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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

MOTORS LIQUIDATION COMPANY
GUC TRUST'S REPLY TO PAUL C. CURZAN'S RESPONSES TO THE 171ST OMNIBUS OBJECTION TO CLAIMS (WELFARE BENEFIT CLAIMS OF RETIRED AND FORMER SALARIED AND EXECUTIVE EMPLOYEES)

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TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

The Motors Liquidation Company GUC Trust (the "**GUC Trust**"), formed by the above-captioned debtors (collectively, the "**Debtors**")[1] in connection with the Debtors' Second Amended Joint Chapter 11 Plan, dated March 18, 2011 (as may be amended, supplemented, or modified from time to time), files this reply (the "**Reply**") to the Curzan Responses (defined below) interposed to the 171st Omnibus Objections to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees) (ECF No. 8853) (the "**Omnibus Objection**"), and respectfully represents:

Preliminary Statement

1. On January 26, 2011, the Debtors filed the Omnibus Objection. The Omnibus Objection seeks the disallowance and expungement of certain compensation and welfare benefits claims of retired and former salaried and executive employees of the Debtors on the basis that such claims (a) are related to unvested welfare benefits that were capable of being modified or terminated by the Debtors at will pursuant to the terms of the operative documents governing such welfare benefits, and were modified or terminated in accordance with such operative documents, and (b) to the extent modified, have otherwise been assumed by New GM[2] pursuant to the terms of the Master Purchase Agreement and, as described in the Omnibus Objection, are not the responsibility of the Debtors or the GUC Trust and therefore should be disallowed and expunged from the claims register.

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[1] The Debtors are Motors Liquidation Company (f/k/a General Motors Corporation) ("**MLC**"), 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.), Remediation and Liability Management Company, Inc., and Environmental Corporate Remediation Company, Inc.

[2] Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Omnibus Objection.

2. Responses to the Omnibus Objection were due by February 22, 2011. The Curzan Responses listed on **Exhibit 2** hereto and described further herein were filed with respect to the Omnibus Objection (the "**Curzan Responses**") by Paul C. Curzan relating to his individual claims (the "**Welfare Benefits Claims**," which include "**Continuing Life Insurance Claims**").

3. The Curzan Responses are generally not substantive, but are critical of the reduction or termination of welfare benefits provided to retired and former salaried and executive employees of the Debtors. After reviewing the Curzan Responses, the GUC Trust[3] respectfully reiterates the Debtors' position in the Omnibus Objection, and submits that Mr. Curzan has failed to provide any legal or factual support for his Welfare Benefits Claims. The Curzan Responses allege the same facts provided by, and do not take any position different from the position taken by another former employee of the Debtors, George Cobble Jr., with respect to the alleged vesting of Mr. Cobble's Continuing Life Insurance benefit, which was disallowed and expunged by an order of the Court, dated February 8, 2012 (ECF No. 11391).[4]

4. Notwithstanding Mr. Curzan's opposition, the Curzan Responses should be dismissed because (i) the Debtors had a right to amend or terminate the employee welfare benefit plans (the "**Welfare Benefits Plans**") providing medical, dental, vision, and life insurance benefits (the "**Welfare Benefits**"), including those on which the Welfare Benefits Claims are based, without further liability, and in all relevant instances did so, and (ii) New GM

[3] While the Omnibus Objection was filed by the Debtors, this Reply is being filed by the GUC Trust because, pursuant to the Plan, the GUC Trust now has the exclusive authority to prosecute and resolve objections to Disputed General Unsecured Claims (as defined in the Plan).

[4] Mr. Cobble filed Proof of Claim No. 64959, which was objected to in the Debtors' 171st Omnibus Objections to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees) (ECF No. 6740). Mr. Cobble's reply to the 171st omnibus objection appears at ECF No. 7074. The GUC Trust's response to Mr. Cobble's reply is at ECF No. 11283.

otherwise assumed Welfare Benefits as they existed on the Closing Date and continues to provide Welfare Benefits as modified prior to their assumption by New GM, and consequently the Debtors and the GUC Trust have no liability for the Welfare Benefits Claims (which, as noted above, include the Continuing Life Insurance Claims). Accordingly, the GUC Trust files this Reply in support of the Omnibus Objection and respectfully requests that the Welfare Benefits Claims be disallowed and expunged from the claims register.

5. The Debtors and the GUC Trust are, of course, sympathetic with the impact that the financial problems of the Debtors have had on Mr. Curzan's Welfare Benefits. However, in view of the Debtors' liquidation and under applicable law, there should be no other outcome.

The Welfare Benefits Claims Should Be Disallowed and Expunged

6. Mr. Curzan has failed to demonstrate the validity of his Welfare Benefits Claims, and the Welfare Benefits Claims should therefore be disallowed and expunged. *See, e.g.*, *In re Oneida, Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009), *aff'd*, No. 09 Civ. 2229 (DC), 2010 WL 234827 (S.D.N.Y. Jan. 22, 2010) (claimant has burden to demonstrate validity of claim when objection is asserted refuting claim's essential allegations).

I. The Welfare Benefits Claims Should Be Disallowed As Debtors Had Right to Amend or Terminate Each Welfare Benefit Plan

7. In the Curzan Responses, Mr. Curzan has not demonstrated that the Debtors were bound by any legal or contractual requirement to continue to provide him, or other retired and former salaried and executive employees, with the Welfare Benefits on a permanent basis. The Omnibus Objection explains that the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), comprehensively regulates employer-provided welfare benefit plans, and that ERISA does not require an employer to provide or to vest welfare benefits.

Welfare benefits provided under the terms of a welfare benefit plan may therefore be reduced or forfeited in accordance with the terms of the applicable welfare benefit plan. 29 U.S.C. § 1051(1); *see Moore v. Metro. Life Ins. Co.*, 856 F.2d 488, 491 (2d Cir. 1988); *Sprague v. Gen. Motors Corp*., 133 F.3d 388, 400 (6th Cir. 1998).

8. In addressing claims similar to Mr. Curzan's Welfare Benefits Claims, the U.S. Supreme Court has noted that welfare plans such as the Welfare Benefit Plans are specifically exempted from vesting requirements (to which pension plans are subject) under ERISA, and accordingly, employers "are generally free under ERISA, for any reason at any time, to adopt, modify or terminate welfare plans." *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) (emphasis added) (citing *Adams v. Avondale Indus., Inc.*, 905 F.2d 943, 947 (6th Cir. 1990)). *See also Joyce. v. Curtiss Wright Corp*., 171 F. 3d 130 (2d Cir. 1999) (stating the general rule that under ERISA an employer welfare plan is not vested and that an employer has the right to terminate or unilaterally amend the plan at any time). As noted in the Omnibus Objection, however, the Sixth Circuit has recognized that once welfare benefits are vested, they are rendered forever unalterable. *See also Devlin v. Empire Blue Cross and Blue Shield*, 274 F.3d 76, 82 (2nd Cir. 2001)(quoting *Am. Fed'n of Grain Millers, AFL-CIO v. Int'l Multifoods Corp*, 116 F.3d 976, 980 (2d Cir. 1997) ("If a [plan] document unambiguously indicates whether retiree … benefits are vested, the unambiguous language should be enforced").

9. Thus, Mr. Curzan bears the burden of showing that the Debtors intended to vest Welfare Benefits provided by the Welfare Benefits Plans, and did *in fact* vest the Welfare Benefits, such that Mr. Curzan has a contractual right to the perpetual continuation of his Welfare Benefits at a contractually specified level.

10. In the Curzan Responses, Mr. Curzan has not provided any evidence that contradicts the Debtors' common practice of advising participants of the Welfare Benefits Plans of the Debtors' right to amend or terminate the Welfare Benefits at any time. Moreover, Mr. Curzan has not provided any evidence of a separate, affirmative contractual obligation on the part of the Debtors to continue to provide the Welfare Benefits specifically to Mr. Curzan. Therefore, the Debtors and the GUC Trust do not have any liability with respect to the reduction in or discontinuation of the Welfare Benefits.

11. The Curzan Responses further state opposition to the relief sought in the Omnibus Objection with respect to Continuing Life Insurance Claims, which relate to the Debtors' reduction, as of August 1, 2009, of the maximum amount of basic life insurance benefit ("**Continuing Life Insurance**") to $10,000 (self-funded by General Motors Corporation (hereafter "**GM**") and subsequently by General Motors Company ("**New GM**")), which would be paid by GM and subsequently New GM to the beneficiaries of eligible deceased retirees to receive such benefit upon their death (*i.e.*, those whose most recent date of hire (or adjusted service date) was prior to January 1, 1993).

12. In the Curzan Responses, Mr. Curzan opposes the disallowance and expungement of his Continuing Life Insurance Claims on the basis that the Continuing Life Insurance benefits are vested rather than unvested. In support, Mr. Curzan provides a one-page letters from the Debtors to Mr. Curzan following his retirement from employment with the Debtors (the "**Retiree Servicing Center Letter**"). Each Retiree Servicing Center Letter generally contains the following standard language:

> As a retiree of General Motors with 10 or more years of participation in the Life and Disability Benefits Program, you are eligible for Continuing Life Insurance. Our insurance records, as of the date of this letter, show the Continuing Life Insurance has

> now fully reduced to the ultimate amount of $[***stated amount***]. This ultimate amount will remain in effect for the rest of your life and is provided by General Motors at no cost to you.

13. In the Curzan Responses, Mr. Curzan does not provide any explanation for why the Retiree Servicing Center Letter he received should be read as ensuring the vesting of a benefit, rather than a mere acknowledgement by his former employer of the reduction of a lifetime death benefit amount in accordance with the written terms of the applicable life insurance plan then in effect and subject to the plan sponsor's continuing right to change the terms of the life insurance plan.

(A) Neither the Debtors' Salaried Life Insurance Plan Nor the Retiree Servicing Center Letter Provides Mr. Curzan With a Permanent Contractual Right to Continuing Life Insurance Benefits at a Guaranteed Amount

14. In the Curzan Responses, Mr. Curzan provides a copy of a Retiree Servicing Center Letter from the GM National Retiree Servicing Center ("**Retiree Servicing Center**"). GM self-administered its life insurance benefits until some point in the 1990s, at which time it transferred administration of life insurance benefits to MetLife, a third party administrator. To enable MetLife to be readily identifiable as GM's administrator for life insurance benefits, GM permitted MetLife to use the prior name of their internal benefits administrator, the General Motors National Benefits Center and/or Retiree Servicing Center.

15. The Retiree Servicing Center Letter and letters substantially similar to it were routinely sent out by mail from the Retiree Servicing Center to each retiree of General Motors Corporation entitled to a Continuing Life Insurance benefit (which was a continuation of the retiree's basic life insurance benefit offered to them while they were active employees). The letters were routinely sent out at the time that a scheduled reduction to the retiree's Continuing Life Insurance benefit had reduced to the maximum amount pursuant to the terms then in effect

under the General Motors Life and Disability Benefits Program for Salaried Employees, as amended from time to time ("**Debtors' Salaried Life Insurance Plan**").

16. As explained above with respect to the Debtors' right to amend or terminate other Welfare Benefits, ERISA does not require an employer to provide or to vest life insurance benefits. Insurance benefits provided under the terms of a welfare benefit plan may therefore be reduced or forfeited in accordance with the terms of the applicable welfare benefits plan. 29 U.S.C. § 1051(1); *see Moore v. Metro. Life Ins. Co.*, 856 F.2d 488, 491 (2d Cir. 1988).

17. ERISA provides that the contractual rights established under a welfare benefits plan must be in writing and contained in the plan document for the welfare benefits plan, and furthermore, requires that a welfare benefits plan sponsor provide a summary plan description (and as necessary, summaries of material modifications) of the plan and the terms of benefits provided under the plan to participants of the plan; however, the summary plan description does not establish any contractual rights not provided by the plan document. *Cigna Corp. v. Amara*, 000 U.S. 09-804 (2011) (holding that a summary plan description has no contractual authority because it does not constitute a part of the plan document; however, plan participants may seek appropriate equitable relief in the case of a false or misleading summary plan description). Communications from the plan sponsor to plan participants, such as the Retiree Servicing Center Letter received by Mr. Curzan, are neither summary plan descriptions nor summaries of material modifications. Even so, by the reasoning of *Amara*, the Retiree Servicing Center Letter does not supersede the terms of the Debtors' Salaried Life Insurance Plan, which provided the Debtors the right to amend, modify or terminate the Continuing Life Insurance benefits at any time.

18. The Debtors clearly and unambiguously reserved their right to amend or terminate the Continuing Life Insurance benefit under the terms of the plan documents and the summary plan descriptions of the Debtors' Salaried Life Insurance Plan provided and made available to Mr. Curzan during his employment period, and therefore, neither the Retiree Servicing Center Letter received by Mr. Curzan nor the plan documents create any vested contractual rights to the Continuing Life Insurance benefits. Section 3.05 of the most recent restatement of the Debtors' Salaried Life Insurance Plan, as amended effective January 1, 2007, provides:

> The Corporation reserves the right to amend, modify, suspend or terminate the Program in whole or in part, at any time by action of its Board of Directors or other committee or individual expressly authorized by the Board to take such action. The benefits available to Employees are determined solely by the terms of this Program. Absent express delegation of authority from the Board of Directors, no one has the authority to commit the Corporation to any benefit or benefit provisions not provided under the terms of this Program.

Because ERISA does not require the vesting of welfare benefits, such provision reserved the Debtors' right to modify Continuing Life Insurance benefits by amendment of Debtor's Salaried Life Insurance Plan. Moreover, the Debtors could terminate the plan. Clearly, no vested rights were created under the plan. The following reservation of rights to amend or terminate benefits is prominently stated on the second page of a recent benefits handbook for salaried retirees containing the summary plan description of Debtors' Salaried Life Insurance Plan:

> General Motors Corporation reserves the right to amend, change, or terminate the Plans and Programs described in this booklet. The Plans and Programs can be amended only in writing by an appropriate committee or individual as expressly authorized by the Board of Directors. No other oral or written statements can change the terms of a benefit Plan or Program.

The same or substantially similar reservation of rights language is prominently stated on the second page of benefits handbooks for salaried retirees issued by the Debtors in 1996, 2000, and 2005. Mr. Curzan was therefore clearly on notice of this reservation of rights, as he will have seen it prominently displayed in the benefits handbooks for salaried retirees that they received along with every other retiree with such benefits.

19. On the basis of such language, the Sixth Circuit in *Sprague* reviewed the plan documents and summary plan descriptions of certain of the Debtors' salaried welfare benefits plans, as contained in benefits handbooks regularly provided by Debtors to their employees and retirees, and concluded that the Debtors' salaried welfare benefits plans explicitly permitted the Debtors to unilaterally amend, terminate or modify the salaried welfare benefits provided under such plans. The Sixth Circuit's opinion in *Sprague* contains the following description of the Debtors' reservation of rights to change or terminate health care benefits at any time, which reservation would have equally pertained to the right to change or terminate life insurance benefits, the summary plan description of which was contained in the same booklet as contained the summary plan description of the health plan:

> GM has long made it a practice to inform its salaried employees and retirees of their health care coverage by providing them booklets containing summaries of the company's health insurance policies and programs. Prior to 1974 GM put out a booklet entitled "The GM Insurance Program for Salaried Employees." After ERISA took effect in 1974 the booklet became "Highlights of Your GM Benefits." Beginning in 1977, GM also issued a booklet called "Your Benefits in Retirement." Each of these publications

went through a series of different editions […] and most of the booklets also put plan participants on notice of GM's right to change or terminate the health care plan at any time:

> "General Motors believes wholeheartedly in this Insurance Program for GM men and women, and expects to continue the Program indefinitely. However, GM reserves the right to modify, revoke, suspend, terminate, or change the Program, in whole or in part, at any time...." The General Motors Insurance Program for Salaried Employees (1965, 1968, and 1971).
>
> "General Motors Corporation reserves the right to amend, change or terminate the Plans and Programs described in this booklet." Your GM Benefits (1985).
>
> "The Corporation reserves the right to amend, modify, suspend, or terminate its benefit Plans or Programs by action of its Board of Directors." Your Benefits in Retirement (1985).

Sprague v. Gen. Motors Corp., 133 F.3d 388 (6th Cir. 1998) at 400.[5]

20. As evidenced by the description set forth in *Sprague* and as confirmed by the Debtors, GM had a long-term practice of providing explicit notice to participants of their reservation of rights to amend or terminate salaried welfare benefits at any time through the issuance of benefits handbooks to both active and retired employees on a regular basis spanning over a period of 47 years or more (*i.e.*, since at least 1965). This means that Mr. Curzan would have been on notice from the start of and through the end of his career with General Motors Corporation that his employer had reserved its rights to amend or terminate his basic life insurance benefit and/or their Continuing Life Insurance benefit.

[5] The Sixth Circuit found: "Most of the summary plan descriptions unambiguously reserved GM's right to amend or terminate the plan. For example: 'General Motors Corporation reserves the right to amend, change or terminate the Plans and Programs described in this booklet.' Your GM Benefits (1984) [and] 'The Corporation reserves the right to amend, modify, suspend or terminate the Program in whole or in part, at any time, by action of its Board of Directors.' Your Benefits in Retirement (1985)." 133 F.3d at 400.

21. The Second Circuit has held that an employer's reservation of rights to amend or to terminate insurance benefits was sufficient to preclude such insurance benefits from being susceptible to being interpreted as promises of vested lifetime insurance benefits:

> Here … we have [SPD or Summary Plan Description] language that both appears to promise lifetime life insurance coverage at a particular level and clearly reserves Empire's right to amend or terminate such coverage. Because the same document that potentially provided the 'lifetime' benefits also clearly informed employees that these benefits were subject to modification, we conclude that the language contained in the 1987 SPD is not susceptible to an interpretation that promises vested lifetime life insurance benefits.
>
> The Sixth Circuit has similarly concluded, where a group of General Motors retirees challenged a reduction in health coverage, that the relevant SPD provided that lifetime health coverage would be provided at no cost. *See Sprague v. Gen. Motors Corp., 133 F.3d 388, 401 (6th Cir. 1998) (en banc).* The same SPD also provided that 'General Motors Corporation reserves the right to amend, change or terminate the Plans and Programs described in this booklet.' *Id.* The Sixth Circuit reasoned:
>
> > "We see no ambiguity in a summary plan description that tells participants both that the terms of the current plan entitle them to health insurance at no cost throughout retirement and that the terms of the current plan are subject to change.... As the Third Circuit explained in a similar case, `the promise made to retirees was a qualified one: the

> promise was that retiree medical benefits were for life provided the company chose not to terminate the plans, pursuant to clauses that preserved the company's right to terminate the plan under which those benefits are provided.' *Id.* (quoting *In re Unisys Corp. Retiree Med. Benefit ERISA Litig.*, 58 F.3d 896, 904 n.12 (3d Cir. 1995))." *Abbruscato v. Empire Blue Cross and Blue Shield*, 274 F. 3d 90, 99-100 (2nd Cir. 2001)

22. Each summary plan description of the Debtors' Salaried Life Insurance Plan contained in the employee handbooks issued over the years has contained a description of the Continuing Life Insurance benefits and an explanation of the manner in which the Continuing Life Insurance benefits were to be reduced upon or during the retirement of a retiree. Pursuant to the terms of the Debtors' Salaried Life Insurance Plan, the Continuing Life Insurance benefit was, upon retirement or age 65, subject to reduction in the case of all of the Debtors' retirees eligible for such benefit depending on when the retiree retired. In addition to notice provided by the summary plan descriptions, the Debtors were in the practice of notifying retirees of such reductions, at the point of the ultimate reduction, in the form of the Retiree Servicing Center Letters.

23. The terms of such reductions in effect under the Debtors' Salaried Life Insurance Plan immediately prior to the commencement of these chapter 11 cases are set forth in **Exhibit 1** hereto. The fact that different groups of retirees were subject to different rates of reduction reflects the fact that the Debtors' Salaried Life Insurance Plan had been amended many times previously, each amendment of which would have modified, *i.e.*, increased or reduced, the Continuing Life Insurance benefits applicable to different groups of retirees. Mr. Curzan does not question the right of the Debtors to have modified his Continuing Life Insurance benefits for better or worse at any time prior to the commencement of these chapter 11 cases.

24. In connection with their insolvency, following approval by the Employee Benefits Plans Committee of Debtor's Board of Directors, the Debtors reduced to $10,000 the maximum amount of the Continuing Life Insurance benefit that would be paid by the Debtors (and subsequently by New GM) to the beneficiaries of a retiree eligible to receive such benefit upon death (*i.e.*, those whose most recent date of hire (or adjusted service date) was prior to January 1, 1993). The reduction was effected by amendment of the Salaried Life Insurance Plan made by the Employee Benefits Plans Committee of Debtor's Board of Directors on June 19, 2009, who had been expressly delegated by the Board of Directors the authority to amend the Debtors' welfare benefit plans.

25. Pursuant to the terms of the Debtors' Salaried Life Insurance Plan, upon attaining age 65, retirees were no longer required to make contributions to maintain their Continuing Life Insurance benefits. Reduction of the maximum amount of the Continuing Life Insurance benefits has not changed this fact.

26. Upon reduction of the Continuing Life Insurance benefit in connection with their insolvency, the Debtors provided retirees with the opportunity to supplement the reduced amount of their Continuing Life Insurance benefits by enrolling in a voluntary life insurance program through MetLife. By virtue of the supplemental program, Mr. Curzan was fully eligible, at his cost, to continue to be covered by the life insurance benefit at the same level as prior to the reduction in his Continuing Life Insurance benefits.

(B) The Retiree Servicing Center Letter Does Not Create A New Contract With Mr. Curzan

27. In the Curzan Responses, Mr. Curzan has not provided any evidence that contradicts the Debtors' common practice of advising participants of the Debtors' Salaried Life Insurance Plan of the Debtors' right to amend or terminate the Continuing Life Insurance

benefits at any time. Moreover, Mr. Curzan has not provided any evidence of an affirmative contractual obligation on the part of the Debtors separate from the terms of Debtors' Salaried Life Insurance Plan to permanently provide the same level of Continuing Life Insurance benefits specifically to Mr. Curzan. The Retiree Servicing Center Letter refers to and explains a "Continuing Life Insurance" benefit, which appearing as a capitalized term explicitly relates to, and is one and the same with, the basic life insurance benefit provided to Debtors' retirees pursuant to Debtors' Salaried Life Insurance Plan. Mr. Curzan should readily have recognized "Continuing Life Insurance" as a defined term of the Debtors' Salaried Life Insurance Plan, of which he would have been familiar by having read, over the past 47 years or more, employee benefits handbooks and summary plan descriptions related to the Continuing Life Insurance. Moreover, the Retiree Servicing Center Letter received by Mr. Curzan directly refers to the applicability of Debtors' Salaried Life Insurance Plan in prefacing eligibility for such Continuing Life Insurance benefit (which had been reduced) on Mr. Curzan's status as a "a retiree of General Motors with 10 or more years of participation in the Life and Disability Benefits Program." Therefore, the Retiree Servicing Center Letter clearly indicated that the Continuing Life Insurance benefits were fully subject to the terms of the Debtors' Salaried Life Insurance Plan and, as such, could not have been subject only to the terms set forth on the single page of the Retiree Servicing Center Letter. The Retiree Servicing Center Letter could therefore not serve to have vested Mr. Curzan in any new life insurance obligations on the part of the Debtors.

28. The Retiree Servicing Center Letter was not approved by the Board of Directors of GM at any time. It was not an authorized amendment of the Debtors' Salaried Life Insurance Plan or modifications of the Continuing Life Insurance benefits. The Retiree Servicing Center Letter sent to Mr. Curzan was merely a communication with Mr. Curzan with

respect to a change in the benefit amounts of their Continuing Life Insurance pursuant to the terms of Debtors' Salaried Life Insurance Plan.

29. The Retiree Servicing Center Letter was sent to Mr. Curzan after his retirement, during a period which he was no longer providing services to the Debtors, and therefore cannot reasonably be construed as an inducement for Mr. Curzan to provide new services to the Debtors, or to retire. Indeed, Mr. Curzan never used the provision of permanent, unalterable welfare benefits as a form of consideration inducing retirement. Rather, even for employees who elected to participate in early retirement window programs (consideration for which was typically in cash), retiree medical, life insurance and all other welfare benefits would have been the same following retirement as for regular retirees. Given such treatment, there would be no reason to provide any separate communication to window program participants with respect to their welfare benefits, such as a letter promising permanent lifetime benefits.

30. The Retiree Servicing Center Letter does not contain any language establishing it as a new contract between Mr. Curzan and his former employer. To establish the Retiree Servicing Center Letter as such, under the standard of the Second Circuit, Mr. Curzan "must first identify 'specific written language that is reasonably susceptible to interpretation as a promise.'" *Devlin v. Empire Blue Cross and Blue Shield,* 274 F.3d 76, 103 (2nd Cir. 2001)(quoting *Joyce,* 171 F.3d at 134).

31. The Second Circuit in *Devlin* discussed an example of language offering a benefit that could have been susceptible to induce employees to perform without having been negated by the employer's reservation of its right to amend or terminate the benefit (which Empire's pre-1987 summary plan description had not done) and that is reasonably susceptible to interpretation as a promise:

> Plaintiffs direct our attention to two sentences within the pre-1987 [summary plan description]s. The first provides that 'retired employees, after completion of twenty years of full-time permanent service and at least age 55 will be insured.' J.A. at 522 (emphasis added). We believe that this statement can be reasonably read as promising such insurance so long as employees retire after age 55 and have provided full-time permanent service to Empire for at least twenty years. This provision can be construed as an offer that specifies performance as the means of acceptance -- sometimes referred to as an offer for a unilateral contract -- and promises lifetime life insurance benefits upon performance. Therefore, by 'performing' (that is, working for at least twenty years until attaining the age of 55), the plaintiffs accepted this offer. Restatement (Second) of Contracts 45(1) (1981). Where the offeror did not explicitly reserve the power to revoke, such an offer cannot be revoked once the offeree has begun to perform. See id. 45 & cmt. d ('The beginning of performance . . . completes the manifestation of mutual assent and furnishes consideration.'). Therefore, Empire's reliance on its 1987 [summary plan description], 'Your Handbook,' for its reservation of the right to modify the life insurance benefits is unavailing. We reject Empire's argument because after the plaintiffs began performance, pursuant to the pre-1987 [summary plan description]s, Empire was not free to revoke. *Id*. at 84.

Contrary to the facts with respect to Empire's failure to reserve its right in pre-1987 summary plan descriptions to amend or terminate the life insurance benefit, the Debtors have had a long-term practice over at least the past 47 years, and most likely for an even longer period of time, to provide explicit notice in each of their summary plan descriptions of their right to amend or terminate life insurance benefits at any time. Moreover, by the time that Mr. Curzan had received the Retiree Servicing Center Letter in question, he had since retired and could no longer be induced to perform any services for the Debtors, nor be induced to retire a second time, and so, the contents of the applicable Retiree Servicing Center Letter could not have been susceptible to interpretation as a promise.

32. Though Mr. Curzan has not made any such argument or suggestion, it cannot be said that Mr. Curzan relied on the qualified statement made in the Retiree Servicing

Center Letter to his detriment. In order to prevail on a claim of promissory estoppel under ERISA in the Second Circuit, Mr. Curzan must establish: "(1) a promise, (2) reliance on the promise, (3) injury caused by the reliance, and (4) an injustice if the promise is not enforced." *Aramony v. United Way Replacement Benefit Plan*, 191 F.3d 140, 151 (2d Cir. 1999) (quoting *Schonholz v. Long Island Jewish Med. Ctr.*, 87 F.3d 72, 79 (2d Cir. 1996). Additionally, "an ERISA plaintiff must 'adduce[…] not only facts sufficient to support the four basic elements of promissory estoppel, but facts sufficient to [satisfy an] 'extraordinary circumstances' requirement as well.'" *Aramony*, 191 F.3d at 151 (quoting *Devlin v. Transp. Comms. Int'l Union*, 173 F.3d 94, 102 (2d Cir. 1999)). The Second Circuit in *Devlin* cited that "*Schonholz* provides an example of such extraordinary circumstances, where the employer used promised severance benefits to induce the plaintiff to retire." *Devlin*, 274 F.3d at 86 (quoting *Schonholz*, 87 F.3d at 79-80).

33. With respect to the Continuing Life Insurance Claims, there was no promise to provide permanent basic life insurance benefits at the same level where the Debtors had provided explicit notice to Mr. Curzan over the past 47 years or more, that they could amend or terminate the basic life insurance benefits at any time (*i.e.*, in a manner discussed by *Abbruscato, supra*). Because there was no promise of a permanent benefit, there could be no reliance on such promise. It has been demonstrated that the Retiree Servicing Center Letter itself did not create a separate obligation on the Debtors to provide a benefit separate from benefits offered under Debtors' Salaried Life Insurance Plan, and as such, the Retiree Servicing Center Letter in and of itself could not have created a promise nor could it have been susceptible to interpretation as a promise.

34. Nor were there any facts that may separately support the existence of extraordinary circumstances in the case of either the Retiree Servicing Center Letter or the reduction in 2009 of the Continuing Life Insurance. Basic life insurance is a benefit that is commonly provided by employers on an unvested basis, and is accordingly assumed by most employees and retirees to be a benefit that could be lost at any time, absent an extraordinary circumstance, such as a separate, express contractual commitment. With respect to the Continuing Life Insurance Claims, Mr. Curzan has not suggested any extraordinary circumstances with respect to his right to Continuing Life Insurance, such as receiving it as an inducement to enter into employment or to retire early. No such extraordinary circumstance could exist where the Debtors have clearly and unambiguously represented to their employees and retirees over the past 47 years or more of their right to amend or terminate life insurance benefits at any time. Moreover, at the time that Mr. Curzan received the Retiree Servicing Center Letter and at the time that the Debtors provided notice in June 2009 to Mr. Curzan of the reduction in their Continuing Life Insurance benefits, Mr. Curzan had already retired and could therefore neither have been induced to perform (*i.e.*, in a manner discussed by *Devlin, supra*) or otherwise made to rely in any manner constituting an extraordinary circumstance.

II. Ongoing Benefits Have Been Assumed by New GM

35. On the Closing Date, New GM completed its purchase of certain assets in accordance with the Master Purchase Agreement. Pursuant to Section 6.17(e) of the Master Purchase Agreement (*Assumption of Certain Parent Employee Benefit Plans and Policies*), New GM assumed the plans specified in a disclosure schedule, and the Welfare Benefit Plans (including Debtors' Salaried Life Insurance Plan) are set forth on that schedule. New GM assumed the obligation to provide the Welfare Benefits to the extent required to be provided under the terms of the applicable Welfare Benefits Plan in effect on the Closing Date, including

both responsibility for all claims incurred prior to the Closing Date and all future claims properly payable pursuant to the terms of the applicable Welfare Benefit Plan in effect when such claims are incurred. Therefore, the Debtors and the GUC Trust do not have any liability with respect to Welfare Benefits (including the Continuing Life Insurance benefits) that have been assumed by New GM, and Mr. Curzan has not provided any credible factual or legal basis to suggest otherwise.

The Curzan Responses

Claim Nos. 31707 and 31708

36. On February 22, 2011, a non-substantive response was filed by Mr. Curzan to the Omnibus Objection at ECF No. 9357 (the "**First Curzan Response**"). In the First Curzan Response, Mr. Curzan notes that a similarly situated claimant to him, Mr. Kuipers (a former General Motors Corporation colleague), had not yet received an objection to his proof of claim, and requests that the Court ensure that fair and equitable treatment is applied to all similarly situated claims. On March 18, 2011, a further response was filed by Mr. Curzan at ECF No. 9862 (the "**Second Curzan Response,**" and with the First Curzan Response, the "**Curzan Responses**") largely reiterating the First Curzan Response, and further requesting an explanation as to why his proof of claim was objected to before that of Mr. Kuipers. Mr. Curzan further requests information on attorneys who may be able to represent him with respect to the Welfare Benefit Claims (See Proof of Claim No. 31707 at **Exhibit 3** hereto, Proof of Claim No. 31708 at **Exhibit 4** hereto, the First Curzan Response at **Exhibit 5** hereto, and the Second Curzan Response at **Exhibit 6** hereto).

37. Mr. Kuipers has filed two Proofs of Claim in these chapter 11 cases. Proof of Claim No. 23252 filed by Mr. Kuipers was objected to in the Debtors' 177th Omnibus Objection to Claims (ECF. No. 8860) on January 26, 2011, which was filed on the same day as

the Debtors' 171st Omnibus Objection to Claims which included Mr. Curzan's Claims. Mr. Kuipers' second claim, Proof of Claim no. 23251, was objected to in the Debtors' 225th Omnibus Objection to Claims (ECF No. 10301), filed on May 20, 2011. Proofs of Claim No. 23252 and 23251 were expunged by order of this Court dated March 9, 2011 (ECF No. 9677), and by order of this Court dated June 27, 2011 (ECF No. 10500), respectively. Over 70,000 proofs of claim were filed in these chapter 11 cases, and while the Debtors cannot ensure that all omnibus objections to claims for similarly situated claimants are filed on the same date, they have treated all similarly situated claimants in the same way, as is the case with the Claims of Mr. Curzan and Mr. Kuipers.

38. In the Curzan Responses, Mr. Curzan does not provide any explanation for why the Retiree Servicing Center Letter he submitted as support for Proof of Claim No. 31707 should be read as ensuring the vesting of a benefit, rather than a mere acknowledgement by his former employer of the reduction of a lifetime death benefit amount in accordance with the written terms of the applicable life insurance plan then in effect and subject to the plan sponsor's continuing right to change the terms of the life insurance plan, as discussed in more detail above. As illustrated by the transcript of the Motors Liquidation Company hearing of January 18, 2012 annexed as **Exhibit 7** hereto, this Court has in the past expunged a similar claim of a former employee based on the Debtors' modification of Continuing Life Insurance benefits.

39. No additional documentation is provided in either the Welfare Benefit Claims or the Curzan Responses to support Mr. Curzan's opposition to the reduction of his Welfare Benefits. Further, the GUC Trust is not aware of any other documentation or facts supporting the Welfare Benefit Claims.

40. The Curzan Responses do not provide any additional support for the Welfare Benefit Claims. For the reasons set out above, the GUC Trust respectfully submits that the Curzan Responses should be overruled, and the Welfare Benefit Claims should be disallowed and expunged.

Conclusion

41. Because (i) ERISA recognizes that employers are free to amend or terminate welfare benefits, (ii) the Debtors had explicitly reserved their right to amend, modify or terminate the Welfare Benefits (including Continuing Life Insurance benefits) at any time, (iii) the Retiree Servicing Center Letter submitted by Mr. Curzan does not establish any contractual rights to vested Continuing Life Insurance benefits, and (iv) Mr. Curzan has not provided evidence of any permanent contractual right to vested Welfare Benefits (including Continuing Life Insurance benefits); the Debtors and the GUC Trust have no liability for the Welfare Benefits Claims (including Continuing Life Insurance Claims). The GUC Trust reiterates that the Curzan Responses have not provided any legal or factual support for the Welfare Benefits Claims and the Continuing Life Insurance Claims, which cannot be afforded prima facie validity under the Bankruptcy Code. Accordingly, the Welfare Benefits Claims and the Continuing Life Insurance Claims should be disallowed and expunged in their entirety.

WHEREFORE, for the reasons set forth above and in the Omnibus Objection, the GUC Trust respectfully requests that the Court grant the relief requested in the Omnibus Objection and such other and further relief as is just.

Dated: New York, New York
May 21, 2012

/s/ Joseph H. Smolinsky

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

Attorneys for Motors Liquidation Company GUC Trust

Exhibit 1

Pursuant to the terms of Debtors' Salaried Life Insurance Plan, and as fully described to participants in summary plan descriptions of the plan, the Continuing Life Insurance benefit was, upon retirement or age 65, subject to reduction in the case of all of the Debtors' retirees eligible for such benefit depending on when the retiree retired, as follows:

(i) Category I: If the retiree's most recent date of hire (or adjusted service date) was on or after January 1, 1993, the retiree was not eligible for a Continuing Life Insurance benefit following retirement.

(ii) Category II: If the retiree's most recent date of hire (or adjusted service date) was prior to January 1, 1993 and the retiree retired prior to May 1, 2007, the amount of the retiree's Continuing Life Insurance benefit was to be reduced immediately upon retirement to an amount equal to 1-1/2% for each year of the retiree's participation in Debtors' Salaried Life Insurance Plan (*i.e.*, for each year of service to Debtors) times the amount of the retiree's basic life insurance benefit in force immediately prior to retirement (but not less than $5,000), and would be reduced an additional 50% on May 1, 2017 (but not less than $25,000).

(iii) Category III: If the retiree's most recent date of hire (or adjusted service date) was prior to January 1, 1993 and the retiree retired on or after May 1, 2007, the amount of the retiree's Continuing Life Insurance benefit was to be reduced immediately upon retirement to an amount equal to the lesser of one times the retiree's annual base salary at the time of retirement and $200,000, and would be reduced an additional 50% on the tenth anniversary of the date of retirement (but not less than $25,000).

(iv) Category IV: If the retiree last worked on or after July 1, 1985 and prior to January 1, 1994, the amount of the retiree's Continuing Life Insurance benefit was the amount of the retiree's basic life insurance in effect immediately prior to the earlier of age 65 or

retirement to be reduced by 2% each month beginning on the earlier of age 65 or retirement, which successive reduction would continue until the amount of the Continuing Life Insurance benefit equaled the amount of basic life insurance in force immediately prior to when the amount began to reduce times 1-1/2% for each year of the retiree's participation in Debtors' Salaried Life Insurance Plan (*i.e.*, for each year of service to Debtors).

(v) Category V: If the retiree last worked prior to July 1, 1985, the amount of the retiree's Continuing Life Insurance benefit was the amount of the retiree's basic life insurance in effect immediately prior to age 65 to be reduced by 2% each month commencing at age 65.

Exhibit 2

171st Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)					
No.	**Proof of Claim No.**	**Response Docket No.**	**Name**	**Total Claimed**	**Summary**
1.	31707	9357 and 9862	Curzan, Paul C.	$46,329.00 (U)	Mr. Curzan's responses request that the Court ensure that fair and equitable treatment is applied to all similarly situated claims.
2.	31708	9357 and 9862	Curzan, Paul C.	$117,311.00 (U)	Please see Proof of Claim No. 31707 above.

Exhibit 3

01138985

APS0548266020

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)	09-50026 (REG)
☐ MLCS, LLC (f/k/a Saturn, LLC)	09-50027 (REG)
☐ MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation)	09-50028 (REG)
☐ MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.)	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.

Name of Creditor (the person or other entity to whom the debtor owes money or property): CURZAN, PAUL C

Name and address where notices should be sent:

CURZAN, PAUL C
5660 VIA TRENTO
GOLETA, CA 93117-1802

Telephone number: 805-964-4493
Email Address: Curzanp@cox.net

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

Court Claim Number _____ (*If known*)

Filed on _____

THE GARDEN CITY GROUP, INC
NOV 20 2009

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 payment should be sent (if different from above):

FILED - 31707
MOTORS LIQUIDATION COMPANY
F/K/A GENERAL MOTORS CORP
SDNY # 09-50026 (REG)

Telephone number:

☐ 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 $ 46,329

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 VALUE OF CANCELLED BASIC LIFE INSURANCE
(See instruction #2 on reverse side.)

3 Last four digits of any number by which creditor identifies debtor _____

3a Debtor may have scheduled account as _____
(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:

Value of Property $_____ **Annual Interest Rate** ___%

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

Basis for perfection _____

Amount of Secured Claim $_____ **Amount Unsecured** $_____

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 of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See instruction 7 and definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

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

Date: NOV 17 2009

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

PAUL C. CURZAN

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Modified B10 (GCG) (12/08)

Proof of Claim for Paul C Curzan SS# xxx – xx - 4834

Calculation of Loss due to Reduction of GM Life Insurance Benefits

for Paul C. Curzan, retired on September 01, 1991

Life Insurance promised by GM at no cost after retirement:	**$56,329**
(please refer to attached letter from GM National Retiree Servicing Center)	
Current amount of Company provided Life Insurance:	**-$10,000**
VALUE OF LOST LIFE INSURANCE:	**$46,329**

GM NATIONAL RETIREE SERVICING CENTER
NAO PERSONNEL Administration
PO Box 5113
Southfield, Michigan 48086-5113
1-800-828-9236
TDD 1-800-872-8682

December 06, 1993

Paul C Curzan
5660 Via Trento
Goleta, CA 93117-1802

Dear Paul C Curzan,

As a retiree of General Motors with 10 or more years of participation in the Life and Disability Benefits Program, you are eligible for Continuing Life insurance.

Our insurance records, as of the date of this letter, show the Continuing Life insurance has now fully reduced to the ultimate amount of **$56,329.00**. This ultimate amount will remain in effect for the rest of your life and is provided by General Motors at no cost to you.

IMPORTANT: YOU SHOULD KEEP THIS NOTICE WITH YOUR OTHER VALUABLE PAPERS.

If you have any questions regarding this letter, you may call toll-free, **1-800-828-9236** (Telephone Device for the Deaf 1-800-872-8682), during normal business hours, or write to the address above.

Always include this Social Security number, -4834, in all your correspondence.

Retiree Servicing Center

UA01

Exhibit 4

01138985

APS0548266020

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)	09-50026 (REG)
☐ MLCS, LLC (f/k/a Saturn, LLC)	09-50027 (REG)
☐ MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation)	09-50028 (REG)
☐ MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.)	09-13558 (REG)

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

Name of Creditor (the person or other entity to whom the debtor owes money or property): CURZAN, PAUL C

Name and address where notices should be sent:
CURZAN, PAUL C
5660 VIA TRENTO
GOLETA, CA 93117-1802

Telephone number: 805-964-4493
Email Address: curzanp@cox.net

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

Court Claim Number: _____ (If known)

Filed on: _____

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

FILED - 31708
MOTORS LIQUIDATION COMPANY
F/K/A GENERAL MOTORS CORP
SDNY # 09-50026 (REG)

Telephone number:

☐ 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.

Your Claim is Scheduled As Follows.

THE GARDEN CITY GROUP, INC. NOV 20 2009

THE GARDEN CITY GROUP, INC.

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. The 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 Debtors and you have no other claim against the Debtors, you do not need to file this proof of claim form. EXCEPTIONS TO 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.

1 Amount of Claim as of Date Case Filed, June 1, 2009: $ 117,311

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: VALUE OF CANCELLED GM HEALTH CARE BENEFITS
(See instruction #2 on reverse side.)

3 Last four digits of any number by which creditor identifies debtor: _____

3a Debtor may have scheduled account as: _____
(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:

Value of Property: $_____ **Annual Interest Rate:** ____%

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

Basis for perfection: _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

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 of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See instruction 7 and definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

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

Date: NOV. 17 2009

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

PAUL C. CURZAN

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Modified B10 (GCG) (12/08)

Proof of Claim for Paul C Curzan SS# xxx – xx - 4834

Calculation of Loss from Cancellation of GM Health Care Benefits:

The actual date that the GM Health Care Benefit was cancelled was Jan 01, 2009 Since I had been retired for a number of years prior to this date and had reached an age of 72, this date is used as the start date for calculating my loss and my spouse's loss The amount of loss for me, the retiree, and my spouse will be calculated separately to determine the total loss

Based on information recently provided by General Motors Company, the average cost of health care for Medical, Prescription, Dental, Vision, and Extended Care Coverage to the company under the salaried cap implemented in 2006/7 was $5500 Beginning at age 65 or greater, the loss per year, per retiree, would be $5500 minus the $3600 annual Level Benefit through life expectancy, or $1900 Since only the retiree/surviving spouse receives this benefit offset payment, the annual loss for a spouse or eligible dependent would be the full $5500

Loss Calculation for retiree Paul C. Curzan (birth date: Feb. 20, 1937)

Annual post-72 benefit loss beginning January 01, 2009	$1900
Number of years between 72 and full life expectancy*	X 12 04
Amount of loss after age 72	$22,876
Total Lifetime Loss forRetiree	$22,876

Loss Calculation for spouse Evelina C. Curzan (birth date: Nov. 26, 1940)

Annual post-68 benefit loss beginning January 01, 2009	$5500
Number of years between 68 and full life expectancy*	X 17 17
Amount of loss after age 68	$94,435
Total Lifetime Loss	$94,435

Total loss for retiree and spouse: $117,311

*This calculation is based on the Social Security Administration's period life table which predicts longevity based on gender and current age

SSA Actuarial Table Data
http //www ssa gov/OACT/STATS/table4c6 html

Exact Age as of Jan 1, 2009	Life Expectancy Male	Total	Life Expectancy Female	Total
45	32 81	$51,539	36 79	$59,101
46	31 93	$50,407	35 87	$57,893
47	31 06	$49,294	34 96	$56,704
48	30 2	$48,200	34 05	$55,515
49	29 34	$47,106	33 14	$54,326
50	28 49	$46,031	32 24	$53,156
51	27 65	$44,975	31 35	$52,005
52	26 83	$43,957	30 46	$50,854
53	26	$42,920	29 57	$49,703
54	25 19	$41,921	28 69	$48,571
55	24 37	$40,903	27 82	$47,458
56	23 57	$39,923	26 94	$46,326
57	22 77	$38,943	26 08	$45,232
58	21 97	$37,963	25 22	$44,138
59	21 19	$37,021	24 37	$43,063
60	20 42	$36,098	23 53	$42,007
61	19 66	$35,194	22 7	$40,970
62	18 91	$34,309	21 88	$39,952
63	18 17	$33,443	21 08	$38,972
64	17 44	$32,596	20 28	$37,992
65	16 73	$31,787	19 49	$37,031
66	16 02	$30,438	18 7	$35,530
67	15 32	$29,108	17 93	$34,067
68	14 63	$27,797	17 17	$32,623
69	13 96	$26,524	16 42	$31,198
70	13 3	$25,270	15 69	$29,811
71	12 66	$24,054	14 97	$28,443
72	12 04	$22,876	14 27	$27,113
73	11 43	$21,717	13 58	$25,802
74	10 84	$20,596	12 9	$24,510

Spouse/Dependent Health Care Insurance Calculations

SS Actuarial Table
http //www ssa gov/OACT/STATS/table4c6 html

	Male		Female	
Exact Age as of Jan 1, 2009	**Life Expectancy**	Total	**Life Expectancy**	Total
45	32 81	$97,655	36 79	$119,545
46	31 93	$96,955	35 87	$118,625
47	31 06	$96,310	34 96	$117,760
48	30 2	$95,720	34 05	$116,895
49	29 34	$95,130	33 14	$116,030
50	28 49	$94,595	32 24	$115,220
51	27 65	$94,115	31 35	$114,465
52	26 83	$93,745	30 46	$113,710
53	26	$93,320	29 57	$112,955
54	25 19	$93,005	28 69	$112,255
55	24 37	$92,635	27 82	$111,610
56	23 57	$92,375	26 94	$110,910
57	22 77	$92,115	26 08	$110,320
58	21 97	$91,855	25 22	$109,730
59	21 19	$91,705	24 37	$109,195
60	20 42	$91,610	23 53	$108,715
61	19 66	$91,570	22 7	$108,290
62	18 91	$91,585	21 88	$107,920
63	18 17	$91,655	21 08	$107,660
64	17 44	$91,780	20 28	$107,400
65	16 73	$92,015	19 49	$107,195
66	16 02	$88,110	18 7	$102,850
67	15 32	$84,260	17 93	$98,615
68	14 63	$80,465	17 17	$94,435
69	13 96	$76,780	16 42	$90,310
	Male		**Female**	
Exact Age as of Jan 1, 2009	**Life Expectancy**	Total	**Life Expectancy**	Total
66			18 7	102,850

APS2080795458
00021150

BALLOT #847

PLEASE COMPLETE THE FOLLOWING:

ITEM 1. **Amount of General Unsecured Claim.** For purposes of voting to accept or reject the Plan, the undersigned holds a General Unsecured Claim against the Debtor listed below in the amount set forth below.

Claim Amount:	$163,640.00
Debtor	MOTORS LIQUIDATION COMPANY

ITEM 2. **Vote on the Plan.** The undersigned holder of a Class 3 General Unsecured Claim in the amount set forth in Item 1 above hereby votes to:

Check one box: ☒ Accept the Plan

☐ Reject the Plan

01-12-11 P12:19 IN

ITEM 3. **Acknowledgement and Certification.** By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement, including all exhibits thereto. The undersigned certifies that (i) it is the holder of the General Unsecured Claim identified in Item 1 above and (ii) it has full power and authority to vote to accept or reject the Plan. The undersigned further acknowledges that the Debtors' solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement and the order of the Bankruptcy Court approving the Disclosure Statement and the procedures for the solicitation of votes to accept or reject the Plan contained therein.

Print or Type Name of Claimant: PAUL C. CURZAN

Social Security or Federal Tax I.D. No. of Claimant: 394-38-4834

Signature: Paul C Curzan

Name of Signatory (if different than claimant): _____

If by Authorized Agent, Title of Agent: _____

Street Address: 5660 VIA TRENTO

City, State, and Zip Code: GOLETA, CA 93117

Telephone Number: 805-964-4493

E-mail Address: CURZANP@COX.NET

Date Completed: JAN 3, 2011

Please check one or both of the below boxes, if the above address is a change of address for the purpose(s) of.

☐ future notice mailings; **AND/OR** ☐ distributions

THE GARDEN CITY GROUP, INC. JAN 12 2011

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CUKZAN PAUL C
5660 VIA TRENTO
GOLETA, CA 93117-1802

Mr. Paul Curzan
5660 Via Trento
Goleta, CA 93117

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ATTN: MOTORS LIQUIDATION CO BALLOTING CENTER
PO BOX 9386
DUBLIN OH 43017-9957

Exhibit 5

February 15, 2011

Honorable Robert E. Gerber
United States Bankruptcy Judge

Re: Chapter 11 Case No. 09-50026 (REG)

Dear Judge Gerber,

I am in receipt of 'Notice of Debtors' 171st Omnibus Objections to Claims' pertaining to welfare benefits of retired and former salaried and executive employees of General Motors Corporation which you will be considering on March 1, 2011. I have read this legal notice and my understanding is that my claims as well as those of a number of others are likely to be disallowed and expunged based on your decision in this case. The legal effort on my part to file a formal objection to this proposed order would entail a significant amount of cost and effort for an attorney, etc. and I'm not in a position to be able to handle that at the present time. So while I believe I am entitled to the amount I am claiming in Exhibit A of the document, there is another issue of some concern to me. Is the treatment of this Order, if approved, being applied equally to all parties who have filed claims such as mine? To give one example, a co-worker of mine (Mr. George Kuipers) has had almost an identical situation to mine relative to length of service at the same General Motors facility as an engineer, which I also was. In fact he and I collaborated on filing our individual claims for compensation from GM using the same basic guidelines, etc. At this point in time I find myself on the list of those who will likely be expunged from the claim, since my name appears on the list of Exhibit A, while Mr.Kuipers name does not. My basic question is whether all parties are being treated on the same basis in this situation. At the present time I believe that may not be the case. Anything you could do to insure fair and equitable treatment in this matter would be much appreciated.

Sincerely,

Paul C. Curzan
5660 Via Trento
Goleta, CA 93117

Exhibit 6

March 14, 2011

Honorable Robert E. Gerber
United States Bankruptcy Judge

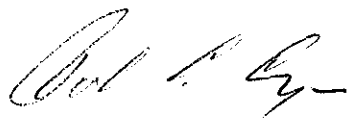
Re: Chapter 11 Case No. 09-50026 (REG)

Dear Judge Gerber,

I am in receipt of your Order dated March 7, 2011 Granting Debtors' 171st Omnibus Objections to Claims in which I am one of several parties whose objections have been adjourned to March 29, 2011. First of all I certainly appreciate the fact that I was given additional consideration even though my submittal of an objection was done in a somewhat informal manner. It is my understanding that the Debtors have been given a response deadline relative to an adjourned hearing date of March 29, 2011.
My hope was that in whatever response is given at that time by the Debtors they would provide a clear explanation as to what differences may exist between my situation and that of Mr. George Kuipers, another party who had submitted a claim very similar to mine and who has not been one of those under consideration for expunging and dismissal.

As I pointed out in my earlier letter (copy attached) Mr. Kuipers and I have almost identical work histories with the same company, doing very similar work, etc. If there are valid circumstances that have led to this difference in treatment between Mr. Kuipers and me I would very much like to understand what they might be. With the large number of lawyers and law firms working on behalf of the Debtors I was not sure which firm I might approach to raise this question. I'm hoping that in the course of the March 29th hearing that information will be forthcoming and I would very much appreciate learning who I might contact to find out the answer to this question.

Sincerely,



Paul C. Curzan
5660 Via Trento
Goleta, CA 93117

Exhibit 7

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-reg

- -X

In the Matter of:

GENERAL MOTORS CORPORATION, ET AL.,

Debtors.

- -X

United States Bankruptcy Court

One Bowling Green

New York, New York

January 18, 2012

9:49 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Debtors' Eighty-Third Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees) - Only Cobble Claim

Motion for Objection to Claim(s) Number: 70860 and 70869 Filed by Tracy Woody and Motion Requesting Enforcement of Court Orders Setting Deadlines to File Proofs of Claim

Motion of Post-Effective Date Debtors and Motors Liquidation Company GUC Trust for Entry of Order Pursuant to 11 U.S.C. Sections 105(A) and 1142(B) and Fed R. Bankr. P. 7012(B) and 9014(C)(I) Directing the Tullises to Dismiss the Debtors and Their Attorneys from Pending Action with Prejudice; and (II) Enforcing Prior Orders of this Court by Enjoining the Tullises from Further Action Against the Debtors, Post-Effective Date Debtors, Motors Liquidation Company GUC Trust, and Their Officers and Professionals

Transcribed by: Aliza Chodoff

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

WEIL GOTSHAL & MANGES LLP

Attorneys for Debtors

767 Fifth Avenue

New York, NY 10153

BY: JOSEPH H. SMOLINSKY, ESQ.

DICKSTEIN SHAPIRO LLP

Attorneys for the Motors Liquidation Company GUC Trust

1633 Broadway

New York, NY 10020

BY: STEPHANIE GREER, ESQ.

ALSO PRESENT:

JOSEPH COBBLE, Claimant, In Pro Se (Telephonically)

CLINTON M. TULLIS, Claimant, In Pro Se (Telephonically)

P R O C E E D I N G S

THE COURT: Have seats, please. Okay. General Motors, Motors Liquidation. I know of three matters that we have disputed, and I sense we have some others that we need to take care of even though there may not be opposition. Mr. Smolinsky, are you taking the lead? You want to give me an update on where we stand?

MR. SMOLINSKY: Good morning, Your Honor. Joe Smolinsky of Weil Gotshal & Manges, for the Motors Liquidation Company GUC Trust.

I believe this morning we have four matters on. Two of them relate to Tracy Woody. I don't believe there are other -- any other matters on the calendar. I do not believe that Ms. Woody signed up for CourtCall. And rather than go in the order of the agenda, to the extent that the Woody matter is uncontested, perhaps we should start there.

THE COURT: Um-hum. Ms. Woody, are you on the phone? No. Anybody in the court here on behalf of Ms. Woody? No.

MR. COBBLE: (Indiscernible)

THE COURT: Yes, Mr. Cobble. If I'm not mistaken, you have a pension or a welfare benefit related claim, which we'll be dealing with shortly. But before that, Mr. Cobble, I want to deal with Ms. Woody if Ms. Woody is on the phone or somebody's on on her behalf. All right. I hear no response.

Mr. Smolinsky, I think the brief on Ms. Woody was

submitted by Ms. Greer. Are you going to be handing off to her on that or --

MR. SMOLINSKY: Yes, Your Honor.

THE COURT: Okay. Ms. Greer.

MS. GREER: Good morning, Your Honor. Stephanie Greer from Dickstein Shapiro, on behalf of the Trust.

As you said, Your Honor, we're here on the Tracy Woody claims this morning.

THE COURT: Can you come closer to the microphone, please, Ms. --

MS. GREER: Sure.

THE COURT: -- Greer?

MS. GREER: It's always a problem. Your Honor, we set forth in the pleadings the basis for the objection to Ms. Woody's claims. Each of the claims were filed late; the first two in accordance with the bar date order, and the second two in accordance with this Court's order. Ms. Woody's pleadings haven't satisfied her burden of excusable neglect, and so I'm happy to rest on our pleadings or answer whatever questions Your Honor may have.

THE COURT: Well, I read the papers, Ms. Greer. Do we -- not we -- do you have any understanding as to why she blew the second bar date; the deadline I'd given her of thirty days, but only did it by -- missed it by a few days?

MS. GREER: Your Honor, I don't know. And there's a

few facts that I would like to bring this Court's attention -- to this Court's attention before you make a ruling. And the first is that Ms. Woody did file an affidavit of service with her second group of claims, which was dated February 5th. The deadline to file was February 7th. Of course, the order says it has to be received by the Court by the 7th. We didn't receive it -- or the trust, Garden City Group, didn't receive it until the 10th. So technically, the claims were late.

Ms. Woody has been nonresponsive to our request for more information as to why the claims were late and to -- talking to her about potential resolution of the claims. So we were at sort of a loss to resolve them on our own, and that's why we had to file these pleadings because the obje -- the claims were technically late.

THE COURT: She mailed it in time, but it wasn't received in time?

MS. GREER: That's right, Your Honor. And while we're on the subject, Your Honor, I -- with respect to the first claims, there's also a slight factual issue I wanted to bring to your attention. As an officer of the court, despite the fact that Ms. Woody hasn't raised it herself, and that is that there was -- there is at least some question as to whether she got actual notice of the original bar date order.

THE COURT: I had that concern at the last hearing.

MS. GREER: Yeah. And we went back and looked at the

facts, and it looked like there was a package mailed to her address. However, upon looking at it even fur -- more closely, it looks like there was a mistake in the way that the address was -- somehow ended up on the envelope. So I think there is at least some question as to whether she had actual notice.

Now, Ms. Woody was involved in litigation with GM at the time, and so it's certainly possible that she had actual notice. And I think based on the facts that we know likely that she had actual notice. But as far as the service, there's certainly are some issues there that I wanted to bring to your Court -- the Court's attention.

THE COURT: Yeah. If you had a commercial claimant, I would throw this out at this point in the blink of an eye. But the additional fact that you brought my attention today, which I hadn't picked up from the papers, about her having mailed it before the deadline and just not having arrived at the time, coupled with the lack of prejudice to the Motors Liquidation estate on a very small claim of this size, it's a matter of concern to me.

MS. GREER: Your Honor, what we would ask -- and I understand the Court's view, and we wouldn't object to deeming the claims timely for the purpo -- for -- solely for this purpose for Ms. Woody. But what we would ask the Court to do is reclassify the claims. The claims are filed as secured priority claims, which is part of why we haven't just been able

to resolve them. These are claims that arose from an allegedly defective SUV, and so clearly they're unsecured claims. So if the Court is inclined to allow them as -- or deem them timely filed, we'd ask that the Court reclassify the claims. And that way we can just resolve them fully and finally.

THE COURT: Ironically, this is the exact same issue upon I was affirmed yesterday by Judge Buchwald in the district court on another person who had a car accident, who was trying to get secured status. And Judge Buchwald agreed with me that whatever it was, it wasn't a secured claim. I think that's very fair, Ms. Greer.

Settle an order in accordance with what you just said, but additionally provide that it is ordered that she has to respond to any existing settlement offers you have or tee up her matter for ADR within a time certain -- you pick a reasonable time. You got a little bit of flexibility to do that. Failing which, her claim will be dismissed for lack of prosecution.

MS. GREER: Thank you, Your Honor.

THE COURT: She's got to -- your willingness to not throw her out is commendable, but she's got to do what it takes to allow this case to move forward.

MS. GREER: Understood, Your Honor.

One --

THE COURT: Okay.

MS. GREER: -- more thing. Ms. Woody did file a motion seeking sanctions against --

THE COURT: That's denied.

MS. GREER: Thank you.

THE COURT: On the papers.

MS. GREER: Thank you very much.

THE COURT: Oh, put a decretal paragraph in the order that says that in baby talk.

MS. GREER: Thank you. Will do.

THE COURT: Okay.

MS. GREER: Your Honor, what Mr. Smolinsky points out to me, and I think is consistent with my understanding as well, I think the cli -- our client is inclined to allow the claim in the full amount as long as it's allowed as an unsecured claim in the interest of efficiency.

THE COURT: Very good, okay.

MS. GREER: Thank you, Your Honor.

THE COURT: Make it happen then.

Back to you, Mr. Smolinsky.

MR. SMOLINSKY: Thank you, sir. The two remaining matters: we have the Tullis matter. I'm not sure that I heard Mr. Tullis on the phone, but I believe after speaking with him yesterday he planned on attending.

THE COURT: He's on my phone log. Let's pause for a second. Mr. Tullis, are you on the phone?

MR. TULLIS: Yeah.

THE COURT: Oh, okay. We're going to -- is it your recommendation, Mr. Smolinsky, that we deal with Mr. Tullis' claim next?

MR. SMOLINSKY: Yes.

MR. TULLIS: Don't talk too fast. I can't hear (indiscernible) my hearing aids (indiscernible). Is this the Honorable Robert E. Gerber, or is this (indiscernible)?

THE COURT: This is the judge, Mr. Tullis. My name is Robert Gerber.

MR. TULLIS: I appreciate that. (indiscernible) Okay, sir. I appreciate that, and I'll do my best, but I am hard of hearing and am wearing hearing aids.

THE COURT: Okay. Mr. Smolinsky, the lawyer for GM, you may proceed.

MR. SMOLINSKY: Thank you. Clinton and Margaret Tullis has been pursuing claims against General Motors Corporation since 2008 relating to a 2004 motor vehicle accident. Our motion and reply describe a web of litigation that -- in state and federal court that goes well beyond a judicial determination that was previously made in state court that his claims are barred by the statute of limitations.

We have tried to inform Mr. Tullis that his continued litigation is in violation of the various orders of this Court, including the bar date order, the plan of confirmation and the

exculpation provisions. But in fact, Mr. Tullis continues to file various papers and pleadings in state court in Washington. Our understanding is that he might have filed additional pleadings as recently as yesterday in those actions.

Our efforts to advise him of his obligations pursuant to these bankruptcy court orders have not been met with a response other than his attempts to assert claims not only against General Motors Corporation, but also against my firm and members and associates of my firm for bringing that to his attention. At this point, I would advise the Court that Mr. Tullis did not file a proof of claim, although he did seem to file copies of state court pleadings in this court with a caption that references the Southern District of New York.

But we do not believe that that -- those pleadings could rise to the level of a -- an informal proof of claim, and they were not timely. We attached to our papers parts of the affidavit of service showing that both Margaret Tullis and Clinton Tullis received actual notice of the bar date and elected not to file claims in this court.

Your Honor, we would ask that you put an end to this litigation and to enforce this Court's prior orders so that we can continue to wrap up these estates.

THE COURT: All right. Mr. Tullis, I'll hear from you now. I read the papers. There seems --

MR. TULLIS: (indiscernible)

THE COURT: -- there seems --

MR. TULLIS: Your Honor?

THE COURT: No, okay. Please. One of the things you have to understand, Mr. Tullis, is you can't interrupt me. The facts that Old GM lays out do not appear to be disputed. And they're very serious. They show very serious violations of bankruptcy law. And while my in -- I'll hear what you have to say. And while my inclination isn't to throw you in jail or recommend that you be thrown in jail or to have you fined right now, it's to tell you that it's got to come to a stop right here and now.

Now, I need you to help me as a matter of either telling me that the facts that they put forward in their papers aren't true, or, as a matter of bankruptcy law, why I shouldn't enter an order saying you've got to stop. Go ahead, sir.

MR. TULLIS: Your Honor, (indiscernible) here in the state of Washington (indiscernible) there's crimes committed. I cannot (indiscernible). And Margaret's had her problems because of it, but not as much injury as I took. And it's something that you need (indiscernible), and you wouldn't want to go through it, either. And after I filed (indiscernible), General Motors Corporation, telling them what the situation was and that. They went right out immediately and ordered better steel for their vehicles.

They put it out for their framework, and it's much

stronger steel. And the same for the steering (indiscernible) steering. And they've sent me many papers out saying that they thank me for bringing those things up so they can take care of them and be proud of the vehicle that they manufacture. So I hope, again, together on this (indiscernible) Weil Gotshal & Manges tell me that I'm committing a crime by proceeding with my agenda they are off their -- up on the wrong trail. Are you there, sir?

THE COURT: Yes. I just didn't want to interrupt you. Are you finished, sir?

MR. TULLIS: Yeah. Yes, sir.

THE COURT: Okay. Mr. Smolinsky, do you wish to reply?

MR. SMOLINSKY: While we are sympathetic with Mr. Tullis' injuries and his wife's injuries, Mr. Tullis had his day in court. It was determined that he had no claim under Washington State law. His attempts to -- his attempts to criminal law in order to expand the statute of limitations I think evidences confusion on his part as to who can bring criminal actions and prosecute them.

My first takes very seriously the allegations that have been leveled against the firm and against individuals. We attached copies of our letter -- letters. And as you can see, sir, we did not allege any criminal activity of any kind but were merely pointing out that there orders of this Court which

bar the very things that Mr. Tullis is considering. I could see this spinning out of control. And while we don't seek sanctions at this point, we very much as serious about the possibility of seeking sanctions in the future.

THE COURT: All right. Okay. I want you to have a seat for a second, Mr. Smolinsky. Mr. Tullis, you're going to hear a couple of minutes of silence, and then I'm going to rule.

MR. TULLIS: Yes, sir. Your Honor (indiscernible). Okay.

THE COURT: All right. Just stand by, please.

All right. Folks, in this contested in the jointly administered cases of Motors Liquidation Company and its affiliates, Motors Liquidation and the GUC Trust move for an order protecting the debtors, the GUC Trust and their officers and professionals from actions initiated by Clinton M. Tullis and Margaret L. Tullis in violations on the Bankruptcy Code's automatic stay. The injunctions that have been previously put in place and exculpation provision set forth in the debtors' reorganization plan and in the order that I signed confirming the reorganization plan.

For the reasons that follow, the debtors' motion is granted. Turning first to my findings of fact. On January 17, 2008, the Tullises commenced an action against General Motors Corporation in the Superior Court of the State of Washington

for the County of Pierce. The Pierce County Superior Court dismissed that action with prejudice on April 4th, 2008, finding that that Tullises' claims against the defendants were barred by the applicable statute of limitations.

Following this dismissal, the Tullises attempted to resurrect the action with motions to vacate and motions to show cause, and each of these attempts was unsuccessful.

On June 1st, 2009, the debtors commenced the Chapter 11 case, which is now before me. The debtors were represented in the Chapter 11 case by the law firm of Weil Gotshal & Manges, which I'll refer to as Weil. Two weeks after the debtors commenced the Chapter 11 case, the Tullises filed a complaint in the U.S. District Court for the Western District of Washington. The district court complaint replicates the complaint filed in the Pierce County Superior Court, but with the additional handwritten notes that read "continuance of this case" and "This case is removed from Pierce County Superior Court to federal court; June 5" -- "15, 2009."

While the debtors say they were never served with the federal district court complaint, the Tullises did send a copy to the clerk of the bankruptcy court here, and the clerk's office filed it on the debtors' public docket at entry number 1977 on June 19, 2009. That same day, the Washington State Federal District Court entered an order remanding the federal action back to the Pierce County Superior Court.

On September 16, 2009, I signed an order establishing November 30, 2009 as the deadline, which is sometimes known as a bar date, for filing claims against the debtors. The bar date order was served upon the Tullises as indicated of Exhibit D of the GUC Trust motion. Despite notice of the bar date, the Tullises failed to file any proofs of claim in the Chapter 11 case.

Notwithstanding full knowledge of the Chapter 11 case, as evidenced, among other things, by their sending the clerk of the bankruptcy court the earlier federal district court complaint, the Tullises commenced yet another action against the debtors on July 16, 2010, once more in Washington State court, but this time in Washington State's Kings -- King County.

On July 30, 2010, the debtors' attorneys sent the Tullises a letter advising the Tullises of the bankruptcy and the requirements of the automatic stay, which prohibits the commencement or continuation of actions against any debtor that could have or were commenced prior to such debtors' filing of a petition for bankruptcy relief.

On December 30, 2010, the Tullises filed a revised complaint in the federal district court in Washington, adding Weil -- and two Weil attorneys as individual defendants, seeking a five-million-dollar fine and/or criminal sanctions against the Weil defendants. Though debtors and the Weil

defendants were not made aware of the revised complaint until it was filed in the bankruptcy court's docket at GM docket entry 10299.

On March 29, 2011, I entered an order confirming the debtors' plan of reorganization. That confirmation order and the underlying plan both include what are known as exculpation provisions providing that neither the debtors, the GUC Trust, nor their respective officers or professionals, which obviously includes both the Weil law firm and the Weil attorneys, "shall have or incur any liability to any holder of a claim or equity interest for any act or omission in connection with, related to or arising out of the Chapter 11 cases." See paragraph 52 of the confirmation order and Section 12.6 of the plan.

In addition, the plan provides for an injunction against interference with the implementation or consummation of the plan. See Section 10.7 of the plan. Both the plan and my confirmation order reserved to this bankruptcy Court, that's me, exclusive jurisdiction to consider matters arising out of or relating to these Chapter 11 cases. See paragraph 52 of the confirmation order and Sections 11.1 and 12.6 of the plan.

Now, turning to my conclusions of law and certain mixed findings of fact and law: the Tullises' actions -- and please listen to me, Mr. Tullis -- are in direct violation of the automatic stay, my bar date order, the plan and my confirmation order. I will address each violation in turn.

Section 362(a) of the Bankruptcy Code provides that the filing of a Chapter 11 petition serves as an automatic stay. Mr. Tullis, a stay is an injunction applicable to the commencement or continuation of an action against the debtor that was or could have been commenced before the petition date. That's Section 362(a)(1) of the Bankruptcy Code. The pending -- please don't interrupt me, Mr. Tullis. I'll give you a chance to speak after I have announced my ruling, okay? The pending King County action initiated by the Tullises in July of 2010 over a year after the bankruptcy case was filed clearly, very clearly, violates the automatic stay.

The King County action arises out of an automobile accident that occurred sometime around 2003 or 2004 and the subsequent surgery that was performed in 2005; all long before the commencement of the Chapter 11 case. The claims, if any, are pre-petition claims. And asserting them in an action, especially one brought after the filing date, violates the automatic stay. The Tullises clearly knew of the debtors' Chapter cases as early as June of 2009 when the clerk of this bankruptcy court received documents from the Tullises that were filed as docket entry number 1977 in the GM docket.

In any case, the debtors promptly notified the Tullises and the King County Court of GM's bankruptcy and the applicability of the automatic stay. Because the King County action was commenced in violation of the automatic stay, any

and all proceedings in that court are void. They have no effect. And that action much be dismissed. See, for example, E. Refractories Company Inc. v. 48 Insulations Inc.; 157 F.3d 169 at page 172, a decision of the Second Circuit Court of Appeals in 1998. And while I find that the Tullises had actual notice of GM's bankruptcy before they blatantly violated the automatic stay, the law is that violations of the automatic stay are void even without notice. See for example, in re Heating Oil Partners LP; 422 Fed Appendix 15 at page 18, a decision of the Second Circuit, 2011.

Notice is, however, relevant to the bar date and the filing of proofs of claim. While it's undisputable that the Tullises had notice of the bankruptcy case, because they were sending the bankruptcy court notices since 2009 making explicit reference to the Chapter 11 case, I further find that the Tullises knew of the deadline for filing proofs of claim in these cases because the address on the debtors' bar date list matches the return address on the documents that the Tullises mailed to the bankruptcy court. But with notice of the bar date, the Tullises failed to file a proof of claim.

Having filed -- having failed to file a proof of claim prior to the bar date, the Tullises are barred from asserting any claims against the debtor.

MR. TULLIS: Your Honor?

THE COURT: Just a minute, please, Mr. Tullis.

I further find that the Tullises have violated the debtors' plan of reorganization and my order confirming the plan. The plan explicitly, that means clearly, enjoins claimants from taking any actions that interfere with the implementation or consummation of the plan. And under the plan and the confirmation order, people cannot go after the debtor's officers and professionals, either law firms or human beings working for those law firms with respect to any acts or commissions -- or omissions, excuse me, connected with the Chapter 11 cases.

I'm not going to move on beyond my official ruling. And Mr. Tullis, I'm saying this very softly. And I'm not screaming, but you have to understand how serious I am about this, and how serious what you did is. You have violated the Bankruptcy Code's requirements over and over again. You have violated my injunction over and over again. You are very lucky that the debtors aren't asking for sanctions, which is punishment. They're not asking for damages, and I'm not imposing that. But I'm telling you in the clearest terms I can that you got to stop.

Now, I am not imposing sanctions. I'm not referring you to criminal charges. I'm not making you write a check or threatening to have you jailed, but I am saying it's got to come to a stop. And your contention that they're doing something illegal and that you can ignore the requirements of

the Bankruptcy Code or my court orders is not in any way a defense to what you've been doing. If there is something criminal, that's for the district attorneys or the U.S. attorneys of the world to deal with, not you. The police power exception under the automatic stay does not apply to individuals who think that they've been legally wronged in some way.

The debtor is to settle an order in accordance with what I just dictated. Mr. Tullis, you're going to have a right to appeal, but you will have only fourteen days to bring that appeal. The time for bringing that appeal will run from the date of entry of the resulting order and not from the date of this dictated decision.

Now, Mr. Tullis, I think several times you interrupted me and you wanted to say something. Now I'll let you speak. Mr. Tullis, do you want to be heard? Mr. Tullis? Mr. --

MR. TULLIS: Sir -- yes, Your Honor (indiscernible).

THE COURT: Yes, sir, I am. Do you want to be heard?

MR. TULLIS: Well, now, I don't know. I never knew anything about an automatic stay. But the rules or laws that I know of here in the state of Washington states that I (indiscernible) or find other means to (indiscernible), not any criminal acts and when you committed a crime. And when I sent you a (indiscernible). I don't want to do that. I don't want to see them do that. And if they hit me with this automatic

stay and bring it back here, then I'll immediately go down to the governor, who's also -- has been an attorney for years, and we'll see about proceeding with the dismissal of their (indiscernible) rights selling vehicles in the state of Washington.

THE COURT: Mr. Tullis, I can't let you continue anymore.

MR. TULLIS: All right.

THE COURT: I've let you speak and speak without interrupting, but I can't let you speak anymore. I have ruled.

MR. TULLIS: (indiscernible)

THE COURT: I have ruled --

MR. TULLIS: (indiscernible) --

THE COURT: -- deeming your remarks to be a motion for reargument. Reargument is denied. If you still think my ruling is an error, your remedy is in the appellate courts, starting with the United States District for the Southern District of New York. With all respect -- and I've had many, many consumers who felt very saddened by what happened to them with their vehicles, and I feel their pain. I really do, but nobody before today, Mr. Tullis, has argued with me after I have ruled. And they have all understood that if they think that I got it wrong they've got to go to the appellate courts. And again, with all respect and sympathy, sir, that's what I'm telling you that you need to do.

Now, we need to go on to the next matter. CourtCall: Mr. Tullis can stay on the phone, or he can drop off as he prefers, but I'm directing you to put him on mute.

UNIDENTIFIED SPEAKER: Okay, Your Honor.

THE COURT: Thank you. All right. Mr. Smolinsky, next matter, please.

MR. SMOLINSKY: Thank you, sir. Ms. Greer --

MR. COBBLE: (indiscernible)

MR. SMOLINSKY: Before I get -- begin, Ms. Greer has asked to be excused.

THE COURT: Of course.

MR. SMOLINSKY: The last matter on the agenda --

THE COURT: Mr. Smolinsky, we're still on the record even though Mr. Tullis can no longer speak since we're done with him. I do of course want the order settled upon him so that he can be heard on the form of the order. And I want you, even though you might not be required by law to do it, to send him by overnight mail a notice of entry of the resulting order so it is entered, so he is on notice of when his time to appeal starts to run.

MR. SMOLINSKY: Of course, sir. And if we may, while we do not suppose that Your Honor would be comfortable directing the clerk of any other court to do anything, we would like to send a copy of the transcript of this hearing to the court where the actions are pending.

THE COURT: You may do so.

MR. SMOLINSKY: Thank you, sir.

The last matter on the calendar is the debtors' eighty-third omnibus objections to claim. This is a claim seeking to expunge welfare benefit claims of retired and former salaried employees. We are addressing today one claim filed by Joseph Cobble, Jr., which is a claim for life insurance --

THE COURT: Pause please, Mr. Smolinsky.

MR. SMOLINSKY: Yes.

THE COURT: Mr. Cobble, you are on the phone, and you announced your presence a long time ago. CourtCall: I want you to be sure that Mr. Cobble can speak and confirm that he is still on the line, or, Mr. Cobble, you can do that yourself.

MR. COBBLE: Yes, I'm still on the line.

THE COURT: Thank you. Continue then, please, Mr. Smolinsky.

MR. SMOLINSKY: Thank you, sir. Mr. Cobble filed a reply to that objection, which Your Honor should have. And we -- just in terms of context, Your Honor has dealt with hundreds of employee claims in the past. We have expunged claims. We've had hearings on disputed claims objections. We indicated to this Court in the past that there are certain instances in which employees have asserted that they've received letters or other correspondence that may alter the landscape in terms of Your Honor's ruling; although, we

expressed at the time our view that it didn't alter the law with respect to your prior rulings.

but I want to put this into context because we are now moving from plain vanilla objections, where Your Honor has, I believe, asked the employees, where we had hearings, did you receive any other documents or do you anything else that you want to put before the Court, and the answer was no. These are situations where often times there have been correspondence that these employees are relying on.

We file -- we did file a fifteen-page reply. And while Your Honor may think that that's overkill in connection with the one-page response that was filed by Mr. Cobble, we wanted to make sure that Your Honor had a full view and understanding of our position with respect to all of these related types of claims. And we're happy to answer any other questions surrounding this issue because before we set forth on having hearings with respect to this new round of claims we did go back and do substantial amount of research and consider and review all of the correspondence that have submitted by the various employees.

So that's by way of background. Mr. Cobble attaches to his response a letter that was received by him through the General Motors Retirement Center, which was actually a organization that was created by MetLife, who was administering various retirement plans for General Motors. And this letter,

according to Mr. Cobble, sets out a promise that his entitlement to life insurance would not change. I do point your attention to the language beneath that statement that says that the coverage is not guaranteed; although, we don't believe that that really has any impact as well.

we believe that these -- this letter does not create any separate entitlement to the employee plans that were in place and that were all subject to the company's ability to modify, amend or terminate those plans. And that's language which we set forth in the objections as well as in the reply, as well as in the -- in other documents that were submitted and circulated to employees from time-to-time. That includes the employee handbook that was circulated as well as summary plan descriptions, which were updated every five years and sent out to employees and retirees.

So regardless of receiving this letter, they would have been on notice periodically of the debtors' obligation -- the company's obligation or right to amend, modify or terminate the plans at any time.

We cite in our papers the Sprague case, which is a case directly on point because it involves some of these very issues surrounding the GM plans. And the Court in that case sets out clearly that the reservation of rights to amend, modify or terminate the plans at any time is conclusive without a separate agreement or contract that would vest those rights.

And for those reasons, Your Honor, we believe that this letter that was actually sent out after Mr. Cobble retired does not alter the plan or the ability of the debtors to amend or terminate the plan.

As Your Honor knows that -- this plan was amended to bring down all employees' life insurance benefits to 10,000 dollars. And New GM, under the master sale and purchase agreement, agreed to assume that liability so that employees could get and retirees could get the 10,000 dollars in cash upon their death.

THE COURT: Okay. I'll hear from you next, Mr. Cobble. Make your remarks as you see fit. But when you do so, I need you to be sure that you discuss the Sixth Circuit Court of Appeals case and Sprague v. General Motors. And Mr. Smolinsky, tell your associates -- although I think you signed the reply --

MR. SMOLINSKY: The Table of Contents?

THE COURT: -- that I'm supposed to have a table of cases so I don't have to leaf through something to find references to the Sprague case --

MR. SMOLINSKY: Your Honor, I did realize --

THE COURT: -- and a table of contents --

MR. SMOLINSKY: -- that when I reviewed on preparation for the hearing. And I apologize. It won't happen again.

THE COURT: All right, thank you. Mr. Cobble.

MR. COBBLE: Yes.

THE COURT: I'll hear your argument now.

MR. COBBLE: Okay. Now, the other attorney did state (indiscernible). And when you retire, you go through an exit interview, and you go through all the benefits. You go through the -- all the pension, any insurance, if it will be extended. So I wasn't aware that this would be a continuing life insurance policy. It did have some influence on the fact that I did accept the retirement. I know that -- and I guess I relied on the document. The document states life insurance (indiscernible) reduced to the ultimate amount (indiscernible) dollars. The ultimate amount will remain in effect for the rest of your life.

I'm not an attorney, but I can give you an engineer's point of view. If the definition of reduced is to bring to a certain state or condition, and the definition of ultimate is preclusive or final, this document that I received from the retirement center does not contain any reservation or right to modify, much less terminate. It states it will remain in effect for the rest of your life (indiscernible). So it did have some affect on my decision, and the extended insurance certainly something that I relied on.

As far as I'm concerned, I think that these decisions are irrevocable (indiscernible) age, health and cost of replacing (indiscernible). And in fact, it does just the

opposite. It makes clear that the benefit is fully reduced and will remain in effect for the rest of my life. And I guess (indiscernible).

THE COURT: Okay. Thank you. Mr. Smolinsky, do you wish to reply?

MR. COBBLE: Thank you, sir. Your Honor?

THE COURT: Yes. Thank you, sir.

MR. SMOLINSKY: Your Honor, the language in these retiree letters is unfortunate, I give you that, to the extent that it led on any employees about what could or could not be done with respect to the coverage. I do note in this particular letter that it says this is not a guarantee of the coverage amount, and that's pretty clear on its face.

With respect to the reliance issue, I would note that the Devlin case, which talks about promissory estoppel and reliance, talk about the rel -- it not being incidental reliance, but real reliance upon which the party acts or changes their course. And I guess the best example if you work for the next ten years, we will grant you lifetime coverage. In this case, the decision to retire was not based on this letter. This letter was sent out for information purposes, but the benefits that were promised to him were consistent with the plans that were in place, which all had this reservation of rights language.

Mr. Cobble would have received a couple of years later

the new summary plan description, which would have had all of the material rights to amend or terminate the benefits. He would have had in his possession, presumably, the employee handbook and the last summary plan description that would have this reservation of rights language. So under the four-part test that's set in Devlin, I don't believe that this letter gives rise to the kind of reliance that the Devlin Court considered.

THE COURT: Okay. Both sides -- have a seat, please, Mr. Smolinsky. Both sides sit in place for a couple minutes.

(Pause)

THE COURT: All right. Gentlemen, in this contested matter in the jointly administered Chapter 11 case of Motors Liquidation Company and its affiliates, the debtor, General Motors Corporation or Old GM, moves to disallow and expunge Mr. Cobble's claim. For reasons that follow, the debtor's motion must be granted, and Mr. Cobble's claim must be disallowed and expunged.

Before I go into the legal reasons, though, and my findings of fact, I do want to note something. Perhaps it's the obvious. This matter is very different than the first one on my calendar today. Here, we do not have in any way, shape or form an individual who has violated the requirements of the Bankruptcy Code or has in any way acted improperly. The issue isn't about his wrongful conduct. The issue ultimately is what

exactly his contract was with GM, which gave him the claim to the life insurance that he seeks now. And this is unfortunately one of the many cases where GM simply not having the resources to honor its earlier contracts caused it to amend those contracts. And the issue is whether or not GM had the right to change the contract in the way in which it did.

As I'll continue to point out, in this case, GM's contract with Mr. Cobble gave it the right to change his life insurance coverage. And therefore, although I recognize the hardship on Mr. Cobble and of course hundreds, if not thousands, of other employees who had to face the same situation, I'm required to comply with the law.

So with that, turning first to my findings of fact: on June 1st, 2009, the debtors commenced their Chapter 11 case.

On September 16, 2009, I entered an order establishing a deadline for the filing of proofs of claim. And Mr. Cobble timely, that is in time, submitted a proof of claim for what he seeks. His proof of claim asserts a claim for 112,049 against Old Gm for "loss for life insurance, salary, retiree." Basically, what he's saying is that he's entitled to the 112,049 that would be payable upon his death under the old level of life insurance that he had at times prior to the commencement of the Chapter 11 case.

The debtors filed what are called omnibus, covering many people, claims objections to eliminate claims lacking in

legal support. They objected to Mr. Cobble's claim. Mr. Cobble filed a response, and the debtors replied.

In his papers, Mr. Cobble explains that he was employed by Old GM for thirty-two years before he retired in 2002. He explains that his claim if for continuation of an earned and accrued benefit, to wit the continuing lifetime coverage and the future payment at the time of Mr. Cobble's death, of continuing life insurance benefits in the amount 122,049 pursuant to the debtors' "life and disability program." Mr. Cobble further asserts that his benefit was acknowledged by the debtor in a writing dated April 18, 2002, which writing Mr. Cobble attaches to his response.

I note by way of clarification that, as Mr. Cobble pointed out in his argument today, and this fact is undisputed, the April 8th, 2002 letter came to him a few weeks after he retired rather than before he retired. The letter has three significant paragraphs. I'll revise my remarks to say four, although I think the list, although Mr. Cobble relies on it, is not quite as important as he says.

Those four paragraphs read, and I'll quote them verbatim, "As a retiree of General Motors with ten or more years of participation in the life and disability benefits program, you are eligible for continuing life insurance. Our insurance records, as of the date of this letter, show the continuing life insurance has now fully reduced to the ultimate

amount of $122,049.00."

"This ultimate amount will remain in effect for the rest of your life and is provided by General Motors at no cost to you. This is not a guarantee of the coverage amount. Important: you should keep this notice with your other valuable papers."

On December 31st, 2011, the Motors Liquidation Company GUC Trust, which was formed under the debtors' plan of reorganization replied to Mr. Cobble's response. In that reply, the GUC Trust argues that Mr. Cobble's claim must be disallowed because his life insurance benefits were unvested welfare benefits that could be modified under the plan terms governing such welfare benefits and that they were properly modified under those terms.

Now, turning to my conclusions of law and certain mixed findings of fact and law: a proof of claim is prima facie evidence of the validity and amount of the claim, and the objector bears the initial burden of persuasion. See, for example, in re Oneida Limited; 400 BR. 384, at page 389, a decision by Judge Gropper of this court. The burden then shifts to the claimant, in this case that's Mr. Cobble, if the objector produces evidence equal in force to the prima facie case, which, if believed, would refute at least one of the allegations that's essential to the claim's legal sufficiency.

When the burden is shifted back to the claimant, the

claimant must then prove by a preponderance of the evidence that under applicable law the claim should be allowed. Here, the objecting debtors have produced evidence at least equal in force to the evidence provided by Mr. Cobble; thus, shifting the burden back to Mr. Cobble. And then, Mr. Cobble does not satisfy his burden under the law.

First, I find that Mr. Cobble has not met his burden to show that his life insurance have vested. Rather, the documents covering his life insurance reserved the right to change its level. In dealing with claims of Old GM retirees, which were similar to Mr. Cobble's present claim, the Sixth Circuit Court of Appeals in a case called Sprague v. General Motors Corp.; 133 F.3rd 338, at page 400, explain that to "vest benefits is to render them forever unalterable. Because vesting of welfare plan benefits is not required by law, an employer's commitment to vest such benefits is not to be inferred lightly. The intent to vest must be found in the plan documents and must be stated in clear and express language."

In their briefing, the debtors point to several welfare plan summaries which include language explicitly reserving the right to amend, modify, suspend or terminate welfare benefits. And I say by way of explanation that welfare benefits are benefits that employers provide that include, among other things, life insurance. So life insurance was one of the things that GM had reserved the right to change. And

when GM reserved that right, that became part of Mr. Cobble's contract with Old GM, if you will. So GM did something that it was authorized to do.

Now, that was the state of play when Mr. Cobble retired. And the letter dated April 8, 2002 doesn't change that result. Mr. Cobble skipped the key sentence when he read parts of the letter, but didn't read all of it. He skipped a sentence that said this is not a guarantee of the coverage amount. But with or without that extra clarification, the terms under which Mr. Cobble worked didn't change over the years that he was a GM employee.

Now, thirty-two years is a lot of years to work for a company, and everything in the record indicates that this was faithful employment. And I understand why Mr. Cobble is upset, and I understand it both from what Mr. Cobble said and what any number of employees said back in June and July of 2009 when this case was first filed. And I have to deal with these same issues. It doesn't please me to have to rule that people have to accept a lesser level of life insurance or medical benefits that are subject to similar considerations. But the fact is that there were limited resources to take care of GM retirees.

The letter of April 8, which was sent to him after he retired, explicitly stated it wasn't a guarantee of the coverage amount. In fact, it also told him of a reduction in -- to his ultimate amount of continuing life insurance

coverage. The fact that Old GM was able to reduce the ultimate amount of his coverage at this time underscores a fundamental point; that Old GM always had the right to modify the benefits.

While it's probably obvious, I make a few other observations to provide greater clarity and for the avoidance of doubt. The letter of April 8 didn't create a new contract between the debtors and Mr. Cobble. He had already retired. It can't reasonable interpreted as an offer to which Mr. Cobble could accept, nor is there any evidence in that letter that it includes language reasonably susceptible to interpretation as a promise. There was no evidence that Old GM promised Mr. Cobble certain life insurance benefits to induce his retirement or other action or inaction by Mr. Cobble. See, for instance, Devlin v. Empire Blue Cross and Blue Shield; 274 F.3d 76.

For those reasons, I am compelled to disallow Mr. Cobble's claim, and I am authorizing and directing the debtor to settle an order consistent with this decision. The time to appeal my decision will run from the date of entry of the order rather than the date I'm dictating this. And once more, Mr. Smolinsky, I want you to serve notice of entry on the resulting order in addition to the notice of settlement by an overnight mail mechanism so that Mr. Cobble knows when his time to appeal start to run.

Mr. Cobble, the time to appeal a bankruptcy court order is quite short. It's only fourteen days from the date of

entry of the order. So if you think about it and decide you do want to appeal, I want you to be aware of that short period of time. Once more, I underscore in connection with this decision that unlike the first matter on the calendar, Mr. Cobble did nothing wrong. But here, I am compelled to act in accordance with the law. So while I'm not happy about having to rule this way, the claim is disallowed.

Okay. Mr. Cobble, I sense that you're an engineer and not a lawyer. But not by way of reargument, because I have ruled, I will answer any questions you might have if you have any desire for a clarification.

MR. COBBLE: I just have one further question, and that's on a statement that this is not a guarantee of coverage amount. And in my point of view, I guess, guarantee in coverage, I would say that is an expression of a future happening. This is a perspective and not a statement of fact, and the rest of body of the letter, which states ultimately reduced and the rest of your life to mean that it's just a statement of fact. But I understand your points of view, and I certainly appreciate your time going through this.

THE COURT: Very well. Thank you. And of course, I appreciate your courtesy, sir.

All right. With that, we're adjourned. Everybody have a good day.

MR. COBBLE: Okay.

MR. SMOLINSKY: Thank you, sir.

MR. COBBLE: Thanks for your time, sir.

(Whereupon these proceedings were concluded at 11:02 AM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Aliza Chodoff, certify that the foregoing transcript is a true and accurate record of the proceedings.

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ALIZA CHODOFF

AAERT Certified Electronic Transcriber CET**D-634

Veritext

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Date: January 19, 2012