

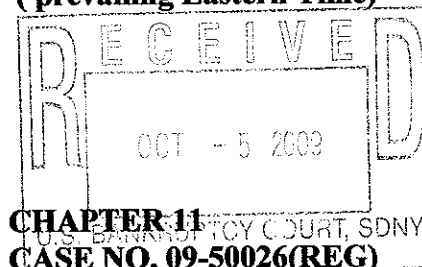
Hearing Date: November 6, 1990
Hearing Time: 9:45 a.m. (prevailing Eastern Time)
Hearing Place: New York, N.Y.
Objection Deadline: October 30, 2009,
at 4:00 p.m. (prevailing Eastern Time)

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

IN RE:

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

Debtors.



(Jointly Administered)

MOTION OF MOVANT IN THE ACTION ENTITLED *WALTER J. LAWRENCE V. GENERAL MOTORS HOURLY RATE EMPLOYEE PENSION, AND GENERAL MOTORS CORPORATION*, 5:07-CV-408 OC, UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA FOR ENTRY OF AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1).

Walter J. Lawrence ("Movant") and the defendants in the action entitled *WALTER J. LAWRENCE V. GENERAL MOTORS HOURLY RATE EMPLOYEE PENSION, AND GENERAL MOTORS CORPORATION*, 5:07-CV-408 OC, UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, (the "Litigation") as and for its motion (this "Motion") under L.R. 9013-1 seeking entry of an order, substantially in the form annexed hereto as Exhibit "A", modifying the automatic stay pursuant to Section 362(a) of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") to enable Movant's Motion for Summary Judgment and other pending motions to be heard by the United States District Court in the Middle District of Florida., case number 5:07

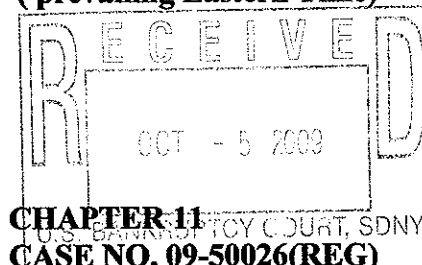
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CV-408 OC Movant respectfully alleges as follows;

JURISDICTION

This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

THE BANKRUPTCY PROCEEDINGS

On June 1, 2009, the Debtor and certain affiliates filed voluntary petitions (the "Petition Date") for relief under Chapter 11 of the Code in the United States Bankruptcy Court for the Southern District of New York (the "Court"). As a result the Litigation (as defined herein) as well as the attendant action

then and now pending in the United States District Court in the Middle District of Florida, case number **5:07-CV-408 OC**, was stayed.

The District Court is now immediately poised to rule on Debtor's and Movant's pending motions for summary judgment. Based on the arguments set forth below there exists a real and viable likelihood that Movant will prevail on the merits.

According to the Order of this Court, Debtor has until September 29, 1999, to file and serve its schedules of liabilities.

BACKGROUND

The Dispute Between Movant and the Debtor(s)

Movant is a former employee of Debtor having been employed with Debtor for nearly 31 years, retired on March 1, 1993, from General Motors Corporation. Since that time, and as a former employee of debtor, Debtor has been under a legal obligation to Movant to pay to Movant monthly

pension payments as provided for in the GM/UAW Pension Plan agreement. In the interest of brevity and the limited judicial and administrative resources of this Court, Movant includes with this motion and under separate cover copies of Movant's Amended Complaint, Motion for Summary Judgment.

The GM/UAW ERISA and IRC qualified pension plan payments has been in pay-out status since March 1, 1993, at which time Movant ceased being an employee of Debtor and became a retiree of Debtor. Starting with the pay-out on March 1, 2007, GM/UAW ERISA and IRC qualified pension plan payment, Debtor gained access to the GM/UAW ERISA and IRC qualified pension plan payment that was property of the estate. Up until the GM/UAW ERISA and IRC qualified pension plan payments was in pay-out status debtor could not gain access to these funds because they were locked up in the GM/UAW ERISA and IRC qualified pension plan. However, starting with May, 2007, Debtor starting executing on the funds that were in pay-out status, those funds were alienated by Debtor, funds that ceased being property of the estate in order to satisfy the debt referred to by Debtor in their letters to Movant of May 14, 2007, (Exhibit "B") and September 5, 2007 (Exhibit "C").

However, in the case *McVay v. Otero*, 371 B.R. 190 (W.D. Texas, 2007), that just as is the case here, if the alienation of Debtor's payments by Movant can be a "debt" "...only if the retirement plan administrator has a 'claim' for repayment." The Court held, inciting 11 U.S.C. § 101(5), that:

In the Bankruptcy Code, '[t]her term 'debt' means liability on a claim.' 11 U.S.C. § 101(5). A 'claim' is in turn defined, in relevant part, as a 'right to payment.' Id.. § 101(5). The meanings of 'debt' and 'claim' are considered to be 'coextensive.' *Jonhson v. Home State Bank*, 501 U.S. 78, 84-85 n. 5, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991); *Penn. Dept. Of Public Welfare v. Davenport*, 495 U.S. 552, 558, 110 S.Ct. 2126, 109 L.Ed.2d 588 (1990). *In re Rifkin*, 124 B.R. 626, 628 (Bankr. E.D.N.y. 1991). ('Debt and claim are flip sides of the same coin.'). S.Rep. No. 989, 95th Cong. 2d Sess, 23 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5809 ('The terms 'debt' and 'claim' are coextensive; a creditor has a 'claim' against the debtor; the debtor owes a 'debt' to the creditor.').

Here, the Debtor owes a "debt" to the Movant, the creditor and Movant has a "claim" against the Debtor. . The debt is the alienation of the pay out provisions of Movant's interest in the GM/UAW Pension plan payments as is more fully developed herein by "applicable nonbankruptcy law" and applicable bankruptcy law and the "claim" of Movant is for the pay- out portions all in violation of 29 U.S.C. § 1144(d), 1.401(a)-13(b)(I), 26 U.S.C. § 6331(d)(4) and 26 C.F.R. § 301.6331-2(a)(1), 26 C.F.R. § 1.401(a)-13(e), 29 U.S.C. § 1056(d)(1), 26 U.S.C. § 401(a)(13(A), 26 C.F.R. § 1.401(a)-13(1) (i), (ii), 26 U.S.C. § 6065, 6061, Treasury Reg. § 1.6061-1 and well-established applicable case law as is more fully set forth herein.

Consider the case of *United States v. Snyder*, 343 F.3d 1171, (CA9, 2003)

Pursuant to 11 U.S.C. § 541(a)(1), the property of a bankruptcy estate includes "all legal or equitable interest of the debtor in property as of the commencement of the case," "[e]xcept as provided in subsections (b) and (c)(2)." 11 U.S.C. § 541(a)(1). Subsection (c)(2) provides that a "restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law is enforceable in a case under this title." Id. § 541(c)(2). In *Patterson v. Shumate*, 504 U.S. 753 (1992), the Supreme Court was asked to decide whether "applicable non-bankruptcy law" includes federal as well as state law. The Court held that federal law, including ERISA, was included, and therefore that the anti-alienation clause required for ERISA qualification constitutes a restriction on transfer enforceable under "applicable non-bankruptcy law" within the meaning of § 541(c)(2). Id. at 75960; see 29 U.S.C. § 1056(d)(1) ("Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated."). Accordingly, the Court held that a debtor's interest in an ERISA-qualified plan is excluded from the property of the bankruptcy estate. 504 U.S. at 765.

Like *Snyder*, id, the Debtor's alleged interest in the "ERISA-qualified plan is excluded from the property of the bankruptcy estate. 504 U.S. at 765," id because the GM/UAW "ERISA-qualified plan" contains the anti-alienation provision as mandated by law. However, "applicable nonbankruptcy law" applies here. For example, "ERISA expressly provides that it "shall [not] be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States," 29

U.S.C. § 1144(d), including federal tax law.” Id. The provisions of 1.401(a)-13(b)(I), 26 U.S.C. § 6331(d)(4) and 26 C.F.R. § 301.6331-2(a)(1), 26 C.F.R. § 1.401(a)-13(e) are federal laws and they are each “applicable nonbankruptcy law,” for purposes of the alienation of Movant’s pension plan payments where, as is the case and as admitted by Debtor (See attached exhibit “D”, Debtor’s Answer to Movant’s Amended Complaint) in the pending District Court action, there have never been any document signed by any authorized agent of Debtor, any authorized agent of Fidelity Investment or Movant that would be in accordance with the Article VII, Section 3 of the GM/UAW Pension Plan Agreement, and “applicable nonbankruptcy law”, i.e. 29 U.S.C. §1056(d)(1), 26 U.S.C. § 401(a)(13(A), 26 C.F.R. §1.401(a)-13(1) (i), (ii), 26 U.S.C. § 6065, 6061, Treasury Reg. § 1.6061-1. Each of these “applicable nonbankruptcy law[s],” will be developed in full below.

On May 19, 1999, the IRS served on debtor a Notice of Levy. (Exhibit “E”). This levy, in the amount of “267928.91”, in part, stated to debtor that: “THIS LEVY WON’T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS’ RETIREMENT PLAN, **OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL**, UNLESS THIS IS SIGNED IN THE BLOCK TO THE RIGHT. (Emp. Added). The May 19, 1999, Notice of Levy which denied to debtor the execution of the Notice of Levy on Movant’s interest in the GM/UAW pension plan payments for the reason that the instructions to IRS was that this Notice of Levy was not signed by the IRS. Thus, the complete dominion and control vis-a-vis execution of the IRS Notice of Levy dated May 19, 1999, is cause for the lifting of the stay since the execution of the Notice of Levy form instructions and Debtor refusal to comply with those form instructions strips Movant of any and all adequate protection.

26 U.S.C. 6061 provides that “any ... document required to be made under any provision of

the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary." Treasury Reg. § 1.6061-1, in turn, provides that "documents required under the provisions of subtitle A or F of the Code or of the regulations thereunder to be made by any person with respect to any tax imposed by subtitle A of the Code shall be signed in accordance with any regulations contained in this chapter, or any instructions, issued with respect to such returns, statements, or other documents." Section 6065 requires that "any...document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that is made under penalties." 26 U.S.C. § 6065. The one signature that is on the bogus continuing claim Notice of Levy is not signed by the alleged authorized agent under the penalty of perjury. The other signature that is provided for on the Notice of Levy form instructions is not signed and since it is not signed, it is not signed under the penalty of perjury.

The alleged income tax was imposed under the provisions of subtitle A, section and the Notice of Levy was allegedly issued under subtitle F, Section 6331. Thus, as provided for in 26 C.F.R. 1.6061-1, the Notice of Levy form instructions prescribes that that document had to "...be signed in accordance with any regulations contained in this chapter, or any instructions, issued with respect to such returns, statements, or other documents." 26 C.F.R. 1.6061-1 prescribes that the Notice of Levy had to be signed "...in accordance with..." the "...instructions issued with respect to the Notice of Levy document, it is, therefore, a bogus document having not been signed by an authorized agent of the IRS as prescribed by the Notice of Levy form instructions, 26 U.S.C. 6061, and 26 C.F.R. 1.6061-1, the regulation prescribed by the secretary. *Kelly v. United States*, 209 F.Supp. 2d 981 fn#2 ("Section 6331(d)(4) sets forth the information which must be included with the notice."). Thus, a Notice of Levy, like a return, that does not comply with the form instructions

and signature instructions does not constitute a valid Notice of Levy. *McGee v. Commissioner*, T.C. Memo, 2000-308 (2000) (Where "returns were not signed by....an authorized agent pursuant to sec. 1.6061-1(a), Income Taxa Regs, they do not constitute returns of petitioner."). It would be anomalous to excuse Debtor from compliance with Notice of Levy signature form instructions where an IRS authorised agent has determined vis-a-vis the absence of that authorized agent's signature box in the Notice of Levy form as provided for in 26 U.S.C. § 6061(a), 26 C.F.R. § 1.6061-1(a) but not to excuse a taxpayer's failure to sign a return when both 26 U.S.C. § 6061(a), 26 C.F.R. § 1.6061-1(a) apply equally to a return and a Notice of Levy.

Treasury Regulation section 1.401(a)-13(b) provides that:

(b) No assignment or alienation--(1) General rule. Under section 401(a)(13), a trust will not be qualified unless the plan of which the trust is a part provides that benefits provided under the plan may not be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, levy, execution or other legal or equitable process. (2) Federal tax levies and judgments. A plan provision satisfying the requirements of subparagraph (1) of this paragraph shall not preclude the following: (i) The enforcement of a ***Federal tax levy made pursuant to section 6331.***

While the GM/UAW Pension Plan does contain this anti alienation provision the Notice of Levy has to be "***....made pursuant to section 6331.***" The application of this regulation, Treasury Regulation section 1.401(a)-13(b)(I) to the facts of this case is clear: the Notice if Levy here has to be made pursuant to 26 U.S.C. § 6331(d)(4) and 26 C.F.R. § 301.6331-2(a)(1). Thus, since a levy will not "preclude ...

(i) The enforcement of a ***Federal tax levy made pursuant to section 6331,***" it necessarily follows from this that the Notice of Levy of May 19, 1999, does not contain the mandatory signature and verification requirements as set forth in the above and does not contain the signature pursuant to the

Notice of levy form instructions, that Notice of Levy cannot serve as a legal vehicle to alienate Movant's GM/UAW Pension Plan payments.

The U.S. Tax court and the Bankruptcy Courts have all uniformly held that one of the documents that is provided for in 26 U.S.C. § 6061(a), 26 C.F.R. § 1.6061-1(a) - a return - that is not signed under the penalty perjury is no return at all. In re Lee, 186 B.R. 539 (S.D.Fla. Sep. 05, 1995), and cases cited. Thus, since 26 U.S.C. § 6061(a), 26 C.F.R. § 1.6061-1(a) provides for "any ... document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary," and IRS form Notice of Levy meets the test of "any ... document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary," that IRS Notice of Levy has to not only be signed as provided for in the Form instructions, it also has to be signed under the penalty of perjury as provided for in 26 U.S.C. § 6061, 6065. The IRS continuing claim Notice of Levy fails to comply with these statutory, regulatory and well-established provisions. Therefore. The Debtor and its employees who are responsible for execution of this bogus Notice of Levy are engaging in criminal facilitation.

In "DEFENDANTS' MOTION AND BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT." U.S. District Court, Docket entry 51, Movant's attached exhibit "F". Debtor goes to great lengths in their arguments that they know that they have a legal duty to comply with the IRS May 19, 1999, Notice of Levy and its form instructions. For example, Debtor states that starting with page #8 that "[D]efendants were obligated to comply with the IRS levy," citing 26 U.S.C. § 6332(a). Debtor goes

on to state at page #9 of exhibit "F" that "...unless Defendants can show 'reasonable cause' why the levy was not honored, it must pay the government penalty equal to 50% amount stated above." Clearly, the "reasonable cause" that Debtor waived was that the Notice of Levy form instructions was a complete affirmative defense as to why Debtor had to comply with the Notice of Levy by not levying on Movant's property interest in the GM/UAW ERISA and IRC qualified pension plan payments. The GM/UAW Pension Plan is a plan that is qualified under 26 U.S.C. § 401(a) are exempt from tax pursuant to 26 U.S.C. § 501(a) with certain exceptions not applicable. However, since Debtor consciously chose to ignore the provisions of Article VII, Section 3 of the GM/UAW Pension Plan Agreement, and in violation of 29 U.S.C. § 1056(d)(1), 26 U.S.C. § 401(a)(13)(A), 26 C.F.R. § 1.401(a)-13(1) (i), (ii), 26 U.S.C. § 6065, 6061, Treasury Reg. § 1.6061-1 Debtor should be divested of that tax exempt status

Notice of Levy form instructions and levy on Movant's property interest in the GM/UAW ERISA and IRC qualified pension plan payments contract Debtor has now become liable to Movant, as a secured party with a secured claim, to recoup and recover those illegal extractions of Debtor. If, as Debtor has alleged, Debtor fully complied with the Notice of Levy and the form instructions then Debtor would have to have complied with 26 U.S.C. § 6061(a) and 26 C.F.R. § 1.6061-1(a) by refusing to honor the IRS Notice of Levy that does not meet the statutory and regulatory provisions of the signing provisions of 26 U.S.C. § 6061(a) and 26 C.F.R. § 1.6061-1(a)

The fact that the IRS instructed the Debtor vis-a-vis the Notice of Levy form instructions that the Notice of Levy does not apply to the Movant's property interest in the GM/UAW ERISA and IRC qualified pension plan payments contract thereby resulting in those Plan Payments being under the complete dominion and control of Debtor and concurrently divesting Movant of complete

dominion and control; over those payments since Debtor commenced execution of the Notice of levy in the year 1999, result in a complete divestiture of any legal effect of the Notice of Levy on Movant's property interest in the GM/UAW ERISA and IRC qualified pension plan payments contract. The key to determining whether a taxpayer enjoys 'complete dominion' over a given sum is whether the taxpayer 'has some guarantee that he will be allowed to keep the money.' *Indianapolis Power & Light Co.*, 493 U.S. at 210. Here, Debtor has denied Movant complete dominion and control over Movant's property interest in the GM/UAW ERISA and IRC qualified pension plan payments. Whether that divestiture was legal or not does change the legal fact that Movant has had no dominion or control of his property interest in the GM/UAW ERISA and IRC qualified pension plan payments since the year 1999. Therefore, based on Debtor having denied to Movant "... some guarantee that he will be allowed to keep the money." *Indianapolis Power, Id*, money that is not property of the estate, and money that is under the complete dominion and control of Debtor in violation of Article VII, Section 3 of the GM/UAW Pension Plan Agreement, in violation of 29 U.S.C. §1056(d)(1), 26 U.S.C. § 401(a)(13)(A), 26 C.F.R. §1.401(a)-13(1)(i), (ii); Movant has been denied adequate protection. The Automatic stay should be lifted in order that the Court that does have subject matter jurisdiction over the non-property of the estate, Movant's interest in the GM/UAW Pension Plan contract that Court being the District Court in the Middle District of Florida. Thus, the 7th prong of *Sonnax*, "(7) whether litigation in another forum would prejudice the interests of other creditors;" has been met.

Movant argues that the estate will not be burdened of the court permits the District Court litigation to proceed because the imposition of a constructive trust, here the GM/UAW ERISA and IRC qualified pension plan agreement is not property of the estate of debtor and thus, would not

interfere with the Debtor's Chapter 11 case at any time. However, while the stay must be lifted to enable the District Court to determine the pending facts and issues in that action, this Court will determine whether a constructive trust is involved here, it is for this Court, in the first instance, what is property of the estate. *See In re Continental Airlines*, 138 B.R. 442, 445 (the determination of what constitutes property of the debtor's estate is one of the core proceedings arising under title 11 and is inherently an issue to be determined by the Bankruptcy court. As explained in *In re Flanigan*, 503 F.3d 171, 180-11 (CA2, 2007):

The effect of a constructive trust in bankruptcy is profound. While the bankrupt estate is defined very broadly under § 541(a)(1) of the Bankruptcy Code to [*18] include all legal or equitable interests of the debtor, any property that the debtor holds in constructive trust for another is excluded from the estate pursuant to § 541(d), which states

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold. 11 U.S.C. § 541(a)(1), (d); see also *Sanyo Elec., Inc. v. Howard's Appliance Corp.* (In re Howard's Appliance Corp.), 874 F.2d 88, 93 (2d Cir. 1989). A constructive trust thus places its beneficiary ahead of other creditors with respect to the trust *res*.

11 U.S.C. § 541(a)(1), (d); see also *Sanyo Elec., Inc. v. Howard's Appliance Corp.* (In re Howard's Appliance Corp.), 874 F.2d 88, 93 (2d Cir. 1989). A constructive trust thus places its beneficiary ahead of other creditors with respect to the trust *res*.

Granting Movant stay relief will not result in the imposition of a constructive trust and, therefore, neither Debtor nor the estate will be prejudiced.

After determining whether relief from the stay will result in any harm to the Debtor or the estate, this Court must balance that hardship with any hardship that the movant will suffer as a result of the stay being enforced. Here, Movant believes that the equities favor Movant. Hardship will result to Movant denying relief, whereas there will be no prejudice to Debtor. For example, Debtor

and Movant have already prepared extensively for entry of summary judgment in the District Court. Both Debtor and Movant will be burdened by further delay and the fact that it will have to prepare again in this Court that which they and District Court have already spent significant time and resources preparing for the resolution in the District Court action. In addition, it makes no sense for this Court to prepare for that which the District court, Debtor and Movant have already prepared for. That is unnecessary expenditure of the limited resource of this Court, the District court, Debtor and Movant. Further, without a ruling on the District Court issues and facts, Debtor's and Movant's rights in this bankruptcy case remains undetermined and the value of Movant's claim will remain a troubling issue for this Court, the District Court, and Debtor.

The Debtor simply cannot file a confirmable plan of reorganization until they know what liability they have to Movant. The resolution of the issues and facts remaining in the District Court litigation will assist this Court, the Debtor and Movant and not burden this Court. In addition, this Court must consider whether movant has some probability of success on the merits of the pending District Court litigation. Even a slight probability of success on the merits may be sufficient to support lifting an automatic stay in an appropriate case. *Int'l Business Machines v. Fernstrom Storage & Van co. (In re Fernstrom Storage & Van Co.)*, 938 F.2d 731, 737 (CA7, 1991; *Izzarelli v. Rexene (In re Rexene Prods. Co.)* 141 B.R. 574 578.(Bankr. D.Del. 1992). That probability of success is found in Debtor's admitted violations of 29 U.S.C. § 1056(d)(2), 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii) bars any and all alienation over the 10% limits. Here, defendants' violate the provisions of 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii), 26 C.F.R. § 1.401(a)-13(e) 29 U.S.C. § 1056(d)(2), and Article VII, Section 3(e) (Administrative Record, Volume I, pages #47-48) of the GM/UAW Pension Plan Agreement. Thus, it is these admitted violations of Debtor that has already solidified into actual success on the merits and the issues remaining are merely damage calculations.

Antialienation provision required for ERISA qualification and contained in the GM/UAW Pension Plan Supplemental Agreement (attached to Movant's Proof of Claim and incorporated herein by reference as though fully stated) constitutes enforceable transfer restrictions for purposes of 11 U.S.C. § 541(c)(2)'s exclusion of property from bankruptcy estate. *Patterson v. Shumate*, 504 U.S. 753, 112 S.Ct. 2242, 119 L.Ed.2d 519. Thus, because the GM/UAW ERISA and IRC qualified Pension Plan Agreement is not "property of the estate" this Bankruptcy Court lacks subject matter jurisdiction over these ERISA-qualified pension plan funds. 11 U.S.C. § 541(c)(2). In *re Rains*, 428 F.3d 893 (CA9, 2005); In *re McClellan*, 45 F.3d 432 (CA7, 1995). See *Kickman Hanley P.C. v. Kodak Restaurant, ,* 558 F.3d 204 (CA2, 2009).

The terms of the GM/UAW pension plan bars the recovery of overpayments from "...the *General Motors Hourly-Rate Employees Pension Plan*." In the plan, Defendants' and the UAW have agreed in Section 10 Recovery of Benefit Overpayments. of the GM/UAW Pension Plan provides that:

If it is determined that any benefit(s) paid to an employee under a General Motors benefit plan incorporated under the GM-UAW National Agreement or any Exhibits thereto, should not have been paid or should have been paid a lesser amount, written notice thereof shall be given to such employee and the employee shall repay the amount of the overpayment.

If the employee fails to repay such amount of overpayment promptly, the Corporation, on behalf of the applicable benefit plan, shall arrange to recover the amount of such overpayments from any monies then payable, or which may become payable, to the employee in the form of wages or benefits payable under a General Motors benefit plan (*excluding the General Motors Hourly-Rate Employees Pension Plan*) incorporated under the GM-UAW National Agreement or any Exhibits thereto. (Emphasis added by Plaintiff).

There is one limited exception of the exercise of discretionary authority under the terms of the GM/UAW pension plan: Article VII, Section 3 of the GM/UAW Pension Plan Agreement which

provides that:

(e) may have amounts of not less than \$80.00, but in no event more than 10% of the retired employee's monthly pension, withheld to repay any outstanding overpayment owing to any benefit plan of the Corporation, *pursuant to written authorization and direction acceptable to the corporation.*

Ellis National Bank of Jacksonville v. Irving Trust Co., 786 F.2d 466 (CA2, 1986) fn#1 provides that:

Treas.Reg. Sec. 1.401(a)-13(e) expressly permits a participant in a pension plan to direct the plan to pay all or part of plan benefits to a third party if (1) such arrangement is revocable at any time by the participant and (2) *the third party files a written acknowledgment of such revocability with the plan administrator.* The parties do not contend on appeal, and no party (including Irving Trust) has argued to the district court, that Kalil's revocable assignment to Ellis failed to satisfy these requirements

This Treasury Regulation, Sec. 1.401(a)-13(e), expressly provides that:

(e) Special rule for certain arrangements--(1) In general. For purposes of this section and notwithstanding paragraph (c)(1) of this section, an arrangement whereby a participant or beneficiary directs the plan to pay all, or any portion, of a plan benefit payment to a third party (which includes the participant's employer) will not constitute an "assignment or alienation" if-- (i) It is revocable at any time by the participant or beneficiary; and (ii) The third party files a written acknowledgement with the plan administrator pursuant to subparagraph (2) of this paragraph. (2) Acknowledgement requirement for third party arrangements. In accordance with paragraph (e)(1)(ii) of this section, the third party is required to file a written acknowledgement with the plan administrator. This acknowledgement must state that the third party has no enforceable right in, or to, any plan benefit payment or portion thereof (except to the extent of payments actually received pursuant to the terms of the arrangement). A blanket written acknowledgement for all participants and beneficiaries who are covered under the arrangement with the third party is sufficient.

Here, there is no genuine issue of material fact or dispute that the third party, Fidelity Investment, Debtor, Movant has never signed or filed with the plan administrator any Treasury Regulation, Sec. 1.401(a)-13(e) document that would authorize the legal alienation that Fidelity

Investment and Debtor have been executing on Movant's interest in the GM/UAW ERISA and IRC qualified pension plan agreement.

Moreover, 29 U.S.C. § 1056(d)(2) provides that "[F]or the purposes of paragraph [29 U.S.C. § 1056(d)(1)] of this subsection, *there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment.*" In addition, 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii) provides that: "....a plan may provide that once a participant or beneficiary begins receiving benefits under the plan, the participant or beneficiary may assign or alienate the right to future benefit payments *provided that the provision is limited to assignments or alienations which-- (i) Are voluntary and revocable; (ii) Do not in the aggregate exceed 10 percent of any benefit payment.*" Article VII, Section 3(e) (Administrative Record, Volume I, pages #47-48) of the GM/UAW Pension Plan Agreement is the provision of 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii) that implements the provision that defendants' can only alienate plaintiff's pension plan payments if there is first a "written authorization" to do. That "written authorization" is non-existent in this case. Even if in the alternative that was no "written authorization", as is the case here, the provisions of 29 U.S.C. § 1056(d)(2) and 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii) bars any and all alienation over the 10% limits. Here, defendants' violate the provisions of 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii), 29 U.S.C. § 1056(d)(2), and Article VII, Section 3(e) (Administrative Record, Volume I, pages #47-48) of the GM/UAW Pension Plan Agreement.

Section 10 Recovery of Benefit Overpayments., of the GM/UAW Pension Plan provides that:

If the employee fails to repay such amount of overpayment promptly, the Corporation, on behalf of the applicable benefit plan, shall arrange to recover the amount of such overpayments from any monies then payable, or which may become payable, to the employee in the form of wages or benefits payable under a General Motors benefit plan (*excluding the General Motors Hourly-Rate Employees Pension Plan*) incorporated under

the GM-UAW National Agreement or any Exhibits thereto. (Emphasis added by Plaintiff).

Consider for example the case of *Ditto v. MCCurdy*, 86 Hawaii 84, 86, 947 P.2d 962, 954 (1997).

We begin with *General Motors*, which is directly on point. In that case, David Buha obtained a state court judgment against Walter Kinsky and his wife in a tort action. When the judgment was not paid, Buha instituted post-judgment garnishment procedures, after which a writ of garnishment was served on the National Bank of Detroit in its capacity as trustee of a General Motors (GM) Corporation pension fund. The trustee filed a disclosure indicating no liability to Kinsky, prompting Buha to demand an examination of the garnishee. The matter was set for hearing before The Honorable James B. Stone, judge of the 34th judicial district of Michigan.

Prior to the hearing, however, GM filed suit in the United States District Court for the Eastern District of Michigan, seeking to restrain enforcement of the writ of garnishment. The district court entered a temporary restraining order (TRO) pending the hearing on GM's motion for a preliminary injunction. The district court reasoned that GM, as fiduciary of the pension plan, would "be irreparably damaged and harmed" unless defendants Buha and Judge Stone were immediately restrained. Following the hearing on GM's motion for preliminary injunction, the district court entered an order permanently enjoining Buha and Judge Stone from enforcing or attempting to enforce the writ of garnishment.

On appeal, the United States Court of Appeals for the Sixth Circuit held that benefits under an ERISA-qualified pension plan are not subject to garnishment by a creditor of a plan beneficiary. The Sixth Circuit began its discussion by pointing out that

[g]arnishment is not mentioned in ERISA. However, both ERISA and the section of the [IRC] dealing with "qualified" pension, profit-sharing and stock bonus plans contain provisions against assignment or alienation of plan benefits. Nearly identical language in 29 U.S.C. § 1056(d)(1) (ERISA) and 26 U.S.C. § 401(a)(13) (IRC) requires plans to contain a provision that "benefits provided under the plan may not be assigned or alienated." The General Motors plan which was the object of the writ of garnishment contains this provision. There is one exception in ERISA to the requirement of non-assignability which permits a "voluntary and revocable assignment of [sic] not to exceed 10 per cent of any benefit payment" 29 U.S.C. § 1056(d)(2). A similar exception is contained in 26 U.S.C. § 401(a)(13).

General Motors, 623 F.2d 455 at 460.

The Sixth Circuit then reviewed the Joint House and Senate Conference Committee Report, which refers to the requirement of non-assignability and the exception as follows:

Alienation

Under the conference substitute, a plan must provide that benefits under the plan may not be assigned or alienated. However, the plan may provide that after a benefit is in pay status, there may be a voluntary revocable assignment (not to exceed 10 percent of any benefit payment) by an employee which is not for purposes of defraying the administrative costs of the plan. For purposes of this rule, a garnishment or levy is not to be considered a voluntary assignment. Vested benefits may be used as collateral for reasonable loans from a plan, where the fiduciary requirements of the law are not violated. H.R.Rep.No. 93-1280, 93 Cong. 2d Sess., reprinted in [1974 U.S.C.C.A.N.], pp. 4639, 5038, 5061.

Id. (emphasis added).

The court indicated that:

Both sides find support in this language. The plaintiff [(GM)] argues that "this rule" refers to the exception, and that since garnishments are not allowed within the 10 per cent exception, they are clearly not allowed above that amount. On the other hand, the defendants [(Buha and Stone)] see "this rule" as a reference to the general requirement of a provision against assignment or alienation. Under this reading a garnishment is not to be considered an assignment, and therefore is not prohibited.

Id. Nevertheless, the court concluded that neither of the parties' arguments was convincing and stated that it was "unable to decide the question on the basis of this portion of the legislative history." Id.

The court thereafter turned to defendants' argument that use of the words "assignment" and "alienation" in [section] 1056(d)(1) indicates that Congress intended to prohibit only voluntary acts by the pension plan beneficiaries. They point out that Congress has clearly prohibited garnishments and attachments when that is its intention. They list ten different statutes in which Congress has made a distinction between voluntary assignments and involuntary encroachments on benefits by way of garnishment, execution, attachment, etc. See, e. g., 5 U.S.C. § 8346 [Civil Service retirement benefits]; 10 U.S.C. § 1450 [benefits under serviceman's survivor benefits plan].

Id. (brackets in original). Although the Sixth Circuit agreed that "[t]his is a strong indication that Congress recognized the difference between voluntary and involuntary encroachments on benefit funds and has stated it specifically when both are forbidden[.]" the court stated that "Congress did use the word 'voluntary' in specifying those assignments which qualify for the 10 per cent exception in [section] 1056(d)(2)." Id. Accordingly, the court concluded that "[t]his can reasonably be read as an indication that the preceding language in [section] 1056(d)(1) included all encroachments, both voluntary and involuntary." Id.

The court then turned to an administrative interpretation of the anti-assignment provisions of ERISA, which it found highly persuasive:

Pursuant to [its authority under ERISA,] the Secretary of the Treasury issued Internal Revenue Service Regulation § 1.401(a)-13 [hereinafter, Treasury Regulation § 1.401(a)-13 or Reg. § 1.401(a)-13], which provides in part:

(b) *No assignment or alienation.* (1) General rule. Under section 401(a)(13), a trust will not be qualified unless the plan of which the trust is a part provides that benefits provided under the plan may not be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, levy, execution or other legal or equitable process. 26 C.F.R. s 1.401(a)-13 (1979).

As Judge Garth pointed out in *Baker v. Otis Elevator Co.*, 609 F.2d 686, 690 (3d Cir. 1979), Congress specifically delegated to the Secretary of the Treasury the authority to issue regulations concerning participation, vesting and funding standards. Moreover, Congress provided that regulations issued by the Treasury Department would apply to analogous employee benefit sections of Title I of the Act in the same areas. Since the regulation in question is a legislative rather than an interpretive regulation, it is required to be followed unless it was issued in excess of the statutory authority of the Secretary or was "arbitrary, capricious, or an abuse of discretion, or otherwise not in accordance with law." *Id.* at 691, quoting *Batterson v. Francis*, 432 U.S. 416, 426, 97 S.Ct. 2399, 2406, 53 L.Ed.2d 448 (1977). The regulation in question clearly passes this test.

General Motors, 623 F.2d at 462-63 (some brackets in original) (emphases added). "Giving the required effect to Reg. § 1.401(a)-13," the Sixth Circuit concluded that "pension plan benefits are not subject to garnishment and that the district court properly enjoined the proceedings in the Michigan court." *See id.*

In *Guidry*, the United States Supreme Court recognized that ERISA "erects a general bar to the garnishment of pension benefits from plans covered by the Act." *Guidry*, 493 U.S. at 371. Therein, petitioner Curtis Guidry, a union official, pleaded guilty to embezzling more than \$377,000 from respondent Sheet Metal Workers International Association, Local 9 (Union), in violation of section 501© of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 73 Stat. 536, 29 U.S.C. § 501© (1982 ed.). Guidry's employment with the Union had made him eligible to receive benefits from three union pension funds. Nevertheless, two of the pension plans determined that Guidry had forfeited his right to benefits as a result of his criminal activity. Guidry filed a complaint against the two plans in the United States District Court for the District of Colorado, alleging that the plans had wrongfully refused to pay him the benefits to which he was entitled.

The Union intervened, joined the third pension plan as a party, and stipulated to a \$275,000 judgment in the Union's favor. The district court rejected the plans' claim that

Guidry had forfeited his right to benefits, relying upon section 203(a) of ERISA, 29 U.S.C. § 1053(a) (1982 ed.), which declares that "[e]ach pension plan shall provide that an employee's right to

his normal retirement benefit is nonforfeitable" so long as the employee meets the statutory age and years of service requirements. The district court concluded, however, that ERISA's anti-alienation clause did not preclude the imposition of a constructive trust in favor of the Union until the judgment was satisfied. Although the court appeared to acknowledge that the anti-alienation provision generally prohibited the garnishment of pension benefits as a means of collecting a judgment, it nevertheless stated that "ERISA must be read in pari materia with other important federal labor legislation." Guidry, 493 U.S. at 370 (quoting Guidry v. National Sheet Metal Workers' Nat'l Pension Fund, 641 F. Supp. 360, 362 (D. Colo. 1986)). Reading ERISA in pari materia with, *inter alia*, the LMRDA -- which seeks to combat corruption on the part of union officials and to protect the interests of the membership -- the district court concluded that a narrow exception to ERISA's prohibition on assignment or alienation of pension benefits arises where "the viability of a union and the members' pension plans was damaged by the knavery of a union official[.]" Id. The United States Court of Appeals for the Tenth Circuit affirmed, and the Supreme Court reversed.

The Guidry Court began its discussion by stating that: Both the District Court and the Court of Appeals presumed that § 206(d)(1) of ERISA erects a general bar to the garnishment of pension benefits from plans covered by the Act. This Court, also, indicated as much, although in dictum, in Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825 (1988). In Mackey the Court held that ERISA does not bar the garnishment of welfare (e.g., vacation) benefits. In reaching that conclusion, it noted that § 206(d)(1) proscribes the assignment or alienation of pension plan benefits, but that no comparable provision applies to ERISA welfare benefit plans. Id. at 836. It reasoned that "when Congress was adopting ERISA, it had before it a provision to bar the alienation or garnishment of ERISA plan benefits, and chose to impose that limitation only with respect to ERISA pension benefit plans, and not ERISA welfare benefit plans." Id. at 837 (emphasis in original). The view that the statutory restrictions on assignment or alienation of pension benefits apply to garnishment is consistent with applicable administrative regulations,^[6] with the relevant legislative history,^[7] and with the views of other federal courts.^[8] It is also consonant with other statutory provisions designed to safeguard retirement income.^[9]

493 U.S. at 371 (emphases in original). Finding that it could "see no meaningful distinction between a writ of garnishment and the constructive trust remedy imposed in this case[.]" the Court held that the constructive trust remedy "is therefore prohibited by § 206(d)(1) unless some exception to the general statutory ban is applicable." Id.

The Court went on to reject the plans' position that the LMRDA would be modified, impaired, or superseded by a "refusal to allow ERISA pension plans to be used to effectuate the remedial goals of the LMDRA." ⁽¹⁰⁾ 493 U.S. at 375. Additionally, the Court felt it inappropriate to "approve any generalized equitable exception -- either for employee malfeasance or for criminal misconduct -- to ERISA's prohibition on the

assignment or alienation of pension benefits." *Id.* at 376. In refusing to recognize a general equitable exception, the Court reasoned:

Section 206(d) reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them. If exceptions to this policy are to be made, it is for Congress to undertake that task.

As a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text. The creation of such exceptions, in our view, would be especially problematic in the context of an antigarnishment provision. Such a provision acts, by definition, to hinder the collection of a lawful debt. A restriction on garnishment therefore can be defended only on the view that the effectuation of certain broad social policies sometimes takes precedence over the desire to do equity between particular parties. It makes little sense to adopt such a policy and then to refuse enforcement whenever enforcement appears inequitable. A court attempting to carve out an exception that would not swallow the rule would be forced to determine whether application of the rule in particular circumstances would be "especially" inequitable. The impracticability of defining such a standard reinforces our conclusion that the identification of any exception should be left to Congress.

Understandably, there may be a natural distaste for the result we reach here. The statute, however, is clear. In addition, as has been noted above, the malefactor often is not the only beneficiary of the pension.

Id. at 376-77 (footnote omitted) (emphasis in original).

We are persuaded by the reasoning set forth in General Motors and Guidry and hold that section 206(d)(1) erects a general bar to the garnishment of pension benefits from ERISA-covered plans. Numerous federal and state courts are in accord. *See, e.g., Tenneco Inc. v. First Virginia Bank of Tidewater*, 698 F.2d 688, 689-90 (4th Cir. 1983) (holding that, "[b]y virtue of the statute and . . . [Treasury Regulation § 1.401(a)-13], an employee's accrued benefits under . . . a qualified plan may not be reached by judicial process in aid of a third-party creditor"); Travelers Ins. Cos. v. Fountain City Federal Credit Union, 889 F.2d 264, 266 (11th Cir. 1989) (stating that "[b]oth the ERISA statute and the applicable [Treasury] regulation are clear[] . . . that pension plan funds may not be garnished"); Commercial Mortgage Ins., Inc. v. Citizens Nat'l Bank of Dallas, 526 F. Supp. 510, 516 (N.D. Tex. 1981) (concluding that "ERISA's assignment-alienation prohibition creates a general federal exemption of pension benefits from commercial creditors' claims and preempts otherwise relevant state law"); Cody v. Riecker, 454 F. Supp. 22, 24 (E.D. N.Y. 1978) (stating that ERISA's anti-alienation provision will not be construed "as permitting a garnishment or levy by every judgment creditor"); Goddard v. Boozer, 287 S.E.2d 308, 309 (Ga. Ct. App. 1981) (holding that funds of a profit-sharing plan, which was an ERISA-qualified pension plan, were exempt from garnishment). *But see* National Bank of North America v. International Bhd. of Elec. Workers, Local No. 3, Pension and Vacation Funds, 69 A.D.2d 679, 688 (N.Y. App. Div. 1979) (holding that

New York statutory procedures governing the enforcement of money judgments, including the mechanisms of levy and garnishment, are neither in conflict with nor preempted by the provisions of ERISA and, therefore, the vested benefits payable to a judgment debtor from an ERISA-qualified employee pension fund are not exempt). Moreover, our holding clearly comports with ERISA's goal of protecting the interests of participants and beneficiaries of qualified employee benefit plans. See ERISA § 2, 29 U.S.C. §§ 1001(b) and ©. Indeed, the legislative history of ERISA contains the following pertinent references to ERISA's anti-alienation provision:

[(a)] *Other provisions to protect covered employees and their beneficiaries.*--In addition to the minimum participation, vesting and funding standards provided in the bill, your committee has adopted a number of specific provisions to protect the rights of employees and beneficiaries under qualified plans. . . .

Qualified plans must provide that retirement benefits may not be assigned or alienated, except for voluntary and revocable assignments of not more than 10 percent of the benefits.

H. R. Rep. No. 93-807, 93rd Cong. 2d Sess. 3, reprinted in 1974 U.S. Code Cong. & Admin. News 4670, 4695 (italics in original) (bold and underscored emphasis added); and

[(b)] *Alienation.*--To further ensure that the employee's accrued benefits are actually available for retirement purposes, the committee bill also contains a provision requiring the plan to provide that benefits may not be assigned or alienated. (Of course, this provision is not intended to prevent the transfer of benefit rights from one qualified plan to another.)

Nevertheless, a plan will be permitted to provide for voluntary and revocable assignments (not to exceed 10 percent of any benefit payment).

Id. at 4734 (italics in original) (bold and underscored emphasis added).

Here, there is not question that Debtor is a "fiduciary" of the GM/UAW Pension Plan as defined by the Department of Labor. 29 C.F.R. § 2510.3-101(a)(2) ("...any person who exercises authority or control respecting the management or disposition of such underlying assets, and any person who provides investment advice with respect to such assets for a fee (direct or indirect), is a fiduciary of the investing plan.").

OVERPAYMENT

Debtor's claim is for an "overpayment." The U.S. Supreme Court has provided the following definition of an "overpayment": "any payment in excess of that which is properly due." *Jones v. Liberty Glass Co.*, 332 U.S. 524, 531 (1947); *Estate of Baumgardner v. Commissioner*, 85 T.C. 445, 449-450, 460-461 (1985). [A] tax is overpaid when a taxpayer pays more than is owed, for whatever reason or no reason at all." *United States v. Dalm*, 494 U.S. 596, 609 n.6 (1990). The term "overpayment" encompasses "erroneously", "illegally", or "wrongfully" collected taxes. *Id.* The underlying reason why the "taxes" in this case have been "payment in excess of that which is properly due, is because the IRS has used the illegal tax tables to determine the federal income tax deficiency determination. That which results in the tax tables used in this case being illegal is that the tax tables created annually by the IRS does not comply with the notice and comment provisions of the APA and the publication requirements of the Federal Register act.

What Constitutes an Overpayment?

The Code does not have an all-inclusive definition of an "overpayment". Section 6401 provides examples of certain types of overpayments. For instance, the term "overpayment" includes "that part of the amount of the payment of any * * * tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto." Sec. 6401(a). On the other hand, section 6401© provides that an "amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid." However, these specific provisions do not provide a general

definition of the term. The Supreme Court in *Jones v. Liberty Glass Co.*, 332 U.S. 524, 531 (1947), has defined an overpayment as follows:

we read the word "overpayment" in its usual sense, as meaning any payment in excess of that which is properly due. Such an excess payment may be traced to an error in mathematics or in judgment or in interpretation of facts or law. And the error may be committed by the taxpayer or by the revenue agents. Whatever the reason, the payment of more than is rightfully due is what characterizes an overpayment.

See also *United States v. Dalm*, 494 U.S. 596, 609 n.6 (1990) ("The commonsense interpretation is that a tax is overpaid when a taxpayer pays more than is owed, *for whatever reason* or no reason at all."); *Sunoco, Inc. & Subs. v. Commissioner*, 122 T.C. 88 (2004); *Bachner v. Commissioner*, 109 T.C. 125 (1997), affd. without published opinion 172 F.3d 859 (3d Cir. 1998); *Estate of Baumgardner v. Commissioner*, 85 T.C. 445, 450 (1985). Obviously, as we have previously observed: "In order to determine the existence of an overpayment, there must first be a determination of the amount of tax properly due." *Winn-Dixie Stores, Inc. & Subs. v. Commissioner*, 110 T.C. 291, 295 n.5 (1998) (citing *Girard Trust Bank v. United States*, 226 Ct. Cl. 366, 369, 643 F.2d 725, 727 (1981)). This leads to the question of the meaning of the term "tax" The IRS has answered that question through its Notice of Levy and its form instructions.

Movant receive this GM?UAW Pension Plan payments under "*the General Motors Hourly-Rate Employees Pension Plan*", id. Thus, the "overpayment" provision of **Section 10 Recovery of Benefit Overpayments** is not applicable to Movant since he is retired from GM under the "*the General Motors Hourly-Rate Employees Pension Plan*".

Defendants' have admitted that "[P]laintiff and Defendant have never entered into any agreement or arrangement thereby authorizing Defendants to extract, alienate or reduce any amount of the pension plan payments that Defendant is obligated to pay to Plaintiff under the

GM/UAW Pension Plan Agreement." Defendants' Answer to Plaintiff's Amended Complaint, paragraph #18. The reason why no written authorization was needed in this case is because the IRS has made it clear to Debtor that the Notice of Levy does not apply to Movant's property interest in the GM/UAW ERISA and IRC qualified pension plan payments contract.

On May 14, 2007, debtor issued and sent to Movant a letter regarding a reduction of Movant's GM/UAW ERISA and IRC qualified pension plan payments. This letter (Exhibit "B"), in part, provides that:

Our records indicate you have received an overpayment of retirement benefits from 01/01/2005 through 06/10/2007, a total of 30 month(s). The total amount of the overpayment is \$32,985.00. Because the Plan is an ERISA qualified Plan, we are required to collect overpayments and return them to the Plan's Trust Fund.

This letter also states that the "Current Benefit Amount" of "\$1,045.50" was being reduced by the "New Benefit Amount as of 07/01/2007 to "\$0.00."

On September 5, 2007, Debtor sent a second letter to Movant (Exhibit "C"). This letter, Exhibit C, in part, provides that:

Our records indicate you have received an overpayment of retirement benefits. The total amount of the overpayment is \$32,985.00. Because the Plan is an ERISA qualified Plan, we are required to collect overpayments and return them to the Plan's Trust Fund.

This letter also states that the "Current Benefit Amount" of "\$1,045.50" was being reduced from the "Current Benefit Amount" of "\$0.00", to the "New Benefit Amount as of 10/01/2007" in the amount of "\$837.50."

This letter of September 5, 2007, goes on to state that:

If the payment in a lump sum is not received, beginning 10/01/2007, your monthly benefit will be reduced by 50% until the total amount of the overpayment has been recovered. This means that your gross monthly benefit will be \$418.75 until

03/01/2014. On 04/01/2014 you will receive \$515.00 completing the recovery of your overpayment of \$32,985.00. Thereafter, your gross monthly benefit of \$837.50 will be restored.

As is more fully set forth herein, at no time has Movant signed an document agreeing to and authorizing Debtor alienate any amount of Movant's interest in the GM/UAW ERISA and IRC qualified pension plan payments, as provided for in 29 U.S.C. §1056(d)(1), 26 U.S.C. § 401(a)(13(A), 26 C.F.R. §1.401(a)-13(1) (i), (ii); Article III, Section 3(e) and Article VII of the GM/UAW ERISA and IRC qualified pension plan agreement. Thus, these restrictive commands from Debtor to Movant denied to Movant complete dominion and control of those funds as a result of the Notice of Levy dated May 19, 1999, and each of the two (2) letters from debtor to Movant.

Debtor has never intended that the District Court litigation was never intended to be a part of this litigation since neither the District Court nor Movant has been named as a creditor in this bankruptcy case, a case that was commenced long after the District Court litigation. Nor does the District Court litigation have any effect on any reorganization plan of Debtor that is concurrently pending before this Court.

On February 29, 2008, by order of the Court, in the above referenced litigation, Movant filed and served his Amended Complaint. (Exhibit "G") Docket entry # 47. Movant's . allegations at item #18, 19 and defendants' reply to the same (D.E. #55) (Exhibit "D") provides that:

18. Plaintiff and Defendant have never entered into any agreement or arrangement thereby authorizing Defendants to extract, alienate or reduce any amount of the pension plan payments that Defendant is obligated to pay to Plaintiff under the GM/UAW Pension Plan Agreement.
18. Omitted
19. Defendant voluntarily elected to pay to the Internal Revenue Service the amount

of \$32,985.00, the same amount that Defendant is now alienating under Plaintiff's rights under General Motors/United Auto Workers ("GM/UAW") Pension Plan Agreement
19 Omitted

A copy of that Amended Complaint is included in Movant's index of exhibits and exhibit "G." Those allegations are incorporated herein as if set forth fully herein.

On March 7, 2008, Debtor filed with the District Court "DEFENDANTS' MOTION AND BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT." Docket entry 51. At pages 17-18 Debtor cites Article 7, Section 3 of the GM Pension Plan:

The pension fund shall not in any manner be liable for or subject to the debts or liabilities of any employee, separated employer, retired employee, pensioner or surviving spouse. Neither, benefit, pension or supplement at any time under the Plan shall be subject in any manner to alienation, sale transfer, assignment, pledge or encumbrances of any kind except in accord with provisions of a Qualified Domestic Relations Order within the meaning of IRS, section 414(p). If any person shall attempt to, or shall alienate, sell transfer, assign, pledge or otherwise encumber accrued rights, benefits, pension or supplements under the Plan or any part thereof, or if by reason of bankruptcy or enjoyed by anyone else, the Corporation may teammate the interest of such employee, pensioner or surviving spouse in any such benefit and instruct the trustee to hold or apply it to or for the benefit of such employee, pensioner or surviving spouse, spouse, children, or other dependents, or any of them as the Corporation may instruct; provided, however, that any pensioner, or surviving spouse, entitled to a monthly benefits under the plan:

(e) may have amounts of not less than \$80.00, but in no event more than 10% of the retired employee's monthly pension, withheld to repay any outstanding overpayment owing to any benefit plan of the Corporation, ***pursuant to written authorization and direction acceptable to the corporation.*** (Ex.D at 68). (Underline is that of Debtor and bold is that of Movant)

In an attempt to justify Debtors' alienation of Movant's interest in the GM Pension Plan, Debtor attempts to bifurcate the GM Pension Benefit Plan into the "benefits under the plan" provided for in Article 7, Section 3 of the GM Pension Plan and as yet "...another GM benefit plan...". For example, Debtor states at page #17 of "DEFENDANTS' MOTION AND BRIEF

IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT." Docket entry 51, that:

Plaintiff misinterprets [Article 7, Section 3 of the GM Pension Plan] as it is applicable to situations where the [Movant] has received an overpayment from another GM benefits plan and has authorized a deduction from his monthly pension benefit to repay such overpayment (e.g. Extended Disability Benefits under the General Motors Life and Disability Benefits Program).

At pages #2-3 of "DEFENDANTS' MOTION AND BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT." Docket entry 51 (Exhibit "F") , Debtor alleges that;

Plaintiff is a former General Motors hourly employee whose terms and conditions of employment were governed by GM-UAW Collective Bargaining Agreements, and its supplements. Plaintiff retired from General Motors with benefits commencing March 1, 1993. Upon his retirement Plaintiff began receiving a monthly pension benefit of \$1,045.00 per month.

In 1999 GM received a notice from the Internal Revenue Service ("IRS") that Plaintiff had failed to pay his income taxes in 11 different years. Plaintiff's failure to pay his income taxes resulted in a tax liability and penalties of over \$267,000.00 (Ex A). The IRS notice included a levy against Plaintiff's pension benefits. Based on the levy, GM remitted Plaintiff's monthly pension benefits to the IRS, thereby rendering Plaintiff's monthly benefits to \$0.00.

In 2005 the Plan switched claims administrators from electronic Data Systems Corporation ("EDS") to Fidelity Investments Institutional Operation Company, Inc. ("Fidelity"). In approximately January 2005, due to a mis-communication between EDS and Fidelity, Plaintiff's monthly pension benefit of \$1,045.50 was restored. However, Fidelity continued to remit to the IRS \$1,099.50 per month on behalf of Plaintiff to satisfy his tax liability, without currently reducing his pension. Fidelity continued to make these payments to the IRS without the concurrently reducing his pension. Fidelity continued to make these payments to the IRS without the concurrent deductions from Plaintiff's pension benefits until June 2007, when the error was discovered. In total \$32,985.00 was paid to the IRS, thus resulting in an overpayment to Plaintiff in that amount.

On May 14, 2007, the Fidelity / GM Benefits & Service center advised Plaintiff of the overpayment and informed him of the steps to be taken to recover the overpayment. The

Fidelity letter, copy attached as Exhibit B (That letter of May 14, 2007, is incorporated into Movants Index of Exhibit as exhibit "B"), stated:

This is a revised statement of your Pension benefits from General Motors. The revision and reason for the Pension Benefits Recalculation is:

- Benefits were not adjusted by the Tax Levy Amount of \$1,99.50
- Pension Overpayments.

Our records indicate you have received an overpayment of retirement benefits from 01/01/2005 through 06/10/2007, a total of 30 month(s). The total amount of the overpayment is \$32,985.00. Because the Plan is an ERISA qualified Plan, we are required to collect overpayments and return them to the Plan's Trust Fund.. (Ex B, 5/14/07 Letter).

Effective July 1, 2007, Plaintiff's monthly pension benefit was reduced to \$0.00 to recoup the overpayments. Id. Subsequently, on September 5, 2007 Plaintiff was informed that he would receive 50% of his pension until the overpayment was recouped. (Ex. C, 9/5/07 Letter).

Debtors above statement that "The IRS notice included a levy against Plaintiff's pension benefits" is a factually incorrect statement. Debtors "Exhibit A" (Movant's exhibit "B"), the IRS Notice of Levy dated May 19, 1999, does not contain within the four corners of that document "a levy against Plaintiff's pension benefits." This May 19, 1999, Notice of Levy, in the amount of "267928.91", in part, stated to debtor that: "THIS LEVY WON'T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLAN, **OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL**, UNLESS THIS IS SIGNED IN THE BLOCK TO THE RIGHT". (Emp. Added). This document is not "... SIGNED IN THE BLOCK TO THE RIGHT." Thus, Debtors' assertion that "The IRS notice included a levy against Plaintiff's pension benefits" is a factually incorrect statement. Thus, based on the IRS Notice of Levy that plainly and clearly provides that the Notice of Levy does not apply to GM/UAW Pension Plan payments was violated by Debtor by the erroneous levy in violation of that Notice

of Levy cannot constitute an "overpayment." Moreover, that levy that not only violated the Notice of Levy it also violated and continues to violate 29 U.S.C. §1104(1)(D) and the terms of the plan as is more fully developed herein.

Movant will now show by documents obtained from Fidelity.com web site, that Debtor in conspiracy with Fidelity Investments have been violating the IRS May 19, 1999, Notice of Levy by exercising complete dominion and control over Movant's interest in the GM/UAW ERISA and IRS qualified pension plan agreement. Starting with Debtor's statement of Movant's "Payment History" as set forth in Fidelity Investment, ", dated 07/01/2007, evidences that Movant should have been paid is \$13,460.40, in the year 2007 (Exhibit "H"); #13,460.40 for the year 2008 (Exhibit "I"); and for the year 2009, up to and including 09/01/2009, the amount of \$13,460.40 (Exhibit "J"). That is a total amount of \$40,381.20. Yet, in violation of the May 19, 1999, IRS Notice of Levy (Exhibit "E"), Debtor only paid to Movant the amount of \$22,044.91 representing a shortfall of payments to Movant in the amount of \$18,336.29 (\$40,381.20.- \$22,044.91),

If, as stated by Movant at pages #1-3 and pages 8-10 of "DEFENDANTS' MOTION AND BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT." Docket entry 51 (Exhibit "F"), Debtor had a known legal duty to comply with the May 19, 1999, IRS Notice of Levy (Exhibit "E"), Debtor in an attempt to find a safe harbor decided to spin the clear mandate of the Notice of Levy and statutory mandates, the regulatory mandates and along with applicable well-established case law and levies on Movant's interest in the GM/UAW ERISA and IRC Pension Plan payments in such a way so as to attempt to continue to disobey the clear provisions of 29 U.S.C. §1056(d)(1), 26 U.S.C. § 401(a)(13(A), 26 C.F.R. §1.401(a)-13(1) (i), (ii); Article III, Section

3(e) and Article VII of the GM/UAW ERISA and IRC qualified pension plan agreement, and 26 U.S.C. § 6061, 26 C.F.R. § 1.8061-1,

For example, Debtor states at page #1 of exhibit "F" that "[U]pon receipt of the [Notice of] Levy, Defendant's *were obligated to abide by [the Notice of Levy]* and remit the Plaintiff's pension benefits to the IRS to satisfy his tax liability." Yet, rather than Debtor meeting it's obligation to abide by the IRS Notice of Levy, the clear mandate to debtor by the IRS that "THIS LEVY WON'T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLAN, **OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL**, UNLESS THIS IS SIGNED IN THE BLOCK TO THE RIGHT" and where the Notice of Levy was not signed in the box to the right, Debtor's miserably failed to meet it's clearly known legal duty to abide by the clear mandate of the Notice of Levy. Further, debtor goes to great extraneous endeavors to attempt to show to the Court by way of non applicable statutes, regulations and case law that Debtor was in full compliance with the IRS Notice of Levy. Thus, whether Debtor want to classify the levy an "overpayment", a recoupment or otherwise, those monthly levies violate the IRS May 19, 1999 Notice of Levy.

Even if Movant has received any "overpayment" as alleged by Debtor Article 7, Section 3(e) of the GM Pension Plan provides that the predicate to any alleged "overpayment" there has to first be a "... *written authorization and direction acceptable to the corporation.*" That predicate of a "...*written authorization and direction acceptable to the corporation,*" is completely absent here. . .

29 U.S.C. § 1104(1)(D) provides that:

Currently pending before the United States District Court in the Middle District of Florida. , in case number **5:07-CV-408 OC**, the litigation, the following motions are

currently pending:

1. On March 1, 2008, Plaintiff filed with the District Court

**PLAINTIFF'S MOTION TO AMEND PLAINTIFF'S REPLY IN
OPPOSITION TO "DEFENDANTS' MOTION AND BRIEF IN
OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND CROSS-MOTION FOR SUMMARY JUDGMENT"**

(Docket entry # 65). That motion is still pending before the District Court even though nearly one (1) year and ½ of time has passed since the filing of that motion.

2. On April 16, 2008, Plaintiff filed with the District Court

**PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANTS'
AFFIRMATIVE DEFENSE OF FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES RE: DEFENDANTS' ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT**

(Docket entry # 65). That motion is still pending before the District Court even though nearly one (1) year of time has passed since the filing of that motion

3. On April 28, 2008, Plaintiff filed with the District Court:

**PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT RE:
AMENDED COMPLAINT**

(Docket entry # 68). That motion is still pending before the District Court even though nearly eleven (11) months of time has passed since the filing of that motion.

4. On May 9, 2008, Plaintiff filed with the District Court:

**MOTION FOR ENTRY OF ORDER FOR THE COURT TO TAKE
JUDICIAL NOTICE**

(Docket entry # 73). That motion is still pending before the District Court even though nearly eleven (11) months of time has passed since the filing of that motion.

5. On July 7 2008, Plaintiff filed with the District Court:

**PLAINTIFF'S MOTION FOR RECONSIDERATION RE: ORDER ON
MOTION TO QUASH, ORDER ON MOTION TO AMEND, ORDER ON
MOTION TO CONTINUE, ORDER ON MOTION FOR DISCOVERY,
ORDER ON MOTION TO STRIKE**

(Docket entry # 76). That motion is still pending before the District Court even though nearly nine (9) months of time has passed since the filing of that motion.

6. On August 20, 2008, Plaintiff filed with the District Court:

**PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AFFIRMATIVE
DEFENSES**

(Docket entry # 79). That motion is still pending before the District Court even though nearly eight (8) months of time has passed since the filing of that motion.

7. On August 25, 2008, Plaintiff filed with the District Court:

**PLAINTIFF'S MOTION TO DETERMINE IF THE STATUTE OF
LIMITATIONS HAS EXPIRED RE: IRS NOTICE OF LEVY DATED
MAY 19, 1999**

(Docket entry # 81). That motion is still pending before the District Court even though nearly eight (8) months of time has passed since the filing of that motion.

8. On September 26, 2008, Plaintiff filed with the District Court:

**PLAINTIFF'S MOTION FOR SANCTIONS AGAINST DEFENDANTS
FOR FAILURE TO COMPLY WITH F. R. CIV., RULE 26(A)(3)**

(Docket entry # 83). That motion is still pending before the District Court even though nearly seven (7) months of time has passed since the filing of that motion.

9. On February 20, 2009, Plaintiff filed with the U.S. District Court his Motion for Recusal. That motion is still pending before that Court. Docket entry #90.

10. On June 8, 2009, Plaintiff filed with the U.S. District Court his Motion for The Court to

Rule on Plaintiff's then Pending Motions . That motion is still pending before that Court.

Docket entry #91.

11. Relief from the automatic stay is imperative in order to permit the United States District in the Middle District of Florida, being case number **5:07-CV-408 OC**, to rule on Movant's pending motions or in the alternative to allow Movant to Petition to file and Petition for Writ of Mandamus with the Eleventh Circuit Court of Appeals.
12. Currently pending before the United States District in the Middle District of Florida, in this case, being case number **5:07-CV-408 OC**, is an order injunctioning Movant from filing any other documents with that Court until that Court rules on Movant's pending Motion for Summary Judgment.
13. Movant filed with the Eleventh Circuit Court of Appeals a Petition for Writ of Mandamus to the United States District Court of the Middle District Court being case number 09-11975_E. The Eleventh Circuit's order entered on May 26, 2009, (Exhibit "L") holding, in part, that "[L]awrence has the adequate alternative remedy of moving the district court to rule," was exercised by Movant in the United States by Movant filing with that Court a motion for the Court to rule on Movant's pending motions. (Docket entry #92 filed on June 8, 2009). However, the automatic stay of this Court entered within a few days subsequent to the Eleventh Circuit's order of May 26, 2009, completely divested Movant the "adequate alternative remedy" that the Eleventh Circuit held to be available to Movant.
13. Finally, the automatic stay entered by this court on June 1, 1999, prohibits the United States District in the Middle District of Florida, in this case, being case number **5:07-CV-408 OC** from ruling on Movant's now pending motions absent relief from this Court.

Moreover, it is the now pending automatic stay that bars Movant from petitioning the Eleventh Circuit Court of Appeals for any relief. Even if this Court were to grant relief from the automatic stay and in the absence of the of the District Court ruling on Movant's pending motions the order of the U.S. District Court entered on May 12, 2008, (Docket entry #72) (Exhibit "M") injuncts Movant from even attempting to seek and obtain any relief from that Court . Thus, the only relief now available to Movant is from this Court.

The Debtor's Chapter 11 Filing

14. On June 1, 2009, (the "Petition Date") the Debtors filed with this Court a voluntary Chapter 11 petition (the "Petition") in this Court.

ARGUMENT

MOVANT IS ENTITLED TO RELIEF FROM THE AUTOMATIC STAY FOR CAUSE PURSUANT TO 11 U.S.C. § 362(D)(1) BECAUSE THE DEBTOR CANNOT PROVIDE MOVANT WITH ADEQUATE PROTECTION

15. .Movant is entitled to relief from the automatic stay because the Debtor is unable to provide adequate protection. Section 362(d)(1) of the Bankruptcy Code provides, in pertinent part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay;;;

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1)

16. A court must lift the stay of the movant can demonstrate that any of the grounds set forth in § 362(d)(1) for stay relief are met. *See In re Elmira Litho, Inc.* 174 B.R. 892, 900 (Bankr. S.D.N.Y. 1994) (citing *In re Touloumis*, 170 B.R. 825, 827 (Bankr. S.D.N.Y. 1994); *In re de Kleinman*, 156 B.R. 131, 136 (Bankr. S.D.N.Y. 1993); *In re Diplomat Elecs. Corp.* 82 B.R. 688, 692 (Bankr. S.D.N.Y. 1988)).

17. The Bankruptcy Code does not define what constitutes “cause” for relief from the stay; rather, the bankruptcy court has discretion to decide on a case-by-case basis whether cause for relief from the automatic stay exists. *Sonnax Industries, Inc., v. Tri Component Products Corp. (In re Sonnax Industries, Inc.)*, 907 F.2d 1280, 1285-86(CA3, 1990); *In re Balco Equities Ltd., Inc.*, 312 B.R. 734, 748 (Bankr. S.D.N.Y. 2004). Although “cause” is not defined in the statute, the “legislative history does provide that ‘a desire to permit an action to proceed to completion in another tribunal may provide...cause.’” *In re RCM Global Long Term Capital Appreciation industries, INC.* 200 B.R. 514, 526 (Bankr S.D.N.Y. 1996). Here, cause for relief from the stay may be found based on Movant’s desire to proceed to completion in the United States District Court, Middle District of Florida and on a lack of adequate protection.

18. In the case of *Mazzeo Lenhart*, 167 F.3d 139 (CA2, 1999), the Second Circuit set forth the test for determining cause;

To the extent pertinent here, the Bankruptcy Code provides for the lifting of the automatic stay as follows:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay .

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1). “Neither the statute nor the legislative history defines the term ‘for cause’ and the legislative history gives only very general guidance.” *In re Sonnax Industries, Inc.*, 907 F.2d at 1285. Thus the “ ‘facts of each request will determine whether relief is appropriate under the circumstances.’ ” *Id.* at 1286 (quoting H.R.Rep. No. 95-595, at 343-44 (1977), reprinted in 1978 U.S.C.C.A.N. 6300). The burden is on the moving party to make an initial showing of “cause” for relief from the stay. See, e.g., *In re Sonnax Industries, Inc.*, 907 F.2d at 1285. Only if the movant makes such a showing does any burden shift to the debtor; absent a showing of cause, the court should simply deny relief from the stay. See, e.g., *id.*; *In re Boodrow*, 126 F.3d at 48.

In *In re Sonnax Industries, Inc.*, 907 F.2d at 1285, we listed a number of factors (“Sonnax factors”) that may be relevant in deciding whether the stay should be lifted in order to

permit litigation to continue in another forum:

(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms.

In *re* Sonmax Industries, Inc., 907 F.2d at 1286. Not all of these factors will be relevant in every case.

In re G.S. Distribution, Inc., 331 B.R. 552, 566-67 (Bankr. S.D.N.Y. 2005) (“Generally, courts have relied on only a few factors.”)

In these very early days of Debtor’s bankruptcy, this Court, any counsel that would have to be retained by Debtor over and above that which has already been retained in the State of Florida and the State of Michigan, , Debtor need have to devote the necessary resources to ably litigate anew the facts and issues that now stand at door steps of the District court. For example, if the stay is lifted in this case the interests of judicial economy would be advanced since the District Court judge and the Magistrate judge that is thoroughly informed of the facts and issues in this case. On the other hand, of the stay is not lifted this court would be burdened with motions and hearings for pro hoc vic counsel thereby further unnecessarily expended the limited judicial resources of this Court and at the same time not wasting the limited judicial resources of the District Court who stands at the door step of ruling on the pending motion but for the automatic

stay.

Debtor cannot dispute that the parties and Movant have spent a significant amount of time, effort, and resources in the District Court action and that the principle of judicial economy would favor validation of the District Court proceedings. *See e.g. In re G.S. Distribution, Inc.*, 331 B.R. 552, 566-67 (Bankr. S.D.N.Y. 2005). Accordingly, Sonmax factor 10 (“the interests of judicial economy and the expeditious and economical resolution of litigation” under the circumstances of this case strongly supports the annulment of the stay. On the other hand, to deny the annulment of the stay would result in allowing the Debtor to employ the automatic stay as a further shield to that which they have already admitted to their Answer to Movant’s Amended Complaint; that is, there is no written authorization allowing the current alienation of Movant’s pension plan payments.

The General Test for Litigation Stay Relief is Satisfied

The legislative history to section 362(d)(1) emphasizes the section’s applicability to proceedings in another tribunal such as is the case here. “It will be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve bankruptcy court from any duties that may be handled elsewhere.” H.R. Rep. No. 595, 95th Cong., 1st Sess., 341 (1977). Most courts follow this logic and apply an equitable balancing test to determine if cause exists to lift the stay to allow pending litigation to proceed or continue in another forum.

The Bankruptcy Court has developed a three-prong balancing test to determine whether to grant relief from the stay:

1. Whether any great prejudice to either party the bankruptcy estate or the debtor

will result from continuation of the civil suit;

2. Whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor; and
3. The probability of the creditor prevailing on the merits

Izzarelli v. Rexene (In re Rexene Prods. Co.), 141 B.R. 574, 574 (Bankr. D. Del. 1992)

This Court should also consider general policies underlying the automatic stay when deciding whether to grant a motion to lift the stay. These policies, which have been outlined by the United States Court of Appeals for the Second Circuit, are:

(1) whether the relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious [sic] and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceedings; and (12) impact of the stay on the parties and the balance of harms.

Sonnax Industries, Inc., v. Tri Component Products Corp. (In re Sonnox Industries, Inc.), 907 F.2d 1280, 1285-86(CA3, 1990).

Courts have often permitted "litigation to be concluded in another forum, particularly if the non-bankruptcy suit involves multiple parties or is ready for trial." Lawrence P. King, COLLIER ON BANKRUPTCY (15th ed. 2006) at 362.07[3][a]; *In re Rexene Prods. Co.*, 141 B.R. 574, 575 (Bankr. D. Del. 1992) ("...the fact that [the non-bankruptcy judge] has already heard and decided two issues support[s] the granting of relief on the grounds of judicial economy.") (hereinafter, "*Rexene*"); *In re Sonnox Indus., Inc. v. Tri Component Prods. Corp.*,

907 F.2d 1280 (2d Cir. 1990) (hereinafter, "*Sonnax*"); *In re Castlerock Properties*, 781 F.2d 159 (9th Cir. 1986); *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984). In fact, the legislative history of section 362(d)(1) emphasizes that a single factor, such as allowing a proceeding to advance before another tribunal, can constitute the requisite "cause." "It will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere." H.R. Rep. No. 595, 95th Cong., 1st Sess., 341 (1977) (cited in *Rexene* at 576).

Application

The Debtor and Movant are on the door-step of judicial resolution when the Debtor filed its Petition. The U.S. District Court in the Middle District of Florida has extensive knowledge of the facts and issues has already detailed findings. For example, if the stay is lifted the interests of judicial economy will be advanced, Debtor's counsel in the District Court will not have to seek and obtain Counsel in the State of New York as they have done in the state of Florida. However, if on the other hand the stay is not lifted, Debtor will have to expend its limited resources to pay counsel to seek and obtain counsel in the State of New York that would be able to represent Debtor in this Bankruptcy case regarding the Middle District of Florida District Court action. More importantly, an added burden would be placed on the limited judicial and administrative resources of this Court and the District Court and the Second Circuit if appeals should arise out of and from this bankruptcy case. This misallocation of the limited judicial and administrative resources of this court, the limited resource of Debtor and Movant would be a diversion of resources that could be avoided if the stay is granted.

As Movant pointed out herein, relief from the stay may be granted “when necessary to permit litigation to be concluded in another forum, particularly if the nonbankruptcy suit involves ...is ready for trial.” Lawrence P. King, *Collier on Bankruptcy*, 362.07[3][a] (15th de. 2006). Moreover, as noted above, the legislative history of section 362(d)(1) emphasizes the importance of allowing a case to continue in the original tribunal so long as there is no prejudice to the estate. In applying the three-prong balancing test, considering the policies set forth in *Sonnax*, and finding that lifting the stay will not result in prejudice to the Debtor, it is appropriate here to allow the pending District Court action to continue before the District Court.

1. Application of the Three-Prong Balancing Test

The first factor this Court must consider in determining whether to grant relief from the automatic stay for “cause” using the three-prong balancing test is whether the lifting of the stay will result in harm to the debtor or the estate. On the facts of this case, it does not appear that lifting the stay will prejudice debtor.

If Debtors should argue that allowing the District Court to proceed to entry of Summary Judgment would require Debtors and their top management to focus all of their attention on the District Court action, Movant cannot agree. The District Court action will not require the attendance of debtor’s primary officers and directors in order for the District Court to rule on Debtor’s and Movant’s pending motions for Summary judgment. Since no attention to the pending District Court is enjoined nor allowed by order of the District Court (Exhibit “M”) and no further discovery is allowed, again by the District Court (Exhibit “M”), there will certainly be no harm to the estate.

Debtor has separate litigation counsel, and according to the records and files in this case

the Counsel in this action and the counsel in the District Court action are not the same. Debtor's District Court counsel has already completed its extensive trial and summary judgment preparation prior to the petition date. Thus, there is no further trial preparation that could be burdensome to the Debtor. In addition, because the bankruptcy was filed on the eve of a ruling on the pending Motions for Summary Judgment both parties have already spent all of the necessary time and resources in preparation. The longer the pending District Court action is delayed, the more burdensome it is to both Debtor and Movant to ready themselves again.

With respect to the District Court Action, lifting the stay for cause is merited as the action is at a very advanced stage - summary judgment.. After two years of intensive litigation and the disposition of the pending summary judgment and cross summary judgment motions, and the court ordered denial of any further discovery, (Magistrate Court order dated May 12, 2008, (Exhibit "M").the issues between parties will be resolved. Either way that the District court rules or this Court rules should it decide to resolve the issues that are currently before the District Court, there will most assuredly be pending issues..

Thus, the District Court has necessarily developed specialized knowledge of the underlying ERISA and Internal Revenue laws, applicable well established case law, the facts of the dispute, with counsel in this action that is different than counsel in the District Court action and is fully versed in the issues between the parties. Indeed, the cross motions for summary judgment alone involved over 1,500 pages of briefing, along with hundreds of pages of accompanying declarations and exhibits. By the same token, the parties, their counsel Judge Hodges and the Magistrate by now understand each other's expectations and practices. These are precisely the kind of circumstances under which lifting the automatic stay for "cause" to conclude

litigation is appropriate. The alternatives of delay or trial by another judicial authority that is unfamiliar with the District Court Action are inconsistent with the dictates of judicial economy and fairness to the parties themselves, who have already determined the forum for litigation. Moreover, given the role of the underlying ERISA and IRC issues and already historically marginal financial affairs of the Debtor and this pro se litigant, resolution of the balance of the District Court Action is paramount to the prospects of these Chapter 11 cases. Finally, that Movant's claim will have to be liquidated at some time in these Chapter 11 cases (and liquidated sooner rather than later) -- counsels stay relief now.

The "Balancing Test" Also Compels Relief From the Stay

As just discussed, courts have widely found the kind of facts and circumstances present in this case to constitute "cause" for modifying the automatic stay to permit parties to conclude pending litigation. In addition, courts in the Third Circuit separately have approached the issue of stay relief by applying a balancing test between the interests of the bankrupt estate and the movant. For example, in deciding to lift the stay in favor of the movant, the Delaware Bankruptcy Court in *Rexene* considered three factors in its analysis. Those factors are:

- (1) whether any great prejudice to either the bankrupt estate or the debtor will result from continuation of the suit;
- (2) whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor; and
- (3) the probability of the creditor prevailing on the merits.

In *re Rexene Prods. Co.*, 141 B.R. 574 (Bankr. D. Del. 1992). The United States District Court of Delaware applied this same test in affirming stay relief for the movant in *In re Continental Airlines, Inc.*, 152 B.R. 420 (D. Del. 1993).

Even more recently, the Delaware Bankruptcy Court has considered the three *Rexene* factors along with the general "policies underlying the automatic stay," which include the twelve factors followed by the United States Court of Appeals for the Second Circuit in *Sonnax*. *In re W.R. Grace & Co., et al*, 2007 Bankr. LEXIS 1214, *12 (Bankr. D. Del. 2007); *see also In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984).

As discussed above, lifting the stay to allow the District Court Action to conclude is merited because the litigation is at a very advanced stage. The parties have already completed pre-trial motion practice, pre-trial briefing, and poised for the parties motions for summary judgment. The item of greatest debate -- that debtor does not have written authorization from Debtor to alienate Movant's payment of the pay-out status of the GM/UAW Pension Plan payments. Given the late stage of litigation, the District Court is uniquely situated to resolve the remaining issues between the parties.

Further, lifting the stay now, as opposed to at a later juncture in the bankruptcy cases, is useful so that the parties, this Court and Debtors creditors will not be in limbo any longer than unavoidable as to when and how there will be a resolution of remaining issues between Debtor and Movant -- issues that are of importance to both to the parties and the future of this Chapter 11 cases. See *Rexene* at 577 ("Judicial economy dictates a prompt resolution in a single forum and with the same judge who was originally assigned to the case."). With stay relief now, will give the parties the flexibility to capitalize on whatever opportunities may arise in the District Court to resolve the remaining issues by appropriate means.

(ii) The Interests of Judicial Economy Favor the District Court Action: and

(iii) The Specialized Expertise of the Court

Both the interests of judicial economy and the specialized expertise the District Court has developed over the past two years of activity in the District Court Action militate in favor of lifting the automatic stay to allow the District Court action to conclude before the District Court. It would be a waste of resources to discard the time, energy and money that brought the District Court Action to the eve of summary judgment on the issues that remain. Under these circumstances, from the perspectives of judicial economy, the parties' own resources and fairness to the parties, it makes no sense to ask this Court at some time in the future to take the necessary time to acquaint itself with the extensive background of the District Court Action and then to resolve the remaining disputes to the extent it otherwise would have jurisdiction to do so. *See In re Continental Airlines, Inc., et al.*, 152 B.R. 420, 425 (D. Del. 1993) (in lifting the stay the court held that "the difference between filing briefs and preparing for oral argument in [the non-bankruptcy forum]...is negligible in terms of added litigation expenses and diverted attention."); *see also* *Rexene* at 577 ("This Court is of the opinion that to begin this litigation anew in this bankruptcy court...would certainly result in a waste of judicial resources.").

(iv) The District Court Action Results in Complete Resolution of the Issues

If the automatic stay is lifted, the District Court will resolve all remaining issues. Thus, there will be a final determination and liquidation of any and all claims Movant may have against Debtor in the District Court Action. The parties have already run virtually the entire, grueling race; they should be allowed to take advantage of the only step that remains -- to cross the finish line: ruling on Motions for Summary Judgment. *See In re Patriot Contracting Corp.*, 2006 Bankr. LEXIS 4133, *10 (Bankr. D. N.J. 2006) (court found that permitting the action to proceed in the original forum was merited because it would result in "complete resolution of the

dispute").

(v) The District Court Action Will Not Interfere With the Bankruptcy Case

Allowing the District Court Action to proceed will not interfere with Debtor's bankruptcy cases because Debtor already has counsel for this matter, separate and apart from bankruptcy counsel. Again, due to the timing of the bankruptcy filings, on the eve of summary judgment, Debtor's litigation counsel is fully prepared to litigate the majority of the limited remaining issues in the District Court Action. Finally, as discussed above, and as compared to the overall action, the issues that remain to be determined are finite and there is trial on those issues based on the pending Motions for Summary Judgment. This level of work, when compared to the two years of prior litigation in the District Court Action by litigation counsel that is otherwise unaffiliated with the bankruptcy cases simply cannot be reasonably viewed as an imposition on Debtor's bankruptcy cases, the more so because these issues will have to be decided somewhere, some time, for this Chapter 11 case. For those same reasons, there is no argument that the estates would be prejudiced by having to expend additional financial resources on the District Court Action, as lifting the stay provides the shortest and least expensive means to resolution of the issues that remain in the District Court Action. *See In re Ware Window Co.*, 2003 Bankr. LEXIS 885, *9 (Bankr. E.D. Pa. 2003) ("In all cases addressing relief from the stay under § 362(d)(1) to allow the commencement or continuation of non-bankruptcy litigation, the overriding consideration is whether the debtor's estate or the debtor will be prejudiced if the litigation is permitted in another forum. Absent a showing of prejudice, relief has generally been granted.").

(vi) Judgment Not Subject to Equitable Subordination: and

(vii) Resolution Will Not Result in Avoidable Judicial Lien

Given the nature of the District Court Action and the relief sought by the Pending motions for summary judgment, there is simply no argument that any judgment that would stem from the District Court Action could be subject to equitable subordination or result in an avoidable judicial lien. Therefore, these two factors, as delineated in *Sonnax*, weigh in favor of lifting the automatic stay and allowing the District Court Action to conclude before the District Court, as the results of the action would not be effectively reversed by the rights afforded to Debtor through the bankruptcy process.

(viii) Balance of Hardships and the *Rexene* Analysis

The analysis of the *Sonnax* factors, above, demonstrates that the prevalent balancing test in *Rexene*, as favored by courts, heavily weighs in favor of lifting the automatic stay to allow Movant to proceed with the District Court Action. Most importantly (and of enough weight in and of itself to merit lifting the stay), the District Court Action was advanced literally to the eve of summary judgment when Debtor sought bankruptcy protection. Given the time, expense and developed expertise of the District Court with respect to the District Court Action, to deny its completion would simply be inefficient. When balancing, on the one hand, the hypothetical harm to the estates of allowing Debtor's separate litigation counsel to conclude the remaining issues in a two-year litigation against, on the other hand, the harm to Movant of substantial delay and/or recommencing litigation before the Bankruptcy Court, the result is clear -- the stay should be lifted. Additionally, resolution of the remaining issues in the District Court Action is actually in the best interests of the Debtors' estates. Given the weight of the apportionment and assets in dispute, the Chapter 11 cases cannot substantially advance without resolution of Movant's claims against it.

Finally, the third consideration in *Rexene*, which is the probability that Movant will prevail on the merits, provides further support for lifting the stay. The "probability" that Movant will prevail on the merits has already solidified into actual success on the merits. For example, the Eleventh Circuit's order entered on May 26, 2009, (Exhibit "L"), holding, in part, that "[L]awrence has the adequate alternative remedy of moving the district court to rule." On the eve of the filing of the bankruptcy petition by Debtor on June 1, 2009, Movant invoked that 'adequate alternative remedy [by] moving the district court to rule,' on Debtor's pending motions. However, Movant was notified of the filing of the petition thereby staying the hand of the District Court from ruling on the "adequate alternative", an alternative issuance of Writ of Mandamus by the Eleventh Circuit. The lifting of the stay would allow Movant to obtain from the District Court the "adequate alternative" that Movant's constitutional right of access to the courts entitles Movant to.

As the majority of the issues between the parties will be decided on summary judgment, including, especially, the key issues of the ten percent provisions of ERISA § 206(d)(2), 29 U.S.C. § 1056(d)(2), the ten percent provisions of 26 U.S.C. § 401(a)(13)(A), the ten percent provisions of 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii), and the ten percent written authorization provision of Article VII, Section 3 of the GM/UAW Pension Plan Agreement that remains of the litigation. In other words, what remains for determination in the District Court Action are, in essence, damage calculations on an already successful admission by Debtor vis-à-vis Answer to Movant's Amended Complaint. (Exhibit "G") Docket entry # 47. Movant's allegations at item #18, 19 and defendants' reply to the same (D.E. #55) (Exhibit "D") provides that:

18. Plaintiff and Defendant have never entered into any agreement or arrangement thereby authorizing Defendants to extract, alienate or reduce any amount of the

pension plan payments that Defendant is obligated to pay to Plaintiff under the GM/UAW Pension Plan Agreement.

18. Omitted

19. Defendant voluntarily elected to pay to the Internal Revenue Service the amount of \$32,985.00, the same amount that Defendant is now alienating under Plaintiff's rights under General Motors/United Auto Workers ("GM/UAW") Pension Plan Agreement

19 Omitted

Thus, in the District Court action Debtor has admitted that "Plaintiff and Defendant have never entered into any agreement or arrangement thereby authorizing Defendants to extract, alienate or reduce any amount of the pension plan payments that Defendant is obligated to pay to Plaintiff under the GM/UAW Pension Plan Agreement" and that "Defendant voluntarily elected to pay to the Internal Revenue Service the amount of \$32,985.00, the same amount that Defendant is now alienating under Plaintiff's rights under General Motors/United Auto Workers ("GM/UAW") Pension Plan Agreement." A copy of that Answer to Movant's Amended Complaint is included in Movant's index of exhibits as exhibit "D". That document is incorporated herein as if set forth fully herein.

Accordingly, a balancing test under *Rexene*, whether considered simply or in conjunction with the *Sonmax* factors, strongly favors lifting the stay to allow the District Court Action to conclude.

18. (1) whether relief would result in a partial or complete resolution of the issues

The Statutory and Regulatory Procedures Applicable to the IRS Notice of Levy

The statutory and regulatory procedures applicable to the IRS notice of levy are provided for in 26 U.S.C. § 6331(d)(4) and 26 C.F.R. § 301.6331-2(a)(1).

The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms—

(A) the provisions of this title relating to levy and sale of property,

(B) *the procedures applicable to the levy...*

The IRS has determined within the four (4) corners of the May 19, 1999, that the procedures applicable to the notice of levy is that if that document is not signed, and that document is not signed, then that Notice of Levy cannot be executed against Movant's GM/UAW ERISA and IRC qualified pension plan provisions. In the Notice of Levy the IRS clearly set forth the procedure that "THIS LEVY WON'T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLAN, ***OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL***, UNLESS THIS IS SIGNED IN THE BLOCK TO THE RIGHT". The Notice of Levy was not signed in the box to the right. Thus, in accordance with 26 U.S.C. § 6331(d)(4) and 26 C.F.R. § 301.6331-2(a)(1) as applicable to the Notice of Levy Debtor violated 26 U.S.C. § 6331(d)(4) and 26 C.F.R. § 301.6331-2(a)(1) and the Notice of Levy by executing on Movant's Pension Plan payments.

The Statutory Breaches: The Provisions of the Ten Percent Alienation Provisions of ERISA, the Statutes Under the Internal Revenue Code, the Internal Revenue Code Regulations and the Terms of the GM/UAW Pension Plan

Debtor has departed from the essential requirements of the law.

A. The Ten Percent Provisions of ERISA, 29 U.S.C. § 1056(d)(2)

29 U.S.C. § 1056(d)(2), in part, provides that:

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment,

ERISA broadly protects covered retirement benefits from dissipation through payment to third parties, even if the payments are authorized by a plan participant or would otherwise be valid by force of law. Under Section 206 of ERISA, “[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated.” 29 U.S.C. § 1056(d)(1); *see also* 26 U.S.C. § 401(a)(13)(A) (mandating that trusts are entitled to favorable retirement plan tax treatment only if they contain an anti-alienation provision). Section 1056(d)(2) includes one exception, for alienation of Movant’s interest in the GM/UAW ERISA and fIRC qualified pension plan payments that is applicable here: “there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment.” To “give[] full and appropriate effect to ERISA’s goal of protecting pension benefits,” the Supreme Court has “declined to recognize any [other] exceptions to ERISA’s antialienation provision.” *Patterson v. Shumate* , 504 U.S. 753, 764 (1992). In doing so, the Court has explained:

Section 206(d) reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them. If exceptions to this policy are to be made, it is for Congress to undertake that task.

Guidry v. Sheet Metal Workers Nat’l Pension Fund , 493 U.S. 365, 376 (1990); *Kickham Hanley, P.C. v. Kodak Restaurant*, 558 F.3d 204 (CA2, 2009) (“As the Supreme Court said in *Guidry*, §1056(d) “reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners . . . even if that decision prevents others from securing relief for the wrongs done them.” 493 U.S. at 376.”). Here, by Debtor’s own admission the wrong done to them was the wrong done by Fidelity Investments by Fidelity paying to the IRS allegedly according their perception of having to obey that Notice of Levy and at the same time paying to

Movant the pension plan payments that Movant has been legally entitled to all of the time. This is a debt that was created by Fidelity Investment and a debt that is owed to Debtor. It is not the legal responsibility of Movant to pay the debt of Fidelity Investment.

Treasury Department regulations state that for tax purposes "a trust will not be qualified unless the plan of which the trust is a part provides that benefits provided under the plan may not be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, levy, execution or other legal or equitable process." 26 CFR § 1.401(a)-13(b)(1) (1989). Id. ("fn11 The anti-alienation provision permits "any voluntary and revocable assignment of *not to exceed 10 percent of any benefit payment*." ERISA § 206(d)(2), 29 U.S.C. § 1056(d)(2) (1982 ed.). The Conference Report states: "For purposes of this rule, a garnishment or levy is not to be considered a voluntary assignment." H. R. Conf. Rep. No. 93-1280, p. 280 (1974).").

Plaintiff filed an Amended Complaint in the above referred to litigation. Defendants' have answered. Plaintiff's allegations at item #18, 19 and defendants' reply to the same (D.E. #55) ("D") provides that:

18. *Plaintiff and Defendant have never entered into any agreement or arrangement thereby authorizing Defendants to extract, alienate or reduce any amount of the pension plan payments that Defendant is obligated to pay to Plaintiff under the GM/UAW Pension Plan Agreement.*

18. *Omitted*

19. *Defendant voluntarily elected to pay to the Internal Revenue Service the amount of \$32,985.00, the same amount that Defendant is now alienating under Plaintiff's rights under General Motors/United Auto Workers ("GM/UAW") Pension Plan Agreement*

19 *Omitted*

For purposes of Fed. R. Civ. P, Rule 8(a), these replies constitutes an admission on the part of defendants'. Defendants' have now admitted that there never was any written

authorization under the terms of the plan authorizing the alienation that is now and has been ongoing on. Facts admitted in an answer are judicial admissions that bind debtor throughout this litigation. *Gibbs ex rel Estate of Gibbs v. Cigna*, 440 F.3d 571 (CA2, 2006), citing *Bellefonte v. Argonaut*, 757 F.2d 523, 528 (CA2, 1985); see also *Western World v. Stack Oil* 922 F.2d 118, 121-22 (CA2, 1990). Thus. In view of the fact that debtor has admitted that Movant has never signed any written authorization as provided for of 29 U.S.C. § 1056(d)(2) , 26 U.S.C. § 401(a)(13(A) and 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii), the anti-alienation provisions of Article VII, Section 3(e) (**Administrative Record, page #47-48**) of the GM/UAW Pension Plan Agreement and Section 3(a)(9) of the plan, coupled with the fact that debtor continues this unlawful taking and based on each of the two (2) dated May 14, 2007, and September 5, 2007, Movant has documented admissible evidence that Movant has made a prima facie case of cause and inadequate protection for this Court to lift the stay in order that the Judge Hodges in the litigation can rule on Debtor's and Movant's pending motions for Summary Judgment and the other pending motions. Or in the alternative if Judge Hodges continues to abdicate his judicial obligations to Debtor and Movant a lifting of the stay will open the way for Movant to once again petition the Eleventh Circuit for a Writ of Mandamus.

The debtors' bears the burden to show that an exclusion applies to deny benefits. *Horton v. Reliance Standard Life Ins., Co.*, 141 F.3d 1038 (CA11, 1998). For example, the debtors' here bear the burden to show that in the absence of any "written authorization" debtors' have the authority under ERISA and the terms of the plan to exercise authority to alienate defendants' pension plan payments.

B. The Ten Percent Provision of 26 U.S.C. § 401(a)(13(A).

This statute, 26 U.S.C. § 401(a)(13(A), provides that:

(13) Assignment and alienation.—

(A) In general.— A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, *there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan* unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975 (d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

C. The Ten Percent provisions of 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii)

Buttressing, and reinforcing 29 U.S.C. § 1056(d)(2) and 26 U.S.C. § 401(a)(13(A) is 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii), this regulation provides that:

(d) Exceptions to general rule prohibiting assignments or alienations—(1) Certain voluntary and revocable assignments or alienations. Notwithstanding paragraph (b)(1) of this section, a plan may provide that once a participant or beneficiary begins receiving benefits under the plan, the participant or beneficiary may assign or alienate the right to future benefit payments *provided that the provision is limited to assignments or alienations which-- (i) Are voluntary and revocable; (ii) Do not in the aggregate exceed 10 percent of any benefit payment*

D. Debtors ' Have Developed a Pattern of Behavior Here That Has Denied to Plaintiff Procedural Due Process and Alienation of Plaintiff's Pension Plan Payments.

That pattern of behavior not only violates the anti-alienation provisions of 29 U.S.C. § 1056(d)(2) , 26 U.S.C. § 401(a)(13(A) and 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii), but also violates the anti-alienation provisions of Article VII, Section 3(e) (**Administrative Record, page #47-48**) of the GM/UAW Pension Plan Agreement and Section 3(a)(9) of the plan in the context of the "authority" of the "Board".

The lifting of the stay by this Court will result in either a partial or complete resolution of the

issues in the United States District Court, Middle District of Florida. Movant respectfully submits that staying Movant's pending action against Debtor in the United States District Court in the Middle District of Florida., case number **5:07-CV-408 OC** will deprive Movant of his ability to pursue his meritorious claims as is more fully set forth in Movant's Amended Complaint. By order of the Court, Movant filed and served his Amended Complaint. on February 29, 2008 (Exhibit "G") Docket entry # 47. This Amended Complaint is incorporated herein by reference as though fully set forth herein. Without relief from the automatic stay, Movant stands to forfeit those claims and there is no adequate, substitute relief available to Movant. See the Eleventh Circuit's order entered on May 26, 2009, (Exhibit "L") holding, in part, that "[L]awrence has the adequate alternative remedy of moving the district court to rule."

Movant's lacks adequate protection since the Value of Movant's interest in the GM/UAW ERISA Qualified and Internal Revenue Code Qualified Pension Plan agreement as a result of the stay. As proof of the decline in value in Movant's interest in the GM/UAW ERISA Qualified and Internal Revenue Code Qualified Pension Plan agreement , the Court, in the case of *In re Elmira*, 174, 892 (S.D.N.Y., 1994), a case setting forth the "...proof required to establish a prima facie case under 11 U.S.C. § 362(d)(1)...", where the burden is placed 'squarely on the debtor's shoulders the burden of proving the absence of cause...', and where "...cause includes the lack of adequate protection...", Movant must, therefore, "...demonstrate a factual and legal right to the relief that [Movant] seeks," citing *In re Planned Sys.* 78 B.R. 852, 859 (Bankr S.D. Ohio 1987). Thus, in movant's "...seeking relief from the automatic stay under 11 U.S.C. § 362(d)(1) [Movant carries] the initial burden of showing that [Movant] is entitled to relief before the debtor is obligated to go forward with its proof." *Elmira*, id and cases cited.

If, as is the case here, "...the basis of the stay relief is lack of adequate protection of an

interest in [the GM/UAW ERISA Qualified and Internal Revenue Code Qualified Pension Plan agreement, the “property], the nature of movant’s interest defines the need for adequate protection, and the scope of the prima facie case.” Id. The Court in *Elmior* went on to hold that:

In *United Savings As’n v. Timbers Forest Associates, Ltd.*, 484 U.S. 365, 370, 108 S.Ct. 626, 630, 98 L.Ed.2d 740 (1988), the Supreme Court defined the nature of the secured creditor’s interest and the extent of the adequate protection that [11 U.S.C.] § 362(d)(1) addresses:

It is common ground that the ‘interest in property’ referred to by [11 U.S.C.] § 362(d)(1) includes the right of a secured creditor to have the security applied in payment of the debt upon completion of the reorganization; and that that interest is not adequately protected if the security is depreciating during the term of the stay.

Accord, *Barclay’s Bank of New York, N.A. v. Saypol (In re Saypol)*, 31 B.R. 796, 800 (Bankr. S.D.N.Y. 1983) (“in the context of the automatic stay, Congress believed the existence *vel non* of such a decline [in the value of the secured creditor’s interest] to be almost decisive in determining the need of adequate protection.”); *In re Snyder* 285 B.R. 712, FN#2 (D.C.N.D. Calif., 2002) (“ Secured creditors may also be entitled to relief from the automatic stay to enforce nonbankruptcy rights against their collateral if the requirements of § 362(d) are met. And, absent consent, a plan may not be confirmed if the special requirements of §§ 1129(b)(2)(A), 1225(a)(5) or 1335(a)(5) applicable to secured claims are not satisfied . 11 U.S.C. §§ 1129(b)(2)(A), 1225(a)(5), 1335(a)(5).”).

Here, Movant’s interest in the GM/UAW pension plan payments is depreciating during the term of the stay.. For example, according to the Payment history of Movant’s GM/UAW ERISA and IRC qualified pension plan payments (Exhibits “H”, “I”, “ and “J”) Debtor has alienated from of Movant’s GM/UAW ERISA and IRC qualified pension plan payments every month and continues to do so every month.

Accordingly, Movant, as a secured creditor, lacks adequate protection since the value of Movant's interest in the GM/UAW Pension Plan is declining as a result of the stay each month when debtor alienates Movant's interest in the GM/UAW ERISA Qualified and Internal Revenue Code Qualified Pension Plan agreement. Thus, Movant's interest in the GM/UAW ERISA Qualified and Internal Revenue Code Qualified Pension Plan payments is not adequately protected since the security, Movant's interest in the GM/UAW ERISA Qualified and Internal Revenue Code Qualified Pension Plan payments is depreciating during the term of stay.

The proof of this decline in Movant's interest and the value of that interest lies in the fact that Debtor is alienating Movant's monthly GM/UAW pension payments in violation of 29 U.S.C. § 1056(d)(2) and 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii) bars any and all alienation over the 10% limits. Here, defendants' violate the provisions of 26 C.F.R. § 1.401(a)-13(d)(1)(i), (ii), 29 U.S.C. § 1056(d)(2), and Article VII, Section 3(e), and the IRS May 19, 1999, Notice of Levy (Exhibit "E").

Under Bankruptcy Code Section 506(a), a creditor with a lien on bankruptcy estate property holds a secured claim to the extent of the value of the creditor's interest in the estate's interest in such property. Bankruptcy Code Section 541(a) provides that, on the commencement of a bankruptcy case, an estate is created that consists of all the debtor's legal and equitable interests on that date. However, according to Section 541 (c)(2), nonbankruptcy law restrictions on the transfer of a beneficial interest in a trust are enforceable in a bankruptcy case. While 541(a) of the Bankruptcy code provides that bankruptcy estate is comprised of all legal and equitable interests of the debtor section 542(c)(2) provides an exclusion from the estate as follows:

A restriction on the transfer of a beneficial interest of the debtor in a trust that enforceable under applicable nonbankruptcy law is enforceable in a case under title 11 U.S.C. § 542(c)(2).

c)(2).

In *Patterson v. Shumate*, 504 US 753 (1992), the Supreme Court obliterated the narrow definition of the exclusion and held that the “applicable nonbankruptcy law” in § 541(c)(2) “encompasses any relevant nonbankruptcy law, including federal law such as ERISA.” Id. At 759, 112 S.Ct. 2242.

In *Patterson* , id, the Supreme Court determined that an anti-alienation clause is a provision in the governing document for an arrangement such as a trust that specifies that the beneficial or equitable owner of the property held in that arrangement cannot transfer his or her interest to a third party.

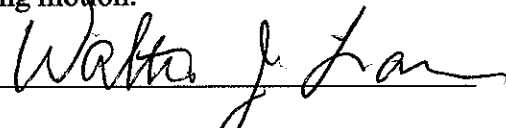
The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. § 1001 et seq. (1974), is a federal law that sets minimum standards for most voluntarily established Pension and health plans in private industry to provide protection for individuals enrolled in these plans. of 1974 ERISA See Employee Retirement Income Security Act.

Contained in the debtor's plan, is a restriction on transfer enforceable under "nonbankruptcy law" within the meaning of Section 541(c)(2). GM/UAW Pension Plan being an ERISA-qualified pension plan is excluded from the debtor's bankruptcy estate under that section. Thus, since the GM/UAW Pension Plan being an ERISA-qualified pension plan, the provisions of Article VII, Section 3 of the GM/UAW Pension Plan Agreement, and 29 U.S.C. §1056(d)(1), 26 U.S.C. § 401(a)(13(A), 26 C.F.R. §1.401(a)-13(1) (i), (ii) only provides for a written, voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, the fact that there is no “written authorization” bars the levy of the sums demanded by Debtor in their letters to Movant of May 14, 2007, (Exhibit “B”) and September 5, 2007 (Exhibit “C”).

NO PRIOR REQUEST

communicate "...by United States Mail or by an approved courier service." This is Movant's written attempt to seek and obtain "by United States Mail" **GENERAL MOTORS HOURLY RATE EMPLOYEE PENSION, AND GENERAL MOTORS CORPORATION** concurrence on the above request. If **GENERAL MOTORS HOURLY RATE EMPLOYEE PENSION, AND GENERAL MOTORS CORPORATION** does concur, then Movant shall expect such concurrence to be delivered to Movant by the above ordered means of delivery until such time that the Bankruptcy Court rules on Movant's above pending motion.

By:



Walter J. Lawrence

Plaintiff in pro per

Declaration of Service

Pursuant to 28 U.S.C. 1746, I, Walter J. Lawrence, declares under the penalty of perjury that on October 2, 2009, I did place a copy of **MOTION OF PLAINTIFF IN THE ACTION ENTITLED WALTER J. LAWRENCE V. GENERAL MOTORS HOURLY RATE EMPLOYEE PENSION, AND GENERAL MOTORS CORPORATION, 5:07-CV-408 OC, UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA FOR ENTRY OF AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1).** in a U.S. mail receptacle with U.S. postage first being fully prepaid for first class U.S. with the addresses being:

Counsel for GM

Weil, Gotshal & Manges, LLP

767 Fifth avenue

New York, NY 10153

Attn: Harvey R. Miller, Esq.

Stephen Karotkin, Esq.

Joseph H. Smolinsky, Esq.

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

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Attn: Ted Stenger

General Motors Corporation

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Attn: Lawrence S. Buonomo, Esq.

U.S. Trustee's Office

The Office of the United States Trustee
for the Southern District of New York
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Attn: Diana G. Adams, Esq.

Creditors' Committee

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Thomas Moers Mayer, Esq.
Adam C. Rogogg, Esq.
Gordon Z. Novod, Esq.

20 Largest Unsecured Creditors

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Rodney Square North
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Attn: Geoffrey J. Lewis

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America (UAW)
8000 East Jefferson
Detroit, MI 48214
Attn: Ron Gettlefinger

Deutsche Bank AG,
London As Fiscal Agent
Attn: Stuart Harding
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International Union of Electronic, Electrical,
Salaried, Machine and Furniture Workers-
Communications
Workers of America (IUE-CWA)
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Attn: Gregory Kinder

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35 W. Wacker drive
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Attn: Laura Desmond

Delphi Corp.
5725 Delphi Drive
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Attn: Rodney O'Nea

Robert Bosch GmbH
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Attn: Franz Fehrenbach

Lear Corp.
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Southfield, MI 48033
Attn: Robert Rositer

renco Group, Inc.
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29th Floor
New York, NY 10020
Attn: Lon Offenbacher

Enterprise Rent A Car
6929 N. Lakewood Ave.
Suite 100
Tulsa, OK 74117
Attn: Greg Stubblefield

Johnson Controls, Inc.
5757 N. Green Bay Avenue
Glendale, WI 53209
Attn: Stephen A. Roell

Denso Corp.
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Southfield, MI 48086
Attn: Haruya Maruyama

TRW Automotive
Holdings, Corp.
12025 Tech Center Dr.
Livonia, MI 48150
Attn: John Plant

Magna International, Inc.
Attn: Don Walker
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Aurora, ON L4G7K1
Canada

American Axle & Mfg Holdings, Inc.
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Detroit, MI 48211-1198
Attn: Richard Dauch

Maritz Inc.
1375 North Highway Drive
Fenton, MO 63099
Attn: Steve Maritz

Publicis Groups S.A.
Attn: Maurice Levy
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Paris, 75008
France

Hewlett Packard Co.
3000 Hanover Street
Palo Alto, CA 94304
Attn: Mike Nefkens

Interpublic Group of
Companies, Inc.

1114 Avenue of the Americas
New York, NY 10036
Attn: Michael Roth

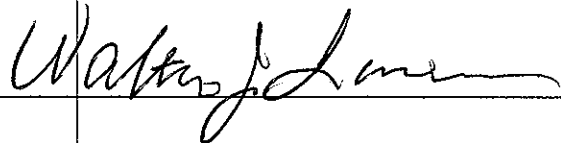
Others:

U.S. Treasury
Attn: Matthews Feldman, Esq.
1500 Pennsylvania Avenue NW Room 2312
Washington, DC 20220

Cadwalder, Wickersham & taft, LLP
Attn: John J. Rapisardi, Esq;
One World Financial Center
New York New York 10281

Vedder Price, P.C.
Michael J. Edelman, Esq.
Michael L. Schein, Esq.
1633 Broadway, 47th Floor
New York, NY 10019

By: _____

A handwritten signature in black ink, appearing to read "Walter J. Lawrence", is written over a horizontal line.

Walter J. Lawrence

Plaintiff in pro per.

please file

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

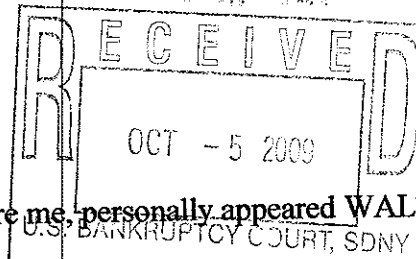
MOTORS LIQUIDATION COMPANY, *et al.*,
f/k/a General Motors Corp., *et al.*

Debtors.

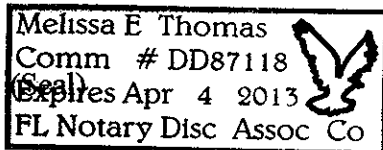
CHAPTER 11
CASE NO. 09-50026(REG)
(Jointly Administered)

**AFFIDAVIT OF SERVICE
OF PROOF OF CLAIM**

STATE OF FLORIDA
COUNTY OF CITRUS



ON THIS 30th day of September, 2009, before me, personally appeared WALTER J. LAWRENCE, who is known to me, or who produced State of Florida driver's license as identification, and who having first been duly sworn by me, that he has read the above and foregoing Affidavit of Service of Proof of Claim, and that the same is true and correct to the best of his knowledge and belief and that on this date WALTER J. LAWRENCE did serve a copy of his Proof of Claim on each of the below entities by placing the same in separate envelopes, addressed to each entity according to each of the below address with U.S. postage first fully prepaid for first class U.S. mail delivery.



Melissa E Thomas

Notary Public

Melissa E Thomas

(Type or print notary's name above)

My Commission Expires:

4/4/13

The Garden City Group, Inc.
Attn: Motors Liquidation Company
P.O. Box 9386
Dublin, Ohio 43017-4286

Counsel for GM

Weil, Gotshal & Manges, LLP
767 Fifth avenue
New York, NY 10153
Attn: Harvey R. Miller, Esq.
Stephen Karotkin, Esq.
Joseph H. Smolinsky, Esq.

Cynthia L. May
Greenberg Traurig, LLP*
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Tampa, FL 33602-3925
813/318-5700
Fax: 813/318-5900
Email: mayc@gtlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Debtor

General Motors Corporation
c/o Motors Liquidation Company
300 Renaissance Center
Detroit, MI 48265
Attn: Ted Stenger

General Motors Corporation
300 Renaissance Center
Detroit, MI 48265
Attn: Lawrence S. Buonomo, Esq.

U.S. Trustee's Office

The Office of the United States Trustee
for the Southern District of New York
33 Whitehall Street
21st Floor
New York, NY 10004
Attn: Diana G. Adams, Esq.

Creditors' Committee

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
Attn: Kenneth H. Eckstein, Esq.
Thomas Moers Mayer, Esq.
Adam C. Rogogg, Esq.
Gordon Z. Novod, Esq.

20 Largest Unsecured Creditors

.Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890
Attn: Geoffrey J. Lewis

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America (UAW)
8000 East Jefferson
Detroit, MI 48214
Attn: Ron Gettlefinger

Deutsche Bank AG,
London As Fiscal Agent
Attn: Stuart Harding
Theodor-Heuss-Allee 70
Frankfurt, 60262
Germany

International Union of Electronic, Electrical,
Salaried, Machine and Furniture Workers-
Communications
Workers of America (IUE-CWA)
3461 Office Park Drive
Kettering, OH 45439
Attn: Mr. James Clark

Bank of New York Mellon
One Wall Street
New York, NY 10286

Attn: Gregory Kinder

Starcom Mediavest Group, Inc.
35 W. Wacker drive
Chicago, IL 60601
Attn: Laura Desmond

Delphi Corp.
5725 Delphi Drive
Troy, MI 48098
Attn: Rodney O'Nea

Robert Bosch GmbH
38000 Hills Tech Drive
Farmington Hills, MI 48331
Attn: Franz Fehrenbach

Lear Corp.
21557 Telegraph Road
Southfield, MI 48033
Attn: Robert Rositer

renco Group, Inc.
1 Rockefeller Plaza
29th Floor
New York, NY 10020
Attn: Lon Offenbacher

Enterprise Rent A Car
6929 N. Lakewood Ave.
Suite 100
Tulsa, OK 74117
Attn: Greg Stubblefield

Johnson Controls, Inc.
5757 N. Green Bay Avenue
Glendale, WI 53209
Attn: Stephen A. Roell

Denso Corp.
24777 Denso Drive
Southfield, MI 48086

Attn: Haruya Maruyama

TRW Automotive
Holdings, Corp.
12025 Tech Center Dr.
Livonia, MI 48150
Attn: John Plant

Magna International, Inc.
Attn: Don Walker
337 Magna Drive
Aurora, ON L4G7K1
Canada

American Axle & Mfg Holdings, Inc.
One Dauch Drive
Detroit, MI 48211-1198
Attn: Richard Dauch

Maritz Inc.
1375 North Highway Drive
Fenton, MO 63099
Attn: Steve Maritz

Publicis Groups S.A.
Attn: Maurice Levy
133 Ave Des Champs Elysees
Paris, 75008
France

Hewlett Packard Co.
3000 Hanover Street
Palo Alto, CA 94304
Attn: Mike Nefkens

Interpublic Group of
Companies, Inc.
1114 Avenue of the Americas
New York, NY 10036
Attn: Michael Roth

Others:

U.S. Treasury
Attn: Matthews Feldman, Esq.
1500 Pennsylvania Avenue NW Room 2312
Washington, DC 20220

Cadwalder, Wickersham & taft, LLP
Attn: John J. Rapisardi, Esq;
One World Financial Center
New York New York 10281

Vedder Price, P.C.
Michael J. Edelman, Esq.
Michael L. Schein, Esq.
1633 Broadway, 47th Floor
New York, NY 10019



Walter J. Lawrence
Secured Creditor, pro se

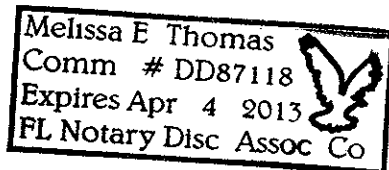
**STATE OF FLORIDA
COUNTY OF CITRUS**

ON THIS 30 day of September , 2009, before me, personally appeared WALTER J. LAWRENCE, who is known to me, or who produced State of Florida driver's license as identification, and who having first been duly sworn by me, that he has read the above and foregoing Affidavit, and that the same is true and correct to the best of his knowledge and belief.

Melissa E Thomas

Notary Public

(Seal)



Melissa E Thomas

(Type or print notary's name above)

My Commission Expires:

4/4/13



UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One):

Case No.

- ☒ Motors Liquidation Company (f/k/a General Motors Corporation)
☐ MLCS, LLC (f/k/a Saturn, LLC)
☐ MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation)
☐ MLC of Harlem, Inc. (f/k/a Chevrolet Saturn of Harlem, Inc.)

09-50026 (REG)
09-50027 (REG)
09-50028 (REG)
09-13558 (REG)

Your Claim is Scheduled As Follows:

I have no
Knowledge as
to whether
Debtor has or
has not scheduled
this debt

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9) (see Item # 5). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property): WALTER J. LAWRENCE

☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:

Court Claim Number: _____
(If known)

WALTER J. LAWRENCE
#103, 2609 N. FOREST RIDGE BLVD
HERNANDO, FL 34442

Filed on: _____

Telephone number: 269-838-5076
Email Address: NONE

Name and address where payment should be sent (if different from above):

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

N/A

☐ Check this box if you are the debtor or trustee in this case.

Telephone number:

1. Amount of Claim as of Date Case Filed, June 1, 2009: \$ 160,600.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: SEE MOTION TO LIFT AUTOMATIC WHICH IS INCORPORATED HEREIN BY REFERENCE AS THOUGH FULLY STATED
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: ETN 38-0572515

3a. Debtor may have scheduled account as: UNKNOWN
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Equipment ☒ Other

Describe: GM/UAW Supplemental PENSION PLAN (HONORARY) AGREEMENT

Value of Property: \$160,600.00 Annual Interest Rate 7%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$160,600.00

Basis for perfection: GM/UAW Supplemental Hourly Pension Plan AGREEMENT included in attached CD

Amount of Secured Claim: \$ 160,600.00 Amount Unsecured: \$ - 0 -

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

☐ Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).

☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).

☐ Value of goods received by the Debtor within 20 days before the date of commencement of the case - 11 U.S.C. § 503(b)(9) (§ 507(a)(2)).

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)().

Amount entitled to priority:

\$ _____
*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts (contracts), judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

A CD is included that contains a copy of document referred to in item #4 above.
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain in an attachment.

Date: 9-30-09

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Walter J. Lawrence - WALTER J. LAWRENCE

FOR COURT USE ONLY



UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor (Check Only One): ☒ Motors Liquidation Company (f/k/a General Motors Corporation) ☐ MLCS, LLC (f/k/a Saturn, LLC) ☐ MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation) ☐ MLC of Harlem, Inc. (f/k/a Chevrolet Saturn of Harlem, Inc.)		Case No. 09-50026 (REG) 09-50027 (REG) 09-50028 (REG) 09-13558 (REG)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9) (see Item # 5). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.		Your Claim is Scheduled As Follows: <i>I have no knowledge as to whether Debtor has or has not scheduled this debt.</i>
Name of Creditor (the person or other entity to whom the debtor owes money or property): <u>WALTER J. LAWRENCE</u>	☐ Check this box to indicate that this claim amends a previously filed claim.	If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form. EXCEPT AS FOLLOWS: If the amount shown is listed as DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.
Name and address where notices should be sent: <u>WALTER J. LAWRENCE</u> <u>#103, 2609 N. FOREST RIDGE BLVD</u> <u>HERNANDO, FL 34442</u>	Court Claim Number: _____ (If known)	
Telephone number: <u>269-838-5076</u>	Filed on: _____	
Email Address: <u>NONE</u>		
Name and address where payment should be sent (if different from above): <u>N/A</u>	☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. ☐ Check this box if you are the debtor or trustee in this case.	
1. Amount of Claim as of Date Case Filed, June 1, 2009: <u>\$ 160,600.00</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 5. ☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. ☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). ☐ Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). ☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). ☐ Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). ☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). ☐ Value of goods received by the Debtor within 20 days before the date of commencement of the case - 11 U.S.C. § 503(b)(9) (§ 507(a)(2)). ☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). Amount entitled to priority: _____
2. Basis for Claim: <u>SEE MOTION TO LIFT AUTOMATIC WHICH IS INCORPORATED HEREIN BY REFERENCE AS THOUGH FULLY STATED</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>21N 38-0572515</u> 3a. Debtor may have scheduled account as: <u>UNKNOWN</u> (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Equipment ☒ Other Describe: <u>GM/UAW Supplemental PENSION PLAN (HOURLY) AGREEMENT</u> Value of Property: <u>\$160,600.00</u> Annual Interest Rate: <u>7%</u> Amount of arrearage and other charges as of time case filed included in secured claim, if any: <u>\$160,600.00</u> Basis for perfection: <u>GM/UAW Supplemental Hourly Pension Plan AGREEMENT</u> Amount of Secured Claim: <u>\$160,600.00</u> Amount Unsecured: <u>\$ - 0 -</u> <u>C.D.</u>		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts (contracts), judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) <u>A CD is included that contains a copy of document referred to in item #4 above.</u> DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain in an attachment.		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
Date: <u>7-30-09</u> Signature: <u>Walter J. Lawrence</u> - <u>WALTER J. LAWRENCE</u> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.		FOR COURT USE ONLY

*Supplemental
Agreement*

Covering

PENSION PLAN

Exhibit A
to
AGREEMENT
between

GENERAL MOTORS CORPORATION
and
UAW
dated
September 17, 1990

A

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EXHIBIT A
SUPPLEMENTAL
AGREEMENT
(Pension Plan)

SUPPLEMENTAL AGREEMENT (PENSION PLAN)

On this 17th day of September, 1990, General Motors Corporation, hereinafter referred to as the Corporation, and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, hereinafter referred to as the Union, on behalf of the employees covered by the collective bargaining agreement of which this Supplemental Agreement becomes a part, agree as follows:

Section 1. Establishment of Plan

Subject to the approval of its Board of Directors, the Corporation will establish an amended pension plan, hereinafter referred to as the "Plan," a copy of which is attached hereto as Exhibit A-1 and made a part of this agreement to the extent applicable to the employees represented by the Union and covered by this agreement as it fully set out herein, modified and supplemented, however, by the provisions hereinafter. In the event of any conflict between the provisions of the Plan and the provisions of this agreement, the provisions of this agreement will supersede the provisions of the Plan to the extent necessary to eliminate such conflict.

The Plan, as set forth in Exhibit A-1, and the Plan as it may be modified and supplemented by superseding provisions of this agreement, as above provided, are both contingent upon and subject to obtaining and retaining such approval of the Commissioner of Internal Revenue as the Corporation may find necessary to establish the deductibility under Section 404 of the Internal Revenue Code for income tax purposes of any and all contributions made by the Corporation to both plans and to establish the plans and related trust as being qualified and tax-exempt.

A. Sect. 1

under Sections 401 and 501(a) or other applicable provisions of the Internal Revenue Code. Any modification or amendment of either the Plan, or the Plan as modified and supplemented by this agreement, may be made retroactively by the Corporation with the consent of the Union, if necessary or appropriate, to qualify or maintain the Plan as a plan and trust meeting the requirements of Sections 401 and 501(a) of the Internal Revenue Code, as now in effect or hereafter amended, or any other applicable provisions of the federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder, provided that pension benefits under the Plan are not diminished.

Until the Plan is approved by the Corporation's Board of Directors and by the Commissioner of Internal Revenue, all as hereinbefore provided, the benefits payable shall be only those determined under the Plan as constituted prior to October 1, 1990; provided, however, that following approval by its Board of Directors and its receipt of the favorable ruling from the Commissioner of Internal Revenue as set forth above, the Corporation or the trustee will pay to retired employees and surviving spouses any excess amounts equal to the difference between the monthly pension calculated in accordance with the terms of the Plan, attached hereto as Exhibit A-1, and the monthly pension paid or payable in accordance with the terms of the Pension Plan, which was attached as Exhibit A-1 to the Supplemental Agreement (Pension Plan) between the Parties dated October 8, 1987. Any such excess amounts payable for months prior to the receipt of the aforementioned Board of Directors and the Commissioner of Internal Revenue approvals, shall be payable the first of the month following the date upon which the last of these two approvals is received by the Corporation, and any such amounts payable thereafter shall be paid on the first of the month at the same time as the related pension is paid.

(2)

A. Sect. 1

In the event that the Plan is disapproved by the Board of Directors of the Corporation, the Corporation within thirty days after any such disapproval will give written notice thereof to the Union and this agreement shall thereupon have no force or effect. In that event the matters covered by this agreement shall be the subject of further negotiation between the Corporation and the Union.

Section 2. Financing

(a) A trustee or an insurance company, or both, shall be designated by the Corporation, and a trust agreement or contract, of both, executed between the Corporation and such trustee or insurance company, or both, under the terms of which a pension fund or insured fund, shall be established to receive and hold contributions payable by the Corporation, interest, and other income and to pay the pensions and supplements provided by the Plan.

(b) The Corporation agrees to pay over irrevocably to the trustee or insurance company during the period of this agreement, contributions or payments for the Plan equal to the sum of (i) and (ii) below as determined and certified as of each anniversary of the effective date of the Plan by one or more actuaries chosen by, but independent of, the Corporation, and qualified through Fellowship in the Society of Actuaries and enrollment with the Joint Board for Enrollment of Actuaries (hereinafter referred to as the actuary). Such contributions or payments for any year may be made not later than the date on which such contributions are required by law to be made for the purpose of crediting such contributions to such year under the minimum funding standards of the Employee Retirement Income Security Act of 1974: (1) the "annual" "current service" or "normal cost" contribution attributable to a year's cost accruals

(3)

A. Sect. 21(b)(1)

in respect of assigned continuous service after each such anniversary date, and

(ii) the "prior service contribution" computed as that part of the present value, at each such anniversary date, of the prospective pensions payable under the Plan for employees, pensioners and former employees who are entitled to a deferred pension then covered by the Plan which is in excess of:

(aa) the value of the trust fund, as then comprised of any contracts and total other assets, invested and uninvested, such total assets being valued on a basis at least equal to the total cost thereof, plus

(bb) the then present value of the prospective current service or normal cost contributions determined by the actuary in accordance with (i) above.

such excess part being amortized according to the following schedule:

(1) in respect of the portion of such excess part attributable to the level of benefits in effect prior to October 1, 1979 -- the fifty-ninth anniversary of the Corporation's pension plan (October 1, 2009) and

(2) in respect of the portion of such excess part attributable to the increase in the level of benefits established by amendments to the Corporation's pension plan effective on or after October 1, 1979 -- the thirtieth anniversary of the date on which such increase in the level of benefits becomes effective.

(c) The Corporation may contribute or pay additional amounts to the trustee of insurance company, or both, under (b) above in any year without such additional amounts being construed to reduce any thirty-year period for the completion of the prior service contributions of subsection (b)(ii) above. If the Corporation has contributed any such additional amounts prior to any anniversary date of the

(4)

A. Sect. 21(e)

Corporation's pension plan or shall contribute any such additional amounts prior to any anniversary date of the Plan falling within the duration of this agreement, the Corporation may as of such anniversary contribute a lesser amount than otherwise determined by (b) above for such anniversary, provided that the value of any contracts and total other assets as valued in accordance with (b)(ii)(aa) above at such anniversary shall not be less than the amount estimated by the actuary to be the value as if contributions and payments up to and including such anniversary date had been made as provided in (b) above and no additional amounts had been contributed or paid prior to such anniversary.

(d) The Corporation by payment of the contributions or amounts as hereinbefore provided in this section shall be relieved of any further liability, and pensions and supplements shall be payable only from the trust fund or the insured fund or both.

Section 3. Administration

(a) Board of Administration

(1) There shall be established a central Board of Administration hereinafter referred to as the Board, composed of six members, three appointed by the Corporation and three by the Union. Each member of the Board shall have an alternate. In the event a member is absent from a meeting of the Board, his alternate may attend and when in attendance shall exercise the duties of the member. Either the Corporation or the Union at any time may remove a member or alternate appointed by it and may appoint a member or alternate to fill any vacancy among members or alternates appointed by it.

No person shall act as a member of the Board of Administration or as an alternate for such member unless notice of his appointment has been given in

(5)

A. Sect. 3(e)(1)

writing by the party making the appointment to the other party.

(2) The Board shall meet at such times and for such periods for the transaction of necessary business as may be mutually agreed upon by its members.

(3) To constitute a quorum for the transaction of business, the presence of four members of the Board shall be required. At all meetings of the Board the member or members present appointed by the Corporation shall have in the aggregate a total of one vote to be cast on behalf of the Corporation, and the member or members present appointed by the Union shall have in the aggregate a total of one vote to be cast on behalf of the Union.

(4) The compensation and expenses of the Corporation members will be paid by the Corporation and the compensation and expenses of the Union members will be paid by the Union and no part of such compensation or expenses will be paid from the trust fund.

(5) The Corporation shall cause to be furnished to the Board of Administration annually:

(1) A statement as of each anniversary date of the Plan showing in summary form the value of the assets which comprise such fund by general categories of investment, such value being determined on a basis at least equal to the total cost thereof for each such category.

(11) Such information, as to age, sex and service of hourly-rate employees of the Corporation as a whole in the United States and as to the number of pensioners and amount of pensions and supplements by age groups, as the Board may reasonably require, but in no event shall the Corporation be required to furnish the Board with any data not furnished by the Corporation to the actuary.

(6)

A. Sect. 3(e)(iii)

(iii) A report, prepared by the actuary, in respect of each year's actuarial valuation of the Plan, setting out the following:

(a) the amount of the normal cost contribution and the amount of the payment toward amortization of the actuarial deficiency required in accordance with Section 2(b) hereof.

(b) a statement of the method and the assumptions, such as the interest rate, mortality rates, withdrawal rates, retirement rates, average benefit unit and assumptions used with respect to the survivor benefit, adopted for the valuation for the purposes of Section 2(b) hereof.

(c) the amount, as of each anniversary date, of the gross actuarial deficiency, determined in accordance with Section 2(b) hereof as the present value of the prospective pensions payable under the Plan less the then present value of the prospective normal cost contributions, if any, for (1) retired employees, (2) employees who have separated with retention of deferred pensions, (3) non-retired and non-separated employees, and (4) total.

(d) the amount of assets used in the actuarial valuation, together with a reconciliation of the amount of such assets with the amount used in the preceding valuation.

(e) the amount of the net (unfunded) actuarial deficiency.

(f) the amount by which the value of the trust fund exceeded the amount then required by Section 2(b) hereof to be in such fund.

(g) the extent to which the trust fund assets as of the valuation date would be sufficient to cover the pension liabilities, as determined in accordance with SFAS 87.

(7)

A. Sect. 3(a)(5)(iv)

(iv) A statement, certified by the actuary, that the amount of the trust fund is or is not less than the amount then required by Section 2(b) hereof to be in such fund.

(v) A statement setting forth:

(aa) The value of the trust fund computed on the basis of market value as of the previous anniversary date of the Plan.

(bb) Additions during Plan year:

(i) payments by General Motors into the fund

(ii) interest and dividends received by the fund

(iii) net investment gains, and

(iv) total additions.

(cc) Pension payments and supplements to retired employees and surviving spouses during Plan year.

(dd) The value of the trust fund computed on the basis of market value as of the anniversary date of the Plan for the year for which the statement is being submitted.

(vi) A schedule setting forth as of March 31 of each year:

(aa) the amount of investment of the pension fund in residential real estate mortgages, by type, in communities with General Motors plants and in other communities,

(bb) the amount invested in such residential real estate mortgages during the preceding year in comparison with total new money investments during that year, and

(8)

A. Sect. 3(a)(5)(v)(cc)

(cc) a description of such residential mortgages in which funds were invested during the preceding year, by type, separately by plant city areas and in total for other areas.

(vii) A copy of Form 5500 reports and attendant schedules for the Plan will be furnished as soon as practicable after General Motors has filed such report with the Internal Revenue Service.

(6) The Board of Administration shall have no power to add to or subtract from or modify any of the terms of this agreement or the Plan, nor to change or add to any benefit provided by said agreement or Plan, nor to waive or fail to apply any requirement of eligibility for a benefit under said agreement or Plan.

(7) Any case referred to the Board of Administration on which it has no power to rule shall be referred back to the parties without ruling.

(8) No ruling or decision of the Board of Administration in one case shall create a basis for a retroactive adjustment in any other case prior to the date of written filing of each such specific claim.

(9) There shall be no appeal from any ruling by the Board which is within its authority. Each such ruling shall be final and binding on the Union and its members, the employee or employees involved, and on the Corporation.

The Union will discourage any attempt of its members and will not encourage or cooperate with any of its members, in any appeal to any Court or Administrative Board or Agency from a ruling of the Board of Administration.

(b) Impartial Chairman

(1) The Corporation and the Union shall mutually agree upon and select an impartial

(9)

A. Sect. 3(b)(1)

Chairman, who shall serve until requested in writing to resign by three Board members.

(2) The Impartial Chairman will not be counted for the purpose of a quorum, and will vote only in case of a failure of the Corporation and the Union by vote through their representatives on the Board, to agree upon a matter which is properly before the Board and within the Board's authority to determine; provided that the Impartial Chairman may vote only on matters involving the processing of individual cases, not on the development of procedures.

(3) The fees and expenses of the Impartial Chairman will be paid one-half by the Corporation and one-half by the Union.

(c) As soon as possible after the effective date of this agreement, the Union and Corporation members of the Board of Administration shall work out matters such as but not limited to: (1) procedures for establishing Local Pension Committees at the Divisions or plants involved; (2) the authority and duties of such Local Pension Committees; (3) the procedures for reviewing applications for pensions; (4) the handling of complaints regarding the determination of age, service credits, and computation of benefits; (5) procedures for making appeals to the Board; (6) means of verifying service credits to which employees are entitled under the Plan; (7) methods of furnishing information to employees regarding past and future service credits; (8) the amount of time the Union members of the local committees may be permitted to leave their work to attend meetings of the Local Pension Committees; (9) how disputes over total and permanent disability claims will be handled, including disputes, if any, with respect to whether a disabled pensioner engages in gainful employment; (10) the review of pertinent information about the Plan for dissemination to employees; (11) how pension payments will be authorized by the Board. All such

(10)

A. Sect. 3(d)

matters shall be consistent with all other provisions of the Plan and this agreement. The working out of the procedures outlined in this section shall be the responsibility of the Corporation and Union members of the Board, and the Impartial Chairman shall have no power to decide any question with respect thereto.

The provisions of Agreement Implementing Section 3(c) of the Supplemental Agreement, Pension Plan, dated October 14, 1988 which were established by the Board pursuant to the foregoing are incorporated herein by reference and are a part hereof and effective with respect to the administration of the Plan as fully as if set out herein at length.

(d) Except as provided otherwise in this agreement, the general administration of the provisions of the Plan shall be the responsibility of the Corporation.

(e) The Board and any member of the Board, or the Local Pension Committees or any member of the Local Pension Committees, shall be entitled to rely upon the correctness of any information furnished by the Union or the Corporation. Neither the Board nor any of its members, nor the Local Pension Committees nor any of its members, nor the Union nor any officer or other representative of the Union, nor the Corporation nor any officer or other representative of the Corporation shall be liable because of any act, or failure to act, on the part of the Board or any of its members, or the Local Pension Committees or any of its members or any person, except that nothing herein shall be deemed to relieve any such individual from any liability for his own fraud or bad faith.

(f) No matter respecting the Plan as modified and supplemented by this agreement or any difference arising thereunder shall be subject to the grievance procedure established in the collective bargaining agreement between the Corporation and the Union,

(11)

A. Sect. 3(f)

except as expressly provided in Paragraph (4)(g) of such collective bargaining agreement.

(g) Credited service shall be granted an employee who is absent from his work pursuant to Paragraph 24 of the National Agreement, or on a leave of absence under Paragraph 109 of the National Agreement, if the leave was granted for the purpose of permitting the employee to engage in the business of or to work for the Local Union, or if the leave was granted under Paragraph 109(a) of the National Agreement for the purpose of permitting the employee to engage in the business of or to work for the International Union while on such leave. (An employee on leave under the National Agreement solely to permit the employee to be Manager of the credit union sponsored by the Local Union shall be included hereunder, but only with respect to any period while serving in such capacity while on such leave).

An employee eligible for credited service under this section shall be credited with up to 400 hours for each calendar week since October 1, 1950 while he is on such leave, including compensated hours, provided he meets the requirements of the leave; but in no event shall the employee be credited with more than 1700 hours, including compensated hours, in any calendar year.

Section 4. Effect of Retirement on Employment Status and Seniority

(a) An employee who retires or is retired under the terms of the Plan shall cease to be an employee and shall have his seniority canceled.

(b) An employee who has been retired on a total and permanent disability pension and who thereby has broken his seniority in accordance with subsection (a) above, but who recovers and has his pension discontinued, shall have his seniority reinstated as

(12)

A. Sect. 4(b)

though he had been on a sick leave of absence during the period of his disability retirement, provided, however, if the period of his disability retirement was for a period longer than the seniority he had at the date of retirement, he shall, upon the discontinuance of his disability pension, be given seniority equal to the amount of seniority he had at the date of such retirement.

(c) If an employee retired for reasons other than total and permanent disability, who has lost seniority in accordance with subsection (a) above, is retired, such employee will have the status of a new employee.

Section 5. Supplements

Notwithstanding any other provisions of the Plan, an employee who retires with benefits payable commencing on or after October 1, 1990 while on an approved leave of absence requested by the International Union to permit him to engage in the business of or to work for the International Union, shall not be prevented from receiving benefits under Section 6 of Article II of the Plan solely because the last day he worked for the Corporation was not within five years of the date his pension benefits commence.

Section 6. Deduction of Union Dues

(a) Notwithstanding any other provisions of the Plan, any retired employee entitled to receive a pension or supplement may, pursuant to the retired employee's written authorization and direction acceptable to the Corporation, authorize the deduction of monthly Union dues from any monthly pension or supplement otherwise payable to him and direct that such dues be remitted to the Union.

(b) An authorization to deduct said monthly Union dues shall become effective as of the first of the second month following the month in which the Corporation

(13)

A, Sect. 6(b)

receives such authorization from the Union, and shall remain in full force and effect until revoked by the retired employee's written notice given to the Corporation, except that during any period when there is not in effect a written collective bargaining agreement or supplement thereto between the Corporation and the Union which permits or provides for the deduction of Union dues from monthly pension benefits payable to a retired employee, such assignment, authorization and direction, if otherwise in effect, shall automatically be suspended for the duration of such period only.

(c) The Union shall indemnify and hold harmless the Corporation against any and all liability, including reasonable attorney's fees, that may arise by reason of the Corporation's compliance with this Section 6.

(d) This Section 6 shall be of no force or effect during any month for which less than one thousand such authorizations are in effect.

Section 7. Foundry Jobs

Any job classification put into effect after September 14, 1973, at a plant identified in Appendix B of the Plan, shall be designated by written agreement between the parties as a foundry job if such classification (a) supersedes or replaces a job classification previously designated as a foundry job for such plant and (b) becomes applicable to employees who perform substantially the same work as had been performed by employees while on a job classification previously designated as a foundry job for such plant.

(14)

A, Sect. 8

Section 8. Duration of Agreement

This agreement and Plan shall continue in effect until the termination of the collective bargaining agreement of which this is a part.

In witness hereof, the parties hereto have caused this agreement to be executed the day and year first above written.

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A. Sect. 8

INTERNATIONAL
UNION, UAW

OWEN BUBIR
STEPHEN P. YOKICH
DONALD J. DAVIS
DARREL NEWBERRY
CALVIN T. RABSON
TED MILLER
TOM PASCO
HENDERSON SLAUGHTER
TOM WEEKLEY
RICHARD SHOEMAKER
LEON ELACKWELL
GEORGE BROOBUR
LESTER BRYAN
L. E. BUNCH
MIKE GRACEY
RICHARD HOLLICRAFT
JAMES JACKSON
RICK LYONS
DICK MONCZKA
JUDY MURPHY
PEGGY PERSON
GARY WATSON
RICHARD SWIM
HAROLD SHELTON
J. D. DALTON
VINCE DEMME, JR.
SAM ISAAC
KEN LAUBERT
CARL PEDERSEN, JR.
ROGER RANTLFF
TOM ROBINSON
DON SAKESIAN
LEWIS W. SCHULTZ
NORM ACCORD
ROGER ANGLAM
BILL APFLE
JIM BEARDSLEY
AL BERGMANN
CHARLES BERT
JACK BROWN
BENNE BURGESS
BILL CARSHAW
JIM CARSON

GENERAL MOTORS
CORPORATION

ROBERT C. STENPHIL
LOYD E. REUSS
F. ALAN SMITH
CHARLES KATKO
ALFRED S. WARREN, JR.
RICHARD F. O'BRIEN
JOHN D. BUTLER
HOWARD C. CARLSON
DONALD G. GARDNER
RICHARD K. McALLAN
THOMAS J. MOER
ROBERT G. WIENCER, M.D.
RALPH E. HANDLEY
JAMES E. PRYCE
KENNETH J. McORMICK
THOMAS E. UTTER
ARTHUR R. SCHWARTZ
CHARLES E. RYAN
ALAN S. DAVES
ROBERT W. HENDRY
H. EDGEM BROWN
EDWARD D. DACHARNIE
FRED G. HAUNOLD
RICHARD L. HUBER
GERALD A. KNECHTEL
ROBERT D. LEE
ANTHONY L. MARCHIO
MICHAEL V. TIERNEY
JAMES R. WHEATLES
BETTY R. ANDERSON
JOHN H. BERRY, III
E. PRESTON BOLDEN
RICHARD L. BREWER
SAMUEL L. COLE, JR.
WILLIAM L. COWELL
RALPH E. DIERKS, JR.
H. STEPHEN DOYLE
JOHN J. FLAHERTY
MARK R. FLORA
JOHN P. FURMAN
THOMAS A. GAVEL
STEVEN L. GEBBIA
BEACH E. HALL

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A. Sect. 8

INTERNATIONAL
UNION, UAW

RUFUS COLEMAN
JERRY COVILLE
HAROLD COX
DICK DANIN
BOB FARLEY
EARL FARRELL
JERRY FALKNER
MARK FIELDER
RAY GIBSON
ROY GORFORTH
LARRY GORTO
MOSES GREEN
CECIL HARTON
LINDA HOLLICRAFT
JIM HOWE
LARRY JOLLY
DICK JONES
CHRIS MANNING
GEORGE MAYES
BUD MILLER
CLAYTON MOLL
RON MURRAY
WILBERT NEAL
HERSCHEL NIX
BEL RENO
TOM RICHARDSON
JOE SAWYER
ELLA MAE SCHULTZ
JIM SHROAT
DARRELL SMITH
WILLIAM SMITH
JOE SPRING
LARRY STEVENS
CINDY SUBANICK
KARLA SWIFT
KEN TERRY
JIM TITSWORTH
TOM WALSH
DICK WEBBEN
JIM WESTNESS
JIM WHEATLEY
WILLIE WILLIAMS
ED YONAN

GENERAL MOTORS
CORPORATION

CARLTON V. MATZELLE
TERRY J. McDOUGALL
MILTON H. OSBORN, JR.
GARY N. PHELEY
BERNARD J. QUICK
JAY C. WILBER
GERALD J. WINTER
W. GARY BRYANT
CAROLE G. DAVEY
JENNIE F. HART
BETTY SUE JONES
JAMES W. LALONDE
SANDRA POPE THOMPSON
BERNARD G. WEBER

(17)

EXHIBIT A-1
THE GENERAL MOTORS
HOURLY-RATE EMPLOYEES
PENSION PLAN

ARTICLE I ESTABLISHMENT OF THE PLAN

General Motors Corporation on behalf of itself and its Divisions and, as agent for certain of its directly or indirectly wholly-owned and substantially wholly-owned domestic subsidiaries in accordance with I.R.C. Section 414(b), (c), and (m) will establish, subject to the approval of its Board of Directors, a pension fund either by a trust agreement with a trustee or trustees, or by contract with an insurance company or insurance companies, or both, and with respect thereto shall make such payments or contributions as will be sufficient to maintain the fund on a sound actuarial basis as well as to pay expenses incident to the operation and management of the Plan.

Except as expressly provided in Sections 6, 7, and 8 of Article II and as provided in Article VII and Article IX, the provisions set forth in this Plan are applicable only to employees with seniority on or after October 1, 1990. Employees retired with benefits commencing prior to such date or separated prior to such date, or eligible surviving spouses of such employees, shall be entitled to the benefits, if any, under the Plan as it existed immediately prior to such date.

Notwithstanding the paragraph immediately above, employees who retired with benefits commencing after September 17, 1990 and prior to October 1, 1990 pursuant to the provisions of Article II of the Plan, shall be considered for purposes of Article II herein as having retired with benefits payable commencing on or after October 1, 1990; the surviving spouse of any employee who died after September 17, 1990 and prior to October 1, 1990, who is otherwise eligible for monthly benefits under the Plan, shall be considered entitled to monthly benefits pursuant to Section 5 of Article II herein; and any such employees

Art. I

shall be considered eligible for credited service under Article III herein.

ARTICLE II

ELIGIBILITY FOR RETIREMENT AND AMOUNT OF PENSIONS

Section 1. Normal Retirement

Any employee who shall have attained the age of 65, shall have completed one or more years of credited service as provided in Article III and shall cease active service, shall be entitled to receive a pension.

Section 2. Early Retirement

(a)(1) An employee who has attained age 60 but not age 65, and who has 10 or more years of credited service, may retire at the option of the employee.

(2) An employee who has attained age 55 but not age 60, and whose combined years of age and years of credited service (to the nearest 1/12 in each case) shall total 85 or more, may retire at the option of the employee.

(3) An employee who has 30 or more years of credited service may retire at the option of the employee.

(b) An employee who has attained age 55 (age 50 for an employee who is laid off on or after October 1, 1984 as a result of a plant closing where no other General Motors plants are in the same geographical area) but not age 65 and who has 10 or more years of credited service may be retired under mutually satisfactory conditions as set forth hereinafter in the Standards applicable to such retirement.

Art. II, 3

Section 3. Total and Permanent Disability Retirement

(a) An employee who is totally and permanently disabled prior to attaining age 65, and has at least 10 years of credited service, shall be eligible for a disability pension as hereinafter provided.

(b) An employee shall be deemed to be totally and permanently disabled only if he is not engaged in regular employment or occupation for remuneration or profit and on the basis of medical evidence satisfactory to the Corporation the employee is found to be wholly and permanently prevented from engaging in regular employment or occupation with the Corporation at the plant or plants where he has seniority for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country unless the employee becomes totally and permanently disabled after he has accumulated at least 5 years of seniority following his separation from service in the armed forces.

(c) Any disability pensioner may be required to submit to medical examination at any time during retirement prior to age 65, but not more often than semi-annually, to determine whether the pensioner is eligible for continuance of the disability pension. If on the basis of such examination it is found that the pensioner is no longer disabled or if the pensioner engages in gainful employment, except for purposes of rehabilitation as determined by the Corporation, the pensioner will be deemed recovered and his disability pension will cease. In the event the disability pensioner refuses to submit to medical examination the pension will be discontinued until the pensioner is examined.

Section 4. Amount of Pensions

(a) (1) The monthly pension payable to an employee retired pursuant to the provisions of Sections 1, 2, or 3 of this Article II with benefits payable commencing on or after October 1, 1990 shall be a basic benefit for each year of credited service that the employee had at the date of his retirement, determined by his Benefit Class Code and based on the month for which payment is being made as set forth in the table immediately following:

Retiree's Benefit Class Code	Basic Benefit Rate Per Year of Credited Service For Months Commencing			
	10-1-90 through 9-1-91	10-1-91 through 9-1-92	10-1-92 through 9-1-93	10-1-93 and After
October 1, 1990 and After	A 28.35	B 28.60	C 28.85	D 29.10
	\$ 28.35	\$ 29.50	\$ 29.75	\$ 30.95
				\$ 31.20
				\$ 31.45

(2) The monthly pension benefit payable to an employee who retires at his option at a date selected by the employee shall be multiplied by a percentage as set forth in the following table:

Age When Pension Commences	Percentage*
42	21.0%
43	22.6
44	24.3
45	26.1
46	28.2
47	30.4
48	32.8
49	35.4
50	38.3
51	41.5
52	45.0
53	48.9
54	53.2
55	57.9
56	63.5
57	69.4
58	75.2
59	80.8
60	86.7
61	93.3
62 or over	100.0

*Prorated for intermediate ages computed on the basis of the number of complete calendar months by which the employee is under the age he will attain at his next birthday.

If an employee:

(i) with 30 or more years of credited service retires at his option, or

(ii) whose combined years of age and years of credited service (to the nearest 1/12 in each case) shall total 85 or more retires at his option, the monthly basic benefits otherwise payable to him after age 62 and one month shall be redetermined without any such reduction.

Art. II, 414(k)

(3) The basic benefit payable in any month will not be reduced below an amount which results in the early retirement supplement paid to a participant in such month; under Article II, Section 6 (a) (1), exceeding the old age insurance benefits, unreduced on account of age, payable under Title II of the Social Security Act, as amended.

(b) A temporary benefit for each year of credited service up to 30 shall be payable in addition to the monthly basic pension payable to an employee retired under mutually satisfactory conditions, or totally and permanently disabled pursuant to Section 2 (b) or Section 3 above, as set forth in the table immediately following:

Retires With Benefits Payable Commencing	Monthly Temporary Benefit Amount	
	Per Year of Credited Service	Maximum
October 1, 1990 through September 1, 1991	\$ 25.00	\$ 750.00
October 1, 1991 through September 1, 1992	27.20	816.00
October 1, 1992 and After	29.30	879.00

(c) The monthly temporary benefit determined in (b) above shall be payable until age 62 and one month, or until the age at which the employee becomes or could have become eligible for a Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age. At such age the temporary benefit shall cease to be payable.

Art. II, 414(l)

(d) An employee discharged for cause after such employee is eligible to retire at his option under Section 2 (a) of this Article II shall be entitled to the benefits provided under Section 4 (a) of this Article II as though he had retired at his option.

(e) The amount of any monthly pension benefit otherwise payable to the employee at retirement, or earlier commencement, will be reduced by the value of any past and future benefits paid or payable to any alternate payee(s) under a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p).

The actuarial value will be used to determine any amount to be paid to any such payee(s), if applicable, and the remaining benefit entitlement of the employee.

Section 5. Pension Benefits to Employee's Surviving Spouse

(a) In lieu of the monthly basic benefit otherwise payable, an employee who retires or is retired pursuant to the normal, early or total and permanent disability retirement provisions of this Article II, or who breaks seniority and is eligible for a deferred pension pursuant to the provisions of Section 2 of Article VII hereof, shall be deemed to have elected automatically a reduced amount of monthly basic benefit to provide that, if his designated spouse shall be living at his death after such election shall have become effective, a survivor benefit shall be payable to such spouse during the spouse's further lifetime. In the event such spouse predeceases such employee, or they are divorced by court decree and a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) does not provide to the contrary, such employee may cancel the survivor benefit election and have his monthly basic pension benefit restored to the amount payable without such election, effective the first day of the third month following the month in

which the Corporation receives (i) evidence satisfactory to the Corporation of the spouse's death, or (ii) such employee's written revocation of the election because of divorce; on a form approved by the Corporation and accompanied by evidence satisfactory to the Corporation of a final decree of divorce.

The automatic election provided in this subsection (a) shall become effective on the later of (i) the commencement date of the employee's monthly pension benefit, (ii) the first day of the month following the month in which the employee attains age 55 (except that this item (ii) shall not apply to an employee with 30 or more years of credited service or to an employee who retires with benefits payable prior to age 55 pursuant to Section 2 (b) of this Article II), or (iii) the first day of the month following the month in which the employee has been married one year if he is married when the election would otherwise become effective but such marriage has been in effect less than one year at that date.

An employee may prevent the automatic election provided in this subsection (a); (i) at the time of application for retirement benefits, or (ii) if later, during the month prior to that in which he attains age 55 (except that this item (ii) shall not apply to an employee with 30 or more years of credited service or to an employee who retires with benefits payable prior to age 55 pursuant to Section 2 (b) of this Article II) by executing a specific written rejection of such election, which includes the written consent of his spouse witnessed by the plan representative or a notary public, on a form approved by the Corporation and filing it with the Corporation.

Information regarding this coverage is included in the summary plan description, which will be provided to each employee. Within a reasonable period prior to the annuity starting date, each participant shall be

provided a written explanation of: (i) the terms and conditions of the surviving spouse coverage; (ii) the participant's right to make and the effect of an election to waive the surviving spouse coverage; (iii) the rights of the participant's spouse; and (iv) the right to make and the effect of revocation of a previous selection to waive the surviving spouse coverage.

(b) The beneficiary of a survivor benefit election shall be only the person who is the employee's spouse at such time and who has been his spouse for at least one year immediately prior to the effective date of such election.

(c) A survivor benefit election shall be revoked automatically upon the death of the employee or his designated spouse, or both, prior to the effective date of the election.

(d) A survivor benefit election shall be irrevocable at and after its effective date if the employee and his designated spouse shall be living at such date, except as otherwise provided in Section 5 (a) of this Article II.

(e) For an employee who makes a survivor benefit election or who is deemed to have made such election under this Section 5, the reduced amount of his monthly basic benefit referred to in (a) above shall be equal to an amount determined by multiplying the monthly basic benefit otherwise payable to the employee by 95% if the employee's age and his eligible spouse's age are the same; except that, in the case of an employee whose basic benefits are subject to redetermination at age 62 and one month the amount of reduction in his monthly basic benefit before such age for the survivor benefit election shall be based on the monthly basic benefit payable to such employee after age 62 and one month. Such percentage shall be increased by one-half of one percent (1/2%) (up to a maximum of 100%) for each 12 months in excess of

Art. II, 5(c)

five (5) years that the spouse's age exceeds the employee's age and shall be decreased by one-half of one percent (1/2%) for each 12 months in excess of five (5) years that the spouse's age is less than the employee's age.

(f) The survivor benefit payable to the surviving spouse of a retired employee who has completed an election or who is deemed to have made an election under this Section 5, and who dies after such election becomes effective, shall be a monthly benefit for the further lifetime of such surviving spouse equal to 60% of the reduced amount of such employee's monthly basic benefit as determined in (e) above; except that the survivor benefit payable to the surviving spouse of an employee whose basic benefits are subject to redetermination at age 62 and one month, pursuant to Section 4 (a) of this Article II, shall be based on the monthly basic benefit payable to such employee after age 62 and one month.

(g) The surviving spouse of an employee

(i) who dies on or after attaining age 65, or on or after attaining age 55 and after the employee is eligible to retire at his option under Section 2 (a) (1) or 2 (a) (2) of this Article II, or at any age with 30 or more years of credited service, but before the first day of the month following the date on which the employee retires or before the commencement date of the employee's monthly pension in the case of an employee who retires at his option and defers the receipt of his monthly pension, and

(ii) who, if he had retired at the date of his death, would have been eligible for the election under subsection (a) of this Section 5,

shall be entitled to a monthly benefit during the spouse's lifetime, terminating with the last monthly payment before the spouse's death. The monthly

Art. II, 5(g)(ii)

benefit payable to the surviving spouse shall be the amount such spouse would have been entitled to receive under subsection (f) of this Section 5, if the employee had retired on the date of his death under Sections 1, 2 (a) (1), 2 (a) (2) or 2 (a) (3), whichever is applicable, of this Article II with benefits commencing the first of the following month and had effectively made the election under subsection (a) of this Section 5.

(h) The death of an otherwise eligible employee who has retired under Section 3 of this Article II, occurring on or after his attaining age 55, but before the first day of the month following the date on which he dies, shall not disqualify an otherwise eligible surviving spouse from receiving a benefit hereunder.

Section 6. Supplements

(a) An employee who retires under Section 2, (other than an employee referred to in Section 4 (d) of this Article II, unless the Corporation or an Impartial Umpire under an applicable collective bargaining agreement determines his discharge should not result in his being ineligible for benefits under this Section 6), or 3 of this Article II, and who files his application for a pension within five years of the last day he worked for the Corporation and who agrees to resign his participation in the work force before age 62 and one month as provided in (e) below, will receive, in addition to his pension, certain supplements as set forth below:

(1) If the employee retires under Section 2 or 3 of this Article II with 30 or more years of credited service at the date of his retirement, he shall be entitled to a monthly early retirement supplement until age 62 and one month in an amount which when added to his monthly pension under this Plan will equal the amount of total monthly benefit applicable to him as

Art. II, et al(1)

provided in the table set forth below, subject to subsequent provisions of this Section 6;

Retirement With Benefits Payable Commencing	Total Monthly Benefit Rate For Determining Monthly Early Retirement Supplement Prior to Age 62 and One Month For Retirees With 30 or More Years of Credited Service		
	10-1-90 through 9-1-91	10-1-91 through 9-1-92	10-1-92 and After
October 1, 1990 and After	\$ 1,600	\$ 1,700	\$ 1,800

(2) If the employee retires at his option after attaining age 55 with benefits payable commencing on or after October 1, 1990 with less than 30 years of credited service, he shall be entitled to a monthly interim supplement until he attains age 62 and one month equal to the amount applicable to him as provided immediately below for each year of credited service that he had at the date of his retirement, subject to the provisions of (b), (c) and (d) of this Section 6;

Art. II, et al(2)

Age at Retirement	Monthly Amount* and Effective Date of Interim Supplement Payable Prior to Age 62 and One Month for Each Year of Credited Service		
	Retired With Benefits Payable Commencing on or After October 1, 1990	10-1-90	10-1-91
55	\$ 12.00	\$ 12.00	\$ 12.90
56	12.95	14.10	15.20
57	15.70	17.05	18.40
58	18.40	20.00	21.55
59	20.55	22.40	24.10
60	23.75	25.85	27.85
61	23.75	25.85	27.85

*Provided for intermediate ages computed on the basis of the number of complete calendar months by which the employee is under the age he will attain at his next birthday.

(b) The early retirement supplement under provision (a) (1) of this Section 6 for an employee who retires at his option shall be calculated assuming that his basic pension commences immediately after retirement; and such early retirement supplements and the interim supplement under provision (a) (2) of this Section 6 shall be reduced for any month prior to age 62 and one month, for which he becomes or could have become eligible for a Federal Social Security benefit, by an amount equal to the amount of the temporary benefit to which he would have been entitled if he had retired under Section 2 (b) of this Article II.

Art. II, 6(c)

(c) The early retirement supplement under provision (a) (1) of this Section 6 for an employee who retires under Section 2 (b) or Section 3 of this Article II shall be calculated on the assumption that he will receive a temporary benefit until age 62 and one month, even if such temporary benefit is not received by the employee until such age because of his entitlement to Social Security Benefits.

(d) The early retirement supplement under provision (a) (1) of this Section 6 for an employee who does not prevent the automatic election of the surviving spouse coverage provided under Section 5 of this Article II shall be calculated on the basis of the monthly pension he would have received if he had prevented such automatic election.

(e) Any of the supplements to which an employee is entitled shall commence on the first day of the month following the date on which the employee retires and shall be payable monthly thereafter until and including the first day of the month in which he dies, or his pension ceases for any other reason, or he is reemployed by the Corporation, or he attains age 62 and one month, whichever occurs first, provided, however, that if an employee entitled to receive a supplement has earnings after retirement in excess of the following annual earnings limitation in any calendar year before he attains age 62 and one month, such earnings being defined for this purpose as the type counted for the earnings test under the Federal Social Security Act or the corresponding type in any future Federal legislation amending, superseding, supplementing, or incorporating the Federal Social Security Act, a penalty equal to double the amount by which such earnings exceed the amount permitted shall be charged against each succeeding monthly supplement which he would otherwise be entitled to receive until the full amount of such penalty is

Art. II, 6(e)

satisfied, it being understood that penalties and charges herein shall be cumulative if appropriate.

Calendar Year	Annual Earnings Limitation Amount
1990	\$ 10,000
1991	15,000
1992	15,000
1993	15,000

An employee receiving a monthly early retirement supplement or interim supplement may be required to certify whether his earnings have been in excess of the permitted amount and to furnish verification of the amount of his earnings. Unless repaid by the employee in a lump sum, any overpayments of a supplement made after an employee incurred a penalty because of excess earnings in accordance with the preceding paragraph shall be deducted from future monthly benefits payable to him under this Pension Plan.

The annual earnings limitation provisions of this subsection (e) shall not be applicable to any mutually satisfactory retirement with benefits payable commencing on or after October 1, 1990 and prior to September 14, 1993.

(f) If a retired employee has been receiving a pension under Section 3 of this Article II and has been receiving a supplement and on the basis of medical evidence satisfactory to the Corporation, it is found that he is no longer totally and permanently disabled and his seniority is restored, or if he is reemployed by the Corporation, he shall not thereby forfeit any right he may thereafter have to receive a supplement if he thereafter retires under this Pension Plan.

(g) If the total of the employee's monthly pension under this Pension Plan and his monthly early

Art. II, 61g)

retirement supplement or interim supplement receivable as computed above would exceed 70% of his final base pay, his monthly supplement (but not his monthly pension) shall be reduced to the extent required so that such monthly pension plus his supplement will equal 70% of his final base pay. For this purpose, an employee's final base pay shall mean 173 1/3 times his Base Hourly Rate as defined in Article X.

Section 7. Special Benefit

(a) A retired employee or a surviving spouse, (i) age 65 or older, or (ii) under age 65 and enrolled in the voluntary "Medicare" coverage that is available under the Federal Social Security Act by making contributions (in either case excluding the spouse of a former employee who received a deferred-vested pension benefit under Article VII of the Plan), who is receiving a monthly benefit under Article II of the Plan which commenced prior to October 1, 1979, subject to (d) below, shall receive a monthly special benefit equal to:

(i) the lesser of \$28.00 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1990,

(ii) the lesser of \$31.00 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1991,

(iii) the lesser of \$34.00 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1992,

(iv) the lesser of \$38.50 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1993.

(b) In no event shall such payment commence prior to the first day of the month following the earlier of (i) the month during which age 65 is attained, or

Art. II, 71b)

(ii) for enrollments effective prior to October 1, 1990 receipt by the Corporation of application on a form provided for this purpose from an otherwise eligible individual under age 65; except that, with respect to an otherwise eligible individual under age 65, payment shall commence with the first month of such enrollment, but in no event prior to October 1, 1979.

(c) Not more than one such payment shall be made to any individual for any one month. No such payment shall be made to any individual under age 65 for any month such individual is not enrolled for such voluntary "Medicare" coverage. No such payment shall be made under this Plan to any individual who retires with benefits payable commencing on or after October 1, 1979.

(d) Effective January 1, 1991, the special benefit payable to an individual who is not enrolled in "Medicare" Part B as of October 1, 1990, but who was receiving a special benefit, will be limited to \$28.00 per month. Such an individual will become entitled to the schedule of payments in subsection (a) above, upon proof of enrollment in "Medicare" Part B. Thereafter, continued receipt of a special benefit will be contingent on maintenance of "Medicare" Part B enrollment.

(e) For an individual enrolled in "Medicare" Part B as of October 1, 1990, or who first becomes eligible for "Medicare" Part B on or after October 1, 1990, receipt of a special benefit of and after January 1, 1991 is contingent upon continued enrollment in "Medicare" Part B.

Section 8. Benefits for Employees Who Retired With Benefits Payable Commencing Prior to October 1, 1990.

An employee who retired under Article II of the Plan with benefits payable commencing prior to October 1, 1990, or the eligible surviving spouse of

such an employee, shall be entitled to the benefits, if any, under the Plan as it existed immediately prior to such date, except that

(a) (1) Benefits payable to such retired employees or surviving spouses shall be increased to the extent necessary to provide monthly benefits equal to the benefits which would have been payable had the basic pension benefits payable to the employee after age 65 been based on the following table:

Retirement With Benefits Payable Commencing	Benefit Class Code	Basic Benefit Rate Per Year of Credited Service For Months Commencing	
		October 1, 1990 and After	
Prior to October 1, 1979	N/A	\$ 20.00*	
October 1, 1979 through September 1, 1980	A B C D	21.25 21.50 21.75 22.00	
October 1, 1980 through September 1, 1981	A B C D	21.35 21.60 21.85 22.10	
October 1, 1981 through September 1, 1984	A B C D	21.45 21.70 21.95 22.20	
October 1, 1984 through September 1, 1985	A B C D	24.10 24.35 24.60 24.85	

*Including, if applicable, \$1.00 waived for election of a special survivor option.

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Retirement With Benefits Payable Commencing	Benefit Class Code	Basic Benefit Rate Per Year of Credited Service For Months Commencing	
		October 1, 1990 and After	
October 1, 1985 through September 1, 1986	A B C D	24.20 24.45 24.70 24.95	
October 1, 1986 through September 1, 1987	A B C D	24.30 24.55 24.80 25.05	
October 1, 1987 through September 1, 1988	A B C D	27.30 27.55 27.80 28.05	
October 1, 1988 through September 1, 1989	A B C D	27.40 27.65 27.90 28.15	
October 1, 1989 and prior to October 1, 1990	A B C D	27.50 27.75 28.00 28.25	

(2) Benefits payable to employees retired on and after October 1, 1973, shall be based on the Benefit Class Code applicable to the employee, determined as though the maximum base hourly rate of the employee's job classification had included the amount of any wage inaccuracy adjustment made applicable to such job classification on or after September 14, 1973, and prior to the employee's loss of seniority.

Art. II, 8(a)(3)

(3) If an employee whose monthly basic benefit otherwise would have been determined at age 62 attains age 62 on or after March 1, 1982, such redetermination shall be effective at age 62 and one month.

(b) Any temporary benefits payable to such retired employee until age 65 if retired with benefits payable commencing before March 1, 1974, or age 62 if retired with benefits payable commencing on or after March 1, 1974 or age 62 and one month for a retired employee who attains age 62 on or after March 1, 1982, or, in any case, if earlier, until the age at which the employee becomes or could have become eligible for a Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age shall be increased to the extent necessary to provide monthly temporary benefits equal to the temporary benefits which would have been payable had the temporary benefits payable to the employee prior to such age 65 (or age 62 or age 62 and one month) or earlier age been based on the following:

Retirees With Benefits Payable Commencing	Monthly Temporary Benefit Amount*	
	Per Year of Credited Service	Maximum
Prior to September 1, 1964	11.50	300.00
September 1, 1964 and prior to October 1, 1967	12.00	300.00
October 1, 1967 and prior to October 1, 1970	12.25	306.25
October 1, 1970 and prior to March 1, 1974	12.75	318.75
March 1, 1974 and prior to October 1, 1976	13.75	343.75
October 1, 1976 and prior to October 1, 1978	14.25	356.25
October 1, 1978 and prior to October 1, 1979	15.25	381.25
October 1, 1979 and prior to October 1, 1980	16.25	406.25
October 1, 1980 and prior to October 1, 1981	17.25	431.25
October 1, 1981 and prior to January 1, 1983	18.25	456.25
January 1, 1983 and prior to October 1, 1985	18.25	547.50

* Benefit payable for months commencing October 1, 1990.

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Art. II, 8(b)

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Retirees With Benefits Payable Commencing	Monthly Temporary Benefit Amount*	
	Per Year of Credited Service	Maximum
October 1, 1985 and prior to October 1, 1986	\$.	\$
October 1, 1986 and prior to October 1, 1987	19.25	577.50
October 1, 1987 and prior to October 1, 1988	20.25	607.50
October 1, 1988 and prior to October 1, 1989	20.45	613.50
October 1, 1989 and prior to October 1, 1990	21.55	646.50
October 1, 1990 and prior to October 1, 1990	22.65	679.50

* Benefit payable for months commencing October 1, 1990.

(c) (1) An employee who retired under Article II of this Plan with 30 or more years of credited service who is receiving a monthly supplement which commenced prior to October 1, 1990 shall receive an increase to such monthly supplement as follows:

Effective Date of Increase	Amount of Increase*	
	Payable to Age 62 and One Month	Payable Between Ages 62 and One Month - 64
October 1, 1990	\$ 75.00	\$ 37.50

* This increase will not result in a total monthly benefit of less than \$1,100 for months prior to age 62 and one month, or \$550 for months between ages 62 and one month and 64.

The amount of any monthly supplement payable to an employee who retired under Article II of the Plan with benefits commencing prior to October 1, 1990 shall be redetermined to the amount of supplement which would have been payable had the applicable benefit rates set forth in this Section 8 been in effect when such employee's benefits commenced. If such retired employee is entitled as of October 1, 1990 to receive Social Security benefits, and if he became so entitled before October 1, 1990 any increase in the rate of temporary pension provided in provision (b) of this Section 8 shall not be considered in redetermining his supplement until he ceases to be so entitled.

(2) An employee who retired under Article II of this Plan at his option after attaining age 55 with less than 30 years of credited service who is receiving an interim supplement which commenced prior to October 1, 1990 shall receive, for months commencing on and after October 1, 1990, an increase to such interim supplement, as follows:

Age at Retirement	Monthly Increase Per Year of Credited Service
55	0.55
56	0.65
57	0.80
58	0.95
59	1.05
60	1.20
61	1.40

(d) The survivor benefit payable to the surviving spouse of a retired employee who has completed an election of a special survivor option and who dies after such election becomes effective, shall be a monthly benefit for the further lifetime of such surviving spouse equal to:

(1) \$7.00 for each year of credited service that such retired employee had at the date of his retirement, with respect to benefits payable for any month commencing October 1, 1990 through September 1, 1991,

(2) \$8.00 for each year of credited service that such retired employee had at the date of his retirement, with respect to benefits payable for any month commencing October 1, 1991 through September 1, 1992, and

(3) \$9.00 for each year of credited service that such retired employee had at the date of his retirement, with respect to benefits payable for any month commencing on or after October 1, 1992.

(e) An employee who retired under Article II of the Plan, or who is eligible for a deferred pension pursuant to the provisions of Section 2 of Article VII of the Plan, and who has surviving spouse coverage in effect but whose designated spouse predeceases him, may have his monthly basic pension benefit restored to the amount payable without such coverage, effective the first day of the third month following the month in which the Corporation receives evidence satisfactory to the Corporation of the spouse's death.

(f) In lieu of receiving a reduced amount of any increase in benefits otherwise payable to him under this Section 8 on or after April 1, 1971 in order to provide an increase in the amount of survivor benefit otherwise payable, an employee who retired under Article II of the Plan with benefits payable commencing prior to November 23, 1970, who is divorced by court decree, and for whom the terms of a: Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) do not expressly prohibit cancellation of the survivor annuity, from his designated spouse for whom he has a survivor benefit

coverage in effect, may elect to receive the full amount of such increase. To make such election he must complete a form approved by the Corporation and file it with the Corporation, accompanied by evidence satisfactory to the Corporation of a final decree of divorce, in which case such election shall become effective with respect to benefits falling due for months commencing on the first day of the third month following the month in which the Corporation receives such completed election form and final decree of divorce.

(g) An employee who retired or retires under Article II of the Plan with benefits payable commencing on or after January 1, 1962; who marries, or remarries, subsequent to the earliest date a survivor benefit coverage was in effect, or was not in effect on such date solely because the retired employee was not then married, may elect, or re-elect, a survivor benefit coverage. Any such coverage, and the benefits thereunder, shall be provided under the terms and conditions of the Plan in effect at the time of the employee's retirement. Such coverage shall become effective on the first day of the third month following the month in which the Corporation receives a completed election form, but in no event before the first day of the month following the month in which the retired employee has been married one year.

No election provided hereunder shall become effective under any circumstance for any retired employee whose completed election form is received by the Corporation after the first day of the month in which the retired employee has been married one year.

This subsection (g) also shall be applicable to an employee retired with benefits payable commencing on or after October 1, 1990.

Art. II, 8(h)

(h) Monthly benefits payable under this Section 8 on and after October 1, 1990 shall not be limited by the 70% benefit limitation in Section 6(e) of this Article II.

(i) The monthly amount of any lifetime supplement payable to an employee retired with benefits payable commencing on or after March 1, 1974 with 30 or more years of credited service shall be \$35.00.

Section 9. Employees Not Actively at Work

The absence of an employee from active work at the time such employee would be eligible to retire under the Plan shall not preclude the employee's retirement without return to active work.

Section 10. Joint and Survivor Coverage

(a) In lieu of the monthly basic benefit otherwise payable, an employee who retires pursuant to the provisions of Section 3 of this Article II who is under age 55 and has less than 30 years of credited service shall be deemed to have elected automatically a reduced amount of monthly basic benefit, up to and including the month in which he dies or attains age 55, whichever occurs first, and a monthly survivor's benefit, beginning on the first day of the month after the retired employee would have reached age 55 if he dies before the first day of the month after he would have reached age 55, shall be payable to his designated spouse during the further lifetime of the spouse.

(b) This automatic election shall be deemed to have been made at the time the employee shall apply or shall have applied for a disability pension benefit (with the election being effective the first day of the month for which his first benefit under the Plan is payable).

Art. II, 10(e)

(c) The automatic election provided in this Section 10 shall be applicable only with respect to a spouse to whom the employee is married on the date of such election and only if the retired employee and his spouse shall have been married throughout the one-year period ending on the date of the retired employee's death.

(d) An employee may prevent the automatic election provided in this Section 10 at the time such election would otherwise be deemed to have been made, as set forth in subsection (b) of this Section 10, by specific written rejection which includes the written consent of his spouse witnessed by the plan representative or a notary public on a form approved by the Corporation.

(e) In any event, the election shall automatically be canceled.

(f) If the employee's disability retirement status terminates other than by death prior to the first day of the month after the retired employee attains age 55, or

(ii) if the retired employee survives on a disability retirement status until the first day of the month after he attains age 55, at which time the coverage described in Section 5 of this Article II becomes applicable.

(i) The amount of the monthly basic benefit payable to an employee deemed to have made the election provided hereunder shall be determined by reducing actuarially the amount of such benefit for the cost of the survivor benefit payable in the event of the retired employee's death before the first of the month following the attainment of age 55. The actuarial reduction shall be based on the age of the retired employee and his spouse (the age of each being

determined as the age at his or her birthday nearest the date on which the benefits commence) and shall reflect the higher mortality associated with being disabled. Reduction factors at selected ages for disability survivor coverage before age 55 are set forth in the following table:

Age of Employee When Benefits Commence	Age Difference Between Disabled Employee and Spouse			
	10 Years Younger	5 Years Younger	Same Age	5 Years Older
30	8.6	8.1	7.5	6.7
35	10.4	9.9	9.2	8.3
40	12.5	11.8	11.0	10.0
45	14.3	13.5	12.7	11.6
50	13.9	13.2	12.4	11.4
51	13.1	12.5	11.7	10.8
52	10.4	9.9	9.3	8.6
53	3.4	3.2	3.0	2.8
54	3.4	3.3	3.1	2.8

NOTE: Actuarial reduction factors for ages not shown will be calculated on the same basis as the factors shown.

(g) The amount of the monthly benefit payable to the surviving spouse of a retired employee deemed to have made the election specified hereunder shall be 50% of the amount of the monthly basic benefit payable to the retired employee after the reduction provided in subsection (f) of this Section 10.

(h) Anything in the Plan to the contrary notwithstanding, if the designated spouse of a retired employee deemed to have made the election provided

hereunder shall predecease, such retired employee, or they are divorced by court decree and a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) does not provide to the contrary, such retired employee shall have his monthly basic benefit restored to the amount payable without such election, effective the first day of the third month following the month in which the Corporation receives evidence satisfactory to the Corporation of the spouse's death or divorce.

(i) No benefit shall be payable under this Section 10 for any month for which benefits are payable under Article II, Section 5(b) or Section 11 of this Plan.

(j) Information regarding this coverage is included in the summary plan description, which will be provided to each employee. Within a reasonable period prior to the annuity starting date, each participant shall be provided a written explanation of: (i) the terms and conditions of the surviving spouse coverage; (ii) the participant's right to make and the effect of an election to waive the surviving spouse coverage; (iii) the rights of the participant's spouse; and (iv) the right to make and the effect of a revocation of a previous selection to waive the surviving spouse coverage.

Section 11. Pre-Retirement Survivor Coverage to Comply With the Retirement Equity Act of 1984.

(a) An employee who:

- has either 5 or more years of credited service, or 5 years of service as provided under Article III, Section 6, or
- breaks seniority over after October 1, 1990 and who is eligible for a deferred pension under Article VII, Section 2,

and in either case is not eligible for the survivor benefit coverage provided under Section 5 of this Article II, shall have the pre-retirement survivor coverage described herein.

Such coverage shall remain in full force and effect until the date on which the employee or former employee becomes eligible for the survivor benefit coverage provided under Article II, Section 5, at which time the pre-retirement survivor coverage described herein shall cease to be effective.

In the event the employee or former employee predeceases the designated spouse while the pre-retirement survivor coverage provided hereunder is in effect, the designated spouse shall be eligible, during the further lifetime of such spouse, for a monthly benefit commencing on the first of the month following the month in which the employee or former employee would have become eligible; except for the fact that he died, to retro to the option of the employee.

The amount of any such monthly survivor benefit shall be determined by the basic benefit rate in effect for the employee on the date of death of such employee, or the date seniority broke for a former employee.

(b) The survivor coverage provided hereunder for an employee or former employee shall be effective on the date the employee or former employee attains 5 years of credited service or "service" as provided under Article III, Section 6.

(c) The survivor coverage provided hereunder shall be effective with respect to a spouse to whom the employee or former employee is married, but only if the couple shall have been married throughout the one-year period ending on the date of the employee's or former employee's death.

(d) Subsections (b) and (c) notwithstanding, if an employee or former employee marries or remarries, such coverage shall be in effect in favor of his spouse upon such marriage or remarriage, unless, in the case of remarriage, a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) requires such coverage to remain in effect for the former spouse. The effective date of any such coverage shall be in accordance with subsection (c) of this Section 11.

(e) In the event of divorce, the employee or former employee can revoke the coverage provided hereunder without spousal consent, unless a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) provides to the contrary.

(f) The coverage provided hereunder shall be canceled automatically on the date when any employee or former employee becomes eligible for the survivor coverage provided under the provisions of Article II, Section 5 of the Plan.

(g) The monthly benefit amount payable hereunder to any eligible surviving spouse shall be 50% of the monthly amount of the basic benefit as determined in Article VII, Section 2(b) otherwise payable at the (i) date of death to the employee, or (ii) date seniority broke for a former employee, after any reduction provided in Section 2(c) of Article VII.

(h) No benefit shall be payable under this Section 11 for any month for which benefits are payable under Article II, Section 5 or Section 10 of this Plan.

(i) Information regarding the coverage provided hereunder is included in the summary plan description, which will be provided to each employee covered by the Pension Plan, in accordance with The Employee Retirement Income Security Act (ERISA).

Act II, 11(1)

(1) The pre-retirement survivor coverage provided hereunder will apply to eligible employees and former employees separated from service:

(1) whose last day worked for the Corporation was on or after October 1, 1976, and

(2) who have entitlement to but have not commenced receipt of deferred vested benefits, and

(3) who are alive as of August 23, 1984.

ARTICLE III CREDITED SERVICE

Section 1. Credited Service Subsequent to October 1, 1950

(a) (1) Credited service shall be computed for each calendar year for each employee, on the basis of total hours compensated by any plant or Division of the Corporation during such calendar year while the employee has unbroken seniority. Employment while covered under The GM Special Pension Plan shall not be credited hereunder, except for an employee with seniority on March 1, 1968, who has not received a cash payment representing his accrued benefit under The GM Special Pension Plan. Any calendar year in which the employee has 1700 or more compensated hours shall be counted a full calendar year. Where the employee's total hours compensated during a calendar year are less than 1700 hours, a proportionate credit shall be given to the nearest 1/10 of a year.

(2) For the purpose of computing credited service, hours of pay at premium rate shall be computed as straight time hours.

(b) For the purpose of computing compensated hours under subsection (a) of this Section:

Act III, 1(6)(1)

(1) An employee with seniority on or after January 1, 1968 who is absent from work during any calendar year thereafter because of layoff or while on a Corporation approved sick leave, shall be credited with 40 hours for each complete calendar week of such absence during such year in addition to any other hours credited provided that such employee shall have received pay from the Corporation during that year for at least 170 hours, and provided further, that if such absence commences in calendar year 1970, or later, and such layoff or sick leave continues into the following year he shall be credited with 40 hours for each complete calendar week of absence in the following year, not to exceed 1530 hours of credit for all such absence related to receipt of such pay from the Corporation in the first year.

An employee who is recalled from permanent layoff and returns to work on or after October 1, 1990 shall become eligible for the 1530 hours of credit hereunder, applicable during a sick leave or layoff, on the later of: (1) receipt of pay from the Corporation for at least 170 hours, or (2) the day next following the 12th week of pay from one or more GM plants within a calendar year. If the employee receives pay from the Corporation for 170 or more hours prior to the 12th week in (2) immediately above, the employee shall become eligible for "bank" hours equal to the number of hours worked since recall, plus any "bank" hours to which he was entitled immediately before such return to work, but in no case to exceed 1530 hours.

An employee who returns to work on or after October 1, 1979 and receives pay for a period of less than 170 hours and who thereafter returns to such layoff or sick leave, shall not be disqualified, solely because of the receipt of such pay, from receiving any such credit for which he otherwise would be eligible hereunder. For the purposes of this subsection only, an employee who is laid off subsequent to

October 1, 1979 and whose first day of absence due to such layoff is the first regularly scheduled work day in the January next following his last day worked shall be deemed to have been laid off on December 31 of the year in which he last worked. A part-time employee shall be credited for any week of such absence in the same percentage relationship as such employee's regular part-time schedule is to 40 hours.

An employee who (i) is at work on or after October 1, 1990; (ii) has 10 or more years of seniority at time of layoff commencing on or after October 1, 1990; (iii) while on such layoff has received the maximum of 1530 hours of credit for periods of absence due to layoff; or Corporation approved sick leave in accordance with the preceding paragraph of this Section 1(b)(1); and (iv) continues thereafter to be absent due to such layoff shall be credited with 40 hours for each complete calendar week of absence due to such layoff up to a maximum of 1700 hours of credit.

(2) An employee who is absent from work because of occupational injury or disease incurred in the course of such employee's employment with the Corporation, and on account of such absence receives Workers' Compensation while on Corporation approved leave of absence shall be credited with 40 hours for each complete calendar week of such absence after September 1, 1961.

(c) Any salaried employee transferred to an hourly-rate job who thereby becomes an employee covered by the Plan shall have credited to the nearest 1/10 year any credited service the employee had as of the date of such transfer under any Corporation retirement plan for salaried employees.

(d) If an employee who retired is rehired, such employee may accumulate additional credited service by reason of such reemployment.

(e) For the purpose of computing compensated hours under subsection (a) of this Section 1:

(1) An employee who after October 1, 1950 and prior to June 1, 1955 was absent from work because he entered into active service in the armed forces of the United States and who was given a Corporation approved leave of absence for such period shall be credited with the number of hours that the employee would have been scheduled to work during such absence.

(2) An employee, who on or after June 1, 1955 was or is absent from work to enter into (or remain in) active service in the armed forces of the United States and for that reason was or is given a Corporation approved leave of absence, shall be credited with 40 hours for each complete calendar week that he is on such leave; provided, however, that credited service based on such hours shall not exceed four years (including credited service, if any, granted under subsection (c)(1) of this Section 1), or such longer period during which he has reemployment rights pursuant to any Federal law, and provided, further, that the employee is reemployed in accordance with the terms of such leave of absence or, if reemployed by the Corporation at a location other than the location from which the leave was granted, within 90 days from the date of his discharge from the armed forces.

(f) Any employee hired on an hourly-rate job by a plant or Division of the Corporation who has credited service under any Corporation retirement plan for salaried employees or who has lost credited service under any such plan, shall, upon making proper application, have such service credited to the nearest 1/10 year; provided that the employee acquires or acquired seniority following the loss of such credited service.

Art. III, 1(g)

(g) If a former salaried employee who is entitled to a deferred retirement benefit, under Part A of the General Motors Retirement Program for Salaried Employees is reemployed by the Corporation and acquires seniority prior to the commencement of such deferred retirement benefit, such employee shall, upon making proper application, have reinstated, in lieu of the deferred retirement benefit, the credited service lost at the time the employee became entitled to such deferred retirement benefit.

(h) An employee with at least five years of seniority:

(1) on January 1, 1968 who was absent from work because of layoff during any calendar year after December 31, 1955 and before January 1, 1963, or

(2) on December 10, 1973 who was absent from work because of layoff during any calendar year after December 31, 1950 and before January 1, 1956, or

(3) on October 1, 1979 who was absent from work because of layoff during any calendar year after December 31, 1962 and before January 1, 1968, or

(4) on October 1, 1984 who was absent from work because of layoff during any calendar year after December 31, 1978 and before January 1, 1984

shall be credited with 40 hours for each complete calendar week of such absence, not previously credited under this Section 1, during which he had seniority multiplied by a percentage as set forth in the following table:

Art. III, 1(b)(4)

Employee's Seniority on January 1, 1968 in the Case of (1) Above or December 10, 1973 in the Case of (2) Above or October 1, 1979 in the Case of (3) Above or October 1, 1984 in the Case of (4) Above	%
20 years or more	100
15 years but less than 20 years	75
10 years but less than 15 years	50
5 years but less than 10 years	25

provided that the employee makes proper application.

(f) In any event shall any employee be credited with more than 1700 hours, including compensated hours, in any calendar year. No employee shall be credited with any service after retirement. There shall be no duplication of credited service under the Plan. Not more than one year of credited service shall be credited to any employee in any calendar year, except as otherwise provided in Section 5 of this Article III with respect to foundry service.

(g) Notwithstanding any other Section of this Article III, in the case of an employee who shall retire on or after October 1, 1990, the employee's credited service for the period before January 1, 1966 shall not be less than the employee's seniority as of December 31, 1965 as determined under the Collective Bargaining Agreement.

Section 2. Loss of Credited Service.

An employee will lose all credited service for purposes of this Plan:

- (a) if the employee quits;
- (b) if the employee is discharged or released;
- (c) if the employee's seniority is broken for any other reason.

Section 3. Reinstatement of Credited Service

(a) Any employee with seniority on or after October 1, 1990 who breaks seniority and thereby loses or has lost credited service under Section 2 of this Article III and then is or was later reemployed by any plant or Division of the Corporation shall, upon making proper application, have such credited service reinstated provided the employee subsequently acquires or acquired seniority.

(b) Any employee retired under the provisions of this Plan who subsequently has seniority reinstated, will have credited service at the time of retirement reinstated.

Section 4. Service With a Foreign Subsidiary

An employee with seniority on or after October 1, 1990 whose employment as an hourly or salaried employee with a directly or indirectly wholly-owned or substantially wholly-owned foreign subsidiary of General Motors Corporation has been terminated other than by retirement, shall be granted credited service under this Plan for any periods of active service with such foreign subsidiary or, if greater, the amount of service credited to such employee under any pension or retirement plan of the foreign subsidiary at the time of his termination, provided such service was prior to

his most recent period of active service credited under this Plan.

Any monthly benefits payable under this Plan to a retired employee who has received credited service under this Section 4 will be reduced by an amount equivalent to the total of any monthly benefits that could be payable to such employee under any retirement plan to which the foreign subsidiary has contributed, excluding, however, any such plan or any portion of any such plan providing retirement benefits purchased solely by voluntary employee contributions. Any survivor's benefits payable under this Plan to a survivor of such an employee shall be subject to similar reduction by monthly survivor's benefits payable under any plan to which the foreign subsidiary has contributed.

Section 5. Foundry Service

An employee with seniority on or after October 1, 1990 who at retirement has over 10 years of credited service which he accrued while employed on certain foundry job classifications as set forth in Appendix B, shall receive additional credited service related thereto. Total credited service for any such employee who retires with benefits payable commencing on or after October 1, 1975 shall be the sum of (i) credited service otherwise credited to him, and (ii) any such additional credited service which shall be credited to him in accordance with the following table:

Years of Credited Service Credited on Foundry Jobs	Additional Credited Service
For years 1 through 10	0
For years 10.1 through 25	33-1/3%
For years over 25	20%

If any such employee is continuously employed exclusively on such foundry jobs in a calendar year such additional credited service shall apply to any credited service otherwise credited to him for such year. If any such employee (i) is not continuously employed in a calendar year, or (ii) is employed on other than such foundry jobs in such year, such additional credited service shall apply to any credited service otherwise credited to him for such year in accordance with the following table:

If Credited Service Otherwise Credited to Employee For Calendar Year is	Additional Credited Service Applies to Such Year Only if Employee Spent Following Minimum Number of Complete Calendar Weeks on Foundry Jobs During Such Year
1.0 (year)	26
.9	23
.8	21
.7	18
.6	16
.5	13
.4	10
.3	8
.2	5
.1	3

No additional credited service shall be granted for any calendar year in which any such employee spends less than the minimum required number of complete calendar weeks on such foundry jobs, as indicated above.

If any such employee is on such foundry job at the time he goes on layoff or approved leave of absence, such additional credited service shall apply to any

credited service otherwise credited to him while on such layoff or approved leave of absence.

Section 6. Hours, Years and Breaks in Service to Comply With The Employee Retirement Income Security Act of 1974

(a) An employee who breaks seniority on or after October 1, 1976 who would be eligible for a deferred pension under Article VII, Section 2, except solely for the fact that he does not have at least 5 years of credited service under the foregoing Sections of this Article III, shall be eligible for a deferred pension under the provisions of Article VII, Section 2 if, at the time the employee breaks seniority, he has 5 years of service solely as determined under this Section 6.

(b) The monthly amount of any such deferred pension shall be based solely on the credited service that the employee had under the foregoing Sections of this Article III when he broke seniority.

(c) No employee shall be eligible to be covered under this Section 6 until he (i) attains age 21, or (ii) completes 1 year of service under this Section 6, whichever is later. Rehired employees shall participate immediately.

(d) An employee shall complete 1 year of service when he completes 750 hours of service in the 12 consecutive month period beginning with his employment commencement date. If an employee fails to complete 750 hours of service in such period, he shall complete 1 year of service in the first 12 consecutive month period thereafter in which he completes 750 hours of service, measured from each succeeding anniversary of his employment commencement date. Thereafter, an employee shall complete 1 year of service during each 12 consecutive month period in which he completes 750 hours of

service, measured from the anniversary of his employment commencement date. A year of service under this Section 6 shall include service (i) with affiliated group members accrued subsequent to acquisition; (ii) rendered to the Corporation as a former leased employee (but only upon employee application, supported by substantiation satisfactory to the Corporation of such service); and (iii) rendered to the Corporation as a salaried employee in accordance with I.R.C. Section 414(b), (c), (m), (n), and (o).

(e) An employee who satisfies the eligibility requirements of this Section 6, and who is otherwise entitled to participate in the Plan, shall commence participation under this Section 6 if he satisfies such requirements (i) between April 1 and September 30; on the first day of the plan year beginning after the date on which such requirements are satisfied, or (ii) between October 1 and March 31; on the first day of the plan year that includes the date such requirements are satisfied, but in no event shall any employee participate hereunder if he breaks seniority prior to such commencement date.

(f) An employee shall complete an hour of service under this Section 6 for each hour for which he is paid by the Corporation for working or for which he is paid by the Corporation for having been entitled to work. Any hours for which an employee receives pay for having been entitled to work, irrespective of mitigation of damages, shall be credited to the period or periods he was so entitled, rather than to the period in which he receives such pay. There shall be no duplication of any hours of service under this Section 6.

(g) Solely for purposes of determining years of service for vesting under this Section 6, all of the employee's years of service shall be taken into account except the following: (i) years of service before age 18

(ags 22 prior to October 1, 1985); (ii) years of service before January 1, 1971, unless the employee has at least 3 years of service after December 31, 1970; (iii) years of service prior to any 1-year break in service as defined herein, until the employee completes a year of service after such break; (iv) for non-vested participants under this section, years of service prior to any 1-year break in service if the number of such consecutive breaks equals or exceeds the aggregate number of years of service prior to such break; for a non-vested participant at work on or after October 1, 1985, years of service prior to any 1-year break in service if the number of such consecutive breaks equals or exceeds the greater of 5, or the aggregate number of years of service prior to such break (such aggregate number of years of service before such break shall not include any "years of service" not required to be taken into account under this Section 6 by reason of any prior break in service); (v) years of service before October 1, 1976; if such service would have been disregarded under rules of the Plan as in effect on October 1, 1976, regarding breaks in service; and (vi) any year in which the employee completes less than 750 hours of service.

(h) An employee shall incur a 1-year break in service under this Section 6 in any 12 consecutive month period during which he does not complete more than 375 hours of service, measured from the anniversary of his employment commencement date. Solely for purposes of determining whether an employee has incurred such 1-year break in service; in addition to hours worked which are paid by the Corporation, any hours which an employee does not work but for which he is paid by the Corporation for vacation, sickness or disability, or is entitled to be so paid, directly or indirectly, shall be taken into consideration. For any absence from work commencing on and after October 1, 1985 by reason of pregnancy of the individual, childbirth, placement

of a child related to an adoption, or for child care purposes immediately following such birth or placement, the employee shall be credited with the hours of work for which he otherwise would have been scheduled, or, if unable to determine such scheduled hours, 8 hours for each work day of such absence, not to exceed a total of 501 hours for any such absence. Such hours shall be credited in the year in which the absence commenced if necessary to prevent incurring a 1-year break in service, otherwise such hours shall be credited in the immediately following year.

Section 7. Asbestos Service

An employee with seniority on or after October 1, 1990 who at retirement has over 10 years of credited service which was accrued while employed on certain asbestos job classifications as set forth in Appendix C, shall receive additional credited service related thereto in the same manner as set forth in Section 5 of this Article III.

ARTICLE IV

REDETERMINATIONS ON ACCOUNT OF SOCIAL LEGISLATION

Section 1. Redeterminations for Federal Social Security Benefits for Age or Disability

(a) The benefits payable for age or disability under the Federal Social Security Act, as amended, as now in effect, or as hereafter amended, which are referred to in the determination of pensions under Article II shall be included in such determination even though the employee either does not apply for, or loses part or all of such payments through delay in applying for them, by entering into covered employment, or otherwise.

(b) Old age benefit payments or disability benefit payments, other than those payable on a basis of "need" or because of military service, under any future federal legislation, amending, superseding, supplementing, or incorporating the Federal Social Security Act, as amended, or benefits provided therein, shall be considered as benefits for age or disability under the Federal Social Security Act for the purposes of the Plan.

(c) If an employee is eligible for a Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age at the time of retirement or thereafter, such employee shall provide the Corporation with evidence of the effective date of entitlement to such benefit.

Section 2. Deductions for Workers Compensation in determining the monthly benefits payable under this Plan, a deduction shall be made unless prohibited by law, equivalent to all or any part of Workers Compensation (including compromise or redemption settlements) payable to such employee by reason of any law of the United States, or any political subdivision thereof, which has been or shall be enacted, provided that such deductions shall be to the extent that such Workers Compensation has been provided by premiums, taxes or other payments paid by or at the expense of the Corporation, except that no deduction shall be made for the following:

(a) Workers Compensation payments specifically allocated for hospitalization or medical expense, fixed statutory payments for the loss of any bodily member, or 100% loss of use of any bodily member, or payments for loss of industrial vision.

(b) Compromise or redemption settlements payable prior to the date monthly pension benefits first become payable.

ARTICLE VI

ADMINISTRATION

Section 1.

The Corporation shall be responsible for the general administration of the Plan and for carrying out the provisions thereof.

Section 2.

(a) The Corporation shall have all such powers as may be necessary to carry out the provisions of the Plan except as the powers and duties of the Corporation may be modified by any collective bargaining agreement.

(b) Subject to the limitations of (a) above, the Corporation may from time to time establish rules for the administration of the Plan and the transaction of the Plan's business.

(c) In making any such determination or rule, the Corporation shall pursue uniform policies and shall not discriminate in favor of, or against any employee or group of employees.

ARTICLE VII

PENSION BENEFITS AND SUPPLEMENTS

Section 1. Pension and Supplement Payments

(a)(1) Pensions and supplements shall be paid monthly.

(2) The first monthly payment of an employee's pension other than for total and permanent disability shall become payable with the employee's consent on

the first day of the month following the month in which the employee actually retires, and the pension shall be payable monthly thereafter.

(3) Total and permanent disability pension shall be payable monthly during the continuance of total and permanent disability and while the pensioner otherwise remains eligible for such benefits. Such payments shall begin the later of:

(i) the first day of the month which includes the date the required proof of disability is received by the Corporation, or

(ii) the first day of the month which includes the date the employee has been continuously and totally disabled for a period of 5 months.

Successive periods of absence due to the same disability as that upon which claim for total and permanent disability pension is based and aggregating at least five months will be considered the same as one continuous absence provided that the aggregate will not include any such absence which precedes the last day at work by more than one year, or

(iii) the first day of the third month following the date the required proof of disability is received by the Corporation, or

(iv) the first day of the third month following determination by the impartial clinic that the employee is totally and permanently disabled.

These subsections (iii) and (iv) shall not be applicable (a) if the employee dies prior to such date, or (b) where Extended Disability Benefits are less than the benefits payable under this Plan.

(4) A supplement for an employee shall be payable in the manner provided in Section 6 of Article II.

(5) Pension and supplement payments shall not be payable with respect to any period for which weekly sickness and accident benefits are payable to the employee under any plan to which the Corporation has contributed. If such sickness and accident benefits during any month are payable for a period of less than 4-1/3 weeks the sum of the monthly pension benefit (excluding any special benefit) and supplement payable for that month shall be reduced by the percentage which such period of sickness and accident benefits is of 4-1/3 weeks.

(b) A pensioner who is reemployed by the Corporation shall cease to receive, during such reemployment, any monthly pension benefits to which the pensioner might otherwise be entitled. Any such reemployed pensioner will have his credited service at the time of retirement reinstated. A reemployed pensioner shall accrue additional credited service as a result of such employment and the monthly pension benefits of such pensioner shall be adjusted with regard to such employment upon subsequent cessation of active service.

(c) In the event that it shall be found that any pensioner or surviving spouse to whom a pension or survivor benefit is payable is unable to care for the affairs of such pensioner or surviving spouse because of illness or accident any monthly pension payment and supplement of survivor benefit due (unless prior claim therefor shall have been made by a duly qualified guardian or other legal representative) may be paid to the spouse, parent, brother, sister or other person or party (including private or public institutions) deemed by the Corporation to have incurred expense for such pensioner otherwise entitled to payment. Any such payment shall be a payment for the account of the pensioner and shall be a complete discharge of any liability of the Plan therefor.

(d) In order to retire under the Plan, an employee must have unbroken seniority at the time of his retirement except that a person who is eligible for benefits under the Guaranteed Income Stream Benefit Program and is not receiving deferred pension benefits under this Plan shall not be precluded from retiring without return to employment even though he shall have incurred a break in seniority while on continuous layoff from the Corporation.

(e) Notwithstanding any other provision of this Section 1, an employee attaining age 70-1/2 on and after January 1, 1988, will commence monthly receipt of his accrued benefits under this Plan, beginning April 1 of the calendar year immediately following the year the employee attains or attained age 70-1/2. No employee shall be eligible to receive any such payment for any month prior to April, 1990, however, and the first such monthly payment shall be April 1, 1990. Only those employees who attained age 70-1/2 during 1988 and 1989 are eligible for any payment under this provision. No employee attaining age 70-1/2 prior to January 1, 1988, shall be eligible hereunder. An employee attaining age 70-1/2 after December 31, 1989, shall have his monthly payment based on his pension benefit accrual as of December 31 of the year in which he attains age 70-1/2. The actuarial value of the sum of all cash distributions received by any otherwise eligible employee prior to his actual retirement under this Plan will be used as an offset from any additional benefit accrual that might otherwise have been payable to such employee as a result of his working for the Corporation.

Section 2: Retention of Deferred Pension if Separated

(a) Any employee who loses accumulated credited service under the provisions of Article III, Section 2, shall be eligible for a deferred pension if such employee

is not retired and eligible for pension benefits pursuant to Article II, and provided the credited service of such employee at separation is at least 5 years, or such employee satisfies the "service" requirements of Article III, Section 6.

(b) The monthly amount of such deferred pension for an employee breaking seniority on or after October 1, 1990 shall be a basic benefit for each year of credited service that he had when he broke seniority, determined by his Benefit Class Code when he broke seniority as set forth in the table immediately following:

Date Seniority Broke	Benefit Class Code	Basic Benefit Rate
October 1, 1990 through September 30, 1991	A B C D	\$ 28.35 28.60 28.85 29.10
October 1, 1991 through September 30, 1992	A B C D	29.50 29.75 30.00 30.25
October 1, 1992 and After	A B C D	30.70 30.95 31.20 31.45

(c) A former employee who is eligible for a deferred pension may at the election of such former employee receive

(1) a monthly pension commencing at or after age 65 determined in accordance with subsection (b) of this Section 2, or

(2) a monthly pension commencing after age 60 and prior to age 65 determined in accordance with subsection (b) of this Section 2, such pension being reduced by 6/10 of 1 percent for each complete calendar month by which such former employee is under the age of 65 at the date the deferred pension commences, or

(3) a monthly pension commencing after age 55 and prior to age 60 for a former employee who breaks seniority on or after October 1, 1976, determined in accordance with subsection (b) of this Section 2. Such pension shall be multiplied by a percentage as set forth in the following table:

Age When Pension Commences	Percentage*
55	42.8
56	46.8
57	51.2
58	55.5
59	59.6
60	64.0

*Prorated for intermediate ages, computed on the basis of the number of complete calendar months by which the employee is under the age he will attain at his next birthday.

(d) The deferred pension shall be payable commencing the later of the first day of the month following the month (i) in which such employee attains the applicable age set forth in Section 2(c) of this Article VII, or (ii) during which the Corporation receives a written request from such former employee; provided that such written request shall be valid and effective only if it is filed with the Corporation not

earlier than 60 days prior to the date such former employee first becomes eligible for such benefit, and, for such employee who broke seniority prior to October 1, 1976, not later than his 70th birthday, otherwise no deferred vested pension benefit shall be payable at any time.

(e) If, prior to the commencement of deferred pension benefits, an employee is reemployed by the Corporation and: (1) acquires seniority, or (2) is reemployed by, and works for, the Corporation at the plant where he worked immediately prior to the loss of his credited service, or (3) dies after having qualified for a deferred pension in accordance with this Section 2, such employee shall, in lieu thereof, have reinstated the credited service in effect when such deferred pension was granted; provided that if an employee with 10 or more years of credited service

(1) is reemployed by, and works for, the Corporation within 36 months of the date he lost credited service under Article III, Section 2, and

(2) becomes disabled while employed by the Corporation prior to acquiring 5 months of seniority, and such disability is continuous for a period of 5 months during which he makes proper application and submits medical evidence satisfactory to the Corporation that he is totally and permanently disabled as set forth in Section 3 of Article II;

he will be deemed eligible for a disability pension under Section 3 of Article II, and such pension will be payable pursuant to Section 1 of Article VII, as though he had been an employee with seniority throughout such disability period.

(f) The amount of any monthly pension benefit otherwise payable to a former employee eligible for a deferred pension will be reduced by the value of any past and future benefits paid or payable to any

alternate payee(s) under a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p).

The actuarial value will be used to determine any amount to be paid to any such payee(s), if applicable, and the remaining benefit entitlement of the employee.

Section 3. Non-Alienation of Benefits

The pension fund shall not in any manner be liable for or subject to the debts or liability of any employee, separated employee, retired employee, pensioner or surviving spouse. No right, benefit, pension or supplement at any time under the Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge or encumbrances of any kind except in accord with provisions of a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p). If any person shall attempt to, or shall, alienate, sell, transfer, assign, pledge or otherwise encumber accrued rights, benefits, pensions or supplements under the Plan or any part thereof, or if by reason of bankruptcy or other event happening at any time such benefits would otherwise be received or enjoyed by anyone else, the Corporation in its discretion may terminate the interest of such employee, pensioner or surviving spouse in any such benefit and instruct the trustee to hold or apply it to or for the benefit of such employee, pensioner or surviving spouse, his or her spouse, children or other dependents, or any of them as the Corporation may instruct; provided, however, that any pensioner, or surviving spouse, entitled to a monthly benefit under the Plan:

(a) who elects Blue Cross, Blue Shield, or equivalent coverage, made available under the General Motors Health Care Program for Hourly

Employees may, insofar as it is consistent with the regulations governing the plans, providing such coverage, participate in such coverage and have deducted from the monthly pension and any supplement, if the monthly pension shall be insufficient, pursuant to written authorization and direction acceptable to the Corporation, the required contribution for such coverage.

(b) will have Federal and state income tax withheld pursuant to Federal and state statutes or regulations unless, only with respect to Federal income tax, elected otherwise by submitting to the Corporation written authorization and direction acceptable to the Corporation.

(c) who elects optional or dependent life insurance coverage(s) made available under the General Motors Life and Disability Benefits Program for Hourly Employees may have deducted from the monthly pension, pursuant to written authorization and direction, acceptable to the Corporation, the required contribution(s) for such coverage(s).

(d) may have amounts of not less than \$40.00, but in no event more than 10% of the retired employee's monthly benefit, withheld to repay any outstanding overpayment owing to any benefit plan of the Corporation, pursuant to written authorization and direction acceptable to the Corporation.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 1. No Enlargement of Employment Rights

The Corporation's rights to discipline or discharge employees shall not be affected by reason of any of the provisions of the Plan.

Section 2. Internal Revenue Service Approval

This Plan as amended is contingent upon and subject to obtaining and retaining such approval of the Commissioner of Internal Revenue as may be necessary to establish the deductibility under Section 404 of the Internal Revenue Code for income tax purposes of any and all contributions made by the Corporation to this Plan and to establish this Plan and related trust as being qualified and tax exempt under Sections 401 and 501(a) or other applicable provisions of the Internal Revenue Code. Any modification or amendment of the Plan may be made retroactively, if necessary or appropriate, to qualify or maintain the Plan as a plan and trust meeting the requirements of Sections 401 and 501(a) of the Internal Revenue Code, as now in effect or hereafter amended, or any other applicable provisions of the federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

Section 3. Corporation Board of Directors Approval

Continuation of the Plan as amended in 1990 is contingent upon obtaining the approval of the Corporation's Board of Directors not later than June 1, 1991.

Art. VIII, 4

Section 4. Named Fiduciary

The Finance Committee of the Corporation's Board of Directors shall be the named fiduciary with respect to the Plan. The Finance Committee may delegate to various officers, employees and committees of the Corporation authority to carry out such of its responsibilities as it deems proper to the extent permitted by the Employee Retirement Income Security Act of 1974.

Section 5. Limitation of Benefits

No benefits paid from this Plan will exceed the limits of Section 415 of the Internal Revenue Code.

ARTICLE IX
AMENDMENT AND TERMINATION

Section 1. Amendment

The Corporation reserves the right to amend, modify, suspend or terminate the Plan by action of its Board of Directors, provided, however, that no such action shall alter the Plan or its operation, except as may be required by the Internal Revenue Service for the purpose of meeting the conditions for qualification and tax deduction under Sections 401, 404, and 501(a) of the Internal Revenue Code, in respect of employees who are represented under a collective bargaining agreement in contravention of the provisions of any such agreement pertaining to pension benefits and supplements as long as any such agreement is in effect. Except as provided in Article V, Section 3, no such action shall operate to recapture for the Corporation any contributions previously made to the

Art. IX, 1

trustee or insurance company under the Plan, nor, except to the extent necessary to meet the requirements of the Internal Revenue Service or any other governmental authority, to affect adversely the pensions or supplements of employees already retired or the trust fund of insured fund then securing such pensions and supplements.

Section 2. Termination of Plan

(a) If the Corporation, in accordance with Section 1 of this Article IX, or the Pension Benefit Guaranty Corporation terminates the Plan, the amount of the assets, which are available to provide benefits, and which are held by the trustee as of the termination date, shall be allocated, after deducting expenses for administration or liquidation, in the following manner and order to the extent of the sufficiency of such assets:

(i) First, in the case of benefits payable as an annuity:

(i) In the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the Plan, to each such benefit, based on the provisions of the Plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least;

(ii) In the case of a participant's or beneficiary's benefit (other than a benefit described in subsection (a)(i)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the Plan) as of the

beginning of such period, to each such benefit based on the provisions of the Plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subsection (a)(1)(i), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(2) Second, to all other benefits (if any) of individuals under the Plan which are guaranteed under the plan termination insurance provisions of the Employee Retirement Income Security Act of 1974 determined without regard to Section 4022B(a) of said Act.

(3) Third, to all other nonforfeitable benefits under the Plan.

(4) Fourth, to all other benefits under the Plan.

(b)(1) The amount allocated under any of the preceding subsections of this Section 2 with respect to any benefit shall be properly adjusted, for any allocation of assets with respect to that benefit under a prior subsection of this Section 2.

(2) If the assets available for allocation under subsections (a)(1) and (a)(2) are insufficient to satisfy in full the benefits of all individuals which are described in such subsections, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in such subsections.

(3) If the assets available for allocation under subsection (a)(3) are not sufficient to satisfy in full the benefits of individuals described therein:

(i) Except as provided in subsection (b)(3)(ii), the assets shall be allocated to the benefits of individuals described in subsection (a)(3) on the basis of the benefits of individuals which would have been described in subsection (a)(3) under the Plan as in effect at the beginning of the 5-year period ending on the date of the Plan's termination.

(ii) If the assets available for allocation under subsection (b)(3)(i) are sufficient to satisfy in full the benefits described therein (without regard to this subsection (b)(3)(ii)), then for purposes of subsection (b)(3)(i), benefits of individuals described therein shall be determined on the basis of the Plan as amended by the most recent Plan amendment effective during such 5-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subsection (b)(3)(i) and any assets remaining to be allocated under such subsection shall be allocated under subsection (b)(3)(i) on the basis of the Plan as amended by the next succeeding Plan amendment effective during such period.

(c) If the Secretary of the Treasury determines that the allocation made pursuant to this Section 2 results in discrimination prohibited by Section 401(a)(4) of the Internal Revenue Code of 1986, or as may be subsequently amended, then, if required to prevent the disqualification of the plan (or any trust under the plan) under Section 401(a) or 403(a) of such Code, the assets allocated shall be reallocated to the extent necessary to avoid such discrimination.

(d) In the event of termination or partial termination of the Plan, the right of all affected employees to benefits accrued to the date of such termination, partial termination or discontinuance, to the extent funded as of such date, are nonforfeitable.

Art. IX, 2(e)

(e) Anything in the Plan to the contrary notwithstanding it shall not be possible at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income of the Pension Fund to be used for, or diverted to purposes other than, the exclusive benefit of employees. After satisfaction of all liabilities to participants and beneficiaries under the Plan, any residual assets of the Pension Fund will be distributed to the Corporation if the distribution does not contravene any applicable provision of law.

Section 3. Merger or Consolidation

In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the Plan would, if the Plan then terminated, receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer, if the Plan had then terminated.

ARTICLE X

DEFINITIONS

1. Employee

(a) Any person regularly employed in the United States by the Corporation or by a wholly-owned or substantially wholly-owned domestic subsidiary in accordance with I.R.C. Section 414(b), (c), and (m) thereof, including:

- (1) hourly-rate persons employed on a full time basis;
- (2) hourly-rate persons on incentive pay plans;
- (3) students from educational institutions who are enrolled in cooperative training courses on hourly rate;

Art. X, 1(a)(4)

(4) part time hourly-rate employees who, on a regular and continuing basis, perform jobs having definitely established working hours, but the complete performance of which requires fewer hours of work than the regular work week, provided such employees work one-half or more of the employing unit's regular work week;

(5) hourly-rate employees of Delco Electronics Corporation (DEC).

(b) The term "employee" shall not include:

- (1) temporary employees;
- (2) part-time employees, who work less than one-half of the employing unit's work week;
- (3) employees represented by a labor organization which has not signed an agreement making this Plan applicable to such employees;
- (4) employees of any directly or indirectly wholly-owned or substantially wholly-owned subsidiary of the Corporation acquired or formed by the Corporation on or after January 1, 1984;
- (5) leased employees as defined under Section 414(n) of the Internal Revenue Code;
- (6) employees of Saturn Corporation;
- (7) Trustee or Insurance Company
- (8) The bank or banks, trust or insurance company or companies or any combination thereof designated by a trust agreement or contract as the "medium" for financing the Plan.

Art. X, 3

3. Seniority

Seniority means the period following the most recent date of hire by the Corporation and subsequent to which there has been no loss of credited service (as loss of credited service is defined in the Plan) or if the employee is represented under a collective bargaining agreement seniority will be as defined in such agreement. An employee who is rehired on or after October 1, 1984, and thereby has his pension discontinued, but does not have his seniority reinstated, shall be deemed, solely to satisfy purposes of The General Motors Hourly Rate Employees Pension Plan, to have seniority while so employed.

4. Federal Social Security Benefit

A Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age means a benefit determined and payable under Title II of the Federal Social Security Act, as now in effect or as hereafter amended, without any reduction being made therefrom based on the age of the recipient.

5. Trust Fund; Pension Fund; Insured Fund

The General Motors Hourly Rate Employees Pension Plan fund established by payments made by the Corporation in accordance with Article V herein. Such fund, herein called the trust fund shall be comprised of either a pension fund or insured fund, or a combination thereof.

6. Base Hourly Rate

For the purpose referred to in Section 6(g) of Article II of this Plan only, Base Hourly Rate shall be the higher of:

(a) the employee's highest straight-time hourly rate, or

Art. X, 4(b)

(b) for an employee who worked on incentive or piece work in at least 4 pay periods, the employee's average earned straight-time hourly rate for the first 4 pay periods (or, if higher, for the last 4 pay periods) for which he had any incentive earnings (provided, however, that if he worked in less than 4 pay periods but during each such pay period worked he worked on incentive or piece work, his average earned straight-time hourly rate for such pay periods worked shall be used) during the last 13 consecutive pay periods ending with the pay period which includes his last day worked, plus any cost-of-living allowance in effect with respect to the employee's last day worked for the Corporation.

7. Basic Benefit

The monthly benefit payable under the Plan for the lifetime of a retired or separated employee, including a benefit reduced by a percentage because of early retirement. The term "basic benefit" shall not include any temporary benefit, special benefit, or supplement payable under the Plan.

8. Age 62 and One Month

"Age 62 and one month" means age 62 and one month except that for purposes of determining the month for which the temporary benefit provided in Article II, Section 4 and the early retirement and interim supplements provided in Article II, Section 6 shall cease and the month for which the basic benefit is redetermined in accordance with Article II, Section 4, it shall mean age 62 if both a temporary benefit, early retirement supplement, or interim supplement under the Plan and a benefit under the Federal Social Security Act could otherwise be payable.

9. Actuarial Value

The actuarial value as of any determination date shall be calculated on the basis of the UP-84 mortality table and the applicable interest rate used by the Pension Benefit Guaranty Corporation (PBGC) as of the first day of the plan year preceding the determination date.

APPENDIX A

(HOURLY-RATE EMPLOYEES PENSION PLAN)

A Benefit Class Code for the sole purpose of this Plan is hereby established for each job classification in effect on September 17, 1990 on the basis of the maximum base hourly rate (which term as used herein shall include incentive earnings unless otherwise noted) applicable to the job classification on that date, as follows:

	For Job Classifications Having a Maximum Base Hourly Rate of	Benefit Class Code
On or after September 17, 1990	Less than \$14.48	A
but prior to October 1, 1990	\$14.48 but less than \$14.70	B
	\$14.70 but less than \$15.63	C
	\$15.63 and over	D
On or after October 1, 1990	Less than \$16.16	A
	\$16.16 but less than \$16.38	B
	\$16.38 but less than \$17.31	C
	\$17.31 and over	D

(1) The Benefit Class Code applicable to an employee is the Benefit Class Code for the job classification held by the employee for the greatest number of calendar days during the 24 consecutive months immediately preceding his last day worked.

(2) The Benefit Class Code to be established for any new job classification put into effect after September 17, 1990 shall be whichever Benefit Class Code is applicable to other job classifications having the same maximum base hourly rate on the date that such new job classification is put into effect. With respect to a job classification that was obsolete as of September 17, 1990 a hypothetical maximum base hourly rate applicable thereto shall be determined by increasing the maximum base hourly rate for that job

classification at the time of its discontinuance to the extent necessary so as to give effect to general wage increases (including cost-of-living allowance transfers) that have occurred since such discontinuance, and the Benefit Class Code for such classification so derived shall be whichever Benefit Class Code herein is applicable to other job classifications having the same maximum base hourly rate on that date.

(3) For purposes hereof, the maximum base hourly rate of a job classification paid on a day-work basis at any plant or facility shall be the maximum straight-time hourly rate for that job classification at such plant or facility (excluding any cost-of-living allowance and premiums).

(4) The maximum base hourly rate of a job classification in effect on September 6, 1967 and paid under an incentive method of pay at any plant or facility shall be the average straight-time hourly earned rate (including incentive earnings and any wage increases and cost-of-living allowance transfers which, as of September 6, 1967, were not factored in the base rate of the job classification but excluding any cost-of-living allowance and premiums) for all hours worked by all employees in that job classification at such plant or facility for the period beginning September 5, 1966, and ending September 3, 1967, plus any wage increases and cost-of-living allowance transfers effective for that job classification subsequent to September 6, 1967.

In the event an employee is transferred to a job which results in a lower basic benefit rate, such employee's vested pension benefit, if any, shall not be less than the amount of his accrued pension benefit on the date of such transfer to such job.

APPENDIX B

For the sole purpose of Article III, Section 5 of the Plan, all approved job classifications set forth in the Local Wage Agreements as of September 14, 1973 of the Central Foundry Plant, Danville, Illinois, the Central Foundry Plant, Defiance, Ohio, the Central Foundry Malleable Iron Plant, Saginaw, Michigan, and the Central Foundry Grey Iron Plant, Saginaw, Michigan, are designated foundry jobs at the respective plant locations except for those job classifications listed herein for each such respective plant location. No other job classifications shall be designated foundry jobs.

Central Foundry Plant, Danville, Illinois

Buildover Operator
Bus Boy
Cashier
Cook
Crane Operator, Locomotive
Crane Operator - Yard & Bridge
Driver - Licensed Trucks - Tractor
& Trailer
End Loader Operator
Kardex Clerk
Kitchen Help
Pattern & Maintenance Clerk
Pattern Storage and Transport
Salvage Reclaimer
Scrap Cutter - Torch
Shipping Clerk
Spray Crane Hook Up
Stock Room Clerk
Stock Room and Receiving
Warehouse Attendant
Window Washer
Yard Labor
Yard Switchman

Central Foundry Plant,
Danville, Illinois (Cont'd.)

Garage Mechanic
Machinist
Pattern Maker, Wood & Metal
Power House Operator

Central Foundry Plant, Defiance, Ohio

Bus Boy
Cashier
Clerk - Pattern and/or Maintenance
Cook
Crane Operator - Locomotive
Dispatcher - Materials
Driver - Licensed Trucks - Tractor
and Trailer - Semi
Heavy Equipment Operator
Inspection Department - Inspection
(Special Assignment)
Kitchen Help
Locomotive Operator
Safety Equipment Repair
Salvage Reclaimer

(2) Shipping Clerk
Yard Labor

Blacksmith
Casting Layout
(3) Garage Mechanic
(1) Machinist
Pattern Maker - Leader
Pattern Maker - Wood & Metal
Shift Operating Engineer
Tool Grinder

(1) Designated as a foundry job only for those employees so classified who work in Plant 2, 816 Department.

Central Foundry Plant,
Defiance, Ohio (Cont'd.)

(2) Designated as a foundry job only for those employees so classified who work in Plant #1, 539 Department.

(3) Designated as a foundry job only for those employees so classified who work in Plant #2, 816 Department, Battery Charge Area.

Central Foundry Malleable Iron Plant,
Saginaw, Michigan

Bull Dozer Operator
Bus Boy
Cashier
Clerk - Pattern and Maintenance
Cook
Crane Operators - Locomotive
Driver-Licensed Trucks, Tractor,
and Trailer
Kitchen Help
Salvage Reclaimer
Stock Room and Receiving
Yard Labor

Blacksmith
Core and/or Mold Maker - Experimental -
Bench & Floor
Garage Mechanic
Inspector - Layout
Machinist - Maintenance
Machinist - Miscellaneous
(1) Machinist - Pattern
Pattern Maker - Leader
Pattern Maker - Wood and Metal
Power House Operator

(1) Designated as a foundry job only for those employees so classified who work in Department 16.

**Central Foundry: Grey Iron Plant,
Saginaw, Michigan (Cont'd.)**

Grinder - Cutter
Grinder Operator - Blanchard
Inspector - Layout
Machine Repair - Machinist

Machine Repair - Mechanist -
Maintenance - Leader
Machine Repair - Mechanist -
Mathematic
Machine Repair - Mechanist -
Pattern Shop
Power House - Engineer - Class "B"
Power House - Fincman
Power House - Repairman
Power House - Repairman - Leader
Truck Repair - Gas

Power House - Repairman - Leander
Truck Repair - Gas

Power House - Repairman - Leander
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Truck Repair - Gas

Power House - Repairman - Leiden
Truck Repair - Gas

Power House - Repairman - Leiden
Truck Repair - Gas

Appendix B

Any job classification in effect at a plant specified in Appendix B that was discontinued at such plant prior to September 14, 1973 shall be designated a foundry job if the work that was performed by employees on such discontinued job classification shall conform substantially to work performed at the same plant by employees on a job classification designated as a foundry job for such plant.

APPENDIX C.

For the sole purpose of Article III, Section 7 of the Plan, only those job classifications specifically listed herein, which are set forth in the Local Wage Agreement in effect as of October 1, 1979 at Delco Moraine Division, Dayton, Ohio, may be designated asbestos jobs. Such designation as an asbestos job will apply only to these classifications at the above-specified plant location under the conditions specifically set forth herein. No other job classifications shall be designated asbestos jobs.

Delco Moraine Division, Dayton, Ohio

The following job classifications involved in the blending and processing of raw asbestos are designated asbestos jobs for employees so classified who are assigned to Departments 73M, 515, 523, and 530.

- Experimental Lining
- Extruding Machine Operator
- Janitors
- Job Setter
- Lining-Grinder
- Machine Cleaners
- Preform of Disc Brake Linings
- Production Heat Treat Linings
- Protective Coating Operator
- Sensor Riveters
- Stock Handler
- Weigh and Mix Materials

**STANDARDS FOR APPLICATION OF
PROVISIONS REGARDING RETIREMENT
UNDER MUTUALLY
SATISFACTORY CONDITIONS**

**GENERAL MOTORS HOURLY-RATE
EMPLOYEES PENSION PLAN**

Article II, Section 2(b) and (c) of the General Motors Hourly-Rate Employees Pension Plan provides that an employee may be retired early under mutually satisfactory conditions providing he is otherwise eligible. The following standards have been adopted by the Corporation as a guide in the application of this provision.

Standards

A. An employee who is unable to work efficiently by reason of permanent disability:

The retirement must be in the best interest of the Corporation. It is also intended to benefit employees who are unable to work efficiently by reason of permanent disability. It contemplates that the efficiency of operation will be improved by reason of the retirement which may be the case in any of the following situations:

- (1) The employee is no longer physically or mentally capable of performing his work in an efficient and satisfactory manner.
- (2) The employee, though still capable of performing his work satisfactorily, is prevented by chronic physical illness or physical disability (less than total) from working regularly to the extent that efficiency of operation is interfered with.
- (3) The employee's condition, based on medical evidence satisfactory to the Corporation, is such that,

although able to perform the duties of his job efficiently and satisfactorily, he would thereby be jeopardizing his health or that of fellow employees.

(4) The employee is on disability leave or is laid off because he is unable to do the work offered by the Corporation efficiently and satisfactorily although able to perform efficiently and satisfactorily other work in the plant to which he would have been entitled if he had had sufficient seniority, and his condition, based on medical evidence satisfactory to the Corporation, is expected to be continuous until his normal retirement age.

B. An employee who is laid off.

Retirement under mutually satisfactory conditions will be available to an employee who is laid off

(i) as a result of a plant closing or discontinuance of operations, or

(ii) whose layoff appears to be permanent, and in either case has not been offered suitable work by the Corporation in the same labor market area.

STATEMENT OF INTENT

Notwithstanding the provisions of Exhibit A, Section 3(c) of The General Motors Hourly-Rate Employees Pension Plan; Exhibit B, Items Agreed To of the General Motors Life and Disability Benefits Program For Hourly Employees; Exhibit C, Items Agreed To of the General Motors Health Care Program For Hourly Employees; Exhibit D, Articles V and VI of the Supplemental Unemployment Benefit Plan, and the Items Agreed to by GM-UAW SUB Board of Administration; and Exhibit E, Section 6(a) of the Guaranteed Income Stream Benefit Program, which deal with local union representatives for each of these benefit plan areas, the Corporation and the Union agree as follows:

1. Appointment of Local Union Benefit Representatives

(a) Local union benefit representative(s) and alternate(s) shall be appointed by removed by the GM Department of the International Union.

(b) Temporary replacement appointments may be made by the local union President for a minimum of one week and a maximum of four weeks. Replacement appointments for any absence in excess of four weeks also shall be made by the GM Department of the International Union. Replacement appointments in situations when the benefit representative(s) and alternate(s) are both absent but for less than one week and are on a leave of absence pursuant to the provisions of Paragraph 109 of the GM-UAW National Agreement may be made by the local union President. Any problems that may arise under this procedure may be discussed by the Corporation with the GM Department of the International Union.

(c) A local union benefit representative shall be an employee of the Corporation having at least one year of seniority, and working at the plant where, and at the time when, he/she is to serve as such representative or alternate. No such representative or alternate shall function until written notice has been given. In the case of temporary appointments, the notice should be given to local Management with additional copies forwarded to the GM Department of the International Union and the Corporation.

2. Number of Local Union Benefit Representatives

(a) In plants having a total of less than 600 employees, there may be one local union benefit representative and one alternate.

(b) In plants having a total of 600 but less than 1,200 employees, there may be two local union benefit representatives and two alternates.

(c) In plants having a total of 1,200 but less than 2,000 employees, there may be three local union benefit representatives and three alternates.

(d) In plants having a total of 2,000 but less than 5,000 employees, there may be four local union benefit representatives and three alternates. If such plants have a total of 1,400 or more employees on the second and third shifts combined, there may be five local union benefit representatives and two alternates.

(e) In plants having a total of 5,000 but less than 8,000 employees, there may be five local union benefit representatives and two alternates.

(f) In plants having a total of 8,000 but less than 10,000 employees, there may be six local union benefit representatives and two alternates.

(g) In plants having a total of 10,000 or more employees, there may be seven local union benefit representatives and two alternates.

The number of employees as used herein, shall include active employees, employees on sick leave of absence, and employees on temporary layoff.

3. Of the total number of local union benefit representatives and alternates otherwise available, one or more representatives and alternates may be assigned to the second shift or third shift so long as the total number of representatives and alternates set forth in Paragraph 2. above is not exceeded.

4. When plant population changes occur which would increase or decrease the number of local benefit plan representatives, such population changes must be in effect for a period of six consecutive months before such adjustment is made in the number of representatives, unless such population change results from the discontinuance or addition of a shift or the opening or closing of a plant. In the event of a cessation of operations, the Corporation, at the request of the UAW General Motors Department of the International Union, will provide for the continuance of Benefit Representation. Other situations involving a sudden significant change in the number of employees at a location may be discussed by the Corporation and the GM Department of the International Union.

5. Benefit Plan districts will be established by local mutual agreement. Only one local union benefit representative will function in a benefit district and will handle specified benefit plan problems raised by employees within that district pertaining to the Pension Plan, Life and Disability Benefits Program, Health Care Program, Supplemental Unemployment Benefit Plan, and Guaranteed Income Stream Benefit Program agreements. An alternate will be permitted to function in the absence of a local benefit plan representative on his/her shift.

6. Any local union benefit representative may function as the member of the local Pension Committee, as the member of the local Supplemental Unemployment Benefit Committee, as a member of the Guaranteed Income Stream Benefit Committee or handle benefit problems under the Life and Disability Benefits Program and the Health Care Program with respect to employees in his/her Benefit Plan district. An alternate may function in the absence of a local union benefit representative.

7. The time available to a local union benefit representative and alternate with respect to a Benefit Plan district may not exceed eight (8) regular working hours of available time in a day.

(a) On his/her regular shift and without loss of pay, a local union benefit representative(s) may accompany the management benefit representative for a mutually agreeable joint off-site visit to a local hospital, an impartial medical opinion clinic or a health maintenance organization, or other similar type joint ventures, with respect to benefit plan matters.

(b) A local union benefit representative attending a scheduled Management-Union Benefit Plan meeting on a shift other than his/her regular shift will be paid for time spent in such meeting.

(c) One local union benefit representative attending the local union retiree chapter meeting will be paid for time spent in such meeting.

(d) The time spent in such local union retiree chapter meetings, off-site visits or Management-Union Benefit Plan meetings will not result in additional hours which exceed regularly scheduled shift hours, overtime premiums or an increase in representation time being furnished as a result of the representative(s) not working a full shift on his/her regular shift.

8. The local union benefit representative shall be retained on the shift to which he/she was assigned when appointed as such representative regardless of seniority, provided there is a job that is operating on his/her assigned shift which he/she is able to perform.

9. The Benefit Plans — Health and Safety office may be used by local union benefit representatives during their regular working hours:

(a) To confer with retirees, beneficiaries, and surviving spouses who ask to see a local union benefit representative with respect to legitimate benefit problems under the Pension, Life and Disability Benefits Program and Health Care Program Agreements.

(b) If the matter cannot be handled appropriately in or near the employee's work area, to confer with employees who, during their regular working hours, ask to see a local union benefit representative with respect to legitimate benefit problems under the Pension, Life and Disability Benefits, Health Care, SUB, and GIS Agreements.

(c) To confer with employees who are absent from, or not at work on, their regular shift and who ask to see a local union benefit representative with respect to legitimate benefit problems under the Pension, Life and Disability Benefits, Health Care, SUB, and GIS Agreements.

(d) To write position statements and to complete necessary forms with respect to a case being appealed to the Pension, SUB, or GIS Boards by an employee in his/her Benefit Plan district, and to write appeals with respect to denied life, health care, and disability claims involving employees within his/her Benefit Plan district.

(e) To file material with respect to the Pension, Life and Disability Benefits, Health Care, SUB and GIS Agreements.

(f) To make telephone calls with respect to legitimate benefit problems raised by employees under the Pension, Life and Disability Benefits, Health Care, SUB, and GIS Agreements.

[illegible]

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GENERAL MOTORS CORPORATION

September 17, 1980

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Attention: Mr. Stephen P. Yelich
Vice President and Director
General Motors Department

Gentlemen:

This letter of agreement constitutes an amendment to
the 1980 GM-UAW Pension Plan and shall be construed
and applied as if it were therein incorporated.

Pursuant to Subsection 354(14) of the Michigan Workers
Compensation Act, as amended, until termination or
earlier amendment of the 1980 Collective Bargaining
Agreement, workers compensation for employees shall
not be reduced by disability retirement benefits
payable under the Hourly-Rate Employees Pension Plan.

Very truly yours,

GENERAL MOTORS CORPORATION

Alfred S. Warren, Jr.
Vice President

Accepted and Approved:

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

By: Stephen P. Yelich

Lump-Sum Payment

GENERAL MOTORS CORPORATION

September 17, 1990

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America, UAW,
8000 East Jefferson Avenue
Detroit, Michigan 48214

Attention: Mr. Stephen P. Yokich
Vice President and Director
General Motors Department

Gentlemen:

During these negotiations the parties agreed upon certain lump-sum payments to be made to eligible retirees and surviving spouses.

Lump-sum payments would be made, on the basis described below, by Corporation check or draft paid directly to retired employees and surviving spouses.

1. The following persons will be eligible for lump-sum payments:

(a) employees who retired prior to October 1, 1990 under the terms of Article II, Sections 1, 2 or 3 of the Plan and who are receiving benefits from the Plan as of the first of the month for which a lump-sum payment would be made.

(b) eligible surviving spouses of employees who retired under the terms of Article II, Sections 1, 2 or 3 of the Plan prior to October 1, 1990, or surviving spouses eligible for a benefit prior to September 17, 1990 pursuant to Article II, Section 5(g) of the Plan (excluding surviving spouses of former employees who broke seniority and who are eligible for a deferred pension), or surviving spouses eligible for a benefit under Article II, Section 5(d) and who are eligible for a pension benefit from the Plan as of the first of the month for which a lump-sum payment would be made.

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Lump-Sum Payment

2. Amount of Benefit:

(c) a maximum payment of \$630 will be made to retired employees with thirty or more years of credited service. The payment to pensioners with less than thirty years of credited service will be \$21 per year of credited service (with a proportional amount for fractional years) or a minimum payment of \$210.

(b) eligible surviving spouses will receive 80% of the amount that would have been payable to the retired employee under (a) above.

3. Dates of Payment: December 1991 and December 1992.

Please indicate your concurrence in the proposed lump-sum payments arrangement and other provisions of this letter.

Very truly yours,

GENERAL MOTORS CORPORATION

Alfred S. Warren, Jr.
Vice President

Accepted and Approved:

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

By: Stephen P. Yokich

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Mutually Satisfactory Retirement

GENERAL MOTORS CORPORATION

September 17, 1990

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Attention: Mr. Stephen P. Yokich
Vice President and Director
General Motors Department

Gentlemen:

During these negotiations the parties agreed to provide mutually satisfactory retirements, commencing as early as age 50, and solely during the period November 1, 1990, through May 1, 1991, inclusive, to up to 5,213 hourly employees, in selected GM locations, who had attained age 50 with 10 or more years of credited service as of October 1, 1990, all as set forth in detail in Document 9 attached to the 1990 GM-UAW Collective Bargaining Agreement.

Solely to implement the agreement described immediately above, this letter of agreement constitutes an amendment to the 1990 GM-UAW Pension Plan and shall be construed and applied as if it were therein incorporated.

In that regard, Article II, Section 2(b) of the GM-UAW Pension Plan, and the "Standards" attached to such Plan, shall be deemed to provide eligibility for mutually satisfactory retirement as early as age 50, solely for the otherwise eligible employees set forth in such Document 9, only during the period described therein, and only under the specific circumstances described therein.

92

Mutually Satisfactory Retirement

In conjunction therewith, the attached guidelines are applicable, and must be satisfied with respect to certain such employees retired under Attachment B of the GM-UAW Collective Bargaining Agreement.

Very truly yours,

GENERAL MOTORS CORPORATION

Alfred S. Warren, Jr.
Vice President

Attach.

Accepted and Approved:

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

By: Stephen P. Yokich

ATTACHMENT

An employee with seniority:

Retirement under mutually satisfactory conditions will be available to an employee who on or after October 1, 1990

(i) is in a JOBS Bank, or

(ii) will be replaced by

(a) an employee in a JOBS Bank, or

(b) a laid-off GIS eligible employee with seniority whose layoff appears to be permanent.

and in any such case, only to any such employee who at the date of his retirement satisfies the conditions for such retirement as stipulated under Attachment B of the JOBS Program.

93

GENERAL MOTORS CORPORATION

September 17, 1980

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Attention: Mr. Stephen P. Yokich
Vice President and Director
General Motors Department

Gentlemen:

During these negotiations the parties agreed to provide mutually satisfactory retirements, commencing as early as age 50, and solely during the period November 1, 1980, through May 1, 1981, inclusive, to (1) active employees, (2) laid off seniority employees, and (3) laid off employees with 84(e) retire rights, only at BOC - Leoda, CPC - Flero, CPC - Framingham, and CPC - Lakewood, who have attained age 50 with 10 or more years of credited service as of October 1, 1980, all as set forth in detail in the new "Special Benefit and Placement Plan Document", which is attached to the 1980 GM-UAW Collective Bargaining Agreement.

Solely to implement the agreement described immediately above, this letter of agreement constitutes an amendment to the 1980 GM-UAW Pension Plan and shall be construed and applied as if it were therein incorporated.

In that regard, Article II, Section 2(b) of the GM-UAW Pension Plan, and the "Standards" attached to such Plan, shall be deemed to provide eligibility for mutually satisfactory retirement as early as age 50, solely for the otherwise eligible employees set forth in the above described Document, only during the period described therein, and only under the specific circumstances described therein.

Notwithstanding the preceding, the parties further agreed to provide mutually satisfactory retirement eligibility, only to certain employees at the four locations listed earlier herein, each of whom has (a) attained age 48, but not age 50, and (b) 10 or more years of credited service, as of October 1, 1980. Each such retirement granted hereunder will become effective on the first day of the month immediately following each such eligible employee's attainment of age 50.

Very truly yours,

GENERAL MOTORS CORPORATION

Alfred S. Warren, Jr.
Vice President

Accepted and Approved:

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

By: Stephen P. Yokich

5-14-07



GM Benefits & Services Center

gmbenefits.com

1-800-489-4646

International Access

Dial AT&T Direct Service Access Code, then 877-833-9900

TDD Service for the Hearing Impaired

1-877-347-5225

WALTER J LAWRENCE
#162, 3101 SW 34TH AVE. #905
OCALA, FL 34474-0000

May 14, 2007

Re: Recalculation of Pension Benefits

Dear WALTER J LAWRENCE:

This is a revised statement of your Pension Benefits from General Motors. The revision and reason for the Pension Benefit Recalculation is:

- Benefits were not adjusted by the Tax Levy Amount of \$1,099.50
- Pension Overpayment

	Current Benefit Amount	New Benefit Amount as of 07/01/2007
Benefit to Participant:	\$1,045.50	\$0.00

Our records indicate you have received an overpayment of retirement benefits from 01/01/2005 through 06/01/2007, a total of 30 month(s). The total amount of the overpayment is \$32,985.00. Because the Plan is an ERISA qualified Plan, we are required to collect overpayments and return them to the Plan's Trust Fund.

Please make your check or money order payable to General Motors Corporation and send it to the Benefit Service Center in the self addressed envelope enclosed for your convenience. On the check or money order, indicate that this is to repay an overpayment, clearly print your full name and include your Social Security number.

B

Additional Information

If you have any questions, please call the GM Benefits & Services Center toll-free at 1-800-489-4646, Monday through Friday, between 7:30 a.m. and 6:00 p.m., Eastern Time zone, to speak with a Customer Service Associate. From outside the U.S., dial your country's toll-free AT&T Direct® access number then enter 877-833-9900. In the U.S., call 1-800-331-1140 to obtain AT&T Direct access numbers. From anywhere in the world, access numbers are available online at www.att.com/traveler or from your local operator.

To ensure you receive future mailings, please contact the GM Benefits & Services Center any time your mailing address changes.

Sincerely,

GM Benefits & Services Center

Additional Information

If you have any questions, please call the GM Benefits & Services Center toll-free at 1-800-489-4646, Monday through Friday, between 7:30 a.m. and 6:00 p.m., Eastern Time zone, to speak with a Customer Service Associate. From outside the U.S., dial your country's toll-free AT&T Direct® access number then enter 877-833-9900. In the U.S., call 1-800-331-1140 to obtain AT&T Direct access numbers. From anywhere in the world, access numbers are available online at www.att.com/traveler or from your local operator.

To ensure you receive future mailings, please contact the GM Benefits & Services Center any time your mailing address changes.

Sincerely,

GM Benefits & Services Center



WALTER J LAWRENCE
#162, 3101 SW 34TH AVE. #905
OCALA, FL 34474-0000

GM Benefits & Services Center

gmbenefits.com

1-800-489-4646

International Access

Dial AT&T Direct® Service Access Code. then 877-833-9900

TDD Service for the Hearing Impaired

1-877-347-5225

September 5, 2007

Re: Recalculation of Pension Benefits

Dear WALTER J LAWRENCE:

This is a revised statement of your Pension Benefits from General Motors. The revision and reason for the Pension Benefit Recalculation is:

- Tax Levy Amended to \$208 as per IRS Guidelines
- Pension Overpayment

	Current Benefit Amount	New Benefit Amount as of 10/01/2007
Benefit to Participant:	\$0.00	\$837.50

Our records indicate you have received an overpayment of retirement benefits. The total amount of the overpayment is \$32,985.00. Because the Plan is an ERISA qualified Plan, we are required to collect overpayments and return them to the Plan's Trust Fund.

Please make your check or money order payable to FIIOC "Fidelity Investments Institutional Operating Company" and send it to the Benefit Service Center in the self addressed envelope enclosed for your convenience. On the check or money order, indicate that this is to repay an overpayment, clearly print your full name and include your Social Security number.

If the payment in a lump sum is not received, beginning 10/01/2007, your monthly benefit will be reduced by 50% until the total amount of the overpayment has been recovered. This means that your gross monthly benefit will be \$418.75 until 03/01/2014. On 04/01/2014, you will receive \$515.00 completing the recovery of your overpayment of \$32,985.00. Thereafter, your gross monthly benefit of \$837.50 will be restored.

D

Additional Information

If you have any questions, please call the GM Benefits & Services Center toll-free at 1-800-489-4646, Monday through Friday, between 7:30 a.m. and 6:00 p.m., Eastern Time zone, to speak with a Customer Service Associate. From outside the U.S., dial your country's toll-free AT&T Direct® access number then enter 877-833-9900. In the U.S., call 1-800-331-1140 to obtain AT&T Direct access numbers. From anywhere in the world, access numbers are available online at www.att.com/traveler or from your local operator.

To ensure you receive future mailings, please contact the GM Benefits & Services Center any time your mailing address changes.

Sincerely,

GM Benefits & Services Center

(c) Workers Compensation payments paid under a claim filed not later than two years after the breaking of seniority.

ARTICLE V FINANCING

Section 1: Trust Fund

The Corporation shall execute a trust agreement with a trustee or trustees selected by the Corporation to manage and operate the pension fund and to receive, hold and disburse such contributions, interest and other income as may be necessary to pay such of the pensions and supplements or portions thereof under this Plan as are not provided for by an insured fund. The Corporation may establish an insured fund with such insurance company or companies as it may select for the payment of such of the pension and supplements or portions thereof under this Plan as are not provided for in a trustee fund.

The Corporation will determine the form and terms of any such trust agreement which may authorize the inclusion of obligations and stock (common and preferred) of the Corporation and its wholly-owned subsidiaries, among the investments of the pension fund provided for by such trust agreement; may utilize any investment manager as defined under the Employee Retirement Income Security Act of 1974 or regulations thereunder; may modify any such trust agreement from time to time to accomplish the purposes of this Plan; may remove any trustee, and select any successor trustee; and select and change insurance companies.

Section 2. Contributions

(a) The Corporation, subject to Article IX, Section 1, shall make such contributions to the trustee

or pay such premiums under any insured contract for the purposes of providing pensions and supplements under the Plan as shall be required under accepted actuarial principles and Title I of the Employee Retirement Income Security Act of 1974 to maintain the Plan and pension or insured fund in a sound condition and shall pay for expenses incident to the operation and management of the Plan.

(b) The Corporation may charge to the fund expenses necessary for the proper administration of the Plan and investment of the funds, including the direct cost of benefit administration performed by, or on behalf of, the Corporation for the Plan, and Pension Benefit Guaranty Corporation premiums for participants.

(c) No employee shall be required to make any contributions to the Plan.

Section 3. Irrevocability

(a) The Corporation shall have no right, title or interest in the contributions made by it to the trustee and no part of the pension or insured fund shall revert to the Corporation, except that after satisfaction of all liabilities of the Plan as set forth in Article IX, such contributions as may have been made by the Corporation as the result of overpayments may revert to the Corporation.

(b) The pension benefits and supplements of the Plan shall be only such as can be provided by the assets of the pension fund or by any insured fund and there shall be no liability or obligation on the part of the Corporation to make any further contributions to the trustee or insurance company in event of termination of the Plan. No liability for the payment of pension benefits or supplements under the Plan shall be imposed upon the Corporation, the Officers, Directors or Stockholders of the Corporation, except as otherwise may be required by the Employee Retirement Income Security Act of 1974.

5-14-07



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TDD Service for the Hearing Impaired
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WALTER J LAWRENCE
#162, 3101 SW 34TH AVE. #905
OCALA, FL 34474-0000

May 14, 2007

Re: Recalculation of Pension Benefits

Dear WALTER J LAWRENCE:

This is a revised statement of your Pension Benefits from General Motors. The revision and reason for the Pension Benefit Recalculation is:

- Benefits were not adjusted by the Tax Levy Amount of \$1,099.50
- Pension Overpayment

	Current Benefit Amount	New Benefit Amount as of 07/01/2007
Benefit to Participant:	\$1,045.50	\$0.00

Our records indicate you have received an overpayment of retirement benefits from 01/01/2005 through 06/01/2007, a total of 30 month(s). The total amount of the overpayment is \$32,985.00. Because the Plan is an ERISA qualified Plan, we are required to collect overpayments and return them to the Plan's Trust Fund.

Please make your check or money order payable to General Motors Corporation and send it to the Benefit Service Center in the self addressed envelope enclosed for your convenience. On the check or money order, indicate that this is to repay an overpayment, clearly print your full name and include your Social Security number.

B

Additional Information

If you have any questions, please call the GM Benefits & Services Center toll-free at 1-800-489-4646, Monday through Friday, between 7:30 a.m. and 6:00 p.m., Eastern Time zone, to speak with a Customer Service Associate. From outside the U.S., dial your country's toll-free AT&T Direct® access number then enter 877-833-9900. In the U.S., call 1-800-331-1140 to obtain AT&T Direct access numbers. From anywhere in the world, access numbers are available online at www.att.com/traveler or from your local operator.

To ensure you receive future mailings, please contact the GM Benefits & Services Center any time your mailing address changes.

Sincerely,

GM Benefits & Services Center

*Supplemental
Agreement*

Covering

PENSION PLAN

Exhibit A

to

AGREEMENT

between

GENERAL MOTORS CORPORATION

and

UAW

dated

September 17, 1990

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EXHIBIT A
SUPPLEMENTAL
AGREEMENT
(Pension Plan)

SUPPLEMENTAL AGREEMENT (PENSION PLAN)

On this 17th day of September, 1990, General Motors Corporation, hereinafter referred to as the Corporation, and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, hereinafter referred to as the Union, on behalf of the employees covered by the collective bargaining agreement of which this Supplemental Agreement becomes a part, agree as follows:

Section 1. Establishment of Plan

Subject to the approval of its Board of Directors, the Corporation will establish an amended pension plan, hereinafter referred to as the "Plan", a copy of which is attached hereto as Exhibit A-1 and made a part of this agreement to the extent applicable to the employees represented by the Union and covered by this agreement as if fully set out herein, modified, and supplemented, however, by the provisions hereinafter. In the event of any conflict between the provisions of the Plan and the provisions of this agreement, the provisions of this agreement will supersede the provisions of the Plan to the extent necessary to eliminate such conflict.

The Plan, as set forth in Exhibit A-1, and the Plan as it may be modified and supplemented by superseding provisions of this agreement, as above provided, are both contingent upon and subject to obtaining and retaining such approval of the Commissioner of Internal Revenue as the Corporation may find necessary to establish the deductibility under Section 404 of the Internal Revenue Code for income tax purposes of any and all contributions made by the Corporation to both plans and to establish the plans and related trust as being qualified and tax exempt.

under Sections 401 and 501(a) or other applicable provisions of the Internal Revenue Code. Any modification or amendment of either the Plan, or the Plan as modified and supplemented by this agreement, may be made retroactively by the Corporation with the consent of the Union, if necessary or appropriate, to qualify or maintain the Plan as a plan and trust meeting the requirements of Sections 401 and 501(a) of the Internal Revenue Code, as now in effect or hereafter amended, or any other applicable provisions of the federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder, provided that pension benefits under the Plan are not diminished.

Until the Plan is approved by the Corporation's Board of Directors and by the Commissioner of Internal Revenue, all as hereinbefore provided, the benefits payable shall be only those determined under the Plan as constituted prior to October 1, 1990; provided, however, that following approval by its Board of Directors and its receipt of the favorable ruling from the Commissioner of Internal Revenue as set forth above, the Corporation or the trustee will pay to retired employees and surviving spouses any excess amounts equal to the difference between the monthly pension calculated in accordance with the terms of the Plan, attached hereto as Exhibit A-1, and the monthly pension paid or payable in accordance with the terms of the Pension Plan which was attached as Exhibit A-1 to the Supplemental Agreement (Pension Plan) between the Parties dated October 8, 1987. Any such excess amounts payable for months prior to the receipt of the aforementioned Board of Directors and the Commissioner of Internal Revenue approvals, shall be payable the first of the month following the date upon which the last of these two approvals is received by the Corporation, and any such amounts payable thereafter shall be paid on the first of the month at the same time as the related pension is paid.

(2)

In the event that the Plan is disapproved by the Board of Directors of the Corporation, the Corporation within thirty days after any such disapproval will give written notice thereof to the Union and this agreement shall thereupon have no force or effect. In that event the matters covered by this agreement shall be the subject of further negotiation between the Corporation and the Union.

Section 2. Financing

(a) A trustee or an insurance company, or both, shall be designated by the Corporation, and a trust agreement or contract, of both, executed between the Corporation and such trustee or insurance company, or both, under the terms of which a pension fund or insured fund, shall be established to receive and hold contributions payable by the Corporation, interest, and other income, and to pay the pensions and supplements provided by the Plan.

(b) The Corporation agrees to pay over irrevocably to the trustee or insurance company during the period of this agreement contributions or payments for the Plan equal to the sum of (i) and (ii) below as determined and certified as of each anniversary of the effective date of the Plan by one or more actuaries chosen by, but independent of, the Corporation, and qualified through Fellowship in the Society of Actuaries and enrollment with the Joint Board for Enrollment of Actuaries (hereinafter referred to as the actuary). Such contributions or payments for any year may be made not later than the date on which such contributions are required by law to be made for the purpose of crediting such contributions to such year under the minimum funding standards of the Employee Retirement Income Security Act of 1974:

(i) the annual "current service" or "normal cost" contribution attributable to a year's cost accruals

(3)

in respect of assumed continuous service after each such anniversary date, and

(ii) the "prior service contribution" computed as that part of the present value, at each such anniversary date, of the prospective pensions payable under the Plan for employees, pensioners and former employees who are entitled to a deferred pension then covered by the Plan which is in excess of:

(aa) the value of the trust fund, as then comprised of any contracts and total other assets, invested and uninvested, such total assets being valued on a basis at least equal to the total cost thereof, plus

(bb) the then present value of the prospective current service or normal cost contributions determined by the actuary in accordance with (i) above,

such excess part being amortized according to the following schedule:

(1) in respect of the portion of such excess part attributable to the level of benefits in effect prior to October 1, 1979 — the fifty-ninth anniversary of the Corporation's pension plan (October 1, 2009); and

(2) in respect of the portion of such excess part attributable to the increase in the level of benefits established by amendments to the Corporation's pension plan effective on or after October 1, 1979 — the thirtieth anniversary of the date on which such increase in the level of benefits becomes effective.

(c) The Corporation may contribute or pay additional amounts to the trustee or insurance company or both, under (b) above in any year without such additional amounts being construed to reduce any thirty-year period for the completion of the prior service contributions of subsection (b)(ii) above. If the Corporation has contributed any such additional amounts prior to any anniversary date of the

(4)

Corporation's pension plan or shall contribute any such additional amounts prior to any anniversary date of the Plan falling within the duration of this agreement, the Corporation may as of such anniversary contribute a lesser amount than otherwise determined by (b) above for such anniversary, provided that the value of any contracts and total other assets as valued in accordance with (b)(ii)(aa) above at such anniversary shall not be less than the amount estimated by the actuary to be the value as if contributions and payments up to and including such anniversary date had been made as provided in (b) above and no additional amounts had been contributed or paid prior to such anniversary.

(d) The Corporation by payment of the contributions or amounts as hereinbefore provided in this section shall be relieved of any further liability, and pensions and supplements shall be payable only from the trust fund or the insured fund or both.

Section 3. Administration

(a) Board of Administration

(1) There shall be established a central Board of Administration hereinafter referred to as the Board, composed of six members, three appointed by the Corporation and three by the Union. Each member of the Board shall have an alternate. In the event a member is absent from a meeting of the Board, his alternate may attend and when in attendance shall exercise the duties of the member. Either the Corporation or the Union at any time may remove a member or alternate appointed by it and may appoint a member or alternate to fill any vacancy among members or alternates appointed by it.

No person shall act as a member of the Board of Administration or as an alternate for such member unless notice of his appointment has been given in

(5)

writing by the party making the appointment to the other party.

(2) The Board shall meet at such times and for such periods for the transaction of necessary business as may be mutually agreed upon by its members.

(3) To constitute a quorum for the transaction of business, the presence of four members of the Board shall be required. At all meetings of the Board the member or members present appointed by the Corporation shall have in the aggregate a total of one vote to be cast on behalf of the Corporation, and the member or members present appointed by the Union shall have in the aggregate a total of one vote to be cast on behalf of the Union.

(4) The compensation and expenses of the Corporation members will be paid by the Corporation and the compensation and expenses of the Union members will be paid by the Union and no part of such compensation or expenses will be paid from the trust fund.

(5) The Corporation shall cause to be furnished to the Board of Administration annually:

(i) A statement as of each anniversary date of the Plan showing in summary form the value of the assets which comprise such fund by general categories of investment, such value being determined on a basis at least equal to the total cost thereof for each such category.

(ii) Such information as to age, sex and service of hourly-rate employees of the Corporation as a whole in the United States and as to the number of pensioners and amount of pensions and supplements by age groups, as the Board may reasonably require, but in no event shall the Corporation be required to furnish the Board with any data not furnished by the Corporation to the actuary.

(6)

(iii) A report, prepared by the actuary, in respect of each year's actuarial valuation of the Plan, setting out the following:

(a) the amount of the normal cost contribution and the amount of the payment toward amortization of the actuarial deficiency required in accordance with Section 2(b) hereof.

(b) a statement of the method and the assumptions, such as the interest rate, mortality rates, withdrawal rates, retirement rates, average benefit unit and assumptions used with respect to the survivor benefit, adopted for the valuation for the purposes of Section 2(b) hereof.

(c) the amount, as of each anniversary date, of the gross actuarial deficiency, determined in accordance with Section 2(b) hereof as the present value of the prospective pensions payable under the Plan less the then present value of the prospective normal cost contributions, if any, for (1) retired employees, (2) employees who have separated with retention of deferred pensions, (3) non-retired and non-separated employees, and (4) total.

(d) the amount of assets used in the actuarial valuation, together with a reconciliation of the amount of such assets with the amount used in the preceding valuation.

(e) the amount of the net (unfunded) actuarial deficiency.

(f) the amount by which the value of the trust fund exceeded the amount then required by Section 2(b) hereof to be in such fund.

(g) the extent to which the trust fund assets as of the valuation date would be sufficient to cover the pension liabilities, as determined in accordance with SFAS 87.

(7)

(iv) A statement, certified by the actuary, that the amount of the trust fund is or is not less than the amount then required by Section 2(b) hereof to be in such fund.

(v) A statement setting forth:

(aa) The value of the trust fund computed on the basis of market value as of the previous anniversary date of the Plan.

(bb) Additions during Plan year:

(i) payments by General Motors into the fund

(ii) interest and dividends received by the fund

(iii) net investment gains, and

(iv) total additions.

(cc) Pension payments and supplements to retired employees and surviving spouses during Plan year.

(dd) The value of the trust fund computed on the basis of market value as of the anniversary date of the Plan for the year for which the statement is being submitted.

(vi) A schedule setting forth as of March 31 of each year:

(aa) the amount of investment of the pension fund in residential real estate mortgages, by type, in communities with General Motors plants and in other communities.

(bb) the amount invested in such residential real estate mortgages during the preceding year in comparison with total new money investments during that year, and

(8)

(cc) a description of such residential mortgages in which funds were invested during the preceding year, by type, separately by plant city areas and in total for other areas.

(vii) A copy of Form 5500 reports and attendant schedules for the Plan will be furnished as soon as practicable after General Motors has filed such report with the Internal Revenue Service.

(6) The Board of Administration shall have no power to add to or subtract from or modify any of the terms of this agreement or the Plan, nor to change or add to any benefit provided by said agreement or Plan, nor to waive or fail to apply any requirement of eligibility for a benefit under said agreement or Plan.

(7) Any case referred to the Board of Administration on which it has no power to rule shall be referred back to the parties without ruling.

(8) No ruling or decision of the Board of Administration in one case shall create a basis for a retroactive adjustment in any other case prior to the date of written filing of each such specific claim.

(9) There shall be no appeal from any ruling by the Board which is within its authority. Each such ruling shall be final and binding on the Union and its members, the employee or employees involved, and on the Corporation.

The Union will discourage any attempt of its members and will not encourage or cooperate with any of its members, in any appeal to any Court or Administrative Board or Agency from a ruling of the Board of Administration.

(b) Impartial Chairman:

(1) The Corporation and the Union shall mutually agree upon and select an Impartial

(9)

A. Sect. 3(b)(1)

Chairman, who shall serve until requested in writing to resign by three Board members.

(2) The Impartial Chairman will not be counted for the purpose of a quorum, and will vote only in case of a failure of the Corporation and the Union by vote through their representatives on the Board, to agree upon a matter which is properly before the Board and within the Board's authority to determine; provided that the Impartial Chairman may vote only on matters involving the processing of individual cases, not on the development of procedures.

(3) The fees and expenses of the Impartial Chairman will be paid one-half by the Corporation and one-half by the Union.

(c) As soon as possible after the effective date of this agreement, the Union and Corporation members of the Board of Administration shall work out matters such as but not limited to: (1) procedures for establishing Local Pension Committees at the Divisions or plants involved; (2) the authority and duties of such Local Pension Committees; (3) the procedures for reviewing applications for pensions; (4) the handling of complaints regarding the determination of age, service credits, and computation of benefits; (5) procedures for making appeals to the Board; (6) means of verifying service credits to which employees are entitled under the Plan; (7) methods of furnishing information to employees regarding past and future service credits; (8) the amount of time the Union members of the local committees may be permitted to leave their work to attend meetings of the Local Pension Committees; (9) how disputes over total and permanent disability claims will be handled, including disputes, if any, with respect to whether a disabled pensioner engages in gainful employment; (10) the review of pertinent information about the Plan for dissemination to employees; (11) how pension payments will be authorized by the Board. All such

(10)

A. Sect. 3(c)

matters shall be consistent with all other provisions of the Plan and this agreement. The working out of the procedures outlined in this section shall be the responsibility of the Corporation and Union members of the Board, and the Impartial Chairman shall have no power to decide any question with respect thereto.

The provisions of Agreement Implementing Section 3(c) of the Supplemental Agreement, Pension Plan, dated October 14, 1988 which were established by the Board pursuant to the foregoing are incorporated herein by reference and are a part hereof and effective with respect to the administration of the Plan as fully as if set out herein at length.

(d) Except as provided otherwise in this agreement, the general administration of the provisions of the Plan shall be the responsibility of the Corporation.

(e) The Board and any member of the Board, or the Local Pension Committees or any member of the Local Pension Committees, shall be entitled to rely upon the correctness of any information furnished by the Union or the Corporation. Neither the Board nor any of its members, nor the Local Pension Committees nor any of its members, nor the Union nor any officer or other representative of the Union, nor the Corporation nor any officer or other representative of the Corporation shall be liable because of any act, or failure to act, on the part of the Board or any of its members, or the Local Pension Committees or any of its members or any person, except that nothing herein shall be deemed to relieve any such individual from any liability for his own fraud or bad faith.

(f) No matter respecting the Plan as modified and supplemented by this agreement or any difference arising thereunder shall be subject to the grievance procedure established in the collective bargaining agreement between the Corporation and the Union,

(11)

A. Sect. 3(f)

except as expressly provided in Paragraph (46) of such collective bargaining agreement.

(g) Credited service shall be granted an employee who is absent from his work pursuant to Paragraph 24 of the National Agreement, or on a leave of absence under Paragraph 109 of the National Agreement if the leave was granted for the purpose of permitting the employee to engage in the business of or to work for the Local Union, or if the leave was granted under Paragraph 109(a) of the National Agreement for the purpose of permitting the employee to engage in the business of or to work for the International Union while on such leave (an employee on leave under the National Agreement solely to permit the employee to be Manager of the credit union sponsored by the Local Union shall be included hereunder, but only with respect to any period while serving in such capacity while on such leave).

An employee eligible for credited service under this section shall be credited with up to 40 hours for each calendar week since October 1, 1950 while he is on such leave, including compensated hours, provided he meets the requirements of the leave, but in no event shall the employee be credited with more than 1700 hours, including compensated hours, in any calendar year.

Section 4. Effect of Retirement on Employment Status and Seniority

(a) An employee who retires or is retired under the terms of the Plan shall cease to be an employee and shall have his seniority canceled.

(b) An employee who has been retired on a total and permanent disability pension and who thereby has broken his seniority in accordance with subsection (a) above, but who recovers and has his pension discontinued, shall have his seniority reinstated as

(12)

A. Sect. 4(b)

though he had been on a sick leave of absence during the period of his disability retirement, provided, however, if the period of his disability retirement was for a period longer than the seniority he had at the date of retirement, he shall, upon the discontinuance of his disability pension, be given seniority equal to the amount of seniority he had at the date of such retirement.

(c) If an employee retired for reasons other than total and permanent disability who has lost seniority in accordance with subsection (a) above, is retired, such employee will have the status of a new employee.

Section 5. Supplements

Notwithstanding any other provisions of the Plan, an employee who retires with benefits payable commencing on or after October 1, 1990 while on an approved leave of absence requested by the International Union to permit him to engage in the business of or to work for the International Union shall not be prevented from receiving benefits under Section 6 of Article II of the Plan solely because the last day he worked for the Corporation was not within five years of the date his pension benefits commence.

Section 6. Deduction of Union Dues

(a) Notwithstanding any other provisions of the Plan, any retired employee entitled to receive a pension or supplement may, pursuant to the retired employee's written authorization and direction acceptable to the Corporation, authorize the deduction of monthly Union dues from any monthly pension or supplement otherwise payable to him and direct that such dues be remitted to the Union.

(b) An authorization to deduct said monthly Union dues shall become effective as of the first of the second month following the month in which the Corporation

(13)

A, Sect. 6(b)

receives such authorization from the Union, and shall remain in full force and effect until revoked by the retired employee's written notice given to the Corporation, except that during any period when there is not in effect a written collective bargaining agreement or supplement thereto between the Corporation and the Union which permits or provides for the deduction of Union dues from monthly pension benefits payable to a retired employee, such assignment, authorization and direction, if otherwise in effect, shall automatically be suspended for the duration of such period only.

(c) The Union shall indemnify and hold harmless the Corporation against any and all liability, including reasonable attorney's fees, that may arise by reason of the Corporation's compliance with this Section 6.

(d) This Section 6 shall be of no force or effect during any month for which less than one thousand such authorizations are in effect.

Section 7. Foundry Jobs

Any job classification put into effect after September 14, 1973, at a plant identified in Appendix B of the Plan, shall be designated by written agreement between the parties as a foundry job if such classification (a) supersedes or replaces a job classification previously designated as a foundry job for such plant and (b) becomes applicable to employees who perform substantially the same work as had been performed by employees while on a job classification previously designated as a foundry job for such plant.

(14)

A, Sect. 8

Section 8. Duration of Agreement

This agreement and Plan shall continue in effect until the termination of the collective bargaining agreement of which this is a part.

In witness hereof, the parties hereto have caused this agreement to be executed the day and year first above written.

(15)

INTERNATIONAL
UNION, UAW

OWEN BUBER
STEPHEN P. YOKICH
DONALD I. DAVIS
DARREL NEWBERRY
CALVIN T. RAPSON
TED MILLER
TOM PASCO
HENDERSON SLAUGHTER
TOM WEEKLEY
RICHARD SHOEMAKER
LEON BLACKWELL
GEORGE BRODEUR
LESTER BRYAN
L. E. BUNCH
MIKE GRACEY
RICHARD HOALCRAFT
JAMES JACKSON
RICK LYONS
DICK MONCZKA
JUDY MURPHY
PEGGY PERSON
GARY WATSON
RICHARD SWIM
HAROLD SHELTON
J. D. DALTON
VINCE DEMME, JR.
SAM ISAAC
KEN LAUBERT
CARL PEDERSEN, JR.
ROGER RATLIFF
TOM ROBINSON
DON SARKESIAN
LEWIS W. SCHULTZ
NORM ACORD
ROGER ANCLAM
BILL APPLE
JIM BEARDSLEY
AL BERGMANN
CHARLES BEST
JACK BROWN
BENNIE BURGESS
BILL CARSHAW
JIM CARSON

GENERAL MOTORS
CORPORATION

ROBERT C. STEMPHIL
LLOYD E. REUSS
F. ALAN SMITH
CHARLES KATKO
ALFRED S. WARREN, JR.
RICHARD F. O'BRIEN
JOHN D. BUTLER
HOWARD C. CARLSON
DONALD G. GARDNER
RICHARD K. McMILLAN
THOMAS J. MORR
ROBERT G. WIENCEK, M.D.
RALPH E. HANDLEY
JAMES E. PRYCE
KENNETH J. MCCORMICK
THOMAS E. UTTER
ARTHUR R. SCHWARTZ
CHARLES E. RYAN
ALAN S. DAWES
ROBERT W. HENDRY
H. EUGENE BROWN
EDWARD D. DuCHARME
FRED G. HAUBOLD
RICHARD L. HUBER
GERALD A. KNECHTEL
ROBERT D. LEE
ANTHONY L. MARCHIO
MICHAEL V. TIERNEY
JAMES R. WIEMELS
BETTY R. ANDERSON
JOHN H. BERRY, III
E. PRESTON BOLDEN
RICHARD L. BREWER
SAMUEL L. COLE, JR.
WILLIAM L. COWELL
RALPH E. DEEDS, JR.
H. STEPHEN DOYLE
JOHN J. FLAHERTY
MARK R. FLORA
JOHN P. FURMAN
THOMAS A. GAWEL
STEVEN L. GEBBIA
BEACH B. HALL

INTERNATIONAL
UNION, UAW

RUFUS COLEMAN
JERRY COVILLE
HAROLD COX
DICK DANJIN
BOB FARLEY
EARL FARRELL
JERRY FAULKNER
MARK FIELDER
RAY GIBSON
ROY GOFORTH
LARRY GONTKO
MOSES GREEN
CECIL HAMPTON
LINDA HOALCRAFT
JIM HOWE
LARRY JOLLY
DICK JONES
CHRIS MANNING
GEORGE MAPES
BUD MILLER
CLAYTON MOLL
RON MURRAY
WILBERT NEAL
HERSCHEL NIX
BILL RENO
TOM RICHARDSON
JOE SAWYER
ELLA MAE SCHULTZ
JIM SHROAT
DARRELL SMITH
WILLIAM SMITH
JOE SPRING
LARRY STEVENS
CINDY SUEMNICK
KARLA SWIFT
KEN TERRY
JIM TITSWORTH
TOM WALSH
DICK WEEDEN
JIM WESTNESS
JIM WHEATLEY
WILLIE WILLIAMS
ED YONAN

GENERAL MOTORS
CORPORATION

CARLTON V. MATZELLE
TERRY J. McDOUGALL
MILTON H. OSBORN, JR.
GARY N. PHELEY
BERNARD J. QUICK
JAY C. WILBER
GERALD J. WINTER
W. GARY BRYANT
CAROLE G. DAVEY
JENNIE F. HART
BETTY SUE JONES
JAMES W. LaLONDE
SANDRA POPE THOMPSON
BERNARD G. WEBER

EXHIBIT A-1
THE GENERAL MOTORS
HOURLY-RATE EMPLOYEES
PENSION PLAN

**ARTICLE I
ESTABLISHMENT OF THE PLAN**

General Motors Corporation on behalf of itself and its Divisions and as agent for certain of its directly or indirectly wholly-owned and substantially wholly-owned domestic subsidiaries in accordance with I.R.C. Section 414(b), (c), and (m) will establish, subject to the approval of its Board of Directors, a pension fund either by a trust agreement with a trustee or trustees or by contract with an insurance company or insurance companies, or both, and with respect thereto shall make such payments or contributions as will be sufficient to maintain the fund on a sound actuarial basis as well as to pay expenses incident to the operation and management of the Plan.

Except as expressly provided in Sections 6, 7, and 8 of Article II and as provided in Article VII and Article IX, the provisions set forth in this Plan are applicable only to employees with seniority on or after October 1, 1990. Employees retired with benefits commencing prior to such date or separated prior to such date, or eligible surviving spouses of such employees, shall be entitled to the benefits, if any, under the Plan as it existed immediately prior to such date.

Notwithstanding the paragraph immediately above, employees who retired with benefits commencing after September 17, 1990 and prior to October 1, 1990 pursuant to the provisions of Article II of the Plan, shall be considered for purposes of Article II herein as having retired with benefits payable commencing on or after October 1, 1990; the surviving spouse of any employee who died after September 17, 1990 and prior to October 1, 1990, who is otherwise eligible for monthly benefits under the Plan, shall be considered entitled to monthly benefits pursuant to Section 5 of Article II herein; and any such employees

shall be considered eligible for credited service under Article III herein.

ARTICLE II

ELIGIBILITY FOR RETIREMENT AND AMOUNT OF PENSIONS

Section 1. Normal Retirement

Any employee who shall have attained the age of 65, shall have completed one or more years of credited service as provided in Article III and shall cease active service, shall be entitled to receive a pension.

Section 2. Early Retirement

(a)(1) An employee who has attained age 60 but not age 65, and who has 10 or more years of credited service, may retire at the option of the employee.

(2) An employee who has attained age 55 but not age 60, and whose combined years of age and years of credited service (to the nearest 1/12 in each case) shall total 85 or more, may retire at the option of the employee.

(3) An employee who has 30 or more years of credited service may retire at the option of the employee.

(b) An employee who has attained age 55 (age 50 for an employee who is laid off on or after October 1, 1984 as a result of a plant closing where no other General Motors plants are in the same geographical area) but not age 65 and who has 10 or more years of credited service may be retired under mutually satisfactory conditions as set forth hereinafter in the Standards applicable to such retirement.

Section 3. Total and Permanent Disability Retirement

(a) An employee who is totally and permanently disabled prior to attaining age 65, and has at least 10 years of credited service, shall be eligible for a disability pension as hereinafter provided.

(b) An employee shall be deemed to be totally and permanently disabled only if he is not engaged in regular employment or occupation for remuneration or profit and on the basis of medical evidence satisfactory to the Corporation the employee is found to be wholly and permanently prevented from engaging in regular employment or occupation with the Corporation at the plant or plants where he has seniority for remuneration or profit as a result of bodily injury or disease, either occupational, or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country unless the employee becomes totally and permanently disabled after he has accumulated at least 5 years of seniority following his separation from service in the armed forces.

(c) Any disability pensioner may be required to submit to medical examination at any time during retirement prior to age 65, but not more often than semi-annually, to determine whether the pensioner is eligible for continuance of the disability pension. If on the basis of such examination it is found that the pensioner is no longer disabled or if the pensioner engages in gainful employment, except for purposes of rehabilitation as determined by the Corporation, the pensioner will be deemed recovered and his disability pension will cease. In the event the disability pensioner refuses to submit to medical examination the pension will be discontinued until the pensioner is examined.

Section 4. Amount of Pensions

(1) The monthly pension payable to an employee retired pursuant to the provisions of Sections 1, 2, or 3 of this Article II with benefits payable commencing on or after October 1, 1990 shall be a basic benefit for each year of credited service that the employee had at the date of his retirement, determined by his Benefit Class Code and based on the month for which payment is being made as set forth in the table immediately following:

Retirement With Benefits Payable Commencing	Benefit Class Code	Basic Benefit Rate Per Year of Credited Service For Months Commencing		
		10-1-90 through 9-1-91	10-1-91 through 9-1-92	10-1-92 and After
October 1, 1990 and After	A	\$ 28.35	\$ 29.50	\$ 30.70
	B	28.60	29.75	30.95
	C	28.85	30.00	31.20
	D	29.10	30.25	31.45

(2) The monthly pension benefit payable to an employee who retires at his option at a date selected by the employee shall be multiplied by a percentage as set forth in the following table:

Age When Pension Commences	Percentage*
42	21.0%
43	22.6
44	24.3
45	26.1
46	28.2
47	30.4
48	32.8
49	35.4
50	38.3
51	41.5
52	45.0
53	48.9
54	53.2
55	57.9
56	63.5
57	69.4
58	75.2
59	80.8
60	86.7
61	93.3
62 or over	100.0

*Prorated for intermediate ages computed on the basis of the number of complete calendar months by which the employee is under the age he will attain at his next birthday.

If an employee:

(i) with 30 or more years of credited service retires at his option, or

(ii) whose combined years of age and years of credited service (to the nearest 1/12 in each case) shall total 85 or more retires at his option, the monthly basic benefits otherwise payable to him after age 62 and one month shall be redetermined without any such reduction.

(3) The basic benefit payable in any month will not be reduced below an amount which results in the early retirement supplement paid to a participant in such month; under Article II, Section 6 (a) (1), exceeding the old age insurance benefits, unreduced on account of age, payable under Title II of the Social Security Act, as amended.

(b) A temporary benefit for each year of credited service up to 30 shall be payable in addition to the monthly basic pension payable to an employee retired under mutually satisfactory conditions, or totally and permanently disabled pursuant to Section 2 (b) or Section 3 above, as set forth in the table immediately following:

Retires With Benefits Payable Commencing	Monthly Temporary Benefit Amount	
	Per Year of Credited Service	Maximum
October 1, 1990 through September 1, 1991	\$ 25.00	\$ 750.00
October 1, 1991 through September 1, 1992	27.20	816.00
October 1, 1992 and After	29.30	879.00

(c) The monthly temporary benefit determined in (b) above shall be payable until age 62 and one month, or until the age at which the employee becomes or could have become eligible for a Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age. At such age the temporary benefit shall cease to be payable.

(d) An employee discharged for cause after such employee is eligible to retire at his option under Section 2 (a) of this Article II shall be entitled to the benefits provided under Section 4 (a) of this Article II as though he had retired at his option.

(e) The amount of any monthly pension benefit otherwise payable to the employee at retirement, or earlier commencement, will be reduced by the value of any past and future benefits paid or payable to any alternate payee(s) under a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p).

The actuarial value will be used to determine any amount to be paid to any such payee(s), if applicable, and the remaining benefit entitlement of the employee.

Section 5. Pension Benefits to Employee's Surviving Spouse

(a) In lieu of the monthly basic benefit otherwise payable, an employee who retires or is retired pursuant to the normal, early or total and permanent disability retirement provisions of this Article II, or who breaks seniority and is eligible for a deferred pension pursuant to the provisions of Section 2 of Article VII hereof, shall be deemed to have elected automatically a reduced amount of monthly basic benefit to provide that, if his designated spouse shall be living at his death after such election shall have become effective, a survivor benefit shall be payable to such spouse during the spouse's further lifetime. In the event such spouse predeceases such employee, or they are divorced by court decree and a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) does not provide to the contrary, such employee may cancel the survivor benefit election and have his monthly basic pension benefit restored to the amount payable without such election, effective the first day of the third month following the month in

which the Corporation receives (i) evidence satisfactory to the Corporation of the spouse's death, or (ii) such employee's written revocation of the election because of divorce; on a form approved by the Corporation and accompanied by evidence satisfactory to the Corporation of a final decree of divorce.

The automatic election provided in this subsection (a) shall become effective on the later of (i) the commencement date of the employee's monthly pension benefit, (ii) the first day of the month following the month in which the employee attains age 55 (except that this item (ii) shall not apply to an employee with 30 or more years of credited service or to an employee who retires with benefits payable prior to age 55 pursuant to Section 2 (b) of this Article II), or (iii) the first day of the month following the month in which the employee has been married one year if he is married when the election would otherwise become effective but such marriage has been in effect less than one year at that date.

An employee may prevent the automatic election provided in this subsection (a), (i) at the time of application for retirement benefits, or (ii) if later, during the month prior to that in which he attains age 55 (except that this item (ii) shall not apply to an employee with 30 or more years of credited service or to an employee who retires with benefits payable prior to age 55 pursuant to Section 2 (b) of this Article II) by executing a specific written rejection of such election, which includes the written consent of his spouse witnessed by the plan representative or a notary public, on a form approved by the Corporation and filing it with the Corporation.

Information regarding this coverage is included in the summary plan description, which will be provided to each employee. Within a reasonable period prior to the annuity starting date, each participant shall be

provided a written explanation of: (i) the terms and conditions of the surviving spouse coverage; (ii) the participant's right to make and the effect of an election to waive the surviving spouse coverage; (iii) the rights of the participant's spouse; and (iv) the right to make and the effect of revocation of a previous selection to waive the surviving spouse coverage.

(b) The beneficiary of a survivor benefit election shall be only the person who is the employee's spouse at such time and who has been his spouse for at least one year immediately prior to the effective date of such election.

(c) A survivor benefit election shall be revoked automatically upon the death of the employee or his designated spouse, or both, prior to the effective date of the election.

(d) A survivor benefit election shall be irrevocable at and after its effective date if the employee and his designated spouse shall be living at such date, except as otherwise provided in Section 5 (a) of this Article II.

(e) For an employee who makes a survivor benefit election or who is deemed to have made such election under this Section 5, the reduced amount of his monthly basic benefit referred to in (a) above shall be equal to an amount determined by multiplying the monthly basic benefit otherwise payable to the employee by 95% if the employee's age and his eligible spouse's age are the same; except that, in the case of an employee whose basic benefits are subject to redemption at age 62 and one month the amount of reduction in his monthly basic benefit before such age for the survivor benefit election shall be based on the monthly basic benefit payable to such employee after age 62 and one month. Such percentage shall be increased by one-half of one percent (1/2%) (up to a maximum of 100%) for each 12 months in excess of

five (5) years that the spouse's age exceeds the employee's age and shall be decreased by one-half of one percent (1/2%) for each 12 months in excess of five (5) years that the spouse's age is less than the employee's age.

(f) The survivor benefit payable to the surviving spouse of a retired employee who has completed an election or who is deemed to have made an election under this Section 5, and who dies after such election becomes effective, shall be a monthly benefit for the further lifetime of such surviving spouse equal to 60% of the reduced amount of such employee's monthly basic benefit as determined in (e) above; except that the survivor benefit payable to the surviving spouse of an employee whose basic benefits are subject to redetermination at age 62 and one month pursuant to Section 4 (a) of this Article II, shall be based on the monthly basic benefit payable to such employee after age 62 and one month.

(g) The surviving spouse of an employee

(i) who dies on or after attaining age 65, or on or after attaining age 55 and after the employee is eligible to retire at his option under Section 2 (a) (1) or 2 (a) (2) of this Article II, or at any age with 30 or more years of credited service, but before the first day of the month following the date on which the employee retires or before the commencement date of the employee's monthly pension in the case of an employee who retires at his option and defers the receipt of his monthly pension, and

(ii) who, if he had retired at the date of his death, would have been eligible for the election under subsection (a) of this Section 5, shall be entitled to a monthly benefit during the spouse's lifetime, terminating with the last monthly payment before the spouse's death. The monthly

benefit payable to the surviving spouse shall be the amount such spouse would have been entitled to receive under subsection (f) of this Section 5, if the employee had retired on the date of his death under Sections 1, 2 (a) (1), 2 (a) (2) or 2 (a) (3), whichever is applicable, of this Article II with benefits commencing the first of the following month and had effectively made the election under subsection (a) of this Section 5.

(h) The death of an otherwise eligible employee who has retired under Section 3 of this Article II, occurring on or after his attaining age 55, but before the first day of the month following the date on which he dies, shall not disqualify an otherwise eligible surviving spouse from receiving a benefit hereunder.

Section 6. Supplements

(a) An employee who retires under Section 2 (other than an employee referred to in Section 4 (d) of this Article II, unless the Corporation or an Impartial Umpire under an applicable collective bargaining agreement determines his discharge should not result in his being ineligible for benefits under this Section 6), or 3 of this Article II, and who files his application for a pension within five years of the last day he worked for the Corporation and who agrees to restrict his participation in the work force before age 62 and one month as provided in (e) below will receive, in addition to his pension, certain supplements as set forth below:

(1) If the employee retires under Section 2 or 3 of this Article II with 30 or more years of credited service at the date of his retirement, he shall be entitled to a monthly early retirement supplement until age 62 and one month in an amount which when added to his monthly pension under this Plan will equal the amount of total monthly benefit applicable to him as

provided in the table set forth below, subject to subsequent provisions of this Section 6:

Retirement With Benefits Payable Commencing	Total Monthly Benefit Rate For Determining Monthly Early Retirement Supplement Prior to Age 62 and One Month For Retirees With 30 or More Years of Credited Service		
	10-1-90 through 9-1-91	10-1-91 through 9-1-92	10-1-92 and After
October 1, 1990 and After	\$ 1,600	\$ 1,700	\$ 1,800

(2) If the employee retires at his option after attaining age 55 with benefits payable commencing on or after October 1, 1990 with less than 30 years of credited service, he shall be entitled to a monthly interim supplement until he attains age 62 and one month equal to the amount applicable to him as provided immediately below for each year of credited service that he had at the date of his retirement, subject to the provisions of (b), (c) and (g) of this Section 6:

Age at Retirement	Monthly Amount* and Effective Date of Interim Supplement Payable Prior to Age 62 and One Month for Each Year of Credited Service		
	Retired With Benefits Payable Commencing on or After October 1, 1990		
	10-1-90	10-1-91	10-1-92
55	\$ 11.00	\$ 12.00	\$ 12.90
56	12.95	14.10	15.20
57	15.70	17.05	18.40
58	18.40	20.00	21.55
59	20.55	22.40	24.10
60	23.75	25.85	27.85
61	23.75	25.85	27.85

*Pro-rated for intermediate ages computed on the basis of the number of complete calendar months by which the employee is under the age he will attain at his next birthday.

(b) The early retirement supplement under provision (a) (1) of this Section 6 for an employee who retires at his option shall be calculated assuming that his basic pension commences immediately after retirement, and such early retirement supplements and the interim supplement under provision (a) (2) of this Section 6 shall be reduced for any month prior to age 62 and one month, for which he becomes or could have become eligible for a Federal Social Security benefit, by an amount equal to the amount of the temporary benefit to which he would have been entitled if he had retired under Section 2 (b) of this Article II.

(c) The early retirement supplement under provision (a) (1) of this Section 6 for an employee who retires under Section 2 (b) or Section 3 of this Article II shall be calculated on the assumption that he will receive a temporary benefit until age 62 and one month, even if such temporary benefit is not received by the employee until such age because of his entitlement to Social Security Benefits.

(d) The early retirement supplement under provision (a) (1) of this Section 6 for an employee who does not prevent the automatic election of the surviving spouse coverage provided under Section 5 of this Article II shall be calculated on the basis of the monthly pension he would have received if he had prevented such automatic election.

(e) Any of the supplements to which an employee is entitled shall commence on the first day of the month following the date on which the employee retires and shall be payable monthly thereafter until and including the first day of the month in which he dies, or his pension ceases for any other reason, or he is reemployed by the Corporation, or he attains age 62 and one month, whichever occurs first, provided, however, that if an employee entitled to receive a supplement has earnings after retirement in excess of the following annual earnings limitation in any calendar year before he attains age 62 and one month, such earnings being defined for this purpose as the type counted for the earnings test under the Federal Social Security Act or the corresponding type in any future Federal legislation amending, superseding, supplementing, or incorporating the Federal Social Security Act; a penalty equal to double the amount by which such earnings exceed the amount permitted shall be charged against each succeeding monthly supplement which he would otherwise be entitled to receive until the full amount of such penalty is

satisfied, it being understood that penalties and charges herein shall be cumulative if appropriate:

Calendar Year	Annual Earnings Limitation Amount
1990	\$ 10,000
1991	15,000
1992	15,000
1993	15,000

An employee receiving a monthly early retirement supplement or interim supplement may be required to certify whether his earnings have been in excess of the permitted amount and to furnish verification of the amount of his earnings. Unless repaid by the employee in a lump sum, any overpayments of a supplement made after an employee incurred a penalty because of excess earnings in accordance with the preceding paragraph shall be deducted from future monthly benefits payable to him under this Pension Plan.

The annual earnings limitation provisions of this subsection (e) shall not be applicable to any mutually satisfactory retirement with benefits payable commencing on or after October 1, 1990 and prior to September 14, 1993.

(f) If a retired employee has been receiving a pension under Section 3 of this Article II and has been receiving a supplement and on the basis of medical evidence satisfactory to the Corporation it is found that he is no longer totally and permanently disabled and his seniority is restored, or if he is reemployed by the Corporation, he shall not thereby forfeit any right he may thereafter have to receive a supplement if he thereafter retires under this Pension Plan.

(g) If the total of the employee's monthly pension under this Pension Plan and his monthly early

retirement supplement or interim supplement receivable as computed above would exceed 70% of his final base pay, his monthly supplement (but not his monthly pension) shall be reduced to the extent required so that such monthly pension plus his supplement will equal 70% of his final base pay. For this purpose, an employee's final base pay shall mean 173 1/3 times his Base Hourly Rate as defined in Article X.

Section 7. Special Benefit

(a) A retired employee or a surviving spouse, (i) age 65 or older, or (ii) under age 65 and enrolled in the voluntary "Medicare" coverage that is available under the Federal Social Security Act by making contributions (in either case excluding the spouse of a former employee who received a deferred vested pension benefit under Article VII of the Plan), who is receiving a monthly benefit under Article II of the Plan which commenced prior to October 1, 1979, subject to (d) below, shall receive a monthly special benefit equal to:

(i) the lesser of \$28.00 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1990,

(ii) the lesser of \$31.00 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1991,

(iii) the lesser of \$34.00 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1992,

or (iv) the lesser of \$38.50 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1993.

(b) In no event shall such payment commence prior to the first day of the month following the earlier of (i) the month during which age 65 is attained, or

(ii) for enrollments effective prior to October 1, 1990 receipt by the Corporation of application on a form provided for this purpose from an otherwise eligible individual under age 65; except that, with respect to an otherwise eligible individual under age 65, payment shall commence with the first month of such enrollment, but in no event prior to October 1, 1979.

(c) Not more than one such payment shall be made to any individual for any one month. No such payment shall be made to any individual under age 65 for any month such individual is not enrolled for such voluntary "Medicare" coverage. No such payment shall be made under this Plan to any individual who retires with benefits payable commencing on or after October 1, 1979.

(d) Effective January 1, 1991, the special benefit payable to, an individual who is not enrolled in "Medicare" Part B as of October 1, 1990, but who was receiving a special benefit, will be limited to \$28.00 per month. Such an individual will become entitled to the schedule of payments in subsection (a) above, upon proof of enrollment in "Medicare" Part B. Thereafter, continued receipt of a special benefit will be contingent on maintenance of "Medicare" Part B enrollment.

(e) For an individual enrolled in "Medicare" Part B as of October 1, 1990, or who first becomes eligible for "Medicare" Part B on or after October 1, 1990, receipt of a special benefit on and after January 1, 1991 is contingent upon continued enrollment in "Medicare" Part B.

Section 8. Benefits for Employees Who Retired With Benefits Payable Commencing Prior to October 1, 1990.

An employee who retired under Article II of the Plan with benefits payable commencing prior to October 1, 1990, or the eligible surviving spouse of

such an employee, shall be entitled to the benefits, if any, under the Plan as it existed immediately prior to such date, except that

(a) (1) Benefits payable to such retired employees or surviving spouses shall be increased to the extent necessary to provide monthly benefits equal to the benefits which would have been payable had the basic pension benefits payable to the employee after age 65 been based on the following table:

Retirement With Benefits Payable Commencing	Benefit Class Code	Basic Benefit Rate Per Year of Credited Service For Months Commencing	October 1, 1990 and After
		\$	
Prior to October 1, 1979	N/A	20.00*	
October 1, 1979 through September 1, 1980	A	21.25	
	B	21.50	
	C	21.75	
	D	22.00	
October 1, 1980 through September 1, 1981	A	21.35	
	B	21.60	
	C	21.85	
	D	22.10	
October 1, 1981 through September 1, 1984	A	21.45	
	B	21.70	
	C	21.95	
	D	22.20	
October 1, 1984 through September 1, 1985	A	24.10	
	B	24.35	
	C	24.60	
	D	24.85	

*Including, if applicable, \$1.00 waived for election of a special survivor option.

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Retirement With Benefits Payable Commencing	Benefit Class Code	Basic Benefit Rate Per Year of Credited Service For Months Commencing	October 1, 1990 and After
		\$	
October 1, 1985 through September 1, 1986	A	24.20	
	B	24.45	
	C	24.70	
	D	24.95	
October 1, 1986 through September 1, 1987	A	24.30	
	B	24.55	
	C	24.80	
	D	25.05	
October 1, 1987 through September 1, 1988	A	27.30	
	B	27.55	
	C	27.80	
	D	28.05	
October 1, 1988 through September 1, 1989	A	27.40	
	B	27.65	
	C	27.90	
	D	28.15	
October 1, 1989 and prior to October 1, 1990	A	27.50	
	B	27.75	
	C	28.00	
	D	28.25	

(2) Benefits payable to employees retired on and after October 1, 1973, shall be based on the Benefit Class Code applicable to the employee, determined as though the maximum base hourly rate of the employee's job classification had included the amount of any wage inequity adjustment made applicable to such job classification on or after September 14, 1973, and prior to the employee's loss of seniority.

(3) If an employee, whose monthly basic benefit otherwise would have been redetermined at age 62 attains age 62 on or after March 1, 1982, such redetermination shall be effective at age 62 and one month.

(b) Any temporary benefits payable to such retired employees until age 65 if retired with benefits payable commencing before March 1, 1974, or age 62 if retired with benefits payable commencing on or after March 1, 1974 or age 62 and one month for a retired employee who attains age 62 on or after March 1, 1982, or, in any case, if earlier, until the age at which the employee becomes or could have become eligible for a Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age shall be increased to the extent necessary to provide monthly temporary benefits equal to the temporary benefits which would have been payable had the temporary benefits payable to the employee prior to such age 65 (or age 62 or age 62 and one month) or earlier age been based on the following:

Retires With Benefits Payable Commencing	Monthly Temporary Benefit Amount*	
	Per Year of Credited Service	Maximum
Prior to September 1, 1964	\$ 11.50	\$ 300.00
September 1, 1964 and prior to October 1, 1967	12.00	300.00
October 1, 1967 and prior to October 1, 1970	12.25	306.25
October 1, 1970 and prior to March 1, 1974	12.75	318.75
March 1, 1974 and prior to October 1, 1976	13.75	343.75
October 1, 1976 and prior to October 1, 1978	14.25	356.25
October 1, 1978 and prior to October 1, 1979	15.25	381.25
October 1, 1979 and prior to October 1, 1980	16.25	406.25
October 1, 1980 and prior to October 1, 1981	17.25	431.25
October 1, 1981 and prior to January 1, 1983	18.25	456.25
January 1, 1983 and prior to October 1, 1985	18.25	547.50

*Benefit payable for months commencing October 1, 1990.

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Retires With Benefits Payable Commencing	Monthly Temporary Benefit Amount*	
	Per Year of Credited Service	Maximum
October 1, 1985 and prior to October 1, 1986	19.25	\$ 577.50
October 1, 1986 and prior to October 1, 1987	20.25	607.50
October 1, 1987 and prior to October 1, 1988	20.45	613.50
October 1, 1988 and prior to October 1, 1989	21.55	646.50
October 1, 1989 and prior to October 1, 1990	22.65	679.50

* Benefit payable for months commencing October 1, 1990.

(c) (1) An employee who retired under Article II of this Plan with 30 or more years of credited service who is receiving a monthly supplement which commenced prior to October 1, 1990 shall receive an increase to such monthly supplement as follows:

Effective Date of Increase	Amount of Increase*	
	Payable to Age 62 and One Month	Payable Between Ages 62 and One Month - 64
October 1, 1990	\$ 75.00	\$ 37.50

* This increase will not result in a total monthly benefit of less than \$1,100 for months prior to age 62 and one month, or \$350 for months between ages 62 and one month and 64.

The amount of any monthly supplement payable to an employee who retired under Article II of the Plan with benefits commencing prior to October 1, 1990 shall be redetermined to the amount of supplement which would have been payable had the applicable benefit rates set forth in this Section 8 been in effect when such employee's benefits commenced. If such retired employee is entitled as of October 1, 1990 to receive Social Security benefits, and if he became so entitled before October 1, 1990 any increase in the rate of temporary pension provided in provision (b) of this Section 8 shall not be considered in redetermining his supplement until he ceases to be so entitled.

(2) An employee who retired under Article II of this Plan at his option after attaining age 55 with less than 30 years of credited service who is receiving an interim supplement which commenced prior to October 1, 1990 shall receive, for months commencing on and after October 1, 1990, an increase to such interim supplement, as follows:

Age at Retirement	Monthly Increase Per Year of Credited Service
55	\$ 0.55
56	0.65
57	0.80
58	0.95
59	1.05
60	1.20
61	1.20

(d) The survivor benefit payable to the surviving spouse of a retired employee who has completed an election of a special survivor option and who dies after such election becomes effective, shall be a monthly benefit for the further lifetime of such surviving spouse equal to:

(1) \$7.00 for each year of credited service that such retired employee had at the date of his retirement, with respect to benefits payable for any month commencing October 1, 1990 through September 1, 1991.

(2) \$8.00 for each year of credited service that such retired employee had at the date of his retirement, with respect to benefits payable for any month commencing October 1, 1991 through September 1, 1992, and

(3) \$9.00 for each year of credited service that such retired employee had at the date of his retirement, with respect to benefits payable for any month commencing on or after October 1, 1992.

(c) An employee who retired under Article II of the Plan, or who is eligible for a deferred pension pursuant to the provisions of Section 2 of Article VII of the Plan, and who has surviving spouse coverage in effect but whose designated spouse predeceases him, may have his monthly basic pension benefit restored to the amount payable without such coverage, effective the first day of the third month following the month in which the Corporation receives evidence satisfactory to the Corporation of the spouse's death.

(f) In lieu of receiving a reduced amount of any increase in benefits otherwise payable to him under this Section 8 on or after April 1, 1971 in order to provide an increase in the amount of survivor benefit otherwise payable, an employee who retired under Article II of the Plan with benefits payable commencing prior to November 23, 1970, who is divorced by court decree, and for whom the terms of a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) do not expressly prohibit cancellation of the survivor annuity, from his designated spouse for whom he has a survivor benefit

coverage in effect, may elect to receive the full amount of such increase. To make such election, he must complete a form approved by the Corporation and file it with the Corporation, accompanied by evidence satisfactory to the Corporation of a final decree of divorce, in which case such election shall become effective with respect to benefits falling due for months commencing on the first day of the third month following the month in which the Corporation receives such completed election form and final decree of divorce.

(g) An employee who retired or retires under Article II of the Plan with benefits payable commencing on or after January 1, 1962; who marries, or remarries, subsequent to the earliest date a survivor benefit coverage was in effect, or was not in effect on such date solely because the retired employee was not then married, may elect, or re-elect, a survivor benefit coverage. Any such coverage, and the benefits thereunder, shall be provided under the terms and conditions of the Plan in effect at the time of the employee's retirement. Such coverage shall become effective on the first day of the third month following the month in which the Corporation receives a completed election form, but in no event before the first day of the month following the month in which the retired employee has been married one year.

No election provided hereunder shall become effective under any circumstance for any retired employee whose completed election form is received by the Corporation after the first day of the month in which the retired employee has been married one year.

This subsection (g) also shall be applicable to an employee retired with benefits payable commencing on or after October 1, 1990.

(h) Monthly benefits payable under this Section 8 on and after October 1, 1990 shall not be limited by the 70% benefit limitation in Section 6(g) of this Article II.

(i) The monthly amount of any lifetime supplement payable to an employee retired with benefits payable commencing on or after March 1, 1974 with 30 or more years of credited service shall be \$35.00.

Section 9. Employees Not Actively at Work

The absence of an employee from active work at the time such employee would be eligible to retire under the Plan shall not preclude the employee's retirement without return to active work.

Section 10. Joint and Survivor Coverage

(a) In lieu of the monthly basic benefit otherwise payable, an employee who retires pursuant to the provisions of Section 3 of this Article II who is under age 55 and has less than 30 years of credited service shall be deemed to have elected automatically a reduced amount of monthly basic benefit, up to and including the month in which he dies or attains age 55, whichever occurs first, and a monthly survivor's benefit, beginning on the first day of the month after the retired employee would have reached age 55 if he dies before the first day of the month after he would have reached age 55, shall be payable to his designated spouse during the further lifetime of the spouse.

(b) This automatic election shall be deemed to have been made at the time the employee shall apply or shall have applied for a disability pension benefit (with the election being effective the first day of the month for which his first benefit under the Plan is payable).

(c) The automatic election provided in this Section 10 shall be applicable only with respect to a spouse to whom the employee is married on the date of such election and only if the retired employee and his spouse shall have been married throughout the one-year period ending on the date of the retired employee's death.

(d) An employee may prevent the automatic election provided in this Section 10 at the time such election would otherwise be deemed to have been made, as set forth in subsection (b) of this Section 10, by specific written rejection which includes the written consent of his spouse witnessed by the plan representative or a notary public on a form approved by the Corporation.

(e) In any event, the election shall automatically be canceled:

(i) if the employee's disability retirement status terminates other than by death prior to the first day of the month after the retired employee attains age 55, or

(ii) if the retired employee survives on a disability retirement status until the first day of the month after he attains age 55, at which time the coverage described in Section 5 of this Article II becomes applicable.

(f) The amount of the monthly basic benefit payable to an employee deemed to have made the election provided hereunder shall be determined by reducing actuarially the amount of such benefit for the cost of the survivor benefit payable in the event of the retired employee's death before the first of the month following the attainment of age 55. The actuarial reduction shall be based on the age of the retired employee and his spouse (the age of each being

determined as the age at his or her birthday nearer the date on which the benefits commence) and shall reflect the higher mortality associated with being disabled. Reduction factors at selected ages for disability survivor coverage before age 55 are set forth in the following table:

Age of Employee When Benefits Commence	Age Difference Between Disabled Employee and Spouse					
	Spouse Is:					
	10 Years Younger	5 Years Younger	Same Age	5 Years Older	10 Years Older	
30	% 8.6	% 8.1	% 7.5	% 6.7	% 5.9	
35	% 10.4	% 9.9	% 9.2	% 8.3	% 7.2	
40	% 12.5	% 11.8	% 11.0	% 10.0	% 8.8	
45	% 14.3	% 13.5	% 12.7	% 11.6	% 10.3	
50	% 13.9	% 13.2	% 12.4	% 11.4	% 10.2	
51	% 13.1	% 12.5	% 11.7	% 10.8	% 9.7	
52	% 10.4	% 9.9	% 9.3	% 8.6	% 7.7	
53	% 3.4	% 3.2	% 3.0	% 2.8	% 2.5	
54	% 3.4	% 3.3	% 3.1	% 2.8	% 2.5	

NOTE: Actuarial reduction factors for ages not shown will be calculated on the same basis as the factors shown.

(g) The amount of the monthly benefit payable to the surviving spouse of a retired employee deemed to have made the election specified hereunder shall be 50% of the amount of the monthly basic benefit payable to the retired employee after the reduction provided in subsection (f) of this Section 10.

(h) Anything in the Plan to the contrary notwithstanding, if the designated spouse of a retired employee deemed to have made the election provided

hereunder shall predecease, such retired employee, or they are divorced by court decree and a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) does not provide to the contrary, such retired employee shall have his monthly basic benefit restored to the amount payable without such election, effective the first day of the third month following the month in which the Corporation receives evidence satisfactory to the Corporation of the spouse's death or divorce.

(i) No benefit shall be payable under this Section 10 for any month for which benefits are payable under Article II, Section 5(h) or Section 11 of this Plan.

(j) Information regarding this coverage is included in the summary plan description, which will be provided to each employee. Within a reasonable period prior to the annuity starting date, each participant shall be provided a written explanation of: (i) the terms and conditions of the surviving spouse coverage; (ii) the participant's right to make and the effect of an election to waive the surviving spouse coverage; (iii) the rights of the participant's spouse; and (iv) the right to make and the effect of a revocation of a previous selection to waive the surviving spouse coverage.

Section 11. Pre-Retirement Survivor Coverage to Comply With the Retirement Equity Act of 1984

(a) An employee who:

(i) has either 5 or more years of credited service, or 5 years of "service" as provided under Article III, Section 6, or

(ii) breaks seniority on or after October 1, 1990 and who is eligible for a deferred pension under Article VII, Section 2,

and in either case is not eligible for the survivor benefit coverage provided under Section 5 of this Article II, shall have the pre-retirement survivor coverage described herein.

Such coverage shall remain in full force and effect until the date on which the employee or former employee becomes eligible for the survivor benefit coverage provided under Article II, Section 5, at which time the pre-retirement survivor coverage described herein shall cease to be effective.

In the event the employee or former employee predeceases, the designated spouse while the pre-retirement survivor coverage provided hereunder is in effect, the designated spouse shall be eligible, during the further lifetime of such spouse, for a monthly benefit commencing on the first of the month following the month in which the employee or former employee would have become eligible; except for the fact that he died, to retire at the option of the employee.

The amount of any such monthly survivor benefit shall be determined by the basic benefit rate in effect for the employee on the date of death of such employee, or the date seniority broke for a former employee.

(b) The survivor coverage provided hereunder for an employee or former employee shall be effective on the date the employee or former employee attains 5 years of credited service or "service" as provided under Article III, Section 6.

(c) The survivor coverage provided hereunder shall be effective with respect to a spouse to whom the employee or former employee is married, but only if the couple shall have been married throughout the one-year period ending on the date of the employee's or former employee's death.

(d) Subsections (b) and (c) notwithstanding, if an employee or former employee marries or remarries, such coverage shall be in effect in favor of his spouse upon such marriage or remarriage, unless, in the case of remarriage, a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) requires such coverage to remain in effect for the former spouse. The effective date of any such coverage shall be in accordance with subsection (c) of this Section 11.

(e) In the event of divorce, the employee or former employee can revoke the coverage provided hereunder without spousal consent, unless a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) provides to the contrary.

(f) The coverage provided hereunder shall be canceled automatically on the date when any employee or former employee becomes eligible for the survivor coverage provided under the provisions of Article II, Section 5 of the Plan.

(g) The monthly benefit amount payable hereunder to any eligible surviving spouse shall be 50% of the monthly amount of the basic benefit as determined in Article VII, Section 2(b), otherwise payable at the (i) date of death to the employee; or (ii) date seniority broke for a former employee, after any reduction provided in Section 2(c) of Article VII.

(h) No benefit shall be payable under this Section 11 for any month for which benefits are payable under Article II, Section 5 or Section 10 of this Plan.

(i) Information regarding the coverage provided hereunder is included in the summary plan description, which will be provided to each employee covered by the Pension Plan, in accordance with The Employee Retirement Income Security Act (ERISA).

(f) The pre-retirement survivor coverage provided hereunder will apply to eligible employees and former employees separated from service:

- (1) whose last day worked for the Corporation was on or after October 1, 1976, and
- (2) who have entitlement to but have not commenced receipt of deferred vested benefits, and
- (3) who are alive as of August 23, 1984.

ARTICLE III

CREDITED SERVICE

Section 1. Credited Service Subsequent to October 1, 1950

(a) (1) Credited service shall be computed for each calendar year for each employee on the basis of total hours compensated by any plant or Division of the Corporation during such calendar year while the employee has unbroken seniority. Employment while covered under The GM Special Pension Plan shall not be credited hereunder, except for an employee with seniority on March 1, 1988, who has not received a cash payment representing his accrued benefit under The GM Special Pension Plan. Any calendar year in which the employee has 1700 or more compensated hours shall be counted a full calendar year. Where the employee's total hours compensated during a calendar year are less than 1700 hours, a proportionate credit shall be given to the nearest 1/10 of a year.

(2) For the purpose of computing credited service, hours of pay at premium rate shall be computed as straight time hours.

(b) For the purpose of computing compensated hours under subsection (a) of this Section 1:

(1) An employee with seniority on or after January 1, 1968 who is absent from work during any calendar year thereafter because of layoff or while on a Corporation approved sick leave, shall be credited with 40 hours for each complete calendar week of such absence during such year in addition to any other hours credited provided that such employee shall have received pay from the Corporation during that year for at least 170 hours, and provided further, that if such absence commences in calendar year 1970, or later, and such layoff or sick leave continues into the following year he shall be credited with 40 hours for each complete calendar week of absence in the following year, not to exceed 1530 hours of credit for all such absence related to receipt of such pay from the Corporation in the first year.

An employee who is recalled from permanent layoff and returns to work on or after October 1, 1990 shall become eligible for the 1530 hours of credit hereunder, applicable during a sick leave or layoff, on the later of: (1) receipt of pay from the Corporation for at least 170 hours, or (2) the day next following the 12th week of pay from one or more GM plants within a calendar year. If the employee receives pay from the Corporation for 170 or more hours prior to the 12th week in (2) immediately above, the employee shall become eligible for "bank" hours equal to the number of hours worked since recall, plus any "bank" hours to which he was entitled immediately before such return to work, but in no case to exceed 1530 hours.

An employee who returns to work on or after October 1, 1979 and receives pay for a period of less than 170 hours and who thereafter returns to such layoff or sick leave, shall not be disqualified, solely because of the receipt of such pay, from receiving any such credit for which he otherwise would be eligible hereunder. For the purposes of this subsection only, an employee who is laid off subsequent to

October 1, 1979 and whose first day of absence due to such layoff is the first regularly scheduled work day in the January next following his last day worked shall be deemed to have been laid off on December 31 of the year in which he last worked. A part-time employee shall be credited for any week of such absence in the same percentage relationship as such employee's regular part-time schedule is to 40 hours.

An employee who (i) is at work on or after October 1, 1990; (ii) has 10 or more years of seniority at time of layoff commencing on or after October 1, 1990; (iii) while on such layoff has received the maximum of 1530 hours of credit for periods of absence due to layoff or Corporation approved sick leave in accordance with the preceding paragraph of this Section 1(b)(1); and (iv) continues thereafter to be absent due to such layoff shall be credited with 40 hours for each complete calendar week of absence due to such layoff up to a maximum of 1700 hours of credit.

(2) An employee who is absent from work because of occupational injury or disease incurred in the course of such employee's employment with the Corporation, and on account of such absence receives Workers' Compensation while on Corporation approved leave of absence shall be credited with 40 hours for each complete calendar week of such absence after September 1, 1961.

(c) Any salaried employee transferred to an hourly-rate job who thereby becomes an employee covered by the Plan shall have credited to the nearest 1/10 year any credited service the employee had as of the date of such transfer under any Corporation retirement plan for salaried employees.

(d) If an employee who retired is rehired, such employee may accumulate additional credited service by reason of such reemployment.

(e) For the purpose of computing compensated hours under subsection (a) of this Section 1:

(1) An employee who after October 1, 1950 and prior to June 1, 1955 was absent from work because he entered into active service in the armed forces of the United States and who was given a Corporation approved leave of absence for such period shall be credited with the number of hours that the employee would have been scheduled to work during such absence.

(2) An employee, who on or after June 1, 1955 was or is absent from work to enter into (or remain in) active service in the armed forces of the United States and for that reason was or is given a Corporation approved leave of absence, shall be credited with 40 hours for each complete calendar week that he is on such leave; provided, however, that credited service based on such hours shall not exceed four years (including credited service, if any, granted under subsection (e)(1) of this Section 1), or such longer period during which he has reemployment rights pursuant to any Federal law, and provided, further, that the employee is reemployed in accordance with the terms of such leave of absence or, if reemployed by the Corporation at a location other than the location from which the leave was granted, within 90 days from the date of his discharge from the armed forces.

(f) Any employee hired on an hourly-rate job by a plant or Division of the Corporation, who has credited service under any Corporation retirement plan for salaried employees or who has lost credited service under any such plan, shall, upon making proper application, have such service credited to the nearest 1/10 year, provided that the employee acquires or acquired seniority following the loss of such credited service.

(g) If a former salaried employee who is entitled to a deferred retirement benefit under Part A of the General Motors Retirement Program for Salaried Employees is reemployed by the Corporation and acquires seniority prior to the commencement of such deferred retirement benefit, such employee shall, upon making proper application, have reinstated, in lieu of the deferred retirement benefit, the credited service lost at the time the employee became entitled to such deferred retirement benefit.

(h) An employee with at least five years of seniority:

(1) on January 1, 1968 who was absent from work because of layoff during any calendar year after December 31, 1955 and before January 1, 1963, or

(2) on December 10, 1973 who was absent from work because of layoff during any calendar year after December 31, 1950 and before January 1, 1956, or

(3) on October 1, 1979 who was absent from work because of layoff during any calendar year after December 31, 1962 and before January 1, 1968, or

(4) on October 1, 1984 who was absent from work because of layoff during any calendar year after December 31, 1978 and before January 1, 1984

shall be credited with 40 hours for each complete calendar week of such absence, not previously credited under this Section 1, during which he had seniority multiplied by a percentage as set forth in the following table:

Employee's Seniority on January 1, 1968 in the Case of (1) Above or December 10, 1973 in the Case of (2) Above or October 1, 1979 in the Case of (3) Above or October 1, 1984 in the Case of (4) Above	%
20 years or more	100
15 years but less than 20 years	75
10 years but less than 15 years	50
5 years but less than 10 years	25

provided that the employee makes proper application.

(i) In no event shall any employee be credited with more than 1700 hours, including compensated hours, in any calendar year. No employee shall be credited with any service after retirement. There shall be no duplication of credited service under the Plan. Not more than one year of credited service shall be credited to any employee in any calendar year, except as otherwise provided in Section 5 of this Article III with respect to foundry service.

(j) Notwithstanding any other Section of this Article III, in the case of an employee who shall retire on or after October 1, 1990, the employee's credited service for the period before January 1, 1966 shall not be less than the employee's seniority as of December 31, 1965 as determined under the Collective Bargaining Agreement.

Section 2. Loss of Credited Service

An employee will lose all credited service for purposes of this Plan:

- (a) if the employee quits,
- (b) if the employee is discharged or released,
- (c) if the employee's seniority is broken for any other reason.

Section 3. Reinstatement of Credited Service

(a) Any employee with seniority on or after October 1, 1990 who breaks seniority and thereby loses or has lost credited service under Section 2 of this Article III and then is or was later reemployed by any plant or Division of the Corporation shall, upon making proper application, have such credited service reinstated provided the employee subsequently acquires or acquired seniority.

(b) Any employee retired under the provisions of this Plan who subsequently has seniority reinstated, will have credited service at the time of retirement reinstated.

Section 4. Service With a Foreign Subsidiary

An employee with seniority on or after October 1, 1990 whose employment as an hourly or salaried employee with a directly or indirectly wholly-owned or substantially wholly-owned foreign subsidiary of General Motors Corporation has been terminated other than by retirement, shall be granted credited service under this Plan for any periods of active service with such foreign subsidiary or, if greater, the amount of service credited to such employee under any pension or retirement plan of the foreign subsidiary at the time of his termination, provided such service was prior to

his most recent period of active service credited under this Plan.

Any monthly benefits payable under this Plan to a retired employee who has received credited service under this Section 4 will be reduced by an amount equivalent to the total of any monthly benefits that could be payable to such employee under any retirement plan to which the foreign subsidiary has contributed, excluding, however, any such plan or any portion of any such plan providing retirement benefits purchased solely by voluntary employee contributions. Any survivor's benefits payable under this Plan to a survivor of such an employee shall be subject to similar reduction by monthly survivor's benefits payable under any plan to which the foreign subsidiary has contributed.

Section 5. Foundry Service

An employee with seniority on or after October 1, 1990 who at retirement has over 10 years of credited service which he accrued while employed on certain foundry job classifications as set forth in Appendix B, shall receive additional credited service related thereto. Total credited service for any such employee who retires with benefits payable commencing on or after October 1, 1975 shall be the sum of (i) credited service otherwise credited to him, and (ii) any such additional credited service which shall be credited to him in accordance with the following table:

Years of Credited Service Credited on Foundry Jobs	Additional Credited Service
For years 1 through 10	0
For years 10.1 through 25	33-1/3%
For years over 25	20%

If any such employee is continuously employed exclusively on such foundry jobs in a calendar year such additional credited service shall apply to any credited service otherwise credited to him for such year. If any such employee (i) is not continuously employed in a calendar year or (ii) is employed on other than such foundry jobs in such year, such additional credited service shall apply to any credited service otherwise credited to him for such year in accordance with the following table:

If Credited Service Otherwise Credited to Employee For Calendar Year is	Additional Credited Service Applies to Such Year Only if Employee Spent Following Minimum Number of Complete Calendar Weeks on Foundry Jobs During Such Year
1.0 (year)	26
.9	23
.8	21
.7	18
.6	16
.5	13
.4	10
.3	8
.2	5
.1	3

No additional credited service shall be granted for any calendar year in which any such employee spends less than the minimum required number of complete calendar weeks on such foundry jobs, as indicated above.

If any such employee is on such foundry job at the time he goes on layoff or approved leave of absence, such additional credited service shall apply to any

credited service otherwise credited to him while on such layoff or approved leave of absence.

Section 6. Hours, Years and Breaks in Service to Comply With The Employee Retirement Income Security Act of 1974

(a) An employee who breaks seniority on or after October 1, 1976 who would be eligible for a deferred pension under Article VII, Section 2, except solely for the fact that he does not have at least 5 years of credited service under the foregoing Sections of this Article III, shall be eligible for a deferred pension under the provisions of Article VII, Section 2, if, at the time the employee breaks seniority, he has 5 years of service solely as determined under this Section 6.

(b) The monthly amount of any such deferred pension shall be based solely on the credited service that the employee had under the foregoing Sections of this Article III when he broke seniority.

(c) No employee shall be eligible to be covered under this Section 6 until he (i) attains age 21, or (ii) completes 1 year of service under this Section 6, whichever is later. Retired employees shall participate immediately.

(d) An employee shall complete 1 year of service when he completes 750 hours of service in the 12 consecutive month period beginning with his employment commencement date. If an employee fails to complete 750 hours of service in such period, he shall complete 1 year of service in the first 12 consecutive month period thereafter in which he completes 750 hours of service, measured from each succeeding anniversary of his employment commencement date. Thereafter, an employee shall complete 1 year of service during each 12 consecutive month period in which he completes 750 hours of

service, measured from the anniversary of his employment commencement date. A year of service under this Section 6 shall include service (i) with affiliated group members accrued subsequent to acquisition, (ii) rendered to the Corporation as a former leased employee (but only upon employee application, supported by substantiation satisfactory to the Corporation of such service), and (iii) rendered to the Corporation as a salaried employee in accordance with I.R.C. Section 414(b), (c), (m), (n), and (o).

(e) An employee who satisfies the eligibility requirements of this Section 6, and who is otherwise entitled to participate in the Plan, shall commence participation under this Section 6 if he satisfies such requirements (i) between April 1 and September 30, on the first day of the plan year beginning after the date on which such requirements are satisfied, or (ii) between October 1 and March 31, on the first day of the plan year that includes the date such requirements are satisfied, but in no event shall any employee participate hereunder if he breaks seniority prior to such commencement date.

(f) An employee shall complete an hour of service under this Section 6 for each hour for which he is paid by the Corporation for working or for which he is paid by the Corporation for having been entitled to work. Any hours for which an employee receives pay for having been entitled to work, irrespective of mitigation of damages, shall be credited to the period of periods he was so entitled, rather than to the period in which he receives such pay. There shall be no duplication of any hours of service under this Section 6.

(g) Solely for purposes of determining years of service for vesting under this Section 6, all of the employee's years of service shall be taken into account except the following: (i) years of service before age 18

(age 22 prior to October 1, 1985); (ii) years of service before January 1, 1971, unless the employee has at least 3 years of service after December 31, 1970; (iii) years of service prior to any 1-year break in service as defined herein, until the employee completes a year of service after such break; (iv) for non-vested participants under this section, years of service prior to any 1-year break in service if the number of such consecutive breaks equals or exceeds the aggregate number of years of service prior to such break, for a non-vested participant at work on or after October 1, 1985, years of service prior to any 1-year break in service if the number of such consecutive breaks equals or exceeds the greater of 5, or the aggregate number of years of service prior to such break (such aggregate number of years of service before such break shall not include any "years of service" not required to be taken into account under this Section 6 by reason of any prior break in service); (v) years of service before October 1, 1976, if such service would have been disregarded under rules of the Plan as in effect on October 1, 1976, regarding breaks in service; and (vi) any year in which the employee completes less than 750 hours of service.

(h) An employee shall incur a 1-year break in service under this Section 6 in any 12 consecutive month period during which he does not complete more than 375 hours of service, measured from the anniversary of his employment commencement date. Solely for purposes of determining whether an employee has incurred such 1-year break in service, in addition to hours worked which are paid by the Corporation, any hours which an employee does not work but for which he is paid by the Corporation for vacation, sickness or disability, or is entitled to be so paid, directly or indirectly, shall be taken into consideration. For any absence from work commencing on and after October 1, 1985 by reason of pregnancy of the individual, childbirth, placement

Art. III, 6(h)

of a child related to an adoption, or for child care purposes immediately following such birth or placement, the employee shall be credited with the hours of work for which he otherwise would have been scheduled, or, if unable to determine such scheduled hours, 8 hours for each work day of such absence, not to exceed a total of 501 hours for any such absence. Such hours shall be credited in the year in which the absence commences if necessary to prevent incurring a 1-year break in service, otherwise such hours shall be credited in the immediately following year.

Section 7. Asbestos Service

An employee with seniority on or after October 1, 1990 who at retirement has over 10 years of credited service which was accrued while employed on certain asbestos job classifications as set forth in Appendix C, shall receive additional credited service related thereto in the same manner as set forth in Section 5 of this Article III.

ARTICLE IV

REDETERMINATIONS ON ACCOUNT OF SOCIAL LEGISLATION

Section 1. Redeterminations for Federal Social Security Benefits for Age or Disability

(a) The benefits payable for age or disability under the Federal Social Security Act, as amended, as now in effect, or as hereafter amended, which are referred to in the determination of pensions under Article II shall be included in such determination even though the employee either does not apply for, or loses part or all of such payments through delay in applying for them, by entering into covered employment, or otherwise.

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Art. IV, 1(b)

(b) Old age benefit payments or disability benefit payments, other than those payable on a basis of "need" or because of military service, under any future federal legislation, amending, superseding, supplementing, or incorporating the Federal Social Security Act, as amended, or benefits provided therein, shall be considered as benefits for age or disability under the Federal Social Security Act for the purposes of the Plan.

(c) If an employee is eligible for a Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age at the time of retirement or thereafter, such employee shall provide the Corporation with evidence of the effective date of entitlement to such benefit.

Section 2. Deductions for Workers Compensation

In determining the monthly benefits payable under this Plan, a deduction shall be made unless prohibited by law, equivalent to all or any part of Workers Compensation (including compromise or redemption settlements) payable to such employee by reason of any law of the United States, or any political subdivision thereof, which has been or shall be enacted, provided that such deductions shall be to the extent that such Workers Compensation has been provided by premiums, taxes or other payments paid by, or at the expense of the Corporation, except that no deduction shall be made for the following:

(a) Workers Compensation payments specifically allocated for hospitalization or medical expense, fixed statutory payments for the loss of any bodily member, or 100% loss of use of any bodily member, or payments for loss of industrial vision.

(b) Compromise or redemption settlements payable prior to the date monthly pension benefits first become payable.

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(c) Workers Compensation payments paid under a claim filed not later than two years after the breaking of seniority.

ARTICLE V

FINANCING

Section 1: Trust Fund

The Corporation shall execute a trust agreement with a trustee or trustees selected by the Corporation to manage and operate the pension fund and to receive, hold and disburse such contributions, interest and other income as may be necessary to pay such of the pensions and supplements or portions thereof under this Plan as are not provided for by an insured fund. The Corporation may establish an insured fund with such insurance company or companies as it may select for the payment of such of the pension and supplements or portions thereof under this Plan as are not provided for in a trustee fund.

The Corporation will determine the form and terms of any such trust agreement which may authorize the inclusion of obligations and stock (common and preferred) of the Corporation and its wholly-owned subsidiaries among the investments of the pension fund provided for by such trust agreement; may utilize any investment manager as defined under the Employee Retirement Income Security Act of 1974 or regulations thereunder; may modify any such trust agreement from time to time to accomplish the purposes of this Plan; may remove any trustee, and select any successor trustee; and select and change insurance companies.

Section 2: Contributions

(a) The Corporation, subject to Article IX, Section 1, shall make such contributions to the trustee

or pay such premiums under any insured contract for the purposes of providing pensions and supplements under the Plan as shall be required under accepted actuarial principles and Title I of the Employee Retirement Income Security Act of 1974 to maintain the Plan and pension or insured fund in a sound condition and shall pay for expenses incident to the operation and management of the Plan.

(b) The Corporation may charge to the fund expenses necessary for the proper administration of the Plan and investment of the funds, including the direct cost of benefit administration performed by, or on behalf of, the Corporation for the Plan, and Pension Benefit Guaranty Corporation premiums for participants.

(c) No employee shall be required to make any contributions to the Plan.

Section 3: Irrevocability

(a) The Corporation shall have no right, title or interest in the contributions made by it to the trustee and no part of the pension or insured fund shall revert to the Corporation, except that after satisfaction of all liabilities of the Plan as set forth in Article IX, such contributions as may have been made by the Corporation as the result of overpayments may revert to the Corporation.

(b) The pension benefits and supplements of the Plan shall be only such as can be provided by the assets of the pension fund or by any insured fund and there shall be no liability or obligation on the part of the Corporation to make any further contributions to the trustee or insurance company in event of termination of the Plan. No liability for the payment of pension benefits or supplements under the Plan shall be imposed upon the Corporation, the Officers, Directors or Stockholders of the Corporation, except as otherwise may be required by the Employee Retirement Income Security Act of 1974.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

WALTER J. LAWRENCE,

Plaintiff,

vs.

GENERAL MOTORS HOURLY-RATE
EMPLOYEES PENSION PLAN, and
GENERAL MOTORS CORPORATION,

Defendants.

Case No. 5:07-CV-408 OC

Hon. William Terrell Hodges
Magistrate Judge Gary R. Jones

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**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S RENEWED
MOTION TO STRIKE DEFENDANTS' AFFIRMATIVE DEFENSE
OF FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES
RE: DEFENDANT'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

WALTER J. LAWRENCE,

Plaintiff,

Case No. 5:07-CV-408 OC

vs.

Hon. William Terrell Hodges
Magistrate Judge Gary R. Jones

GENERAL MOTORS HOURLY-RATE
EMPLOYEES PENSION PLAN, and
GENERAL MOTORS CORPORATION,

Defendants.

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S RENEWED
MOTION TO STRIKE DEFENDANTS' AFFIRMATIVE DEFENSE
OF FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES
RE: DEFENDANT'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

INTRODUCTION

Plaintiff, Walter Lawrence, a tax evader and a very litigious retired employee of Defendant General Motors Corporation ("GM"), claims: (1) that Defendants General Motors and the General Motors Hourly-Rate Pension Plan ("Defendants") improperly alienated his pension in violation of the Employee Retirement Income Security Act of 1974, as amended, ERISA, 29 U.S.C. §§1001, *et seq.* by honoring a Notice of Tax Levy and remitting pension benefits to the Internal Revenue Service ("IRS"), and (2) that Defendants are not entitled to recover the resulting \$32,985.00 overpayment of pension benefits received by Plaintiff. Although the claims administrator forwarded \$32,985.00 to the IRS pursuant to the Levy, Plaintiff apparently feels that he has no obligation to reimburse the pension fund or to pay his federal taxes.

In any event, Plaintiff failed to exhaust available administrative remedies under the Supplement Agreement Covering Pension Plan with respect to the recovery of the \$32,985.00 overpayment. Under the Employee Retirement Income Security Act of 1974, as amended, ERISA, 29 U.S.C. §§ 1001 *et seq.*, a claimant who fails to exhaust his administrative remedies prior to filing

suit should have his case dismissed. Accordingly, Defendants properly asserted failure to exhaust remedies as an Affirmative Defense in this case.

On or about December 5, 2007, Plaintiff filed "Plaintiff's Rule #11 Motion for Sanctions" against Defendants alleging that Defendants violated Rule 11 when they asserted in their Affirmative Defenses to Plaintiff's original Complaint that "Plaintiff cannot maintain his claims because he has failed to fully exhaust administrative appeals available under the Supplemental Agreement Covering Pension Plan." (AD # 3). Exhibit A, attached hereto.

Plaintiff's Motion was promptly denied by the Court on January 29, 2008 (Exhibit B, attached hereto). The Court's Order states:

"Here, the Plaintiff has failed to establish that the affirmative defenses, which raise the issue of Plaintiff's failure to exhaust, should be stricken. Rather, the affirmative defenses that Plaintiff seeks to strike actually raise substantial questions of fact that the Court cannot and should not resolve on a motion to strike, before the record has been developed by the parties. Whether or not the Plaintiff has met all of ERISA's jurisdictional prerequisites is an issue that the Court can only address based upon a developed factual record and not, as here, simply because a party alleges that he has fully exhausted his administrative remedies. Accordingly, for these reasons, Plaintiff Rule #11 Motion For Sanctions (Doc. 17)-construed as a motion to strike-is due to be **DENIED**.

IT IS SO ORDERED."

Exhibit B.

On February 29, 2008, Plaintiff filed an Amended Complaint (Exhibit C, attached hereto). Defendants' filed their Answer and Affirmative Defenses to the Amended Complaint on March 17, 2008, again raising the same Affirmative Defense of failure to exhaust remedies (Exhibit D, attached hereto).

On April 16, 2008, Plaintiff filed a "Renewed Motion" to strike Defendants' Affirmative Defense based on his failure to exhaust administrative remedies, making the same arguments as in his initial Motion. However, in his Renewed Motion, Plaintiff relies on Federal Rule of Civil Procedure 12(f), which provides:

"Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days

after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

For all the reasons that follow, Plaintiff's Renewed Motion must be denied in its entirety.

STATEMENT OF FACTS

The GM/UAW Supplemental Agreement covering Pension Plan contains, at Appendix D, Section K, the appeal procedure available to participants to contest computation of their pension benefits or partial or complete suspension of their pension benefits:

1. Any employee who disputes a determination with respect to such employee's...(iii) computation of pension benefits or supplements under the Pension Plan, (iv) partial or complete suspension of supplements...may file with the Center a written claim on form BA 1, "Employee Claim to Pension Committee". Such claim shall be filed within 60 days, including the 60th day, or receipt of such determination.
2. In all cases where the employee has filed a claim on form BA 1, the Pension Committee shall review such claim with the employee, return one copy of form BA 1 to the employee with a written answer to the claim and, if the claim is rejected, the reasons therefor.
3. If the employee is not satisfied with the answer, such employee may request the Pension Committee, in writing on form BA 1, to refer the case to the Board for decision. Such claim shall be filed with the Pension Committee within 60 days, including the 60th day, of the employee's receipt of such answer. The Pension Committee shall then forward form BA 1, with material pertinent to the case and the answer to the employee's claim, to the Board.
4. If the Pension Committee should fail to agree upon the disposition of any application or authorization, or of any claim filed by an employee, the case shall be referred to the Board for determination on form BA 2, "Notice of Appeal to Board of Administration." A written signed statement setting forth all the facts and circumstances surrounding the case, and any material pertinent to the case, shall accompany the referral. Such statement may be submitted jointly by the members of the Pension Committee or separate signed statements may be submitted provided such statements are exchanged by the Pension Committee members prior to being submitted to the Board.
5. All material with respect to cases referred to the Board shall be submitted in duplicate and shall be mailed to the Secretary, Pension Board of Administration, Mail Code 482-B37-A68, General Motors Global Headquarters, 200 Renaissance Center, P.O. Box 200, Detroit, Michigan 48265-2000.
6. The Board shall advise the Pension Committee in writing of the disposition of any case referred to the Board by the Pension Committee. The Pension Committee shall forward a copy of such disposition to the employee.

7. Forms BA 1 and BA 2 for each appeal must be requested from the Secretary, Pension Board of Administration, Mail Code 482-B37-A68, General Motors Global Headquarters, 200 Renaissance Center, P.O. Box 200, Detroit, Michigan 48265-2000. (Defs.' Cross Motion for Summary Judgment, Ex D at 117-118).

In the present case, Plaintiff failed to utilize the above appeal procedure. He never submitted the designated form, or any other documents, to the Secretary of the Pension Board of Administration as required under the procedure. Instead, Plaintiff mailed letters to the Plan Administrator and the GM Benefits & Service Center on June 16, 2007 (45 pages), June 25, 2007 (55 pages) and July 11, 2007 (106 pages) (plus attachments) (*See* Pl. Rule #11 Motion for Sanctions, Exs I, J, K).

LAW AND ARGUMENT

I. Plaintiff's Renewed Motion is Untimely

Unlike his earlier Motion which was brought under Federal Rule of Civil Procedure 11 and denied by the Court, Plaintiff brings his current Motion under Federal Rule of Civil Procedure 12(f). First, Plaintiff should not get two bites at the apple on this issue simply by relying on and citing a different court rule. The Court has already ruled on this matter and Plaintiff is bound by that ruling.

Moreover, Plaintiff does not cite the language of Rule 12(f) correctly. (Pl. Renewed Motion, p. 8). He also erroneously asserts that, because Defendants can respond to his Amended Complaint, this somehow means that he "can bring this motion under Rule 12(f) more than 20 days, in contrast to within 20 days, after plaintiff was served with Defendants's [sic] Answer to Plaintiff's Amended Complaint." (Pl's Renewed Motion, p. 8). The correct language and interpretation of Rule 12(f) however, mandates that Plaintiff should have filed his Renewed Motion "within 20 days after the service of the pleading," i.e., the Defendants' Answer and Affirmative Defenses to his Amended Complaint. Contrary to Plaintiff's interpretation of the Rule, it is not whether *Defendants* can file a response to his Amended Complaint, but whether *he* can respond to Defendants' Answer and Affirmative Defenses. The "pleading," as intended by Rule 12(f), is the pleading which contains the allegedly offensive allegation and which the opposing party seeks to strike.

Plaintiff's construction of Rule 12(f) is wholly nonsensical. See Williams v. MacArthur, 2007 WL 64169 (D. Nev. 2007); Moore's Federal Practice 3d, § 12.37[5] ("If a party wishes the court to remove any matter from a pleading, it must move to strike before responding (e.g., filing an answer) or within 20 days of service of the offending pleading.").

Plaintiff's Renewed Motion was filed on April 16, 2008. Undisputedly, the pleading of Defendants to which his Renewed Motion responds is Defendants' Answer and Affirmative Defenses to Plaintiff's Amended Complaint, which were filed on March 17, 2008 (Exhibit A). Twenty days from March 17, 2008 is April 7, 2008. Clearly, therefore, Plaintiff has not filed his current Renewed Motion timely and the Motion should be summarily denied on these grounds.

II. Defendants Properly Raised the Affirmative Defense of Failure to Exhaust Remedies

Should the Court decide to consider Plaintiff's Motion despite its untimeliness, the Motion is nonetheless without merit and should be denied.

Federal Rule of Civil Procedure 8(c) provides:

"Affirmative Defenses. In pleading to a preceding pleading, a party **shall** set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, **and any other matter constituting an avoidance or affirmative defense...**". (Emphasis added)

Clearly, it was entirely proper and in compliance with the Rules of Civil Procedure for Defendants to plead the Affirmative Defense of Failure to Exhaust Administrative Remedies in their responsive pleadings. Moreover, Defendants would have risked waiving this defense had it never been raised. See, Engers v. AT & T, 428 F.Supp.2d 213, 226-228 (D. N.J. 2006); Legal Aid Society v. City of New York, 114 F.Supp.2d 204, 222 (S.D.N.Y. 2000).

Plaintiff's attempt to strike Defendants' Affirmative Defense as "insufficient" under Federal Rule of Civil Procedure 12(f) is without merit. It is well-settled that motions to strike are disfavored and will usually be denied unless the allegations have no possible relation to the controversy and may cause prejudice to the other party. Motions to strike will not be granted unless the insufficiency of

the defense is clearly apparent and no factual issues exist that should be determined in a hearing on the merits. See Resolution Trust Corp. v. Williams, 1994 WL 477231 (D. Kan. 1994). Further, Rule 12(f) motions are generally disfavored because they are often used as delaying tactics and because of the limited importance of pleadings in federal court. Rosales v. Citibank, 133 F.Supp.2d 1177, 1180 (N.D. Cal. 2001). The court must view the challenged pleading in the light most favorable to the pleader, i.e., Defendants, treating as admitted all material facts alleged and all reasonable presumptions that can be drawn therefrom. *Id.*

Courts also disfavor motions to strike because it proposes a drastic remedy. Moore's Federal Practice, 3d, § 12.37. The movant must make a strong showing to succeed in striking an affirmative defense, and the affirmative defense should be stricken only when it is insufficient on the face of the pleadings. *Id.* If sufficiency of the defense depends on disputed questions of fact or questions of law, a motion to strike should not be granted. *Id.*

In this case, not only must the Court look beyond the pleadings to determine the sufficiency of Defendants' exhaustion defense, thereby making Plaintiff's Motion improper, but, as shown below, the Affirmative Defense is unequivocally a meritorious one that must be allowed to stand.

III. The Appeal Procedure contained in the GM Supplemental Agreement to the Pension Plan Applies to Plaintiff

Just as he did in his original Motion, Plaintiff, in his Renewed Motion, erroneously contends that he does not meet the definition of "employee" under the Supplemental Agreement Covering Pension Plan and therefore was not required to exhaust his administrative remedies prior to filing suit (Pl. Renewed Motion at pp. 9-20). Such a claim has no merit and once again should be rejected by the Court.

Section 503 of ERISA, 29 U.S.C. § 1133, requires every employee benefit plan to include a procedure affording participants review of an adverse decision of a claim for benefits. The law is clear that plaintiffs in ERISA actions must exhaust available administrative remedies before suing in federal court. Bickley v. Caremark RX, Inc., 461 F.3d 1325, 1328 (11th Cir.2006). This exhaustion requirement applies equally to claims for benefits and claims for violation of ERISA

itself. Id. (citations omitted). Exhaustion of administrative remedies is a jurisdictional defense that when proven results in dismissal of the plaintiff's claims. Reyher v. Trans World Airlines, Inc., 881 F.Supp. 574, 576 (M.D.Fla.1995). The 11th Circuit strictly enforces the exhaustion requirement on ERISA claims with certain caveats reserved for exceptional circumstances. Perrino v. Southern Bell Telephone & Telegraph Co., 209 F.3d 1309, 1315 (11th Cir.2000).

As stated above, Plaintiff claims the appeal procedure in the Supplemental Agreement Covering Pension Plan does not apply to him because he is not an "employee." Contrary to his belief, courts have found that the appeal procedure contained in the Supplemental Agreement applies to retirees and even other non-employees despite those individuals not being specifically identified in the appeal procedure.¹

Furthermore, an examination of the appeal procedure itself shows it is applicable to retirees. Many of the appealable issues identified in the Supplemental Agreement are clearly issues which would only impact a retiree. These issues include: computation of pension benefits or supplements under the Pension Plan; partial or complete suspension of supplements; and credited service under the Pension Plan (Def.'s Cross Motion for Summary Judgment, Ex. D at 117). Despite his attempts to wriggle out from the appeal procedure in the Supplemental Agreement, the appeal procedure is applicable to Plaintiff and had to be exhausted before he filed this present action.

Plaintiff also claims that Defendants cannot rely upon the summary plan description ("SPD") to show he failed to exhaust his administrative remedies because the SPD was never integrated into the Plan (Pl. Motion for Summary Judgment at 24-25). However, the SPD also contains an appeal procedure:

¹ See Pitchford v. General Motors Corp., 248 F.Supp.2d 675, 678 fn.1 (W.D. Mich.2003) (Even if former employee properly brought his claims under ERISA, such claims would have failed because he failed to exhaust his administrative remedies under Section K of Appendix D under the Plan); Lloyd v. General Motors Hourly Rate Employees Pension Plan, et al., 1 Fed.Appx 789, 790 (10th Cir. 2001) (Retiree's claims dismissed because he failed to exhaust the administrative remedies available to him.); Duncan v. General Motors Corp., 2006 WL 375343 (W.D.Ark. 2006) (Surviving spouse who sought benefits had her case terminated to enable her to exhaust her administrative remedies under the Supplemental Agreement Covering Pension Plan).

If you do not agree with a GM decision that has been made with respect to (1) your age, (2) the amount of your credited service, or (3) the computation of your benefits, you may appeal this decision to your local pension committee. If (1) the local pension committee is unable to agree on your appeal, or (2) the committee agrees but you do not, your case may be referred to the GM-UAW Pension Board of Administration. If the Board members fail to agree, the Board may appoint an impartial chairman to resolve the dispute. The decision of the (1) Board, or (2) impartial chairman, will be binding on all parties. (Defs.' Cross Motion for Summary Judgment, Ex E).

Plaintiff's pension benefits are payable under the GM Pension Plan, incorporated within the Supplemental Agreement Covering Pension Plan, and he is subject to, and must utilize, the appeal procedure set forth at Section K of the Supplemental Agreement. Plaintiff should be in the same position as other GM retirees who have attempted to sue Defendants without exhausting their administrative remedies and hence, his claims should be dismissed.

IV. Plaintiff Failed to Exhaust his Remedies

Even if Plaintiff is correct, which he is not, and Defendants failed to comply with the technical requirements of ERISA by not delineating an appeal procedure, it still does not excuse Plaintiff's failure to exhaust his administrative remedies.

In Perrino v. Southern Bell Telephone & Telegraph Co., *supra*, the plaintiffs attempted to claim they were excused from exhausting their administrative remedies because the defendants failed to comply with ERISA by providing a summary plan description or a formal claims procedure. The court soundly rejected this argument, holding that non-compliance with ERISA does not excuse a retiree's duty to exhaust his administrative remedies:

We find Appellants' arguments unpersuasive. After reviewing the relevant federal regulations and our prior precedent, we decline to create an exception to the exhaustion requirement in this case.

* * * *

Our prior precedent makes clear that the exhaustion requirement for ERISA claims should not be excused for technical violations of ERISA regulations that do not deny plaintiffs meaningful access to an administrative remedy procedure through which they may receive an adequate remedy.

Perrino, 209 F.3d at 1316-1317.

The result should be no different in this case. Although Plaintiff sent multiple letters to GM's Service & Benefit Center and the Plan Administrator, apparently in an attempt to exhaust administrative remedies, he did not follow the proper procedure set forth in the Supplemental

Agreement and in the Summary Plan Description. Thus, Plaintiff failed to exhaust his administrative remedies before filing suit and as explained below, his claims should be dismissed.

In the present case, Plaintiff was a participant in the GM Pension Plan. That Plan is incorporated within the Supplemental Agreement covering Pension Plan. Both documents were collectively bargained between General Motors and the International Union, UAW. Appendix D of the Supplemental Agreement contains the detailed procedure for employees to contest decisions with which they disagree, including computation of pension benefits and/or partial or complete suspension of payments (*See* Section I(B); Defs.' Cross Motion for Summary Judgment, Ex. D at 117). By law Plaintiff had to exhaust this procedure before filing the instant suit. If not, his suit can be dismissed. *See* Section II(A), *supra*.

The appeal procedure in the Supplemental Agreement Covering Pension Plan is very specific. All appeals must be submitted on the designated form and mailed to the Secretary, Pension Board of Administration (Defs.' Cross Motion for Summary Judgment, Ex. D at 118). Here, Plaintiff sent letters to the GM Benefits & Service Center and the Plan Administrator. That is not the proper procedure. Plaintiff was required to strictly comply with the appeal procedure contained in the GM/UAW Supplemental Agreement Covering Pension Plan if he wished to challenge Defendants' decision to recover an overpayment by reducing his pension. Plaintiff's failure to exhaust his administrative remedies should result in the dismissal of his claims.²

CONCLUSION

Plaintiff's Renewed Motion is untimely as it was filed more than 20 days after Defendants filed their Answer and Affirmative Defenses to Plaintiff's Amended Complaint. In addition,

² Pitchford v. General Motors Corp., 248 F. Supp.2d 675, 678 fn.1 (W.D. Mich.2003)(Even if former employee properly brought his claims under ERISA, such claims would have failed because he failed to exhaust his administrative remedies under Section K of Appendix D under the Plan); Lloyd v. General Motors Hourly Rate Employees Pension Plan, et al., 1 Fed. Appx 789, 790 (10th Cir. 2001) (Retiree's claims dismissed because he failed to exhaust the administrative remedies available to him.); Duncan v. General Motors Corp., 2006 WL 375343 (W.D. Ark. 2006) (Surviving spouse who sought benefits had her case terminated to enable her to exhaust her administrative remedies under the Supplemental Agreement Covering Pension Plan).

Plaintiff's Motion is improper where it cannot be decided solely by looking at the pleadings. Further, Defendants' Affirmative Defense is properly raised and should be allowed to stand where the evidence beyond the pleadings clearly shows that Plaintiff failed to exhaust his remedies.

WHEREFORE, Plaintiff's Renewed Motion to Strike Defendants' Affirmative Defense should be denied and Defendants should be awarded any and all applicable costs, sanctions and attorney fees for having to defend this Motion.

Respectfully submitted:

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Dated: April 28, 2008
00206050 WPD

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

WALTER J. LAWRENCE,

Plaintiff,

Case No. 5:07-CV-408 OC

vs.

Hon. William Terrell Hodges
Magistrate Judge Gary R. Jones

GENERAL MOTORS HOURLY-RATE
EMPLOYEES PENSION PLAN, and
GENERAL MOTORS CORPORATION,

Defendants.

_____ /

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the Notice of Electronic Filing by first-class mail to the following non-CM/ECF participant:

Walter J. Lawrence, 3101 SW 34th Avenue, # 905, Ocala, Florida 34474.

/s/ David M. Davis

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Dated: April 28, 2008

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**DEFENDANTS' ANSWER AND BRIEF IN OPPOSITION TO PLAINTIFF'S SECOND
MOTION FOR SUMMARY JUDGMENT RE: AMENDED COMPLAINT**

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**UNITED STATES DISTRICT COURT
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Magistrate Judge Gary R. Jones

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EMPLOYEES PENSION PLAN, and
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**DEFENDANTS' ANSWER AND BRIEF IN OPPOSITION TO PLAINTIFF'S SECOND
MOTION FOR SUMMARY JUDGMENT RE: AMENDED COMPLAINT**

INTRODUCTION

Plaintiff, Walter Lawrence, filed his original Complaint in this matter on October 9, 2007, alleging that Defendants violated the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001 et seq. by reducing his pension benefits following payment by General Motors Corporation of an outstanding IRS tax levy incurred by Plaintiff.

Defendants filed their Answer and Affirmative Defenses thereto on November 16, 2007. In Affirmative Defense No. 3, Defendants asserted that "Plaintiff cannot maintain his claims because

he has failed to fully exhaust administrative appeals available under the Supplemental Agreement Covering Pension Plan.”

On February 12, 2008, Plaintiff filed his initial Motion for Summary Judgment. Shortly thereafter, on February 29, 2008, Plaintiff filed an Amended Complaint. The amendments included a substantial number of additional factual allegations, but the legal causes of action asserted in the Amended Complaint are essentially the same as in the original Complaint, with the exception of additional claims in Count II of the Amended Complaint wherein Plaintiff contends that he was denied adequate notice of and opportunity to respond to the denial of his pension benefit claims and a “full and fair review”(Amended Complaint, Paras. 58-60).

On March 7, 2008, Defendants filed a Response in Opposition to Plaintiff’s Motion for Summary Judgment and a Cross-Motion for Summary Judgment (hereafter, Defs’ Cross-Motion for Summary Judgment). Both Plaintiff’s initial Motion for Summary Judgment and Defendants’ Cross-Motion remain pending for decision by the Court.

On March 17, 2008, Defendants filed their Answer and Affirmative Defenses to Plaintiff’s Amended Complaint. Again, in Affirmative Defense No. 3, Defendants asserted that “Plaintiff cannot maintain his claims because he has failed to fully exhaust administrative appeals available under the Supplemental Agreement Covering Pension Plan.”

Now, on April 28, 2008, Plaintiff has filed yet another Motion for Summary Judgment regarding his Amended Complaint. Defendants respond to this latest Motion as follows:

STATEMENT OF FACTS

A. The Events That Led to the Overpayment of Pension Benefits to Plaintiff in the Amount of \$32,985

The complete, relevant facts have already been presented to the Court in Defendants’ initial Brief in Opposition to Plaintiff’s first Motion for Summary Judgment and Cross-Motion for Summary Judgment. Therefore, a condensed version of the facts follows simply to refresh the Court’s recollection of this case.

Plaintiff is a former General Motors hourly employee whose terms and conditions of employment were governed by the GM-UAW Collective Bargaining Agreements, and its Supplemental Agreements. Plaintiff retired from General Motors with benefits commencing on March 1, 1993. Upon his retirement Plaintiff began receiving a monthly pension benefit of \$1,045.50 per month.

In 1999 GM received a notice from the Internal Revenue Service (“IRS”) that Plaintiff had failed to pay his income taxes in 11 different years. Plaintiff’s failure to pay his income taxes resulted in a tax liability and penalties of over \$267,000.00 (Defs.’ Cross-Motion for Summary Judgment, Ex A). The IRS’ notice included a levy against Plaintiff’s pension benefits. Based on the levy, GM remitted Plaintiff’s monthly pension benefits to the IRS, thereby reducing Plaintiff’s monthly benefit to \$0.00.

In 2005 the Plan switched claims administrators from Electronic Data Systems Corporation (“EDS”) to Fidelity Investments Institutional Operations Company, Inc., (“Fidelity”). In approximately January 2005, due to a mis-communication between EDS and Fidelity, Plaintiff’s monthly pension benefit of \$1,045.50 was restored. However, Fidelity continued to remit to the IRS \$1,099.50 per month on behalf of Plaintiff to satisfy his tax liability, without concurrently reducing his pension. Fidelity continued to make these payments to the IRS without the concurrent deduction from Plaintiff’s pension benefits until June 2007, when the error was discovered. In total, \$32,985.00 was paid to the IRS, thus resulting in an overpayment to Plaintiff in that amount.

On May 14, 2007 the Fidelity / GM Benefits & Service Center advised Plaintiff of the overpayment and informed him of the steps to be taken to recover the overpayment. (Defs.’ Cross-Motion for Summary Judgment, Ex B.)

Effective July 1, 2007, Plaintiff’s monthly pension benefit was reduced to \$0.00 to recoup the overpayments. Id. Subsequently, on September 5, 2007, Plaintiff was informed that he would

receive 50% of his pension until the overpayment was recouped. (Defs.' Cross-Motion for Summary Judgment, Ex C).

B. Description of the Available Appeal Procedure Under the General Motors Hourly-Rate Employees Pension Plan

The GM/UAW Supplemental Agreement Covering Pension Plan contains, at Appendix D, Section K, the appeal procedure available to participants to contest computation of their pension benefits or partial or complete suspension of their pension benefits:

1. Any employee who disputes a determination with respect to such employee's...(iii) computation of pension benefits or supplements under the Pension Plan, (iv) partial or complete suspension of supplements...may file with the Center a written claim on form BA 1, "Employee Claim to Pension Committee". Such claim shall be filed within 60 days, including the 60th day, of receipt of such determination.
2. In all cases where the employee has filed a claim on form BA 1, the Pension Committee shall review such claim with the employee, return one copy of form BA 1 to the employee with a written answer to the claim and, if the claim is rejected, the reasons therefor.
3. If the employee is not satisfied with the answer, such employee may request the Pension Committee, in writing on form BA 1, to refer the case to the Board for decision. Such claim shall be filed with the Pension Committee within 60 days, including the 60th day, of the employee's receipt of such answer. The Pension Committee shall then forward form BA 1, with material pertinent to the case and the answer to the employee's claim, to the Board.
4. If the Pension Committee should fail to agree upon the disposition of any application or authorization, or of any claim filed by an employee, the case shall be referred to the Board for determination on form BA 2, "Notice of Appeal to Board of Administration." A written signed statement setting forth all the facts and circumstances surrounding the case, and any material pertinent to the case, shall accompany the referral. Such statement may be submitted jointly by the members of the Pension Committee or separate signed statements may be submitted provided such statements are exchanged by the Pension Committee members prior to being submitted to the Board.
5. All material with respect to cases referred to the Board shall be submitted in duplicate and shall be mailed to the Secretary, Pension Board of Administration, Mail Code 482-B37-A68, General Motors Global Headquarters, 200 Renaissance Center, P.O. Box 200, Detroit, Michigan 48265-2000.
6. The Board shall advise the Pension Committee in writing of the disposition of any case referred to the Board by the Pension Committee. The Pension Committee shall forward a copy of such disposition to the employee.

7. Forms BA 1 and BA 2 for each appeal must be requested from the Secretary, Pension Board of Administration, Mail Code 482-B37-A68, General Motors Global Headquarters, 200 Renaissance Center, P.O. Box 200, Detroit, Michigan 48265-2000.

Defs.' Cross-Motion for Summary Judgment, Ex D at pp. 117-118.

In the present case, Plaintiff failed to utilize the above appeal procedure. He never submitted the designated form, or any other documents, to the Secretary of the Pension Board of Administration as required under the procedure. Instead, Plaintiff mailed letters to the Plan Administrator and the GM Benefits & Service Center on June 16, 2007 (45 pages), June 25, 2007 (55 pages) and July 11, 2007 (106 pages) (plus attachments) (*See* Pls' Rule # 11 Motion for Sanctions, Exs I, J, K).

LEGAL ARGUMENT

In his present Motion, which is extremely repetitive in its unfounded factual and legal allegations, and, to the extent Defendants comprehend his convoluted claims, Plaintiff now takes the position that he had no obligation to exhaust his administrative remedies because 1) Defendants had no procedures in place pursuant to which he could pursue his benefit claim; 2) the parties never entered into a "written authorization" which permitted Defendants to "alienate" Plaintiff's pension benefits; and 3) Defendants allegedly never responded to Plaintiff's "administrative claims of appeal" on three alleged occasions. Because of these alleged violations of ERISA, Plaintiff maintains that he should be "deemed" to have exhausted his administrative remedies such that his civil lawsuit may be maintained. In fact, Plaintiff asserts that "deemed exhausted" is the *standard of review* that should be applied in this case. (Pl's Motion, p. 2)

I. Defendants Had Clear and Specific Procedures Pursuant to Which Benefit Claims Could Be Appealed

In the present case, Plaintiff asserts that "defendants" [sic] failed to have any procedures through which plaintiff could have pursued his benefit claim." (Pl's Motion, p. 4). To the contrary, Defendants' Pension Plan fully complies with the ERISA Regulations which mandate that an employee benefit plan establish and maintain "reasonable procedures governing the filing of benefit

claims, notification of benefit determinations, and appeal of adverse benefit determinations.” 29 C.F.R. § 2560.503-1(b). Because Plaintiff’s allegations pertain only to his appeal of an adverse benefit decision, the applicable provision for appeals is set forth above in The GM-UAW Supplemental Agreement Covering Pension Plan, Appendix D, Section K. Defendants’ ERISA-mandated appeal procedures are unassailable in this case. In addition, contrary to Plaintiff’s argument, these procedures existed long before Plaintiff filed his suit for benefits in federal court (Pl’s Brief, p. 4).

Even if Plaintiff is correct, which he is not, and Defendants failed to comply with the technical requirements of ERISA by not delineating an appeal procedure, it still does not excuse Plaintiff’s failure to exhaust his administrative remedies.

In Perrino v. Southern Bell Telephone & Telegraph Co., 209 F.3d 1309 (11th Cir. 2000), the plaintiffs attempted to claim they were excused from exhausting their administrative remedies because the defendants failed to comply with ERISA by providing a summary plan description or a formal claims procedure. The Court soundly rejected this argument, holding that non-compliance with ERISA does not excuse a retiree’s duty to exhaust his administrative remedies:

We find Appellants’ arguments unpersuasive. After reviewing the relevant federal regulations and our prior precedent, we decline to create an exception to the exhaustion requirement in this case.

* * * *

Our prior precedent makes clear that the exhaustion requirement for ERISA claims should not be excused for technical violations of ERISA regulations that do not deny plaintiffs meaningful access to an administrative remedy procedure through which they may receive an adequate remedy.

209 F.3d at 1316-1317.

The result should be no different in this case. Although Plaintiff sent multiple letters to GM’s Service & Benefit Center and the Plan Administrator, apparently in an attempt to exhaust administrative remedies, he did not follow the proper procedure set forth in the Supplemental Agreement and in the Summary Plan Description. Thus, Plaintiff failed to exhaust his administrative remedies before filing suit and his claims should be dismissed.

II. The Summary Plan Description is Binding

Next, Plaintiff alleges that he should be deemed to have exhausted his administrative remedies because he appealed the denial of his claims by using the addresses contained in the Summary Plan Description (“SPD”). He asserts that not only is the SPD a document which was not agreed to, negotiated by the Defendants or incorporated into the Pension Plan, but contends Defendants have “rejected” the SPD and therefore, his reliance on those addresses should be excused (Pl’s Motion, pp. 3-4). Plaintiff could not be more wrong.

First, SPDs are *required* to be maintained and furnished to every plan participant and beneficiaries. ERISA, 29 U.S.C. § 1102(a)(1); 29 U.S.C. § 1024(b). SPDs are also required to be filed in compliance with ERISA’s reporting and disclosure requirements. It is the “statutorily established means of informing participants of the terms of the plan and its benefits.” 29 U.S.C. §§ 1022(a) and 1102; 29 C.F.R. § 2520.102-2. SPDs are generally considered part of the ERISA plan documents. Alday v. Container Corp., 906 F.2d 660, 665 (11th Cir. 1990).

In addition, the SPD in this case specifically states in its preamble that “This booklet summarizes all of the outstanding benefit plans covering you and your family. Changes resulting from the GM-UAW negotiations are included in the benefit program descriptions contained in this booklet.” (AR p.92)¹ Not only is the SPD a summary of the Pension Plan itself, but contrary to Plaintiff’s belief, it is not an “amendment” to the Plan that must be negotiated or agreed to. Nonetheless, the SPD specifically states:

“The GM-UAW Pension Board of Administration and the GM-UAW SUB and GIS Boards of Administration have reviewed and approved the explanatory material related to pensions, supplemental unemployment benefits and guaranteed income stream benefits, respectively. The International Union, UAW, has reviewed and approved the material related to life and disability and health care coverages, the Profit Sharing Plan and the Personal Savings Plan.”

¹ AR refers to the Administrative Record filed in this case.

(AR p. 94) Plaintiff erroneously allege that the SPD terms were not “negotiated,” when it fact the SPD is simply a summary of the *negotiated* Pension Plan terms.

Plaintiff relies on Shaw v. Connecticut General Life Ins. Co., 353 F.3d 1276 (11th Cir. 2003), and Slomcenski v. Citibank, N.A., 432 F.3d 1271 (11th Cir. 2005), for the proposition that the SPD is not part of the underlying Pension Plan. In Shaw, the underlying plan did not grant the administrator discretionary authority to decide claims for benefits, but the SPD did grant such authority. However, the plan expressly provided for an “amendment” procedure and also contained an “integration clause” precluding changes unless done in compliance with the amendment procedure. The court held that because the employer and insurance company in Shaw did not follow the amendment procedure and there was “integration” language, they could not rely on the discretionary language provision contained in the SPD. Id. at 1284.

Shaw is easily distinguished Here the grant of discretionary authority in this case is clearly spelled out in the Pension Plan itself (Defs.’ Cross-Motion for Summary Judgment, Ex D, p. 9). Similarly, in Slomcenski, the disputed language was present in the SPD but not in the underlying or original disability benefits plan. The Slomcenski court, although acknowledging the holding in Shaw, *supra*, nonetheless held that the “SPD is sufficiently formal to meet the amendment procedure requirements of the both [sic] ERISA and our circuit...” Id. at 1279. Therefore, Slomcenski does not support Plaintiff’s position in this case. See also, Campbell v. Chevron Phillips Chemical Co., 2006 WL 2380896 (E.D.Tex. 2006) (summary plan descriptions are considered ERISA documents, and may serve as a written plan the terms of which are binding, citing Alday v. Container Corp., *supra*, 906 F.2d 660, 665 (11th Cir. 1990).

Finally, Plaintiff’s argument that the Pension Plan contains a “zipper clause” which does not provide for an SPD is wholly meritless, where, as stated above, SPDs are a *requirement* under ERISA.

III. Defendants Did Not Violate the Notification Provision of ERISA

Finally, Plaintiff relies on the “deemed exhausted” language based on his misguided belief that Defendants did not timely respond to his appeals, allegedly in violation of 29 C.F.R. § 2560.503-1(f) which states that “the plan administrator shall notify the claimant...of the plan’s adverse benefit determination within a reasonable period of time, but not later than 90 days after receipt of the claim by the plan, unless the plan administrator determines that special circumstances require an extension of time for processing the claim...” *Id.* In the present case, Plaintiff contends that Defendants did not respond at all to his appeals, and therefore “the 90 day time period was ignored.” (Pl’s Motion, p. 2-3). However, this argument is without merit because Defendants have no legal obligation to respond to improperly submitted appeals. Plaintiff did not file his appeals according to the correct procedure, thereby obviating Defendants’ need to comply with 29 C.F.R. § 2560.503-1(f). The language in the Regulation is clear that, for the ninety day period to apply, there must be “receipt of the claim by the plan.” This presupposes that the claim must be properly submitted to the appropriate entity in order to entitle the claimant to the notification period set forth in Section 2560.503-1(f). Because Plaintiff did not properly follow the claim procedures, he cannot justifiably rely on the ninety day notice of denial period.

IV. The Arbitrary and Capricious Standard of Review Applies to the Review of Determinations Made Under the GM Pension Plan

Because Shaw does not govern the facts of this case, the discretionary authority granted to the Plan administrator must be honored by the court, unless the administrator’s decision is determined to have been arbitrary or capricious. The arbitrary and capricious standard of review applies in this case.

First, it must be pointed out that Plaintiff argues that the applicable standard of review in this case is the ‘deemed exhausted’ standard. However, the “deemed exhausted” principle is not a standard of review, but is a Department of Labor Regulation implemented in 2000 and applicable to ERISA claims filed on or after January 1, 2002. 29 C.F.R. § 2560.503-1(l). The Regulation provides:

(l) Failure to establish and follow reasonable claims procedures. In the case of the failure of a plan to establish or follow claims procedures consistent with the requirements of this section, a claimant shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502 (a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.”

Moreover, contrary to Plaintiff’s claim, it remains proper for the Court to apply the “abuse of discretion” standard of review when reviewing the administrative record even if the plaintiff is deemed to have exhausted his administrative remedies. See e.g., Hardt v. Reliance Standard Life Ins. Co., 494 F. Supp.2d 391 (E.D. Va. 2007); Neathery v. Chevron Texaco Corp., 2006 WL 4690902 (S.D. Cal. 2006).

In Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989), the United States Supreme Court defined the standard of review applicable to an administrator’s decision to deny benefits under an ERISA-covered plan:

[A] denial of benefits challenged under §1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan. Id. at 115.

The Court reasoned that general principles of trust law should govern the choice of the standard of review. Because a trustee’s discharging of his duties under a trust agreement is accorded deferential treatment only when the instrument grants the trustee discretion, the Court concluded that deference to an administrator’s decision is appropriate when discretion is delegated to the decision maker. Id. at 108-15.

The GM-UAW Supplemental Agreement Covering Pension Plan delegates to the Board of Administration the responsibility for considering appeals arising from a denial of benefits, such as in this case. The parties have collectively bargained that decisions of the Board of Administration are final and binding on the Union and its members, the employee or employees involved, and on General Motors:

(9) There shall be no appeal from any ruling by the Board which is within its authority. Each such ruling shall be final and binding on the Union, its members, the employee or employees involved, and on the Corporation, subject only to the

arbitrary and capricious standard of judicial review. (Defs.' Cross-Motion for Summary Judgment, Ex D at pp. 9-10).

Three decisions have considered the applicable standard of review for determinations made by the Board under the above procedures. In Lord v. General Motors Corp., 39 F.3d 1182 (6th Cir. 1994) (unpublished, copy attached) the Court reviewed the decision of the Pension Board of Administration which denied a claim under section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). The Court explained:

Section 502(a)(1)(B) of ERISA, 29 U.S.C. Sec. 1132(a)(1)(B), provides the exclusive remedy for a person seeking to clarify his rights and benefits under an ERISA-covered employee benefit plan. The "arbitrary and capricious" standard of review applies when a plan affords the administrator discretionary authority to construe the terms of the plan or to determine eligibility. Here, Section 3(a) of the Supplemental Agreement Covering Pension Plan empowered the Board of Administration to make final decisions regarding matters within its authority. In addition, Section 3(c) authorized the Board of Administration to formulate procedures for resolving disputes. The procedures enacted generally provided that independent doctors were to make final and binding determinations concerning benefit eligibility. Therefore, in view of this discretionary authority vested in the administrator, the "arbitrary and capricious" standard applies. Lord, slip opinion at p.2 (citations omitted)

Similarly, in Roberson v. General Motors Corporation, 801 F.2d 176 (6th Cir. 1986), the Court reviewed a section 502(a)(1)(B) claim for benefits arising from a decision under the GM Pension Plan. Again the Court explained that the standard of review was whether the determination was arbitrary and capricious:

The district court properly concluded that the appropriate standard of review of the board's denial of disability pension benefits to appellant is whether such action was arbitrary or capricious. "The standard for court review of a determination to deny pension benefits is whether the denial was arbitrary, capricious, or in bad faith." Id. at 180 (citations omitted).

See also Hawkins-Dunn v. General Motors Corp., 225 Fed.Appx. 358, 360 (6th Cir.2007) (Court found that the GM Pension Plan "gives the plan administrator authority to construe the terms of the plan, courts will only overturn the administrator's decision if it is arbitrary and capricious.")

The Eleventh Circuit has taken the same approach. In Adams v. Thiokol Corporation, 231 F.3d 837 (11th Cir. 2000), the Court explained the application of Firestone:

In Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109 S.Ct. 948, 103 L.Ed.2d 80 (1989), the Supreme Court discussed the appropriate standard of review in 29

U.S.C. § 1132(a)(1)(B) actions challenging a denial of benefits based on plan interpretations. A review under the arbitrary and capricious standard is appropriate where "the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Bruch*, 489 U.S. at 115, 109 S.Ct. 948. However, "if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a 'facto[r]' in determining whether there is an abuse of discretion." *Id.* (quoting Restatement (Second) of Trusts § 187, Comment *d* (1959)). "[T]he beneficiary need only show that the fiduciary allowed himself to be placed in a position where his personal interest *might* conflict with the interest of the beneficiary." *Brown v. Blue Cross and Blue Shield of Alabama, Inc.*, 898 F.2d 1556, 1565 (11th Cir.1990) (quoting *Fulton Nat'l Bank v. Tate*, 363 F.2d 562, 571 (5th Cir.1966) (underlined emphasis added, italicized emphasis in original)).

Id. at 842. Nevertheless, even under the heightened standard, the Court explained that when the issue involves interpretation of a plan provision, if the administrator's interpretation was correct, the inquiry ends:

Under the heightened standard, we must first determine the legally correct interpretation of the disputed plan provision. *Brown*, 898 F.2d at 1570; *Newell*, 904 F.2d at 651. If the administrator's interpretation was legally correct, the inquiry ends. *Collins v. American Cast Iron Pipe Co.*, 105 F.3d 1368, 1370 (11th Cir.1997). If the administrator's interpretation differs, we must then determine whether the administrator was arbitrary and capricious in employing a different interpretation. *Brown*, 898 F.2d at 1570; *Newell*, 904 F.2d at 651.

Id. at 843. (emphasis added). See also Carnaghi v. Phoenix American Life Insurance Company, 238 F.Supp. 1373 (N.D.Ga. 2002), where the Court, relying on Eleventh Circuit precedent, explained:

As the court explained in *Jones [v. Champion International Corporation]*, Civil Action No. 00- CV-1186-JOF]:

Under the line of cases dealing with the legal interpretation of the plan, if the administrator's interpretation was legally correct, the inquiry ends because the conclusion would be the same under any of the three standards of review. See, e.g., *Yochum v. Barnett Banks, Inc. Severance Pay Plan*, 234 F.3d 541, 544 (11th Cir.2000) (per curiam); *Collins v. American Cast Iron Pipe Co.*, 105 F.3d 1368, 1370 (11th Cir.1997); *Marecek v. BellSouth Telecommunications, Inc.*, 49 F.3d 702, 705 (11th Cir.1995).

Id. at 1376.

As explained above, in this case the Board of Administrators has the authority to interpret and apply the provisions of the General Motors Hourly-Rate Pension Plan. Thus, the question here

is whether the determination of General Motors was arbitrary and capricious. That question cannot be answered until the Court conducts its review of the Administrative Record.

In summary, the Court's review of determinations made by the Board of Administration under the GM Pension Plan is subject to the arbitrary and capricious standard. Further, Plaintiff cannot avoid the application of this standard merely because he failed to exhaust the available appeal procedure.

CONCLUSION AND RELIEF REQUESTED

Plaintiff's Second Motion for Summary Judgment should be denied. Plaintiff's claims should fail because he failed to exhaust his administrative remedies under the Supplemental Agreement. There was, at all relevant times, a valid, enforceable and binding appeal procedure in place which Plaintiff did not follow. He neither submitted his appeal on the designated form nor did he send his "appeal" to the Secretary, Pension Board of Administration as required by the appeal procedure.

Further, Defendants' Cross Motion for Summary Judgment filed on March 7, 2008 should be granted. Accordingly, Plaintiff's claims should be dismissed in their entirety and Defendants should be awarded any and all applicable costs, sanctions and attorney fees for having to defend this action.

Respectfully submitted:

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Dated: May 12, 2008
00206218.WPD

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

WALTER J. LAWRENCE,

Plaintiff,

Case No. 5:07-CV-408 OC

vs.

GENERAL MOTORS HOURLY-RATE
EMPLOYEES PENSION PLAN, and
GENERAL MOTORS CORPORATION,

Hon. William Terrell Hodges
Magistrate Judge Gary R. Jones

Defendants.

Walter J. Lawrence, In Pro Per
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Ocala, Florida 34474

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 12, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant: Walter J. Lawrence, #162, 3101 S.W. 34th Avenue, #90 Ocala, FL 34474.

/s/ David M. Davis

David M. Davis (MI Bar No. P24006)
Attorney for Defendants
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E-mail: dmd@hardylewis.com

Dated: May 12, 2008

EXHIBIT D

Notice of Levy

DATE: 05-19-1999 DIS. ST: Michigan
 REPLY TO: INTERNAL REVENUE SERVICE
 GARY P. SNYDER 38-04082
 GROUP 26
 22300 HALL RD. - STE 102
 CLINTON TWP, MI 48036

TELEPHONE NUMBER
 OF IRS OFFICE: (810) 493-4540

NAME AND ADDRESS OF TAXPAYER:

WALTER J. LAWRENCE
 23205 GRATIOT APT 188
 EASTPOINTE, MI 48021-1341

TO: GENERAL MOTORS CORPORATION
 NBD BANK TRUSTEE
 P.O. BOX 330222
 DETROIT, MI 48232-6222

IDENTIFYING NUMBER(S): 273-30-8004
 LAWR

Kind of Tax	Tax Period Ended	Unpaid Balance of Assessment	Statutory Additions	Total
1040	12/31/1980	21199.79		
1040	12/31/1981	38726.27	14107.64	35307.43
1040	12/31/1982	24736.99	25903.66	64629.93
1040	12/31/1983	62684.71	2570.63	27307.62
1040	12/31/1988	3733.44	12640.20	75324.91
1040	12/31/1989	3448.37	3320.84	7254.28
1040	12/31/1990	7109.23	4862.96	8311.33
1040	12/31/1991	5954.81	8133.12	15242.35
1040	12/31/1992	7808.55	1384.82	7339.63
1040	12/31/1993	6489.26	1874.66	9683.21
1040	12/31/1994	7515.38	1603.95	8093.21
			1919.63	9435.01
THIS LEVY WON'T ATTACH FUNDS IN IRAS, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLANS, OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL, UNLESS IT IS SIGNED IN THE BLOCK TO THE RIGHT.			Total Amount Due	267928.91

We figured the interest and late payment penalty to 05-19-1999

Although we have told you to pay the amount you owe, it is still not paid. This is your copy of a notice of levy we have sent to collect this unpaid amount. We will send other levies if we don't get enough with this one.

Banks, credit unions, savings and loans, and similar institutions described in section 408(n) of the Internal Revenue Code must hold your money for 21 calendar days before sending it to us. They must include the interest you earn during that time. Anyone else we send a levy to must turn over your money, property, credits, etc. that they have or are already obligated for) when they would have paid you.

If you decide to pay the amount you owe now, please bring a guaranteed payment (cash, cashier's check, certified check, money order) to the nearest IRS office with this form, so we can tell the person who received this levy not to send us your money. If you mail your payment instead of bringing it to us, we may not have time to stop the person who received this levy from sending us your money.

If we have erroneously levied your bank account, we may reimburse you for the fees your bank charged you for handling the levy. You must file a claim with the IRS on Form 8546 within one year after the fees are charged.

If you have any questions, or want to arrange payment before other levies are issued, please call or write us. If you write to us, please include your telephone number and the best time to call.

Notice of Levy

DATE: 04/19/1999
 DISTRICT: Michigan
 REPLY TO: INTERNAL REVENUE SERVICE
 GARY R SNYDER 38-04082
 GROUP 26
 22500 HALL RD. - STE 102
 CLINTON TWP, MI 48036

TELEPHONE NUMBER
 OF IRS OFFICE: (810)493-4540

NAME AND ADDRESS OF TAXPAYER:

WALTER J LAWRENCE
 23205 GRATIOT APT 188
 EASTPOINTE, MI 48021-1541

TO: GENERAL MOTORS CORPORATION
 NBD BANK TRUSTEE
 P.O. BOX 330222
 DETROIT, MI 48232-6222

IDENTIFYING NUMBER(S): 273-30-8004

LAWR

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Although we have told you to pay the amount you owe, it is still not paid. This is your copy of a notice of levy we have sent to collect this unpaid amount. We will send other levies if we don't get enough with this one.

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If you decide to pay the amount you owe now, please **bring** a guaranteed payment (cash, cashier's check, certified check, or money order) to the nearest IRS office with this form, so we can tell the person who received this levy not to send us your money. If you mail your payment instead of bringing it to us, we may not have time to stop the person who received this levy from sending us your money.

If we have erroneously levied your bank account, we may reimburse you for the fees your bank charged you for handling the levy. You must file a claim with the IRS on Form 8546 within one year after the fees are charged.

If you have any questions, or want to arrange payment before other levies are issued, please call or write us. If you write to us, please include your telephone number and the best time to call.

Signature of Service Representative *Gary R Snyder* Title

GARY R SNYDER 38-04082 REVENUE OFFICER

Part 2 - FOR TAXPAYER

FORM 668-A(c) (DO) (Rev. 9-97) 1570A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

WALTER J. LAWRENCE,

Plaintiff,

Case No. 5:07-CV-408 OC

vs.

Hon. William Terrell Hodges
Magistrate Judge Gary R. Jones

GENERAL MOTORS HOURLY-RATE
EMPLOYEES PENSION PLAN, and
GENERAL MOTORS CORPORATION,

Defendants.

Walter J. Lawrence, In Pro Per
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**DEFENDANTS' MOTION AND BRIEF IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND CROSS-MOTION FOR SUMMARY JUDGMENT**

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**DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND CROSS-MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

On February 12, 2008 Plaintiff Walter Lawrence ("Plaintiff") filed the instant Motion for Summary Judgment. Plaintiff's claims for summary judgment are premised on the following: (1) that Defendants General Motors and the General Motors Hourly-Rate Pension Plan ("Defendants") improperly alienated his pension in violation of the Employee Retirement Income Security Act of 1974, as amended, ERISA, 29 U.S.C. §§1001, *et seq.* by remitting pension benefits to the Internal Revenue Service ("IRS") after Defendants received a Notice of Tax Levy, and (2) that Defendants are not entitled to recover a \$32,985.00 overpayment of pension benefits received by Plaintiff which resulted from Defendants' error. Although the claims administrator forwarded \$32,985.00 to the IRS pursuant to the Levy, it failed to make the appropriate deduction from Plaintiff's pension benefits. Both of Plaintiff's claims are without merit. In fact, as explained herein, it is Defendants, not Plaintiff, who are entitled to summary judgment in this matter.

First, Plaintiff cannot recover from Defendants any monies they remitted to the IRS pursuant to the Notice of Levy. Upon receipt of the Levy, Defendants were obligated to abide by it and remit Plaintiff's pension benefits to the IRS to satisfy his tax liability. Once Defendants complied with the tax levy, they are immune from liability to Plaintiff for any monies remitted to the IRS. To the extent that Plaintiff contends the Notice of Levy contained a procedural deficiency, he should have pursued that issue with the IRS, not Defendants.

Plaintiff erroneously contends that Defendants should not have remitted his pension benefits to the IRS because a box on the Levy indicating that the levy applied to pension benefits was left unsigned. If Defendants had ignored the Levy, they would have been subject to substantial penalties. Moreover, Defendants do not have an obligation to contest any possible procedural deficiencies in the Notice of Levy. Regardless, a procedural defect in the Notice of Levy does not discharge the employer's obligation to honor an IRS levy. Even if the Plaintiff may have a defense premised upon

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a procedural defect, such defect does not entitle him to sue Defendants for recovery of the pension benefits forwarded to the IRS.

Second, Defendants, not Plaintiff, are entitled to summary judgment because Plaintiff failed to exhaust available administrative remedies under the GM Pension Plan with respect to the recovery of the \$32,985.00 overpayment. Under ERISA, a claimant who fails to exhaust his administrative remedies prior to filing suit should have his case dismissed.

Here, the GM/UAW Supplemental Agreement Covering Pension Plan contains a detailed appeal procedure. This procedure specifies how (on the proper form) and to whom (Secretary, Pension Board of Administration) appeals for a denial of benefits must be submitted. Plaintiff did not exhaust his administrative remedies. At no time did Plaintiff ever submit an appeal on the proper form and forward it to the proper place. Rather, Plaintiff sent all his "appeals" to the Plan Administrator or the GM Benefits & Service Center, not to the Secretary, Pension Board of Administration. Therefore, Plaintiff's claims should be dismissed.

Plaintiff erroneously suggests that he did not have to follow the appeal procedure in the Supplemental Agreement Covering Pension Plan because it is only applicable to employees. Such an argument is without merit. Courts have previously dismissed other cases brought against General Motors because the retiree and/or other non-employee (surviving spouse of a retiree) had failed to exhaust the available appeal procedure in the Supplemental Agreement. The result should be no different in this case.

COUNTER STATEMENT OF FACTS.

A. The Events That Led to the Overpayment of Pension Benefits to Plaintiff in the Amount of \$32,985

On October 9, 2007 Plaintiff filed the instant three count complaint against Defendants alleging violations of the Employee Retirement Income Security Act ("ERISA"), 29 USC §§1001, *et seq.* Plaintiff alleges that Defendants violated ERISA by remitting his pension benefits to the IRS and by reducing his pension by 50% to recover an overpayment of \$32,985.00.

Plaintiff is a former General Motors hourly employee whose terms and conditions of employment were governed by the GM-UAW Collective Bargaining Agreements, and its supplements.

Plaintiff retired from General Motors with benefits commencing on March 1, 1993. Upon his retirement Plaintiff began receiving a monthly pension benefit of \$1,045.50 per month.

In 1999 GM received a notice from the Internal Revenue Service ("IRS") that Plaintiff had failed to pay his income taxes in 11 different years. Plaintiff's failure to pay his income taxes resulted in a tax liability and penalties of over \$267,000.00 (Ex A). The IRS' notice included a levy against Plaintiff's pension benefits. Based on the levy, GM remitted Plaintiff's monthly pension benefits to the IRS, thereby reducing Plaintiff's monthly benefit to \$0.00.

In 2005 the Plan switched claims administrators from Electronic Data Systems Corporation ("EDS") to Fidelity Investments Institutional Operations Company, Inc., ("Fidelity"). In approximately January 2005, due to a mis-communication between EDS and Fidelity, Plaintiff's monthly pension benefit of \$1,045.50 was restored. However, Fidelity continued to remit to the IRS \$1,099.50 per month on behalf of Plaintiff to satisfy his tax liability, without concurrently reducing his pension. Fidelity continued to make these payments to the IRS without the concurrent deduction from Plaintiff's pension benefits until June 2007, when the error was discovered. In total, \$32,985.00 was paid to the IRS, thus resulting in an overpayment to Plaintiff in that amount.

On May 14, 2007 the Fidelity / GM Benefits & Service Center advised Plaintiff of the overpayment and informed him of the steps to be taken to recover the overpayment. The Fidelity letter, copy attached as Exhibit B, stated:

This is a revised statement of your Pension Benefits from General Motors. The revision and reason for the Pension Benefit Recalculation is:

- Benefits were not adjusted by the Tax Levy Amount of \$1,099.50
- Pension Overpayment

* * * *

Our records indicate you have received an overpayment of retirement benefits from 01/01/2005 through 06/01/07, a total of 30 months. The total amount of the overpayment is \$32,985.00. Because the Plan is an ERISA qualified Plan, we are required to collect overpayments and return them to the Plan's Trust Fund. (Ex B, 5/14/07 Letter).

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Effective July 1, 2007, Plaintiff's monthly pension benefit was reduced to \$0.00 to recoup the overpayments. Id. Subsequently, on September 5, 2007 Plaintiff was informed that he would receive 50% of his pension until the overpayment was recouped. (Ex C, 9/5/07 Letter).

B. Description of the Available Appeal Procedure Under the General Motors Hourly- Rate Employees Pension Plan

The GM/UAW Supplemental Agreement covering Pension Plan contains, at Appendix D, Section K, the appeal procedure available to participants to contest computation of their pension benefits or partial or complete suspension of their pension benefits:

1. Any employee who disputes a determination with respect to such employee's... (iii) computation of pension benefits or supplements under the Pension Plan, (iv) partial or complete suspension of supplements... may file with the Center a written claim on form BA 1, "Employee Claim to Pension Committee". Such claim shall be filed within 60 days, including the 60th day, or receipt of such determination.

2. In all cases where the employee has filed a claim on form BA 1, the Pension Committee shall review such claim with the employee, return one copy of form BA 1 to the employee with a written answer to the claim and, if the claim is rejected, the reasons therefor.

3. If the employee is not satisfied with the answer, such employee may request the Pension Committee, in writing on form BA 1, to refer the case to the Board for decision. Such claim shall be filed with the Pension Committee within 60 days, including the 60th day, of the employee's receipt of such answer. The Pension Committee shall then forward form BA 1, with material pertinent to the case and the answer to the employee's claim, to the Board.

4. If the Pension Committee should fail to agree upon the disposition of any application or authorization, or of any claim filed by an employee, the case shall be referred to the Board for determination on form BA 2, "Notice of Appeal to Board of Administration." A written signed statement setting forth all the facts and circumstances surrounding the case, and any material pertinent to the case, shall accompany the referral. Such statement may be submitted jointly by the members of the Pension Committee or separate signed statements may be submitted provided such statements are exchanged by the Pension Committee members prior to being submitted to the Board.

5. All material with respect to cases referred to the Board shall be submitted in duplicate and shall be mailed to the Secretary, Pension Board of Administration, Mail Code 482-B37-A68, General Motors Global Headquarters, 200 Renaissance Center, P.O. Box 200, Detroit, Michigan 48265-2000.

6. The Board shall advise the Pension Committee in writing of the disposition of any case referred to the Board by the Pension Committee. The Pension Committee shall forward a copy of such disposition to the employee.

7. Forms BA 1 and BA 2 for each appeal must be requested from the Secretary, Pension Board of Administration, Mail Code 482-B37-A68, General Motors Global Headquarters, 200 Renaissance Center, P.O. Box 200, Detroit, Michigan 48265-2000. (Ex D at 117-118).

In the present case Plaintiff failed to utilize the above appeal procedure. He never submitted the designated form, or any other documents, to the Secretary of the Pension Board of Administration as required under the procedure. Instead, Plaintiff mailed letters to the Plan Administrator and the GM Benefits & Service Center on June 16, 2007 (45 pages), June 25, 2007 (55 pages) and July 11, 2007 (106 pages) (plus attachments) (*See* Pl. Exs I, J, K). When Plaintiff failed to receive a response to his liking, he filed the instant lawsuit.

LAW AND ARGUMENT

I. The Arbitrary and Capricious Standard of Review Applies to the Review of Determinations Made Under the GM Pension Plan

Plaintiff, In his Motion, erroneously suggests that the applicable standard of review for determinations made under the GM Pension Plan is *de novo* (Pl. Motion at 10). However, when a plan grants discretionary authority to the plan administrator, as in this case, the proper standard of review is arbitrary and capricious.

A. Courts Have Determined The Arbitrary And Capricious Standard Is Applicable To Determinations Made Under the GM Pension Plan

The GM-UAW Supplemental Agreement Covering Pension Plan delegates to the Board of Administration the responsibility for considering appeals arising from a denial of benefits, such as in this case. The parties have collectively bargained that decisions of the Board of Administration are final and binding on the Union and its members, the employee or employees involved, and on General Motors:

(9) There shall be no appeal from any ruling by the Board which is within its authority. Each such ruling shall be final and binding on the Union, its members, the employee or employees involved, and on the Corporation, subject only to the arbitrary and capricious standard of judicial review. (Ex D at 9-10).

Three decisions have considered the applicable standard of review for determinations made by the Board under the above procedures. In Lord v. General Motors Corp., 39 F.3d 1182 (6th Cir. 1994) (unpublished, copy attached) the Court reviewed the decision of the Pension Board of Administration which denied a claim under section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). The Court explained:

Section 502(a)(1)(B) of ERISA, 29 U.S.C. Sec. 1132(a)(1)(B), provides the exclusive remedy for a person seeking to clarify his rights and benefits under an ERISA-covered employee benefit plan. The "arbitrary and capricious" standard of review applies when

a plan affords the administrator discretionary authority to construe the terms of the plan or to determine eligibility. Here, Section 3(a) of the Supplemental Agreement Covering Pension Plan empowered the Board of Administration to make final decisions regarding matters within its authority. In addition, Section 3(c) authorized the Board of Administration to formulate procedures for resolving disputes. The procedures enacted generally provided that independent doctors were to make final and binding determinations concerning benefit eligibility. Therefore, in view of this discretionary authority vested in the administrator, the “arbitrary and capricious” standard applies. Lord, slip opinion p. at 2 (citations omitted)

Similarly in Roberson v. General Motors Corporation, 801 F.2d 176 (6th Cir. 1986), the Court reviewed a section 502(a)(1)(B) claim for benefits arising from a decision under the GM Pension Plan. Again the Court explained that the standard of review was whether the determination was arbitrary and capricious:

The district court properly concluded that the appropriate standard of review of the board's denial of disability pension benefits to appellant is whether such action was arbitrary or capricious. “The standard for court review of a determination to deny pension benefits is whether the denial was arbitrary, capricious, or in bad faith.” Id. at 180 (citations omitted).

See also Hawkins-Dunn v. General Motors Corp., 225 Fed.Appx. 358, 360 (6th Cir.2007) (Court found that the GM Pension Plan “gives the plan administrator authority to construe the terms of the plan, courts will only overturn the administrator’s decision if it is arbitrary and capricious.”)

In summary, the Court’s review of determinations made by the Board of Administration under the GM Pension Plan are subject to the arbitrary and capricious standard. Further, Plaintiff cannot avoid the application of this standard merely because he failed to exhaust the available appeal procedure.

B. The Eleventh Circuit Has Adopted The Arbitrary And Capricious Review Standard When The Plan Is Granted Authority To Interpret The Plan’s Terms
In Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989), the United States Supreme Court defined the standard of review applicable to an administrator’s decision to deny benefits under an ERISA-covered plan:

[A] denial of benefits challenged under §1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan. Id. at 115.

The Court reasoned that general principles of trust law should govern the choice of the standard of

review. Because a trustee's discharging of his duties under a trust agreement is accorded deferential treatment only when the instrument grants the trustee discretion, the Court concluded that deference to an administrator's decision is appropriate when discretion is delegated to the decision maker. *Id.* at 108-15.

In *Adams v. Thiokol Corporation*, 231 F.3d 837 (11th Cir. 2000), the Court explained the application of *Firestone*:

In *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 109 S.Ct. 948, 103 L.Ed.2d 80 (1989), the Supreme Court discussed the appropriate standard of review in 29 U.S.C. § 1132(a)(1)(B) actions challenging a denial of benefits based on plan interpretations. A review under the arbitrary and capricious standard is appropriate where "the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Bruch*, 489 U.S. at 115, 109 S.Ct. 948.

However, "if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a 'facto[r]' in determining whether there is an abuse of discretion." *Id.* (quoting Restatement (Second) of Trusts § 187, Comment *d* (1959)). "[T]he beneficiary need only show that the fiduciary allowed himself to be placed in a position where his personal interest *might* conflict with the interest of the beneficiary." *Brown v. Blue Cross and Blue Shield of Alabama, Inc.*, 898 F.2d 1556, 1565 (11th Cir.1990) (quoting *Fulton Nat'l Bank v. Tate*, 363 F.2d 562, 571 (5th Cir.1966) (underlined emphasis added, italicized emphasis in original)). *Id.* at 842.

Nevertheless, even under the heightened standard, the Court explained that when the issue involves interpretation of a plan provision, if the administrator's interpretation was correct, the inquiry ends:

Under the heightened standard, we must first determine the legally correct interpretation of the disputed plan provision. *Brown*, 898 F.2d at 1570; *Newell*, 904 F.2d at 651. If the administrator's interpretation was legally correct, the inquiry ends. *Collins v. American Cast Iron Pipe Co.*, 105 F.3d 1368, 1370 (11th Cir.1997). If the administrator's interpretation differs, we must then determine whether the administrator was arbitrary and capricious in employing a different interpretation. *Brown*, 898 F.2d at 1570; *Newell*, 904 F.2d at 651. *Id.* at 843. (emphasis added)

In *Carnaghi v. Phoenix American Life Insurance Company*, 238 F.Supp. 1373 (N.D.Ga. 2002), the Court, relying on Eleventh Circuit precedent, explained that in cases, such as this, dealing with the interpretation of a plan provision, if the administrator's interpretation is legally correct the inquiry ends:

As the court explained in *Jones [v. Champion International Corporation]*, Civil Action No. 00-CV-1186-JOF/:

Under the line of cases dealing with the legal interpretation of the plan, if the administrator's interpretation was legally correct, the inquiry ends because the

conclusion would be the same under any of the three standards of review. *See, e.g., Yochum v. Barnett Banks, Inc. Severance Pay Plan*, 234 F.3d 541, 544 (11th Cir.2000) (per curiam); *Collins v. American Cast Iron Pipe Co.*, 105 F.3d 1368, 1370 (11th Cir.1997); *Marecek v. BellSouth Telecommunications, Inc.*, 49 F.3d 702, 705 (11th Cir.1995). Id. at 1376.

As explained above, in this case the Board of Administrators has the authority to interpret and apply the provisions of the General Motors Hourly-Rate Pension Plan. Thus, the question here is whether the determination of General Motors was arbitrary and capricious. Because that question will be answered based on a review of the administrative record, Plaintiff's Motion for Summary Judgment should be denied at this time.

C. Defendants' Decision To Remit Plaintiff's Pension To The IRS Was Not Arbitrary And Capricious Because It Was Mandated By Law

In 1999 General Motors Corporation received a Notice of Levy from the IRS regarding Plaintiff (Ex A). That Notice required Defendants to remit Plaintiff's pension benefits to the IRS in order to satisfy his substantial outstanding tax liability. As detailed above, GM has complied with the tax levy and remitted Plaintiff's pension benefits to the IRS.

On the tax levy a box appears which states:

This levy won't attach funds in IRAs, self-employed individuals' retirement accounts or any other retirement plans in your possession or control, unless it is signed in the block to the right. (Ex A).

Because this box was not signed, Plaintiff now erroneously claims in his motion that Defendants violated ERISA by alienating his pension benefits when it remitted them to the IRS. (Pl. Motion at 2).

This argument is without merit.

First, upon receipt Defendants were obligated to comply with the IRS levy:

...[A]ny person in possession of (or obligated with respect to) property or rights subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights (or discharge such obligation) to the Secretary, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process. Internal Revenue Code ("I.R.C."), 26 U.S.C. §6332(a) (emphasis added).

An IRS levy extends to property and rights to property which exist "at the time the levy is made," including a person's pension benefit. 26 C.F.R. § 301.6331-1(a); 26 C.F.R. § 1.401(a)-13(b)(2) (Provision providing for no assignment or alienation of benefits does not prevent enforcement of a Federal tax

levy).¹

An employer who refuses to honor a federal tax levy is liable to the IRS for the value of the employee's wages (or pension benefit) not surrendered, together with costs and interest from the date of such levy. I.R.C., 26 U.S.C. §6332(d)(1). In addition, unless Defendants can show "reasonable cause" why the levy was not honored, it must pay the Government a penalty equal to 50% of the amount stated above. I.R.C., 26 U.S.C. §6332(d)(2). *See also United States v. Ruff*, 99 F.3d 1559, 1563 (11th Cir.1996) ("Those individuals who fail to honor the Service's levy incur liability to the government equal to the full value of the property not surrendered.").

Second, Plaintiff cannot hold Defendants liable, or recover from them, the money remitted to the IRS for complying with the IRS levy. By complying with the IRS levy, any liability Defendants may have to Plaintiff is discharged:

Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (d)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or right to property arising from such surrender or payment. I.R.C., 26 U.S.C. §6332(e) (emphasis added).

In *Lawler v. Suntrust Securities, Inc. et al.*, 740 So.2d 592 (Fla. App 5 Dist.1999), a taxpayer brought suit against the bank who held her IRA account after the bank complied with a notice of levy and remitted \$123,870.61 from her IRA to the IRS. Applying federal law, the court dismissed the plaintiff's claims and found the bank was immune from liability to the plaintiff:

If a bank or trust company is in possession of an account or funds belonging to the taxpayer against whom the levy is sought, and if that property is not subject to a judicial attachment or execution, that entity must comply with the levy or face penalties. After compliance, the custodian is immune from liability to the taxpayer. *Id.* at 593 (emphasis added, citations omitted).²

¹ *See also Shanbaum v. United States* 32 F.3d 180, 183 (5th Cir. 1994) ("Section 6334, which specifically exempts certain property from levy, does not exempt pension benefits from collection...[thus] Shanbaum's argument that the IRS levy authority yields to the later enacted non-alienation provision [of ERISA] is without merit."); *Weiler v. United States*, 82 F.3d 424 (9th Cir.1996).

² *See also Busby v. IRS, et al.*, 1997 WL 364507 (S.D.Fla.1997) (copy attached) ("The mere fact of compliance by Principal Mutual with the Notice of Levy filed by the IRS does not give rise to a claim upon which relief may be granted..."); *Pawlowske v. Chrysler Corp.*, 623 F.Supp. 569, 570 (N.D.Ill.1985), *aff'd* 799 F.2d 753 (7th Cir.1986) (Notice of levy by the

Third, Plaintiff claims that the IRS' Notice of Levy was deficient because the box on the form was not signed. He contends this box had to be signed in order for the levy to attach to his pension (Pl. Motion at 2). Contrary to Plaintiff's belief, a procedural defect in the Notice of Levy does not discharge the employer's obligation to honor an IRS levy. Purk v. United States, 747 F.Supp. 1243, 1249 (S.D.Ohio.1989). In other words, when Defendants received the Notice of Levy, they were obligated to turn over his pension benefits to the IRS. That Plaintiff may have a defense in the nature of a procedural defect in the levy does not entitle Plaintiff to sue Defendants. *See Miles v. United States*, 1999 WL 501000 (N.D.Tex.1999) (Plaintiff's suit to enjoin his employer from remitting his salary to the IRS dismissed despite plaintiff's claim that the levy suffered from procedural defects). If Plaintiff believed there was a problem with the Notice of Levy or that Defendants should not have remitted his pension benefits to the IRS, his proper course of action is to seek relief from the IRS or file suit against the Government:

(3) *Remedy*. In situations described in paragraphs (c)(1) and (c)(2) of this section, taxpayers and third parties who have an interest in property surrendered in response to a levy may secure from the Internal Revenue Service the administrative relief provided for in section 6343(b) or may bring suit to recover the property under section 7426. 26 C.F.R. § 301.6332-1(c)(3).³

Fourth, even if any liability against Defendants was not discharged, the Defendants' decision to comply with the IRS levy and remit Plaintiff's pension benefits to the IRS cannot be overturned. By remitting Plaintiff's pension to the IRS, Defendants complied with the law and the Notice of Levy. Complying with the law can hardly be characterized as arbitrary and capricious conduct. Accordingly, Plaintiff's claims should be dismissed in their entirety.

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IRS on employee's salary was sufficient to require employer to pay the money demanded, so that employee had no right to recover anything from employer because of his compliance with the levy).

³ See also Ryiz v. First Bankers, N.A., 516 So.2d 1069, 1071 (Fla.App 4 Dist. 1987) ("The appropriate remedy for one who believes he has been wrongfully served with a Notice of Levy is to surrender the property and bring an action against the government.").

II. Defendants Are Entitled To Summary Judgment Because Plaintiff Failed To Exhaust His Available Contractual Administrative Remedies

A. The appeal procedure contained in the GM Supplemental Agreement Covering Pension Plan is applicable to Plaintiff

In his Motion Plaintiff erroneously contends that he does not meet the definition of “employee” under the Supplemental Agreement Covering Pension Plan and therefore was not required to exhaust his administrative remedies prior to filing suit (Pl. Motion at 17-25). Such a claim has no merit and should be rejected.

Section 503 of ERISA, 29 U.S.C. § 1133, requires every employee benefit plan to include a procedure affording participants review of an adverse decision of a claim for benefits. The law is clear that plaintiffs in ERISA actions must exhaust available administrative remedies before suing in federal court. Bickley v. Caremark RX, Inc., 461 F.3d 1325, 1328 (11th Cir.2006). This exhaustion requirement applies equally to claims for benefits and claims for violation of ERISA itself. Id. (citations omitted). Exhaustion of administrative remedies is a jurisdictional defense that when proven results in dismissal of the plaintiff’s claims. Reyher v. Trans World Airlines, Inc., 881 F.Supp. 574, 576 (M.D.Fla.1995). The 11th Circuit strictly enforces the exhaustion requirement on ERISA claims with certain caveats reserved for exceptional circumstances. Perrino v. Southern Bell Telephone & Telegraph Co., 209 F.3d 1309, 1315 (11th Cir.2000).

As stated above, Plaintiff claims the appeal procedure in the Supplemental Agreement Covering Pension Plan does not apply to him because he is not an “employee.” Contrary to his belief, courts have found that the appeal procedure contained in the Supplemental Agreement applies to retirees and even other non-employees despite those individuals not being specifically identified in the appeal procedure.⁴

Furthermore, an examination of the appeal procedure itself shows it is applicable to retirees.

⁴ See Pitchford v. General Motors Corp., 248 F.Supp.2d 675, 678 fn.1 (W.D. Mich.2003) (Even if former employee properly brought his claims under ERISA, such claims would have failed because he failed to exhaust his administrative remedies under Section K of Appendix D under the Plan); Lloyd v. General Motors Hourly Rate Employees Pension Plan, et al., 1 Fed.Appx 789, 790 (10th Cir. 2001) (Retiree’s claims dismissed because he failed to exhaust the administrative remedies available to him.); Duncan v. General Motors Corp., 2006 WL 375343 (W.D.Ark. 2006) (Surviving spouse who sought benefits had her case terminated to enable her to exhaust her administrative remedies under the Supplemental Agreement Covering Pension Plan).

Many of the appealable issues identified in the Supplemental Agreement are clearly issues which would only impact a retiree. These issues include: computation of pension benefits or supplements under the Pension Plan; partial or complete suspension of supplements; and credited service under the Pension Plan (Ex. D at 117). Despite his attempts to wriggle out from the appeal procedure in the Supplemental Agreement, the appeal procedure is applicable to Plaintiff and had to be exhausted before he filed this present action.

Plaintiff also claims that Defendants cannot rely upon the summary plan description ("SPD") to show he failed to exhaust his administrative remedies because the SPD was never integrated into the Plan (Pl. Motion at 24-25). However, the SPD also contains appeal procedure:

If you do not agree with a GM decision that has been made with respect to (1) your age, (2) the amount of your credited service, or (3) the computation of your benefits, you may appeal this decision to your local pension committee. If (1) the local pension committee is unable to agree on your appeal, or (2) the committee agrees but you do not, your case may be referred to the GM-UAW Pension Board of Administration. If the Board members fail to agree, the Board may appoint an impartial chairman to resolve the dispute. The decision of the (1) Board, or (2) impartial chairman, will be binding on all parties. (Ex E).

Plaintiff's pension benefits are payable under the GM Pension Plan, incorporated within the Supplemental Agreement Covering Pension Plan, and he is subject to, and must utilize, the appeal procedure set forth at Section K of the Supplemental Agreement. Plaintiff should be in the same position as other GM retirees who have attempted to sue Defendants without exhausting their administrative remedies and hence, his claims should be dismissed.

B. Even if the Court Determines Defendants Failed to Comply with the Technical Requirements of ERISA, Summary Judgment is Still Warranted

Even if Plaintiff is correct, which he is not, and Defendants failed to comply with the technical requirements of ERISA by not delineating an appeal procedure, it still does not excuse Plaintiff's failure to exhaust his administrative remedies.

In Perrino v. Southern Bell Telephone & Telegraph Co., *supra*, the plaintiffs attempted to claim they were excused from exhausting their administrative remedies because the defendants failed to comply with ERISA by providing a summary plan description or a formal claims procedure. The court soundly rejected this argument, holding that non-compliance with ERISA does not excuse a retiree's

duty to exhaust his administrative remedies:

We find Appellants' arguments unpersuasive. After reviewing the relevant federal regulations and our prior precedent, we decline to create an exception to the exhaustion requirement in this case.

* * * *

Our prior precedent makes clear that the exhaustion requirement for ERISA claims should not be excused for technical violations of ERISA regulations that do not deny plaintiffs meaningful access to an administrative remedy procedure through which they may receive an adequate remedy. Perrino, 209 F.3d at 1316-1317.

The result should be no different in this case. Although Plaintiff sent multiple letters to GM's Service & Benefit Center and the Plan Administrator, apparently in an attempt to exhaust administrative remedies, he did not follow the proper procedure set forth in the Supplemental Agreement and in the Summary Plan Description. Thus, Plaintiff failed to exhaust his administrative remedies before filing suit and as explained below, his claims should be dismissed.

C. Plaintiff Failed to Exhaust his Administrative Remedies and Thus His Claims Should be Dismissed

In the present case, Plaintiff was a participant in the GM Pension Plan. That Plan is incorporated within the Supplemental Agreement covering Pension Plan. Both documents were collectively bargained between General Motors and the International Union, UAW. Appendix D of the Supplemental Agreement contains the detailed procedure for employees to contest decisions with which they disagree, including computation of pension benefits and/or partial or complete suspension of payments (*See* Section I(B); Ex. D at 117). By law Plaintiff had to exhaust this procedure before filing the instant suit. If not, his suit can be dismissed. *See* Section II(A), *supra*.

Plaintiff failed to exhaust his administrative remedies and his claims should be dismissed. The appeal procedure in the Supplemental Agreement Covering Pension Plan is very specific. All appeals must be submitted on the designated form and mailed to the Secretary, Pension Board of Administration (Ex. D at 118). Here, Plaintiff sent letters to the GM Benefits & Service Center and the Plan Administrator. That is not the proper procedure. Plaintiff was required to strictly comply with the appeal procedure contained in the GM/UAW Supplemental Agreement covering Pension Plan if he wished to challenge Defendants' decision to recover an overpayment by reducing his pension. Plaintiff's

failure to exhaust his administrative remedies should result in the dismissal of his claims.⁵

III. Plaintiff's Remaining Arguments Are Insufficient To Warrant A Grant Of Summary Judgment In His Favor

In addition to the above, Plaintiff also alleges (1) that GM cannot recover its overpayment from his pension because the bankruptcy court exempted it from capture (Pl. Motion at 3-4) and (2) that GM violated the Supplemental Agreement Covering Pension Plan by recovering more than 10% of his pension benefits to satisfy the overpayment (Pl. Motion at 1, 6, 12, 13). Neither of these arguments have any merit and should be rejected.

A. Defendants Had a Right to Recoup the Overpayment from Plaintiff's Pension Benefits.

Recovery of the overpayment of pension benefits is under the doctrine of recoupment and is not affected by the filing of a petition in bankruptcy. Further, the suspension of pension benefits in these circumstances is not subject to the automatic stay under section 362 (11 U.S.C. § 362).

In Brown v. General Motors Corporation, 152 B.R. 935 (W.D.Wisc.1993), the Court considered almost identical circumstances. Brown commenced an action in the state court seeking a declaration that General Motors was barred by plaintiff's bankruptcy discharge from recovering past benefit overpayments from his future pension benefits. The Court in Brown explained that the doctrine of recoupment is an equitable defense which enables a defendant to reduce liability on a plaintiff's claim by asserting an obligation of the plaintiff that arises under the same circumstances and cannot be discharged through bankruptcy:

Recoupment is an equitable defense which enables a defendant to reduce liability on a plaintiff's claim by asserting an obligation of the plaintiff which arose out of the same transaction. *In re Holford*, 896 F.2d 176, 178 (5th Cir.1990). Recoupment is only a challenge to the validity and extent of the plaintiff's claim, and no affirmative recovery is permitted. *In re Rooster, Inc.*, 127 B.R. 560, 569 (Bankr.E.D.Pa.1991), 20 Am.Jur.2d *Counterclaim, Recoupment, and Setoff*, § 11 (1965).

⁵ Pitchford v. General Motors Corp., 248 F.Supp.2d 675, 678 fn.1 (W.D. Mich.2003)(Even if former employee properly brought his claims under ERISA, such claims would have failed because he failed to exhaust his administrative remedies under Section K of Appendix D under the Plan); Lloyd v. General Motors Hourly Rate Employees Pension Plan, et al., 1 Fed.Appx 789, 790 (10th Cir. 2001) (Retiree's claims dismissed because he failed to exhaust the administrative remedies available to him.); Duncan v. General Motors Corp., 2006 WL 375343 (W.D.Ark. 2006) (Surviving spouse who sought benefits had her case terminated to enable her to exhaust her administrative remedies under the Supplemental Agreement Covering Pension Plan).

Because of its unique nature as a limited equitable defense the right of recoupment does not constitute a claim within the meaning of 11 U.S.C. § 101(5) which defines a claim as follows:

- (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
- (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment....

Since the right of recoupment carries with it no right to payment, it is not a claim. *See Mullen v. United States*, 696 F.2d 470, 472 (6th Cir.1983). It naturally follows that the potential assertion of recoupment against a claim by the debtor does not constitute a "debt" within the meaning of 11 U.S.C. § 101(12), which defines debt as "liability on a claim."

Since the right of recoupment is not a claim and its potential assertion is not a debt, the right is unaffected by a discharge in bankruptcy which operates as an injunction against actions to collect any *debt* discharged under § 727. 11 U.S.C. § 524(a)(2).

* * * *

Since the right of recoupment likewise provides no basis for an independent claim against the assets of the debtor or the estate, the right to recover against future benefits is not discharged. *See Lee v. Schweiker*, 739 F.2d 870, 875 (3rd Cir.1984); *In re B & L Oil Co.*, 782 F.2d 155, 157 (10th Cir.1986); *In re Hiler*, 99 B.R. 238, 243 (Bankr.D.N.J.1989). (emphasis added). *Id.* at 938.

After examining the provisions of the GM Pension Plan, the Court in *Brown* concluded that the Pension Plan had a right to recoupment that was unaffected by the plaintiff's bankruptcy. *Id.* at 939.

Similarly in *In Re Jones*, 289 B.R. 188 (Bankr.M.D.Fla. 2002), the Court considered whether the State Patrol was allowed to reduce future disability benefits payable to the debtor to recoup overpayments resulting from the receipt of other income that was properly deductible from disability benefits. The debtor filed a Motion to Impose Sanctions against the State Patrol. The Court first advised that if recoupment applied, the automatic stay of 11 U.S.C. § 362 is not applicable:

It is well established that the automatic stay does not prohibit recoupment, as distinguished from setoff. This is of course, a correct statement of the law; however, it has no application whatsoever once a debtor receives a discharge, by virtue of 11 U.S.C. § 362(c)(2)(C). This section provides, in general, that a stay of any other act under subsection (a) of that section continues until the earliest of the time a discharge is granted. Thus, it is evident from the forgoing that cases dealing with recoupment, in a chapter 7 context for violations of the automatic stay, are of no significance to the facts of this case. *Id.* at 191.

The Court next held that the action of the State Patrol in reducing future benefits to recover an

overpayment is a recoupment and not a set-off:

It should be noted, at the outset, that the action of the State Patrol is clearly a recoupment and not a set-off. Next, while the discharge prohibits a setoff of any debt as to the personal liability of a debtor, Section 524(a)(2) of the Code does not prohibit a recoupment. Moreover, the term "debt" is defined by 11 U.S.C. § 101(12) as a liability of a claim, which in turn is defined by 11 U.S.C. § 101(5), to mean a "right to payment." Recoupment is a defensive mechanism, which does not seek affirmative relief but merely seeks to defeat or reduce the claim by the entity who seeks recoupment. Several courts have considered this exact issue in the context of discharged obligations. Id.

The Court in Jones, citing other precedent, concluded by holding that the actions of the State Patrol was a proper exercise of recoupment and denied the debtor's Motion to Impose Sanctions:

Based upon the foregoing, under either analysis as set forth in *Brown* or *Izaguirre*, this Court is satisfied that the State Patrol is exercising a proper recoupment of its disability benefits, notwithstanding that the debt in the Final Judgment has been discharged. Regardless of whether or not the State Patrol obtained a judgment against the Debtor, the fact remains that the State Patrol has the ability to properly exercise its defense of recoupment to the future disability payments received by the Debtor with respect to the prior overpayments in benefits. Inasmuch as this Court finds that the recoupment is proper, it is not necessary for this Court to determine whether or not the State Patrol properly asserted a sovereign immunity defense.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Motion to Impose Sanctions for Violation of 11 U.S.C. § 524 (Doc. No. 17) be, and the same is hereby, denied. Id. at 193.

In summary, under the above rationale, Defendants, as Administrator of the GM Pension Plan, had a right to recoup the overpayment of pension benefits from Plaintiff, regardless of any prior order from the bankruptcy court. Such right of recoupment is not subject to any automatic stay and is not dischargeable. Thus, Plaintiff's claim that General Motors violated Bankruptcy laws by recouping the \$32,985.00 overpayment has no merit and should be dismissed.

B. Likewise, Defendants Did Not Violate ERISA by Remitting his Pension Benefits to the IRS While Plaintiff was in Bankruptcy

Plaintiff's Motion appears to allege that Defendants also violated ERISA by remitting his pension benefits to the IRS after the bankruptcy court found his pension benefits exempt from capture by creditors (Pl. Motion at 3-4). Defendants did not violate ERISA, or any other law, by remitting his pension benefits to the IRS during, or after, Plaintiff's bankruptcy. A tax debt is not dischargeable during bankruptcy and can continue to be collected during that time. *See* 26 U.S.C. §523; In re

Chastang, 116 B.R. 833, 834 (Bkrtcy.M.D.Fla.1990)(Debtor's federal income taxes for years in which he failed to file a return were non-dischargeable in bankruptcy).

Moreover, as Plaintiff points out, his pension benefits were exempt from the bankruptcy proceeding (Pl. Motion at 4). Hence, the pension benefits were not under control of the bankruptcy court and were subject to levy. 26 C.F.R. §301.6871(a)-2(a) ("...[G]enerally the assets of a taxpayer are under control of the court in which such [bankruptcy] proceeding is pending, and the collection of taxes cannot be made by levying upon such assets. However, any assets which under applicable provisions of law are not under the control of the court, may be subject to levy."). Accordingly, Plaintiff's claims should be dismissed.

C. Defendants Were Not Limited to Only Recouping 10% of Plaintiff's Pension Benefits to Satisfy the Overpayment

Plaintiff erroneously suggests that Defendants could not reduce his pension benefits to recover the \$32,985.00 overpayment unless he gave them written authorization to do so. Even with written authorization, Plaintiff erroneously claims Defendants could recoup no more than 10% from his pension benefits each week. He claims that these actions alienate his pension benefits and violate the GM Pension Plan. Plaintiff's interpretation of Article 7, Section 3 of the GM Pension Plan is incorrect. Defendants are not limited to reducing his pension by only 10% when recouping an overpayment and do not alienate his pension when doing so.

As required under section 206(d)(1) of ERISA, 29 U.S.C. § 1056(d)(1), the GM Pension Plan contains a provision prohibiting the assignment or alienation of pension benefits (Ex. D at 67-68). Consistent with ERISA, section 206(d)(2), the Plan does allow a revocable assignment not to exceed 10% of any benefit payment. However, Plaintiff misinterprets this section as it is applicable to situations where the participant has received an overpayment from another GM benefit plan and has authorized a deduction from his monthly pension benefit to repay such overpayment (e.g. Extended Disability Benefits under the General Motors Life and Disability Benefits Program):

The pension fund shall not in any manner be liable for or subject to the debts or liabilities of any employee, separated employee, retired employee, pensioner or surviving spouse. No right, benefit, pension or supplement at any time under the Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge or encumbrances of any kind except in accord with provisions of a Qualified Domestic Relations Order

within the meaning of IRC, Section 414(p). If any person shall attempt to, or shall alienate, sell, transfer, assign, pledge or otherwise encumber accrued rights, benefits, pension or supplements under the Plan or any part thereof, or if by reason of bankruptcy or other event happening at any time such benefits would otherwise be received or enjoyed by anyone else, the Corporation may terminate the interest of such employee, pensioner or surviving spouse in any such benefit and instruct the trustee to hold or apply it to or for the benefit of such employee, pensioner or surviving spouse, spouse, children, or other dependents, or any of them as the Corporation may instruct; provided, however, that any pensioner, or surviving spouse, entitled to a monthly benefit under the Plan:

* * * *

(c) may have amounts of not less than \$80.00, but in no event more than 10% of the retired employee's monthly pension, withheld to repay any outstanding overpayment owing to any benefit plan of the Corporation, pursuant to written authorization and direction acceptable to the Corporation. (Ex. D at 68)(emphasis added)⁶.

Here, Defendants reduced Plaintiff's pension benefit to recoup an overpayment from the Pension Plan itself, not another General Motors benefit plan. This present situation is akin to an employee who is receiving a social security disability award that results in a pension benefit overpayment. In those cases, General Motors also reduces the pensioner's benefit by 50%, just as it did in this case:

If the pensioner received an overpayment of benefits because of a receipt of a retroactive Social Security Disability Insurance Benefit award and the amount of overpayment is not promptly repaid in a lump sum, a deduction shall be made from future monthly benefits equal to 50% of the total amount of such monthly benefits until the total amount of suspended equals the overpayment. (Ex D at 112).

Furthermore, the Treasury Regulations do not consider the recoupment of an overpayment to be as assignment or alienation of a person's pension benefit and expressly permit a benefit plan to withhold benefits to compensate for prior overpayments.

(2) *Specific arrangements not considered an assignment or alienation.* The terms "assignment" or "alienation" do not include...the following arrangements:

* * * *

(iii) Any arrangement for the recovery by the plan of overpayments of benefits previously made to a participant. 26 C.F.R. §1.401(a)-13(c)(2)(iii).

See also Coar v. Kazimir, 990 F.2d 1413, 1422 (3rd Cir.1993) (Noting that clause 13(c)(2)(iii) excludes from the anti-alienation restrictions an action by a benefits plan to offset overpayments against benefits.) Therefore, in this case a recoupment is authorized by the Treasury Regulations. GM was not limited

⁶ This section closely tracks the language of 29 U.S.C. §1056.

to recouping only 10% and did not need Plaintiff's authorization to reduce his pension by 50% or more to recoup the \$32,985.00 overpayment. Plaintiff's claims should be dismissed.

D. Plaintiff's Claim for Breach of Fiduciary Duty has No Merit and Should Be Dismissed.

Count II of Plaintiff's Complaint alleges a breach of fiduciary duty. A breach of fiduciary duty claim cannot be maintained under ERISA, § 502(a)(3) because Plaintiff has an adequate remedy under section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). Section 502(a)(1)(B) provides Plaintiffs a remedy in these circumstances:

(a) Persons empowered to bring a civil action.

A civil action may be brought –

(1) by a participant or beneficiary –

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan; (emphasis added)

The Supreme Court in Varity Corporation v. Howe, 516 U.S. 489, 116 S.Ct. 1065 (1996), explained that when a remedy is available under another section of ERISA, equitable relief under §502(a)(3) is not appropriate:

Third, the statute authorizes "*appropriate*" equitable relief. We should expect that courts, in fashioning "appropriate" equitable relief, will keep in mind the "special nature and purpose of employee benefit plans," and will respect the "policy choices reflected in the inclusion of certain remedies and the exclusion of others." Thus, we should expect that where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be "appropriate." *Id.* at 515 (citations omitted, emphasis added)

See also Mertens v. Hewitt Assoc., 508 U.S. 248, 258-259, 113 S.Ct. 2063, 2069-2070 (1993) (Court held that "other equitable relief" as used in ERISA, § 502(a)(3) does not encompass monetary damages); Katz v. Comprehensive Plan of Group Insurance, ALLTEL, 197 F.3d 1084, 1088-1089 (11th Cir. 1999) (District court's dismissal of claim seeking life insurance benefits affirmed where plaintiff had adequate remedies available under §1132(a)(1)(B). Further, court stated, "However, the availability of an adequate remedy under the law for *Varity* purposes, does not mean, nor does it guarantee, an adjudication in one's favor."); Ogden v. Blue Bell Creameries, U.S.A., Inc., 348 F.3d 1284 (11th Cir. 2003) (ERISA § 502(a)(3) has no application when an adequate remedy is available under § 502(a)(1)(B)).

Because Plaintiff can bring his action under section 502(a)(1)(B) to recover benefits under an

ERISA-covered plan, he cannot maintain a claim for breach of fiduciary duty under § 502(a)(3) providing for “other appropriate equitable relief.” Thus, Plaintiff’s claim for breach of fiduciary duty has no merit and should be dismissed.

CONCLUSION

Plaintiff’s Motion for Summary Judgment should be denied. He is unable to establish that Defendants are liable for reducing his pension benefits to recoup an overpayment. Further, Plaintiff cannot show that any other action taken by Defendants violated either the Supplemental Agreement Covering Pension Plan, ERISA, or any other law.

In fact, it is Defendants who are entitled to summary judgment. The statutes, regulations and case law all discharge any liability Defendants may have to Plaintiff for monies they remitted to the IRS from his pension benefits pursuant to a Notice of Levy. Also, Plaintiff’s claims should fail because he failed to exhaust his administrative remedies under the Supplemental Agreement. Plaintiff did not follow the appeal procedure. He neither submitted his appeal on the designated form nor did he send his “appeal” to the Secretary, Pension Board of Administration as required by the appeal procedure.

Accordingly, Plaintiff’s claims should be dismissed in their entirety and Defendants should be awarded any and all applicable costs, sanctions and attorney fees for having to defend this action.

Respectfully submitted:

/s/Mark D. Filak

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Mark D. Filak (MI Bar No. P61633)

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Dated: March 7, 2008

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

WALTER J. LAWRENCE,

Plaintiff,

Case No. 5:07-CV-408 OC

vs.

Hon. William Terrell Hodges

Magistrate Judge Gary R. Jones

GENERAL MOTORS HOURLY-RATE
EMPLOYEES PENSION PLAN, and
GENERAL MOTORS CORPORATION,

Defendants.

Walter J. Lawrence, In Pro Per
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Ocala, Florida 34474

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 7, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant: Walter J. Lawrence, #162, 3101 S.W. 34th Avenue, #90 Ocala, FL 34474.

/s/Mark D. Filak

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Dated: March 7, 2008

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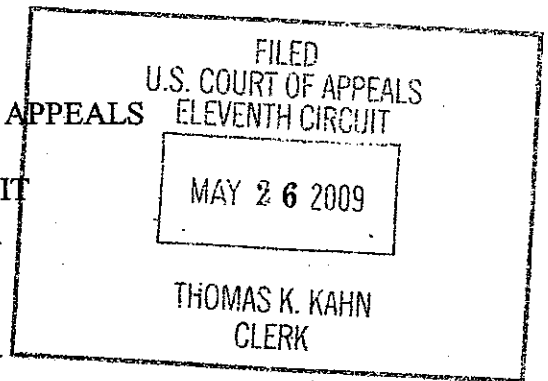
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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-11975-E



Dist.Ct. Docket No. 07-00408-CV-OC-10GRJ

IN RE:

WALTER J. LAWRENCE,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Middle District of Florida

BEFORE: BLACK and BARKETT, Circuit Judges

BY THE COURT:

Walter J. Lawrence, proceeding pro se, has filed a petition for a writ of mandamus, requesting that this Court order the district court to rule on several pending motions, including his: (1) March 2008 motion to amend his reply in opposition to the defendants' motion and brief in opposition to his motion for summary judgment and cross-motion for summary judgment; (2) April 2008 motion to strike one of the defendants' affirmative defenses; (3) second motion for summary judgment; (4) "motion for entry of order for the court to take judicial notice"; (5) motion for reconsideration of various orders; (6) motion to strike one of the defendants' affirmative defenses; (7) motion to determine whether the statute of limitations has expired

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regarding an IRS levy; (8) motion for sanctions against the defendants for failure to comply with Fed.R.Civ.P. 26(A)(3); and (9) motion for recusal of the district court judge.

Mandamus relief is available “only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion.” Jackson v. Motel 6 Multipurpose, Inc., 130 F.3d 999, 1004 (11th Cir. 1997). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. Id. The petitioner has the burden of showing that the claimed right to issuance of the writ is clear and indisputable. In re Lopez-Lukis, 113 F.3d 1187, 1188 (11th Cir. 1997). Mandamus may be used to direct a district court to decide a pending case where there has been an unreasonable delay in rendering a decision. Will v. Calvert Fire Ins. Co., 437 U.S. 655, 661-62, 98 S.Ct. 2552, 2557, 57 L.Ed.2d 504 (1978).

~~Lawrence has not established a clear and indisputable right to mandamus relief. See~~
Lopez-Lukis, 113 F.3d at 1188. To the extent that Lawrence is asking this Court to order the district court to rule on his March 2008 motion to amend, the petition is moot because the district court granted that motion in May 2008. With respect to the pending motions, Lawrence has the adequate alternative remedy of moving the district court to rule. The district court docket sheet reveals no attempt by Lawrence to file such a motion. Therefore, we **DENY** the mandamus petition.

ARTICLE VI ADMINISTRATION

Section 1.

The Corporation shall be responsible for the general administration of the Plan and for carrying out the provisions thereof.

Section 2.

(a) The Corporation shall have all such powers as may be necessary to carry out the provisions of the Plan except as the powers and duties of the Corporation may be modified by any collective bargaining agreement.

(b) Subject to the limitations of (a) above, the Corporation may from time to time establish rules for the administration of the Plan and the transaction of the Plan's business.

(c) In making any such determination or rule, the Corporation shall pursue uniform policies and shall not discriminate in favor of, or against any employee or group of employees.

ARTICLE VII

PENSION BENEFITS AND SUPPLEMENTS

Section 1. Pension and Supplement Payments

(a)(1) Pensions and supplements shall be paid monthly.

(2) The first monthly payment of an employee's pension other than for total and permanent disability shall become payable with the employee's consent on

the first day of the month following the month in which the employee actually retires, and the pension shall be payable monthly thereafter.

(3) Total and permanent disability pension shall be payable monthly during the continuance of total and permanent disability and while the pensioner otherwise remains eligible for such benefits. Such payments shall begin the later of:

(i) the first day of the month which includes the date the required proof of disability is received by the Corporation, or

(ii) the first day of the month which includes the date the employee has been continuously and totally disabled for a period of 5 months.

Successive periods of absence due to the same disability as that upon which claim for total and permanent disability pension is based and aggregating at least five months will be considered the same as one continuous absence provided that the aggregate will not include any such absence which precedes the last day at work by more than one year, or

(iii) the first day of the third month following the date the required proof of disability is received by the Corporation, or

(iv) the first day of the third month following determination by the impartial clinic that the employee is totally and permanently disabled.

These subsections (iii) and (iv) shall not be applicable (a) if the employee dies prior to such date, or (b) where Extended Disability Benefits are less than the benefits payable under this Plan.

(4) A supplement for an employee shall be payable in the manner provided in Section 6 of Article II.

(5) Pension and supplement payments shall not be payable with respect to any period for which weekly sickness and accident benefits are payable to the employee under any plan to which the Corporation has contributed. If such sickness and accident benefits during any month are payable for a period of less than 4-1/3 weeks the sum of the monthly pension benefit (excluding any special benefit) and supplement payable for that month shall be reduced by the percentage which such period of sickness and accident benefits is of 4-1/3 weeks.

(b) A pensioner who is reemployed by the Corporation shall cease to receive, during such reemployment, any monthly pension benefits to which the pensioner might otherwise be entitled. Any such reemployed pensioner will have his credited service at the time of retirement reinstated. A reemployed pensioner shall accrue additional credited service as a result of such employment and the monthly pension benefits of such pensioner shall be adjusted with regard to such employment upon subsequent cessation of active service.

(c) In the event that it shall be found that any pensioner or surviving spouse to whom a pension or survivor benefit is payable is unable to care for the affairs of such pensioner or surviving spouse because of illness or accident any monthly pension payment and supplement or survivor benefit due (unless prior claim therefor shall have been made by a duly qualified guardian or other legal representative) may be paid to the spouse, parent, brother, sister or other person or party, (including private or public institutions) deemed by the Corporation to have incurred expense for such pensioner otherwise entitled to payment. Any such payment shall be a payment for the account of the pensioner and shall be a complete discharge of any liability of the Plan therefor.

(d) In order to retire under the Plan, an employee must have unbroken seniority at the time of his retirement except that a person who is eligible for benefits under the Guaranteed Income Stream Benefit Program and is not receiving deferred pension benefits under this Plan shall not be precluded from retiring without return to employment even though he shall have incurred a break in seniority while on continuous layoff from the Corporation.

(e) Notwithstanding any other provision of this Section 1, an employee attaining age 70-1/2 on and after January 1, 1988, will commence monthly receipt of his accrued benefits under this Plan, beginning April 1 of the calendar year immediately following the year the employee attains or attained age 70-1/2. No employee shall be eligible to receive any such payment for any month prior to April, 1990, however, and the first such monthly payment shall be April 1, 1990. Only those employees who attained age 70-1/2 during 1988 and 1989 are eligible for any payment under this provision. No employee attaining age 70-1/2 prior to January 1, 1988, shall be eligible hereunder. An employee attaining age 70-1/2 after December 31, 1989, shall have his monthly payment based on his pension benefit accrual as of December 31 of the year in which he attains age 70-1/2. The actuarial value of the sum of all cash distributions received by any otherwise eligible employee prior to his actual retirement under this Plan will be used as an offset from any additional benefit accrual that might otherwise have been payable to such employee as a result of his working for the Corporation.

Section 2. Retention of Deferred Pension if Separated

(a) Any employee who loses accumulated credited service under the provisions of Article III, Section 2 shall be eligible for a deferred pension if such employee

is not retired and eligible for pension benefits pursuant to Article II, and provided the credited service of such employee at separation is at least 5 years, or such employee satisfies the "service" requirements of Article III, Section 6.

(b) The monthly amount of such deferred pension for an employee breaking seniority on or after October 1, 1990 shall be a basic benefit for each year of credited service that he had when he broke seniority, determined by his Benefit Class Code when he broke seniority as set forth in the table immediately following:

Date Seniority Broke	Benefit Class Code	Basic Benefit Rate
October 1, 1990 through September 30, 1991	A	\$ 28.35
	B	28.60
	C	28.85
	D	29.10
October 1, 1991 through September 30, 1992	A	29.50
	B	29.75
	C	30.00
	D	30.25
October 1, 1992 and After	A	30.70
	B	30.95
	C	31.20
	D	31.45

(c) A former employee who is eligible for a deferred pension may at the election of such former employee receive

(1) a monthly pension commencing at or after age 65 determined in accordance with subsection (b) of this Section 2, or

(2) a monthly pension commencing after age 60 and prior to age 65 determined in accordance with subsection (b) of this Section 2, such pension being reduced by 6/10 of 1 percent for each complete calendar month by which such former employee is under the age of 65 at the date the deferred pension commences, or

(3) a monthly pension commencing after age 55 and prior to age 60 for a former employee who breaks seniority on or after October 1, 1976, determined in accordance with subsection (b) of this Section 2. Such pension shall be multiplied by a percentage as set forth in the following table:

Age When Pension Commences	Percentage*
55	42.8
56	46.8
57	51.2
58	55.5
59	59.6
60	64.0

*Prorated for intermediate ages computed on the basis of the number of complete calendar months by which the employee is under the age he will attain at his next birthday.

(d) The deferred pension shall be payable commencing the later of the first day of the month following the month (i) in which such employee attains the applicable age set forth in Section 2(c) of this Article VII, or (ii) during which the Corporation receives a written request from such former employee; provided that such written request shall be valid and effective only if it is filed with the Corporation not

earlier than 60 days prior to the date such former employee first becomes eligible for such benefit, and, for such employee who broke seniority prior to October 1, 1976, not later than his 70th birthday, otherwise no deferred vested pension benefit shall be payable at any time.

(e) If, prior to the commencement of deferred pension benefits, an employee is reemployed by the Corporation and: (1) acquires seniority, or (2) is reemployed by, and works for, the Corporation at the plant where he worked immediately prior to the loss of his credited service, or (3) dies after having qualified for a deferred pension in accordance with this Section 2, such employee shall, in lieu thereof, have reinstated the credited service in effect when such deferred pension was granted; provided that if an employee with 10 or more years of credited service

(1) is reemployed by, and works for, the Corporation within 36 months of the date he lost credited service under Article III, Section 2, and

(2) becomes disabled while employed by the Corporation prior to acquiring 5 months of seniority, and such disability is continuous for a period of 5 months during which he makes proper application and submits medical evidence satisfactory to the Corporation that he is totally and permanently disabled as set forth in Section 3 of Article II,

he will be deemed eligible for a disability pension under Section 3 of Article II, and such pension will be payable pursuant to Section 1 of Article VII, as though he had been an employee with seniority throughout such disability period.

(f) The amount of any monthly pension benefit otherwise payable to a former employee eligible for a deferred pension will be reduced by the value of any past and future benefits paid or payable to any

alternate payee(s) under a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p).

The actuarial value will be used to determine any amount to be paid to any such payee(s), if applicable, and the remaining benefit entitlement of the employee.

Section 3. Non-Alienation of Benefits

The pension fund shall not in any manner be liable for or subject to the debts or liability of any employee, separated employee, retired employee, pensioner or surviving spouse. No right, benefit, pension or supplement at any time under the Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge or encumbrances of any kind except in accord with provisions of a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p). If any person shall attempt to, or shall, alienate, sell, transfer, assign, pledge or otherwise encumber accrued rights, benefits, pensions or supplements under the Plan or any part thereof, or if by reason of bankruptcy or other event happening at any time such benefits would otherwise be received or enjoyed by anyone else, the Corporation in its discretion may terminate the interest of such employee, pensioner or surviving spouse in any such benefit and instruct the trustee to hold or apply it to or for the benefit of such employee, pensioner or surviving spouse, his or her spouse, children or other dependents, or any of them as the Corporation may instruct; provided, however, that any pensioner, or surviving spouse, entitled to a monthly benefit under the Plan:

(a) who elects Blue Cross, Blue Shield, or equivalent coverage, made available under the General Motors Health Care Program for Hourly

Employees may, insofar as it is consistent with the regulations governing the plans, providing such coverage, participate in such coverage and have deducted from the monthly pension and any supplement, if the monthly pension shall be insufficient, pursuant to written authorization and direction acceptable to the Corporation, the required contribution for such coverage.

(b) will have Federal and state income tax withheld pursuant to Federal and state statutes or regulations unless, only with respect to Federal income tax, elected otherwise by submitting to the Corporation written authorization and direction acceptable to the Corporation.

(c) who elects optional or dependent life insurance coverage(s) made available under the General Motors Life and Disability Benefits Program for Hourly Employees may have deducted from the monthly pension, pursuant to written authorization and direction, acceptable to the Corporation, the required contribution(s) for such coverage(s).

(d) may have amounts of not less than \$40.00, but in no event more than 10% of the retired employee's monthly benefit, withheld to repay any outstanding overpayment owing to any benefit plan of the Corporation, pursuant to written authorization and direction acceptable to the Corporation.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 1. No Enlargement of Employment Rights

The Corporation's rights to discipline or discharge employees shall not be affected by reason of any of the provisions of the Plan.

Section 2. Internal Revenue Service Approval

This Plan as amended is contingent upon and subject to obtaining and retaining such approval of the Commissioner of Internal Revenue as may be necessary to establish the deductibility under Section 404 of the Internal Revenue Code for income tax purposes of any and all contributions made by the Corporation to this Plan and to establish this Plan and related trust as being qualified and tax exempt under Sections 401 and 501(a) or other applicable provisions of the Internal Revenue Code. Any modification or amendment of the Plan may be made retroactively, if necessary or appropriate, to qualify or maintain the Plan as a plan and trust meeting the requirements of Sections 401 and 501(a) of the Internal Revenue Code, as now in effect or hereafter amended, or any other applicable provisions of the federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

Section 3. Corporation Board of Directors Approval

Continuation of the Plan as amended in 1990 is contingent upon obtaining the approval of the Corporation's Board of Directors not later than June 1, 1991.

Section 4. Named Fiduciary

The Finance Committee of the Corporation's Board of Directors shall be the named fiduciary with respect to the Plan. The Finance Committee may delegate to various officers, employees and committees of the Corporation authority to carry out such of its responsibilities as it deems proper to the extent permitted by the Employee Retirement Income Security Act of 1974.

Section 5. Limitation of Benefits

No benefits paid from this Plan will exceed the limits of Section 415 of the Internal Revenue Code.

ARTICLE IX AMENDMENT AND TERMINATION

Section 1. Amendment

The Corporation reserves the right to amend, modify, suspend or terminate the Plan by action of its Board of Directors, provided, however, that no such action shall alter the Plan or its operation, except as may be required by the Internal Revenue Service for the purpose of meeting the conditions for qualification and tax deduction under Sections 401, 404, and 501(a) of the Internal Revenue Code, in respect of employees who are represented under a collective bargaining agreement in contravention of the provisions of any such agreement pertaining to pension benefits and supplements as long as any such agreement is in effect. Except as provided in Article V, Section 3, no such action shall operate, to recapture for the Corporation any contributions previously made to the

trustee or insurance company under the Plan, nor, except to the extent necessary to meet the requirements of the Internal Revenue Service or any other governmental authority, to affect adversely the pensions or supplements of employees already retired or the trust fund or insured fund then securing such pensions and supplements.

Section 2. Termination of Plan

(a) If the Corporation, in accordance with Section 1 of this Article IX, or the Pension Benefit Guaranty Corporation terminates the Plan, the amount of the assets, which are available to provide benefits, and which are held by the trustee as of the termination date, shall be allocated, after deducting expenses for administration or liquidation, in the following manner and order to the extent of the sufficiency of such assets:

(1) First, in the case of benefits payable as an annuity:

(i) In the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the Plan, to each such benefit, based on the provisions of the Plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least;

(ii) In the case of a participant's or beneficiary's benefit (other than a benefit described in subsection (a)(1)(i)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the Plan) as of the

beginning of such period, to each such benefit based on the provisions of the Plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subsection (a)(1)(i), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(2) Second, to all other benefits (if any) of individuals under the Plan which are guaranteed under the plan termination insurance provisions of the Employee Retirement Income Security Act of 1974 determined without regard to Section 4022B(a) of said Act.

(3) Third, to all other nonforfeitable benefits under the Plan.

(4) Fourth, to all other benefits under the Plan.

(b)(1) The amount allocated under any of the preceding subsections of this Section 2 with respect to any benefit shall be properly adjusted, for any allocation of assets with respect to that benefit under a prior subsection of this Section 2.

(2) If the assets available for allocation under subsections (a)(1) and (a)(2) are insufficient to satisfy in full the benefits of all individuals which are described in such subsections, the assets shall be allocated pro rata among such individuals on the basis of the present value, (as of the termination date) of their respective benefits described in such subsections.

(3) If the assets available for allocation under subsection (a)(3) are not sufficient to satisfy in full the benefits of individuals described therein:

(i) Except as provided in subsection (b)(3)(ii), the assets shall be allocated to the benefits of individuals described in subsection (a)(3) on the basis of the benefits of individuals which would have been described in subsection (a)(3) under the Plan as in effect at the beginning of the 5-year period ending on the date of the Plan's termination.

(ii) If the assets available for allocation under subsection (b)(3)(i) are sufficient to satisfy in full the benefits described therein (without regard to this subsection (b)(3)(ii)), then for purposes of subsection (b)(3)(i), benefits of individuals described therein shall be determined on the basis of the Plan as amended by the most recent Plan amendment effective during such 5-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subsection (b)(3)(i) and any assets remaining to be allocated under such subsection shall be allocated under subsection (b)(3)(i) on the basis of the Plan as amended by the next succeeding Plan amendment effective during such period.

(c) If the Secretary of the Treasury determines that the allocation made pursuant to this Section 2 results in discrimination prohibited by Section 401(a)(4) of the Internal Revenue Code of 1986, or as may be subsequently amended, then, if required to prevent the disqualification of the plan (or any trust under the plan) under Section 401(a) of 403(a) of such Code, the assets allocated shall be reallocated to the extent necessary to avoid such discrimination.

(d) In the event of termination or partial termination of the Plan, the right of all affected employees to benefits accrued to the date of such termination, partial termination or discontinuance, to the extent funded as of such date, are nonforfeitable.

(c) Anything in the Plan to the contrary notwithstanding it shall not be possible at any time prior to the satisfaction of all liabilities with respect to employees under the plan for any part of the corpus or income of the Pension Fund to be used for, or diverted to purposes other than the exclusive benefit of employees. After satisfaction of all liabilities to participants and beneficiaries under the Plan, any residual assets of the Pension Fund will be distributed to the Corporation if the distribution does not contravene any applicable provision of law.

Section 3. Merger or Consolidation

In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the Plan would, if the Plan then terminated, receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer, if the Plan had then terminated.

ARTICLE X

DEFINITIONS

1. Employee

(a) Any person regularly employed in the United States by the Corporation or by a wholly-owned or substantially wholly-owned domestic subsidiary in accordance with I.R.C. Section 414(b), (c), and (n) thereof, including:

- (1) hourly-rate persons employed on a full time basis;
- (2) hourly-rate persons on incentive pay plans;
- (3) students from educational institutions who are employed in cooperative training courses on hourly rate;

(4) part time hourly-rate employees who, on a regular and continuing basis, perform jobs having definitely established working hours, but the complete performance of which requires fewer hours of work than the regular work week, provided such employees work one-half or more of the employing unit's regular work week;

(5) hourly-rate employees of Delco Electronics Corporation (DEC).

(b) The term "employee" shall not include:

- (1) temporary employees;
 - (2) part-time employees, who work less than one-half of the employing unit's work week;
 - (3) employees represented by a labor organization which has not signed an agreement making this Plan applicable to such employees;
 - (4) employees of any directly or indirectly wholly-owned or substantially wholly-owned subsidiary of the Corporation acquired or formed by the Corporation on or after January 1, 1984;
 - (5) leased employees as defined under Section 414(n) of the Internal Revenue Code;
 - (6) employees of Saturn Corporation.
2. Trustee or Insurance Company
- The bank or banks, trust or insurance company or companies or any combination thereof designated by a trust agreement or contract as the medium for financing the Plan.

3. Seniority

Seniority means the period following the most recent date of hire by the Corporation and subsequent to which there has been no loss of credited service (as loss of credited service is defined in the Plan) or if the employee is represented under a collective bargaining agreement seniority will be as defined in such agreement. An employee who is rehired on or after October 1, 1984, and thereby has his pension discontinued, but does not have his seniority reinstated, shall be deemed, solely to satisfy purposes of The General Motors Hourly-Rate Employees Pension Plan, to have seniority while so employed.

4. Federal Social Security Benefit

A Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age means a benefit determined and payable under Title II of the Federal Social Security Act, as now in effect or as hereafter amended, without any reduction being made therefrom based on the age of the recipient.

5. Trust Fund; Pension Fund; Insured Fund

The General Motors Hourly-Rate Employees Pension Plan fund established by payments made by the Corporation in accordance with Article V herein. Such fund therein called the trust fund shall be comprised of either a pension fund or insured fund, or a combination thereof.

6. Base Hourly Rate

For the purpose referred to in Section 6(g) of Article II of this Plan only, Base Hourly Rate shall be the higher of:

(a) the employee's highest straight-time hourly rate, or

(b) for an employee who worked on incentive or piece work in at least 4 pay periods, the employee's average earned straight-time hourly rate for the first 4 pay periods (or, if higher, for the last 4 pay periods) for which he had any incentive earnings (provided, however, that if he worked in less than 4 pay periods but during each such pay period worked he worked on incentive or piece work, his average earned straight-time hourly rate for such pay periods worked shall be used)

during the last 13 consecutive pay periods ending with the pay period which includes his last day worked, plus any cost-of-living allowance in effect with respect to the employee's last day worked for the Corporation.

7. Basic Benefit

The monthly benefit payable under the Plan for the lifetime of a retired or separated employee, including a benefit reduced by a percentage because of early retirement. The term "basic benefit" shall not include any temporary benefit, special benefit, or supplement payable under the Plan.

8. Age 62 and One Month

"Age 62 and one month" means age 62 and one month except that for purposes of determining the month for which the temporary benefit provided in Article II, Section 4 and the early retirement and interim supplements provided in Article II, Section 6 shall cease and the month for which the basic benefit is redetermined in accordance with Article II, Section 4, it shall mean age 62 if both a temporary benefit, early retirement supplement, or interim supplement under the Plan and a benefit under the Federal Social Security Act could otherwise be payable.

9. Actuarial Value.

The actuarial value as of any determination date shall be calculated on the basis of the UP-84 mortality table and the applicable interest rate used by the Pension Benefit Guaranty Corporation (PBGC) as of the first day of the plan year preceding the determination date.

APPENDIX A**(HOURLY-RATE EMPLOYEES PENSION PLAN)**

A Benefit Class Code for the sole purpose of this Plan is hereby established for each job classification in effect on September 17, 1990 on the basis of the maximum base hourly rate (which term as used herein shall include incentive earnings unless otherwise noted) applicable to the job classification on that date, as follows:

	For Job Classifications Having a Maximum Base Hourly Rate of	Benefit Class Code
On or after September 17, 1990	Less than \$14.48	A
but prior to October 1, 1990	\$14.48 but less than \$14.70	B
	\$14.70 but less than \$15.63	C
	\$15.63 and over	D
On or after October 1, 1990	Less than \$16.16	A
	\$16.16 but less than \$16.38	B
	\$16.38 but less than \$17.31	C
	\$17.31 and over	D

(1) The Benefit Class Code applicable to an employee is the Benefit Class Code for the job classification held by the employee for the greatest number of calendar days during the 24 consecutive months immediately preceding his last day worked.

(2) The Benefit Class Code to be established for any new job classification put into effect after September 17, 1990 shall be whichever Benefit Class Code is applicable to other job classifications having the same maximum base hourly rate on the date that such new job classification is put into effect. With respect to a job classification that was obsolete as of September 17, 1990 a hypothetical maximum base hourly rate applicable thereto shall be determined by increasing the maximum base hourly rate for that job

classification at the time of its discontinuance to the extent necessary so as to give effect to general wage increases (including cost-of-living allowance transfers) that have occurred since such discontinuance, and the Benefit Class Code for such classification so derived shall be whichever Benefit Class Code herein is applicable to other job classifications having the same maximum base hourly rate on that date.

(3) For purposes hereof, the maximum base hourly rate of a job classification paid on a day-work basis at any plant or facility shall be the maximum straight-time hourly rate for that job classification at such plant or facility (excluding any cost-of-living allowance and premiums).

(4) The maximum base hourly rate of a job classification in effect on September 6, 1967 and paid under an incentive method of pay at any plant or facility shall be the average straight-time hourly earned rate (including incentive earnings and any wage increases and cost-of-living allowance transfers which, as of September 6, 1967, were not factored in the base rate of the job classification but excluding any cost-of-living allowance and premiums) for all hours worked by all employees in that job classification at such plant or facility for the period beginning September 5, 1966, and ending September 3, 1967, plus any wage increases and cost-of-living allowance transfers effective for that job classification subsequent to September 6, 1967.

In the event an employee is transferred to a job which results in a lower basic benefit rate, such employee's vested pension benefit, if any, shall not be less than the amount of his accrued pension benefit on the date of such transfer to such job.

APPENDIX B

For the sole purpose of Article III, Section 5 of the Plan, all approved job classifications set forth in the Local Wage Agreements as of September 14, 1973 of the Central Foundry Plant, Danville, Illinois, the Central Foundry Plant, Defiance, Ohio, the Central Foundry Malleable Iron Plant, Saginaw, Michigan, and the Central Foundry Grey Iron Plant, Saginaw, Michigan, are designated foundry jobs at the respective plant locations except for those job classifications listed herein for each such respective plant location. No other job classifications shall be designated foundry jobs.

Central Foundry Plant, Danville, Illinois

Bulldozer Operator
 Bus Boy
 Cashier
 Cook
 Crane Operator, Locomotive
 Crane Operator - Yard & Bridge
 Driver - Licensed Trucks - Tractor
 & Trailer
 End Loader Operator
 Kardex Clerk
 Kitchen Help
 Pattern & Maintenance Clerk
 Pattern Storage and Transport
 Salvage Reclaimer
 Scrap Cutter - Torch
 Shipping Clerk
 Spruce Crane Hook Up
 Stock Room Clerk
 Stock Room and Receiving
 Warehouse Attendant
 Window Washer
 Yard Labor
 Yard Switchman

**Central Foundry Plant,
Danville, Illinois (Cont'd.)**

Garage-Mechanic
Machinist
Pattern Maker, Wood & Metal
Power House Operator

Central Foundry Plant, Defiance, Ohio

Bus Boy
Cashier
Clerk - Pattern and/or Maintenance
Cook
Crane Operator - Locomotive
Dispatcher - Materials
Driver - Licensed Trucks - Tractor
and Trailer - Semi
Heavy Equipment Operator
Inspection Department - Inspection
(Special Assignment)
Kitchen Help
Locomotive Operator
Safety Equipment Repair
Salvage Reclaimer
(2) Shipping Clerk
Yard Labor

Blacksmith
Casting Layout
(3) Garage Mechanic
(1) Machinist
Pattern Maker - Leader
Pattern Maker - Wood & Metal
Shift Operating Engineer
Tool Grinder

(1) Designated as a foundry job only for those employees so classified who work in Plant 2, 816 Department.

**Central Foundry Plant,
Defiance, Ohio (Cont'd.)**

(2) Designated as a foundry job only for those employees so classified who work in Plant #1, 539 Department.

(3) Designated as a foundry job only for those employees so classified who work in Plant #2, 816 Department, Battery Charge Area.

**Central Foundry Malleable Iron Plant,
Saginaw, Michigan**

Bull Dozer Operator
Bus Boy
Cashier
Clerk - Pattern and Maintenance
Cook
Crane Operators - Locomotive
Driver-Licensed Trucks, Tractor,
and Trailer
Kitchen Help
Salvage Reclaimer
Stock Room and Receiving
Yard Labor

Blacksmith
Core and/or Mold Maker - Experimental -
Bench & Floor
Garage Mechanic
Inspector - Layout
Machinist - Maintenance
Machinist - Miscellaneous
(1) Machinist - Pattern
Pattern Maker - Leader
Pattern Maker - Wood and Metal
Power House Operator

(1) Designated as a foundry job only for those employees so classified who work in Department 16.

**Central Foundry Grey Iron Plant,
Saginaw, Michigan**

(1) Attendant - Pattern, Storage
 Attendant - Pattern Storage - Leader
 Clerks - Receiving - (Includes
 Inspectors)
 Crane Hooker or Signal Man
 Crane Operator - Locomotive
 Crib Attendant - Maintenance
 Crib Attendant - Pattern Shop
 Drill Press Operator
 Driver - Licensed Passenger Cars
 Drivers - Licensed Trucks -
 Receiving & Yard
 (1) Equipment Operator - Special
 (Including Bay City Shovel,
 Bull Dozer, Pay Loader
 Shovel Operator)
 Field Sand Gasoline Locomotive,
 Operator
 Flask Repair - Metal Flask
 Flask Repair - Metal Flask - Leader
 Gardener
 Laborer - Yard - Maintenance
 Leader
 Labor - Yard - Maintenance -
 Railroad Track Repair
 Locker Room Attendant
 Milling Machine Operator - Drivers
 (2) Oilier - Machinery, Equipment and
 Motors
 Power House Attendant
 Receiving Department - Leader
 Salvage - Flash Cutter
 Crane Repairman - (Also Operates
 Crane)
 Crane Repairman - Leader
 Die Repair
 Flask Welder

**Central Foundry Grey Iron Plant,
Saginaw, Michigan (Cont'd.)**

Grinder - Cutter
 Grinder Operator - Blanchard
 Inspector - Layout
 Machine Repair - Machinist
 Maintenance - Leader
 Machine Repair - Machinist
 Maintenance
 Machine Repair - Machinist -
 Pattern Shop
 Power House - Engineer - Class "B"
 Power House - Fireman
 Power House - Repairman
 Power House - Repairman - Leader
 Truck Repair - Gas
 Truck Repair - Gas - Leader
 Truck Repairman - Gas and Electric
 (3) Welder - Maintenance - Gas & Arc
 Welder - Tool and Die
 (1) Designated a foundry job only for credited
 service accrued on and after July 27, 1987.
 (2) Not designated as a foundry job for those
 employees so classified who work in
 Department 32.
 (3) Not designated as a foundry job for those
 employees so classified who work in
 Department 30.

Appendix B

Any job classification in effect at a plant specified in Appendix B that was discontinued at such plant prior to September 14, 1973 shall be designated a foundry job if the work that was performed by employees on such discontinued job classification shall conform substantially to work performed at the same plant by employees on a job classification designated as a foundry job for such plant.

APPENDIX C.

For the sole purpose of Article III, Section 7 of the Plan, only those job classifications specifically listed herein, which are set forth in the Local Wage Agreement in effect as of October 1, 1979, at Delco Moraine Division, Dayton, Ohio, may be designated asbestos jobs. Such designation as an asbestos job will apply only to these classifications at the above-specified plant location under the conditions specifically set forth herein. No other job classifications shall be designated asbestos jobs.

Delco Moraine Division, Dayton, Ohio

The following job classifications involved in the blending and processing of raw asbestos are designated asbestos jobs for employees so classified who are assigned to Departments 73M, 515, 523, and 530.

- Experimental Lining
- Extruding Machine Operator
- Janitors
- Job Setter
- Lining-Grinder
- Machine Cleaners
- Preform of Disc Brake Linings
- Production Heat Treat Linings
- Protective Coating Operator
- Sensor Riveters
- Stock Handler
- Weigh and Mix Materials

**STANDARDS FOR APPLICATION OF
PROVISIONS REGARDING RETIREMENT
UNDER MUTUALLY
SATISFACTORY CONDITIONS**

**GENERAL MOTORS HOURLY-RATE
EMPLOYEES PENSION PLAN**

Article II, Section 2(b) and (c) of the General Motors Hourly-Rate Employees Pension Plan provides that an employee may be retired early under mutually satisfactory conditions providing he is otherwise eligible. The following standards have been adopted by the Corporation as a guide in the application of this provision.

Standards

A. An employee who is unable to work efficiently by reason of permanent disability:

The retirement must be in the best interest of the Corporation. It is also intended to benefit employees who are unable to work efficiently by reason of permanent disability. It contemplates that the efficiency of operation will be improved by reason of the retirement which may be the case in any of the following situations:

- (1) The employee is no longer physically or mentally capable of performing his work in an efficient and satisfactory manner.
- (2) The employee, though still capable of performing his work satisfactorily, is prevented by chronic physical illness or physical disability (less than total) from working regularly to the extent that efficiency of operation is interfered with.
- (3) The employee's condition, based on medical evidence satisfactory to the Corporation, is such that,

although able to perform the duties of his job efficiently and satisfactorily, he would thereby be jeopardizing his health or that of fellow employees.

- (4) The employee is on disability leave or is laid off because he is unable to do the work offered by the Corporation efficiently and satisfactorily although able to perform efficiently and satisfactorily other work in the plant to which he would have been entitled if he had had sufficient seniority, and his condition, based on medical evidence satisfactory to the Corporation, is expected to be continuous until his normal retirement age.

B. An employee who is laid off:

Retirement under mutually satisfactory conditions will be available to an employee who is laid off

- (i) as a result of a plant closing or discontinuance of operations, or

- (ii) whose layoff appears to be permanent, and in either case has not been offered suitable work by the Corporation in the same labor market area.

STATEMENT OF INTENT

Notwithstanding the provisions of Exhibit A, Section 3(c) of The General Motors Hourly-Rate Employees Pension Plan; Exhibit B, Items Agreed To of the General Motors Life and Disability Benefits Program For Hourly Employees; Exhibit C, Items Agreed To of the General Motors Health Care Program For Hourly Employees; Exhibit D, Articles V and VI of the Supplemental Unemployment Benefit Plan, and the Items Agreed to by GM-UAW SUB Board of Administration; and Exhibit E, Section 6(a) of the Guaranteed Income Stream Benefit Program, which deal with local union representatives for each of these benefit plan areas, the Corporation and the Union, agree as follows:

1. Appointment of Local Union Benefit Representatives

- (a) Local union benefit representative(s) and alternate(s) shall be appointed or removed by the GM Department of the International Union.
- (b) Temporary replacement appointments may be made by the local union President for a minimum of one week and a maximum of four weeks. Replacement appointments for any absence in excess of four weeks also shall be made by the GM Department of the International Union. Replacement appointments in situations when the benefit representative(s) and alternate(s) are both absent but for less than one week and are on a leave of absence pursuant to the provisions of Paragraph 109 of the GM-UAW National Agreement may be made by the local union President. Any problems that may arise under this procedure may be discussed by the Corporation with the GM Department of the International Union.

- (c) A local union benefit representative shall be an employee of the Corporation having at least one year of seniority, and working at the plant where, and at the time when, he/she is to serve as such representative or alternate. No such representative or alternate shall function until written notice has been given. In the case of temporary appointments, the notice should be given to local Management with additional copies forwarded to the GM Department of the International Union and the Corporation.

2. Number of Local Union Benefit Representatives

- (a) In plants having a total of less than 600 employees, there may be one local union benefit representative and one alternate.
- (b) In plants having a total of 600 but less than 1,200 employees, there may be two local union benefit representatives and two alternates.
- (c) In plants having a total of 1,200 but less than 2,000 employees, there may be three local union benefit representatives and three alternates.
- (d) In plants having a total of 2,000 but less than 5,000 employees, there may be four local union benefit representatives and three alternates. If such plants have a total of 1,400 or more employees on the second and third shifts combined, there may be five local union benefit representatives and two alternates.
- (e) In plants having a total of 5,000 but less than 8,000 employees, there may be five local union benefit representatives and two alternates.
- (f) In plants having a total of 8,000 but less than 10,000 employees, there may be six local union benefit representatives and two alternates.
- (g) In plants having a total of 10,000 or more employees, there may be seven local union benefit representatives and two alternates.

The number of employees as used herein shall include active employees, employees on sick leave of absence, and employees on temporary layoff.

3. Of the total number of local union benefit representatives and alternates otherwise available, one or more representatives and alternates may be assigned to the second shift or third shift so long as the total number of representatives and alternates set forth in Paragraph 2. above is not exceeded.

4. When plant population changes occur which would increase or decrease the number of local benefit plan representatives, such population changes must be in effect for a period of six consecutive months before such adjustment is made in the number of representatives, unless such population change results from the discontinuance or addition of a shift or the opening or closing of a plant. In the event of a cessation of operations, the Corporation, at the request of the UAW General Motors Department of the International Union, will provide for the continuance of Benefit Representation. Other situations involving a sudden significant change in the number of employees at a location may be discussed by the Corporation and the GM Department of the International Union.

5. Benefit Plan districts will be established by local mutual agreement. Only one local union benefit representative will function in a benefit district and will handle specified benefit plan problems raised by employees within that district pertaining to the Pension Plan, Life and Disability Benefits Program, Health Care Program, Supplemental Unemployment Benefit Plan, and Guaranteed Income Stream Benefit Program agreements. An alternate will be permitted to function in the absence of a local benefit plan representative on his/her shift.

6. Any local union benefit representative may function as the member of the local Pension Committee, as the member of the local Supplemental Unemployment Benefit Committee, as a member of the Guaranteed Income Stream Benefit Committee or handle benefit problems under the Life and Disability Benefits Program and the Health Care Program with respect to employees in his/her Benefit Plan district. An alternate may function in the absence of a local union benefit representative.

7. The time available to a local union benefit representative and alternate with respect to a Benefit Plan district may not exceed eight (8) regular working hours of available time in a day.

(a) On his/her regular shift and without loss of pay, a local union benefit representative(s) may accompany the management benefit representative for a mutually agreeable joint off-site visit to a local hospital, an impartial medical opinion clinic or a health maintenance organization, or other similar type joint ventures, with respect to benefit plan matters.

(b) A local union benefit representative attending a scheduled Management-Union Benefit Plan meeting on a shift other than his/her regular shift will be paid for time spent in such meeting.

(c) One local union benefit representative attending the local union retiree chapter meeting will be paid for time spent in such meeting.

(d) The time spent in such local union retiree chapter meetings, off-site visits or Management-Union Benefit Plan meetings will not result in additional hours which exceed regularly scheduled shift hours, overtime premiums or an increase in representation time being furnished as a result of the representative(s) not working a full shift on his/her regular shift.

8. The local union benefit representative shall be retained on the shift to which he/she was assigned when appointed as such representative regardless of seniority, provided there is a job that is operating on his/her assigned shift which he/she is able to perform.

9. The Benefit Plans — Health and Safety office may be used by local union benefit representatives during their regular working hours:

(a) To confer with retirees, beneficiaries, and surviving spouses who ask to see a local union benefit representative with respect to legitimate benefit problems under the Pension, Life and Disability Benefits Program and Health Care Program Agreements.

(b) If the matter cannot be handled appropriately in or near the employee's work area, to confer with employees who, during their regular working hours, ask to see a local union benefit representative with respect to legitimate benefit problems under the Pension, Life and Disability Benefits, Health Care, SUB, and GIS Agreements.

(c) To confer with employees who are absent from, or not at work on, their regular shift and who ask to see a local union benefit representative with respect to legitimate benefit problems under the Pension, Life and Disability Benefits, Health Care, SUB, and GIS Agreements.

(d) To write position statements and to complete necessary forms with respect to a case being appealed to the Pension, SUB, or GIS Boards by an employee in his/her Benefit Plan district, and to write appeals with respect to denied life, health care, and disability claims involving employees within his/her Benefit Plan district.

(e) To file material with respect to the Pension, Life and Disability Benefits, Health Care, SUB and GIS Agreements.

(f) To make telephone calls with respect to legitimate benefit problems raised by employees under the Pension, Life and Disability Benefits, Health Care, SUB, and GIS Agreements.

**LETTER
AGREEMENTS**

GENERAL MOTORS CORPORATION

September 17, 1990

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Attention: Mr. Stephen P. Yokich
Vice President and Director
General Motors Department

Gentlemen:

This letter of agreement constitutes an amendment to the 1990 GM-UAW Pension Plan and shall be construed and applied as if it were therein incorporated.

Pursuant to Subsection 354(14) of the Michigan Workers Compensation Act, as amended, until termination or earlier amendment of the 1990 Collective Bargaining Agreement, workers compensation for employees shall not be reduced by disability retirement benefits payable under the Hourly-Rate Employees Pension Plan.

Very truly yours,

GENERAL MOTORS CORPORATION

Alfred S. Warren, Jr.
Vice President

Accepted and Approved:

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

By: Stephen P. Yokich

Lump-Sum Payment

GENERAL MOTORS CORPORATION

September 17, 1990

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Attention: Mr. Stephen P. Yokich
Vice President and Director
General Motors Department

Gentlemen:

During these negotiations the parties agreed upon certain lump-sum payments to be made to eligible retirees and surviving spouses.

Lump-sum payments would be made, on the basis described below, by Corporation check or draft paid directly to retired employees and surviving spouses.

1. The following persons will be eligible for lump-sum payments:

(a) employees who retired prior to October 1, 1990 under the terms of Article II, Sections 1, 2 or 3 of the Plan and who are receiving benefits from the Plan as of the first of the month for which a lump-sum payment would be made.

(b) eligible surviving spouses of employees who retired under the terms of Article II, Sections 1, 2 or 3 of the Plan prior to October 1, 1990, or surviving spouses eligible for a benefit prior to September 17, 1990 pursuant to Article II, Section 5(g) of the Plan (excluding surviving spouses of former employees who broke seniority and who are eligible for a deferred pension), or surviving spouses eligible for a benefit under Article II, Section 8(d) and who are eligible for a pension benefit from the Plan as of the first of the month for which a lump-sum payment would be made.

90

Lump-Sum Payment

2. Amount of Benefit:

(a) a maximum payment of \$630 will be made to retired employees with thirty or more years of credited service. The payment to pensioners with less than thirty years of credited service will be \$21 per year of credited service (with a proportional amount for fractional years) or a minimum payment of \$210.

(b) eligible surviving spouses will receive 60% of the amount that would have been payable to the retired employee under (a) above.

3. Dates of Payment: December 1991 and December 1992.

Please indicate your concurrence in the proposed lump-sum payments arrangement and other provisions of this letter.

Very truly yours,

GENERAL MOTORS CORPORATION

Alfred S. Warren, Jr.
Vice President

Accepted and Approved:

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

By: Stephen P. Yokich

91

Mutually Satisfactory Retirement

GENERAL MOTORS CORPORATION

September 17, 1990

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Attention: Mr. Stephen P. Yokich
Vice President and Director
General Motors Department

Gentlemen:

During these negotiations the parties agreed to provide mutually satisfactory retirements, commencing as early as age 50, and solely during the period November 1, 1990, through May 1, 1991, inclusive, to up to 5,213 hourly employees, in selected GM locations, who had attained age 50 with 10 or more years of credited service as of October 1, 1990, all as set forth in detail in Document 9 attached to the 1990 GM-UAW Collective Bargaining Agreement.

Solely to implement the agreement described immediately above, this letter of agreement constitutes an amendment to the 1990 GM-UAW Pension Plan and shall be construed and applied as if it were therein incorporated.

In that regard, Article II, Section 2(b) of the GM-UAW Pension Plan, and the "Standards" attached to such Plan, shall be deemed to provide eligibility for mutually satisfactory retirement as early as age 50, solely for the otherwise eligible employees set forth in such Document 9, only during the period described therein, and only under the specific circumstances described therein.

Mutually Satisfactory Retirement

In conjunction therewith, the attached guidelines are applicable, and must be satisfied with respect to certain such employees retired under Attachment B of the GM-UAW Collective Bargaining Agreement.

Very truly yours,

GENERAL MOTORS CORPORATION

Alfred S. Warren, Jr.
Vice President

Attach.

Accepted and Approved:

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

By: Stephen P. Yokich

ATTACHMENT

An employee with seniority:

Retirement under mutually satisfactory conditions will be available to an employee who on or after October 1, 1990

- (i) is in a JOBS Bank, or
- (ii) will be replaced by

- (aa) an employee in a JOBS Bank, or
- (bb) a laid off GIS eligible employee with seniority whose layoff appears to be permanent.

and in any such case, only to any such employee who at the date of his retirement satisfies the conditions for such retirement as stipulated under Attachment B of the JOBS Program.

GENERAL MOTORS CORPORATION

September 17, 1990

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Attention: Mr. Stephen P. Yokich
Vice President and Director
General Motors Department

Gentlemen:

During these negotiations the parties agreed to provide mutually satisfactory retirements, commencing as early as age 50, and solely during the period November 1, 1990, through May 1, 1991, inclusive, to (1) active employees, (2) laid off seniority employees, and (3) laid off employees with 64(e) rehired rights, only at BOC - Leeds, CPC - Fiero, CPC - Framingham, and CPC - Lakewood, who have attained age 50 with 10 or more years of credited service as of October 1, 1990, all as set forth in detail in the new "Special Benefit and Placement Plan Document", which is attached to the 1990 GM-UAW Collective Bargaining Agreement.

Solely to implement the agreement described immediately above, this letter of agreement constitutes an amendment to the 1990 GM-UAW Pension Plan and shall be construed and applied as if it were therein incorporated.

In that regard, Article II, Section 2(b) of the GM-UAW Pension Plan, and the "Standards" attached to such Plan, shall be deemed to provide eligibility for mutually satisfactory retirement as early as age 50, solely for the otherwise eligible employees set forth in the above described Document, only during the period described therein, and only under the specific circumstances described therein.

Notwithstanding the preceding, the parties further agreed to provide mutually satisfactory retirement eligibility, only to certain employees at the four locations listed earlier herein, each of whom has (a) attained age 48, but not age 50, and (b) 10 or more years of credited service, as of October 1, 1990. Each such retirement granted hereunder will become effective on the first day of the month immediately following each such eligible employee's attainment of age 50.

Very truly yours,

GENERAL MOTORS CORPORATION

Alfred S. Warren, Jr.
Vice President

Accepted and Approved:

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

By: Stephen P. Yokich

5-14-07



GM Benefits & Services Center

gmbenefits.com

1-800-489-4646

International Access

Dial AT&T Direct[®] Service Access Code, then 877-833-9900

TDD Service for the Hearing Impaired

1-877-347-5225

WALTER J LAWRENCE
#162, 3101 SW 34TH AVE. #905
OCALA, FL 34474-0000

May 14, 2007

Re: Recalculation of Pension Benefits

Dear WALTER J LAWRENCE:

This is a revised statement of your Pension Benefits from General Motors. The revision and reason for the Pension Benefit Recalculation is:

- Benefits were not adjusted by the Tax Levy Amount of \$1,099.50
- Pension Overpayment

	Current Benefit Amount	New Benefit Amount as of 07/01/2007
Benefit to Participant:	\$1,045.50	\$0.00

Our records indicate you have received an overpayment of retirement benefits from 01/01/2005 through 06/01/2007, a total of 30 month(s). The total amount of the overpayment is \$32,985.00. Because the Plan is an ERISA qualified Plan, we are required to collect overpayments and return them to the Plan's Trust Fund.

Please make your check or money order payable to General Motors Corporation and send it to the Benefit Service Center in the self addressed envelope enclosed for your convenience. On the check or money order, indicate that this is to repay an overpayment, clearly print your full name and include your Social Security number.

B

Additional Information

If you have any questions, please call the GM Benefits & Services Center toll-free at 1-800-489-4646, Monday through Friday, between 7:30 a.m. and 6:00 p.m., Eastern Time zone, to speak with a Customer Service Associate. From outside the U.S., dial your country's toll-free AT&T Direct® access number then enter 877-833-9900. In the U.S., call 1-800-331-1140 to obtain AT&T Direct access numbers. From anywhere in the world, access numbers are available online at www.att.com/traveler or from your local operator.

To ensure you receive future mailings, please contact the GM Benefits & Services Center any time your mailing address changes.

Sincerely,

GM Benefits & Services Center

Additional Information

If you have any questions, please call the GM Benefits & Services Center toll-free at 1-800-489-4646, Monday through Friday, between 7:30 a.m. and 6:00 p.m., Eastern Time zone, to speak with a Customer Service Associate. From outside the U.S., dial your country's toll-free AT&T Direct® access number then enter 877-833-9900. In the U.S., call 1-800-331-1140 to obtain AT&T Direct access numbers. From anywhere in the world, access numbers are available online at www.att.com/traveler or from your local operator.

To ensure you receive future mailings, please contact the GM Benefits & Services Center any time your mailing address changes.

Sincerely,

GM Benefits & Services Center



GM Benefits & Services Center

gmbenefits.com

1-800-489-4646

International Access

Dial AT&T Direct® Service Access Code, then 877-833-9900

TDD Service for the Hearing Impaired

1-877-347-5225

WALTER J LAWRENCE
#162, 3101 SW 34TH AVE. #905
OCALA, FL 34474-0000

September 5, 2007

Re: Recalculation of Pension Benefits

Dear WALTER J LAWRENCE:

This is a revised statement of your Pension Benefits from General Motors. The revision and reason for the Pension Benefit Recalculation is:

- Tax Levy Amended to \$208 as per IRS Guidelines
- Pension Overpayment

	Current Benefit Amount	New Benefit Amount as of 10/01/2007
Benefit to Participant:	\$0.00	\$837.50

Our records indicate you have received an overpayment of retirement benefits. The total amount of the overpayment is \$32,985.00. Because the Plan is an ERISA qualified Plan, we are required to collect overpayments and return them to the Plan's Trust Fund.

Please make your check or money order payable to FIIOC "Fidelity Investments Institutional Operating Company" and send it to the Benefit Service Center in the self addressed envelope enclosed for your convenience. On the check or money order, indicate that this is to repay an overpayment, clearly print your full name and include your Social Security number.

If the payment in a lump sum is not received, beginning 10/01/2007, your monthly benefit will be reduced by 50% until the total amount of the overpayment has been recovered. This means that your gross monthly benefit will be \$418.75 until 03/01/2014. On 04/01/2014, you will receive \$515.00 completing the recovery of your overpayment of \$32,985.00. Thereafter, your gross monthly benefit of \$837.50 will be restored.

D

Additional Information

If you have any questions, please call the GM Benefits & Services Center toll-free at 1-800-489-4646, Monday through Friday, between 7:30 a.m. and 6:00 p.m., Eastern Time zone, to speak with a Customer Service Associate. From outside the U.S., dial your country's toll-free AT&T Direct® access number then enter 877-833-9900. In the U.S., call 1-800-331-1140 to obtain AT&T Direct access numbers. From anywhere in the world, access numbers are available online at www.att.com/traveler or from your local operator.

To ensure you receive future mailings, please contact the GM Benefits & Services Center any time your mailing address changes.

Sincerely,

GM Benefits & Services Center

4

Supplemental Agreement

Covering

PENSION PLAN

Exhibit A

to

AGREEMENT

between

GENERAL MOTORS CORPORATION

and

UAW

dated

September 17, 1990

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EXHIBIT A — Supplemental Agreement Between General Motors Corporation and the UAW (Pension Plan)

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EXHIBIT A
SUPPLEMENTAL
AGREEMENT
(Pension Plan)

SUPPLEMENTAL AGREEMENT (PENSION PLAN)

On this 17th day of September, 1990, General Motors Corporation, hereinafter referred to as the Corporation, and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, hereinafter referred to as the Union, on behalf of the employees covered by the collective bargaining agreement of which this Supplemental Agreement becomes a part, agree as follows:

Section 1. Establishment of Plan

Subject to the approval of its Board of Directors, the Corporation will establish an amended pension plan, hereinafter referred to as the "Plan", a copy of which is attached hereto as Exhibit A-1 and made a part of this agreement to the extent applicable to the employees represented by the Union and covered by this agreement as if fully set out herein, modified, and supplemented, however, by the provisions hereinafter. In the event of any conflict between the provisions of the Plan and the provisions of this agreement, the provisions of this agreement will supersede the provisions of the Plan to the extent necessary to eliminate such conflict.

The Plan, as set forth in Exhibit A-1, and the Plan as it may be modified and supplemented by superseding provisions of this agreement, as above provided, are both contingent upon and subject to obtaining and retaining such approval of the Commissioner of Internal Revenue as the Corporation may find necessary to establish the deductibility under Section 404 of the Internal Revenue Code for income tax purposes of any and all contributions made by the Corporation to both plans and to establish the plans and related trust as being qualified and tax exempt.

under Sections 401 and 501(a) or other applicable provisions of the Internal Revenue Code. Any modification or amendment of either the Plan, or the Plan as modified and supplemented by this agreement, may be made retroactively by the Corporation with the consent of the Union, if necessary or appropriate, to qualify or maintain the Plan as a plan and trust meeting the requirements of Sections 401 and 501(a) of the Internal Revenue Code, as now in effect or hereafter amended, or any other applicable provisions of the federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder, provided that pension benefits under the Plan are not diminished.

Until the Plan is approved by the Corporation's Board of Directors and by the Commissioner of Internal Revenue, all as hereinbefore provided, the benefits payable shall be only those determined under the Plan as constituted prior to October 1, 1990; provided, however, that following approval by its Board of Directors and its receipt of the favorable ruling from the Commissioner of Internal Revenue as set forth above, the Corporation or the trustee will pay to retired employees and surviving spouses any excess amounts equal to the difference between the monthly pension calculated in accordance with the terms of the Plan, attached hereto as Exhibit A-1, and the monthly pension paid or payable in accordance with the terms of the Pension Plan which was attached as Exhibit A-1 to the Supplemental Agreement (Pension Plan) between the Parties dated October 8, 1987. Any such excess amounts payable for months prior to the receipt of the aforementioned Board of Directors and the Commissioner of Internal Revenue approvals, shall be payable the first of the month following the date upon which the last of these two approvals is received by the Corporation, and any such amounts payable thereafter shall be paid on the first of the month at the same time as the related pension is paid.

(2)

In the event that the Plan is disapproved by the Board of Directors of the Corporation, the Corporation within thirty days after any such disapproval will give written notice thereof to the Union and this agreement shall thereupon have no force or effect. In that event the matters covered by this agreement shall be the subject of further negotiation between the Corporation and the Union.

Section 2. Financing

(a) A trustee or an insurance company, or both, shall be designated by the Corporation, and a trust agreement or contract, of both, executed between the Corporation and such trustee or insurance company, or both, under the terms of which a pension fund or insured fund, shall be established to receive and hold contributions payable by the Corporation, interest, and other income, and to pay the pensions and supplements provided by the Plan.

(b) The Corporation agrees to pay over irrevocably to the trustee or insurance company during the period of this agreement contributions or payments for the Plan equal to the sum of (i) and (ii) below as determined and certified as of each anniversary of the effective date of the Plan by one or more actuaries chosen by, but independent of, the Corporation, and qualified through Fellowship in the Society of Actuaries and enrollment with the Joint Board for Enrollment of Actuaries (hereinafter referred to as the actuary). Such contributions or payments for any year may be made not later than the date on which such contributions are required by law to be made for the purpose of crediting such contributions to such year under the minimum funding standards of the Employee Retirement Income Security Act of 1974:

(i) the annual "current service" or "normal cost" contribution attributable to a year's cost accruals

(3)

in respect of assumed continuous service after each such anniversary date, and

(ii) the "prior service contribution" computed as that part of the present value, at each such anniversary date, of the prospective pensions payable under the Plan for employees, pensioners and former employees who are entitled to a deferred pension then covered by the Plan which is in excess of:

(aa) the value of the trust fund, as then comprised of any contracts and total other assets, invested and uninvested, such total assets being valued on a basis at least equal to the total cost thereof, plus

(bb) the then present value of the prospective current service or normal cost contributions determined by the actuary in accordance with (i) above,

such excess part being amortized according to the following schedule:

(1) in respect of the portion of such excess part attributable to the level of benefits in effect prior to October 1, 1979 — the fifty-ninth anniversary of the Corporation's pension plan (October 1, 2009); and

(2) in respect of the portion of such excess part attributable to the increase in the level of benefits established by amendments to the Corporation's pension plan effective on or after October 1, 1979 — the thirtieth anniversary of the date on which such increase in the level of benefits becomes effective.

(c) The Corporation may contribute or pay additional amounts to the trustee or insurance company or both, under (b) above in any year without such additional amounts being construed to reduce any thirty-year period for the completion of the prior service contributions of subsection (b)(ii) above. If the Corporation has contributed any such additional amounts prior to any anniversary date of the

(4)

Corporation's pension plan or shall contribute any such additional amounts prior to any anniversary date of the Plan falling within the duration of this agreement, the Corporation may as of such anniversary contribute a lesser amount than otherwise determined by (b) above for such anniversary, provided that the value of any contracts and total other assets as valued in accordance with (b)(ii)(aa) above at such anniversary shall not be less than the amount estimated by the actuary to be the value as if contributions and payments up to and including such anniversary date had been made as provided in (b) above and no additional amounts had been contributed or paid prior to such anniversary.

(d) The Corporation by payment of the contributions or amounts as hereinbefore provided in this section shall be relieved of any further liability, and pensions and supplements shall be payable only from the trust fund or the insured fund or both.

Section 3. Administration

(a) Board of Administration

(1) There shall be established a central Board of Administration hereinafter referred to as the Board, composed of six members, three appointed by the Corporation and three by the Union. Each member of the Board shall have an alternate. In the event a member is absent from a meeting of the Board, his alternate may attend and when in attendance shall exercise the duties of the member. Either the Corporation or the Union at any time may remove a member or alternate appointed by it and may appoint a member or alternate to fill any vacancy among members or alternates appointed by it.

No person shall act as a member of the Board of Administration or as an alternate for such member unless notice of his appointment has been given in

(5)

writing by the party making the appointment to the other party.

(2) The Board shall meet at such times and for such periods for the transaction of necessary business as may be mutually agreed upon by its members.

(3) To constitute a quorum for the transaction of business, the presence of four members of the Board shall be required. At all meetings of the Board the member or members present appointed by the Corporation shall have in the aggregate a total of one vote to be cast on behalf of the Corporation, and the member or members present appointed by the Union shall have in the aggregate a total of one vote to be cast on behalf of the Union.

(4) The compensation and expenses of the Corporation members will be paid by the Corporation and the compensation and expenses of the Union members will be paid by the Union and no part of such compensation or expenses will be paid from the trust fund.

(5) The Corporation shall cause to be furnished to the Board of Administration annually:

(i) A statement as of each anniversary date of the Plan showing in summary form the value of the assets which comprise such fund by general categories of investment, such value being determined on a basis at least equal to the total cost thereof for each such category.

(ii) Such information as to age, sex and service of hourly-rate employees of the Corporation as a whole in the United States and as to the number of pensioners and amount of pensions and supplements by age groups, as the Board may reasonably require, but in no event shall the Corporation be required to furnish the Board with any data not furnished by the Corporation to the actuary.

(6)

(iii) A report, prepared by the actuary, in respect of each year's actuarial valuation of the Plan, setting out the following:

(a) the amount of the normal cost contribution and the amount of the payment toward amortization of the actuarial deficiency required in accordance with Section 2(b) hereof.

(b) a statement of the method and the assumptions, such as the interest rate, mortality rates, withdrawal rates, retirement rates, average benefit unit and assumptions used with respect to the survivor benefit, adopted for the valuation for the purposes of Section 2(b) hereof.

(c) the amount, as of each anniversary date, of the gross actuarial deficiency, determined in accordance with Section 2(b) hereof as the present value of the prospective pensions payable under the Plan less the then present value of the prospective normal cost contributions, if any, for (1) retired employees, (2) employees who have separated with retention of deferred pensions, (3) non-retired and non-separated employees, and (4) total.

(d) the amount of assets used in the actuarial valuation, together with a reconciliation of the amount of such assets with the amount used in the preceding valuation.

(e) the amount of the net (unfunded) actuarial deficiency.

(f) the amount by which the value of the trust fund exceeded the amount then required by Section 2(b) hereof to be in such fund.

(g) the extent to which the trust fund assets as of the valuation date would be sufficient to cover the pension liabilities, as determined in accordance with SFAS 87.

(7)

(iv) A statement, certified by the actuary, that the amount of the trust fund is or is not less than the amount then required by Section 2(b) hereof to be in such fund.

(v) A statement setting forth:

(aa) The value of the trust fund computed on the basis of market value as of the previous anniversary date of the Plan.

(bb) Additions during Plan year:

(i) payments by General Motors into the fund

(ii) interest and dividends received by the fund

(iii) net investment gains, and

(iv) total additions.

(cc) Pension payments and supplements to retired employees and surviving spouses during Plan year.

(dd) The value of the trust fund computed on the basis of market value as of the anniversary date of the Plan for the year for which the statement is being submitted.

(vi) A schedule setting forth as of March 31 of each year:

(aa) the amount of investment of the pension fund in residential real estate mortgages, by type, in communities with General Motors plants and in other communities.

(bb) the amount invested in such residential real estate mortgages during the preceding year in comparison with total new money investments during that year, and

(8)

(cc) a description of such residential mortgages in which funds were invested during the preceding year, by type, separately by plant city areas and in total for other areas.

(vii) A copy of Form 5500 reports and attendant schedules for the Plan will be furnished as soon as practicable after General Motors has filed such report with the Internal Revenue Service.

(6) The Board of Administration shall have no power to add to or subtract from or modify any of the terms of this agreement or the Plan, nor to change or add to any benefit provided by said agreement or Plan, nor to waive or fail to apply any requirement of eligibility for a benefit under said agreement or Plan.

(7) Any case referred to the Board of Administration on which it has no power to rule shall be referred back to the parties without ruling.

(8) No ruling or decision of the Board of Administration in one case shall create a basis for a retroactive adjustment in any other case prior to the date of written filing of each such specific claim.

(9) There shall be no appeal from any ruling by the Board which is within its authority. Each such ruling shall be final and binding on the Union and its members, the employee or employees involved, and on the Corporation.

The Union will discourage any attempt of its members and will not encourage or cooperate with any of its members, in any appeal to any Court or Administrative Board or Agency from a ruling of the Board of Administration.

(b) Impartial Chairman:

(1) The Corporation and the Union shall mutually agree upon and select an Impartial

(9)

A. Sect. 3(b)(1)

Chairman, who shall serve until requested in writing to resign by three Board members.

(2) The Impartial Chairman will not be counted for the purpose of a quorum, and will vote only in case of a failure of the Corporation and the Union by vote through their representatives on the Board, to agree upon a matter which is properly before the Board and within the Board's authority to determine; provided that the Impartial Chairman may vote only on matters involving the processing of individual cases, not on the development of procedures.

(3) The fees and expenses of the Impartial Chairman will be paid one-half by the Corporation and one-half by the Union.

(c) As soon as possible after the effective date of this agreement, the Union and Corporation members of the Board of Administration shall work out matters such as but not limited to: (1) procedures for establishing Local Pension Committees at the Divisions or plants involved; (2) the authority and duties of such Local Pension Committees; (3) the procedures for reviewing applications for pensions; (4) the handling of complaints regarding the determination of age, service credits, and computation of benefits; (5) procedures for making appeals to the Board; (6) means of verifying service credits to which employees are entitled under the Plan; (7) methods of furnishing information to employees regarding past and future service credits; (8) the amount of time the Union members of the local committees may be permitted to leave their work to attend meetings of the Local Pension Committees; (9) how disputes over total and permanent disability claims will be handled, including disputes, if any, with respect to whether a disabled pensioner engages in gainful employment; (10) the review of pertinent information about the Plan for dissemination to employees; (11) how pension payments will be authorized by the Board. All such

(10)

A. Sect. 3(c)

matters shall be consistent with all other provisions of the Plan and this agreement. The working out of the procedures outlined in this section shall be the responsibility of the Corporation and Union members of the Board, and the Impartial Chairman shall have no power to decide any question with respect thereto.

The provisions of Agreement Implementing Section 3(c) of the Supplemental Agreement, Pension Plan, dated October 14, 1988 which were established by the Board pursuant to the foregoing are incorporated herein by reference and are a part hereof and effective with respect to the administration of the Plan as fully as if set out herein at length.

(d) Except as provided otherwise in this agreement, the general administration of the provisions of the Plan shall be the responsibility of the Corporation.

(e) The Board and any member of the Board, or the Local Pension Committees or any member of the Local Pension Committees, shall be entitled to rely upon the correctness of any information furnished by the Union or the Corporation. Neither the Board nor any of its members, nor the Local Pension Committees nor any of its members, nor the Union nor any officer or other representative of the Union, nor the Corporation nor any officer or other representative of the Corporation shall be liable because of any act, or failure to act, on the part of the Board or any of its members, or the Local Pension Committees or any of its members or any person, except that nothing herein shall be deemed to relieve any such individual from any liability for his own fraud or bad faith.

(f) No matter respecting the Plan as modified and supplemented by this agreement or any difference arising thereunder shall be subject to the grievance procedure established in the collective bargaining agreement between the Corporation and the Union,

(11)

A. Sect. 3(f)

except as expressly provided in Paragraph (46) of such collective bargaining agreement.

(g) Credited service shall be granted an employee who is absent from his work pursuant to Paragraph 24 of the National Agreement, or on a leave of absence under Paragraph 109 of the National Agreement if the leave was granted for the purpose of permitting the employee to engage in the business of or to work for the Local Union, or if the leave was granted under Paragraph 109(a) of the National Agreement for the purpose of permitting the employee to engage in the business of or to work for the International Union while on such leave (an employee on leave under the National Agreement solely to permit the employee to be Manager of the credit union sponsored by the Local Union shall be included hereunder, but only with respect to any period while serving in such capacity while on such leave).

An employee eligible for credited service under this section shall be credited with up to 40 hours for each calendar week since October 1, 1950 while he is on such leave, including compensated hours, provided he meets the requirements of the leave, but in no event shall the employee be credited with more than 1700 hours, including compensated hours, in any calendar year.

Section 4. Effect of Retirement on Employment Status and Seniority

(a) An employee who retires or is retired under the terms of the Plan shall cease to be an employee and shall have his seniority canceled.

(b) An employee who has been retired on a total and permanent disability pension and who thereby has broken his seniority in accordance with subsection (a) above, but who recovers and has his pension discontinued, shall have his seniority reinstated as

(12)

A. Sect. 4(b)

though he had been on a sick leave of absence during the period of his disability retirement, provided, however, if the period of his disability retirement was for a period longer than the seniority he had at the date of retirement, he shall, upon the discontinuance of his disability pension, be given seniority equal to the amount of seniority he had at the date of such retirement.

(c) If an employee retired for reasons other than total and permanent disability who has lost seniority in accordance with subsection (a) above, is retired, such employee will have the status of a new employee.

Section 5. Supplements

Notwithstanding any other provisions of the Plan, an employee who retires with benefits payable commencing on or after October 1, 1990 while on an approved leave of absence requested by the International Union to permit him to engage in the business of or to work for the International Union shall not be prevented from receiving benefits under Section 6 of Article II of the Plan solely because the last day he worked for the Corporation was not within five years of the date his pension benefits commence.

Section 6. Deduction of Union Dues

(a) Notwithstanding any other provisions of the Plan, any retired employee entitled to receive a pension or supplement may, pursuant to the retired employee's written authorization and direction acceptable to the Corporation, authorize the deduction of monthly Union dues from any monthly pension or supplement otherwise payable to him and direct that such dues be remitted to the Union.

(b) An authorization to deduct said monthly Union dues shall become effective as of the first of the second month following the month in which the Corporation

(13)

A, Sect. 6(b)

receives such authorization from the Union, and shall remain in full force and effect until revoked by the retired employee's written notice given to the Corporation, except that during any period when there is not in effect a written collective bargaining agreement or supplement thereto between the Corporation and the Union which permits or provides for the deduction of Union dues from monthly pension benefits payable to a retired employee, such assignment, authorization and direction, if otherwise in effect, shall automatically be suspended for the duration of such period only.

(c) The Union shall indemnify and hold harmless the Corporation against any and all liability, including reasonable attorney's fees, that may arise by reason of the Corporation's compliance with this Section 6.

(d) This Section 6 shall be of no force or effect during any month for which less than one thousand such authorizations are in effect.

Section 7. Foundry Jobs

Any job classification put into effect after September 14, 1973, at a plant identified in Appendix B of the Plan, shall be designated by written agreement between the parties as a foundry job if such classification (a) supersedes or replaces a job classification previously designated as a foundry job for such plant and (b) becomes applicable to employees who perform substantially the same work as had been performed by employees while on a job classification previously designated as a foundry job for such plant.

(14)

A, Sect. 8

Section 8. Duration of Agreement

This agreement and Plan shall continue in effect until the termination of the collective bargaining agreement of which this is a part.

In witness hereof, the parties hereto have caused this agreement to be executed the day and year first above written.

(15)

INTERNATIONAL
UNION, UAW

OWEN BUBER
STEPHEN P. YOKICH
DONALD I. DAVIS
DARREL NEWBERRY
CALVIN T. RAPSON
TED MILLER
TOM PASCO
HENDERSON SLAUGHTER
TOM WEEKLEY
RICHARD SHOEMAKER
LEON BLACKWELL
GEORGE BRODEUR
LESTER BRYAN
L. E. BUNCH
MIKE GRACEY
RICHARD HOALCRAFT
JAMES JACKSON
RICK LYONS
DICK MONCZKA
JUDY MURPHY
PEGGY PERSON
GARY WATSON
RICHARD SWIM
HAROLD SHELTON
J. D. DALTON
VINCE DEMME, JR.
SAM ISAAC
KEN LAUBERT
CARL PEDERSEN, JR.
ROGER RATLIFF
TOM ROBINSON
DON SARKESIAN
LEWIS W. SCHULTZ
NORM ACORD
ROGER ANCLAM
BILL APPLE
JIM BEARDSLEY
AL BERGMANN
CHARLES BEST
JACK BROWN
BENNIE BURGESS
BILL CARSHAW
JIM CARSON

GENERAL MOTORS
CORPORATION

ROBERT C. STEMPHIL
LLOYD E. REUSS
F. ALAN SMITH
CHARLES KATKO
ALFRED S. WARREN, JR.
RICHARD F. O'BRIEN
JOHN D. BUTLER
HOWARD C. CARLSON
DONALD G. GARDNER
RICHARD K. McMILLAN
THOMAS J. MORR
ROBERT G. WIENCEK, M.D.
RALPH E. HANDLEY
JAMES E. PRYCE
KENNETH J. MCCORMICK
THOMAS E. UTTER
ARTHUR R. SCHWARTZ
CHARLES E. RYAN
ALAN S. DAWES
ROBERT W. HENDRY
H. EUGENE BROWN
EDWARD D. DuCHARME
FRED G. HAUBOLD
RICHARD L. HUBER
GERALD A. KNECHTEL
ROBERT D. LEE
ANTHONY L. MARCHIO
MICHAEL V. TIERNEY
JAMES R. WIEMELS
BETTY R. ANDERSON
JOHN H. BERRY, III
E. PRESTON BOLDEN
RICHARD L. BREWER
SAMUEL L. COLE, JR.
WILLIAM L. COWELL
RALPH E. DEEDS, JR.
H. STEPHEN DOYLE
JOHN J. FLAHERTY
MARK R. FLORA
JOHN P. FURMAN
THOMAS A. GAWEL
STEVEN L. GEBBIA
BEACH B. HALL

INTERNATIONAL
UNION, UAW

RUFUS COLEMAN
JERRY COVILLE
HAROLD COX
DICK DANJIN
BOB FARLEY
EARL FARRELL
JERRY FAULKNER
MARK FIELDER
RAY GIBSON
ROY GOFORTH
LARRY GONTKO
MOSES GREEN
CECIL HAMPTON
LINDA HOALCRAFT
JIM HOWE
LARRY JOLLY
DICK JONES
CHRIS MANNING
GEORGE MAPES
BUD MILLER
CLAYTON MOLL
RON MURRAY
WILBERT NEAL
HERSCHEL NIX
BILL RENO
TOM RICHARDSON
JOE SAWYER
ELLA MAE SCHULTZ
JIM SHROAT
DARRELL SMITH
WILLIAM SMITH
JOE SPRING
LARRY STEVENS
CINDY SUEMICK
KARLA SWIFT
KEN TERRY
JIM TITSWORTH
TOM WALSH
DICK WEEDEN
JIM WESTNESS
JIM WHEATLEY
WILLIE WILLIAMS
ED YONAN

GENERAL MOTORS
CORPORATION

CARLTON V. MATZELLE
TERRY J. McDOUGALL
MILTON H. OSBORN, JR.
GARY N. PHELEY
BERNARD J. QUICK
JAY C. WILBER
GERALD J. WINTER
W. GARY BRYANT
CAROLE G. DAVEY
JENNIE F. HART
BETTY SUE JONES
JAMES W. LaLONDE
SANDRA POPE THOMPkins
BERNARD G. WEBER

EXHIBIT A-1
THE GENERAL MOTORS
HOURLY-RATE EMPLOYEES
PENSION PLAN

**ARTICLE I
ESTABLISHMENT OF THE PLAN**

General Motors Corporation on behalf of itself and its Divisions and as agent for certain of its directly or indirectly wholly-owned and substantially wholly-owned domestic subsidiaries in accordance with I.R.C. Section 414(b), (c), and (m) will establish, subject to the approval of its Board of Directors, a pension fund either by a trust agreement with a trustee or trustees or by contract with an insurance company or insurance companies, or both, and with respect thereto shall make such payments or contributions as will be sufficient to maintain the fund on a sound actuarial basis as well as to pay expenses incident to the operation and management of the Plan.

Except as expressly provided in Sections 6, 7, and 8 of Article II and as provided in Article VII and Article IX, the provisions set forth in this Plan are applicable only to employees with seniority on or after October 1, 1990. Employees retired with benefits commencing prior to such date or separated prior to such date, or eligible surviving spouses of such employees, shall be entitled to the benefits, if any, under the Plan as it existed immediately prior to such date.

Notwithstanding the paragraph immediately above, employees who retired with benefits commencing after September 17, 1990 and prior to October 1, 1990 pursuant to the provisions of Article II of the Plan, shall be considered for purposes of Article II herein as having retired with benefits payable commencing on or after October 1, 1990; the surviving spouse of any employee who died after September 17, 1990 and prior to October 1, 1990, who is otherwise eligible for monthly benefits under the Plan, shall be considered entitled to monthly benefits pursuant to Section 5 of Article II herein; and any such employees

shall be considered eligible for credited service under Article III herein.

ARTICLE II

ELIGIBILITY FOR RETIREMENT AND AMOUNT OF PENSIONS

Section 1. Normal Retirement

Any employee who shall have attained the age of 65, shall have completed one or more years of credited service as provided in Article III and shall cease active service, shall be entitled to receive a pension.

Section 2. Early Retirement

(a)(1) An employee who has attained age 60 but not age 65, and who has 10 or more years of credited service, may retire at the option of the employee.

(2) An employee who has attained age 55 but not age 60, and whose combined years of age and years of credited service (to the nearest 1/12 in each case) shall total 85 or more, may retire at the option of the employee.

(3) An employee who has 30 or more years of credited service may retire at the option of the employee.

(b) An employee who has attained age 55 (age 50 for an employee who is laid off on or after October 1, 1984 as a result of a plant closing where no other General Motors plants are in the same geographical area) but not age 65 and who has 10 or more years of credited service may be retired under mutually satisfactory conditions as set forth hereinafter in the Standards applicable to such retirement.

Section 3. Total and Permanent Disability Retirement

(a) An employee who is totally and permanently disabled prior to attaining age 65, and has at least 10 years of credited service, shall be eligible for a disability pension as hereinafter provided.

(b) An employee shall be deemed to be totally and permanently disabled only if he is not engaged in regular employment or occupation for remuneration or profit and on the basis of medical evidence satisfactory to the Corporation the employee is found to be wholly and permanently prevented from engaging in regular employment or occupation with the Corporation at the plant or plants where he has seniority for remuneration or profit as a result of bodily injury or disease, either occupational, or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country unless the employee becomes totally and permanently disabled after he has accumulated at least 5 years of seniority following his separation from service in the armed forces.

(c) Any disability pensioner may be required to submit to medical examination at any time during retirement prior to age 65, but not more often than semi-annually, to determine whether the pensioner is eligible for continuance of the disability pension. If on the basis of such examination it is found that the pensioner is no longer disabled or if the pensioner engages in gainful employment, except for purposes of rehabilitation as determined by the Corporation, the pensioner will be deemed recovered and his disability pension will cease. In the event the disability pensioner refuses to submit to medical examination the pension will be discontinued until the pensioner is examined.

Section 4. Amount of Pensions

(1) The monthly pension payable to an employee retired pursuant to the provisions of Sections 1, 2, or 3 of this Article II with benefits payable commencing on or after October 1, 1990 shall be a basic benefit for each year of credited service that the employee had at the date of his retirement, determined by his Benefit Class Code and based on the month for which payment is being made as set forth in the table immediately following:

Retirement With Benefits Payable Commencing	Benefit Class Code	Basic Benefit Rate Per Year of Credited Service For Months Commencing		
		10-1-90 through 9-1-91	10-1-91 through 9-1-92	10-1-92 and After
October 1, 1990 and After	A	\$ 28.35	\$ 29.50	\$ 30.70
	B	28.60	29.75	30.95
	C	28.85	30.00	31.20
	D	29.10	30.25	31.45

(2) The monthly pension benefit payable to an employee who retires at his option at a date selected by the employee shall be multiplied by a percentage as set forth in the following table:

Age When Pension Commences	Percentage*
42	21.0%
43	22.6
44	24.3
45	26.1
46	28.2
47	30.4
48	32.8
49	35.4
50	38.3
51	41.5
52	45.0
53	48.9
54	53.2
55	57.9
56	63.5
57	69.4
58	75.2
59	80.8
60	86.7
61	93.3
62 or over	100.0

*Prorated for intermediate ages computed on the basis of the number of complete calendar months by which the employee is under the age he will attain at his next birthday.

If an employee:

(i) with 30 or more years of credited service retires at his option, or

(ii) whose combined years of age and years of credited service (to the nearest 1/12 in each case) shall total 85 or more retires at his option, the monthly basic benefits otherwise payable to him after age 62 and one month shall be redetermined without any such reduction.

(3) The basic benefit payable in any month will not be reduced below an amount which results in the early retirement supplement paid to a participant in such month; under Article II, Section 6 (a) (1), exceeding the old age insurance benefits, unreduced on account of age, payable under Title II of the Social Security Act, as amended.

(b) A temporary benefit for each year of credited service up to 30 shall be payable in addition to the monthly basic pension payable to an employee retired under mutually satisfactory conditions, or totally and permanently disabled pursuant to Section 2 (b) or Section 3 above, as set forth in the table immediately following:

Retires With Benefits Payable Commencing	Monthly Temporary Benefit Amount	
	Per Year of Credited Service	Maximum
October 1, 1990 through September 1, 1991	\$ 25.00	\$ 750.00
October 1, 1991 through September 1, 1992	27.20	816.00
October 1, 1992 and After	29.30	879.00

(c) The monthly temporary benefit determined in (b) above shall be payable until age 62 and one month, or until the age at which the employee becomes or could have become eligible for a Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age. At such age the temporary benefit shall cease to be payable.

(d) An employee discharged for cause after such employee is eligible to retire at his option under Section 2 (a) of this Article II shall be entitled to the benefits provided under Section 4 (a) of this Article II as though he had retired at his option.

(e) The amount of any monthly pension benefit otherwise payable to the employee at retirement, or earlier commencement, will be reduced by the value of any past and future benefits paid or payable to any alternate payee(s) under a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p).

The actuarial value will be used to determine any amount to be paid to any such payee(s), if applicable, and the remaining benefit entitlement of the employee.

Section 5. Pension Benefits to Employee's Surviving Spouse

(a) In lieu of the monthly basic benefit otherwise payable, an employee who retires or is retired pursuant to the normal, early or total and permanent disability retirement provisions of this Article II, or who breaks seniority and is eligible for a deferred pension pursuant to the provisions of Section 2 of Article VII hereof, shall be deemed to have elected automatically a reduced amount of monthly basic benefit to provide that, if his designated spouse shall be living at his death after such election shall have become effective, a survivor benefit shall be payable to such spouse during the spouse's further lifetime. In the event such spouse predeceases such employee, or they are divorced by court decree and a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) does not provide to the contrary, such employee may cancel the survivor benefit election and have his monthly basic pension benefit restored to the amount payable without such election, effective the first day of the third month following the month in

which the Corporation receives (i) evidence satisfactory to the Corporation of the spouse's death, or (ii) such employee's written revocation of the election because of divorce; on a form approved by the Corporation and accompanied by evidence satisfactory to the Corporation of a final decree of divorce.

The automatic election provided in this subsection (a) shall become effective on the later of (i) the commencement date of the employee's monthly pension benefit, (ii) the first day of the month following the month in which the employee attains age 55 (except that this item (ii) shall not apply to an employee with 30 or more years of credited service or to an employee who retires with benefits payable prior to age 55 pursuant to Section 2 (b) of this Article II), or (iii) the first day of the month following the month in which the employee has been married one year if he is married when the election would otherwise become effective but such marriage has been in effect less than one year at that date.

An employee may prevent the automatic election provided in this subsection (a), (i) at the time of application for retirement benefits, or (ii) if later, during the month prior to that in which he attains age 55 (except that this item (ii) shall not apply to an employee with 30 or more years of credited service or to an employee who retires with benefits payable prior to age 55 pursuant to Section 2 (b) of this Article II) by executing a specific written rejection of such election, which includes the written consent of his spouse witnessed by the plan representative or a notary public, on a form approved by the Corporation and filing it with the Corporation.

Information regarding this coverage is included in the summary plan description, which will be provided to each employee. Within a reasonable period prior to the annuity starting date, each participant shall be

provided a written explanation of: (i) the terms and conditions of the surviving spouse coverage; (ii) the participant's right to make and the effect of an election to waive the surviving spouse coverage; (iii) the rights of the participant's spouse; and (iv) the right to make and the effect of revocation of a previous selection to waive the surviving spouse coverage.

(b) The beneficiary of a survivor benefit election shall be only the person who is the employee's spouse at such time and who has been his spouse for at least one year immediately prior to the effective date of such election.

(c) A survivor benefit election shall be revoked automatically upon the death of the employee or his designated spouse, or both, prior to the effective date of the election.

(d) A survivor benefit election shall be irrevocable at and after its effective date if the employee and his designated spouse shall be living at such date, except as otherwise provided in Section 5 (a) of this Article II.

(e) For an employee who makes a survivor benefit election or who is deemed to have made such election under this Section 5, the reduced amount of his monthly basic benefit referred to in (a) above shall be equal to an amount determined by multiplying the monthly basic benefit otherwise payable to the employee by 95% if the employee's age and his eligible spouse's age are the same; except that, in the case of an employee whose basic benefits are subject to redemption at age 62 and one month the amount of reduction in his monthly basic benefit before such age for the survivor benefit election shall be based on the monthly basic benefit payable to such employee after age 62 and one month. Such percentage shall be increased by one-half of one percent (1/2%) (up to a maximum of 100%) for each 12 months in excess of

five (5) years that the spouse's age exceeds the employee's age and shall be decreased by one-half of one percent (1/2%) for each 12 months in excess of five (5) years that the spouse's age is less than the employee's age.

(f) The survivor benefit payable to the surviving spouse of a retired employee who has completed an election or who is deemed to have made an election under this Section 5, and who dies after such election becomes effective, shall be a monthly benefit for the further lifetime of such surviving spouse equal to 60% of the reduced amount of such employee's monthly basic benefit as determined in (e) above; except that the survivor benefit payable to the surviving spouse of an employee whose basic benefits are subject to redetermination at age 62 and one month pursuant to Section 4 (a) of this Article II, shall be based on the monthly basic benefit payable to such employee after age 62 and one month.

(g) The surviving spouse of an employee

(i) who dies on or after attaining age 65, or on or after attaining age 55 and after the employee is eligible to retire at his option under Section 2 (a) (1) or 2 (a) (2) of this Article II, or at any age with 30 or more years of credited service, but before the first day of the month following the date on which the employee retires or before the commencement date of the employee's monthly pension in the case of an employee who retires at his option and defers the receipt of his monthly pension, and

(ii) who, if he had retired at the date of his death, would have been eligible for the election under subsection (a) of this Section 5, shall be entitled to a monthly benefit during the spouse's lifetime, terminating with the last monthly payment before the spouse's death. The monthly

benefit payable to the surviving spouse shall be the amount such spouse would have been entitled to receive under subsection (f) of this Section 5, if the employee had retired on the date of his death under Sections 1, 2 (a) (1), 2 (a) (2) or 2 (a) (3), whichever is applicable, of this Article II with benefits commencing the first of the following month and had effectively made the election under subsection (a) of this Section 5.

(h) The death of an otherwise eligible employee who has retired under Section 3 of this Article II, occurring on or after his attaining age 55, but before the first day of the month following the date on which he dies, shall not disqualify an otherwise eligible surviving spouse from receiving a benefit hereunder.

Section 6. Supplements

(a) An employee who retires under Section 2 (other than an employee referred to in Section 4 (d) of this Article II, unless the Corporation or an Impartial Umpire under an applicable collective bargaining agreement determines his discharge should not result in his being ineligible for benefits under this Section 6), or 3 of this Article II, and who files his application for a pension within five years of the last day he worked for the Corporation and who agrees to restrict his participation in the work force before age 62 and one month as provided in (e) below will receive, in addition to his pension, certain supplements as set forth below:

(1) If the employee retires under Section 2 or 3 of this Article II with 30 or more years of credited service at the date of his retirement, he shall be entitled to a monthly early retirement supplement until age 62 and one month in an amount which when added to his monthly pension under this Plan will equal the amount of total monthly benefit applicable to him as

provided in the table set forth below, subject to subsequent provisions of this Section 6:

Retirement With Benefits Payable Commencing	Total Monthly Benefit Rate For Determining Monthly Early Retirement Supplement Prior to Age 62 and One Month For Retirees With 30 or More Years of Credited Service		
	10-1-90 through 9-1-91	10-1-91 through 9-1-92	10-1-92 and After
October 1, 1990 and After	\$ 1,600	\$ 1,700	\$ 1,800

(2) If the employee retires at his option after attaining age 55 with benefits payable commencing on or after October 1, 1990 with less than 30 years of credited service, he shall be entitled to a monthly interim supplement until he attains age 62 and one month equal to the amount applicable to him as provided immediately below for each year of credited service that he had at the date of his retirement, subject to the provisions of (b), (c) and (g) of this Section 6:

Age at Retirement	Monthly Amount* and Effective Date of Interim Supplement Payable Prior to Age 62 and One Month for Each Year of Credited Service		
	Retired With Benefits Payable Commencing on or After October 1, 1990		
	10-1-90	10-1-91	10-1-92
55	\$ 11.00	\$ 12.00	\$ 12.90
56	12.95	14.10	15.20
57	15.70	17.05	18.40
58	18.40	20.00	21.55
59	20.55	22.40	24.10
60	23.75	25.85	27.85
61	23.75	25.85	27.85

*Pro-rated for intermediate ages computed on the basis of the number of complete calendar months by which the employee is under the age he will attain at his next birthday.

(b) The early retirement supplement under provision (a) (1) of this Section 6 for an employee who retires at his option shall be calculated assuming that his basic pension commences immediately after retirement, and such early retirement supplements and the interim supplement under provision (a) (2) of this Section 6 shall be reduced for any month prior to age 62 and one month, for which he becomes or could have become eligible for a Federal Social Security benefit, by an amount equal to the amount of the temporary benefit to which he would have been entitled if he had retired under Section 2 (b) of this Article II.

(c) The early retirement supplement under provision (a) (1) of this Section 6 for an employee who retires under Section 2 (b) or Section 3 of this Article II shall be calculated on the assumption that he will receive a temporary benefit until age 62 and one month, even if such temporary benefit is not received by the employee until such age because of his entitlement to Social Security Benefits.

(d) The early retirement supplement under provision (a) (1) of this Section 6 for an employee who does not prevent the automatic election of the surviving spouse coverage provided under Section 5 of this Article II shall be calculated on the basis of the monthly pension he would have received if he had prevented such automatic election.

(e) Any of the supplements to which an employee is entitled shall commence on the first day of the month following the date on which the employee retires and shall be payable monthly thereafter until and including the first day of the month in which he dies, or his pension ceases for any other reason, or he is reemployed by the Corporation, or he attains age 62 and one month, whichever occurs first, provided, however, that if an employee entitled to receive a supplement has earnings after retirement in excess of the following annual earnings limitation in any calendar year before he attains age 62 and one month, such earnings being defined for this purpose as the type counted for the earnings test under the Federal Social Security Act or the corresponding type in any future Federal legislation amending, superseding, supplementing, or incorporating the Federal Social Security Act; a penalty equal to double the amount by which such earnings exceed the amount permitted shall be charged against each succeeding monthly supplement which he would otherwise be entitled to receive until the full amount of such penalty is

satisfied, it being understood that penalties and charges herein shall be cumulative if appropriate:

Calendar Year	Annual Earnings Limitation Amount
1990	\$ 10,000
1991	15,000
1992	15,000
1993	15,000

An employee receiving a monthly early retirement supplement or interim supplement may be required to certify whether his earnings have been in excess of the permitted amount and to furnish verification of the amount of his earnings. Unless repaid by the employee in a lump sum, any overpayments of a supplement made after an employee incurred a penalty because of excess earnings in accordance with the preceding paragraph shall be deducted from future monthly benefits payable to him under this Pension Plan.

The annual earnings limitation provisions of this subsection (e) shall not be applicable to any mutually satisfactory retirement with benefits payable commencing on or after October 1, 1990 and prior to September 14, 1993.

(f) If a retired employee has been receiving a pension under Section 3 of this Article II and has been receiving a supplement and on the basis of medical evidence satisfactory to the Corporation it is found that he is no longer totally and permanently disabled and his seniority is restored, or if he is reemployed by the Corporation, he shall not thereby forfeit any right he may thereafter have to receive a supplement if he thereafter retires under this Pension Plan.

(g) If the total of the employee's monthly pension under this Pension Plan and his monthly early

retirement supplement or interim supplement receivable as computed above would exceed 70% of his final base pay, his monthly supplement (but not his monthly pension) shall be reduced to the extent required so that such monthly pension plus his supplement will equal 70% of his final base pay. For this purpose, an employee's final base pay shall mean 173 1/3 times his Base Hourly Rate as defined in Article X.

Section 7. Special Benefit

(a) A retired employee or a surviving spouse, (i) age 65 or older, or (ii) under age 65 and enrolled in the voluntary "Medicare" coverage that is available under the Federal Social Security Act by making contributions (in either case excluding the spouse of a former employee who received a deferred vested pension benefit under Article VII of the Plan), who is receiving a monthly benefit under Article II of the Plan which commenced prior to October 1, 1979, subject to (d) below, shall receive a monthly special benefit equal to:

(i) the lesser of \$28.00 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1990,

(ii) the lesser of \$31.00 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1991,

(iii) the lesser of \$34.00 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1992,

or (iv) the lesser of \$38.50 or the generally applicable "Medicare" Part B premium for months commencing on or after January 1, 1993.

(b) In no event shall such payment commence prior to the first day of the month following the earlier of (i) the month during which age 65 is attained, or

(ii) for enrollments effective prior to October 1, 1990 receipt by the Corporation of application on a form provided for this purpose from an otherwise eligible individual under age 65; except that, with respect to an otherwise eligible individual under age 65, payment shall commence with the first month of such enrollment, but in no event prior to October 1, 1979.

(c) Not more than one such payment shall be made to any individual for any one month. No such payment shall be made to any individual under age 65 for any month such individual is not enrolled for such voluntary "Medicare" coverage. No such payment shall be made under this Plan to any individual who retires with benefits payable commencing on or after October 1, 1979.

(d) Effective January 1, 1991, the special benefit payable to, an individual who is not enrolled in "Medicare" Part B as of October 1, 1990, but who was receiving a special benefit, will be limited to \$28.00 per month. Such an individual will become entitled to the schedule of payments in subsection (a) above, upon proof of enrollment in "Medicare" Part B. Thereafter, continued receipt of a special benefit will be contingent on maintenance of "Medicare" Part B enrollment.

(e) For an individual enrolled in "Medicare" Part B as of October 1, 1990, or who first becomes eligible for "Medicare" Part B on or after October 1, 1990, receipt of a special benefit on and after January 1, 1991 is contingent upon continued enrollment in "Medicare" Part B.

Section 8. Benefits for Employees Who Retired With Benefits Payable Commencing Prior to October 1, 1990.

An employee who retired under Article II of the Plan with benefits payable commencing prior to October 1, 1990, or the eligible surviving spouse of

such an employee, shall be entitled to the benefits, if any, under the Plan as it existed immediately prior to such date, except that

(a) (1) Benefits payable to such retired employees or surviving spouses shall be increased to the extent necessary to provide monthly benefits equal to the benefits which would have been payable had the basic pension benefits payable to the employee after age 65 been based on the following table:

Retirement With Benefits Payable Commencing	Benefit Class Code	Basic Benefit Rate Per Year of Credited Service For Months Commencing	October 1, 1990 and After
		\$	
Prior to October 1, 1979	N/A	20.00*	
October 1, 1979 through September 1, 1980	A	21.25	
	B	21.50	
	C	21.75	
	D	22.00	
October 1, 1980 through September 1, 1981	A	21.35	
	B	21.60	
	C	21.85	
	D	22.10	
October 1, 1981 through September 1, 1984	A	21.45	
	B	21.70	
	C	21.95	
	D	22.20	
October 1, 1984 through September 1, 1985	A	24.10	
	B	24.35	
	C	24.60	
	D	24.85	

*Including, if applicable, \$1.00 waived for election of a special survivor option.

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Retirement With Benefits Payable Commencing	Benefit Class Code	Basic Benefit Rate Per Year of Credited Service For Months Commencing	October 1, 1990 and After
		\$	
October 1, 1985 through September 1, 1986	A	24.20	
	B	24.45	
	C	24.70	
	D	24.95	
October 1, 1986 through September 1, 1987	A	24.30	
	B	24.55	
	C	24.80	
	D	25.05	
October 1, 1987 through September 1, 1988	A	27.30	
	B	27.55	
	C	27.80	
	D	28.05	
October 1, 1988 through September 1, 1989	A	27.40	
	B	27.65	
	C	27.90	
	D	28.15	
October 1, 1989 and prior to October 1, 1990	A	27.50	
	B	27.75	
	C	28.00	
	D	28.25	

(2) Benefits payable to employees retired on and after October 1, 1973, shall be based on the Benefit Class Code applicable to the employee, determined as though the maximum base hourly rate of the employee's job classification had included the amount of any wage inequity adjustment made applicable to such job classification on or after September 14, 1973, and prior to the employee's loss of seniority.

(3) If an employee, whose monthly basic benefit otherwise would have been redetermined at age 62 attains age 62 on or after March 1, 1982, such redetermination shall be effective at age 62 and one month.

(b) Any temporary benefits payable to such retired employees until age 65 if retired with benefits payable commencing before March 1, 1974, or age 62 if retired with benefits payable commencing on or after March 1, 1974 or age 62 and one month for a retired employee who attains age 62 on or after March 1, 1982, or, in any case, if earlier, until the age at which the employee becomes or could have become eligible for a Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age shall be increased to the extent necessary to provide monthly temporary benefits equal to the temporary benefits which would have been payable had the temporary benefits payable to the employee prior to such age 65 (or age 62 or age 62 and one month) or earlier age been based on the following:

Retires With Benefits Payable Commencing	Monthly Temporary Benefit Amount*	
	Per Year of Credited Service	Maximum
Prior to September 1, 1964	\$ 11.50	\$ 300.00
September 1, 1964 and prior to October 1, 1967	12.00	300.00
October 1, 1967 and prior to October 1, 1970	12.25	306.25
October 1, 1970 and prior to March 1, 1974	12.75	318.75
March 1, 1974 and prior to October 1, 1976	13.75	343.75
October 1, 1976 and prior to October 1, 1978	14.25	356.25
October 1, 1978 and prior to October 1, 1979	15.25	381.25
October 1, 1979 and prior to October 1, 1980	16.25	406.25
October 1, 1980 and prior to October 1, 1981	17.25	431.25
October 1, 1981 and prior to January 1, 1983	18.25	456.25
January 1, 1983 and prior to October 1, 1985	18.25	547.50

*Benefit payable for months commencing October 1, 1990.

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Retires With Benefits Payable Commencing	Monthly Temporary Benefit Amount*	
	Per Year of Credited Service	Maximum
October 1, 1985 and prior to October 1, 1986	19.25	\$ 577.50
October 1, 1986 and prior to October 1, 1987	20.25	607.50
October 1, 1987 and prior to October 1, 1988	20.45	613.50
October 1, 1988 and prior to October 1, 1989	21.55	646.50
October 1, 1989 and prior to October 1, 1990	22.65	679.50

* Benefit payable for months commencing October 1, 1990.

(c) (1) An employee who retired under Article II of this Plan with 30 or more years of credited service who is receiving a monthly supplement which commenced prior to October 1, 1990 shall receive an increase to such monthly supplement as follows:

Effective Date of Increase	Amount of Increase*	
	Payable to Age 62 and One Month	Payable Between Ages 62 and One Month - 64
October 1, 1990	\$ 75.00	\$ 37.50

* This increase will not result in a total monthly benefit of less than \$1,100 for months prior to age 62 and one month, or \$350 for months between ages 62 and one month and 64.

The amount of any monthly supplement payable to an employee who retired under Article II of the Plan with benefits commencing prior to October 1, 1990 shall be redetermined to the amount of supplement which would have been payable had the applicable benefit rates set forth in this Section 8 been in effect when such employee's benefits commenced. If such retired employee is entitled as of October 1, 1990 to receive Social Security benefits, and if he became so entitled before October 1, 1990 any increase in the rate of temporary pension provided in provision (b) of this Section 8 shall not be considered in redetermining his supplement until he ceases to be so entitled.

(2) An employee who retired under Article II of this Plan at his option after attaining age 55 with less than 30 years of credited service who is receiving an interim supplement which commenced prior to October 1, 1990 shall receive, for months commencing on and after October 1, 1990, an increase to such interim supplement, as follows:

Age at Retirement	Monthly Increase Per Year of Credited Service
55	\$ 0.55
56	0.65
57	0.80
58	0.95
59	1.05
60	1.20
61	1.20

(d) The survivor benefit payable to the surviving spouse of a retired employee who has completed an election of a special survivor option and who dies after such election becomes effective, shall be a monthly benefit for the further lifetime of such surviving spouse equal to:

(1) \$7.00 for each year of credited service that such retired employee had at the date of his retirement, with respect to benefits payable for any month commencing October 1, 1990 through September 1, 1991.

(2) \$8.00 for each year of credited service that such retired employee had at the date of his retirement, with respect to benefits payable for any month commencing October 1, 1991 through September 1, 1992, and

(3) \$9.00 for each year of credited service that such retired employee had at the date of his retirement, with respect to benefits payable for any month commencing on or after October 1, 1992.

(c) An employee who retired under Article II of the Plan, or who is eligible for a deferred pension pursuant to the provisions of Section 2 of Article VII of the Plan, and who has surviving spouse coverage in effect but whose designated spouse predeceases him, may have his monthly basic pension benefit restored to the amount payable without such coverage, effective the first day of the third month following the month in which the Corporation receives evidence satisfactory to the Corporation of the spouse's death.

(f) In lieu of receiving a reduced amount of any increase in benefits otherwise payable to him under this Section 8 on or after April 1, 1971 in order to provide an increase in the amount of survivor benefit otherwise payable, an employee who retired under Article II of the Plan with benefits payable commencing prior to November 23, 1970, who is divorced by court decree, and for whom the terms of a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) do not expressly prohibit cancellation of the survivor annuity, from his designated spouse for whom he has a survivor benefit

coverage in effect, may elect to receive the full amount of such increase. To make such election, he must complete a form approved by the Corporation and file it with the Corporation, accompanied by evidence satisfactory to the Corporation of a final decree of divorce, in which case such election shall become effective with respect to benefits falling due for months commencing on the first day of the third month following the month in which the Corporation receives such completed election form and final decree of divorce.

(g) An employee who retired or retires under Article II of the Plan with benefits payable commencing on or after January 1, 1962; who marries, or remarries, subsequent to the earliest date a survivor benefit coverage was in effect, or was not in effect on such date solely because the retired employee was not then married, may elect, or re-elect, a survivor benefit coverage. Any such coverage, and the benefits thereunder, shall be provided under the terms and conditions of the Plan in effect at the time of the employee's retirement. Such coverage shall become effective on the first day of the third month following the month in which the Corporation receives a completed election form, but in no event before the first day of the month following the month in which the retired employee has been married one year.

No election provided hereunder shall become effective under any circumstance for any retired employee whose completed election form is received by the Corporation after the first day of the month in which the retired employee has been married one year.

This subsection (g) also shall be applicable to an employee retired with benefits payable commencing on or after October 1, 1990.

(h) Monthly benefits payable under this Section 8 on and after October 1, 1990 shall not be limited by the 70% benefit limitation in Section 6(g) of this Article II.

(i) The monthly amount of any lifetime supplement payable to an employee retired with benefits payable commencing on or after March 1, 1974 with 30 or more years of credited service shall be \$35.00.

Section 9. Employees Not Actively at Work

The absence of an employee from active work at the time such employee would be eligible to retire under the Plan shall not preclude the employee's retirement without return to active work.

Section 10. Joint and Survivor Coverage

(a) In lieu of the monthly basic benefit otherwise payable, an employee who retires pursuant to the provisions of Section 3 of this Article II who is under age 55 and has less than 30 years of credited service shall be deemed to have elected automatically a reduced amount of monthly basic benefit, up to and including the month in which he dies or attains age 55, whichever occurs first, and a monthly survivor's benefit, beginning on the first day of the month after the retired employee would have reached age 55 if he dies before the first day of the month after he would have reached age 55, shall be payable to his designated spouse during the further lifetime of the spouse.

(b) This automatic election shall be deemed to have been made at the time the employee shall apply or shall have applied for a disability pension benefit (with the election being effective the first day of the month for which his first benefit under the Plan is payable).

(c) The automatic election provided in this Section 10 shall be applicable only with respect to a spouse to whom the employee is married on the date of such election and only if the retired employee and his spouse shall have been married throughout the one-year period ending on the date of the retired employee's death.

(d) An employee may prevent the automatic election provided in this Section 10 at the time such election would otherwise be deemed to have been made, as set forth in subsection (b) of this Section 10, by specific written rejection which includes the written consent of his spouse witnessed by the plan representative or a notary public on a form approved by the Corporation.

(e) In any event, the election shall automatically be canceled:

(i) if the employee's disability retirement status terminates other than by death prior to the first day of the month after the retired employee attains age 55, or

(ii) if the retired employee survives on a disability retirement status until the first day of the month after he attains age 55, at which time the coverage described in Section 5 of this Article II becomes applicable.

(f) The amount of the monthly basic benefit payable to an employee deemed to have made the election provided hereunder shall be determined by reducing actuarially the amount of such benefit for the cost of the survivor benefit payable in the event of the retired employee's death before the first of the month following the attainment of age 55. The actuarial reduction shall be based on the age of the retired employee and his spouse (the age of each being

determined as the age at his or her birthday nearer the date on which the benefits commence) and shall reflect the higher mortality associated with being disabled. Reduction factors at selected ages for disability survivor coverage before age 55 are set forth in the following table:

Age of Employee When Benefits Commence	Age Difference Between Disabled Employee and Spouse					
	Spouse Is:					
	10 Years Younger	5 Years Younger	Same Age	5 Years Older	10 Years Older	
30	% 8.6	% 8.1	% 7.5	% 6.7	% 5.9	
35	% 10.4	% 9.9	% 9.2	% 8.3	% 7.2	
40	% 12.5	% 11.8	% 11.0	% 10.0	% 8.8	
45	% 14.3	% 13.5	% 12.7	% 11.6	% 10.3	
50	% 13.9	% 13.2	% 12.4	% 11.4	% 10.2	
51	% 13.1	% 12.5	% 11.7	% 10.8	% 9.7	
52	% 10.4	% 9.9	% 9.3	% 8.6	% 7.7	
53	% 3.4	% 3.2	% 3.0	% 2.8	% 2.5	
54	% 3.4	% 3.3	% 3.1	% 2.8	% 2.5	

NOTE: Actuarial reduction factors for ages not shown will be calculated on the same basis as the factors shown.

(g) The amount of the monthly benefit payable to the surviving spouse of a retired employee deemed to have made the election specified hereunder shall be 50% of the amount of the monthly basic benefit payable to the retired employee after the reduction provided in subsection (f) of this Section 10.

(h) Anything in the Plan to the contrary notwithstanding, if the designated spouse of a retired employee deemed to have made the election provided

hereunder shall predecease, such retired employee, or they are divorced by court decree and a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) does not provide to the contrary, such retired employee shall have his monthly basic benefit restored to the amount payable without such election, effective the first day of the third month following the month in which the Corporation receives evidence satisfactory to the Corporation of the spouse's death or divorce.

(i) No benefit shall be payable under this Section 10 for any month for which benefits are payable under Article II, Section 5(h) or Section 11 of this Plan.

(j) Information regarding this coverage is included in the summary plan description, which will be provided to each employee. Within a reasonable period prior to the annuity starting date, each participant shall be provided a written explanation of: (i) the terms and conditions of the surviving spouse coverage; (ii) the participant's right to make and the effect of an election to waive the surviving spouse coverage; (iii) the rights of the participant's spouse; and (iv) the right to make and the effect of a revocation of a previous selection to waive the surviving spouse coverage.

Section 11. Pre-Retirement Survivor Coverage to Comply With the Retirement Equity Act of 1984.

(a) An employee who:

(i) has either 5 or more years of credited service, or 5 years of "service" as provided under Article III, Section 6, or

(ii) breaks seniority on or after October 1, 1990 and who is eligible for a deferred pension under Article VII, Section 2,

and in either case is not eligible for the survivor benefit coverage provided under Section 5 of this Article II, shall have the pre-retirement survivor coverage described herein.

Such coverage shall remain in full force and effect until the date on which the employee or former employee becomes eligible for the survivor benefit coverage provided under Article II, Section 5, at which time the pre-retirement survivor coverage described herein shall cease to be effective.

In the event the employee or former employee predeceases, the designated spouse while the pre-retirement survivor coverage provided hereunder is in effect, the designated spouse shall be eligible, during the further lifetime of such spouse, for a monthly benefit commencing on the first of the month following the month in which the employee or former employee would have become eligible; except for the fact that he died, to retire at the option of the employee.

The amount of any such monthly survivor benefit shall be determined by the basic benefit rate in effect for the employee on the date of death of such employee, or the date seniority broke for a former employee.

(b) The survivor coverage provided hereunder for an employee or former employee shall be effective on the date the employee or former employee attains 5 years of credited service or "service" as provided under Article III, Section 6.

(c) The survivor coverage provided hereunder shall be effective with respect to a spouse to whom the employee or former employee is married, but only if the couple shall have been married throughout the one-year period ending on the date of the employee's or former employee's death.

(d) Subsections (b) and (c) notwithstanding, if an employee or former employee marries or remarries, such coverage shall be in effect in favor of his spouse upon such marriage or remarriage, unless, in the case of remarriage, a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) requires such coverage to remain in effect for the former spouse. The effective date of any such coverage shall be in accordance with subsection (c) of this Section 11.

(e) In the event of divorce, the employee or former employee can revoke the coverage provided hereunder without spousal consent, unless a Qualified Domestic Relations Order within the meaning of I.R.C. Section 414(p) provides to the contrary.

(f) The coverage provided hereunder shall be canceled automatically on the date when any employee or former employee becomes eligible for the survivor coverage provided under the provisions of Article II, Section 5 of the Plan.

(g) The monthly benefit amount payable hereunder to any eligible surviving spouse shall be 50% of the monthly amount of the basic benefit as determined in Article VII, Section 2(b), otherwise payable at the (i) date of death to the employee; or (ii) date seniority broke for a former employee, after any reduction provided in Section 2(c) of Article VII.

(h) No benefit shall be payable under this Section 11 for any month for which benefits are payable under Article II, Section 5 or Section 10 of this Plan.

(i) Information regarding the coverage provided hereunder is included in the summary plan description, which will be provided to each employee covered by the Pension Plan, in accordance with The Employee Retirement Income Security Act (ERISA).

(f) The pre-retirement survivor coverage provided hereunder will apply to eligible employees and former employees separated from service:

- (1) whose last day worked for the Corporation was on or after October 1, 1976, and
- (2) who have entitlement to but have not commenced receipt of deferred vested benefits, and
- (3) who are alive as of August 23, 1984.

ARTICLE III

CREDITED SERVICE

Section 1. Credited Service Subsequent to October 1, 1950

(a) (1) Credited service shall be computed for each calendar year for each employee on the basis of total hours compensated by any plant or Division of the Corporation during such calendar year while the employee has unbroken seniority. Employment while covered under The GM Special Pension Plan shall not be credited hereunder, except for an employee with seniority on March 1, 1988, who has not received a cash payment representing his accrued benefit under The GM Special Pension Plan. Any calendar year in which the employee has 1700 or more compensated hours shall be counted a full calendar year. Where the employee's total hours compensated during a calendar year are less than 1700 hours, a proportionate credit shall be given to the nearest 1/10 of a year.

(2) For the purpose of computing credited service, hours of pay at premium rate shall be computed as straight time hours.

(b) For the purpose of computing compensated hours under subsection (a) of this Section 1:

(1) An employee with seniority on or after January 1, 1968 who is absent from work during any calendar year thereafter because of layoff or while on a Corporation approved sick leave, shall be credited with 40 hours for each complete calendar week of such absence during such year in addition to any other hours credited provided that such employee shall have received pay from the Corporation during that year for at least 170 hours, and provided further, that if such absence commences in calendar year 1970, or later, and such layoff or sick leave continues into the following year he shall be credited with 40 hours for each complete calendar week of absence in the following year, not to exceed 1530 hours of credit for all such absence related to receipt of such pay from the Corporation in the first year.

An employee who is recalled from permanent layoff and returns to work on or after October 1, 1990 shall become eligible for the 1530 hours of credit hereunder, applicable during a sick leave or layoff, on the later of: (1) receipt of pay from the Corporation for at least 170 hours, or (2) the day next following the 12th week of pay from one or more GM plants within a calendar year. If the employee receives pay from the Corporation for 170 or more hours prior to the 12th week in (2) immediately above, the employee shall become eligible for "bank" hours equal to the number of hours worked since recall, plus any "bank" hours to which he was entitled immediately before such return to work, but in no case to exceed 1530 hours.

An employee who returns to work on or after October 1, 1979 and receives pay for a period of less than 170 hours and who thereafter returns to such layoff or sick leave, shall not be disqualified, solely because of the receipt of such pay, from receiving any such credit for which he otherwise would be eligible hereunder. For the purposes of this subsection only, an employee who is laid off subsequent to

October 1, 1979 and whose first day of absence due to such layoff is the first regularly scheduled work day in the January next following his last day worked shall be deemed to have been laid off on December 31 of the year in which he last worked. A part-time employee shall be credited for any week of such absence in the same percentage relationship as such employee's regular part-time schedule is to 40 hours.

An employee who (i) is at work on or after October 1, 1990; (ii) has 10 or more years of seniority at time of layoff commencing on or after October 1, 1990; (iii) while on such layoff has received the maximum of 1530 hours of credit for periods of absence due to layoff or Corporation approved sick leave in accordance with the preceding paragraph of this Section 1(b)(1); and (iv) continues thereafter to be absent due to such layoff shall be credited with 40 hours for each complete calendar week of absence due to such layoff up to a maximum of 1700 hours of credit.

(2) An employee who is absent from work because of occupational injury or disease incurred in the course of such employee's employment with the Corporation, and on account of such absence receives Workers' Compensation while on Corporation approved leave of absence shall be credited with 40 hours for each complete calendar week of such absence after September 1, 1961.

(c) Any salaried employee transferred to an hourly-rate job who thereby becomes an employee covered by the Plan shall have credited to the nearest 1/10 year any credited service the employee had as of the date of such transfer under any Corporation retirement plan for salaried employees.

(d) If an employee who retired is rehired, such employee may accumulate additional credited service by reason of such reemployment.

(e) For the purpose of computing compensated hours under subsection (a) of this Section 1:

(1) An employee who after October 1, 1950 and prior to June 1, 1955 was absent from work because he entered into active service in the armed forces of the United States and who was given a Corporation approved leave of absence for such period shall be credited with the number of hours that the employee would have been scheduled to work during such absence.

(2) An employee, who on or after June 1, 1955 was or is absent from work to enter into (or remain in) active service in the armed forces of the United States and for that reason was or is given a Corporation approved leave of absence, shall be credited with 40 hours for each complete calendar week that he is on such leave; provided, however, that credited service based on such hours shall not exceed four years (including credited service, if any, granted under subsection (e)(1) of this Section 1), or such longer period during which he has reemployment rights pursuant to any Federal law, and provided, further, that the employee is reemployed in accordance with the terms of such leave of absence or, if reemployed by the Corporation at a location other than the location from which the leave was granted, within 90 days from the date of his discharge from the armed forces.

(f) Any employee hired on an hourly-rate job by a plant or Division of the Corporation, who has credited service under any Corporation retirement plan for salaried employees or who has lost credited service under any such plan, shall, upon making proper application, have such service credited to the nearest 1/10 year, provided that the employee acquires or acquired seniority following the loss of such credited service.

(g) If a former salaried employee who is entitled to a deferred retirement benefit under Part A of the General Motors Retirement Program for Salaried Employees is reemployed by the Corporation and acquires seniority prior to the commencement of such deferred retirement benefit, such employee shall, upon making proper application, have reinstated, in lieu of the deferred retirement benefit, the credited service lost at the time the employee became entitled to such deferred retirement benefit.

(h) An employee with at least five years of seniority:

(1) on January 1, 1968 who was absent from work because of layoff during any calendar year after December 31, 1955 and before January 1, 1963, or

(2) on December 10, 1973 who was absent from work because of layoff during any calendar year after December 31, 1950 and before January 1, 1956, or

(3) on October 1, 1979 who was absent from work because of layoff during any calendar year after December 31, 1962 and before January 1, 1968, or

(4) on October 1, 1984 who was absent from work because of layoff during any calendar year after December 31, 1978 and before January 1, 1984

shall be credited with 40 hours for each complete calendar week of such absence, not previously credited under this Section 1, during which he had seniority multiplied by a percentage as set forth in the following table:

Employee's Seniority on January 1, 1968 in the Case of (1) Above or December 10, 1973 in the Case of (2) Above or October 1, 1979 in the Case of (3) Above or October 1, 1984 in the Case of (4) Above	%
20 years or more	100
15 years but less than 20 years	75
10 years but less than 15 years	50
5 years but less than 10 years	25

provided that the employee makes proper application.

(i) In no event shall any employee be credited with more than 1700 hours, including compensated hours, in any calendar year. No employee shall be credited with any service after retirement. There shall be no duplication of credited service under the Plan. Not more than one year of credited service shall be credited to any employee in any calendar year, except as otherwise provided in Section 5 of this Article III with respect to foundry service.

(j) Notwithstanding any other Section of this Article III, in the case of an employee who shall retire on or after October 1, 1990, the employee's credited service for the period before January 1, 1966 shall not be less than the employee's seniority as of December 31, 1965 as determined under the Collective Bargaining Agreement.

Section 2. Loss of Credited Service

An employee will lose all credited service for purposes of this Plan:

- (a) if the employee quits,
- (b) if the employee is discharged or released,
- (c) if the employee's seniority is broken for any other reason.

Section 3. Reinstatement of Credited Service

(a) Any employee with seniority on or after October 1, 1990 who breaks seniority and thereby loses or has lost credited service under Section 2 of this Article III and then is or was later reemployed by any plant or Division of the Corporation shall, upon making proper application, have such credited service reinstated provided the employee subsequently acquires or acquired seniority.

(b) Any employee retired under the provisions of this Plan who subsequently has seniority reinstated, will have credited service at the time of retirement reinstated.

Section 4. Service With a Foreign Subsidiary

An employee with seniority on or after October 1, 1990 whose employment as an hourly or salaried employee with a directly or indirectly wholly-owned or substantially wholly-owned foreign subsidiary of General Motors Corporation has been terminated other than by retirement, shall be granted credited service under this Plan for any periods of active service with such foreign subsidiary or, if greater, the amount of service credited to such employee under any pension or retirement plan of the foreign subsidiary at the time of his termination, provided such service was prior to

his most recent period of active service credited under this Plan.

Any monthly benefits payable under this Plan to a retired employee who has received credited service under this Section 4 will be reduced by an amount equivalent to the total of any monthly benefits that could be payable to such employee under any retirement plan to which the foreign subsidiary has contributed, excluding, however, any such plan or any portion of any such plan providing retirement benefits purchased solely by voluntary employee contributions. Any survivor's benefits payable under this Plan to a survivor of such an employee shall be subject to similar reduction by monthly survivor's benefits payable under any plan to which the foreign subsidiary has contributed.

Section 5. Foundry Service

An employee with seniority on or after October 1, 1990 who at retirement has over 10 years of credited service which he accrued while employed on certain foundry job classifications as set forth in Appendix B, shall receive additional credited service related thereto. Total credited service for any such employee who retires with benefits payable commencing on or after October 1, 1975 shall be the sum of (i) credited service otherwise credited to him, and (ii) any such additional credited service which shall be credited to him in accordance with the following table:

Years of Credited Service Credited on Foundry Jobs	Additional Credited Service
For years 1 through 10	0
For years 10.1 through 25	33-1/3%
For years over 25	20%

If any such employee is continuously employed exclusively on such foundry jobs in a calendar year such additional credited service shall apply to any credited service otherwise credited to him for such year. If any such employee (i) is not continuously employed in a calendar year or (ii) is employed on other than such foundry jobs in such year, such additional credited service shall apply to any credited service otherwise credited to him for such year in accordance with the following table:

If Credited Service Otherwise Credited to Employee For Calendar Year is	Additional Credited Service Applies to Such Year Only if Employee Spent Following Minimum Number of Complete Calendar Weeks on Foundry Jobs During Such Year
1.0 (year)	26
.9	23
.8	21
.7	18
.6	16
.5	13
.4	10
.3	8
.2	5
.1	3

No additional credited service shall be granted for any calendar year in which any such employee spends less than the minimum required number of complete calendar weeks on such foundry jobs, as indicated above.

If any such employee is on such foundry job at the time he goes on layoff or approved leave of absence; such additional credited service shall apply to any

credited service otherwise credited to him while on such layoff or approved leave of absence.

Section 6. Hours, Years and Breaks in Service to Comply With The Employee Retirement Income Security Act of 1974

(a) An employee who breaks seniority on or after October 1, 1976 who would be eligible for a deferred pension under Article VII, Section 2, except solely for the fact that he does not have at least 5 years of credited service under the foregoing Sections of this Article III, shall be eligible for a deferred pension under the provisions of Article VII, Section 2, if, at the time the employee breaks seniority, he has 5 years of service solely as determined under this Section 6.

(b) The monthly amount of any such deferred pension shall be based solely on the credited service that the employee had under the foregoing Sections of this Article III when he broke seniority.

(c) No employee shall be eligible to be covered under this Section 6 until he (i) attains age 21, or (ii) completes 1 year of service under this Section 6, whichever is later. Retired employees shall participate immediately.

(d) An employee shall complete 1 year of service when he completes 750 hours of service in the 12 consecutive month period beginning with his employment commencement date. If an employee fails to complete 750 hours of service in such period, he shall complete 1 year of service in the first 12 consecutive month period thereafter in which he completes 750 hours of service, measured from each succeeding anniversary of his employment commencement date. Thereafter, an employee shall complete 1 year of service during each 12 consecutive month period in which he completes 750 hours of

service, measured from the anniversary of his employment commencement date. A year of service under this Section 6 shall include service (i) with affiliated group members accrued subsequent to acquisition, (ii) rendered to the Corporation as a former leased employee (but only upon employee application, supported by substantiation satisfactory to the Corporation of such service), and (iii) rendered to the Corporation as a salaried employee in accordance with I.R.C. Section 414(b), (c), (m), (n), and (o).

(e) An employee who satisfies the eligibility requirements of this Section 6, and who is otherwise entitled to participate in the Plan, shall commence participation under this Section 6 if he satisfies such requirements (i) between April 1 and September 30, on the first day of the plan year beginning after the date on which such requirements are satisfied, or (ii) between October 1 and March 31, on the first day of the plan year that includes the date such requirements are satisfied, but in no event shall any employee participate hereunder if he breaks seniority prior to such commencement date.

(f) An employee shall complete an hour of service under this Section 6 for each hour for which he is paid by the Corporation for working or for which he is paid by the Corporation for having been entitled to work. Any hours for which an employee receives pay for having been entitled to work, irrespective of mitigation of damages, shall be credited to the period of periods he was so entitled, rather than to the period in which he receives such pay. There shall be no duplication of any hours of service under this Section 6.

(g) Solely for purposes of determining years of service for vesting under this Section 6, all of the employee's years of service shall be taken into account except the following: (i) years of service before age 18

(age 22 prior to October 1, 1985); (ii) years of service before January 1, 1971, unless the employee has at least 3 years of service after December 31, 1970; (iii) years of service prior to any 1-year break in service as defined herein, until the employee completes a year of service after such break; (iv) for non-vested participants under this section, years of service prior to any 1-year break in service if the number of such consecutive breaks equals or exceeds the aggregate number of years of service prior to such break, for a non-vested participant at work on or after October 1, 1985, years of service prior to any 1-year break in service if the number of such consecutive breaks equals or exceeds the greater of 5, or the aggregate number of years of service prior to such break (such aggregate number of years of service before such break shall not include any "years of service" not required to be taken into account under this Section 6 by reason of any prior break in service); (v) years of service before October 1, 1976, if such service would have been disregarded under rules of the Plan as in effect on October 1, 1976, regarding breaks in service; and (vi) any year in which the employee completes less than 750 hours of service.

(h) An employee shall incur a 1-year break in service under this Section 6 in any 12 consecutive month period during which he does not complete more than 375 hours of service, measured from the anniversary of his employment commencement date. Solely for purposes of determining whether an employee has incurred such 1-year break in service, in addition to hours worked which are paid by the Corporation, any hours which an employee does not work but for which he is paid by the Corporation for vacation, sickness or disability, or is entitled to be so paid, directly or indirectly, shall be taken into consideration. For any absence from work commencing on and after October 1, 1985 by reason of pregnancy of the individual, childbirth, placement

Art. III, 6(h)

of a child related to an adoption, or for child care purposes immediately following such birth or placement, the employee shall be credited with the hours of work for which he otherwise would have been scheduled, or, if unable to determine such scheduled hours, 8 hours for each work day of such absence, not to exceed a total of 501 hours for any such absence. Such hours shall be credited in the year in which the absence commences if necessary to prevent incurring a 1-year break in service, otherwise such hours shall be credited in the immediately following year.

Section 7. Asbestos Service

An employee with seniority on or after October 1, 1990 who at retirement has over 10 years of credited service which was accrued while employed on certain asbestos job classifications as set forth in Appendix C, shall receive additional credited service related thereto in the same manner as set forth in Section 5 of this Article III.

ARTICLE IV

REDETERMINATIONS ON ACCOUNT OF SOCIAL LEGISLATION

Section 1. Redeterminations for Federal Social Security Benefits for Age or Disability

(a) The benefits payable for age or disability under the Federal Social Security Act, as amended, as now in effect, or as hereafter amended, which are referred to in the determination of pensions under Article II shall be included in such determination even though the employee either does not apply for, or loses part or all of such payments through delay in applying for them, by entering into covered employment, or otherwise.

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Art. IV, 1(b)

(b) Old age benefit payments or disability benefit payments, other than those payable on a basis of "need" or because of military service, under any future federal legislation, amending, superseding, supplementing, or incorporating the Federal Social Security Act, as amended, or benefits provided therein, shall be considered as benefits for age or disability under the Federal Social Security Act for the purposes of the Plan.

(c) If an employee is eligible for a Federal Social Security benefit for disability or an unreduced Federal Social Security benefit for age at the time of retirement or thereafter, such employee shall provide the Corporation with evidence of the effective date of entitlement to such benefit.

Section 2. Deductions for Workers Compensation

In determining the monthly benefits payable under this Plan, a deduction shall be made unless prohibited by law, equivalent to all or any part of Workers Compensation (including compromise or redemption settlements) payable to such employee by reason of any law of the United States, or any political subdivision thereof, which has been or shall be enacted, provided that such deductions shall be to the extent that such Workers Compensation has been provided by premiums, taxes or other payments paid by, or at the expense of the Corporation, except that no deduction shall be made for the following:

(a) Workers Compensation payments specifically allocated for hospitalization or medical expense, fixed statutory payments for the loss of any bodily member, or 100% loss of use of any bodily member, or payments for loss of industrial vision.

(b) Compromise or redemption settlements payable prior to the date monthly pension benefits first become payable.

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(c) Workers Compensation payments paid under a claim filed not later than two years after the breaking of seniority.

ARTICLE V

FINANCING

Section 1: Trust Fund

The Corporation shall execute a trust agreement with a trustee or trustees selected by the Corporation to manage and operate the pension fund and to receive, hold and disburse such contributions, interest and other income as may be necessary to pay such of the pensions and supplements or portions thereof under this Plan as are not provided for by an insured fund. The Corporation may establish an insured fund with such insurance company or companies as it may select for the payment of such of the pension and supplements or portions thereof under this Plan as are not provided for in a trustee fund.

The Corporation will determine the form and terms of any such trust agreement which may authorize the inclusion of obligations and stock (common and preferred) of the Corporation and its wholly-owned subsidiaries among the investments of the pension fund provided for by such trust agreement; may utilize any investment manager as defined under the Employee Retirement Income Security Act of 1974 or regulations thereunder; may modify any such trust agreement from time to time to accomplish the purposes of this Plan; may remove any trustee, and select any successor trustee; and select and change insurance companies.

Section 2: Contributions

(a) The Corporation, subject to Article IX, Section 1, shall make such contributions to the trustee

or pay such premiums under any insured contract for the purposes of providing pensions and supplements under the Plan as shall be required under accepted actuarial principles and Title I of the Employee Retirement Income Security Act of 1974 to maintain the Plan and pension or insured fund in a sound condition and shall pay for expenses incident to the operation and management of the Plan.

(b) The Corporation may charge to the fund expenses necessary for the proper administration of the Plan and investment of the funds, including the direct cost of benefit administration performed by, or on behalf of, the Corporation for the Plan, and Pension Benefit Guaranty Corporation premiums for participants.

(c) No employee shall be required to make any contributions to the Plan.

Section 3: Irrevocability

(a) The Corporation shall have no right, title or interest in the contributions made by it to the trustee and no part of the pension or insured fund shall revert to the Corporation, except that after satisfaction of all liabilities of the Plan as set forth in Article IX, such contributions as may have been made by the Corporation as the result of overpayments may revert to the Corporation.

(b) The pension benefits and supplements of the Plan shall be only such as can be provided by the assets of the pension fund or by any insured fund and there shall be no liability or obligation on the part of the Corporation to make any further contributions to the trustee or insurance company in event of termination of the Plan. No liability for the payment of pension benefits or supplements under the Plan shall be imposed upon the Corporation, the Officers, Directors or Stockholders of the Corporation, except as otherwise may be required by the Employee Retirement Income Security Act of 1974.