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

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

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs and New GM agree that "[t]he issue before the Court is … whether under Section 2.3(a)(vii)(A) [the Class Judgment] is a "Liabilit[y] arising under express written warranties of [Saturn] 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)…." *Doc. 29, p.2* (quoting the ARMSPA). With regard to the ARMSPA, New GM admits:

- "unexpired VTi transmission warranties (***five years or 75,000 miles***, whichever comes first or, in the case of replacement transmissions, 12 months or 12,000 miles) . . . ***fall squarely within the Section 2.3(a)(vii)(A)*** definition of assumed warranty obligations," *Doc. 29, p. 2, n.2* (emphasis added);

- "the Settlement is a 'Liability' under the ARMSPA," *Id., p.1*;

- "the term 'Liabilities' includes . . . for example, ***unproven claims*** in a lawsuit" *Id., p.2* (emphasis added).

Further, New GM concedes that the class action claims "did, in part, 'arise under' warranty …." *Doc. 29, p.6*. In sum, New GM admits that: (a) the settlement and unproven claims are both Liabilities, *Doc. 29, pp. 1-2*; (b) the class action asserted claims for breach of the express warranty, *id. pp. 4-7*, and (c) the class action necessarily "did, in part, 'arise under' warranty," *id., p.6*. To avoid the ultimate conclusion, New GM repeatedly quotes from paragraph 56 of the Sale Approval Order—language absent from the ARMSPA and lacking any weight under the law. *See Doc. 24 at pp. 21-25; Doc. 30 at pp. 8-11*. Nevertheless, New GM's remaining arguments are: (1) Section 2.3(a)(vii)(A) excludes any relief that exceeds the scope of the original warranty provided in connection with the sale; and (2) a settlement that resolves an express warranty claim, even a judicially-approved settlement like the Class Judgment, cannot "arise under" the original warranty absent an adjudication of actual liability. Neither argument, however, removes the Class Judgment as an Assumed Liability under Section 2.3(a)(vii)(A).

I. A LIABILITY (*e.g.*, THE CLASS JUDGMENT) NEED ONLY "ARISE UNDER" WARRANTY—NOT HAVE ITS RELIEF BE LIMITED BY WARRANTY.

In espousing its idea that any relief falling outside the scope of the original warranty removes a Liability otherwise "arising under" Section 2.3(a)(vii)(A) from its scope, New GM

purports to interpret the ARMSPA, but instead relies, repeatedly, on a short fragment—not even a complete sentence—from paragraph 56 of the Sale Approval Order. Despite its utter inability to interpret the ARMSPA without resort to the phrase "pursuant to and subject to conditions and limitations" found in paragraph 56, New GM now concedes that the Sale Approval Order did not change the ARMSPA: "[p]aragraph 56 of the Sale Approval Order provides, at most, a clarification of this limitation [found in the ARMSPA]." *Doc. 29, p. 10.* The ARMSPA, however, does not contain "this limitation."

The Saturn warranty "delivered in connection with the sale" of the Saturn vehicles provided 3 years/36,000 miles of coverage. *Ex. G.* New GM, however, admits that Assumed Liabilities go beyond the 3 years/36,000 miles of coverage.

New GM concedes that "unexpired VTi transmission warranties (five years or 75,000 miles, whichever comes first . . .) … ***fall squarely within*** the Section 2.3(a)(vii)(A) definition of assumed warranty obligations …." *Doc. 29, p.2 n.2* (emphasis added). Yet, Special Policy No. 04020 (5 years/75,000 miles) provides relief ***outside the warranty period*** of the original warranty (3 years/36,000 miles). The Special Policy coverage was never "delivered in connection with the sale" of a Saturn vehicle—a requirement under the ARMSPA. *Ex. C, p. 29, § 2.3(a)(vii)(A).* There was no such thing as a 5 year/75,000 mile warranty until New GM carved out the special program for VTi transmissions alone. Then, the Special Policy was mailed to Saturn owners well after the sales. *Ex. V, p. 2.* As a result, there is no *genuine* dispute that the meaning of "all Liabilities arising under express written warranties … delivered in connection with the sale" extends beyond the "conditions and limitations" (*i.e.*, 3 years/36,000 miles) of the Saturn warranty.

Of course, New GM is correct that the Special Policy (5 years/75,000 miles) is an Assumed Liability under Section 2.3(a)(vii)—not because it was provided with the sale (it was not)—but because the Special Policy has its origins in the original warranty (3 years/36,000 miles) that was provided in connection with the sale. The Special Policy "arises under" the original warranty and, therefore, does indeed fall squarely within the definition of Assumed Liabilities in the ARMSPA.

Undeterred by the actual language of the ARMSPA, New GM repeatedly argues that it assumed liabilities "pursuant to and subject to conditions and limitations contained in" the Saturn standard warranty—language completely absent in the ARMSPA. *Compare Doc. 29, p.1 with Ex. C,§ 2.3(a)(vii)(A).* To avoid the express language, New GM takes a "mix and match" approach to contract interpretation by juxtaposing defined terms of the ARMSPA with a short fragment from the Sale Approval Order without attributing its origin or explaining its context. For example, New GM frames "the issue before the Court" as requiring interpretation "under Section 2.3(a)(vii)(A)" of the ARMSPA. *Doc. 29, p.2*. Then, New GM quotes a short fragment—"pursuant to and subject to conditions and limitations contained in"—from paragraph 56 of the Sale Approval Order. Inviting this Court to assume that such language exists in the ARMSPA is a critical, potentially misleading error. New GM cannot mix excerpts from the Sale Approval Order with the terms of the ARMSPA until it gets the result it now seeks—that opportunity passed upon approval of the ARMSPA and the subsequent Closing.

New GM next argues that the Class Judgment cannot be an Assumed Liability because "the class action ***did not assert*** … that [Old GM] had any liability under Saturn's standard warranty …." *Doc.29, p.3* (emphasis added). The class action, of course, did assert just that. Contrary to New GM's misrepresentations, the "whole point of the class action" was ***not*** simply

to impose obligations beyond the standard warranty. *Doc. 29, p.3.* Rather, the class action asserted that GM breached the warranty by failing "to correct any vehicle defect"—language directly from the original warranty (*Ex. G*)—"within the warranty period":

> 71. ***GM expressly warranted the vehicles*** at issue to be free of defects in factory materials and workmanship at the time of sale and for a period of ***three years or 36,000 miles*** and, further, that GM would, at no cost, correct any vehicle defect related to materials or workmanship during the warranty period. ***Such warranties are express warranties*** within the meaning of Section 2-313 of the Uniform Commercial Code (UCC) in each of the Class States at issue in the class action and are further governed by the Magnuson-Moss Warranty Act. 15 U.S.C. §§ 2301, *et seq.*
>
> * * *
>
> 81. Any attempt by GM to repair a defective VTi transmission or to replace one defectively designed VTi transmission with another defectively designed VTi transmission ***within the warranty period*** could not satisfy ***GM's obligation to correct defects under the warranty***. The design defect in the VTi transmission – which unreasonably elevates the risk of premature failure, immobility and/or dangerous loss of operability of the vehicle – cannot be remedied through the continued use of a defective VTi transmission.

Ex. D, pp. 14-22 (emphasis added). *See also, Ex. I.* These allegations about breaches "within the warranty period" flatly contradict New GM's argument that "plaintiffs in the class action did not assert . . . that [Old GM] had any liability under Saturn's standard warranty." *Doc. 29, p.3.*

New GM then continues that the class action "lack[ed] any prayer for relief … that would have been available under the 'conditions and limitations' of Saturn's standard warranty." *Doc. 29, p.6.* This is false. The prayer for relief in the class action complaint sought, among other things, "actual monetary damages" and "specific performance of GM's express… warranties." *See e.g., Ex. F, Ct. II, prayer ¶¶ B-C.*

Absent New GM's attempt to amend the ARMSPA *nunc pro tunc*, its opposition is reduced to a rhetorical question: "If liability for a transmission repair is *not covered* by the

standard warranty, how can that liability 'originate from [that] source'?" *Doc. 29, p.3*. The answer is simple—the relief provided by a compromise of a warranty claim need not be limited to the warranty "conditions or limitations" for that compromise to "originate from" the original warranty. In other words, parties may settle a claim "arising under" an express warranty for whatever consideration they choose—even if that relief exceeds the scope of the original warranty.

For example, the class settlement could have provided a specific cash amount (*i.e.*, the cost of one transmission repair) to each class member regardless of whether or when a class member experienced a transmission failure. Instead, the class settlement provided extended warranty coverage, like the Special Policy, because the issue was the scope of liability (*i.e.*, Old GM's failure "to correct any vehicle defect") on the warranty claim—not the "conditions and limitations" of the original warranty. Old GM's alleged breach of the original warranty (3 years/36,000 miles) created a right of action for the class members, such that the class settlement and resulting Class Judgment arose under that original warranty regardless of the actual settlement relief. As a result, the Class Judgment had its origin in, and arose under, Old GM's alleged breach of the original warranty—and that is all that Section 2.3(a)(vii)(A) requires. Like the Special Policy (5 years/75,000 miles), the Class Judgment "***fall[s] squarely within*** the Section 2.3(a)(vii)(A) definition" of Assumed Liabilities under the ARMSPA. *Doc. 29, p.2 n.2* (emphasis added).

II. "LIABILITIES" DOES NOT REQUIRE AN ADJUDICATION OF ACTUAL LIABILITY IN ORDER FOR THE CLASS JUDGMENT TO "ARISE UNDER" THE ORIGINAL WARRANTY (3 years/36,000 miles) PROVIDED IN CONNECTION WITH THE SALE OF THE SATURN VEHICLES.

New GM quickly concedes the existence of the underlying warranty claim, but insists that the ARMSPA requires actual liability—as opposed to the term "Liability" defined in the ARMSPA—for the underlying warranty claim. For example, New GM repeatedly states:

> Specifically, it certainly does not follow from *Cone Mills* that liability under a consensual settlement "arises under" a warranty merely because the plaintiff ***asserts*** breach of warranty as one [of] several ***unproven*** causes of action. *Doc. 29, p.4*.
>
> It obviously does not follow from this rule, as plaintiffs seem to argue, that their claim under the Settlement "arises under" Saturn's warranty merely ***because their complaint says it does***. *Id., p.5*.
>
> Plaintiffs' "legal action" did ***assert*** a *claim* for breach of the express warranty, but there was never any adjudication of warranty *liability* and, indeed, the "sources" of the liability in question, the Stipulation of Settlement and Final Judgment, expressly disclaim liability on all of plaintiffs' underlying claims, including breach of express warranty. *Id., pp. 5-6*.
>
> ***So, while plaintiffs can say that their "legal action" did, in part, "arise under" warranty law***, liability under the Settlement clearly did not, particularly given the lack of any prayer for relief on their ***unproven*** claims …. *Id., p.6*.
>
> These holdings obviously do not support in any way plaintiffs' illogical argument that merely because a litigant as one of four "theories of recovery" ***asserts*** a claim for breach of express warranty the consensual settlement of that litigation is a liability that "arises under" an express warranty. *Id., p.6*.
>
> *Of course* the parties argued about warranty issues in the case, … multiple claims and theories were ***asserted***, denied, and analyzed by the Court collectively in determining the "fairness" of the settlement. *Id., pp. 6-7*.

> In the end, plaintiffs' claim for breach of express warranty was only that—an ***unproven and disputed claim for breach of warranty***, not a warranty "liability," …. *Id., p.7.*

Doc. 29, pp. 4-7 (emphasis in italics original; emphasis in bold added). In other words, New GM contends that a judgment entered "in favor of Class Members," *Ex. X*[1] *(Stipulation and Order re: Creation of Subclass), ¶(c),* which is "binding and preclusive," *Ex. A, ¶¶ 4, 8, 10, 12,* "address[es] the allegations in the case," *id. ¶3,* and "resolv[es] complex issues," *id.*, does not arise under the Saturn warranty without an actual finding of liability under the warranty claim.

According to New GM, the Class Judgment would be an Assumed Liability but for the fact that it was simply "an ***unproven and disputed claim*** for breach of warranty …." *Doc.29, p.7* (emphasis added). The ARMSPA, however, does not confine Liability to actual, proven liabilities. Instead, Liabilities include any Claims—defined as "all rights, claims, … investigations, causes of action, choses in action, … suits, … demands, damages, … rights of recovery, … litigation, … and all rights and remedies with respect thereto." *Ex. C, § 1.1, p.4 (definition of "Claims"), p. 11 (definition of "Liabilities").* A finding of actual liability is altogether unnecessary. Again, New GM concedes as much:

> … the term "Liabilities" includes obligations that are "contingent" or "unmatured"—for example, ***unproven claims*** in a lawsuit ….

Doc.29, p.2 (emphasis added). In its Opposition, New GM has admitted that: (1) unproven claims are Liabilities, *Doc.29, p.2*; (2) the underlying class action asserted claims for breach of the express warranty, *id. pp. 4-7,* and (3) the underlying class action "did, in part, 'arise under' warranty …," *id., p.6.* As a result, the Class Judgment is a "Liabilit[y] arising under express written warranties …." *Ex. C, § 2.3(a)(vii)(A).*

[1] A copy of Exhibit X is attached to this memorandum.

In addition to its admissions here, New GM recently substituted itself for Old GM in a Florida lawsuit asserting, among other theories, breach of warranty. *Doc. 31, Ex. W*. There, MLC declared, and New GM acquiesces, that the *pro se* plaintiff's unproven claim for breach of warranty was an Assumed Liability under Section 2.3(a)(vii)(A). *Id.* In the end, New GM contends that settlements approved by the Court, because there is no adjudication of actual liability, are apparently the ***only*** warranty Liabilities that are not Assumed Liabilities. The following table illustrates New GM's position best:

Assumed Liabilities	**Retained Liabilities**
Inchoate warranty rights (*Doc.* 29, n.2) Unproven, pending warranty claims (*Doc.* 29, p.2) (Ex. W) Adjudicated liabilities such as: - Court findings - Summary judgments - Jury verdict (*Doc.* 29, p.2)	Judgments approving class settlements (???)

New GM's assertion that "there was never any adjudication of warranty *liability*," *Doc. 29, p.5* (emphasis in original), is without legal support. New GM argues that because it did not admit liability under the settlement, that the settlement is, in some legally meaningful way, divorced from the allegations of breach of warranty from which the settlement arose. But no court of law has ever held as much in the context of determining Assumed Liabilities for a bankruptcy sale.

Indeed, New GM has not presented a single case, from any context, supporting its assertion that failure to admit ultimate liability in a settlement has any bearing on the issues in this case.[2]

Plaintiffs, on the other hand, have provided this Court with authority from a neighboring bankruptcy court considering assumption of liabilities post-363 sale stating that a settlement only quantifies the liability and does not change the fact that the obligations under the settlement "arose under" whatever facts and law gave rise to the complaint. In re Safety-Kleen, 380 B.R. 716 (Del. Bankr. 2008). In that case, Clean Harbors asserted that certain settlements and consent decrees were the result of indemnity agreements and, therefore, mere contractual liabilities (in other words, not an adjudication of actual liability). Clean Harbors argued that:

> the liabilities which were resolved in the Settlement Agreements were contractual liabilities of the Safety-Kleen predecessors, Rollins, which were owed to Arkema. Therefore, according to Safety-Kleen these are not statutory environmental liabilities. Thus, as Clean Harbors sees it, these liabilities are not within the scope of "assumed liabilities" under the Acquisition Agreement or within the scope of any liabilities described in Paragraph O of the Sale Order. ***The Court rejects*** both the factual assertions and ***the legal conclusion*** offered by Clean Harbors on this issue.

380 B.R. at 724 (emphasis added). The court amplified its legal decision later in the opinion stating in no uncertain terms that:

> [t]he Consent Decrees and the Settlement Agreements evidence obligations ***arising under*** CERCLA and the Spill Act, and settle direct and third-party claims ***arising under*** or with respect to such statutes. As such,

[2] The only cases cited in New GM's Memorandum in Opposition, *Doc.* 29, are from Plaintiffs' initial Memorandum in Support, *Doc.* 24, and they are present only in an attempt to distinguish them on facts. No cases were presented which supported New GM's interpretation of the language in the sale documents. In New GM's own Memorandum in Support of Summary Judgment, *Doc.* 20, the two sections discussing New GM's interpretation of the express language of the sale documents include citation to only one case, and then only for the overly-simplified proposition that "an express warranty does not cover repairs made after the applicable time and mileage periods have elapsed." Either there are no cases supporting New GM's interpretation of the language or New GM prefers to hold them back for its reply so that they cannot be vetted in writing by the Plaintiffs.

> they are "liabilities and obligations ... ***arising under*** Environmental Laws (or other Laws) that relate to violations of Environmental Laws...."

380 B.R. at 736 (emphasis added). The holding that consent decrees and settlements, which by their very nature preclude actual adjudication of ultimate liability, nevertheless arose under the laws upon which the underlying claims were based, is diametrically opposed to New GM's claim that adjudication of actual liability is required.

Because In re Safety-Kleen is not distinguishable on this issue of law, there is no basis to follow New GM's unsupported claim that a contrary result is "obvious." To do so clashes with the policy that "courts are bound to encourage" settlement. In re Tamoxifen Citrate Antitrust. Litig., 429 F.3d 370, 386 (2d Cir. 2005). Regardless, a settlement agreement includes the claims "directly tied" to the dispute, Spiess v. Meyers, 483 F. Supp.2d 1082, 1092 (D. Kan. 2007), is "the equivalent of a decision on the merits," Chandler v. Bernanke, 531 F. Supp.2d 193, 197 (D. D.C. 2008), and as "conclusive as judgment following full litigation." Liberto v. D.F. Stauffer Biscuit Co., 441 F.3d 318, 325 n.16 (5th Cir. 2006). Because the class settlement required court approval, it became the equivalent of a consent decree or consent judgment. *See, e.g.*, 4901 Corp. v. Town of Cicero, 220 F.3d 522, 529 (7th Cir. 2000). Therefore, the Class Judgment was a judicial act whereby a court "has adjudicated [the class]'s right of recovery," Mastercraft Fabrics Corp. v. Dickson Elberton Mills Inc., 821 F. Supp. 1503, 1510 (M.D. Ga. 1993), and it bears the "effect as judgments rendered in due course of litigation upon findings by a jury." In re Eickhoff, 259 B.R. 234, 237 (S.D. Ga. 2000). Here, the district court entered the Class Judgment "in favor of Class Members." *Ex. X*, ¶*(c)*.

According to New GM's logic, an unproven claim for breach of warranty is an Assumed Liability ***until*** one successfully converts it into a settlement, and then it becomes a Retained Liability because there was no "adjudication of actual liability." If there is an adjudication of

liability, such as summary judgment or a jury verdict, it is an Assumed Liability once more. In other words, the class members would have had a chance to litigate and collect from New GM if the Class Judgment had ***not*** been entered! This, however, creates an irreconcilable dilemma because the Class Judgment did ***not*** resolve the underlying class action for all class members. On April 14, 2009, the district court entered the Class Judgment but simultaneously created a subclass. *Ex. X*. The subclass has breach of express warranty claims ***still pending*** against Old GM. Consequently, New GM must substitute itself for Old GM in the underlying class action to litigate those express warranty claims—just like it did in the Florida case. That outcome, of course, reveals the absurdity of New GM's position—an unproven claim for breach of warranty is an Assumed Liability whereas a judgment entered in the same case with the same breach of warranty claim is not.

Conclusion

For all of the foregoing reasons, as to Count I of the plaintiffs' Complaint for Declaratory Judgment addressing express assumption of liability, there is no genuine issue of material fact, and as matter of law, plaintiffs are entitled to declaratory judgment in their favor.

WHEREFORE, plaintiffs request that the Court grant their Motion for Summary Judgment as to Count I, only, and order the following relief:

A. A declaration that the Agreement and Final Judgment are "Assumed Liabilities" under the ARMSPA; and

B. Such other and further relief as the Court deems appropriate under the circumstances

Dated: January 29, 2010

Respectfully submitted,

By: /s/ Mark L. Brown___

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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

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2010, I electronically filed Plaintiffs' Reply Brief in Support of Motion for Partial Summary Judgment with the Clerk of Court using the CM/ECF system, which will send notification of such filings(s) to the following:

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EXHIBIT X

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO , NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendant.

Case No. 2:07-CV-02142 WBS-GGH

STIPULATION AND ~~[PROPOSED]~~ ORDER RE CREATION OF SUBCLASS, APPROVAL OF SUBCLASS NOTICE, AND HEARINGS ON APPROVAL OF CLASS AND SUBCLASS SETTLEMENTS

Hearing Date: March 30, 2009
Time: 2:00 p.m.

RECITALS

1. R. L. Polk & Co. ("Polk") is a third-party vendor which GM engaged to generate the list of current and former owners of class vehicles that GM utilized in providing notice of the Settlement to the Class ("Mailing List"). Polk is the only company with comprehensive access to fifty state motor vehicle registration information for past and current vehicle owners along with their most current address information. The specific process that Polk used to generate the Mailing List is explained in the Declaration submitted by Polk on February 27, 2009. (Doc. No. 66.)

2. On Thursday, March 12, 2009, GM's counsel first learned from Polk that two discrete computer programming errors by Polk which Polk had discovered a few days

earlier had caused the omission from the Mailing List of certain individuals and businesses who are members of the Class provisionally certified by the Court. Both of these errors resulted from a process that Polk routinely runs to avoid including duplicate names on mailing lists, a process called "de-duping." Polk discovered these errors in the course of responding to a request by Class Counsel for additional Mailing List information.

3. The first error caused the first letter of individual Class Members' last names shown in the vehicle registration data to be inserted as the customer's middle initial on the Mailing List. Thus, for example, the names "John Y. Jones," "John J. Jones" and "John Jones" [no middle initial] as they appeared in the registration data for the same Vehicle Identification Number ("VIN") all became "John J. Jones" in the Mailing List. As a result, when Polk ran the "de-duping" program on these three identical names associate with a specific VIN, it erroneously eliminated all of these names from the Mailing List except the one with the most recent "transaction date." The term "transaction date" includes the initial vehicle registration, changes of address and renewals by each individual owner as well as any changes of ownership and registration, changes of address and renewals by the subsequent owner(s). Altogether, this error caused the omission from the Mailing List of 2,775 individual Class Member records. This does not mean, however, that the notice of Settlement was not mailed to all of these Class Members. To the contrary, the parties and Polk believe that most of these omissions did not result in Class Members actually failing to receive notice because "John Jones" and "John M. Jones" in the above example are likely to be either the same person or related members of a single family. This conclusion is based on the slim chance that any particular vehicle would be owned successively by unrelated persons with identical first and last names. It is possible, however, that a small number of people who are prior owners of a Class vehicle identified by a particular VIN were removed from the Mailing List during the "de-duping" procedure because a subsequent owner of the same vehicle coincidentally happened to have the same first and last names as the prior owner.

4. The second error stemmed from the de-duping of the names of businesses which own or owned Class Vehicles identified by particular VINs. In those cases where more than one business owned a Class Vehicle identified by a specific VIN, the Polk de-duping process in error was set up to compare the personal name fields in the owner registration records. In the case of businesses, however, the personal name field was always blank. Thus, whenever a specific VIN was registered successively to two or more different businesses, the de-duping program erroneously eliminated all of the registration records except the one with the latest "transaction date" (as explained above). So for, example, if ABC Corporation bought a specific Saturn ION with a specific VIN and then sold it to XYZ Corporation, which in turn sold it to MNO Corporation, both the ABC and XYZ registrations would have been omitted from the Mailing List, and the Settlement Notice would have been mailed only to MNO Corporation. This error caused the omission of 4,315 Class Member records from the Mailing List. It is likely that a significant but unknown number of these omissions resulted in the Settlement Notice not being mailed to the Class Member.

5. GM advised Class Counsel of the Polk errors late in the afternoon on March 12, 2009, the same day that it learned of them. Subsequently GM and Class Counsel had further discussions with Polk to pin down the nature and scope of the errors and, specifically, the number of Class Members who may not have received timely notice of the Settlement. GM and Class Counsel also have had a series of discussions concerning the best way to remedy Polk's errors. On the one hand, Class Counsel does not want to delay the Settlement approval hearing set for March 30, 2009 because, in the event the Court approves the Settlement, Class Members will become eligible promptly to file claims for the Settlement benefits. On the other hand, Class Counsel and GM understand that Class Members whose names Polk erroneously omitted from the Mailing List are entitled to the same choice as other Class Members: to participate in the Settlement (if approved) or to remove themselves from the Class (*i.e.*,"opt out"). GM and Class Counsel, on behalf of the proposed Subclass of persons who may not have received notice

of the Settlement (as further defined below), have agreed to the following Stipulation to ensure that Subclass Members may receive their rights and benefits under the Settlement.

STIPULATION

Based on the above recitals, **IT IS HEREBY STIPULATED**, by and between Class Counsel and GM, by and through its undersigned counsel of record, that the Court may enter its order as follows to address the notice issues created by the Polk programming errors, effectuate the proposed settlement as to all Class Members in accordance with the terms previously proposed in the Stipulation of Settlement, permit the Settlement approval hearing to proceed on March 30, 2009, and ensure the mailing of appropriate notice to Class Members potentially affected by Polk's errors:

(a) As to any members of the proposed Class (1) to whom the Settlement Notice was actually mailed or (2) who otherwise actually received notice of the Settlement on a timely basis, the Settlement approval hearing shall go forward on March 30, 2009;

(b) All other members of the proposed Class are excluded from the Class and, except for those who are shown on the "opt out" list (Doc. No. 67) as having submitted valid and timely requests for exclusion from the Class, will instead be members of a Subclass pursuant to F.R.Civ. P. 23(c)(5) ("Subclass Members"). GM on the date upon which the Final Notice and Claim Forms are mailed to Class Members will mail the original Notice of Settlement to Subclass Members with a cover letter and a Claim Form substantially similar to the attached Exhibit A informing them of (a) the possible mailing error, (2) their potential right to exclude themselves from the Subclass, and (3) a separate Subclass settlement approval hearing to be set on **June 1, 2009, at 2:00 p.m.**

(c) If the Court approves the Settlement as to Class Members at or after the March 30, 2009 hearing, the Court, so as not to delay the Effective Date of the Settlement and the ability of Class Members to claim Settlement benefits, will enter final judgment in favor of Class Members pursuant to F.R.Civ.P. 54(b) in substantially the form attached hereto as Exhibit B.

(d) If the Court subsequently approves the Settlement as to the proposed Subclass, the Court will enter final judgment in favor of Subclass Members in substantially the form attached hereto as Exhibit C. GM subsequently will mail Supplemental Final Notice and Claim Forms to potential Subclass Members in a form substantially similar to the Final Notice and Claim Forms mailed to Class Members.

(e) If the Settlement is approved as to Class Members, then absent an exclusion, Subclass Members will receive the benefits of the Settlement immediately and will have the ability to submit claims without further delay by submitting Claim Forms in substantially the form shown in the attached Exhibit A. Any claim submitted before the expiration of the Subclass opt-out deadline will constitute a waiver by the Subclass Member submitting the claim of the right to request exclusion from the Subclass and will affirm the Class Member's intent to be bound by the terms of the Settlement, including the release therein provided.

DATED: March 24, 2009

MARK BROWN
LAKIN CHAPMAN LLC

C. BROOKS CUTTER
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By: [s]_____
Mark Brown

Attorneys for Plaintiffs
and the Class

DATED: March 24, 2009

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: [s]_____
Gregory R. Oxford
Attorneys for Defendant
General Motors Corporation

Good cause appearing therefor, **IT IS SO ORDERED**

DATED: April 14, 2009

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

Tana Burton

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Thursday, April 16, 2009 11:59 AM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Stipulation and Order

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U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered on 4/16/2009 at 9:59 AM PDT and filed on 4/16/2009
Case Name: Castillo et al v. General Motors Corporation
Case Number: 2:07-cv-2142
Filer:
Document Number: 73

Docket Text:
STIPULATION and ORDER [71], re Creation of Subclass, Approval of Subclass Notice, and Hearings on approval of Class and Subclass Settlements, signed by Judge William B. Shubb on 4/14/2009. It is hereby STIPULATED, by and between Class Counsel and GM, that Court may enter Order as follows to address Notice issues created by Polk programming errors, effectuate Proposed Settlement as to all Class Members in accordance with terms previously proposed in Stipulation of Settlement, permit Settlement approval hearing to proceed on 3/30/2009, and ensure mailing of appropriate Notice to Class Members potentially affected by Polk's errors. (Marciel, M)

2:07-cv-2142 Electronically filed documents will be served electronically to:

C Brooks Cutter bcutter@kcrlegal.com, kdonnel@kcrlegal.com, kgradwohl@kcrlegal.com, landerson@kcrlegal.com, vburnsworth@kcrlegal.com

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2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=4/16/2009] [FileNumber=2996925-0
] [85bba0396ee59148c91c216674f5918e540b89f1ca589874a316b217773af260203
81a1a6d5a2b3265b87ec2d6357a78f6757b54086ef90c4171890e18eff203]]