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Return Date and Time:
March 25, 2010 at 9:45 a.m

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re MOTORS LIQUIDATION COMPANY,
f/k/a GENERAL MOTORS CORP., *et al.*,

Debtors,

KELLY CASTILLO, NICHOLE BROWN,
BRENDA ALEXIS DIGIANDOMENICO,
VALERIE EVANS, BARBARA ALLEN,
STANLEY OZAROWSKI, and DONNA
SANTI,

Plaintiffs,

v.

GENERAL MOTORS COMPANY, f/k/a NEW
GENERAL MOTORS COMPANY, INC.,

Defendant.

Chapter 11
09-50026 (REG)
Jointly Administered

Adv. Proc. No. 09-00509

**RESPONSE TO NEW GM'S SEPARATE STATEMENT OF UNDISPUTED FACTS
& STATEMENT OF ADDITIONAL UNDISPUTED FACTS**

Responses

1. Plaintiffs admit the allegations of Paragraph 1.
2. Plaintiffs admit MLC moved to dismiss, but deny that MLC filed an answer denying

allegations in the Class Action. By way of further answer, Plaintiffs state that MLC agreed to settle the class action, including the claim for breach of express warranty.

3. Plaintiffs admit the allegations of Paragraph 3. By way of further answer, Plaintiffs state that the settlement released all claims asserted therein, including Plaintiffs' claim for breach of express warranty.
4. Plaintiffs admit that MLC was obligated under the settlement as described in Paragraph 4, but deny that Paragraph 4 is a complete statement of MLC's obligations, and state further that the referenced documents speak for themselves.
5. Plaintiffs admit that the Stipulation of Settlement included a defined term denoted the "Effective Date", that the "Effective Date" can be calculated to be June 2, 2009, and that MLC filed for bankruptcy on June 1, 2009. Plaintiffs deny the implication that the settlement was ineffective prior to the Effective Date. Plaintiffs object to the remaining allegations in Paragraph 5 to the extent that they constitute legal conclusions, rather than statements of fact. Without waiving Plaintiffs' objection, Plaintiffs deny the remaining allegations of Paragraph 5 and state further that the referenced documents speak for themselves.
6. The allegations in Paragraph 6 are legal conclusions, rather than statements of fact, to which no response is required.
7. Plaintiffs admit the allegations of Paragraph 7. By way of further answer, Plaintiffs state that under the Sale Approval Order, entered pursuant to the ARMSPA, New GM also purchased and assumed certain Liabilities of MLC, as set forth in the ARMSPA.
8. The allegations in Paragraph 8 are legal conclusions, rather than statements of fact, to which no response is required.
9. Plaintiffs admit the allegations of Paragraph 9.

10. Plaintiffs lack sufficient knowledge or information to admit or deny the aggregations in Paragraph 10.
11. Plaintiffs admit the allegations of Paragraph 11.
12. Plaintiffs admit the quoted material in Paragraph 12 is part of the ARSMPA. By way of further answer, Plaintiffs state that the quote is an incomplete statement of the terms of the ARMSPA which speaks for itself.
13. Plaintiffs admit the quoted material in Paragraph 13 is part of the Saturn warranty. By way of further answer, Plaintiffs state that the quote is an incomplete statement of the terms of the warranty which otherwise speaks for itself. The remaining allegations in Paragraph 13 are legal conclusions, rather than statements of fact, to which no response is required.
14. Plaintiffs admit the allegations of Paragraph 14.
15. Plaintiffs admit the quoted material in Paragraph 15 is part of the Sale Approval Order. By way of further answer, Plaintiffs state that the quote is an incomplete statement of the terms of the Order which otherwise speaks for itself.
16. Plaintiffs admit the quoted material in Paragraph 16 is part of the Sale Approval Order. By way of further answer, Plaintiffs state that the quote is an incomplete statement of the terms of the Order which otherwise speaks for itself. Plaintiffs specifically deny Defendant's selective characterization of the quoted material as the "pertinent part."
17. Plaintiffs admit the quoted material in Paragraph 17 is part of the Final Judgment or Stipulation of Settlement. By way of further answer, Plaintiffs state that the quote is an incomplete statement of the terms of the Final Judgment or Stipulation of Settlement which otherwise speak for themselves. Plaintiffs specifically deny Defendant's selective characterization of the quoted material as the "pertinent part."
18. Plaintiffs admit the quoted material in Paragraph 18 is part of the ARSMPA. By way of

further answer, Plaintiffs state that the quote is an incomplete statement of the terms of the ARMSPA which speaks for itself. Plaintiffs specifically deny Defendant's selective characterization of the quoted material as the "pertinent part."

19. Plaintiffs admit the quoted material in Paragraph 19 is part of the Sale Approval Order.

By way of further answer, Plaintiffs state that the quote is an incomplete statement of the terms of the Order which otherwise speaks for itself. Plaintiffs specifically deny Defendant's selective characterization of the quoted material as the "pertinent part."

20. Plaintiffs admit the quoted material in Paragraph 20 is part of the Sale Approval Order.

By way of further answer, Plaintiffs state that the quote is an incomplete statement of the terms of the Order which otherwise speaks for itself. Plaintiffs specifically deny Defendant's selective characterization of the quoted material as the "pertinent part."

21. Plaintiffs admit the allegations of Paragraph 21.

22. Plaintiffs admit the allegations of Paragraph 22.

Statement of Additional Undisputed Facts

1. On October 21, 2009, in the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, MLC filed a Motion for Substitution of Party seeking to substitute New GM for a claim sounding in breach of express warranty. *See Ex. W*, attached hereto and by this reference incorporated herein (bankruptcy filing exhibits omitted). In the Motion, MLC stated that "General Motors Company assumed liabilities for claims against General Motors Corporation based upon Florida's Lemon Law or breach of General Motors Corporation's written warranty." *Id.* at ¶ 6.

Dated: January 22, 2010

Respectfully submitted,

By: /s/ Mark L. Brown

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In re MOTORS LIQUIDATION COMPANY,
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Adv. Proc. No. 09-00509

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2010, I electronically filed Response to New GM's Separate Statement of Undisputed Facts & Statement of Additional Undisputed Facts with the Clerk of Court using the CM/ECF system, which will send notification of such filings(s) to the following:

Gregory Oxford
goxford@icclawfirm.com

By: /s/ Mark L. Brown

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EXHIBIT W

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

SHERIF RAFIK KODSY,

Plaintiff,

vs.

AH

CASE NO.: 09-CA-011174

GENERAL MOTORS CORPORATION,

Defendant.

FILED
09 OCT 21 AM 9:53
CIRCUIT COURT 8
SHERIF RAFIK KODSY, PL

**DEFENDANT'S MOTION FOR SUBSTITUTION
OF PARTY AND MOTION FOR EXTENSION OF TIME
TO RESPOND TO AMENDED TRIAL DE NOVO PLEADING**

Defendant hereby files this Motion for Substitution of Party and Motion for Extension of Time to respond to Plaintiff's "Amended Trial De Novo Pleading" and states the following in support:

1. This case was initially filed by Sherif Rafik Kodsy against General Motors Corporation on March 31, 2009 as a petition for trial de novo appealing the Florida New Motor Vehicle Arbitration Board's denial of his request for a refund under Florida Statutes Chapter 681, which is commonly referred to as Florida's Lemon Law.

2. On June 1, 2009, General Motors Corporation filed for bankruptcy. As part of its first-day filings, General Motors Corporation filed a motion seeking authorization to honor prepetition obligations to customers and certain other persons or entities. A copy of that motion is attached hereto as Exhibit "A." General Motors Corporation's motion explained to the bankruptcy court that consumer warranty claims are resolved through various means including General Motors Corporation's "own alternative dispute resolution mechanism, state-run dispute resolution mechanisms or in-court resolution." Exhibit A at page 15. General Motors Corporation advised that consumers need to "rely on the continued availability and honoring of

warranty claims.” Exhibit A at page 16. Thus, General Motors Corporation’s position was that it needed continued authority to address warranty disputes with consumers whether in-court or out-of-court.

3. General Motors Corporation’s motion was granted the same day it was filed. The bankruptcy court’s June 1, 2009 order is attached as Exhibit “B.” The bankruptcy court order expressly provides that General Motors Corporation in its business judgment was “authorized to perform and fully honor all obligations with respect to vehicle, and parts and accessory warranties whether arising prior to or after the Commencement Date.” Exhibit B at pages 2-3.

4. Pursuant to this Order, General Motors Corporation had authority from the bankruptcy court to litigate Plaintiff’s appeal of the Lemon Law arbitration decision. Therefore, General Motors Corporation did not request a stay and continued to defend this case after the commencement of the bankruptcy.

5. During the bankruptcy, General Motors Corporation’s assets were purchased by a new entity, NGMCO, Inc., now called General Motors Company, per an agreement that was approved by the bankruptcy court on July 5, 2009. A copy of the Amended and Restated Master Sale and Purchase Agreement is attached as Exhibit “C”, and the approval order is attached as Exhibit “D.” Per the agreement, General Motors Company purchased most of General Motors Corporation’s assets and assumed certain liabilities including:

Section 2.3 Assumed and Retained Liabilities

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

* * *

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

Exhibit C at pages 28-29. The agreement defined "Lemon Laws" to mean

a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.

Exhibit C at page 11. This definition encompasses Florida Lemon Law claims. See, e.g., sections 681.102(23); 681.104(2); Florida Statutes.

The agreement defined "Damages" to mean "any and all Losses, other than punitive damages." Exhibit C at page 5.

The agreement defined "Liabilities" to mean:

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

Exhibit C at page 11.

6. As a result, General Motors Company assumed liabilities for claims against General Motors Corporation based upon Florida's Lemon Law or breach of General Motors Corporation's written warranty. At the same time, the bankruptcy court discharged General Motors Corporation from these same liabilities. Exhibit D at page 33.

7. General Motors Corporation remained in bankruptcy and is now known as Motors Liquidation Company. Motors Liquidation Company retained certain liabilities including: (1) all "Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date"; (2) "all Liabilities to third parties for Claims based upon Contract, tort or any other basis; and (3) "all Liabilities arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law

without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to [Motors Liquidation Co.].” Exhibit C at pages 30-32.

8. The bankruptcy court’s order became effective on July 9, 2009, and the parties were authorized to close the transaction on or after 12:00 noon on that date. Exhibit D at page 48. The sale closed on July 10, 2009.

9. On October 7, 2009, Plaintiff served an “Amended Trial De Novo Pleading.” In this pleading, Plaintiff has apparently elected not to pursue his appeal of the Lemon Law arbitration decision and has instead alleged claims for fraud (Count I), breach of express and implied warranty (Count II), bad faith (Count III), conspiracy (Count IV), negligence and strict liability (Count V), personal injury (Count VI), and punitive damages (Count VII).

10. Of the counts alleged in the “Amended Trial De Novo Pleading,” the only one which is an assumed liability of General Motors Company and which has been discharged from the bankruptcy estate is the portion of Count II which is based upon an alleged breach of General Motors Corporation’s written warranty. The other counts constitute retained liabilities of Motors Liquidation Company and are subject to the automatic bankruptcy stay.

11. Accordingly, General Motors Company should be substituted as the correct defendant for the breach of written warranty allegations of Count II and Motors Liquidation Company (formerly General Motors Corporation) should remain the defendant for all other claims asserted by Plaintiff in his amended pleading. If Plaintiff wishes to pursue a trial de novo appeal of the Lemon Law arbitration decision, the correct defendant for that appeal is General Motors Company.

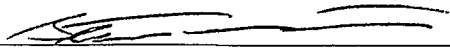
12. Defendant also respectfully requests this Court grant an extension of time for the original and new defendants to respond to the “Amended Trial De Novo Pleading.” Motors Liquidation Company likely will file a notice of automatic bankruptcy stay as to any claims

against it, but General Motors Company will defend itself against the written warranty claim. In the interest of efficiency and uniformity within the pleadings, Defendant respectfully requests this Court allow 20 days from the date the Court enters an Order on the above Motion for Substitution for the original and new defendants to respond to the respective allegations against them.

WHEREFORE, Defendant respectfully requests this Court enter an Order substituting General Motors Company as the correct defendant for the breach of written warranty allegations of Count II and Motors Liquidation Company (formerly General Motors Corporation) remaining as the defendant for all other claims asserted in the "Amended Trial De Novo Pleading" and granting 20 days from the date of the Order for the original and new defendants to respond to the claims against them. Additionally, if Plaintiff wishes to pursue a trial de novo appeal of the Lemon Law arbitration decision, the correct defendant for that appeal is General Motors Company.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to Sherif R. Kodsy, 15968 Laurel Oak Circle, Delray Beach, Florida 33484, this 19th day of October, 2009.



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