex and Ford Taurus use. For purposes of marketing, the Explorer is slotted between the traditional body-on-frame, full-size Ford Expedition and the mid-size CUV Ford Edge. The fifth generation Explorer shares platforms with the Ford Flex and Lincoln MKT. The Explorer has been involved in controversy, after a spate of fatal rollover accidents throughout the 1990s and early 2000s, including those involving Explorers fitted with Firestone tires. The 4-door Explorer and its companion the Mercury Mountaineer were redesigned in 2001, and entirely for the 2002 model year, losing all design similarity with the Ford Ranger while also gaining a similar appearance to the Ford Expedition. The 2002-2004 models saw introduction of stability control as an option, Ford's *AdvanceTrac* with *Roll Stability Control* system. The stability control system became standard for the 2005 model year. For the third generation, Ford installed fully independent rear suspension in the 4-door Ford Explorer and Mercury Mountaineer - but not in the smaller Sport model. The suspension replaced the non-independent "live axle" rear suspension used in previous model year Explorers. With a fully independent rear suspension, each rear wheel connects to the rear differential via a half-shaft drive axle. The design was intended to offer increased ride comfort, on-road handling, and vehicle stability. One reason for Ford's switch to independent rear suspension in the Explorer was due to the well-publicized rollover problem associated with the design, including resulting fatalities that occurred with the previous generations of Ford Explorer. The 2006 model year brought about an update with the introduction of a new frame produced by *Magna International* rather than *Tower Automotive*. By 2008, Ford added side curtain airbags across the Explorer range. By 2009, the Explorer received a trailer sway control system as standard equipment, and the navigation system received traffic flow monitoring and a gas

information system. By 2011, the fifth generation Explorer evolved to a unibody structure based on the D4 platform, a modified version of the D3 platform. The newer Explorer featured blacked-out A, B, and D-pillars to produce a *floating roof* effect similar to Land Rover's floating roof design used on its sport utility vehicles. The fifth generation Explorer (2011), assembly moved to Ford's Chicago Assembly plant, where it is built alongside the Ford Taurus and Lincoln MKS. The Louisville plant, where the previous generation was built, was converted to produce cars based on Ford's global C platform (potentially including the Ford Focus, Ford C-Max, and Ford Kuga). Much like Ford's Escape, the Explorer continues to be marketed as an "SUV" rather than a "crossover SUV". With the discontinuation of the Ford Crown Victoria in 2011, and to compete with police model sport utility vehicles offered by other automobile manufacturers, Ford made the 2012 model year Explorer the basis for a "new" SUV-type Police vehicle. It is only available to law enforcement and other emergency services agencies. Ford calls it the *Utility Police Interceptor*. Major differences between the standard Explorer and the Utility Police Interceptor included provisions for emergency services related equipment such as radios, light bars and sirens. Ford actively marketed the so-called "special service" version of the Explorer as the industry's "first pursuit-rated, all-wheel-drive (AWD) vehicle" with special features such as "bigger brakes, springs and mpg figures for surer stopping, better stability, and greater fuel efficiency." Ford likewise represented and warranted that the Explorer special service version had "faster, ultra-tenacious acceleration thanks to higher horsepower combined with standard AWD", as well as "higher electrical capability". Ford further marketed and sold the police package as "hailing from the same platform so they share many common maintenance parts (no matter the powertrain), including tires, wheels, brake pads, rotors, calipers, and alternator." Ford likewise represented that the design was made for "officer protection" in that it was certified for protection, including certified for a 75 mph rear-impact crash, so-called "shields of armor" as panels for ballistics protection, steel intrusion plates built into the seat backs, and a "safety cell" construction designed to direct force of a collision around the occupant compartment ("SPACE" meaning Side Protection and Cabin Enhancement), including the use of an architecture made of hydro formed cross-vehicle beams between the door frames designed to solidify the sides along with ultra-high-strength steel reinforcement for added occupant protection. The vehicle was marketed with Ford's canopy system and front seat side airbags as well.

12.

On July 23, 2012, Defendant Armando Saenz was driving the 2005 Cadillac SRX northbound on U.S. Interstate 25, at a speed at or near the posted speed limit. During the course of Saenz' journey, he negligently lost control of his vehicle, struck a center concrete barrier, and then veered back to the right where he struck the left side of the 2004 Ford Explorer being driven northbound by the Decedent. Following impact, the Decedent attempted to control the Explorer, but due to its defective design, he was unable to and the Explorer rolled over multiple times causing Decedent to suffer serious injury and death.

COUNT I
NEGLIGENCE
DEFENDANT ARMANDO SAENZ

13.

Defendant Armando Saenz owed the duty to exercise due care in the operation of the vehicle he was driving, including maintaining appropriate speed for the conditions, maintaining control of his vehicle, and operating the vehicle in a non-negligent manner.

14.

Defendant Armando Saenz breached his duties by failing to exercise the reasonable care necessary to maintain control of the vehicle and, specifically, the defective 2005 Cadillac SRX involved in the fatal collision that forms the basis of Plaintiff's Complaint.

15.

Defendant Armando Saenz' negligence was a contributing cause of the injuries, death and damages complained of by Plaintiff herein.

COUNT II
STRICT LIABILITY/PRODUCT LIABILITY
DEFENDANT FORD

16.

At all times relevant to the subject Complaint, *Ford* was responsible for designing, developing, testing, assembling, manufacturing, marketing, and distributing the defective 2004 Ford Explorer. Absent ordinary wear and tear, including foreseeable use, the subject vehicle was in substantially the same condition at the time of the crash as it was when it left *Ford's* possession.

17.

The Explorer is defective and unreasonably dangerous by design when used as marketed by *Ford*. The inherent defects in the design were present at the time the vehicle was manufactured, marketed, and distributed. The defects in the vehicle were a proximate and producing cause of the injuries, death and damages alleged by Plaintiff herein. At all times relevant to the Complaint, *Ford* was in the business of designing, manufacturing, assembling, marketing, testing, and otherwise distributing automobiles. The defective nature of the design of the Explorer included defects in design, stability, handling, marketing, instructions, warning, crashworthiness, rollover resistance and controllability. The defective nature of the vehicle includes the following:

17.01 The Explorer is defective in that the design of the "package", which includes the combination of track width and vertical center of gravity height, creates an unreasonable risk of rollover given the uses for which the vehicle was marketed, especially freeway use and special-service use;

17.02 The Explorer is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency turning maneuvers, including while attempting to avoid crashes and dealing with impacts, and does not remain controllable under all operating conditions as required by *Ford* guidelines, including the tendency to over-steer and skate;

17.03 The Explorer is unreasonably dangerous from a stability standpoint because it rolls over instead of sliding when loss of directional control occurs on relatively flat level surfaces during foreseeable steering maneuvers;

17.04 The combination of the above factors creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

17.05 The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable emergency situations and maneuvers that are consistent with *Ford's* efforts to market the vehicle as a "station wagon" replacement for police use, which *Ford* had both actual and constructive knowledge would lead to rollover crashes. *Ford's* knowledge included both actual knowledge based on its test history with SUVs and its research and knowledge of rollovers in foreseeable turning maneuvers and constructive knowledge given its corporate history with respect to SUV designs, and unique and special knowledge of the dangers posed when operated by aggressive special service public servants;

17.06 The vehicle was defectively marketed in that consumers, including public servants, were led to believe that the vehicle was safe and stable and could be safely used as a passenger-carrying, station-wagon replacement type

vehicle when *Ford* knew that this was untrue. In fact, Ford went further by representing that the police package had special or unique qualities that other Explorers did not have that actually enhanced the safety of the vehicles when exposed to emergencies;

17.07 The risk of operating the vehicle as designed outweighed any benefits associated with the design and *Ford* knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries, and knew that rollover crashes were particularly dangerous;

17.08 *Ford* knew that this type vehicle — an SUV — was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds, especially by police officers who oftentimes are presented with dangerous driving situations;

17.09 The Explorer was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system — roof, occupant compartment, safety cell, safety belt system, anti-ejection design, and glazing design — that would effectively provide reasonable protection in the event of a rollover, with or without pre-roll impact. Similarly, the vehicle was designed in such a manner that unique equipment placement in the vehicle posed unique and unreasonable risk of injury to occupants in all forms of crashes. Despite actual knowledge of the unique dangers posed in rollover crashes, Ford intentionally marketed the Explorer has having special or unique qualities or characteristics that made it safer than other vehicles for public servants;

17.10 Despite knowledge of these risks, and the availability of alternative safer designs, including safety features tied to roll sensing, such as pre-tensioners and side airbags or curtains, *Ford* intentionally marketed the vehicle to consumers, including public servants, for use as a freeway, passenger-carrying vehicle, and intentionally led the public to believe that it was safe, stable, and would provide state of the art protection to occupants exposed to extraordinary conditions;

17.11 *Ford* had both actual and constructive knowledge of the existence of safer, alternative designs from both a stability and crash protection standpoint, including roll sensing, roll curtains, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;

17.12 *Ford* willfully, wantonly, and consciously marketed the Explorer for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public.

18.

Ford's engineers have known for over 30 years, from the time of the development of the Bronco II, that the most important vehicle characteristic in maintaining control and reducing SUV propensity for rollover is understeer, especially in transient maneuvers. *FORD* identified understeer as a "first order effect" and the "primary factor influencing rollover propensity."

19.

The problem with an over-steering vehicle, with respect to rollover propensity, is that it can and likely will result in the back end of the vehicle coming around (a loss of control) with the vehicle ending up sideways to its path of travel. The resulting side forces ("lateral acceleration") contribute to rollover.

20.

Ford also recognized that the rollover stability of a vehicle is affected by its "stability index," or "static stability factor", which is the relationship of center of gravity height and the track width of the vehicle. In light of these common control and stability principles, *Ford* adopted a "handling strategy" with respect to the Explorer to "increase understeer in all conditions."

21.

Ford's engineers recommended major safety changes needed for the Explorer to Ford management, yet management ignored and vetoed those changes to increase profits on the vehicle. Ford engineers recommended, for example, improvements with regards to the Explorer's suspension, reduction in the engine height to lower the center of gravity, and an increase in the track width of the vehicle to make the Explorer more resistant to rollover than the Bronco II and earlier versions of the Explorer.

22.

Ford's knowledge of the critical importance of understeer was not acted upon, however, and Ford management rejected the center of gravity and track width recommendations of its engineers that would have made the Explorer more resistant to rollover. Ford declined to make the necessary changes so that there would not be any delays in the production of the Explorer, and thus Ford could recoup its $500 million investment as quickly as possible.

23.

Ford addressed the rollover stability problem primarily by recommending lower

air pressure in the tires. As set forth in a 1989 development report, after noting that they had investigated variations in tire pressure "as a means to achieving the UN46 (Explorer) ride and handling objective," Ford's engineers recommended use of "reductions in tire pressure to meet the program objectives" for both ride and handling. Likewise, since Ford's marketing department was recommending larger tires (which reduced the vehicle's stability), Ford again put dollars in front of safety and recommended the larger tire, but with reduced air pressure. When it came to creating understeer, Ford's engineers again turned to lower tire pressure.

24.

By putting profits and public relations image before safety, Ford produced a vehicle -- beginning with the Ford Bronco II and continuing with minor changes -- that was prone to over-steer, going out of control in response to simple accident avoidance maneuvers, and rollover when operated by the ordinary driver.

25.

The Explorer also has dangerously weak roof pillars (which support the roof structure), incapable of maintaining integrity of the safety cell in the event of a rollover, and thereby leading to the collapse of the roof — towards the passengers' heads — in a rollover crash.

26.

In the subject crash, the defectively weak roof collapsed and directly attributed to the injuries that took Jon Tibbett's life. The Explorer lacked adequate design features in the roof and structure that should have been present given the high propensity for rollover. The vehicle also lacked structural foam, which would also have substantially and feasibly increased the roof strength. *Ford* also failed to equip, as standard equipment, the 2004 Ford Explorer with electronic stability control, a feasible alternative design that would have likely avoided the rollover and injuries in the subject crash.

27.

Ford knew of the propensity of the Ford Explorer to rollover from the mid 1980's when the initial version of the program was approved. Ford was aware of the rollover problems of the Jeep CJ5 in the 1970s and 1980s, which were alleviated by simply lowering and widening the design. Ford had also experienced similar situations concerning rollover incidents dating back to the Bronco II. It is thus obvious that Ford

was aware of the rollover issues concerning the Ford Explorer.

28.

Not only did Ford's own testing show that there were unacceptable Explorer rollover problems, but the high number of real world incidents also made Ford aware that attention should be directed to this issue. However, *Ford* made no significant attempt to correct the problem despite having the capacity and technology to do so.

29.

A safer alternative design was economically and technologically feasible at the time the product left the control of Ford, both with respect to rollover propensity and crash protection.

30.

The defective nature of the vehicle was a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, including his enhanced injuries, and the resulting damages suffered and sought by the Plaintiff herein. *Ford* is strictly liable for supplying the defective and unreasonably dangerous product.

COUNT III
NEGLIGENCE
DEFENDANT *FORD*

31.

At all times relevant to this Complaint, *Ford* was in the business of supplying motor vehicles for use on the public roadways. *Ford* held itself out to the public as having specialized knowledge in the industry. As such, *Ford* owed consumers, including Decedent and Plaintiff, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the Explorer. *Ford* violated this duty by negligently supplying a vehicle that was defective. The negligent acts include but are not limited to the following acts or omissions:

- Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;
- Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;
- Negligently designing and testing the vehicle from an occupant protection standpoint, and then marketing it for special use by public servants knowing full well that the features it represented did not exist in reality;
- Negligently testing of the vehicle from a handling and stability standpoint;

- Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover;

- Failing to adequately train and assist dealers in the dangers associated with the vehicle when used as marketed;

- Failing to disclose known defects, dangers, and problems to both dealers and the public;

- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;

- Failure to meet or exceed internal corporate guidelines;

- Negligently advertising the vehicle as safe and stable family vehicle and one that was ultra-safe for use by public servants;

- Failing to inform the consumer, including the Plaintiff and Decedent, of the information *Ford* knew about rollover risks, and specifically the Explorer, thus depriving the Plaintiff and Decedent of the right to make a conscious and free choice, and also in failing to disclose known problems in foreign countries in an effort to conceal problems that *Ford* knew about the Explorer from U.S. consumers, including the Plaintiff and Decedent;

- Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of roll sensing, pre-tensioners, side air bag and curtain technology, and integrated seating technology;

- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;

- Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;

- Failing to recall the vehicle or; alternatively, retrofitting the vehicle to enhance safety.

32.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, his enhanced injuries, including his death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT IV
BREACH OF WARRANTY
DEFENDANT FORD

33.

At all times relevant to the complaint, *Ford* was a "merchant" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, Ford breached the warranties of merchantability and fitness for a particular purpose in that the 2004 Explorer was not fit for ordinary use or for the intended use for which it was purchased. These breaches of warranty were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, enhanced injuries, and the resulting damages suffered and sought by the Plaintiff herein. The product was unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

COUNT V
STRICT LIABILITY/PRODUCT LIABILITY
DEFENDANTS *GM-LLC* AND INTEGRITY AUTOMOTIVE

34.

At all times relevant to the present Complaint, Old GM was responsible for designing, developing, testing, assembling, manufacturing, marketing, and distributing the defective 2005 Cadillac SRX. Absent foreseeable wear, tear, modifications, and usage, the subject vehicle was in substantially the same condition at the time of the crash as it was when it left Old GM's possession. GM-LLC has assumed certain liabilities of Old GM, including the liabilities alleged herein relating to vehicle defects.

35.

At all relevant times hereto, Defendant Integrity Automotive was engaged in the business of marketing, distribution, sales and service of motorized vehicles in New Mexico, and held itself out as having special knowledge and expertise. Integrity placed the subject defective vehicle into the stream of commerce in a condition that was defective and unreasonably dangerous, including non-approved, low-profile tires and loose tie rods.

36.

Upon information and belief, and at all material times hereto, Defendants Old GM and Integrity Automotive were responsible for marketing, distributing, selling and/or servicing the subject 2005 Cadillac SRX, and the Cadillac was in substantially the same condition, with respect to its steering mechanism, handling, maneuverability

and stability, as it was when it was initially placed in the stream of commerce. This likewise applies to GM-LLC since it has assumed responsibility for the allegations herein.

37.

The Cadillac SRX is defective and unreasonably dangerous by design when used as marketed. Old GM knew this fact. GM-LLC knew it as well because the employees of Old GM became employees of GM-LLC post-sale, and also because GM-LLC acquired its own knowledge post-sale, independent of Old GM. The inherent defects in the design were present at the time the vehicle was manufactured, marketed, and distributed. The defects in the vehicle were a proximate and producing cause of the injuries, including the severity of the injuries, death and damages alleged by Plaintiff herein. At all times relevant to the Complaint, Old GM was responsible for the business of designing, manufacturing, assembling, marketing, testing, and otherwise distributing automobiles. GM-LLC is now responsible by virtue of its assumption of liabilities herein. The defective nature of the design of the 2005 Cadillac SRX included defects in design, stability, steering, handling, marketing, instructions, warning, and controllability. The defective nature of the vehicle includes the following:

- The Cadillac SRX is defective from a handling standpoint because it does not remain controllable under all operating conditions as required by Old GM and now GM-LLC guidelines;

- The inability to control the vehicle at all times creates an extreme risk of steering and controllability that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

- Old GM knew that this type vehicle — an SUV — was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds. GM-LLC acquired that knowledge as referenced above;

- Old GM had both actual and constructive knowledge of the existence of safer, alternative designs from both a steering and controllability standpoint, including roll sensing, electronic stability control, roll stability control, and other safety features that were technologically feasible and available. GM-LLC acquired that knowledge as referenced above;

- GM-LLC's own independent conduct, post-sale, including failing to warn after assuming to do so, was carried out willfully, wantonly, and consciously in an

effort to market the Cadillac SRX for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the vehicle in conscious disregard for the public, including failing to adequately recall, retrofit and warn consumers of known risks.

38.

By putting profits and public relations image before safety, GM-LLC's own independent misconduct, post-sale, related to a vehicle that was prone to unreasonable steering and controllability, including going out of control in response to simple accident avoidance maneuvers when operated by the ordinary driver in foreseeable circumstances, and GM-LLC did nothing. GM-LLC assumed the responsibility to act reasonably and responsibly post-sale and failed to act reasonably given its knowledge.

39.

The vehicle was defective because it was not equipped with adequate and proper control features that would have likely avoided the uncontrollability of the vehicle that contributed to the collision and injuries in the subject crash.

40.

Not only did testing show that there were unacceptable Cadillac SRX problems, but the high number of real world incidents also made GM-LLC aware, post-sale, that attention should be directed to this issue. However, GM-LLC made no significant attempt to correct the problem despite having the capacity and technology to do so and after accepting legal responsibility for taking such action.

41.

A safer alternative design was economically and technologically feasible at the time the product was produced with respect to steering, controllability, and electronic stability control.

42.

The defective nature of the vehicle was a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. Defendants GM-LLC and Integrity Automotive are strictly liable for supplying the defective and unreasonably dangerous product.

COUNT VI
NEGLIGENCE
DEFENDANT *GM-LLC*

43.

At all times relevant to this Complaint, but limited to post-sale time periods, GM-LLC was in the business of supplying motor vehicles for use on the public roadways. GM-LLC held itself out to the public as having specialized knowledge in the industry. As such, GM-LLC owed a duty to persons using those vehicles, and persons whom GM-LLC reasonably expected to be in the vicinity during the use of those vehicles, including Decedent Jon Tibbetts, especially given that GM-LLC assumed responsibility for those vehicles, to use reasonable care in the warnings surrounding the 2005 Cadillac SRX. GM-LLC violated this duty by negligently supplying a vehicle that was defective in that it failed to continue adequate warnings, and GM-LLC failed to take appropriate remedial steps, post-sale, to remedy and warn about known dangers.

44.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT VII
NEGLIGENCE
DEFENDANT INTEGRITY AUTOMOTIVE

45.

At all relevant times, Defendant Integrity Automotive owed Decedent and Plaintiff a duty of reasonable care. Defendant Integrity Automotive breached that duty of care and was otherwise negligent for the acts complained of herein. The negligence of Defendant Integrity Automotive combined to cause and/or contribute to Decedent's and Plaintiff's resulting injuries, death, losses and damages as set forth more fully herein. The negligence acts of Defendant Integrity Automotive include, but are not limited to the following:

- Negligently marketing the 2005 Cadillac SRX as a safe and stable passenger vehicle given the uses for which it was marketed;

- Failing to adequately inspect, service and equip the vehicle with safe and required equipment;

- Failing to ensure the vehicle was mechanically in good repair before allowing the vehicle to be sold to customers and used upon the roadways and highways open to the general public;

- Failing to disclose known defects, dangers, and problems regarding the vehicle;

- Failing to remove the 22 inch rims and the 265/35R22 tires that were on the vehicle, and then distributing the vehicle in a condition known to be dangerous;

- Failing to retrofit the vehicle with rims and tires specified by the manufacture to ensure and enhance the vehicle's safety; and

- Failing to advise or warn the vehicle's purchasers that size 22 inch rims and 265/35R22 tires were not specified by GM for use on the Cadillac SRX.

46.

These acts of negligence were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The dangers referenced earlier were reasonably foreseeable or scientifically discoverable at the time of exposure.

COUNT VIII
BREACH OF WARRANTY
DEFENDANT'S *GM-LLC* AND INTEGRITY AUTOMOTIVE

47.

Defendants GM-LLC and Integrity Automotive are legally responsible as "merchants" in the business of supplying "goods" and/or "products" sold for consumer usage. As such, these defendants are legally responsible for a product that is not merchantable and not fit for a particular purpose in that the 2005 Cadillac SRX was not fit for ordinary use or for the intended use for which it was purchased. These warranty conditions were a cause and/or contributing cause of the fatal collision, Jon Tibbett's injuries and death, and the resulting damages suffered and sought by the Plaintiff herein. The product was unfit as previously described in the foregoing accounts. Notice has been provided as required by law.

DAMAGES
INCLUDING LOSS OF CONSORTIUM

48.

The actions and/or inactions of Defendants *Ford*, *GM-LLC*, Integrity Automotive and Armando Saenz, Saenz, including the aggravating circumstances attending those acts and/or failures to act, caused and/or contributed to Decedent's serious injuries, death and damages, including:

* Conscious pain and suffering;
* Mental anguish and distress,
* Medical expenses;
* Disfigurement and death;
* Funeral and burial expenses;
* Property damages;
* Loss of earnings and earning capacity;
* Loss of life and enjoyment of life; and
* Loss of household services; all for which Plaintiff seeks relief pursuant to the New Mexico Wrongful Death Act and other New Mexico law.

49.

Plaintiff Connie Tibbetts enjoyed a very special marital, familial, loving, care-giving and intimate relationship with her husband Jon Tibbetts.

50.

Plaintiff Connie Tibbetts suffered and will continue to suffer from the emotional distress caused by the loss of society, companionship and sexual relations she enjoyed with her husband, Jon Tibbetts, which was wrongfully taken from her as a result of his tragic death.

51.

The actions and/or inactions of Defendants *Ford*, *GM-LLC*, Integrity Automotive and Armando Saenz, including the aggravating circumstances attending those acts and/or failures to act, caused and/or contributed to Plaintiff's loss of consortium damages, and Plaintiff is entitled to a recovery against each of the Defendants for these damages in an amount to be awarded by the jury herein.

PUNITIVE/EXEMPLARY DAMAGES

52.

In addition to compensatory damages, Plaintiff is seeking punitive damages from Defendants Integrity Automotive, Ford and GM-LLC because their conduct constitutes reckless, grossly negligent, willful, wanton, malicious behavior that needs to be punished in order to deter others from participating in similar future misconduct. The acts set forth in this complaint were taken with knowledge of the associated risks to consumers. These defendants took the steps set forth herein in conscious disregard for the potential consequences and under circumstances for which a jury could determine

that they willfully, wantonly, recklessly, maliciously, and consciously indifferent to the consequences, endangered human life. These defendants deserve to be punished in a civil forum for the malicious misconduct. The amount of punitive damages to be awarded is within the discretion of the jury.

WHEREFORE, PLAINTIFF prays for judgment for compensatory and punitive damages as set forth in this Complaint, pre- and post-judgment interest, costs and fees in connection with this action, and for any and all other just relief this court may deem appropriate.

Dated this ____ day of June, 2016.

RESPECTFULLY SUBMITTED,

WILL FERGUSON & ASSOCIATES

By: */s/ Robert M. Ortiz*
ROBERT M. ORTIZ
1720 Louisiana Blvd NE, Suite 100
Albuquerque, New Mexico 87110
(505) 243-5566
And

TURNER & ASSOCIATES, P.A.
By: TAB TURNER
(*Pro Hac Vice*)
Arkansas Bar No. 85158
4705 Somers Avenue, Suite 100
North Little Rock, Arkansas 72116
(501) 791-2277

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby verify that this pleading was served on counsel of record via electronic mail and regular mail on this the ___ day of June, 2016.

_____
TAB TURNER

CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

TAMMIE CHAPMAN, Personal Representative of the Estate of AUBREY CHAPMAN, Deceased, Plaintiff, vs. GENERAL MOTORS, LLC; RUSSELL CHEVROLET COMPANY Defendants.	**Civil Action: 60CV-15-3292**

FIRST AMENDED COMPLAINT

Plaintiff, TAMMIE CHAPMAN, Personal Representative of the Estate of AUBREY CHAPMAN, Deceased, submits the following First Amended Complaint against Defendants, stating:

1.

This is a products liability, negligence, and wrongful death action brought pursuant to Arkansas law. The single vehicle rollover crash that forms the subject of this litigation occurred on July 26, 2012, while the Decedent was traveling through Colorado. The subject vehicle, including the safety system, was placed into the chain of commerce, distributed, and maintained in Pulaski County, Arkansas.

2.

PREAMBLE

This is a product liability case involving a pre-bankruptcy vehicle and a post-bankruptcy crash. GM, LLC ("GM-LLC") is the only General Motors defendant because General Motors Corporation ("Old GM") no longer exists. Consistent with Bankruptcy Court rulings, Plaintiffs make no allegations whatsoever that GM-LLC is liable for misconduct as the "successor" of Old GM (e.g. allegations that refer to GM-LLC as the

"successor of," a "mere continuation of," or a "de facto successor of" of Old GM). Any such allegation would be proscribed by the Sale Order, April Decision and June Judgment. Likewise, Any reference to Old GM, GM-branded vehicle, or similar phrases in this Amended Complaint are designed not to mix Old GM with GM-LLC, but are intended to make the context clear that any such reference only refers to GM-LLC, and not designed to insinuate a blend of the periods during which vehicles were manufactured by Old GM and GM-LLC or imply a muddying of the distinctions between the two, but only to make crystal clear that GM-LLC purchased certain assets of Old GM; that GM-LLC assumed certain liabilities from Old GM, including responsibility for defective products and recalls; and that GM-LLC acquired specified knowledge from Old GM by virtue of the fact that GM-LLC came after Old GM as a company, including the same offices, equipment, real property, employees, records, and knowledge. Likewise, any allegation that GM-LLC manufactured or designed an Old GM Vehicle, or performed other conduct relating to an Old GM Vehicle before the Sale Order, are not intended to do anything except plead facts necessary under applicable pleading law that GM-LLC has assumed the position of the designer, manufacturer, assembler, marketer, and distributor of the Old GM vehicles, but not in any way intended to imply that GM was actually somehow personally involved at that point, which would obviously be impossible because GM-LLC did not exist at the time. Finally, as to any claim for punitive damages, any such claim, to the extent such a claim is included herein, is only directed at GM-LLC's conduct post-sale and is no way intended to assert or imply that GM-LLC is legally responsible for punitive damages based on Old GM's past misconduct.

2.

Plaintiff TAMMIE CHAPMAN is a citizen and resident of Hot Spring County, Arkansas, and the former spouse of the Decedent. She is the duly-appointed Administratrix and Personal Representative of the Estate of AUBREY CHAPMAN, Deceased. AUBREY CHAPMAN was a citizen and resident of Hot Spring County, Arkansas at the time of his death with his residence in Bismarck, Arkansas.

3.

Defendant GM-LLC is a Delaware Limited Liability Company and has assumed responsibility for Old GM's defective vehicles. On July 10, 2009, Old GM's continuing operational assets were transferred to "Acquisition Holdings LLC", which assumed the

name "General Motors Company LLC". As part of a reorganization plan agreed to with the U.S., Canadian and Ontario governments, and the company's unions, GM filed for Chapter 11 Bankruptcy protection in a Manhattan court in New York on June 1, 2009. GM filed for a government-assisted Chapter 11 bankruptcy protection on June 1, 2009, with a plan to re-emerge as a less debt-burdened organization. The filing reported $82.29 billion in assets. The "new GM," or “GM-LLC” was formed from the purchase of the desirable assets of "old GM" by an entity called "NGMCO Inc." via the bankruptcy process. NGMCO Inc. was renamed to "General Motors Company" upon purchase of the assets and trade name from "old GM," with the claims of former stakeholders to be handled by the "Motors Liquidation Company." The purchase was supported by $50 billion in U.S. Treasury loans, giving the U.S. government a 60.8% stake in GM. The Queen of Canada, in right of both Canada and Ontario, holds 11.7% and the United Auto Workers, through its health-care trust (VEBA), holds a further 17.5%. The remaining 10% is held by unsecured creditors. On July 10, 2009, a new entity, NGMCO Inc. purchased the ongoing operations and trademarks from GM. The purchasing company in turn changed its name from NGMCO Inc. to General Motors Company, marking the emergence of a new operation from the "pre-packaged" Chapter 11 reorganization. Under the reorganization process, termed a 363 sale (for Section 363 which is located in Title 11, Chapter 3, Subchapter IV of the United States Code, a part of the Bankruptcy Code), the purchaser of the assets of a company in bankruptcy proceedings is able to obtain approval for the purchase from the court prior to the submission of a re-organization plan, free of liens and other claims. The U.S. Treasury financed a new company to purchase the operating assets of the old GM in bankruptcy proceedings in the 'pre-packaged' Chapter 11 reorganization in July, 2009. At all times relevant to the complaint, GM-LLC formally accepted responsibility for the design, manufacture, assembly, marketing and distribution of the subject vehicle, including financial responsibility for damages associated with defects in the subject vehicle. Prior to June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company “MLC”), and now known as GM-LLC, was and is authorized to conduct business in Arkansas, owns property in Arkansas, conducts business in Arkansas and derives significant revenue from its activities in Arkansas, and is therefore subject to be sued in Arkansas courts. At all times relevant to the complaint, Old GM was in the business of designing, developing, testing, manufacturing,

marketing and distributing automobiles, including the defective truck that forms the subject matter of this litigation, and GM-LLC has accepted and assumed responsibility and liability for any such defects by law. GM-LLC currently conducts business in Arkansas and is subject to jurisdiction in Arkansas. GM-LLC has been served and appeared in this action.

4.

At all times relevant to the subject complaint, Old GM was in the business of designing, developing, testing, assembling, manufacturing, marketing, and distributing automobiles, including the subject 2004 model Silverado C1500 pickup truck, worldwide. GM-LLC itself is in the business of designing, developing, testing, assembling, manufacturing, marketing, and distributing automobiles. GM-LLC has assumed Old GM's responsibility for the designing, developing, testing, assembling, manufacturing, marketing, and distributing automobiles, including the subject vehicle and, as a consequence, is considered for all legal purposes as legally responsible for any defects in Old GM vehicles by law.

5.

RUSSELL CHEVROLET COMPANY (hereinafter *Russell*) is an Arkansas corporation whose primary business is located at 6100 Landers Road, North Little Rock, Pulaski County, Arkansas. *Russell* is an authorized GM dealership, providing inventory of new and used cars and SUVs for the consuming public. *Russell* placed the vehicle in question into the stream of commerce in a defective and unreasonably dangerous condition and provided service and maintenance. *Russell* may be served with process through its registered agent, Bob Russell at 6100 Landers Road, Sherwood, Arkansas, 72120.

6.

JURISDICTION AND VENUE

Venue is appropriate in Pulaski County, Arkansas, because this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred, and the county of defendant's residence. The amount in controversy exceeds the jurisdictional limits of the court.

7.

FACTUAL BACKGROUND

This is a products liability, negligence, and wrongful death action brought pursuant to Arkansas law. The single vehicle rollover crash that forms the subject of this litigation occurred on July 26, 2012, while the Decedent was traveling through Colorado. The subject vehicle, including the safety system, was placed into the chain of commerce, distributed, and maintained in Pulaski County, Arkansas. At all times relevant to the Complaint, Defendants were in the business of designing, developing, assembling, testing, manufacturing, and distributing vehicles and tires for use by consumers.

8.

The 2004 model GM pickup was designed, manufactured, marketed, distributed and sold by Old GM and Russell. The truck was designed and marketed for use on the freeways as a safe and stable passenger-carrying vehicle. GM-LLC has legally accepted responsibility for any defects in the vehicle as if it was the original designer and supplier of the vehicle.

9.

As set forth in the preamble, the truck was equipped with a safety belt system that was designed, tested, manufactured and distributed, individually and jointly, by *GM* and suppliers. GM created all design and performance specifications, including the choice of restraints and safety systems to be designed into the vehicle. At all times relevant to the complaint, the restraint system, including the buckle, were defective and unreasonably dangerous.

10.

COUNT I
(Strict Liability/Products Liability – Design Defect)
GM-RUSSELL

Subject to the preamble, at all times relevant to the complaint, the defendants, except for GM-LLC, were in the business (for profit) of designing, manufacturing, assembling, marketing, and distributing automobiles and auto components, including tires and safety belt systems. GM-LLC was created later, but has accepted legal responsibility for Old GM's defective products. The products in question – the GM truck, and the occupant safety equipment (belt-roof-glazing), all contained design defects at the time the product was manufactured, all of which combined to cause, proximately cause, and result in the producing cause of the damage, injuries, enhanced injuries, and damages alleged herein. The referenced design defects in the

products are and were conditions of the products that rendered the products unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in use. At all times relevant to the Complaint, "safer alternative designs" existed, other than the ones actually used for the vehicle and tire, that in reasonable probability would have prevented or significantly reduced the risk of the occurrence or injury in question without substantially impairing the product's utility; and were economically and technologically feasible at the time the products left the control of the defendants by the application of existing or reasonably achievable scientific knowledge.

11.

The defective nature of the design of the truck included defects in design, stability, handling, marketing, instructions, warning, crashworthiness, rollover resistance and controllability, including the tendency to skate. The defective nature of the vehicle includes the following:

- The truck is defective in that the design of the "package," which includes the combination of track width and vertical center of gravity height, creates an unreasonable risk of loss of control and rollover given the uses for which the vehicle was marketed;

- The truck is defective from a handling standpoint because it has an unreasonable tendency to get sideways in emergency turning maneuvers and does not remain controllable under all operating conditions as required by both Old GM and GM-LLC guidelines, including the tendency to overseer and skate in foreseeable turning maneuvers;

- The truck is unreasonably dangerous from a stability standpoint because it rolls over instead of slides when loss of control does occur on relatively flat level surfaces during foreseeable steering maneuvers;

- The truck is defective from a handling standpoint because it has an unreasonable tendency to get oversteer, skate and get sideways in emergency situations, and does not remain controllable under all operating conditions as required by both Old GM and GM-LLC guidelines;

- The combination of the foregoing creates an extreme risk of rollover that is both beyond the reasonable expectations of consumers and creates a risk that far outweighs any benefit associated with the design given the uses for which the vehicle was marketed;

- The vehicle is unreasonably dangerous because it performs in an unsafe manner when operated in foreseeable turning maneuvers that are consistent with Old GM's effort to market the vehicle as a passenger-carrying vehicle at

freeway speeds prior to the sale, and GM-LLC's marketing after the sale, which Old GM had both actual and constructive knowledge would lead to rollover crashes. That same knowledge was carried into GM-LLC by virtue of the fact that the same employees left Old GM and became employees of GM-LLC. Old GM's knowledge included both actual knowledge based on its test history with trucks and SUVs; its research and knowledge of rollover in foreseeable turning maneuvers. GM-LLC continued to gain even more knowledge post-sale;

- The vehicle was defectively marketed in that consumers were led to believe that the vehicle was safe and stable and could be safely used as a passenger-carrying vehicle when defendants knew that this was untrue;

- The risk of operating the vehicle as designed outweighed any benefits associated with the design and the defendants knew of these risks; knew that the risk, if it materialized, would lead to rollover crashes and severe injuries; and knew that rollover crashes were particularly dangerous;

- The defendants knew that this type vehicle—a light truck —was not reasonably safe for inexperienced and untrained drivers and knew that the vehicle was not sufficiently capable of maneuvering in emergency conditions that consumers would face on freeways at freeway speeds;

- The truck was likewise unreasonably dangerous from a crash protection standpoint in that the vehicle was not equipped with an occupant protection system—roof, safety belt system, and glazing design—that would effectively provide reasonable protection in the event of a rollover. GM knew that the belt system would not effectively and reasonably restrain occupants involved in freeway-speed rollovers, including actual knowledge learned from suppliers in the industry as early as 1996, and Old GM new of the risk that the roof was not sufficiently strong to provide a safety cage for the occupants. GM-LLC possesses that same knowledge because the same employees carried over to GM-LLC and likewise GM-LLC acquired additional knowledge post-sale. Despite knowledge of these risks, and the availability of alternative safer designs, including safety features tied to roll sensing—such as pretensioners and side airbags or curtains – Old GM intentionally marketed the vehicle to consumers for use as a freeway, passenger-carrying vehicle, and intentionally led consumers to believe that it was safe, stable, and would provide state of the art protection to occupants, and GM-LLC continued that same irresponsible conduct post-sale;

- The defendants had both actual and constructive knowledge of the existence of safer, alternative designs from both a stability and crash protection standpoint, including roll sensing, roll curtains, electronic stability control, roll stability control, and other safety features that were technologically feasible and available;

- The defendants willfully, wantonly, and consciously marketed the truck, both pre-sale as to Old GM and post-sale as to GM-LLC, for the aforementioned uses with full knowledge of the risks inherent in the vehicle design, yet misled consumers and withheld critical information about the unsafe nature of the

vehicle in conscious disregard for the public, including information about vehicle failures worldwide;

- Old GM failed to act appropriately to take reasonable steps to protect occupants in the event of a rollover. Old GM's conscious disregard for known facts surrounding available technology and the performance of the truck constitutes malicious conduct under applicable law. GM-LLC's post-sale conduct was even worse.

12.

The defective nature of the truck was a proximate and producing cause of the crash and injuries and damages suffered by Plaintiffs. The products were in the substantially the same condition on the date of the crash as they were at the time of manufacture. The Defendants are therefore strictly liable for supplying a defective and unreasonably dangerous product(s) that resulted in plaintiffs' personal injury and property damage.

13.

COUNT II
NEGLIGENCE

Subject to the preamble, at all times relevant to the Complaint, defendant Old GM was in the business of supplying motor vehicles, components, and safety equipment for use on the public roadways in Arkansas. GM-LLC accepted legal responsibility for certain assumed liabilities of Old GM. The defendant hold themselves out to the public as having specialized knowledge in the industry, especially with respect to trucks, SUVs and safety components. As such, the defendant, individually and jointly, owed consumers, including the plaintiffs, a duty to use reasonable care in the design, manufacture, preparation, testing, instructing, and warnings surrounding the truck and safety equipment. The defendant violated this duty by negligently supplying a vehicle that were defective, unreasonably dangerous, and knowingly harmful to consumers when used as marketed. The negligent acts include but are not limited to the following acts or omissions:

- Negligently designing the vehicle from a handling and stability standpoint given the manner in which it was marketed;

- Negligently designing the vehicle with poor rollover resistance given the manner in which it was marketed;

- Negligently designing and testing the vehicle so as to assure its controllability;

- Negligently testing of the vehicle from a handling and stability standpoint, including negligent failure to appropriately test and evaluate the design approved for use on the truck;

- Negligently failing to test the vehicle to ensure the design provides reasonable occupant protection in the event of a rollover;

- Failing to adequately train and assist dealers in the dangers associated with the vehicle and tires when used as marketed;

- Negligently marketing the vehicle as a safe and stable passenger vehicle given the uses for which it was marketed;

- Failure to meet or exceed internal corporate guidelines;

- Negligently advertising the vehicle as safe and stable family vehicle;

- Failing to inform the consumer, including the plaintiffs, of the information the defendants knew about rollover risk and specifically the truck, thus depriving plaintiffs of the right to make a conscious and free choice, and also in failing to disclose known problems in foreign countries in an effort to conceal problems that the defendants knew about the truck;

- Failing to comply with the state of the art in the automotive industry insofar as providing reasonable occupant protection in a rollover, including the use of safe retractors, latch plates, roll sensing, ESC, pretensioners, side air bag and curtain technology, and integrated seating technology;

- Failing to comply with applicable and necessary Federal Motor Vehicle Safety Standards with respect to occupant protection and/or failing to test appropriately to ensure compliance;

- Failing to notify consumers, as required by law, that a defect exists in the vehicle that relates to public safety;

- Negligent failure to warn of aging problems associated with the safety equipment.

These independent acts of negligence combined as a proximate and producing cause of the incident in question and the injuries and damages sustained by Plaintiffs.

14.

Subject to the preamble, and focused solely on GM-LLC's independent conduct during post-sale time periods, GM-LLC brought certain knowledge with it from the sale by virtue of documents and employees, and added to that actual and constructive knowledge of the dangers associated with the failure of the truck post-sale, and in particular the failure of the combination of vehicle and safety equipment. Despite such

knowledge, GM-LLC acted in their own interests, with an "evil mind," in a willful, wanton and malicious manner, having reason to know, and consciously disregarding, a substantial risk that their conduct might significantly injure or kill others. GM-LLC had both objective and subjective knowledge of the dangers and risks associated with their products in the hands of consumers and, as such, failed to recall, remedy, warn, instruct and otherwise carry out its assumed liability for failing to act appropriately with respect to warranty and recall issues, and should be punished in the form of punitive or exemplary damages for only its independent acts of misconduct post-sale.

15.

Plaintiffs are seeking monetary damages from the defendants, jointly and severally, as found to be reasonable by the jury after consideration of all evidence. The plaintiffs are seeking recovery for the following types of injuries and damages:

- Conscious pain and suffering in the past and in the future;
- Past medical and funeral expense;
- Past and future mental and emotional anguish;
- Past and future loss of earnings;
- Loss of life and the value of life;
- Loss of society and companionship;
- Punitive or exemplary damages;
- For costs incurred herein, including attorneys fees;
- For pre-judgment interest at the maximum rate allowed by law;
- For post-judgment interest at the maximum rate allowed by law;
- For such other and further relief as the Court may deem just and proper.

DATED this ___ day of June, 2016.

RESPECTFULLY SUBMITTED

Tab Turner
Bar #85158
TURNER & ASSOCIATES, P.A.
4705 Somers Ave, Suite 100
North little Rock, AR, 72116
501-791-2277 – Phone
501-791-1251 – Fax
tab@tturner.com

Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

I hereby confirm that this pleading was served on all counsel of record on this the ___ day of June, 2016, by electronic correspondence and regular mail.

_____
TAB TURNER

Exhibit B

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-reg

- x

In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.,

f/k/a General Motors Corp., et al.

Debtors.

- x

U.S. Bankruptcy Court

300 Quarropas Street

White Plains, New York

February 17, 2015

9:02 AM

B E F O R E :

HON ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

ECRO: K. HARRIS

Hearing re: Oral Argument on Motion to Enforce.

Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

KING & SPALDING, LLP
Attorneys for General Motors, LLC
1185 Avenue of the Americas
New York, New York 10036

BY: ARTHUR J. STEINBERG, ESQ.
SCOTT DAVIDSON, ESQ.

GOODWIN PROCTER, LLP
Attorneys for South Texas Plaintiffs
The New York Times Building
620 Eighth Avenue
New York, New York 10018

BY: WILLIAM P. WEINTRAUB, ESQ.

BROWN RUDNICK
Attorneys for Certain Plaintiffs
Seven Times Square
New York, New York 10036

BY: EDWARD WEISFELNER, ESQ.

GOLENBOCK. EISEMAN, ASSOR, BELL & PESKOE, LLP

Attorneys for Groman Plaintiffs
437 Madison Avenue
New York, New York 10022

BY: JONATHAN L. FLAXER, ESQ.

GIBSON, DUNN & CRUTCHER, LLP
Attorneys for Wilmington Trust Company as
GUC Trust Administrator
200 Park Avenue
New York, New York 10166

BY: LISA H. RUBIN, ESQ.
KEITH R. MARTORANA, ESQ.
MATTHEW WILLIAMS, ESQ

AKIN, GUMP, STRAUSS, HAUER & FELD, LLP
Attorneys for GUC Trust Unit Trust Holders
One Bryant Park
New York, New York 10036

BY: DEBORAH NEWMAN, ESQ.
DANNY GOLDIN

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.

Attorneys for Barron & Budd & Grant
2323 Bryan Street, Suite 2200
Dallas, Texas 75201

BY: SANDER L. ESSERMAN, ESQ.

KIRKLAND & ELLIS, LLP
Attorneys for General Motors, LLC
300 North LaSalle
Chicago, Illinois 60654

BY: RICHARD C. GODFRY, ESQ.

P R O C E E D I N G S

THE COURT: Good morning. Have seats, please. Well, I know everybody who's likely to speak. So, let me just get appearances of those who will be heard for the transcript. And then I want you all to sit down, because I'm going to have some preliminary comments.

MR. STEINBERG: Arthur Steinberg, from King & Spalding, on behalf of New General Motors.

THE COURT: All right, Mr. Steinberg. Could everybody hear me? I'm not sure if I have the same volume in my mic that I normally do. Can you hear me, Mr. Flaxer?

MR. FLAXER: (indiscernible)

THE COURT: Okay. Thank you.

MR. WEISFELNER: Good morning, Judge. Edward Weisfelner, Brown Rudnick, on behalf of the designated counsel.

THE COURT: Thank you, Mr. Weisfelner.

MR. WEINTRAUB: So, good morning, your Honor. William Weintraub with Goodwin Procter, also designated counsel.

THE COURT: Right, Mr. Weintraub.

MS. RUBIN: Morning, your Honor. I'm Lisa Rubin with Gibbs & Dunn on behalf of the GUC Trust.

THE COURT: Okay. She was kind of far from the mic; that was Ms. Rubin introducing herself for the GUC

Trust. I got it this time, Ms. Rubin.

MS. NEWMAN: Good morning, your Honor. Deborah Newman from Akin Gump on behalf of the participating note holders.

THE COURT: All right, Ms. Newman.

MR. ESSERMAN: Good morning, your Honor. Sander Esserman, Stutzman, Bromberg, Esserman & Plifka on behalf of designated counsel.

THE COURT: All right. And I see Mr. Flaxer right next to you, Mr. Esserman.

MR. FLAXER: Yes, your Honor, only to the extent that we feel that it's necessary to speak for -- it could be a minute or two would be it.

THE COURT: All right, very good. Thank you. All right, folks. With one exception, I want you to make your presentations as you see fit. But before you're done, I'd like you to address a fair number of questions that had occurred to me when I was reading the briefs. These questions (indiscernible) one or another of you, or, in many cases, both.

But first, the exception, mainly Mr. Weisfelner and Mr. Weintraub: you folks spend many, many pages in your briefs talking about the underlying failures of Old GM and New GM to institute the necessary recalls on the cars and the 24 or 25 people at Old GM who knew enough to justify

much, much larger recalls. I get it. But that's not what's before me now.

I'm prepared to assume, for the purposes of this controversy, unless Mr. Steinberg really wants to dispute it, that there was enough to require a recall well before June 2009, and that each of Old GM and New GM acted very badly in connection with the delay. But I want to focus on the legal issues. So, let's turn to them.

Starting with due process, Mr. Steinberg, one would assume, I think, that a company's books and records, if they're to determine whether a claim is known or unknown, have to be much more broadly construed than in the financial statement sense. And I take it that you're not arguing that whether or not a creditor is known or unknown turns on whether the company has booked the liability.

So, before you're done, I'd like you to tell me: how would you articulate the standard? I wonder whether the standard should be more than foreseeable but less than probable. But I would like you to put forward your view as to how I should construe that. It's debatable whether potential liabilities associated with the ignition switches were wholly (indiscernible) claims, even if Fritz Henderson and Mary Barra didn't know about them.

But I take it you'll agree that Old GM knew enough to send out recall notices back in 2009. Their people would

have known that there was something potentially wrong with their cars. And those who weren't in wrecks could have filed claims or objected, as they're doing now, at the time of the 363 sale. If recall notices had been issued, wouldn't the publication notice that was given then be more justifiable?

Number two: by the same token, Mr. Weisfelner, would you clarify your position on what notice should have been given? I gather the parties have stipulated that there were 70 million GM cars then on the road. I gather also that there were approximately 27 million whose cars, we're learning, later became the subject of pending recalls.

It'd be helpful if you would tell me how many of those 27 million cars were then subject to announced recalls and how many would have been subject to recalls if GM, which was then Old GM, of course, had announced them as it should have. Seemingly, the number would be very, very large.

Now, again, Mr. Weisfelner, is it your argument that mailings should have gone out to each owner, each of those 70 million, in the period between the June 1st, 2009, filing of the bankruptcy and the June 30, 2009, date for the start of the sale lien? Or, for that matter, the June 19 date, which was the deadline for objections in the 363 sale? Or are you saying it should have gone out by mail only to cars with the poorly designed ignition switches?

Both sides: what information do I have in the record on how much it would cost to send out mailing notices to all 70 million of the GM cars on the road at the time, or even 27 million cars? And what information do I have in the record on how much time it would take to send out 27 or 70 million notices?

Mr. Weisfelner, I made a factual finding back at the hearing on the same issue, that the continued availability of the financing Old GM was using to survive at the time was conditioned on approval of the 363 sale motion by July 10. And I also rejected an argument that was made by bondholders at the time that the government's July 10 deadline was just posturing and that I should have argued -- I should have found back then, or assumed back then, that the U.S. government cared so much about GM's survival that the U.S. government would never let GM die.

Well, that seems to have a lot of similarities to (indiscernible) you make now. On that, I know your clients weren't present back then to argue to the contrary, but to challenge -- or to challenge those findings. But others did. Are you challenging those findings now? Do you think there are some facts now to suggest that I should now find that the government was posturing, while you'd rejected that contention back in 2009?

I don't know if I'm going to hear from the GUC

Trust in the first phase of the arguments. But, at some point, Ms. Rubin, when you do get the chance to be heard, which you will sooner or later, I'd like you to help me with this: the cost of administration of the Chapter 11 case, which would at least seemingly include the cost of mailing, would come directly out of the pockets of your folks, the unsecured creditor constituency.

How do you think a judge should decide what's reasonable in sending out notice of a 363 sale to a universe of potential creditors when it comes out of the pockets of those who you know are creditors for absolutely, positively sure, like your bondholders, like your vendors in the supply chain, and victims of car wrecks, people who were actually in accidents who got injured or killed when cars didn't perform the way they were supposed to?

Back to you, Mr. Weisfelner: what would the notice have said, if GM were to do it right, and you say that GM didn't do it right? As I think it was Judge Bernstein said in Chrysler -- I think by then it had been named New Car Co., or maybe Old Car Co., "Things can go wrong with cars all the time. And, while design defects that can cause a loss in cars' value don't happen all the time, or all that often, I don't know if anybody could really say they're infrequent." So, what do you think would have been reasonable under the circumstances?

Both sides: is it appropriate to be making distinctions, when we're talking about honoring claims -- and I'm offering you a view now as to whether there are -- these are unknown claims as a (indiscernible) or not -- between liquidating 11s and 11s where there is a surviving entity, we all know that there's no discharge in a liquidating 11. There is, of course, a discharge in the 11 where a company survives.

A lot, and maybe most, of the case law (indiscernible) you rely on is in the context of expunging claims, either because they're late or because they've been discharged. But it's a lot easier to say that a claim isn't discharged when we have a debtor that's surviving and you can still go after that debtor by ignoring or blowing away the order that protected the debtor upon the confirmation of the case or otherwise.

Both sides: shouldn't we focus on the distinctions between the notice that's appropriate in a 363 sale on the one hand and the notice that's required to give parties a chance to file claims on the other? Or, to the extent that it's different, the notice that needs to be given before a judge discharges a creditor's claim? And isn't it necessary or appropriate to take into account the time exigencies inherent in many, perhaps most, 363 sales, especially those, like most of them, where the debtor only

has the cash to survive for only days or weeks?

If reasonableness depends on the facts and circumstances, as the Supreme Court said in (indiscernible), wouldn't it be appropriate to take into account that, in the 363 context, you have to hold a hearing on a sale in four weeks, because you're bleeding so badly that you can't survive any longer?

Mr. Steinberg: you point out that New GM didn't yet exist when notice was given, and that it was Old GM that was responsible for the failure to give the creditor community a notice. But does that matter? Or should a judge simply focus on whether or not the creditor was given appropriate notice, no matter who's responsible for it or for the failure to provide it, and then the extent to which the outcome would have been different if appropriate notice had been given?

Both Mr. Steinberg and Ms. Rubin, back to you. I haven't forgotten about you, Ms. Rubin. Let's assume that I agree with Mr. Steinberg that it wasn't practical to send out mailed notice to the 70 million or even 27 million car owners for the 19 days that they'd have to object to the 363 sale. But isn't it inexcusable for Old GM to have denied people whose cars were subject to recalls notice of the bar date for filing claims?

And even if Old GM thereto -- that is, in the bar

date context as in the 363 context -- wasn't going to give the 70 million or 27 million people mailed notice, I have some trouble seeing how they could have responded to the bar date notice and filed claims when Old GM still hadn't sent out the recall notices as of the bar date, when at least seemingly, if not apparently, there wasn't the same degree of urgency.

Now, both sides -- and here I mean Mr. Weisfelner and Mr. Steinberg -- on remedy, assuming I find violations of due process, I have problems with aspects of each of your positions. Mr. Weisfelner, let's turn first to what you're asking for. I gather -- and I think you said it expressly -- that you're not asking me to vacate the entire sale order. In fact, I gather that you aren't even asking me to vacate it, even in part.

It seems to me that you're saying, "Fine, enforce it against everyone else. Just don't enforce it against me, or me and my guys." Is that an unfair characterization of your position?

Both sides: finding a due process violation may not by itself require a showing of prejudice. But isn't the prejudice critical to determining whether there's a remedy for it? I'm inclined to agree with Mr. Weisfelner that finding a due process violation does not by itself turn on prejudice, but it seems to me that the remedy for it

necessarily must. The issue, it seems to me, is: what should a Court do about the situation when it finds that there's been a violation of due process?

And here, I'm going to ask you guys to address when the standards are the same when you have a bipolar dispute, or a modestly polar dispute, which is typical in a (indiscernible) litigation, and when you have a case where hundreds, thousands, or millions of creditors are affected by an order, and a very small subset of the universe of people who were affected by the order want that order blown away or ignored.

Mr. Weisfelner, you said in your brief that due process involves the right to be heard, not the right to win. And because you were denied the right to be heard, it seems to me that you're saying you (indiscernible) the right to win. Let's go with that for a minute.

If you (indiscernible) the right to be heard, wouldn't the appropriate remedy be a do-over, to give you a chance to make the arguments that you didn't get to make the first time, and then to look at the matter ab initio to see whether the result should be the same or should be different? Because it seems to me that what you're asking for, assuming that you're (indiscernible) due process and you've heard my questions that suggest that -- and I have concerns as to whether you guys were denied due process --

you're asking to simply win.

Is it speculation or is it totally obvious for me to say now that I wouldn't have denied permission for GM to survive and to conduct its 363 sale so that one group of litigants could get a leg up over another group of litigants? Or I guess I should say one group of creditors should -- could get a leg up on other creditors.

And why in the world would I decide the successive liability issue differently today than I did after talking about it for five or 10 or 15 pages in my first opinion, when I considered the arguments made by people like Mr. Jack (indiscernible), who argued the exact same things that you're arguing now after they had (indiscernible) given the appropriate notice?

So, what I need you to do, Mr. Weisfelner, is tell me that, if you had been given notice and an opportunity to be heard back in 2009, how would things be different? Are you arguing to me that I would have denied permission for the sale, or that I would have granted a free-and-clear order generally but I would have denied it for your favored group?

Or do I properly read from your brief that you would have wanted me to give the sale some kind of conditional approval for your benefit, saying I'd approve it if, but only if, New GM were required to assume your claims?

And then, if that's your position, would you please tell me whether there would be some reason for me to grant that protection for people who were claiming that their cars were worthless or that they were inconvenienced, when I denied that relief for people who were injured or killed in actual wrecks?

Also, Mr. Weisfelner, let's talk about the exact context of 363 sales, and recognize, as I think we need to, that 363 sales are an extraordinarily important part of the bankruptcy (indiscernible), not just in this case but winning in the other 11s, and that whatever I do, for better or worse, is likely to have precedential effect.

How can a judge force a buyer of assets in a 363 sale to assume liabilities that it doesn't want to assume? Isn't the only real remedy to deny authority for the sale totally, or to say, were I the judge back in 2009, that, "Yeah, the sale can take place, but I, the judge, won't grant a free-and-clear order at all"?

And, if that is the choice that's provided to the judge, how helpful is that to the remainder of the creditor community, the thousands of people that Ms. Rubin represents? And do we want to impose a principle of law that requires judges to frag everyone else with the same grenade?

Mr. Steinberg, despite the reservations that I

just had expressed, I have some in your direction as well. Before I read the briefs and the underlying cases, I'd started with (indiscernible) stint in bankruptcy, orders and agreements rise and fall as a whole, and that you can't enforce them in part and disregard them in part, or cherry-pick the parts that you like and those that you don't, or, as here, say they're enforceable against most of the world but not against this or that favored class.

But your opponents have cited five cases that seem to do exactly that. Three, while they come out of lower courts, one Bankruptcy, two District, involve 363 sales. The other two don't involve 363 sales, but they come from the Second Circuit. And, while one of the Second Circuit cases is only a summary order, which therefore isn't a binding precedent, it's still a Circuit -- Second Circuit opinion. And, frankly, I don't like to disregard anything that comes out of the Second Circuit, that the Second Circuit tells me.

So, Mr. Steinberg, I need you to talk about Metzger, the 2006 decision by Arthur Weissbrodt, a bankruptcy judge in San Jose; (indiscernible), the 2007 decision by District Judge Mary Cooper in Trenton; and (indiscernible), the 2009 decision by Senior District Judge John Grady in Chicago.

And I need you to talk about the Circuit's 2010

decision in Johns Manville, Travelers v. Chubb, which I think is sometimes referred to -- I believe this is Manville 4; and its 2014 decision in Koepp, K-O-E-P-P, the summary order from a panel that included Judge -- Chief Judge Katzmann and Judges Livingston and Hall.

Finally, while it may be trumped by the holdings of those five cases that I talked about, I still need some help on whether I should be looking at this in (indiscernible) of 9024 and 60(b) terms, or whether I should just bypass what those rules say and get to the "You're excused from the order or not" kind of (indiscernible) those other decisions did.

But I still want both sides to address whether a judge has to look at it in traditional 60(b) terms and either knock it out or live with it, or the third option, which may or may not be permissible under 60(b) doctrine, of living with it in part and validating it in part.

Mr. Weisfelner, you can help me by confirming, if it's true, that you're saying I shouldn't be thinking about invalidating the (indiscernible) or validating the rule but simply refusing to enforce it. But, if that is in fact your position, then help me understand how I can be deciding this without regard to a (indiscernible) bankruptcy procedure in lieu of federal civil procedure. And that would at least seemingly be telling me how I'm supposed to do my job.

Finally, folks, in many ways this is the most important of all the things that I want you to talk about, because I think it's the closest question, in an environment where there are already a bunch of close questions. If we had a do-over, and it's my instinct that, when somebody is denied due process, he or she is entitled to a do-over, the result of part of what you guys are arguing would be pretty clear. But part would be highly debatable. And, in each of those two sides, or prongs, one side would have the stronger side and one would have the weaker.

If we had a do-over, I think it's quite clear that I'd still grant a free-and-clear order, especially since I heard the same arguments before and I rejected them. And I gave them a lot of thought before I did. But if we had a do-over, I'd likely have to consider whether a free-and-clear order in the form that I just issued it was over-broad. And, in this respect, the economic loss plaintiffs, though not Mr. Weintraub's guys, would have the upper hand.

This order, as I read it, not only blocks successor liability, but also blocks claims based on wholly post-sale events that involved Old GM or Old GM parts. This is one of the issues, if not the issue, that bothers me the most. And the issue is whether what I should have done, or would have done if the argument had been made to me then, was to add a new order that was narrower and said that

people couldn't sue based on anything Old GM had done, but they could sue if it was based on what New GM had done, so long as Old -- as New GM wasn't blamed for Old GM's acts.

And if, as I'm inclined to rule, I find that, if there was a due process violation, the economic loss plaintiffs would be entitled to a do-over, and if I also concluded, as I'm inclined to do, that, if they got a do-over on successor liability, the result would be the same, the issue or the conclusion I'd reach would have been different, given New GM protection for events that it did that were not premised on anything old GM had done. And I need both sides to address that scenario.

I have only one real question in (indiscernible), so, even though we may not get to it this afternoon, I'm going to get it out anyway. Mr. Weisfelner, is there a reason that you didn't ask me to stay further distributions to Ms. Rubin's guys, the Old GM creditors, until the issues before me now were sorted out? Am I right in assuming, since you're a pretty competent lawyer, that you didn't overlook that possibility?

And can I properly assume that you did it for tactical reasons, because you'd rather get $100 in a recovery against New GM, as contrasted to the $0.25 or so that you'd get on the dollar if you had to go against Old GM (indiscernible)?

Now, with all of that, let's get to work. And (indiscernible) we hear first from you, Mr. Steinberg?

MR. STEINBERG: Yes, your Honor.

THE COURT: Come up to the main lectern, please.

MR. STEINBERG: Your Honor, good morning. I'm Arthur Steinberg, for the record. I'm here with my colleague, Scott Davidson, and my co-counsel from Kirkland & Ellis, Richard Godfrey and Andrew Bloomer. I want to thank your Honor first of all for accommodating all the lawyers for the rescheduling of this conference.

And I'm sure, like my other counsel who will be addressing you today, they're all -- they have a lot of thoughts swirling in their mind as they try to address the multitude of questions that your Honor just went through. But I think I will be able to do it, and I will do it in the order where it was presented itself in the outline.

About a year ago, New GM announced a recall with respect to ignition switches in Old GM vehicles. And shortly thereafter, that started a wave of lawsuits that were commenced against New General Motors, seeking purported economic losses regarding vehicles that were subject to the recall.

In the early complaints that were filed, which sought primarily monetary compensation for the alleged decrease in value of the vehicles based on the ignition

Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER 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

Upon the motion, dated June 1, 2009 (the "Motion"),[1] of General Motors Corporation ("GM") and certain of its subsidiaries, as debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors" or the "Company"),[2] pursuant to sections 105, 363, and 365 of title 11, United States Code (the "Bankruptcy Code") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for, among other things, entry of an order, (A) approving the proposed sale procedures annexed hereto as Exhibit "A" (the "Sale Procedures"); (B) scheduling a bid deadline and sale hearing date; (C) establishing procedures for assuming and assigning the Assumable Executory Contracts; and (D) fixing notice procedures and approving forms of notice; and upon any

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

[2] The Debtors and their respective Tax ID numbers are as follows: General Motors Corporation, Tax ID No. 38-0572515; Saturn, LLC, Tax ID No. 38-2577506; Saturn Distribution Corporation, Tax ID No. 38-2755764; and Chevrolet-Saturn of Harlem, Inc., Tax ID No. 20-1426707.

objections to the Motion (the "Objections"); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the United States Department of the Treasury (the "U.S. Treasury"), (iii) the attorneys for Export Development Canada ("EDC"), (iv) the attorneys for the agent under GM's prepetition secured term loan agreement, (v) the attorneys for the agent under GM's prepetition amended and restated secured revolving credit agreement, (vi) the holders of the fifty largest unsecured claims against the Debtors (on a consolidated basis), (vii) the attorneys for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), (viii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America, (ix) the United States Department of Labor, (x) the attorneys for the National Automobile Dealers Association, and (xi) the attorneys for the ad hoc bondholders committee, and it appearing that no other or further notice need be provided; and a hearing having been held on June 1, 2009, to consider the relief requested in the Motion (the "Sale Procedures Hearing"); and upon the Affidavit of Frederick A. Henderson Pursuant to Local Bankruptcy Rule 1007-2 (the "Henderson Affidavit"), the record of the Sale Procedures Hearing, and all of the proceedings had before the Court; and the Court having reviewed the Motion and any Objections and found and determined that the relief sought in the Motion as provided herein is necessary to avoid immediate and irreparable harm to the Debtors

and their estates, as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:[3]

A. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the sale process, including the Court's (i) approval of the Sale Procedures, (ii) approval of the Assumption and Assignment Procedures, (iii) approval of and authorization to serve the Sale Notice, the Assumption and Assignment Notice, and the Special UAW Retiree Notice (each as hereinafter defined), and (iv) approval of and authorization to publish the Publication Notice (the "Sale Procedures Relief").

B. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court scheduling a subsequent hearing (the "Sale Hearing") to consider whether to grant the remainder of the relief requested in the Motion, including the approval of the sale of substantially all the assets (the "Purchased Assets") of the Sellers in accordance with either the (i) proposed Master Sale and Purchase Agreement, dated as of June 1, 2009, substantially in the form annexed to the Motion as Exhibit "A" (together with all exhibits and agreements attached thereto, the "MPA"),[4] by and among GM and its Debtor subsidiaries (collectively, the "Sellers") and Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser sponsored by the U.S. Treasury, or (ii) such other Marked Agreement

[3] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

[4] Copies of the Motion and the MPA (without certain commercially sensitive attachments) may be obtained by accessing the website established by the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com.

that may constitute the Successful Bid (the "Replacement Agreement"), free and clear of all liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability (with the same to attach to the proceeds therefrom) pursuant to section 363 of the Bankruptcy Code (the "363 Transaction").

C. The Purchased Assets are "wasting assets" that will not retain going concern value over an extended period of time. As such, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis consistent with the provisions set forth herein and in the MPA.

D. The notice of the Sale Hearing (the "Sale Notice"), substantially in the form annexed hereto as Exhibit "B," is reasonably calculated to provide parties in interest with proper notice of the proposed sale of the Purchased Assets, the Sale Procedures, the 363 Transaction, and the Sale Hearing.

E. Publication of the Publication Notice, substantially in the form annexed hereto as Exhibit "C," as set forth herein is reasonably calculated to provide all unknown creditors and parties not otherwise required to be served with a copy of the Sale Notice pursuant to this Order with proper notice of the proposed sale of the Purchased Assets, the Sale Procedures, the 363 Transaction, and the Sale Hearing.

F. The Assumption and Assignment Notice, substantially in the form annexed hereto as Exhibit "D," is reasonably calculated to provide all counterparties to the Assumable Executory Contracts with proper notice of the potential assumption and assignment of their respective executory contracts or Leases, any Cure Amounts relating thereto, and the Assumption and Assignment Procedures.

G. The UAW Special Retiree Notice (as defined below) including the Cover Letter to UAW-Represented Retirees describing the 363 Transaction and the UAW Retiree

Settlement Agreement and the notice (together, the "UAW Retiree Notice") to the retirees of the Debtors and of certain retirees of Delphi Corporation ("Delphi"), a former unit of GM, including certain retirees of former Delphi units and former GM units, and their respective surviving spouses, who are eligible to receive, now or in the future, Retiree Medical Benefits (as defined in the UAW-Retiree Settlement Agreement) (collectively, the "UAW-Represented Retirees"), copies of which are annexed hereto as Exhibit "E," are reasonably calculated to provide the UAW-Represented Retirees with proper notice of the 363 Transaction, the Sale Procedures, the Sale Hearing, and the UAW Retiree Settlement Agreement.

H. The Motion and this Order comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and the Guidelines for the Conduct of Asset Sales established by the Bankruptcy Court on September 5, 2006 pursuant to General Order M-331.

I. The 363 Transaction includes the transfer of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code). As such, the transfer of personally identifiable information shall not be effective until a Consumer Privacy Ombudsman is appointed and issues its findings and the Court has an opportunity to review the findings and issue any rulings that are appropriate.

J. Due, sufficient, and adequate notice of the relief requested in the Motion and granted herein has been given to parties in interest.

K. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

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

1. The Sale Procedures Relief requested in the Motion is granted as provided herein.

2. The Objections are overruled except as otherwise set forth herein.

3. The Sale Procedures, which are incorporated herein by reference, are approved and shall govern all bids and sale procedures relating to the Purchased Assets. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Sale Procedures.

4. The deadline for submitting a Qualified Bid shall be June 22, 2009 (the "Bid Deadline"), as further described in the Sale Procedures.

5. The deadline for objecting to approval of the 363 Transaction, including the sale of the Purchased Assets free and clear of liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability (or for UAW-Represented Retirees to object to the UAW Retiree Settlement Agreement), shall be June 19, 2009, at 5:00 p.m. (Eastern Time) (the "Objection Deadline"), *provided, however*, that in the event the Sale Procedures result in a Successful Bidder other than the Purchaser, the deadline for objecting to the sale of the Purchased Assets to such Successful Bidder shall be at the Sale Hearing.

6. The Purchaser shall constitute a Qualified Bidder for all purposes and in all respects with respect to the Sale Procedures and is not required to make a Good Faith Deposit.

7. The Court shall conduct the Sale Hearing on June 30, 2009, at 9:45 a.m. (Eastern Time), at which time the Court will consider approval of the 363 Transaction to the Successful Bidder and approval of the UAW Retiree Settlement Agreement. In the event the Successful Bidder is not the Purchaser, non-Debtor parties to the Assumable Executory Contracts may raise objections to adequate assurance of future performance at the Sale Hearing.

8. The Debtors are authorized to conduct the 363 Transaction (or other similar transaction if the Successful Bidder is a party other than the Purchaser) without the necessity of complying with any state or local bulk transfer laws or requirements.

9. The notices described in subparagraphs (a)-(d) below are approved and shall be good and sufficient, and no other or further notice shall be required if given as follows:

(a) The Debtors (or their agent) serve, within three (3) days after entry of this Order (the "Mailing Deadline"), by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a copy of this Order upon: (i) the attorneys for the U.S. Treasury, (ii) the attorneys for Export Development Canada, (iii) the attorneys for the agent under the Debtors' prepetition secured term loan agreement, (iv) the attorneys for the agent under the Debtors' prepetition amended and restated secured revolving credit agreement (v) the attorneys for the statutory committee of unsecured creditors appointed in the Debtors' chapter 11 cases (the "Creditors Committee") (if no statutory committee of unsecured creditors has been appointed, the holders of the fifty largest unsecured claims against the Debtors on a consolidated basis), (vi) the attorneys for the UAW, (vii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America; (viii) the United States Department of Labor; (ix) the attorneys for the National Automobile Dealers Association, (x) the attorneys for the ad hoc bondholders committee; (xi) any party who, in the past three years, expressed in writing to the Debtors an interest in the Purchased Assets and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated in the MPA, (xii) non-Debtor parties to the Assumable Executory Contracts, (xiii) all parties who are known to have asserted any lien, claim, encumbrance, or interest in or on the Purchased Assets, (xiv) the Securities and Exchange Commission, (xv) the Internal Revenue Service, (xvi) all applicable state attorneys general, local environmental enforcement agencies, and local regulatory authorities, (xvii) all applicable state and local taxing authorities, (xviii) the Federal Trade Commission, (ixx) all applicable state attorneys general, (xx) United States Attorney General/Antitrust Division of the Department of Justice, (xxi) the U.S. Environmental Protection Agency and similar state agencies, (xxii) the United States Attorney's Office, (xxiii) all dealers with current agreements for the sale or leasing of GM brand vehicles, (xxiv) the Office of the United States Trustee for the Southern District of New York, and (xxv) all entities that requested notice in these chapter 11 cases under Bankruptcy Rule 2002; and

(b) On or before the Mailing Deadline, the Debtors (or their agent) serve by first-class mail, postage prepaid, or other method reasonably calculated to

provide notice, the Sale Notice, substantially in the form annexed hereto as Exhibit "B," upon (i) all other known creditors and (ii) all equity security holders of the Debtors of record as of May 27, 2009.

(c) On or before the Mailing Deadline, the Debtors (or their agent) serve by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a notice of the assumption and assignment of the Assumable Executory Contracts and the proposed cure amounts relating to the Assumable Executory Contracts (the "Assumption and Assignment Notice"), substantially in the form annexed hereto as Exhibit "C," upon the non-Debtor parties to the Assumable Executory Contracts.

(d) On or before the Mailing Deadline, the Debtors (or their agent) serve by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a notice of the 363 Transaction and the UAW Retiree Settlement, as well as a cover letter from the UAW describing the UAW Retiree Settlement Agreement and communicating the UAW's support of the 363 Transaction, including the UAW Retiree Settlement Agreement (collectively, the "UAW Retiree Notice"), substantially in the form annexed hereto as Exhibit "E," upon (i) the UAW, (ii) the attorneys for the UAW, and (iii) all of the UAW-Represented Retirees. On the Mailing Deadline or as soon as practicable thereafter, the Debtors will cause the MPA, the Motion, the Sale Procedures Order, the UAW Retiree Notice, and the UAW Retiree Settlement Agreement, including all exhibits thereto (other than those containing commercially sensitive information), to be published on the website of the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., at http:/www.gmcourtdocs.com, in an area dedicated to retiree-related information (this website disclosure and the UAW Retiree Notice, collectively the "UAW Special Retiree Notice").

(e) On the Mailing Deadline, or as soon as practicable thereafter, the Debtors shall cause the Publication Notice to be published (i) once in (a) the global edition of *The Wall Street Journal*, (b) the national edition of *The New York Times*, (c) the global edition of *The Financial Times*, (d) the national edition of *USA Today*, (e) *Detroit Free Press/Detroit News*, (f) *Le Journal de Montreal*, (g) *Montreal Gazette*, (h) *The Globe and Mail*, and (i) *The National Post*, and (ii) on the website of the Debtors' proposed claims and noticing agent, The Garden City Group, Inc., at http::/www.gmcourtdocs.com.

10. The following procedures (the "Assumption and Assignment Procedures") shall govern the assumption and assignment of the Assumable Executory Contracts in connection with the sale of the Purchased Assets to the Purchaser:[5]

Determination of Assumable Executory Contracts

- The Sellers shall maintain a schedule (the "Schedule") of Executory Contracts and Leases that the Purchaser has designated as Assumable Executory Contracts. From the date of the MPA until thirty (30) days after the Closing Date (or a later date if mutually agreed upon by the Sellers and the Purchaser) (the "Executory Contract Designation Deadline"), the Purchaser may (i) designate any additional Executory Contracts or Leases as Assumable Executory Contracts and add such Assumable Executory Contracts to the Schedule or (ii) remove any Assumable Executory Contract from the Schedule, in which case the Executory Contract or Lease shall cease to be an Assumable Executory Contract. The right of the Purchaser to add or remove Executory Contracts and Leases from the Schedule is subject to certain exceptions.[6]

- For each Assumable Executory Contract, the Purchaser must determine, prior to the Executory Contract Designation Deadline, the date on which it seeks to have the assumption and assignment become effective, which date may be the Closing or a later date (the "Proposed Assumption Effective Date").

- In addition to the Schedule, the Sellers shall maintain a secure website (the "Contract Website") that the non-Debtor counterparty to an Assumable Executory Contract can access to find current information about the status of its respective Executory Contract or Lease. The Contract Website contains, for each Assumable Executory Contract, (i) an identification of each Assumable Executory Contract that the Purchaser has designated for assumption and assignment and (ii) the Cure Amounts that must be paid to cure any prepetition defaults under such respective Assumable Executory Contract as of the Commencement Date. The information on the Contract Website shall be made available to the non-Debtor counterparty to the Assumable Executory Contract (the "Non-Debtor Counterparty"), but shall not otherwise be publicly available.

[5] If a party other than the Purchaser is the Successful Bidder, or if a transaction other than the 363 Transaction is consummated, then these Assumption and Assignment Procedures may be modified by further order of this Court.

[6] For example, if an Assumable Executory Contract has already been assumed and assigned, it cannot be removed from the Schedule.

Procedures for Providing Notice of Assumption and Assignment

- Following the designation of an Executory Contract or Lease as an Assumable Executory Contract, the Debtors shall provide notice (the "Assumption and Assignment Notice") to the Non-Debtor Counterparty to the Assumable Executory Contract, substantially in the form annexed hereto as Exhibit "D," setting forth (i) instructions for accessing the information on the Contract Website relating to such Non-Debtor Counterparty's Assumable Executory Contract and (ii) the procedures for objecting to the proposed assumption and assignment of the Assumable Executory Contract.

Procedures for Filing Objections to Assumption and Assignment and Cure Amounts

- Objections, if any, to the proposed assumption and assignment of the Assumable Executory Contracts (the "Contract Objections") must be made in writing, filed with the Court, and served on the Objection Deadline Parties (as defined below) so as to be received no later than ten (10) days after the date of the Assumption and Assignment Notice (the "Contract Objection Deadline") and must specifically identify in the objection the grounds therefor. The "Objection Deadline Parties" are (i) the Debtors, c/o General Motors Corporation, 30009 Van Dyke Avenue, Warren, Michigan 48090-9025 (Attn: Warren Command Center, Mailcode 480-206-114); (ii) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (iii) the U.S. Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (iv) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (v) the attorneys for the Creditors Committee; (vi) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); and (vii) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004.

- Unless a Contract Objection is filed and served before the Contract Objection Deadline, the Non-Debtor Counterparty shall be deemed to have consented to the assumption and assignment of its respective Assumable Executory Contract and the respective Cure Amount and shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts against the Sellers, their estates, or the Purchaser.

Procedures for Resolving Objections

- If a timely Contract Objection is filed solely as to the Cure Amount (a "Cure Objection"), then the Assumable Executory Contract shall nevertheless be assumed and assigned to the Purchaser on the Assumption Effective Date, the Purchaser shall pay the undisputed portion of the Cure Amount on or as soon as reasonably practicable after the Assumption Effective Date, and the disputed portion of the Cure Amount shall be determined as follows and paid as soon as reasonably practicable

following resolution of such disputed Cure Amount: To resolve the Cure Objection, the Debtors, the Purchaser, and the objecting Non-Debtor Counterparty may meet and confer in good faith to attempt to resolve any such objection without Court intervention. A call center has been established by the Debtors for this purpose. If the Debtors determine that the Cure Objection cannot be resolved without judicial intervention, then the Cure Amount will be determined as follows: (a) with respect to Assumable Executory Contracts pursuant to which the non-Debtor counterparty has agreed to an alternative dispute resolution procedure, then, according to such procedure; and (b) with respect to all other Assumable Executory Contracts, by the Court at the discretion of the Debtors either at the Sale Hearing or such other date as determined by the Court.

- If a timely Contract Objection is filed that objects to the assumption and assignment on a basis other than the Cure Amount, the Debtors, the Purchaser, and the objecting Non-Debtor Counterparty shall meet and confer in good faith to attempt to resolve any such objection without Court intervention. If the Debtors determine that the objection cannot be resolved without judicial intervention, then, at the discretion of the Sellers and the Purchaser, the objection shall be determined by the Court at the Sale Hearing or such other date as determined by the Court. If the Court determines at such hearing that the Assumable Executory Contract should not be assumed and assigned, then such Executory Contract or Lease shall no longer be considered an Assumable Executory Contract.

- If the Debtors, the Purchaser, and the non-Debtor Counterparty resolve any Contract Objection, they shall enter into a written stipulation (the "Assumption Resolution Stipulation"), which stipulation is not required to be filed with or approved by the Court.

Effective Date of Assumption

- All Assumable Executory Contracts will be assumed and assigned to the Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the Proposed Assumption Effective Date and (ii) the Assumption Resolution Date (as defined below). The "Assumption Resolution Date" shall be, (i) if no Contract Objection has been filed on or prior to the Contract Objection Deadline or the only Contract Objection that has been filed on or prior to the Contract Objection Deadline is a Cure Objection, the business day after the Contract Objection Deadline, or (ii) if a Contract Objection other than a Cure Objection has been filed on or prior to the Contract Objection Deadline, the date of the Assumption Resolution Stipulation or the date of a Court order authorizing the assumption and assignment to the Purchaser of the Assumable Executory Contract.

- Contingent upon the approval of the 363 Transaction and concurrently with the consummation of the 363 Transaction (without prejudice to the conditions set forth in the MPA), (i) the UAW Collective Bargaining Agreement shall be deemed to be an Assumable Executory Contract as to which the Assumption and Assignment Notice need not be sent and which will not be listed on the Schedule or the Contract Website (ii) the Debtors shall assume and assign the UAW Collective Bargaining Agreement

to the Purchaser as of the Closing Date, and each non-Debtor party to the UAW Collective Bargaining Agreement shall be deemed to have consented to such assumption and assignment.

11. Except as otherwise provided in paragraph 10 hereof with respect to Assumable Executory Contracts, in order to be considered, an objection to the 363 Transaction (or for UAW-Represented Retirees, the UAW Retiree Settlement Agreement), must be filed with the Court and served upon the following so as to be received by the Objection Deadline: (i) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (ii) the Debtors, c/o General Motors Corporation, 300 Renaissance Center, Detroit, Michigan 48265 (Attn: Lawrence S. Buonomo, Esq.); (iii) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (iv) the U.S. Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (v) Vedder Price, P.C., attorneys for EDC, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); (vi) the attorneys for the Creditors Committee; (vii) the UAW, 8000 East Jefferson Avenue, Detroit, Michigan 48214 (Attn: Daniel W. Sherrick, Esq.); (viii) Cleary Gottlieb Steen & Hamilton LLP, attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromley, Esq.); (xi) Cohen, Weiss and Simon LLP, attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (xii) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004; and (xiii) the U.S. Attorney's Office, S.D.N.Y., 86 Chambers Street, Third Floor, New York, New York 10007 (Attn: David S. Jones, Esq. and Matthew L. Schwartz, Esq.). Contract

Objections and Cure Objections must be filed and served in accordance with the procedure set forth in paragraph 10 herein.

12. The failure of any objecting person or entity to timely file its objection shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, to the consummation and performance of the 363 Transaction contemplated by the MPA or a Participation Agreement, if any (including the transfer free and clear of all liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability, of each of the Purchased Assets transferred as part of the 363 Transaction), the approval of the UAW Retiree Settlement Agreement, or the assumption and assignment of any Executory Contract or Lease.

13. The U.S. Trustee is directed to appoint a Consumer Privacy Ombudsman pursuant to sections 332 and 363(b)(1) of the Bankruptcy Code as soon as practicable.

14. Notwithstanding any possible applicability of Bankruptcy Rules 6004 or 6006, or otherwise, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry.

15. The Court shall retain jurisdiction over any matter or dispute arising from or relating to this Order.

Dated: New York, York
June ***2,*** 2009

S/ Robert E. Gerber
United States Bankruptcy Judge

EXHIBIT A

SALE PROCEDURES

SALE PROCEDURES

By motion dated June 1, 2009 (the "Motion"), General Motors Corporation ("GM") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"), sought, among other things, approval of the process and procedures through which it will determine the highest or otherwise best price for the purchase of substantially all the assets (the "Purchased Assets") of the Debtors (the "Sellers"). On June 2, 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered an order (the "Sale Procedures Order"), which, among other things, authorized the Debtors to determine the highest or otherwise best price for the Purchased Assets through the process and procedures set forth below (the "Sale Procedures").

On June 30, 2009, as further described below, in the Motion, and in the Sale Procedures Order, the Bankruptcy Court shall conduct a hearing (the "Sale Hearing"), at which the Debtors shall seek entry of an order (the "Sale Order") authorizing and approving the sale of the Purchased Assets (the "363 Transaction") pursuant to either (i) that certain Master Sale and Purchase Agreement (the "MPA") between the Sellers and Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury"), substantially in the form annexed as Exhibit "A" to the Motion, or (ii) a different Successful Bid (as defined below).

Participation Requirements

In order to participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in purchasing the Purchased Assets (a "Potential Bidder") must first deliver the following materials to the Debtors (with a copy to the Purchaser):

(i) An executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors; and

(ii) The most current audited and latest unaudited financial statements (collectively, the "Financials") of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of the 363 Transaction, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors, and (y) a written commitment acceptable to the Debtors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the 363 Transaction.

A "Qualified Bidder" is a Potential Bidder whose Financials (or the Financials of its equity holder(s), if applicable) demonstrate the financial capability to consummate the 363 Transaction, whose bid meets all of the Bid Requirements described below *and* that the Debtors, in their discretion but after consulting with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), and the statutory committee of unsecured creditors appointed in these chapter 11 cases (the "Creditors Committee") determine is likely to consummate the 363 Transaction, if selected as the Successful Bidder, after taking into account all relevant legal, regulatory, and business considerations. The Purchaser is a Qualified Bidder and is not required to make a Good Faith Deposit (as defined below).

Within two (2) business days after the Debtors and the Purchaser receive from a Potential Bidder all the materials required by subparagraphs (i) and (ii) above, the Debtors shall determine, in consultation with their advisors, the UAW, and the Creditors Committee, and shall notify the Purchaser and the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder.

Obtaining Due Diligence Access

To obtain due diligence access or additional information regarding the Purchased Assets or the Sellers, a Qualified Bidder (other than the Purchaser) must first provide the Debtors with a written nonbinding expression of interest (the "Expression of Interest") regarding (i) the Qualified Bidder's proposed 363 Transaction, (ii) the purchase price range, (iii) the structure and financing of the 363 Transaction, (iv) any conditions to closing that it may wish to impose, and (v) the nature and extent of additional due diligence it may wish to conduct. If the Debtors, in their business judgment, determine that a Qualified Bidder that has submitted an Expression of Interest is reasonably likely to make a bona fide offer that would result in greater value being received for the benefit of the Sellers' estates than under the MPA (a "Qualifying Expression of Interest"), then the Debtors shall afford such Qualified Bidder reasonable due diligence, including the ability to access information from a confidential electronic data room concerning the Purchased Assets (the "Data Room").

Neither the Debtors nor any of their affiliates (or any of their respective representatives) are obligated to furnish any information relating to the Sellers, the Purchased Assets, and/or the 363 Transaction to any person except to the Purchaser or another Qualified Bidder who makes a Qualifying Expression of Interest. The Debtors shall give the Purchaser any confidential memoranda (the "Confidential Memoranda") containing information and financial data with respect to the Purchased Assets and access to all due diligence information provided to any other Qualified Bidder.

The Debtors shall coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders. If the Debtors determine that due diligence material requested by a Qualified Bidder is reasonable and appropriate under the circumstances, but such material has not previously been provided to any other Qualified Bidder, the Debtors shall post such materials in the Data Room and provide notification of such posting by electronic transmission to the Qualified Bidders and not previously provided to the Purchaser.

Unless the Debtors determine otherwise, the availability of additional due diligence to a Qualified Bidder will cease after the Bid Deadline (as defined below).

Bid Deadline

The deadline for submitting bids by a Qualified Bidder shall be June 22, 2009, at 5:00 p.m. (Eastern Time) (the "Bid Deadline")

Prior to the Bid Deadline, a Qualified Bidder that desires to make a bid shall deliver (i) one written copy of its bid and (ii) two copies of the MPA that has been marked to show amendments and modifications to the MPA, including price and terms, that are being

proposed by the Qualified Bidder (a "Marked Agreement"), to (a) the Debtors, c/o General Motors Corporation, 300 Renaissance Center, Detroit, Michigan 48265 (Attn: Lawrence S. Buonomo, Esq.), (b) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (c) the U.S. Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (d) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (e) the attorneys for the Creditors Committee; (f) the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), 8000 East Jefferson Avenue, Detroit, Michigan 48214 (Attn: Daniel W. Sherrick, Esq.); (g) Cleary Gottlieb Steen & Hamilton LLP, the attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromely, Esq.); (h) Cohen, Weiss and Simon LLP, the attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (i) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.)

Due Diligence from Bidders

The Debtors and their advisors shall be entitled to due diligence from a Qualified Bidder, upon execution of a confidentiality agreement that is reasonably satisfactory to the Debtors. Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors. Failure of a Qualified Bidder to fully comply with requests for additional information and due diligence access will be a basis for the Debtors to determine that a bid made by the Qualified Bidder is not a Qualified Bid.

Bid Requirements

A bid must be a written irrevocable offer from a Qualified Bidder (i) stating that the Qualified Bidder offers to consummate a 363 Transaction pursuant to the Marked Agreement, (ii) confirming that the offer shall remain open until the closing of a 363 Transaction to the Successful Bidder (as defined below), (iii) enclosing a copy of the Marked Agreement, and (iv) including a certified or bank check, or wire transfer, in the amount of $500 million to be held in escrow as a good-faith deposit (the "Good Faith Deposit").

In addition to the foregoing requirements, a bid or bids must:

(a) provide that the Qualified Bidder (i) agrees to the assumption by the Debtors and assignment to such Qualified Bidder of any collective bargaining agreements entered into by and between the Debtors and the UAW with the exception of (a) the agreement to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW; and (b) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW, and (ii) will enter into the UAW Retiree Settlement Agreement;

(b) be on terms that are not materially more burdensome or conditional than the terms of the MPA;

(c) not be conditioned on obtaining financing or the outcome of unperformed due diligence by the bidder;

(d) not request or entitle the bidder to any breakup fee, expense reimbursement, or similar type of payment; and

(e) fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid, and the complete terms of any such participation.

A timely bid received from a Qualified Bidder and that meets the requirements set forth above (the "Bid Requirements") will be considered a Qualified Bid if the Debtors, in consultation with their advisors, the UAW, and the Creditors Committee, reasonably believe that such bid would be consummated if selected as the Successful Bid (as defined below). For all purposes hereof, the Purchaser's offer to acquire the Purchased Assets pursuant to the MPA shall constitute a Qualified Bid.

Acceptance of Qualified Bids

The Debtors shall present to the Bankruptcy Court at the Sale Hearing the Qualified Bid that the Debtors, in their business judgment, determine, in consultation with their advisors, the UAW, and the Creditors Committee, would provide the highest or best offer for the Purchased Assets and is in the best interests of the Debtors and their estates in the Debtors' chapter 11 cases (the "Successful Bid," and the bidder with respect thereto, the "Successful Bidder"). At the Sale Hearing, certain findings will be sought from the Bankruptcy Court, including that (i) the Successful Bidder was selected in accordance with these Bidding Procedures, and (ii) consummation of the 363 Transaction as contemplated by the Successful Bid will provide the highest or otherwise best value for the Purchased Assets and is in the best interests of the Sellers and their estates in these chapter 11 cases.

In the event that, for any reason, the Successful Bidder fails to close the 363 Transaction contemplated by its Successful Bid, then, without notice to any other party or further Bankruptcy Court order, the Debtors shall be authorized to close with the Qualified Bidder that submitted the bid that the Debtors in their business judgment determined, in consultation with their advisors, the UAW, and the Creditors Committee, would provide the next highest or otherwise best value for the Purchased Assets and is otherwise in the best interests of the Debtors after the Successful Bid (the "Next Highest Bidder").

Return of Good Faith Deposit

Except as otherwise provided in this paragraph with respect to the Successful Bidder and the Next Highest Bidder, the Good Faith Deposits of all Qualified Bidders required to submit such a deposit under the Bidding Procedures shall be returned upon or within one (1) business day after entry of the Sale Order. The Good Faith Deposit of the Successful Bidder required to submit such a deposit under the Bidding Procedures shall be held until the closing of

the 363 Transaction and applied in accordance with the Successful Bid. The Good Faith Deposit of the Next Highest Bidder shall be retained in escrow until 48 hours after the closing of the 363 Transaction. Pending the closing of the 363 Transaction, the Good Faith Deposit of the Successful Bidder and the Next Highest Bidder shall be maintained in an interest-bearing escrow account. If the closing does not occur, the disposition of Good Faith Deposits shall be as provided in the Successful Bid and Next Highest Bid, as applicable.

EXHIBIT B

FORM OF SALE NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

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

PLEASE TAKE NOTICE THAT upon the motion (the "Motion"), of General Motors Corporation ("GM") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"), dated June 1, 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an order dated June 2, 2009 (the "Sale Procedures Order"), among other things, (i) scheduling a hearing (the "Sale Hearing") to approve (a) the Master Sale and Purchase Agreement, dated as of June 1, 2009 (the "MPA"), by and among GM and its Debtor subsidiaries (collectively, the "Sellers") and Vehicle Acquisition Holdings LLC. (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury"), with respect to the sale of substantially all the Debtors' assets (the "Purchased Assets") free and clear of all liens, claims, encumbrances, and other interests, and subject to higher or better offers (the "363 Transaction"); (b) the assumption, assignment, and sale to the Purchaser pursuant to the MPA of certain executory contracts and unexpired leases of personal property and nonresidential real property (the "Assumable Executory Contracts"); and (c) the settlement agreement (the "UAW Retiree Settlement Agreement"), between the Purchaser and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"); (ii) approving certain procedures for the submission and acceptance of any competing bids (the "Sale Procedures"); (iii) approving a procedure for the assumption, assignment, and sale to the Purchaser pursuant to the MPA of the Assumable Executory Contracts; (iv) approving the form and manner of notice of the Motion and the relief requested therein and of the Sale Hearing; and (v) setting a deadline for the filing of objections, if any, to the relief requested in the Motion.

A. THE MASTER SALE AND PURCHASE AGREEMENT

The total consideration under the MPA for the sale of the Purchased Assets is equal to the sum of (i) a credit bid in the amount of the outstanding indebtedness owed to the Purchaser as of the closing pursuant to certain secured loans extended by the U.S. Treasury and Export Development Canada, less approximately $8 billion (estimated to be approximately $48.3 billion at July 31, 2009); (ii) the surrender of a warrant to purchase GM shares previously issued to the U.S. Treasury in connection with the secured loans extended by the U.S. Treasury; (iii) the

issuance to GM of shares of common stock of the Purchaser representing approximately 10% of the common stock of the Purchaser as of the closing of the sale; (iv) the issuance to GM of warrants to purchase up to 15% of the shares of common stock of the Purchaser on a fully diluted basis, with one half exercisable at any time prior to the seventh anniversary of issuance at an initial exercise price based on a $15 billion equity value of the Purchaser and the other half exercisable at any time prior to the tenth anniversary of issuance at an initial exercise price based on a $30 billion equity value of the Purchaser (GM can elect partial and cashless exercises of the warrants); and (v) the assumption by the Purchaser of certain assumed liabilities, all as set forth more fully in the MPA, a copy of which is annexed to the Motion as Exhibit "A." In addition, if the aggregate amount of allowed general unsecured claims against the Debtors exceeds $35 billion, as estimated by an order of the Bankruptcy Court (which the Debtors may seek at any time), GM will receive an additional 2% of the common stock of the Purchaser as of the closing of the sale.

B. THE SALE HEARING

The Sale Hearing will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Courtroom 621 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, on June 30, 2009, at 9:45 a.m. (Eastern Time). The Sale Hearing may be adjourned without notice by an announcement of the adjourned date at the Sale Hearing.

RESPONSES OR OBJECTIONS, IF ANY, TO THE RELIEF SOUGHT IN THE MOTION SHALL BE FILED with the Clerk of the Bankruptcy Court and served upon: (a) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (b) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (c) the attorneys for the Creditors Committee; (d) Cleary Gottlieb Steen & Hamilton LLP, the attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromley, Esq.); (e) Cohen, Weiss and Simon LLP, the attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (f) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); (g) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004; and (h) the U.S. Attorney's Office, S.D.N.Y., 86 Chambers Street, Third Floor, New York, New York 10007 (Attn: David S. Jones, Esq. and Matthew L. Schwartz, Esq.), **SO AS TO BE RECEIVED NO LATER THAN JUNE 19, 2009, AT 5:00 P.M. (EASTERN TIME) (the "Objection Deadline**").

The failure of any person or entity to file a response or objection on or before the Objection Deadline shall be deemed a consent to the 363 Transaction and the other relief requested in the Motion, and shall bar the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Procedures, the Motion, the 363 Transaction, the approval of the UAW Retiree Settlement Agreement, and the Debtors' consummation of the 363 Transaction.

C. COPIES OF THE MOTION AND SALE PROCEDURES ORDER

This Notice provides only a partial summary of the relief sought in the Motion and the terms of the Sale Procedures Order. Copies of the Motion, the MPA (excluding certain commercially sensitive information), and Sale Procedures Order are available for inspection (i) by accessing (a) the website of the Bankruptcy Court at http://www.nysb.uscourts.gov, or (b) the website of the Debtors' claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com or (ii) by visiting the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408. Copies also may be obtained by faxing a written request to the attorneys for the Debtors, Weil, Gotshal & Manges LLP (Attn: Russell Brooks, Esq.) at 212-310-8007.

Dated: New York, New York
June 2, 2009

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

EXHIBIT C

FORM OF PUBLICATION NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

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

PLEASE TAKE NOTICE THAT upon the motion (the "Motion"), of General Motors Corporation ("GM") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"), dated June 1, 2009, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an order dated June 2, 2009 (the "Sale Procedures Order"), among other things, (i) scheduling a hearing (the "Sale Hearing") to approve (a) the Master Sale and Purchase Agreement, dated as of June 1, 2009 (the "MPA"), by and among GM and its Debtor subsidiaries (collectively, the "Sellers") and Vehicle Acquisition Holdings LLC. (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury"), with respect to the sale of substantially all the Debtors' assets (the "Purchased Assets") free and clear of all liens, claims, encumbrances, and other interests, and subject to higher or better offers (the "363 Transaction"); (b) the assumption, assignment, and sale to the Purchaser pursuant to the MPA of certain executory contracts and unexpired leases of personal property and nonresidential real property (the "Assumable Executory Contracts"); and (c) the settlement agreement (the "UAW Retiree Settlement Agreement"), between the Purchaser and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"); (ii) approving certain procedures for the submission and acceptance of any competing bids (the "Sale Procedures"); (iii) approving a procedure for the assumption, assignment, and sale to the Purchaser pursuant to the MPA of the Assumable Executory Contracts; (iv) approving the form and manner of notice of the Motion and the relief requested therein and of the Sale Hearing; and (v) setting a deadline for the filing of objections, if any, to the relief requested in the Motion.

A. THE MASTER SALE AND PURCHASE AGREEMENT

The total consideration under the MPA for the sale of the Purchased Assets is equal to the sum of (i) a credit bid in the amount of the outstanding indebtedness owed to the Purchaser as of the closing pursuant to certain secured loans extended by the U.S. Treasury and Export Development Canada, less approximately $8 billion (estimated to be approximately $48.3 billion at July 31, 2009); (ii) the surrender of a warrant to purchase GM shares previously issued to the U.S. Treasury in connection with the secured loans extended by the U.S. Treasury; (iii) the

issuance to GM of shares of common stock of the Purchaser representing approximately 10% of the common stock of the Purchaser as of the closing of the sale; (iv) the issuance to GM of warrants to purchase up to 15% of the shares of common stock of the Purchaser on a fully diluted basis, with one half exercisable at any time prior to the seventh anniversary of issuance at an initial exercise price based on a $15 billion equity value of the Purchaser and the other half exercisable at any time prior to the tenth anniversary of issuance at an initial exercise price based on a $30 billion equity value of the Purchaser (GM can elect partial and cashless exercises of the warrants); and (v) the assumption by the Purchaser of certain assumed liabilities, all as set forth more fully in the MPA, a copy of which is annexed to the Motion as Exhibit "A." In addition, if the aggregate amount of allowed general unsecured claims against the Debtors exceeds $35 billion, as estimated by an order of the Bankruptcy Court (which the Debtors may seek at any time), GM will receive an additional 2% of the common stock of the Purchaser as of the closing of the sale.

B. THE SALE HEARING

The Sale Hearing will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Courtroom 621 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, on June 30, 2009, at 9:45 a.m. (Eastern Time). The Sale Hearing may be adjourned without notice by an announcement of the adjourned date at the Sale Hearing.

RESPONSES OR OBJECTIONS, IF ANY, TO THE RELIEF SOUGHT IN THE MOTION SHALL BE FILED with the Clerk of the Bankruptcy Court and served upon: (a) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (b) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (c) the attorneys for the Creditors Committee; (d) Cleary Gottlieb Steen & Hamilton LLP, the attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromley, Esq.); (e) Cohen, Weiss and Simon LLP, the attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (f) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); (g) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004; and (h) the U.S. Attorney's Office, S.D.N.Y., 86 Chambers Street, Third Floor, New York, New York 10007 (Attn: David S. Jones, Esq. and Matthew L. Schwartz, Esq.), **SO AS TO BE RECEIVED NO LATER THAN JUNE 19, 2009, AT 5:00 P.M. (EASTERN TIME) (the "Objection Deadline**").

The failure of any person or entity to file a response or objection on or before the Objection Deadline shall be deemed a consent to the 363 Transaction and the other relief requested in the Motion, and shall bar the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Procedures, the Motion, the 363 Transaction, the approval of the UAW Retiree Settlement Agreement, and the Debtors' consummation of the 363 Transaction.

C. COPIES OF THE MOTION AND SALE PROCEDURES ORDER

This Notice provides only a partial summary of the relief sought in the Motion and the terms of the Sale Procedures Order. Copies of the Motion, the MPA (excluding certain commercially sensitive information), and Sale Procedures Order are available for inspection (i) by accessing (a) the website of the Bankruptcy Court at http://www.nysb.uscourts.gov, or (b) the website of the Debtors' claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com or (ii) by visiting the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408. Copies also may be obtained by faxing a written request to the attorneys for the Debtors, Weil, Gotshal & Manges LLP (Attn: Russell Brooks, Esq.) at 212-310-8007.

BY ORDER OF THE COURT

Dated: New York, New York
June 2, 2009

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

EXHIBIT D

FORM OF ASSUMPTION AND ASSIGNMENT NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

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

PLEASE TAKE NOTICE THAT:

1. By motion dated June 1, 2009 (the "Motion"), General Motors Corporation ("GM") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"),[1] sought, among other things, authorization and approval of (a) the sale of substantially all the Debtors' assets pursuant to that certain Master Sale and Purchase Agreement and related agreements (the "MPA") among the Debtors (the "Sellers") and Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury") (the "363 Transaction"), free and clear of liens, claims, encumbrances, and interests, (b) certain proposed procedures to govern the sale process and provide for the submission of any competing bids for substantially all the Debtors' assets (the "Sale Procedures"), (c) the assumption and assignment of certain executory contracts (the "Contracts") and unexpired leases of personal property and of nonresidential real property (collectively, the "Leases") in connection with the 363 Transaction, (d) that certain settlement agreement between the Purchaser and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") to be executed at the closing of the 363 Transaction (the "UAW Retiree Settlement Agreement"), and (e) scheduling a final hearing for approval of the 363 Transaction (the "Sale Hearing").[2]

[1] The Debtors and their respective Tax ID numbers are as follows: General Motors Corporation, Tax ID No. 38-0572515; Saturn, LLC, Tax ID No. 38-2577506; Saturn Distribution Corporation, Tax ID No. 38-2755764; and Chevrolet-Saturn of Harlem, Inc., Tax ID No. 20-1426707.

[2] Copies of the Motion and the MPA (without certain commercially sensitive attachments) may be obtained by accessing the website established by the Debtors' claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com.

2. The MPA, which, together with certain ancillary agreements, contemplates a set of related transactions for the sale of substantially all the Debtors' assets, defined as the "Purchased Assets" in Section 2.2(a) of the MPA, including certain Contracts and Leases, subject to higher or better offers.

3. The MPA contemplates, and the proposed order approving the Motion (the "Sale Order"), if approved, shall authorize the assumption and assignment to the Purchaser of certain Contracts and Leases pursuant to section 365 of title 11, United States Code (the "Bankruptcy Code"). The Sellers maintain a schedule containing Contracts and Leases that the Debtors may assume and assign to the Purchaser (collectively, the "Assumable Executory Contracts"). You are receiving this Notice because you are a party to one or more of the Assumable Executory Contracts.

4. **THE SCHEDULE CONTAINS A LIST OF ASSUMABLE EXECUTORY CONTRACTS THAT MAY BE ASSUMED. THE PURCHASER RESERVES THE RIGHT UNDER THE MPA TO EXCLUDE ANY ASSUMABLE EXECUTORY CONTRACT FROM THE LIST OF ASSUMABLE EXECUTORY CONTRACTS TO BE ASSUMED AND ASSIGNED BY NO LATER THAN THE DESIGNATION DEADLINE DISCUSSED IN PARAGRAPH 10 BELOW.**

5. The Debtors maintain a secure website which contains information about your Assumable Executory Contracts, including amounts that the Debtors believe must be paid to cure all prepetition defaults under the respective contracts as of the Commencement Date in accordance with section 365(b) of the Bankruptcy Code (the "Cure Amounts"). In order to view the Cure Amount for the Assumable Executory Contract to which you are a party, you must log onto http://www.contractnotices.com (the "Contract Website"). To log on, please use the user name and password provided to you with this notice. The username and password will enable you to access the Cure Amount for the particular Assumable Executory Contract to which you are a party.

6. Please review the Cure Amount for your Assumable Executory Contract. In some instances, additional terms or conditions of assumption and assignment with respect to a particular Assumable Executory Contract is provided on the Contract Website.

7. Objections, if any, to the proposed assumption and assignment of the Assumable Executory Contracts (the "Contract Objections"), including objections to the Cure Amount, must be made in writing and filed with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") so as to be received **no later than ten (10) days after the date of this Notice** (the "Objection Deadline") by (i) the Debtors, c/o General Motors Corporation, Cadillac Building, 30009 Van Dyke Avenue, Warren, Michigan 48090-9025 (Attn: Warren Command Center, Mailcode 480-206-114); (ii) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (iii) the U.S. Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (iv) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (v) the attorneys for the Creditors Committee; (vi) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael

J. Edelman, Esq. and Michael L. Schein, Esq.); and (vii) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004.

8. If a timely Contract Objection is filed solely as to the Cure Amount (a "Cure Objection"), then the Assumable Executory Contract shall nevertheless be assumed and assigned to the Purchaser on the Assumption Effective Date (as hereinafter defined), the Purchaser shall pay the undisputed portion of the Cure Amount on or as soon as reasonably practicable after the Assumption Effective Date, and the disputed portion of the Cure Amount shall be determined as follows and paid as soon as reasonably practicable following resolution of such disputed Cure Amount: To resolve the Cure Objection, the Debtors, the Purchaser, and the objecting non-Debtor counterparty to the Assumable Executory Contract (the "Non-Debtor Counterparty") may meet and confer in good faith to attempt to resolve any such objection without Court intervention. The Call Center (as defined in paragraph 19) has been established by the Debtors for this purpose. If the Debtors determine that the Cure Objection cannot be resolved without judicial intervention, then the Cure Amount will be determined as follows: (a) with respect to Assumable Executory Contracts pursuant to which the non-Debtor counterparty has agreed to an alternative dispute resolution procedure, then, according to such procedure; and (b) with respect to all other Assumable Executory Contracts, by the Court at the discretion of the Debtors either at the Sale Hearing or such other date as determined by the Court.

9. If a timely Contract Objection is filed that objects to the assumption and assignment on a basis other than the Cure Amount, the Debtors, the Purchaser, and the objecting Non-Debtor Counterparty shall meet and confer in good faith to attempt to resolve any such objection without Court intervention. If the Debtors determine that the objection cannot be resolved without judicial intervention, then, at the discretion of the Sellers and the Purchaser, the objection shall be determined by the Court at the Sale Hearing or such other date as determined by the Court. If the Court determines at such hearing that the Assumable Executory Contract should not be assumed and assigned, then such Executory Contract or Lease shall no longer be considered an Assumable Executory Contract.

10. If the Debtors, the Purchaser, and the Non-Debtor Counterparty resolve any Contract Objection, they shall enter into a written stipulation (the "Assumption Resolution Stipulation"), which stipulation is not required to be filed with or approved by the Court.

11. If you agree with the respective Cure Amount(s) listed in the Contract Website with respect to your Assumable Executory Contract(s), and otherwise do not object to the Debtors' assumption and assignment of your Assumable Executory Contract, you are not required to take any further action.

12. Unless an Objection is filed and served before the Objection Deadline, you shall be deemed to have consented to the assumption and assignment of your Assumable Executory Contract and the Cure Amount(s) for your Assumable Executory Contract(s), and you shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts against the Debtors, their estates, or the Purchaser.

13. Up to the date that is thirty (30) days following the closing of the 363 Transaction, or if such date is not a Business Day (as defined in the MPA), the next Business

Day, or such other later date as mutually agreed upon by the Purchaser and the Debtors (the "Designation Deadline"), the Purchaser may, in its sole discretion, subject to certain limitations specified in the MPA (applicable only as between the parties thereto), exclude any of the Assumable Executory Contracts by providing notice on the Contract Website. Upon such designation, the Contract or Lease referenced therein shall no longer be considered a Assumable Executory Contract, shall not be deemed to be, or to have been, assumed or assigned, and shall remain subject to assumption, rejection, or assignment by the Debtors. Until the Designation Deadline, the Purchaser also may, subject to certain limitations specified in the MPA (applicable only as between the parties thereto) designate additional Contracts or Leases as Assumable Executory Contracts to be assumed and assigned by providing notice to the affected Non-Debtor Counterparties. The Contract Website shall be updated from time to time to reflect the then current status of your contract as well as the proposed effective date (the "Proposed Assumption Effective Date"), if any, of the assumption and assignment of particular contracts.
'

14. The Debtors' decision to assume and assign the Assumable Executory Contracts is subject to Bankruptcy Court approval and consummation of the 363 Transaction, and, absent such consummation, each of the Assumable Executory Contracts will not be assumed or assigned to the Purchaser and shall in all respects be subject to further administration under the Bankruptcy Code. All Assumable Executory Contracts will be assumed and assigned to the Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the Proposed Assumption Effective Date and (ii) the date following expiration of the Objection Deadline if no Contract Objection, other than to the Cure Amount, has been timely filed, or, if a Contract Objection, other than to the Cure Amount, has been filed the date of the Assumption Resolution Stipulation or the date of a Bankruptcy Court order authorizing the assumption and assignment to the Purchaser of the Assumable Executory Contract. Until the Assumption Effective Date, assumption and assignment thereof is subject to the Purchaser's rights to modify the designation of Assumable Executory Contracts as set forth in paragraph 13 above. Except as otherwise provided by the MPA, the Purchaser shall have no rights in and to a particular Assumable Executory Contract the Assumption Effective Date.

15. The inclusion of any document on the list of Assumable Executory Contracts shall not constitute or deemed to be a determination or admission by the Debtors or the Purchaser that such document is, in fact, an executory contract or Lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are expressly reserved.

16. Any Contract Objection shall not constitute an objection to the relief generally requested in the Motion (e.g., the sale of the Purchased Assets by the Debtors to the Purchaser free and clear of liens, claims, encumbrances, and interests), and parties wishing to object to the relief generally requested in the Motion must file and serve a separate objection in accordance with the procedures approved and set forth in the order of the Bankruptcy Court approving the Sale Procedures.

17. If a party other than the Purchaser is determined to be the highest and best bidder for the assets to be sold pursuant to the 363 Transaction, you will receive a separate notice providing additional information regarding the treatment of your contract(s) or Lease(s); *provided, however*, that if the applicable Cure Amount has been established pursuant to the procedures set forth in this Notice, it shall not be subject to further dispute if the new purchaser seeks to acquire such contract or Lease.

18. This Notice is subject to the full terms and conditions of the Motion, the order of the Bankruptcy Court approving the Sale Procedures, and the Assumption and Assignment Procedures set forth in the order approving the Sale Procedures, which shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

19. If you have questions about the Assumable Executory Contracts or proposed Cure Amounts, you may call 1-888-409-2329 (in the United States) or 1-586-947-3000 (outside the United States) (the "Call Center").

Dated: New York, New York
June 2, 2009

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

EXHIBIT E

FORM OF UAW RETIREE NOTICE

A Message to UAW GM Retirees

Dear Brothers and Sisters,

As we all know, GM is engulfed in a severe crisis. GM's staggering losses during 2008 and 2009 have forced the company to file for bankruptcy. The Company has also been forced to rely on loans from the federal government in order to maintain its operations. In this environment, we are fighting every day to preserve and protect to the greatest extent possible our hard-won gains, particularly for the retirees, and surviving spouses of retirees, who helped build this industry with your years of loyal service.

Last December, after a lengthy process that included congressional hearings and petitioning the White House, the federal government granted GM a short-term emergency operating loan in order to avoid an immediate liquidation of the company at that time. As part of that loan, GM was required to submit a restructuring plan to the Treasury Department by February 17, 2009. On March 30, President Obama announced that the company's February 17 plan didn't go far enough in reducing costs and laying the groundwork for sustainability. He said GM would have to identify additional cost savings and debt reductions if GM were to receive additional financial support. The Treasury Department's auto task force also required deeper concessions from UAW members, retirees and other company stakeholders.

On May 28, GM announced that the Treasury Department would provide additional financial support in connection with a court-supervised restructuring of GM, in accordance with the terms of a broad restructuring agreement worked out between Treasury, GM, the UAW and representatives of GM's bondholders.

The agreement under which the Treasury Department will extend this new financial support includes a new schedule of contributions to the trust fund that will provide retiree medical benefits beginning in 2010. It also includes modifications to the collective bargaining agreement for active employees. The UAW active workforce ratified that agreement May 29. Based on these agreements, the United States government will provide a total of over $50 billion in financial support to allow GM to complete its restructuring.

GM's recent bankruptcy filing is part of the agreement reached with the Treasury Department. The goal of the bankruptcy filing is to allow for swift court approval of the restructuring so that the company can move forward to implement the agreements between the parties.

Proposed Sale

To complete the restructuring, a new company will be formed which will purchase the operating assets of GM. If approved by the Bankruptcy Court, the new company will enter into the agreements with the UAW covering both active and retired workers. The initial ownership of the new corporation will be allocated as follows:

- 72.5% -- United States and Canadian Governments
- 17.5% -- UAW Retiree Benefits Trust Fund

- 10% -- Bondholders

As part of the approval of the proposed sale, the Bankruptcy Court will also be asked to approve the new UAW Retiree Settlement Agreement, summarized below. As described more fully in Paragraph 6 of the attached document, if the court approves both the sale and the UAW Retiree Settlement Agreement, responsibility for providing retiree benefits for the duration of 2009, and for making the contributions to the VEBA, will shift to the new company (which will then own GM's operating assets).

Attached to this letter is a formal notice from the Bankruptcy Court regarding the proposed sale. As described in that notice, the Bankruptcy Court will soon hold a hearing to consider the proposed sale and the UAW Retiree Settlement Agreement.

Pension Plan Continues Without Change

The restructuring agreements provide that the new company will take over responsibility for the GM UAW pension plan. That plan will continue operations and pension benefits will be continued at their current level.

Retiree Medical Benefits

Retiree medical benefits were one of the most significant issues addressed in 2007 bargaining. The 2007 National UAW-GM Agreement established a new Trust Fund (called a "Voluntary Employees' Beneficiary Association" or "VEBA"), which is responsible for retiree medical benefits starting on January 1, 2010. The 2007 Agreement established a series of cash contributions by the Company to the VEBA, beginning on January 1, 2010.

In order for GM to receive the necessary government support -- which will allow the company to complete its restructuring and continue operations into the future -- we were required to support a series of changes to the retiree medical and VEBA agreements.

In this difficult situation, we were able to preserve the core medical benefits for retirees. These were hard fought issues and the changes described below are certainly painful. But if we had not agreed to support these changes, the U.S. Treasury would not have provided the additional support to GM. Without this critical government support, GM's near term future would be in serious peril and GM would face almost certain liquidation.

The following summarizes the principal features of the proposed agreement.

Existing Internal VEBA Assets Transferred in January 2010. Along with the new payment structure described below, in January 2010 the VEBA will receive the assets of an internal trust fund maintained at GM (called the "Internal VEBA"). The value of the assets in that fund is currently approximately $10 billion. GM had sought to use these assets to cover the cost of benefits prior to the January 1, 2010 implementation, which would have depleted these assets and diminished the cash balance in the new VEBA. We successfully resisted these efforts and

the new VEBA will therefore receive the full value of these Internal VEBA assets on January 1, 2010 as outlined in the 2007 agreement.

The assets in the Internal VEBA have been invested by GM on the VEBA's behalf since January 1, 2008. The value of these assets has been negatively impacted by conditions in the investment market during 2008 and so far in 2009. These assets will continue to be invested during the balance of 2009 and will be transferred to the new VEBA on January 1, 2010.

New $2.5 Billion Note. Under the new funding structure, the VEBA will receive a new Note, payable in cash, with a principal amount of $2.5 billion. Cash payments under the new Note (including accrued interest) will be $1.384 billion payable in each of 2013, 2015 and 2017.

New $6.5 Billion in Preferred Stock. The VEBA will also receive Preferred Stock in the new company with a face value of $6.5 billion. This Preferred Stock includes a 9% cash dividend payment structure, under which $585 million is payable annually for as long as the VEBA holds this stock. This dividend payment must be made before the new company can pay any dividends to the holders of its common stock. If the company delays payment of the dividends on the Preferred Stock, it will not be allowed to pay dividends to its common shareholders until it becomes current on the VEBA's Preferred Stock dividend obligations. While this preference over the common shareholders makes it likely the new company will consistently pay the preferred dividend, there is a risk that market conditions or other factors beyond the control of the UAW may result in the company delaying these preferred dividends for some period of time.

VEBA to own Significant GM Common Stock. Another requirement of the Treasury Department loans was that a portion of the value received by the VEBA be in the form of common stock. To meet that requirement, the VEBA will receive an initial allocation of 17.5% of the stock in the new company. The United States and Canadian Governments will receive 72.5% of the initial stock, and bondholders will receive 10%.

The VEBA will also have the right to designate a member of GM's Board of Directors, with UAW consent. The VEBA will be required to vote its GM shares in the same proportion as the votes of other shareholders.

The overall restructuring of GM will eliminate a tremendous portion of GM's other debt obligations. With a greatly improved balance sheet, as well as significant restructuring of business operations, there is a realistic prospect that the stock in the new company will represent significant value in the future. If and when that occurs, a significant portion of that value will be captured by the VEBA through this stock ownership.

Warrants. In addition to the direct ownership of the Preferred and Common Stock described above, the new VEBA will also receive a Warrant, which represents the right to an additional 2.5% of the Common Stock of the new company, with a strike price determined by an aggregate $75 billion equity value for the new company. This will allow the VEBA to realize additional value if the total value of the stock of the new company exceeds that value at any point prior to expiration of the new Warrant.

The new VEBA agreement includes mechanisms for the VEBA to sell the Common and Preferred Stock, as well as the new Warrants, to other parties under certain conditions.

Pension Pass Through Eliminated. One funding mechanism under the 2007 Agreement was called the "Pension Pass Through." Under that arrangement, the new VEBA was scheduled to impose an additional monthly contribution requirement, and the GM pension benefits were to increase by a corresponding amount. This mechanism has been eliminated and its value is instead reflected in the new Note and other instruments described above.

Mitigation VEBA Assets Transferred. Under the existing agreements, an independent VEBA is currently providing dental benefits and certain "mitigation" payments (i.e. covering a significant portion of the co-pays, deductibles and contributions that retirees would otherwise be required to pay under the 2005 agreement). Under the 2007 Agreement and the proposed new agreement, the assets in this existing independent VEBA (called the "Mitigation VEBA") will be transferred into the new VEBA on January 1, 2010. It is expected that the assets in the Mitigation VEBA will be approximately $700 million on January 1, 2010 but the actual balance will depend on investment performance and other factors during the balance of 2009. As explained below, the dental benefits currently provided by the Mitigation VEBA will be eliminated in accordance with the proposed new agreement.

VEBA Committee can adjust benefits beginning in 2010. As under the 2007 Agreement, the VEBA will be governed by an 11-member Committee, including 5 members appointed by the UAW and 6 Independent Members. Under the 2007 Agreement, that Committee had the authority, starting on January 1, 2012, to adjust benefits so that benefit levels can be kept consistent with the assets in the Trust. Under the proposed agreement, the Committee will be allowed to make necessary benefit adjustments beginning when the VEBA assumes responsibility on January 1, 2010.

Immediate Changes in Benefit Levels Required

Under the 2007 Agreement, GM remained responsible for providing retiree medical benefits through the end of 2009, with the new VEBA taking over responsibility on January 1, 2010. In the discussions over the last several weeks, the company sought an "early implementation" of this transition. Had we agreed to that approach, the assets of the VEBA would have been depleted to pay benefits for the remainder of 2009.

We succeeded in avoiding this depletion of the VEBA's assets during 2009. The new company will therefore continue to provide retiree medical benefits for the balance of 2009 until the new VEBA takes over responsibility. In exchange, however, the Treasury Department insisted that the benefits be immediately reduced to reflect GM's difficult financial situation. In order to maintain the support of the Government, therefore, we were required to agree to the following changes in benefits. These changes will be effective on July 1, 2009 (or later if court approval is delayed beyond that date).

Prescription Drug Co-Pays	Retail (34 day supply) • $10 Generic • $25 Brand Mail Order (90 day supply)

	• $20 Generic • $50 Brand
Catastrophic Plan for retirees and surviving spouses who fail to pay required monthly contributions	No longer offered. Retirees and surviving spouses currently in Catastrophic Plan will be given opportunity to join regular plan.
Coverage for Erectile Dysfunction (ED) medications (e.g. Viagra, Cialis, Levitra)	No longer offered, except in prior authorized cases of Pulmonary Arterial Hypertension
Coverage for the Proton Pump Inhibitor drug class (e.g. omeprazole, Prilosec, Zegerid, Nexium, Achiphex, Prevacid, Protonix)	No longer offered, except in prior authorized cases of Barrett's Esophagitis and Zoellinger-Ellison Syndrome
Vision Program	No longer offered
Dental Program	No longer offered
Emergency Room Co-Pay	$100 (waived if admitted)
Medicare Part B Special Benefit ($76.20 per month for retirees enrolled in Medicare)	No longer offered by health plan. This modification is not applicable to approximately 24,800 retirees and surviving spouses who retired or began receiving surviving spouse benefits before October 1979, and whose benefit is provided through the pension trust. The payments will continue for these pre-1979 retirees and surviving spouses.
"Low Income Retirees" (less than $8,000 annual pension and monthly basic benefit rate of less than $33.33)	Monthly contribution requirement of $11 (flat rate regardless of family status) In all other respects, these retirees and surviving spouses will be included in same plan as other retirees and surviving spouses.
Monthly Contribution Requirements (General Retirees)	No Change (currently $11/single and $23/ family)
Deductible and Co-Pay Requirements (General Retirees)	No Change (currently $164 annual deductible and $273 annual (single) out-of-pocket maximum)
Sponsored Dependents and Principally Supported Children	Consistent with changes made to the active medical program, the retiree medical program will not allow the designation of new "sponsored dependents" or "principally supported children." The provisions allowing new dependents to be added as a result of adoption or legal guardianship will continue in effect.

The Future Outlook

In the early years of the VEBA's existence, it is unlikely that the VEBA will be able to sell the stock in the new company. The new VEBA will therefore be required to use the $10 billion in immediate contributions from the Internal VEBA at GM, along with the assets of the Mitigation VEBA and the $585 million annual cash dividend payment on the Preferred Stock, to provide retiree medical benefits during 2010 and 2011. Because of the uncertainty regarding the long-term value of the stock, the Committee will likely be required to make further adjustments in the benefit levels for 2010 and 2011. The extent of those future adjustments will depend on many factors, including investment returns in the Internal and Mitigation VEBA's during the remaining months of 2009, and whether the dividends on the new $6.5 billion in Preferred Stock are delayed.

If the stock can be sold in 2012 or thereafter for significant value, the Committee will be able to take that new value into account and restore some or all of the benefits that are being reduced under these arrangements. In other words, if the current restructuring efforts are successful and the company returns to viability, the UAW retirees stand to reap the benefit of that recovery through the VEBA's significant stock ownership.

We urge your support for these proposed agreements. In these difficult circumstances, we believe they provide the best possible protection for your retiree benefits.

In solidarity,

Ron Gettelfinger	Cal Rapson**,** *Vice President*	Bill Payne
UAW President	*and Director, UAW GM Department*	*Counsel to the Class*

Important Notes

For further information about the proposed agreement and the process for court review of the proposed agreements and the proposed sale, please refer to the enclosed legal notice. Full and complete copies of the proposed retiree health agreement can be found on the website referred to in that notice.

If you support the proposed agreement, you do not need to take any action at this time. Information about the modified medical plan will be sent to you following court approval. If you wish to object to the proposed agreements, you must file a written objection as described in the enclosed legal notice.

Counsel to the Class Representatives participated in negotiation of the 2007 retiree medical agreements which were approved by the District Court for the Eastern District of Michigan on July 31, 2008. Although the Class Representatives are not formal parties to the new agreements described above, Counsel to the Class Representatives has reviewed the proposed agreements and is in full support of the efforts to obtain Bankruptcy Court approval of the new agreements. Counsel for the Class has entered an appearance in the Bankruptcy case and will be supporting approval of the proposed agreements.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

NOTICE TO DEBTORS' RETIREES REPRESENTED BY THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA OF SALE OF DEBTORS' ASSETS AND APPROVAL OF UAW RETIREE SETTLEMENT AGREEMENT

PLEASE TAKE NOTICE THAT:

1. By motion dated June 1, 2009 (the "Motion"), General Motors Corporation ("GM") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"),[1] have sought, among other things, authorization and approval of (a) the sale of substantially all the Debtors' assets pursuant to that certain Master Sale and Purchase Agreement and related agreements (the "MPA") among the Debtors (the "Sellers") and Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser sponsored by the United States Department of the Treasury (the "U.S. Treasury") (the "363 Transaction"), free and clear of liens, claims, encumbrances, and other interests, (b) certain proposed procedures to govern the sale process and provide for the submission of any competing bids for substantially all the Debtors' assets (the "Sale Procedures"), (c) the assumption and assignment of certain executory contracts and unexpired leases of personal property and of nonresidential real property (collectively, the "Leases") in connection with the 363 Transaction, (d) that certain settlement agreement between the Purchaser and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") consented to by representatives of members of the "Class" of the Debtors' retirees and surviving spouses represented by the UAW such representatives, the "Class Representatives") to be executed at the closing of the 363 Transaction (the "UAW Retiree Settlement Agreement"), and (e) scheduling a hearing for approval of the 363 Transaction and the UAW Retiree Settlement Agreement (the "Sale Hearing").[2]

[1] The Debtors and their respective Tax ID numbers are as follows: General Motors Corporation, Tax ID No. 38-0572515; Saturn, LLC, Tax ID No. 38-2577506; Saturn Distribution Corporation, Tax ID No. 38-2755764; and Chevrolet-Saturn of Harlem, Inc., Tax ID No. 20-1426707.

[2] Copies of the Motion and the MPA (without certain commercially sensitive attachments) may be obtained by accessing the website established by the Debtors' claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com.

2. The Sale Hearing is scheduled to be conducted on June 30, 2009 at 9:45 a.m. (Eastern Time) at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, Room 621, New York, New York 10004 (the "Bankruptcy Court"), before the Honorable Robert E. Gerber, United States Bankruptcy Judge, to consider the approval of the MPA or any higher or better offer by a Successful Bidder (as defined in the Sale Procedures) and approval of the UAW Retiree Settlement Agreement. If the Purchaser is the Successful Bidder, the Debtors anticipate seeking entry of an order approving the 363 Transaction substantially in the form of the order attached to the Motion as Exhibit "B" (the "Sale Order"). The Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing.

3. Coverage of Retiree Medical Benefits (as defined in the UAW Retiree Settlement Agreement) will continue to be provided to UAW-Represented Retirees (as defined in the Sale Procedures Order) and their eligible dependents without interruption by either GM or the Purchaser up until December 31, 2009, in accordance with the terms of agreements negotiated and agreed to by the UAW, which include certain benefit reductions to take effect on July 1, 2009 (or, if later, Bankruptcy Court approval, if needed).

4. Contingent upon the Bankruptcy Court's approval of the 363 Transaction, and concurrently with the sale of the Debtors' assets pursuant to the 363 Transaction, the Debtors will assume and assign to the Purchaser any collective bargaining agreements entered into by and between the Debtors and the UAW (the "UAW CBA Assignment"), with the exception of (a) the agreement to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW ("MOU"); and (b) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW (the "2008 Settlement Agreement"), which was approved by the United States District Court for the Eastern District of Michigan in the class action styled *Int'l Union, UAW, et al. v. General Motors Corporation*, Civil Action No. 07-14074 (E.D. Mich. filed Sept. 9, 2007) (final order entered July 31, 2008).

5. The Purchaser has agreed, among other things, to enter into the proposed UAW Retiree Settlement Agreement, pursuant to which the Purchaser will make contributions to a voluntary employee beneficiary association trust (the "New VEBA") in respect of non-pension retiree benefits to the UAW-Represented Retirees on terms that differ from the terms of the MOU and the 2008 Settlement Agreement. Among other things, the UAW Retiree Settlement Agreement provides for the funding of the New VEBA with a combination of (i) shares of the Purchaser's common stock representing 17.5% of the aggregate common equity interest in the Purchaser; (ii) a promissory note of the Purchaser in the principal amount of $2.5 billion, payable in three equal cash installments on July 15 of 2013, 2015, and 2017; (iii) shares of the Purchaser's cumulative perpetual preferred stock in the amount of $6.5 billion, with a 9% dividend per annum, payable quarterly in cash; (iv) warrants to acquire newly issued shares of the Purchaser representing 2.5% of the Purchaser's common equity outstanding at December 31, 2009, issuable at any time prior to December 31, 2015; and (v) the assets held in the existing voluntary employee beneficiary association trust sponsored by the Sellers and to be transferred to the Purchaser, which at March 31, 2009 had a value of approximately $9.4 billion.

6. In addition, GM, the UAW, and the Class Representatives have entered into an agreement, dated May 29, 2009 (the "UAW Claims Agreement"), pursuant to which the UAW and Class Representatives agreed, subject to the consummation of the 363 Transaction and the UAW Retiree Settlement Agreement becoming effective following approval of the Bankruptcy Court, to take further actions to release claims against GM and its subsidiaries, and their employees, officers, directors, and agents, relating to retiree medical benefits pursuant to the MOU, Settlement Agreement, and UAW collective bargaining agreements, *provided* that such claims may be reinstated if the rights or benefits of the UAW-Represented Retirees under the UAW Retiree Settlement Agreement are adversely impacted by reason of any reversal or modification of the Bankruptcy Court's approval of the 363 Transaction or UAW Retiree Settlement Agreement.

7. The UAW is the authorized representative of the UAW-Represented Retirees for purposes of approval of the UAW Retiree Settlement Agreement pursuant to section 1114 of the United States Bankruptcy Code. At the Sale Hearing, the Debtors will request approval by the Bankruptcy Court of the UAW Retiree Settlement Agreement as an agreement with the UAW, as the authorized representative of the UAW-Represented Retirees.

8. A copy of the MPA (without certain commercially sensitive attachments) and the Motion (including the proposed Sale Order), the Sale Procedures Order as entered by the Bankruptcy Court (with the Sale Procedures attached), the UAW Retiree Notice, and the UAW Retiree Settlement Agreement, including all exhibits thereto, may be obtained (i) by accessing (a) the website of the Bankruptcy Court at http://www.nysb.uscourts.gov, or (b) the website of the Debtors' claims and noticing agent, The Garden City Group, Inc., at http://www.gmcourtdocs.com/ or (ii) by visiting the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408. Copies also may be obtained by faxing a written request to the attorneys for the Debtors, Weil, Gotshal & Manges LLP (Attn: Russell Brooks, Esq.) at 212-310-8007.

9. **Responses or objections, if any, to the relief sought in the Motion, including the approval of the UAW Retiree Settlement Agreement, must be made in writing and filed with the Clerk of the Bankruptcy Court (at the address shown in paragraph 2 above), and served upon (a) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (b) Cadwalader, Wickersham & Taft LLP, attorneys for the Purchaser, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (c) the attorneys for the Creditors Committee; (d) Cleary Gottlieb Steen & Hamilton LLP, the attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromley, Esq.); (e) Cohen, Weiss and Simon LLP, the attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (f) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); and (g) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004., so as to be received no later than June 19, 2009, at 5:00 p.m. (Eastern Time) (the "Objection Deadline").**

10. The failure of any person or entity to file a response or objection on or before the Objection Deadline shall be deemed a consent to the 363 Transaction and the other relief requested in the Motion, including approval of the UAW Retiree Settlement Agreement, and shall bar the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Procedures, the Motion, the 363 Transaction, and the UAW Retiree Settlement Agreement, and the Debtors' consummation of the 363 Transaction.

11. This Notice is subject to the full terms and conditions of the Motion, the Sale Procedures Order, the MPA, and the UAW Retiree Settlement Agreement, which shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

12. If you have questions about the 363 Transaction or the UAW Retiree Settlement Agreement, you may call 1-800-489-4646 (the "Call Center").

Dated: New York, New York
June 2, 2009

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