HEARING DATE AND TIME: July 18, 2016 at 10:00 a.m. (Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

REPLY BY GENERAL MOTORS LLC TO OBJECTIONS AND RESPONSE TO ITS' MOTION PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE BANKRUPTCY COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION, AND THE RULINGS IN CONNECTION THEREWITH, WITH RESPECT TO PLAINTIFFS IDENTIFIED ON SCHEDULE "1" ATTACHED THERETO

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

General Motors LLC (**"New GM"**), by its undersigned counsel, submits this reply ("**Reply**") to the objections and response filed in connection with the *Motion By General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Bankruptcy Court's July 5, 2009 Sale Order And Injunction, And The Rulings In Connection Therewith, With Respect To Plaintiffs Identified On Schedule "1" Attached Hereto*, dated June 24, 2016 [Dkt. No. 13655] ("**Second June Motion to Enforce**").[1] In support of this Reply, New GM states as follows:[2]

PRELIMINARY STATEMENT

The Responding Plaintiffs (Post-Closing Accident Plaintiffs alleging personal injuries due to Old GM vehicles without the Ignition Switch Defect) are intentionally violating the Bankruptcy Court's December 2015 Judgment, which expressly provides that plaintiffs whose claims arise in connection with Old GM vehicles without the Ignition Switch Defect cannot assert Independent Claims against New GM, and punitive damages for such Claims.[3] Those proscribed claims and damage demands never got "through the bankruptcy gate."

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[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Second June Motion to Enforce. Objections to the Second June Motion to Enforce were filed by (i) Christopher Pope and Gwendolyn Pope ("**Pope Plaintiffs**"); (ii) Bernard Pitterman, Administrator ("**Pitterman Plaintiff**"); (iii) James Walter Moore and Jaime Reda Moore ("**Moore Plaintiffs**"); and (iv) Brianna Minard ("**Minard Plaintiff**", and with the Pope Plaintiffs, the Pitterman Plaintiff and the Moore Plaintiffs, the "**Responding Plaintiffs**").

A response ("**Lead Counsel Response**") to the Second June Motion to Enforce was also filed by the MDL Class Plaintiffs (as defined in the Lead Counsel Response). As New GM previously pointed out to the Court in connection with an earlier motion to enforce, the MDL Class Plaintiffs never appealed the June 2015 Judgment on behalf of Non-Ignition Switch Plaintiffs. The MDL Class Plaintiffs' *Notice of Appeal*, dated June 2, 2016 [Dkt. No. 13185], and *Appellants' Statement of Issues on Appeal and Designation of Items to be Included in the Record on Appeal*, dated June 16, 2016 [Dkt. No. 13219] were made on behalf of the Ignition Switch Plaintiffs only. The briefs filed by MDL Class Plaintiffs in the Second Circuit were captioned and submitted on behalf of the Ignition Switch Plaintiffs only. The only Non-Ignition Switch Plaintiffs who appealed the April 2015 Decision and the June 2015 Judgment were the handful of plaintiffs represented by counsel Gary Peller, Esq., who did so on their behalf only.

[2] In addition to the Responding Plaintiffs, the Second June Motion to Enforce also applies to other PI Plaintiffs named in Schedule "1" attached thereto (*i.e.*, the Atanaw, Barbot, Black, Boker, Minix and Neal Plaintiffs (collectively, the "**Non-Responding Plaintiffs**")). As the Non-Responding Plaintiffs have not filed an objection or response to the Second June Motion to Enforce, the proposed order attached as Exhibit "L" thereto should be entered against them.

[3] December 2015 Judgment, ¶¶ 6, 7, 14.

The 2009 Sale Order and Injunction bars the assertion of all personal injury claims against New GM with respect to Old GM vehicles except for Assumed Product Liabilities. The Bankruptcy Court did modify that Sale Order and Injunction in June 2015 to allow the assertion of "Independent Claims" only for the Ignition Switch Plaintiffs (and for no other group of plaintiffs) because they alone had established a due process violation in connection with the Sale Motion.[4] Except for this category, no other group of plaintiffs asserting personal injury claims based on Old GM vehicles has established a due process violation relating to the Sale Motion. In fact, the Bankruptcy Court has ruled on a number of occasions (outside the Ignition Switch Defect context) that the Sale Notice given to Old GM vehicle owners was proper.[5]

In the December 2015 Judgment, the Bankruptcy Court reiterated its ruling that only the Ignition Switch Plaintiffs could assert Independent Claims against New GM for Old GM vehicles.[6] Judge Gerber recognized in the November 2015 Decision that other plaintiff groups (such as the Old GM vehicle owners without the Ignition Switch Defect) had been provided with ample opportunity, after the 2014 recalls, to come forward to establish a due process violation relating to the Sale Motion, and none had done so. Recognizing that the Sale Order and Injunction had been resolved years ago, and that the good faith purchaser (New GM) was entitled to the finality and protections it bargained for, the Bankruptcy Court held, in the December 2015 Judgment, that the provisions of the Sale Order and Injunction would be fully enforced against

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[4] New GM has appealed to the Second Circuit the Bankruptcy Court's finding that there was a due process violation in connection with Ignition Switch Plaintiffs.

[5] *Morgenstein v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 462 B.R. 494 (Bankr. S.D.N.Y. 2012); *see also* Transcript of Oral Argument, at 59:19-61:13, *In re Motors Liquidation Co.*, Case No. 09-50026 (REG) (Bankr. S.D.N.Y June 1, 2010) [Dkt. No. 5961]. A copy of the relevant portions of the June 1, 2010 Hearing Transcript are attached hereto as **Exhibit "A."**

In addition, the District Court in affirming the Sale Order and Injunction rejected the due process challenge made by certain Old GM creditors. *See In re Motors Liquidation Co.*, 430 B.R. 65, 97-99 (S.D.N.Y. 2010).

[6] Whether the Bankruptcy Court had the authority to modify the Sale Order and Injunction, and create in the June 2015 Judgment the concept of "Independent Claims"—a new category of liabilities associated with Old GM vehicles—is one of the issues that New GM has raised on appeal in the Second Circuit, which is *sub judice*.

all plaintiffs (other than the limited carve-out for the Ignition Switch Plaintiffs asserting Independent Claims). Since the Responding Plaintiffs are, by definition, not Ignition Switch Plaintiffs, they are barred from asserting Independent Claims against New GM. And, since the December 2015 Judgment held that New GM did not assume punitive damages in connection with Assumed Liabilities, the Responding Plaintiffs are therefore prohibited from seeking punitive damages against New GM with respect to claims involving Old GM vehicles.

Responding Plaintiffs already had a full and fair opportunity to litigate the issues raised in their objections to the Second June Motion to Enforce, and the collateral estoppel doctrine applies to prohibit them from re-litigating those issues now.[7] And, in all events, Responding Plaintiffs are not permitted to simply ignore an existing injunction of the Bankruptcy Court (which is what they are presently doing), that bars them from asserting such claims and seeking punitive damages.[8] The Responding Plaintiffs had notice of, and the right to participate in, the proceedings leading to the December 2015 Judgment. The Bankruptcy Court had subject matter jurisdiction to enter, construe and enforce the Sale Order and Injunction and enter the December 2015 Judgment. Those rulings are binding on the Responding Plaintiffs and New GM's Second June Motion to Enforce seeks that they be compelled to obey them.

ARGUMENT

I. Independent Claims Cannot Be Asserted By The Responding Plaintiffs

A general theme running through the Responding Plaintiffs' objections is that the concept of Independent Claims was meant to apply to both Ignition Switch Plaintiffs and Post-Closing

[7] Even if collateral estoppel did not apply, the Responding Plaintiffs would be bound by *stare decisis* principles.

[8] *See Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995) ("persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order"); *see also In re Motors Liquidation Co.*, 513 B.R. 467, 478 (Bankr. S.D.N.Y. 2014) (citing *Celotex*).

Accident Plaintiffs without the Ignition Switch Defect. A review of the June 2015 Judgment and the December 2015 Judgment (and the events leading to the entry of the December 2015 Judgment), directly contradicts this argument and shows that only Ignition Switch Plaintiffs can assert Independent Claims against New GM; Post-Closing Accident Plaintiffs without the Ignition Switch Defect, like the Responding Plaintiffs, cannot do so.[9]

Specifically, paragraph 4 of the June 2015 Judgment provides:

> The Sale Order shall be deemed modified to permit the assertion of Independent Claims. For purposes of this Judgment, "**Independent Claims**" shall mean claims or causes of action asserted by Ignition Switch Plaintiffs against New GM (whether or not involving Old GM vehicles or parts) that are based solely on New GM's own, independent, post-Closing acts or conduct.

The June Judgment then explicitly provides that "[e]xcept for the modification to permit the assertion of Independent Claims by the Ignition Switch Plaintiffs, the Sale Order shall remain unmodified and in full force and effect." *Id.* ¶ 5. This language makes clear that Old GM vehicle owners without the Ignition Switch Defect, like the Responding Plaintiffs, cannot assert Independent Claims against New GM and remain bound by the Sale Order and Injunction.

With respect to the December 2015 Judgment, a review of the events leading to the entry of that Judgment, and the Judgment itself, makes clear that only Ignition Switch Plaintiffs can

[9] The MDL Class Counsel's assertion in the Lead Counsel Response, that, in all circumstances, the resolution of the Second June Motion to Enforce should be deferred until the Second Circuit rules on the appeal of the June 2015 Judgment, should be rejected because inaction would allow improper claims to proceed in state and federal courts around the nation. Clearly, there is an issue in the Second Circuit appeal raised by New GM as to whether the Sale Order and Injunction should have been modified to allow Ignition Switch Plaintiffs to assert Independent Claims against New GM. New GM has argued that the Sale Order and Injunction should not have been modified and that no plaintiff (including Ignition Switch plaintiffs) can assert Independent Claims against New GM. But, that dispute does not apply to Post-Closing Accident Plaintiffs without the Ignition Switch Defect because, under the December 2015 Judgment, they cannot assert Independent Claims. A Second Circuit ruling in New GM's favor on the Independent Claim issue could impact this proceeding by eliminating all Independent Claims (whether asserted by Ignition Switch Plaintiffs or Non-Ignition Switch Plaintiffs). Alternatively, if this Court finds that Responding Plaintiffs can assert Independent Claims (which it should not), then the Second Circuit appeal as to the applicability of Independent Claims would come into play.

In all events, to defer ruling on the Second June Motion to Enforce, is to fall back to the *status quo*, and under the December 2015 Judgment, the Responding Plaintiffs should still be barred from asserting Independent Claims and punitive damages or proceeding with their state/federal court litigations. The December 2015 Judgment is not the subject of the Second Circuit appeal.

assert Independent Claims against New GM. In the November 2015 Decision, the Bankruptcy Court instructed the parties to try and agree on a proposed form of judgment, or if they could not, to submit counter-forms of proposed judgment. *See In re Motors Liquidation Co.*, 541 B.R. 104, 144 (Bankr. S.D.N.Y. 2015). After the parties could not agree, they submitted competing forms and letter briefs about which version of the judgment should be entered. In New GM's letter brief to the Bankruptcy Court dated November 30, 2015 [Dkt. No. 13559] ("**New GM November 2015 Letter Brief**"),[10] it referred to the Bankruptcy Court ruling that the only category of claim where punitive damages could be asserted against New GM for an Old GM Vehicle is an Independent Claim, and that

> the only plaintiffs that can bring an Independent Claim against New GM with respect to an Old GM Vehicle based on the Sale Order, as modified by the June Judgment, are (i) owners of vehicles with the Ignition Switch Defect bringing economic loss claims (i.e., the Ignition Switch Plaintiffs) and (ii) Post-Closing Accident Plaintiffs who owned a vehicle with the Ignition Switch Defect.

New GM November 2015 Letter Brief, at 4. This point was made explicit in Exhibit "C" to the New GM November 2015 Letter Brief, which contained a mark-up ("**Marked Up Judgment**") of the competing proposed form of judgment. In the Marked Up Judgment, New GM differentiated between plaintiffs involved in accidents with vehicles with the Ignition Switch Defect, and those without it. In New GM's first annotation, it stated: "The only modification to the Sale Order for Old GM vehicles are those with the Ignition Switch Defect. These are the Independent Claims." *See* New GM November 2015 Letter Brief, Exh. C., at ¶ 5.

The differentiation between the two groups of plaintiffs was adopted by the Bankruptcy Court in the December 2015 Judgment. Specifically, paragraph 14 of the December 2015 Judgment provides:

[10] A copy of the New GM November 2015 Letter Brief (with Exhibits) is attached hereto as **Exhibit "B."**

> Plaintiffs . . . whose claims arise in connection with vehicles without the Ignition Switch Defect . . . are not entitled to assert Independent Claims against New GM with respect to vehicles manufactured and first sold by Old GM (an "**Old GM Vehicle**"). To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM Vehicle, such claims are proscribed by the Sale Order, April [2015] Decision and the [June 2015] Judgment . . . .

This distinction between the two groups of plaintiffs is found throughout the December 2015 Judgment (*see, e.g.*, December 2015 Judgment, ¶¶ 7, 8, 9 , 21, 23, *etc.*), demonstrating the Bankruptcy Court's intention to limit the assertion of Independent Claims to only Ignition Switch Plaintiffs.

II. The Responding Plaintiffs Never Asserted, Let Alone Established, A Due Process Violation With Respect To The 363 Sale And, Thus, The Sale Order And Injunction Could Not Be Modified To Permit Them To Assert An Independent Claim

The Responding Plaintiffs concede that the Ignition Switch Plaintiffs are allowed to assert Independent Claims, while they cannot, because the Ignition Switch Plaintiffs established a due process violation with respect to the Sale Motion, while they did not. Their argument is that they were never informed that they needed to prove a due process violation in order to assert Independent Claims against New GM. However, it was not incumbent on New GM to inform the Responding Plaintiffs that they needed to demonstrate a due process violation in order to be relieved of the injunction applicable to them.

Moreover, the Responding Plaintiffs actually knew or certainly should have known what was required of them. In connection with the demand letters sent to them in the Fall of 2015, each of the Responding Plaintiffs were provided copies of the Bankruptcy Court's April 2015 Decision and June 2015 Decision, in which the Bankruptcy Court explained that the Sale Order and Injunction would remain unmodified and in full force and effect, except with respect to the Ignition Switch Plaintiffs who were permitted to assert "Independent Claims" against New GM since they had established a due process violation by Old GM with respect to the notice of the

Sale Hearing.[11] The Responding Plaintiffs, who are not Ignition Switch Plaintiffs, were put on notice that they were bound by the Sale Order and Injunction, which was not modified to them, and they had not been permitted to file Independent Claims. Despite such notice, the Responding Plaintiffs did not request or prove that the Sale Order and Injunction should be modified based on an alleged due process violation as to them. In essence, they are proceeding in non-bankruptcy courts as if they won a motion they never filed. The reality is that the Responding Plaintiffs are willfully violating the Sale Order and Injunction and, in particular, the December 2015 Judgment.[12]

The Responding Plaintiffs' argument that Post-Closing Accident Plaintiffs without the Ignition Switch Defect have not been given an opportunity to prove a due process violation is meritless. Bankruptcy enforcement proceedings on these issues commenced in 2014, over two years ago. The Responding Plaintiffs could have presented the due process issue in the Bankruptcy Court during such time, especially when the Responding Plaintiffs were forewarned that they would be barred from asserting Independent Claims by the April 2015 Decision and the June 2015 Judgment. Judge Gerber was abundantly clear that the proceedings leading up to the December Judgment was the time for him to deal with all issues relating to the Sale Order and Injunction. The Responding Plaintiffs never raised a due process issue. Holding that Non-Ignition Switch Plaintiffs could not assert Independent Claims against New GM, the Bankruptcy Court in November 2015 addressed this specific point:

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[11] The April 2015 Decision held that Used Car Purchasers after the 363 Sale would have no greater rights against New GM than the original Old GM vehicle owner who purchased the vehicle prior to the 363 Sale. *See In re Motors Liquidation Co.*, 529 B.R. 510, 526 n.14 (Bankr. S.D.N.Y. 2015). The Minard Plaintiff is a post-363 Sale Used Car Purchaser who received the April 2015 Decision before the proceedings leading to the December 2015 Judgment.

[12] The only appeal filed in connection with the December 2015 Judgment relates to whether New GM is responsible for plaintiffs' failure to file proofs of claim against Old GM. It has nothing to do with the ability of Post-Closing Accident Plaintiffs without the Ignition Switch Defect to assert Independent Claims or punitive damages.

> [Old GM vehicle owners without the Ignition Switch Defect] could have tried to show the Court that they had "known claims" and were denied due process back in 2009, but they have not done so. The Court ruled on this expressly in the Form of Judgment Decision [relating to the June Judgment]. It then held:
>
> > The Non–Ignition Switch Plaintiffs' claims remain stayed, and properly so; those Plaintiffs have not shown yet, if they ever will, that they were known claimants at the time of the 363 Sale, and that there was any kind of a due process violation with respect to them. And unless and until they do so, the provisions of the Sale Order, including its injunctive provisions, remain in effect.
>
> 531 B.R. at 360. That ruling stands. In the April Decision and resulting Judgment, the Court modified a Sale Order under which the buyer had a justifiable right to rely because a higher priority—a denial of due process, which was of Constitutional dimension—necessitated that. But without a showing of a denial of due process—and the Non–Ignition Switch Plaintiffs have not shown that they were victims of a denial of due process—the critically important interests of finality (in each of the 2009 Sale Order and the 2015 Form of Judgment Decision and Judgment) and predictability must be respected, especially now, more than 6 years after entry of the Sale Order.

Motors Liquidation, 541 B.R. at 130 n. 70.[13]

Clearly, the time to raise due process issues relating to the Sale Order and Injunction was in connection with the proceedings relating to the December 2015 Judgment. It is now too late for the Responding Plaintiffs to raise due process issues after the December 2015 Judgment is final as to them.

The Supreme Court ruled in *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137 (2009) that

> [o]n direct appeal of the 1986 Orders, anyone who objected was free to argue that the Bankruptcy Court had exceeded its jurisdiction, and the District Court or Court of Appeals could have raised such concerns *sua sponte*. . . . But once the 1986 Orders became final on direct review (whether or not proper exercises of bankruptcy court jurisdiction and power), they became res judicata to the "parties and those in privity with them, not only as to every matter which was offered and

[13] *See also Motors Liquidation*, 541 B.R. at 140 (in connection with claims asserted by plaintiffs represented by Gary Peller, some of which concerned post-sale accidents involving Old GM Vehicles without the Ignition Switch Defect, the Bankruptcy Court held that the "third type of Blue Category objection concerns claims asserted on behalf of Non–Ignition Switch Plaintiffs. This objection is sustained, in full, with respect to all assertedly Independent Claims for reasons discussed in n.70 above").

> received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

Id. at 152 (citations omitted). Applying that clear precedent here, since the Sale Order and Injunction and the December 2015 Judgment were final as to the Responding Plaintiffs, there is no basis to modify the Sale Order and Injunction to permit them to assert Independent Claims that are otherwise proscribed by the Sale Order and Injunction. Stated otherwise, without a factual finding that they were a known creditor to Old GM, there was no due process violation that mandated a modification of the Sale Order and Injunction. And, without such modification, the Responding Plaintiffs are proscribed from asserting an Independent Claim (or seeking punitive damages in connection therewith) against New GM that is barred by the Sale Order and Injunction.[14]

III. The Responding Plaintiffs Are Collaterally Estopped From Re-Litigating Issues Already Decided By The Bankruptcy Court In Connection With The December 2015 Judgment

Many of the Responding Plaintiffs assert that they should not be collaterally estopped from re-litigating issues that were the subject matter of the proceedings that resulted in the December 2015 Judgment because they purportedly were not given adequate notice about the issues to be decided by the Bankruptcy Court. However, as explained in the Second June Motion to Enforce, each of the Responding Plaintiffs was (i) sent a demand letter last August/September regarding their PI Lawsuit and explaining that their PI Complaints violated the Bankruptcy Court's ruling, (ii) was served with the September 3 Scheduling Order, and (iii) was served with all of the pleadings filed by New GM which resulted in the entry of the December 2015 Judgment. The Second June Motion to Enforce also details events both prior to and after the

[14] The Bankruptcy Court obviously believed that Independent Claims were otherwise barred by the Sale Order and Injunction since it modified the Sale Order and Injunction, which had been a final and non-appealable order for many years.

entry of the September 3 Scheduling Order, including the Bankruptcy Court's intention to address issues concerning Non-Ignition Switch Plaintiffs (including those, like the Responding Plaintiffs that were involved in Post-Closing Accidents), and how and by whom Non-Ignition Switch Plaintiffs' interests were represented.

Moreover, each of the Responding Plaintiffs was provided with a Court-approved note in early September 2015 in conjunction with the September 3 Scheduling Order, which stated in relevant part:

> If you have any objection to the procedures set forth in the Scheduling Order, you must file such objection in writing with the Bankruptcy Court within three (3) business days of receipt of this notice ("Objection"). ***Otherwise, you will be bound by the terms of the Scheduling Order and the determinations made pursuant thereto***. ***If you believe there are issues that should be presented to the Court relating to your lawsuit that will not otherwise be briefed and argued in accordance with the Scheduling Order, you must set forth that position, with specificity in your Objection.*** The Court will decide whether a hearing is required with respect to any Objection timely filed and, if so, will, promptly notify the parties involved.

September 3 Scheduling Order, at 4 (emphasis added). Thus, the Responding Plaintiffs were put on notice of the issues to be decided, that they could participate in the proceedings if they so chose, and that if they had additional issues, they could raise them with the Bankruptcy Court. With the exception of the Moore Plaintiffs, the other Responding Plaintiffs did not file any pleading with the Bankruptcy Court.[15] The Moore Plaintiffs did file the Moore Punitive

[15] While the Pope Plaintiffs assert that they thought they would be treated the same as the Ignition Switch Plaintiff, and that New GM led counsel for the Pope Plaintiffs to believe they would be treated the same as the Ignition Switch Plaintiffs, the only support for this assertion is a sentence in New GM's letter to the Pope Plaintiffs on September 1, 2015 that stated that "[t]he reasoning and rulings set forth in the Judgment and Decision are equally applicable to the [Pope] Lawsuit." *See* Pope Plaintiffs' Objection, Exh. 2 at 3. But that sentence, taken in its proper context, specifically refers to the Bankruptcy Court's ruling in the June 2015 Judgment that New GM could not be liable for successor liability claims. Moreover, the April 2015 Decision and June 2015 Judgment spelled out which plaintiffs were Ignition Switch Plaintiffs (the Pope Plaintiffs do not fall within that group), and clearly held that only the Ignition Switch Plaintiffs could assert an Independent Claim against New GM. The Pope Plaintiffs have no basis to claim they were misled.

Damages Brief, but did not raise any other issues with the Bankruptcy Court. The fact that the Responding Plaintiffs did not file any pleading (or, with respect to the Moore Plaintiffs, a pleading addressing limited issues) despite being on notice of their ability to do so does not mean that they did not have a full and fair opportunity to litigate their issues. They had such an opportunity, but chose to ignore it.

The notion that Non-Ignition Switch Plaintiffs (including those involved in post-363 Sale accidents in vehicles without the Ignition Switch Defect) were not represented in the proceedings leading to the December 2015 Judgment, is also contrary to the clear record in this case. As explained in the Second June Motion to Enforce, Lead Counsel in MDL 2543 pending before District Judge Furman were intimately involved in the process and filed pleadings on all issues identified in the September 3 Scheduling Order. *See* Second June Motion to Enforce, ¶¶ 17-18. Significantly, at or about the time the September 3 Scheduling Order was entered, there were approximately 110 cases involving ***over 850*** Post-Closing Accident Plaintiffs without the Ignition Switch Defect. Simply put, the MDL is not limited to cases involving the Ignition Switch Defect in MDL 2543. Lead Counsel had an obligation to represent the wide-spread constituency of Old GM vehicle owners without the Ignition Switch Defect, and they have done so in the MDL ***and this Court.***[16] Moreover, Judge Gerber had no interest in ruling on the punitive damage/Assumed Liability issue for only the Ignition Switch Plaintiffs. His ruling and the reasoning applies to all Post-Closing Accident Plaintiffs (those with the Ignition Switch Defect, and those without).

In addition, according to contemporaneous notes maintained by counsel for New GM, upon receipt of the Pope Plaintiffs' September 15, 2015 letter, counsel for New GM contacted counsel for the Pope Plaintiffs and ultimately discussed the process in a subsequent telephone conversation.

[16] The Minard Plaintiff's allegation that the only personal injury plaintiffs before the Bankruptcy Court in connection with the proceedings leading to the December 2015 Judgment were the Ignition Switch Plaintiffs is obviously wrong. One need look no further than the Moore Plaintiffs pleading herein to debunk this contention.

As noted in the Lead Counsel Response, MDL Class Plaintiffs concede that, based on the December 2015 Judgment, Non-Ignition Switch Plaintiffs were required to amend their complaints to strike Independent Claims against New GM, which they have done. *See* Lead Counsel Response, ¶¶ 1, 2. The Responding Plaintiffs should conform to the conduct of the MDL Lead Counsel, and other Post-Closing Accident Plaintiffs without the Ignition Switch Defect, who properly understand what was decided by the December 2015 Judgment.

IV. The Responding Plaintiffs Are Different From The Ignition Switch Plaintiffs And, In Any Event, They Are Only Asserting Disguised Successor Liability Claims.

The Responding Plaintiffs want the same modification to the Sale Order and Injunction that was provided to the Ignition Switch Plaintiffs even though they are in a totally different circumstance. Their lawsuits concern different vehicles and completely different issues from those affecting Ignition Switch Plaintiffs. The June 2015 Judgment found that Old GM knew of the Ignition Switch Defect; it made no rulings on alleged defects raised by the Responding Plaintiffs.

In fact, the Responding Plaintiffs present different issues from each other. Specifically: (i) the *Pope* Lawsuit concerns a 2001 Cadillac DeVille with an allegedly defective airbag; (ii) the *Pitterman* Lawsuit concerns a 2001 Chevrolet Suburban with an allegedly defective transmission; (iii) the *Moore* Lawsuits concern a 1996 GMC Sonoma with an allegedly defective spare tire mount, and (iv) the *Minard* Lawsuit concerns an allegedly defective tire.

Significantly, the Responding Plaintiffs' complaints share a common characteristic that is fatal to their alleged Independent Claim argument. They allege no new and independent post-363 Sale relationship established by New GM with them. That omission is significant because it illustrates that what the Responding Plaintiffs have actually alleged against New GM is either an Assumed Liability or a Retained Liability—but not an Independent Claim.

New GM bought assets under the 363 Sale "free and clear of all Liabilities" (other than Assumed Liabilities). Independent Claims are by definition not Assumed Liabilities or Retained Liabilities.[17] The term "Liabilities" under Section 1.1 of the Sale Agreement includes *obligations* owed by Old GM under *Law*. Thus, an Independent Claim cannot be based on an obligation under state law owed by Old GM to the Old GM vehicle owner. Since New GM did not manufacture or sell the Old GM vehicle, and New GM is not the successor in interest to Old GM, in the absence of any new and independent relationship created with the Responding Plaintiffs after the 363 Sale, New GM could not be liable to them for any claim other than, if applicable, Assumed Liabilities.

The Responding Plaintiffs' so-called Independent Claims are failure to warn, failure to identify defects, failure to recall or retrofit, and statutory consumer protection claims. All of these alleged Independent Claims are premised on an alleged New GM failure to act based on an alleged legal obligation that assumes New GM is the vehicle manufacturer or seller.[18] But, New GM was not the manufacturer and seller of the Old GM vehicle, and bought free and clear of all of Old GM's obligations related thereto under law (except for Assumed Liabilities). The Responding Plaintiffs assert no new, independent legal obligation established by New GM (as the non-manufacturer, non-seller, non-successor) with the Responding Plaintiffs.[19]

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[17] *See* December 2015 Judgment, at 2 n.3 (finding that "Independent Claims do not include (a) Assumed Liabilities, or (b) Retained Liabilities . . . .").

[18] For example, in the Moore Fifth Amended Complaints, which involve an Old GM vehicle, the Moore Plaintiffs assert, among other things, that New GM failed to design the vehicle properly, failed to warn owners of the defect, failed to recall the defect and failed to retrofit the vehicle. *See, e.g.*, J.W. Moore Fifth Amended Complaint, ¶ 10 (a copy of the J.W. Moore Fifth Amended Complaint is contained in the compendium of exhibits filed with the Second June Motion to Enforce as Exhibit "H").

[19] At the oral argument leading to the April 2015 Decision, New GM had agreed that, if after the 363 Sale, New GM had issued a new warranty after the closing under a certified pre-owned vehicle program for an Old GM vehicle, or if it had supplied a vehicle part to an Old GM vehicle owner after the 363 sale, both these situations would involve the creation of a new and independent relationship making New GM responsible for its actions concerning the new relationship. The Responding Plaintiffs have not alleged those types of claims (*e.g.*,

Moreover, the imputation doctrine does not by itself allow Responding Plaintiffs' to assert an Independent Claim. Knowledge without a legal duty does not create a claim. The Responding Plaintiffs refer to the imputation of knowledge from Old GM to New GM as the predicate for the Independent Claim, but in so doing they are essentially transferring an Old GM obligation under law to New GM, which is contrary to the "free and clear" aspects of the Sale Order and Injunction. In this regard, they are simply asserting a successor liability claim against New GM dressed up to look like something else. Judge Gerber cautioned other courts dealing with Ignition Switch cases to be wary of this improper litigation tactic. *See Motors Liquidation Co.*, 529 B.R. at 528 ("any court analyzing claims that are supposedly against New GM only must be extraordinarily careful to ensure that they are not in substance successor liability claims, 'dressed up to look like something else'" (*quoting Burton v. Chrysler Grp., LLC (In re Old Carco)*, 492 B.R. 392, 405 (Bankr. S.D.N.Y. 2013))).

V. The So-Called Independent Claims Asserted By The Responding Plaintiffs Are Barred By The Sale Order And Injunction And The December 2015 Judgment

a. Failure To Recall Claims Can Only Be Asserted As Independent Claims By Ignition Switch Plaintiffs

With respect to a failure to recall or retrofit an Old GM vehicle, paragraph 21 of the December 2015 Judgment provides:

> A duty to recall or retrofit is not an Assumed Liability, and New GM is not responsible for any failures of Old GM to do so. ***But whether an Independent Claim can be asserted that New GM had a duty to recall or retrofit an Old GM Vehicle with the Ignition Switch Defect*** is a question of nonbankruptcy law that can be determined by a court other than this Court. [Emphasis added]

While not referencing paragraph 21 of the December 2015 Judgment, the Moore Plaintiffs and the Pitterman Plaintiffs focus on a parenthetical in paragraph 30 of the December

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volitional conduct by New GM, after the 363 Sale, that established an independent relationship between New GM and the Old GM vehicle owner).

2015 Judgment which refers to the Moore Lawsuit when discussing the failure to recall claim. However, that parenthetical cannot be viewed in isolation; it must be viewed in context with the other language in the December 2015 Judgment. As explained in the Second June Motion to Enforce, the reference to the Moore Lawsuit in paragraph 30 was meant to illustrate a ***type of claim*** that was not an Assumed Liability, but could be an Independent Claim. The Moore Lawsuit was referenced because it was specifically identified in New GM's September 23, 2015 Letter Brief to the Bankruptcy Court [Dkt. No. 13466],[20] which set forth certain causes of action that New GM asserted were Retained Liabilities (and not Assumed Liabilities).[21] In ruling that such claims were not Assumed Liabilities, the Bankruptcy Court was being complete and noting that such finding did not preclude the assertion of Independent Claims by Ignition Switch Plaintiffs. The Bankruptcy Court clearly did not intend to provide the Moore Plaintiffs with a *sui generis* exemption from the Independent Claims bar that applied to all other Post-Closing Accident Plaintiffs without the Ignition Switch Defect.[22]

b. Consumer Protection Act Claims Can Only Be Asserted As Independent Claims By Ignition Switch Plaintiffs.

In their PI Pleading, the Pope Plaintiffs attempt to assert a claim based on a violation of the Oklahoma Consumer Protection Act, arguing that the violation of this statute resulted in the death of the decedent. *See* Pope Plaintiffs' Objection, at 11. However, the Pope Plaintiffs' argument is directly contrary to the Bankruptcy Court's ruling. Specifically, paragraph 19 of the December 2015 Judgment expressly provides:

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[20] A copy of New GM's September 23, 2015 Letter Brief (without Exhibits) is attached hereto as **Exhibit "C."**

[21] Similar limiting language is used in the December 2015 Judgment with respect to the "failure to identify defect" claim. *See* December 2015 Judgment, ¶¶ 31, 32.

[22] The Moore Plaintiffs note that New GM did not appeal the December 2015 Judgment. Based on the entirety of the December 2015 Judgment, there was no reason for New GM to file such an appeal. If the Moore Plaintiffs had an issue with the December 2015 Judgment, or thought it was ambiguous in any way, they could have appealed it or sought reconsideration by the Bankruptcy Court. They did neither.

> Claims with respect to Old GM Vehicles that are based on . . . ***consumer protection statutes*** are not included within the definition of Product Liabilities, and therefore do not constitute Assumed Liabilities, because ***(a) they are not for "death" or "personal injury", and their nexus to any death or personal injury that might thereafter follow is too tangential, and (b) they are not "caused by motor vehicles."*** The Court expresses no view whether such claims may, however, constitute ***viable Independent Claims*** against New GM if they are based on New GM knowledge or conduct.

Again, as the Pope Plaintiffs are not Ignition Switch Plaintiffs, they cannot assert an Independent Claim against New GM based on a violation of a state consumer protection act.

c. Failure To Warn Claims Can Only Be Asserted As Independent Claims By Ignition Switch Plaintiffs

The Minard, Moore and Pitterman Plaintiffs assert claims based on New GM's failure to warn about issues with their vehicles. In the December 2015 Judgment, the Bankruptcy Court held that "failure to warn" claims, if cognizable under applicable state law, could be a cause of action pled to establish an Assumed Product Liability. The Minard, Moore and Pitterman Plaintiffs, however, are asserting failure to warn claims not as Assumed Product Liabilities, but as Independent Claims. For the reasons previously cited, these Responding Plaintiffs are barred from asserting Independent Claims against New GM.

Except with respect to the Moore Plaintiffs, the other Responding Plaintiffs have generally corrected the allegation issues (distinguished from the cause of action infirmities) in their complaints through proposed amendments. However, the Fifth Amended Complaints filed by the Moore Plaintiffs continue to contain allegations that are barred by the Bankruptcy Court's rulings. *See* Second June Motion to Enforce, Sch. "1," Exhibits "G" and "H" (asserting, inter alia, that (i) new GM failed "to design" the 1996 GMC pickup truck properly, (ii) failed "to manufacture the vehicle properly," *etc.*).

VI. As the Responding Plaintiffs Cannot Assert Independent Claims Against New GM, They Cannot Seek Punitive Damages Against New GM.

As explained in the Second June Motion to Enforce, the only possible way to assert punitive damages against New GM in connection with a post-363 Sale accident involving an Old GM vehicle is through a viable Independent Claim. As demonstrated above, only Ignition Switch Plaintiffs can assert Independent Claims against New GM and since none of the Responding Plaintiffs are Ignition Switch Plaintiffs, they cannot seek punitive damages against New GM in connection with their PI Lawsuits.

While the November 2015 Decision makes certain (sometimes conflicting or incorrect) statements respecting the ability to assert punitive damages against New GM, in the circumstance here where the Bankruptcy Court directed the parties to submit proposed forms of judgments and letter briefs containing their arguments on, among other items, the punitive damages issue, the December 2015 Judgment controls this dispute. And, paragraph 7 thereof clearly provides: "A claim for punitive damages with respect to a post-Sale accident involving ***vehicles manufactured by Old GM with the Ignition Switch Defect*** may be asserted against New GM to the extent—but only to the extent—***it relates to an otherwise viable Independent Claim and is based solely on New GM conduct or knowledge*** . . . ." (emphasis added).

The Moore Plaintiffs assert that they did not have a full and fair opportunity to litigate the issue of punitive damages based on New GM conduct. *See* Moore Plaintiffs' Objection, at 11. However, a review of the Moore Plaintiffs' *Brief of Plaintiffs Regarding Punitive Damages Issue* ("**Moore Punitive Damages Brief**"), submitted to the Bankruptcy Court on September 13, 2015, belies their contention.[23] The first argument in the Moore Punitive Damages Brief is titled "Punitive Damages Based on Conduct of New GM," with the Moore Plaintiffs asserting that they

[23] A copy of the Moore Punitive Damages Brief is attached to the Moore Plaintiffs' Objection as Exhibit "C."

"should be allowed to proceed with punitive damages claims based on New GM conduct . . . ." *Id.* at 3-5. As the Moore Plaintiffs acknowledge, the Bankruptcy Court "undoubtedly read" their brief (Moore Plaintiffs Objection, at 8), yet ruled against them on this very point.

VII. Subject Matter Jurisdiction Arguments Were Previously Made And Rejected By The Bankruptcy Court

Certain of the Responding Plaintiffs (*i.e.*, the Minard, Pitterman and Pope Plaintiffs), like other plaintiffs before them, fall back on the now familiar refrain that the Bankruptcy Court lacked subject matter jurisdiction to bar claims against the purchaser of the debtor's assets arising from Old GM Vehicles. The same arguments were in fact raised by product liability claimants at the Sale Hearing (and rejected), and again in their appeal of the Sale Order and Injunction (also rejected). In particular, in the appeal of the Sale Order and Injunction, the District Court found in *Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010):

> Appellants challenge the Bankruptcy Court's "colorable" jurisdiction on the grounds that the Bankruptcy Court lacked authority to enjoin their in personam successor liability claims under section 363(f). However, at the time the Sale Opinion and Order were issued, the Bankruptcy Court's interpretation and exercise of its authority under section 363(f) was consistent with the opinions of at least three Second Circuit judges—whose ranks have since expanded to include a panel of three different judges who also affirmed the proposition that section 363(f) authorizes the sale of assets "free and clear" of successor tort liability, another Bankruptcy Judge in this District, as well as panels of judges in other circuits including the Third and Fourth Circuits.

Id. at 57-58. The District Court ultimately held that:

> In light of the foregoing historic and immediate precedent finding bankruptcy courts possessed of such authority pursuant to section 363(f), it is clear that the Bankruptcy Court had more than "colorable" jurisdiction to issue the Sale Order's injunctive provisions providing that the Purchased Assets would be transferred "free and clear of all liens, claims, encumbrances, and other interests ... including rights or claims based on any successor or transferee liability." Sale Order ¶ 7. Indeed, to contend otherwise is simply not a "colorable" argument.

Id. at 59.

Similar issues were raised in connection with the resolution of the Four Threshold Issues, and rejected by the Bankruptcy Court. *See In re Motors Liquidation Co.*, 514 B.R. 377, 379-80 (Bankr. S.D.N.Y. 2014) (the "claim that I don't have subject matter jurisdiction to construe and enforce the Sale Order in this case—their contention is frivolous, disregarding controlling decisions of the United States Supreme Court and Second Circuit; district court authority in this District; four earlier decisions that I personally have issued; three decisions by other bankruptcy judges in the Southern District of New York, and the leading treatise in the area, Collier"). Put simply, the Bankruptcy Court (and District Court) previously addressed the Bankruptcy Court's subject matter jurisdiction to enter the Sale Order and Injunction, and have consistently enforced the provisions of that Order.

Recently, this Court, in connection with the hearing on New GM's First June Motion to Enforce, stated that it "thought Celetex [sic] was pretty dispositive of the subject matter jurisdiction issue." Transcript of Oral Argument, at 18:8-9, *In re Motors Liquidation Co*., Case No. 09-50026 (REG) (Bankr. S.D.N.Y June 27, 2016) (referring to *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995)). The Court is correct.[24]

Finally, the Sale Order and Injunction has been a final order for almost seven years and it is no longer subject to attack. Thus, any argument regarding subject matter jurisdiction can no longer be asserted by the Responding Plaintiffs. *See Travelers*, 557 U.S. at 152. Accordingly, the Bankruptcy Court had subject matter jurisdiction to enjoin claims against New GM that are based on Old GM Vehicles.[25]

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[24] One of the issue on appeal in the Second Circuit concerns the Bankruptcy Court's subject matter jurisdiction.

[25] The Moore Plaintiffs assert that since they were not brought into this proceeding by a formal summons and complaint, they "were not given the opportunity to 'fully and fairly' litigate these points." Moore Plaintiffs' Objection, at 14. However, the September 3 Schedule Order, which the Moore Plaintiffs received, clearly stated that if a plaintiff has "any objection to the procedures set forth in the Scheduling Order, you must file such objection in writing with the Bankruptcy Court within three (3) business days of receipt of this notice

WHEREFORE, for all of the foregoing reasons, and as set forth in the Second June Motion to Enforce, New GM respectfully requests that this Court enter an order, substantially in the form contained in the compendium of exhibits filed with the Second June Motion to Enforce as Exhibit "L," granting the relief sought in the Second June Motion to Enforce, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 13, 2016

Respectfully submitted,

/s/ Arthur Steinberg

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("Objection"). ***Otherwise, you will be bound by the terms of the Scheduling Order and the determinations made pursuant thereto.***" September 3 Scheduling Order, at 4 (emphasis added). As noted above, while the Moore Plaintiffs timely served the Moore Punitive Damages Brief, they never objected to the procedures set forth in the September 3 Schedule Order. It is too late for them to do so now.

In addition, the Bankruptcy Court already decided this issue. When enforcing an existing injunction, a motion as compared to an adversary proceeding is an acceptable way of proceeding. *See In re Motors Liquidation Co.*, 522 B.R. 13, 22 (Bankr. S.D.N.Y. 2014) ("New GM is not seeking any new injunction against them. It is simply seeking to enforce the preexisting injunction set forth in the Sale Order, which covers Sesay Plaintiffs' claims, and which, at least at this juncture, remains in effect. Thus a separate adversary proceeding is not required.").

Exhibit A

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-reg

- -x

In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

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

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

June 1, 2010

9:42 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Motion of General Motors, LLC for Entry of an Order Pursuant to 11 U.S.C. Section 105 Enforcing 363 Sale Order

Transcribed by: Dena Page

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P R O C E E D I N G S

THE COURT: We have GM on for 9:45 and it's a little bit early. Let me ask if people are ready to go on GM. Is everybody who would want to be heard on that -- I think I need to hear, in addition to the debtors, from Ms. Sizemore -- or, Dr. Sizemore. I hope you're on the phone. Are you on the phone, Dr. Sizemore?

COURTCALL OPERATOR: She has no appearance for that matter, Your Honor.

THE COURT: Okay, I heard you but not very loudly, so I'm going to ask you to speak up.

Mr. Rutledge?

COURTCALL OPERATOR: Your Honor? Your Honor?

THE COURT: Are you Dr. Sizemore? Oh, you came personally, after all. All right, very well.

MR. RUTLEDGE: Your Honor, I'm Roger Rutledge. I'm here from the Western District of Tennessee. I have a motion for appearance pro hac vice before the Court and would hope that the Court would grant that.

THE COURT: Of course. Welcome.

MR. RUTLEDGE: Thank you, Your Honor.

THE COURT: And on behalf of the -- is it Deutsch litigants?

MS. PENA: Yes, Your Honor. Melissa Pena from the law firm Norris, McLaughlin & Marcus. I serve as local counsel for

sale order. So we must look to the ARMSPA, rather than the issues relating to the underlying claims, to ascertain the extent, if any, to which the ARMSPA covers her claims as an assumed liability.

That's a matter as to which she made no substantive arguments. I find no fault with her having acted as she did, especially in light of the fact that she's a pro se litigant, and certainly I wouldn't think of imposing sanctions on her, and I do not do so now. But the issue before me is, nevertheless, whether her lawsuit must be brought to a halt, or putting it differently, whether she can't bring it -- continue it anymore, and the answer is that she can't continue it anymore. That's especially so since the discovery she seeks relates to the merits of her claims as contrasted to the content or intent of the ARMSPA whose terms defined the extent to which she could or could not properly proceed.

Without dispute, Dr. Sizemore was injured in a prepetition accident. As relevant here, the ARMSPA unequivocally provides that for claims to have been assumed by New GM when they are based on an accident taking place at some point in time, those accidents to be allowed to be assumed by New GM must have taken place on or after the closing date. Dr. Sizemore simply doesn't qualify under that language.

Since Dr. Sizemore's claims result from an accident prior to the closing date, she might have a prepetition claim

against Old GM, an issue that I haven't been asked to decide today and which I'm not currently deciding. But her claim, if any, is certainly not an assumed liability. Therefore, Dr. Sizemore will be stayed from taking any action against New GM on account of or arising from her preclosing date accident, including for the avoidance of doubt, continuing litigation against New GM for the purpose of conducting discovery on any issue.

Turning next to the objection filed by Shane Robley, Mr. Robley argues that New GM's motion should be denied because, one, Mr. Robley was deprived of procedural due process because he didn't receive actual notice of the sale motion that led to the sale order; two, the sale to New GM did not convey those assets free and clear of his product liability claim; and three, that selecting July 10, 2009 as the closing date was arbitrary, capricious, and unjust, or, putting it somewhat differently, that I should force New GM to assume his and perhaps other liabilities by reason of my notions of equity.

New GM disputes each of those contentions, and on the facts and law here, I must agree with New GM. It's agreed by all concerned that Mr. Robley didn't get mailed a personal notice of the 363 hearing that resulted in the sale order, very possibly because as of that time, Mr. Robley had not sued either Old GM or New GM yet. It's also agreed that Old GM and New GM did not give personal notice of the 363 hearing to all

of the individuals who had ever purchased a GM vehicle, and instead, supplemented its personal notice to a much smaller universe of people by notice by publication. It's also undisputed that I expressly approved the notice that had been given in advance of the 363 hearing including the notice by publication, which I found to be reasonable under the circumstances.

Mr. Robley relies on the First Circuit's decision in Western Auto Supply Company v. Savage Arms, Inc., 43 F.3d 714 (1st Cir, 1994), in which the First Circuit Court of Appeals, speaking through Judge Conrad Cyr, a highly respected former bankruptcy judge, agreed with the district judge that the bankruptcy court had erred when the bankruptcy court enjoined prosecution of product line liability actions brought against the purchaser of the debtor's business for lack of notice. But the critically important distinction between this case and the Savage Arms case is that here, and not there, notice was also given by publication. We all agree that due process requires the best notice practical, but we look to the best notice that's available under the circumstances. Here, under the facts presented in June of 2009, GM didn't have the luxury of waiting to send out notice by mail to hundreds of thousands of GM car owners, and instead gave notice by publication, which I approved. In Savage Arms, the debtor "conceitedly made no attempt to provide notice by publication" (43 F.3d at 721) and

the notice that was given was never determined, "appropriate in the particular circumstances" (Id. at 722). In other words, the First Circuit found it significant that the debtors in Savage Arms didn't do the very thing that was done here.

As I've indicated, I've already determined that notice was appropriate in the particular circumstances, and provided for that in an order that entered on July 5th, 2009 that remains valid today. Moreover, it's obvious that the notice was, indeed, appropriate and did what it was supposed to do because it permitted Mr. Jakubowski, in particular, to make effectively and well the very arguments that Mr. Robley's counsel would, himself, have to make either now or back then and which I then considered and rejected.

I've already ruled on the arguments dealing with the underlying propriety of a free and clear order cutting off product liabilities claims as set forth in my opinion published at 407 B.R. 463. Until or unless some higher court reverses my determination -- and neither of the district courts who've ruled on that determination have yet done so (see 2010 W.L. 1524763 and 2010 W.L. 1730802) -- they're res judicata, or at least res judicata subject to any limitations on the res judicata doctrine requiring a final order. And of course, they're stare decisis. I found these arguments to be unpersuasive last summer, and considering the great deal with which my previous opinion dealt with those exact issues, I am

not of a mind, nor do I think I could or should, come to a different view on those identical issues today.

Lastly, of course, I sympathize with Mr. Robley's circumstances, just as I've sympathized with each of the tort victims who have been limited to the assertion of prepetition claims against Old GM. But I'm constrained to act in accordance with the law, and can't substitute my own notions of fairness, equity, or sympathy for what the law requires me to do. That's especially so since choosing a closing date required some date to be chosen and there's no evidence in the record to lead me to believe that the closing date was done in any way to particularly target Mr. Robley.

Finally, turning to Mr. Deutsch, Mr. Deutsch, understandably, doesn't argue that the personal injury claims he might otherwise be able to assert are prepetition claims. But he argues that because Ms. Deutsch died after the closing, her resulting wrongful death claim didn't come into being until that time. And he further argues that the death of Ms. Deutsch constituted an incident separate and apart from an event upon which the cause of action accrued. Thus, he argues, that while the wrongful death claim wasn't assumed because of an "accident" taking place after the closing, it was an "incident" or especially a "distinct and discrete occurrence" as appearing in some of the versions of the ARMSPA. However, the problem I have is that the record is now confused as to which version of

Exhibit B

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November 30, 2015

VIA E-MAIL TRANSMISSION
AND ECF FILING
The Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004

Re: In re Motors Liquidation Company, *et al.*
Case No. 09-50026 (REG)

Letter Regarding Proposed Judgment for the Court's November 9, 2015 *Decision On Imputation, Punitive Damages, and Other No-Strike and No-Dismissal Pleadings Issues* ("November Decision")[1]

Dear Judge Gerber:

King & Spalding LLP is co-counsel with Kirkland & Ellis LLP for General Motors LLC ("**New GM**") in the above-referenced matter. We write to inform the Court that while the parties have met and conferred and exchanged drafts of a proposed judgment memorializing the conclusions contained in the November Decision, they have been unable to agree upon a consensual proposed judgment. Accordingly, attached hereto as **Exhibit "A**" is the proposed form of judgment prepared by New GM ("**New GM Proposed Judgment**"). Attached hereto as **Exhibit "B"** is an annotated version of the New GM Proposed Judgment, which includes citations to the November Decision that support individual paragraphs of the New GM Proposed Judgment. Attached hereto as **Exhibit "C"** is a mark-up of Plaintiffs' Proposed Judgment ("**Plaintiffs' Proposed Judgment**") showing (i) for sake of completeness, those portions of the November Decision that should have been included (but were not) in the Plaintiffs' Proposed Judgment; and (ii) which provisions should be revised to make them consistent with the rulings

[1] The November Decision is published at *In re Motors Liquidation Co.*, Case No. 09-50026, 2015 WL 6876114 (Bankr. S.D.N.Y. November 9, 2015).

in the November Decision. To be clear, for the reasons set forth herein, New GM is not advocating that the Court enter the Plaintiffs' Proposed Judgment. Exhibit "C" is included to illustrate that (a) Plaintiffs' lengthier document is, in some respects, less inclusive than the New GM Proposed Judgment, and (b) the Plaintiffs' Proposed Judgment puts a gloss on the November Decision that New GM believes was never intended by the Court, and may prove to be confusing to other courts and plaintiffs reviewing it.

As support of the New GM Proposed Judgment, New GM states as follows:

1. Form of Judgment: The issues set forth in the Court's September 3, 2015 Scheduling Order and the Court's November Decision were meant to address the remaining issues concerning New GM's Motions to Enforce the Sale Order. In addition to MDL 2543 before Judge Furman, the November Decision clearly has application in numerous state and federal courts around the country. The November Decision is 71 pages long and contains many rulings. The New GM Proposed Judgment synthesizes the rulings by sections: first, the Imputation Issue; then, the Punitive Damages Issue; and finally, specific matters relating to complaints in general, as well as to particular lawsuits. The form of the New GM Proposed Judgment was designed to be user-friendly for other judges throughout the country so as to assist them in applying the rulings of the November Decision. It was also meant to be user-friendly to other plaintiffs so as to provide them with clearly enunciated principles to follow.

The Plaintiffs' Proposed Judgment was drafted differently and, in large part, quotes from selected sections of the November Decision. It does not seek to organize the rulings, and the end product makes an overly long and "choppy" presentation. It contains many duplicate provisions that often raise ambiguity rather than set forth clear principles, and that will not easily be applied by judges overseeing other lawsuits or by plaintiffs suing New GM in other courts. Moreover, by selectively quoting from the November Decision, the Plaintiffs' Proposed Judgment sometimes omits relevant portions that were set forth in other parts of the November Decision or in the Court's other rulings. This technique leads to an incomplete summary of the November Decision that does not properly reflect the actual rulings made (and not made) by the Court in the November Decision.

By way of two examples, ***first***, the Court did not decide that Plaintiffs have viable Independent Claims. Rather, the Court ruled that the Plaintiffs' complaints made allegations that were sufficiently pled to "pass through the bankruptcy gate" such that the presiding court should decide whether Plaintiffs' complaints state a claim as a matter of non-bankruptcy law. In certain instances, the Plaintiffs' Proposed Judgment suggests that the Court made rulings as to these alleged Independent Claims more extensive than it actually did. *See, e.g.*, Plaintiffs' Proposed Judgment, footnote 3 and paragraph 56. ***Second***, a significant portion of the Plaintiffs' Proposed Judgment discusses the color-coding of certain marked complaints. The color coding exercise was meant solely for this Court's convenience as an efficient way to review similar issues in various complaints, all of which were presented for this Court's review. The extensive referencing to such color-coding in Plaintiffs' Proposed Judgment will be meaningless to other courts and litigants without undertaking the burdensome (and needless) exercise of obtaining the underlying marked pleadings. A simpler presentation, as contained in the New GM Proposed

Judgment, is preferable in New GM's view to provide straightforward guidance for future review and application of the November Decision.

Below, New GM analyzes the New GM Proposed Judgment and why the provisions therein are appropriate and consistent with the November Decision.

2. Imputation Rulings: The paragraphs in the New GM Proposed Judgment with respect to imputation are taken from various section of the November Decision. New GM synthesized the rulings on imputation, and put them in an easy-to-follow section so that judges and plaintiffs seeking to apply them can review a self-contained set of imputation principles.

Plaintiffs took the position during the meet and confer process that the Court did not explicitly rule that imputation must relate to a viable Independent Claim. *See* New GM Proposed Judgment, ¶ 4. But that is the underlying basis of the November Decision. Imputation relates to knowledge—and knowledge, by itself, has no relevance unless it is an element of a viable claim under nonbankruptcy law. In other words, knowledge is not a cause of action. It must be a basis for a claim, and the claim must be a valid one under applicable nonbankruptcy law before the imputation issue needs to be considered by the other courts. New GM's language is intended to eliminate any ambiguity or contrived argument that may later be raised in another court.

In a similar vein, imputation is not automatic, and there has to be a proper basis to impute knowledge under nonbankruptcy law. Plaintiffs did not want to include the phrase "to the extent valid under nonbankruptcy law" in all circumstances where it should be inserted. The omission of this clause suggests an inevitable imputation result, which is not what this Court ruled.

Footnote 1 contains an Errata point with respect to the inadvertent use of the word "Economic Loss Plaintiffs" on page 7 of the November Decision instead of "Ignition Switch Plaintiffs."

Footnote 3 defines Independent Claims as relating to Old GM Vehicles with the Ignition Switch Defect, and then clearly spells out that Independent Claims are a different concept than an Assumed Liability or a Retained Liability. This clarification is necessary so that other courts that have not participated in these proceedings understand these fundamental concepts.

3. Punitive Damages Rulings: During the meet and confer process, Plaintiffs took the position that assumed Product Liabilities could result in categories of damages other than compensatory damages, as long as they were not punitive damages. That is contrary to the November Decision.[2] The New GM Proposed Judgment makes this point explicit in paragraph 7.

[2] "New GM assumed liability for Product Liabilities claims, which (by definition) arose from accidents or incidents taking place *after* the Sale, and thereby became liable for ***compensatory damages for any Product Liabilities*** resulting from Old GM's action." November Decision, 2015 WL 6876114, at *8 n.30 (emphasis added).

Under the Sale Agreement, June Judgment, and November Decision, there are only three categories of claims that can be asserted with respect to Old GM Vehicles: (a) Assumed Liabilities; (b) Retained Liabilities; and (c) Independent Claims. The November Decision is clear that there can be no punitive damages imposed against New GM for either Assumed Liabilities (specifically, Product Liabilities) or, necessarily, Retained Liabilities. Thus, the only category of claim where punitive damages could be asserted against New GM for an Old GM Vehicle is an "Independent Claim." And, the only plaintiffs that can bring an Independent Claim against New GM with respect to an Old GM Vehicle based on the Sale Order, as modified by the June Judgment, are (i) owners of vehicles with the Ignition Switch Defect bringing economic loss claims (*i.e.*, the Ignition Switch Plaintiffs) and (ii) Post-Closing Accident Plaintiffs who owned a vehicle with the Ignition Switch Defect.[3] The New GM Proposed Judgment makes this point clear in paragraphs 7-9.

On page 30 of the November Decision, the Court ruled that in pursuing punitive damages for New GM manufactured vehicles, plaintiffs can rely on anything appropriate under nonbankruptcy law. It also stated that "evidence of Old GM pre-Sale knowledge and conduct" may be used "if otherwise appropriate." New GM added the second sentence in paragraph 10 of the New GM Proposed Judgment to make clear that it is ***not*** appropriate to claim that New GM is ***liable*** for Old GM conduct, since that is explicitly prohibited by paragraph AA of the Sale Order.[4] The November Decision did not modify the Sale Order, and New GM believes it is important to make this clarification so that the Court's statements are not taken out of context. As noted, other courts and plaintiffs will look to the November Decision and this Court's Judgment with respect to cases that pass through the bankruptcy gate. It is critical that the Court's statement not be misconstrued so that a successor liability claim (dressed up to look like something else) is made against New GM based on plaintiffs assertion that they can rely on ***evidence*** of Old GM conduct to make a punitive damage claim against New GM for a New GM manufactured vehicle.

4. <u>Claims in the Bellwether Complaints/MDL 2543</u>: The November Decision addressed New GM's argument that certain types of claims were not included within the definition of Product Liabilities, and as examples listed claims "such as fraud, negligent misrepresentation, duty to warn after the vehicle's sale, and violations of consumer protection statutes at the time of sale." November Decision, 2015 WL 6876114, at *19. The only claims that the Court stated might be assumed Product Liabilities were "alleged breaches of a duty to warn." *Id*. at *20. By negative implication, all other claims should not be included within the

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[3] *See* Judgment, dated June 1, 2015 [Dkt. No. 13177] ("**<u>June Judgment</u>**"), at ¶ 4; *see also* November Decision, 2015 WL 6876114, at *21 n. 70 ("Ignition Switch Plaintiffs asserting Economic Loss Claims may assert them [*i.e.*, Economic Loss Claims], to the extent they are Independent Claims, under the April 15 Decision and Judgment. Non–Ignition Switch Plaintiffs cannot." (emphasis added)).

[4] The 363 Sale to New GM was "free and clear of liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims . . . based on any successor or transferee liability, including, but not limited to . . . all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under doctrines of successor or transferee liability." Sale Order, at ¶ AA.

definition of Product Liabilities, including any subset of fraud claims (such as, but not limited to, actual fraud, constructive fraud, fraudulent concealment, fraudulent misrepresentation, deceit, negligent misrepresentation, *etc.*). Paragraph 14 of the New GM Proposed Judgment expressly sets forth this ruling. Plaintiffs maintained during the meet and confer that, since this was not made explicit in the November Decision, they can raise this issue in another court, once it passes through the bankruptcy gate. New GM seeks to prevent that end-run from occurring.

5. Claims Alleging New GM is Liable for their Failure to File Proofs of Claim: Plaintiffs, in the meet and confer, took issue with paragraph 19 of the New GM Proposed Judgment, which provides, in part, that the *Adams* complaint should be dismissed. Plaintiffs argue that the November Decision does not prevent the *Adams* plaintiffs from filing an amended complaint. However, it is undisputed that the *Adams* complaint concerns claims based ***only*** on accidents that took place prior to the closing of the 363 Sale. The November Decision, and previous decisions, orders and/or judgments of the Court, clearly provide that claims based on pre-363 Sale accidents are barred by the Sale Order, April Decision and June Judgment. Any claims the *Adams* plaintiffs may have are barred, and the judgment should so state.

6. Peller Complaints/Other Complaints: The portion of Plaintiffs' Proposed Judgment relating to the Peller complaints is not accurate or complete. The Other Complaints section is also not complete. The principles enunciated in these sections have application in many lawsuits throughout the country. It is important that the judgment clearly state these principles, and the New GM Proposed Judgment (unlike the Plaintiffs' Proposed Judgment) accomplishes this.

7. Other Issues: With respect to the penultimate paragraph of the New GM Proposed Judgment, the Plaintiffs take issue with the Court retaining "exclusive jurisdiction, to the fullest extent permissible under law, to construe or enforce the Sale Order, this Judgment, and/or the Decision on which it was based." This exact language was used in the June Judgment, and it should also be included in this judgment. Although it is difficult to foresee every circumstance in which this Court's intervention and guidance might be needed in the future, at a minimum, the November Decision stayed cases, and compliance with the Court's judgment should be heard by this Court to the extent necessary.

The last paragraph in the Plaintiffs' Proposed Judgment regarding amendments to complaints needs to take into account that other courts (such as in MDL 2543) have stayed many of the cases independent of the ongoing bankruptcy proceedings, and those courts should control how their dockets are managed with regard to amendments of stayed actions. New GM added this provision (as modified) to the New GM Proposed Judgment.

Based on the foregoing, New GM respectfully requests that the New GM Proposed Judgment be entered.

Respectfully submitted,

/s/ Arthur Steinberg

Arthur Steinberg

AJS/sd
Encl.

cc: Edward S. Weisfelner
Howard Steel
Sander L. Esserman
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William Weintraub
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Elizabeth J. Cabraser
Robert C. Hilliard
Gary Peller

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

JUDGMENT

For the reasons set forth in the Court's *Decision on Imputation, Punitive Damages, and Other No-Strike and No-Dismissal Pleadings Issues*, entered on November 9, 2015 [Dkt. No. 13533] ("**Decision**"),[1] it is hereby ORDERED AND ADJUDGED as follows:[2]

A. Imputation

1. Knowledge of New GM personnel, whenever acquired, may be imputed to New GM if permitted under nonbankruptcy law.

2. Knowledge of Old GM personnel may not be imputed to New GM based on any type of successorship theory.

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Decision. For purposes of this Judgment, the following terms shall apply: (i) "**Ignition Switch Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM asserting economic losses based on or arising from the Ignition Switch in the Subject Vehicles (each term as defined in the *Agreed and Disputed Stipulations of Fact Pursuant to the Court's Supplemental Scheduling Order, Dated July 11, 2014*, filed on August 8, 2014 [Dkt. No. 12826], at 3); (ii) "**Non-Ignition Switch Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM asserting economic losses based on or arising from an alleged defect, other than the Ignition Switch, in an Old GM Vehicle (as herein defined); (iii) "**Pre-Closing Accident Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM based on an accident or incident that first occurred prior to the closing of the 363 Sale; and (iv) "**Post-Closing Accident Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM based on an accident or incident that occurred after the closing of the 363 Sale.
The term "**Economic Loss Plaintiffs**" as used on page 7 of the Decision shall be changed to "Ignition Switch Plaintiffs."

[2] Any ruling set forth in this Judgment that refers to a particular lawsuit, complaint and/or plaintiff shall apply equally to all lawsuits, complaints and plaintiffs where such ruling may be applicable.

3. To the extent knowledge of Old GM personnel is permitted under nonbankruptcy law to be imputed to Old GM, such knowledge may be imputed to New GM for purposes of Product Liability Claims that were assumed by New GM under the Sale Order.

4. With respect to Independent Claims,[3] knowledge of Old GM may be imputed to New GM to the extent permitted under nonbankruptcy law, if that knowledge is, under nonbankruptcy law, relevant to viable Independent Claims. To the extent imputation is appropriate for such viable Independent Claims, imputation of knowledge from Old GM to New GM can occur only if the fact (a) was actually known to a New GM employee (*e.g.*, because it is the knowledge of the same employee or because it was communicated to a New GM employee), or (b) could be ascertained from New GM's books and records, even if such documents were transferred by Old GM to New GM as part of the 363 Sale and, therefore, such documents first came into existence before the 363 Sale.

5. Imputation turns on the specifics and context of the situation and the particular purpose for which imputation is sought, and it must be based on identified individuals or identified documents. For causes of action where it is appropriate to impute knowledge to New GM, it is possible for such knowledge, depending on the specific circumstances, to be imputed to New GM as early as the first day of its existence, if otherwise permitted under nonbankruptcy law.[4]

6. The foregoing general principles on imputation may be applied in courts other than this Court in the context of particular allegations that rely on such principles. By reason of this Court's limited gatekeeper role, this Court will not engage in further examination of whether

[3] "Independent Claim" shall mean a claim or cause of action asserted against New GM relating to the Ignition Switch Defect that is based solely on New GM's own independent post-Closing acts or conduct. Independent Claims do not include (a) Assumed Liabilities, or (b) Retained Liabilities, which are any Liabilities that Old GM had prior to the closing of the 363 Sale that are not Assumed Liabilities.

[4] Allegations in pleadings starting with "New GM knew…" or "New GM was on notice that…" are permissible.

particular allegations may be imputed to New GM, beyond the extent to which it has done so in the Decision and this Judgment.

B. Punitive Damages and Related Issues

7. New GM's assumption of Product Liabilities (as defined in the Sale Agreement) is limited to compensatory damages and does not include punitive damages. New GM did not contractually assume liability for punitive damages for Product Liabilities, economic loss claims, or under any other theories of recovery (by operation of law or otherwise). New GM is not liable for punitive damages for vehicles manufactured and first sold by Old GM ("**Old GM Vehicles**") if such claims are based in any way on Old GM conduct.

8. A claim for punitive damages involving an Old GM Vehicle with the Ignition Switch Defect (as defined in the April Decision) may be asserted against New GM to the extent—but only to the extent—it relates to an otherwise viable Independent Claim. The Court expresses no opinion on whether it is possible to state such a viable Independent Claim. Knowledge of New GM relevant to a viable Independent Claim may be based on (a) the imputation principles set forth in the Decision and this Judgment, and (b) information developed solely by New GM after the closing of the 363 Sale.

9. Plaintiffs in vehicles without the Ignition Switch Defect and Pre-Closing Accident Plaintiffs have not demonstrated a due process violation with respect to the 363 Sale and, therefore, are not entitled to assert Independent Claims against New GM with respect to Old GM Vehicles. Thus, they may not assert punitive damages claims against New GM with respect to Old GM Vehicles. To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM Vehicle, such claims are

proscribed by the Sale Order, April Decision and the Judgment dated June 1, 2015 [Dkt. No. 13177] ("**June Judgment**").

10. Claims of any type against New GM for compensatory and punitive damages that are based on vehicles manufactured by New GM are not affected by the Sale Order and may proceed in the nonbankruptcy court where they were brought. Except as provided in the June Judgment and the April Decision on which it was based, the provisions in the Sale Order shall remain unmodified and in full force and effect, including without limitation paragraph AA of the Sale Order, which states that, except with respect to Assumed Liabilities, New GM is not liable for Old GM's actions or inactions (*i.e.*, Old GM conduct).

C. Particular Allegations, Claims and/or Causes of Actions in Complaints

11. Allegations in complaints that refer to New GM as the "successor of," a "mere continuation of," a "de facto successor of" (or similar phrases) of Old GM are proscribed by the Sale Order, April Decision and June Judgment, and all complaints (including, but not limited to, the MDL Consolidated Complaint filed in MDL 2543, the Bellwether Complaints filed in MDL 2543, the States Complaints, the Peller Complaints and the Other Complaints) that contain such allegations are and/or remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

12. Allegations in complaints (including, but not limited to, the MDL Complaint, the Bellwether Complaints, the States Complaints, the Peller Complaints and the Other Complaints) that do not distinguish between Old GM and New GM (*e.g.*, referring to "GM" or "General Motors"), or between Old GM vehicles and New GM vehicles (*e.g.*, referring to "GM-branded vehicles"), and/or assert that New GM "was not born innocent" (or any substantially similar phrase or language) are proscribed by the Sale Order, April Decision and June Judgment, and all

complaints containing such allegations are and/or remain stayed, unless and until they are amended consistent with the Decision and this Judgment. Notwithstanding the foregoing, (i) the term "GM" or "GM-branded vehicles" may be used if the context is clear that it can only refer to New GM; and (ii) complaints may say, without using code words as euphemisms for imposing successor liability, or muddying the distinctions between Old GM and New GM, that New GM purchased the assets of Old GM; that New GM assumed Product Liabilities from Old GM; and that New GM acquired specified knowledge from Old GM.

13. Allegations in complaints that allege or suggest that New GM manufactured or designed an Old GM Vehicle, or performed other conduct relating to the Old GM Vehicle before the Sale Order, are proscribed by the Sale Order, April Decision and June Judgment, and all complaints containing such allegations are and/or remain stayed, unless and until they are amended consistent with the Decision and this Judgment.

D. Claims in the Bellwether Complaints and MDL 2543

14. Claims with respect to Old GM Vehicles that are based on fraud (including, but not limited to, actual fraud, constructive fraud, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, *etc.*) and/or consumer protection statutes are not included within the definition of Product Liabilities and therefore do not constitute Assumed Liabilities.

15. The Court expresses no view as to whether, as a matter of nonbankruptcy law, failure to warn claims for Old GM Vehicles are actionable against New GM, or whether New GM has a duty related thereto. A court other than this Court can make that determination for Post-Closing Accident Claims.

16. A duty to recall or retrofit is not an Assumed Liability, and New GM is not responsible for any failures of Old GM to do so. But whether an Independent Claim can be asserted that New GM had a duty to recall or retrofit an Old GM Vehicle with the Ignition Switch Defect is a question of nonbankruptcy law that can be determined by a court other than this Court.

17. Whether New GM had a duty, enforceable in damages to vehicle owners, to notify people who had previously purchased Old GM Vehicles of the Ignition Switch Defect is an issue that can be determined by a court other than this Court. However, it should be noted that (a) New GM's covenant in the Sale Agreement to comply with the Motor Vehicle Safety Act (as more fully set forth in Section 6.15(a) of the Sale Agreement) is not an Assumed Liability; (b) Plaintiffs in MDL 2543 have not asserted a private right of action under the Motor Vehicle Safety Act; and (c) Old GM Vehicle owners are not third-party beneficiaries under the Sale Agreement.

18. Unless otherwise set forth herein, the determination of whether claims asserted in complaints filed by Ignition Switch Plaintiffs (including the MDL Consolidated Complaint filed in MDL 2543), or complaints filed by Post-Closing Accident Plaintiffs (including the Bellwether Complaints filed in MDL 2543) with the Ignition Switch Defect, are Independent Claims that may properly be asserted against New GM, or Retained Liabilities of Old GM, can be made by nonbankruptcy courts overseeing such lawsuits, *provided however*, such plaintiffs may not assert allegations of Old GM knowledge or seek to introduce evidence of Old GM's knowledge in support of such Independent Claims (except to the extent the Imputation principles set forth in the Decision and this Judgment are applicable).

E. Claims in Complaints Alleging New GM is Liable for Vehicle Owners' Failure to File Proofs of Claim Against Old GM

19. Claims in complaints (including, but not limited to, the MDL Consolidated Complaint and the *Adams* complaint) that allege New GM is liable for vehicle owners' failure to file proofs of claim in the Old GM bankruptcy case are barred and enjoined by the Sale Order, April Decision and June Judgment, and shall not be asserted against New GM. For the avoidance of doubt, (i) the one and only count in the *Adams* complaint, entitled "*Negligence, Gross Negligence, Recklessness and/or Fraud by Concealment of the Right to File a Claim Against Old GM in Bankruptcy*," is proscribed and the *Adams* plaintiffs are directed to dismiss the *Adams* complaint forthwith, and (ii) the counts in the MDL Consolidated Complaint, entitled "*Fraud By Concealment Of The Right To File A Claim Against Old GM In Bankruptcy*," are proscribed and the MDL plaintiffs are directed to dismiss such counts forthwith.

F. The States Complaints

20. New GM shall not be liable to the States for any violations of consumer protection statutes that took place before the 363 Sale. Whether New GM can be held liable to the States for New GM's sale of vehicles that post-date the 363 Sale is a matter of nonbankruptcy law that will be decided by nonbankruptcy courts overseeing such cases. To the extent nonbankruptcy law imposes duties at the time of a vehicle's sale, and if the Old GM Vehicle was first sold prior to the closing of the 363 Sale, claims premised on any breaches of such duties are barred by the Sale Order, April Decision and June Judgment.

21. With respect to the California complaint, the allegations relating to Old GM conduct in paragraphs 46-54, 58-60, 71, 95-96, 112-114, 189-190 and 200-201 violate the Sale Order, April Decision and June Judgment. Paragraphs 192, 195, 196, 198, 199, 203-206 and 211 do not say whether they make reference to Old GM or New GM and must be clarified. For this

and other reasons as set forth in the Decision and this Judgment, the California Action shall remain stayed until the complaint is amended as directed by the Decision and this Judgment.

22. With respect to the Arizona complaint, (i) the allegation in paragraph 19 that New GM "was not born innocent" is impermissible and violates the Sale Order, April Decision and June Judgment; and (ii) the allegations relating to Old GM conduct in paragraphs 92, 93, 136 and 357 violate the Sale Order, April Decision and June Judgment. The Arizona Action shall remain stayed until the complaint is amended as directed by the Decision and this Judgment.

G. The Peller Complaints

23. With respect to the Peller Complaints, whether the claims asserted therein by Ignition Switch Plaintiffs with respect to Old GM Vehicles are Independent Claims are matters of nonbankruptcy law to be decided by nonbankruptcy courts, *provided however*, the Peller Complaints shall remain stayed unless and until they are amended with respect to Old GM Vehicles (i) to remove all allegations that are premised on Old GM conduct, (ii) to comply with the other applicable provisions of the Decision and this Judgment, and (iii) to strike any purported Independent Claims by Non-Ignition Switch Plaintiffs or Pre-Closing Accident Plaintiffs. To the extent the Peller Complaints assert claims against New GM based on New GM manufactured vehicles, such claims are not proscribed by the Sale Order, April Decision and June Judgment.

H. Other Complaints

(1) "Failure to Recall/Retrofit Vehicles"

24. Obligations, if any, that New GM had to recall or retrofit Old GM Vehicles were not Assumed Liabilities, and New GM is not the successor to Old GM and is not responsible for any failures of Old GM to do so. But whether New GM had an independent duty to recall or

retrofit previously sold Old GM Vehicles that New GM did not manufacture is a question of nonbankruptcy law.

25. The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law for such Old GM Vehicles, but allows this claim to be asserted by the Ignition Switch Plaintiffs and the Post-Closing Accident Plaintiffs (such as has been asserted by the plaintiff in *Moore v. Ross*) with the Ignition Switch Defect, leaving determination of whether this is a viable Independent Claim to the court hearing this action. For the avoidance of doubt, claims referred to in this section shall not be asserted by Plaintiffs in Old GM Vehicles without the Ignition Switch Defect and/or Pre-Closing Accident Plaintiffs against New GM.

(2) "Negligent Failure to Identify Defects or Respond to Notice of a Defect"

26. Obligations, if any, that New GM had to identify or respond to defects in previously sold Old GM Vehicles were not Assumed Liabilities, and New GM is not the successor to Old GM and is not responsible for any failures of Old GM to do so. But whether New GM had an independent duty to identify or respond to defects in previously sold Old GM Vehicles that New GM did not manufacture is a question of nonbankruptcy law.

27. The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law for such Old GM Vehicles, and allows this claim to be asserted by the Ignition Switch Plaintiffs and the Post-Closing Accident Plaintiffs with the Ignition Switch Defect, leaving determination of whether this is a viable Independent Claim to the court hearing this action. For the avoidance of doubt, claims referred to in this section shall not be asserted by Plaintiffs in Old GM Vehicles without the Ignition Switch Defect and/or Pre-Closing Accident Plaintiffs against New GM.

(3) "Negligent Infliction of Economic Loss and Increased Risk"

28. Claims that New GM had a duty to warn consumers owning Old GM Vehicles of the Ignition Switch Defect but instead concealed it, and by doing so, the economic value of the Ignition Switch Plaintiffs' vehicles was diminished (such as been raised by the plaintiffs in *Elliott* and *Sesay*) were not Assumed Liabilities, and New GM is not the successor to Old GM and is not responsible for any failures of Old GM to do so. But whether New GM had an independent duty to warn consumers owning previously sold Old GM Vehicles that New GM did not manufacture of the Ignition Switch Defect is a question of nonbankruptcy law. The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law to warn for such Old GM Vehicles with the Ignition Switch Defect, and allows this claim to be asserted by the Ignition Switch Plaintiffs to the extent, but only the extent, that New GM had an independent "duty to warn" owners of Old GM Vehicles of the Ignition Switch Defect, as relevant to situations *in which no one is alleged to have been injured* by that failure, but where the Old GM Vehicles involved are alleged to have lost value as a result. Determination of whether this is a viable Independent Claim will be left to the court hearing the underlying actions. For the avoidance of doubt, claims referred to in this section shall not be asserted by Non-Ignition Switch Plaintiffs and/or Pre-Closing Accident Plaintiffs against New GM.

(4) "Civil Conspiracy"

29. *De Los Santos v. Ortega*, in Texas state court, and the Peller Complaints in the District of Columbia, involve claims that New GM was involved "in a civil conspiracy with others to conceal the alleged ignition switch defect." Claims of this character were not Assumed Liabilities. The extent to which they might constitute Independent Claims requires a determination of nonbankruptcy law. This Court leaves the determination of the nonbankruptcy

issue as to whether claims of this sort are actionable, with respect to vehicles previously manufactured and sold by a different entity, to the nonbankruptcy court hearing the underlying action. For the avoidance of doubt, claims referred to in this section shall not be asserted by Plaintiffs in Old GM Vehicles without the Ignition Switch Defect and/or Pre-Closing Accident Plaintiffs against New GM.

(5) "Section 402B—Misrepresentation by Seller"

30. Claims based on "Section 402B-Misrepresentation by Seller" fall within the definition of assumed Product Liabilities, and such claims may be asserted against New GM, *provided however*, whether New GM is liable for such claims shall be determined by the nonbankruptcy courts overseeing such lawsuits.

(6) Claims Based on Pre-Closing Accidents

31. All claims brought by Pre-Closing Accident Plaintiffs (like the *Coleman* action in the Eastern District of Louisiana) seeking to hold New GM liable, under any theory of liability, for accidents or incidents that first occurred prior to the closing of the 363 Sale are barred and enjoined pursuant to the Sale Order, April Decision and June Judgment. The Pre-Closing Accident Plaintiffs shall not assert or maintain such claims against New GM.

I. Jurisdiction

32. The Court shall retain exclusive jurisdiction, to the fullest extent permissible under law, to construe or enforce the Sale Order, this Judgment, and/or the Decision on which it was based. This Judgment shall not be collaterally attacked, or otherwise subjected to review or modification, in any Court other than this Court or any court exercising appellate authority over this Court.

J. Amended Complaints

33. For the avoidance of any doubt, complaints amended in compliance with this Judgment may be filed in the non-bankruptcy courts with jurisdiction over them, without violating any automatic stay or injunction or necessitating further Bankruptcy Court approval to file same. It will be up to the other courts (including the MDL court which has stayed many actions) to decide when it would be appropriate to file such amendments.

Dated: New York, New York
December __, 2015

_____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

JUDGMENT

For the reasons set forth in the Court's *Decision on Imputation, Punitive Damages, and Other No-Strike and No-Dismissal Pleadings Issues*, entered on November 9, 2015 [Dkt. No. 13533] ("**Decision**"),[1] it is hereby ORDERED AND ADJUDGED as follows:[2]

A. Imputation

1. Knowledge of New GM personnel, whenever acquired, may be imputed to New GM if permitted under nonbankruptcy law. (Decision, at 2, 65).

2. Knowledge of Old GM personnel may not be imputed to New GM based on any type of successorship theory. (*Id*. at 16).

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Decision. For purposes of this Judgment, the following terms shall apply: (i) "**Ignition Switch Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM asserting economic losses based on or arising from the Ignition Switch in the Subject Vehicles (each term as defined in the *Agreed and Disputed Stipulations of Fact Pursuant to the Court's Supplemental Scheduling Order, Dated July 11, 2014*, filed on August 8, 2014 [Dkt. No. 12826], at 3); (ii) "**Non-Ignition Switch Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM asserting economic losses based on or arising from an alleged defect, other than the Ignition Switch, in an Old GM Vehicle (as herein defined); (iii) "**Pre-Closing Accident Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM based on an accident or incident that first occurred prior to the closing of the 363 Sale; and (iv) "**Post-Closing Accident Plaintiffs**" shall mean plaintiffs that have commenced a lawsuit against New GM based on an accident or incident that occurred after the closing of the 363 Sale.
The term "**Economic Loss Plaintiffs**" as used on page 7 of the Decision shall be changed to "Ignition Switch Plaintiffs."

[2] Any ruling set forth in this Judgment that refers to a particular lawsuit, complaint and/or plaintiff shall apply equally to all lawsuits, complaints and plaintiffs where such ruling may be applicable.

3. To the extent knowledge of Old GM personnel is permitted under nonbankruptcy law to be imputed to Old GM, such knowledge may be imputed to New GM for purposes of Product Liability Claims that were assumed by New GM under the Sale Order. (*Id.* at 2-3, 65).

4. With respect to Independent Claims,[3] knowledge of Old GM may be imputed to New GM to the extent permitted under nonbankruptcy law, if that knowledge is, under nonbankruptcy law, relevant to viable Independent Claims. (*Id.* at 16). To the extent imputation is appropriate for such viable Independent Claims, imputation of knowledge from Old GM to New GM can occur only if the fact (a) was actually known to a New GM employee (*e.g.*, because it is the knowledge of the same employee or because it was communicated to a New GM employee) (*id.* at 2-3, 16), or (b) could be ascertained from New GM's books and records, even if such documents were transferred by Old GM to New GM as part of the 363 Sale and, therefore, such documents first came into existence before the 363 Sale. (*Id.*).

5. Imputation turns on the specifics and context of the situation and the particular purpose for which imputation is sought, and it must be based on identified individuals or identified documents. (*Id.* at 15). For causes of action where it is appropriate to impute knowledge to New GM, it is possible for such knowledge, depending on the specific circumstances, to be imputed to New GM as early as the first day of its existence, if otherwise permitted under nonbankruptcy law.[4] (*Id.* at 16)

6. The foregoing general principles on imputation may be applied in courts other than this Court in the context of particular allegations that rely on such principles. By reason of this Court's limited gatekeeper role, this Court will not engage in further examination of whether

[3] "Independent Claim" shall mean a claim or cause of action asserted against New GM relating to the Ignition Switch Defect that is based solely on New GM's own independent post-Closing acts or conduct. Independent Claims do not include (a) Assumed Liabilities, or (b) Retained Liabilities, which are any Liabilities that Old GM had prior to the closing of the 363 Sale that are not Assumed Liabilities.

[4] Allegations in pleadings starting with "New GM knew…" or "New GM was on notice that…" are permissible.

particular allegations may be imputed to New GM, beyond the extent to which it has done so in the Decision and this Judgment. (*Id.* at 16).

B. Punitive Damages and Related Issues

7. New GM's assumption of Product Liabilities (as defined in the Sale Agreement) is limited to compensatory damages and does not include punitive damages. (*Id.* at 3, 19, 27). New GM did not contractually assume liability for punitive damages for Product Liabilities, economic loss claims, or under any other theories of recovery (by operation of law or otherwise). New GM is not liable for punitive damages for vehicles manufactured and first sold by Old GM ("**Old GM Vehicles**") if such claims are based in any way on Old GM conduct. (*Id.* at 3-4).

8. A claim for punitive damages involving an Old GM Vehicle with the Ignition Switch Defect (as defined in the April Decision) may be asserted against New GM to the extent—but only to the extent—it relates to an otherwise viable Independent Claim. (*Id.* at 65). The Court expresses no opinion on whether it is possible to state such a viable Independent Claim. Knowledge of New GM relevant to a viable Independent Claim may be based on (a) the imputation principles set forth in the Decision and this Judgment (*id.*at 27-28), and (b) information developed solely by New GM after the closing of the 363 Sale (*id.*).

9. Plaintiffs in vehicles without the Ignition Switch Defect and Pre-Closing Accident Plaintiffs have not demonstrated a due process violation with respect to the 363 Sale and, therefore, are not entitled to assert Independent Claims against New GM with respect to Old GM Vehicles. (*Id.* at 42 n.70). Thus, they may not assert punitive damages claims against New GM with respect to Old GM Vehicles. (*Id.*). To the extent such Plaintiffs have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM

Vehicle, such claims are proscribed by the Sale Order, April Decision and the Judgment dated June 1, 2015 [Dkt. No. 13177] ("**June Judgment**").

10. Claims of any type against New GM for compensatory and punitive damages that are based on vehicles manufactured by New GM are not affected by the Sale Order and may proceed in the nonbankruptcy court where they were brought. (*Id.*at 33-34). Except as provided in the June Judgment and the April Decision on which it was based, the provisions in the Sale Order shall remain unmodified and in full force and effect, including without limitation paragraph AA of the Sale Order, which states that, except with respect to Assumed Liabilities, New GM is not liable for Old GM's actions or inactions (*i.e.*, Old GM conduct).

C. Particular Allegations, Claims and/or Causes of Actions in Complaints

11. Allegations in complaints that refer to New GM as the "successor of," a "mere continuation of," a "de facto successor of" (or similar phrases) (*id.* at 36) of Old GM are proscribed by the Sale Order, April Decision and June Judgment, and all complaints (including, but not limited to, the MDL Consolidated Complaint filed in MDL 2543, the Bellwether Complaints filed in MDL 2543, the States Complaints, the Peller Complaints and the Other Complaints) that contain such allegations are and/or remain stayed, unless and until they are amended consistent with the Decision and this Judgment. (*Id.* at 35-36).

12. Allegations in complaints (including, but not limited to, the MDL Complaint, the Bellwether Complaints, the States Complaints, the Peller Complaints and the Other Complaints) that do not distinguish between Old GM and New GM (*e.g.*, referring to "GM" or "General Motors") (*id.* at 36), or between Old GM vehicles and New GM vehicles (*e.g.*, referring to "GM-branded vehicles"), and/or assert that New GM "was not born innocent" (or any substantially similar phrase or language) (*id.* at 54 n.94) are proscribed by the Sale Order, April Decision and

June Judgment, and all complaints containing such allegations are and/or remain stayed, unless and until they are amended consistent with the Decision and this Judgment. Notwithstanding the foregoing, (i) the term "GM" or "GM-branded vehicles" may be used if the context is clear that it can only refer to New GM (*id.* at 45); and (ii) complaints may say, without using code words as euphemisms for imposing successor liability, or muddying the distinctions between Old GM and New GM, that New GM purchased the assets of Old GM (*id.* at 37); that New GM assumed Product Liabilities from Old GM; and that New GM acquired specified knowledge from Old GM (*id.* at 37).

13. Allegations in complaints that allege or suggest that New GM manufactured or designed an Old GM Vehicle, or performed other conduct relating to the Old GM Vehicle before the Sale Order, are proscribed by the Sale Order, April Decision and June Judgment, and all complaints containing such allegations are and/or remain stayed, unless and until they are amended consistent with the Decision and this Judgment. (*Id.* at 36 n.63).

D. Claims in the Bellwether Complaints and MDL 2543

14. Claims with respect to Old GM Vehicles that are based on fraud (including, but not limited to, actual fraud, constructive fraud, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, *etc.*) and/or consumer protection statutes are not included within the definition of Product Liabilities and therefore do not constitute Assumed Liabilities. (*Id.* at 39, 55-56).

15. The Court expresses no view as to whether, as a matter of nonbankruptcy law, failure to warn claims for Old GM Vehicles are actionable against New GM, or whether New GM has a duty related thereto. (*Id.* at 40-41). A court other than this Court can make that determination for Post-Closing Accident Claims. (*Id.*).

16. A duty to recall or retrofit is not an Assumed Liability, and New GM is not responsible for any failures of Old GM to do so. (*Id.* at 61). But whether an Independent Claim can be asserted that New GM had a duty to recall or retrofit an Old GM Vehicle with the Ignition Switch Defect is a question of nonbankruptcy law that can be determined by a court other than this Court. (*Id.*).

17. Whether New GM had a duty, enforceable in damages to vehicle owners, to notify people who had previously purchased Old GM Vehicles of the Ignition Switch Defect is an issue that can be determined by a court other than this Court. (*Id.* at 61-62). However, it should be noted that (a) New GM's covenant in the Sale Agreement to comply with the Motor Vehicle Safety Act (as more fully set forth in Section 6.15(a) of the Sale Agreement) is not an Assumed Liability (*id.* at 41 n.67); (b) Plaintiffs in MDL 2543 have not asserted a private right of action under the Motor Vehicle Safety Act; and (c) Old GM Vehicle owners are not third-party beneficiaries under the Sale Agreement (*id.*).

18. Unless otherwise set forth herein, the determination of whether claims asserted in complaints filed by Ignition Switch Plaintiffs (including the MDL Consolidated Complaint filed in MDL 2543), or complaints filed by Post-Closing Accident Plaintiffs (including the Bellwether Complaints filed in MDL 2543) with the Ignition Switch Defect, are Independent Claims that may properly be asserted against New GM, or Retained Liabilities of Old GM, can be made by nonbankruptcy courts overseeing such lawsuits, *provided however*, such plaintiffs may not assert allegations of Old GM knowledge or seek to introduce evidence of Old GM's knowledge in support of such Independent Claims (except to the extent the Imputation principles set forth in the Decision and this Judgment are applicable). (*Id.* at 41-44).

E. Claims in Complaints Alleging New GM is Liable for Vehicle Owners' Failure to File Proofs of Claim Against Old GM

19. Claims in complaints (including, but not limited to, the MDL Consolidated Complaint and the *Adams* complaint) that allege New GM is liable for vehicle owners' failure to file proofs of claim in the Old GM bankruptcy case are barred and enjoined by the Sale Order, April Decision and June Judgment, and shall not be asserted against New GM. (*Id.* at 47-52). For the avoidance of doubt, (i) the one and only count in the *Adams* complaint, entitled "*Negligence, Gross Negligence, Recklessness and/or Fraud by Concealment of the Right to File a Claim Against Old GM in Bankruptcy*," is proscribed and the *Adams* plaintiffs are directed to dismiss the *Adams* complaint forthwith, and (ii) the counts in the MDL Consolidated Complaint, entitled "*Fraud By Concealment Of The Right To File A Claim Against Old GM In Bankruptcy*," are proscribed and the MDL plaintiffs are directed to dismiss such counts forthwith. (*Id.* at 50-52).

F. The States Complaints

20. New GM shall not be liable to the States for any violations of consumer protection statutes that took place before the 363 Sale. (*Id.* at 56). Whether New GM can be held liable to the States for New GM's sale of vehicles that post-date the 363 Sale is a matter of nonbankruptcy law that will be decided by nonbankruptcy courts overseeing such cases. To the extent nonbankruptcy law imposes duties at the time of a vehicle's sale, and if the Old GM Vehicle was first sold prior to the closing of the 363 Sale, claims premised on any breaches of such duties are barred by the Sale Order, April Decision and June Judgment. (*Id.*).

21. With respect to the California complaint, the allegations relating to Old GM conduct in paragraphs 46-54, 58-60, 71, 95-96, 112-114, 189-190 and 200-201 violate the Sale Order, April Decision and June Judgment. (*Id.* at 54). Paragraphs 192, 195, 196, 198, 199, 203-206 and 211 do not say whether they make reference to Old GM or New GM and must be

clarified. (*Id.* at 54 n.93). For this and other reasons as set forth in the Decision and this Judgment, the California Action shall remain stayed until the complaint is amended as directed by the Decision and this Judgment. (*Id.* at 55).

22. With respect to the Arizona complaint, (i) the allegation in paragraph 19 that New GM "was not born innocent" is impermissible and violates the Sale Order, April Decision and June Judgment (*id.* at 54 n.94); and (ii) the allegations relating to Old GM conduct in paragraphs 92, 93, 136 and 357 violate the Sale Order, April Decision and June Judgment (*id.* at 54-55). The Arizona Action shall remain stayed until the complaint is amended as directed by the Decision and this Judgment. (*Id.* at 55).

G. The Peller Complaints

23. With respect to the Peller Complaints, whether the claims asserted therein by Ignition Switch Plaintiffs with respect to Old GM Vehicles are Independent Claims are matters of nonbankruptcy law to be decided by nonbankruptcy courts, *provided however*, the Peller Complaints shall remain stayed unless and until they are amended with respect to Old GM Vehicles (i) to remove all allegations that are premised on Old GM conduct, (ii) to comply with the other applicable provisions of the Decision and this Judgment, and (iii) to strike any purported Independent Claims by Non-Ignition Switch Plaintiffs or Pre-Closing Accident Plaintiffs. (*Id.* at 57-60). To the extent the Peller Complaints assert claims against New GM based on New GM manufactured vehicles, such claims are not proscribed by the Sale Order, April Decision and June Judgment. (*Id.* at 59).

H. Other Complaints

(1) "Failure to Recall/Retrofit Vehicles"

24. Obligations, if any, that New GM had to recall or retrofit Old GM Vehicles were not Assumed Liabilities, and New GM is not the successor to Old GM and is not responsible for any failures of Old GM to do so. (*Id.* at 61). But whether New GM had an independent duty to recall or retrofit previously sold Old GM Vehicles that New GM did not manufacture is a question of nonbankruptcy law. (*Id.*).

25. The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law for such Old GM Vehicles, but allows this claim to be asserted by the Ignition Switch Plaintiffs and the Post-Closing Accident Plaintiffs (such as has been asserted by the plaintiff in *Moore v. Ross*) with the Ignition Switch Defect, leaving determination of whether this is a viable Independent Claim to the court hearing this action. (*Id.*). For the avoidance of doubt, claims referred to in this section shall not be asserted by Plaintiffs in Old GM Vehicles without the Ignition Switch Defect and/or Pre-Closing Accident Plaintiffs against New GM.

(2) "Negligent Failure to Identify Defects or Respond to Notice of a Defect"

26. Obligations, if any, that New GM had to identify or respond to defects in previously sold Old GM Vehicles were not Assumed Liabilities, and New GM is not the successor to Old GM and is not responsible for any failures of Old GM to do so. (*Id.* at 61-62). But whether New GM had an independent duty to identify or respond to defects in previously sold Old GM Vehicles that New GM did not manufacture is a question of nonbankruptcy law. (*Id.* at 62).

27. The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law for such Old GM Vehicles, and allows this claim to be asserted by the

Ignition Switch Plaintiffs and the Post-Closing Accident Plaintiffs with the Ignition Switch Defect, leaving determination of whether this is a viable Independent Claim to the court hearing this action. (*Id.*). For the avoidance of doubt, claims referred to in this section shall not be asserted by Plaintiffs in Old GM Vehicles without the Ignition Switch Defect and/or Pre-Closing Accident Plaintiffs against New GM.

(3) "Negligent Infliction of Economic Loss and Increased Risk"

28. Claims that New GM had a duty to warn consumers owning Old GM Vehicles of the Ignition Switch Defect but instead concealed it, and by doing so, the economic value of the Ignition Switch Plaintiffs' vehicles was diminished (such as been raised by the plaintiffs in *Elliott* and *Sesay*) were not Assumed Liabilities, and New GM is not the successor to Old GM and is not responsible for any failures of Old GM to do so. (*Id.* at 62). But whether New GM had an independent duty to warn consumers owning previously sold Old GM Vehicles that New GM did not manufacture of the Ignition Switch Defect is a question of nonbankruptcy law. (*Id.*). The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law to warn for such Old GM Vehicles with the Ignition Switch Defect, and allows this claim to be asserted by the Ignition Switch Plaintiffs to the extent, but only the extent, that New GM had an independent "duty to warn" owners of Old GM Vehicles of the Ignition Switch Defect, as relevant to situations *in which no one is alleged to have been injured* by that failure, but where the Old GM Vehicles involved are alleged to have lost value as a result. (*Id.*). Determination of whether this is a viable Independent Claim will be left to the court hearing the underlying actions. (*Id.*). For the avoidance of doubt, claims referred to in this section shall not be asserted by Non-Ignition Switch Plaintiffs and/or Pre-Closing Accident Plaintiffs against New GM.

(4) "Civil Conspiracy"

29. *De Los Santos v. Ortega*, in Texas state court, and the Peller Complaints in the District of Columbia, involve claims that New GM was involved "in a civil conspiracy with others to conceal the alleged ignition switch defect." Claims of this character were not Assumed Liabilities. (*Id.* at 62-63). The extent to which they might constitute Independent Claims requires a determination of nonbankruptcy law. (*Id.* at 63). This Court leaves the determination of the nonbankruptcy issue as to whether claims of this sort are actionable, with respect to vehicles previously manufactured and sold by a different entity, to the nonbankruptcy court hearing the underlying action. (*Id.*). For the avoidance of doubt, claims referred to in this section shall not be asserted by Plaintiffs in Old GM Vehicles without the Ignition Switch Defect and/or Pre-Closing Accident Plaintiffs against New GM.

(5) "Section 402B—Misrepresentation by Seller"

30. Claims based on "Section 402B-Misrepresentation by Seller" fall within the definition of assumed Product Liabilities, and such claims may be asserted against New GM, *provided however*, whether New GM is liable for such claims shall be determined by the nonbankruptcy courts overseeing such lawsuits. (*Id.* at 63-64).

(6) Claims Based on Pre-Closing Accidents

31. All claims brought by Pre-Closing Accident Plaintiffs (like the *Coleman* action in the Eastern District of Louisiana) seeking to hold New GM liable, under any theory of liability, for accidents or incidents that first occurred prior to the closing of the 363 Sale are barred and enjoined pursuant to the Sale Order, April Decision and June Judgment. (*Id.* at 64-65). The Pre-Closing Accident Plaintiffs shall not assert or maintain such claims against New GM. (*Id.*).

I. Jurisdiction

32. The Court shall retain exclusive jurisdiction, to the fullest extent permissible under law, to construe or enforce the Sale Order, this Judgment, and/or the Decision on which it was based. This Judgment shall not be collaterally attacked, or otherwise subjected to review or modification, in any Court other than this Court or any court exercising appellate authority over this Court.

J. Amended Complaints

33. For the avoidance of any doubt, complaints amended in compliance with this Judgment may be filed in the non-bankruptcy courts with jurisdiction over them, without violating any automatic stay or injunction or necessitating further Bankruptcy Court approval to file same. It will be up to the other courts (including the MDL court which has stayed many actions) to decide when it would be appropriate to file such amendments.

Dated: New York, New York
December __, 2015

_____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

JUDGMENT ON IMPUTATION, PUNITIVE DAMAGES, AND OTHER NO-STRIKE AND NO-DISMISSAL PLEADINGS ISSUES

For the reasons set forth in the Court's *Decision on Imputation, Punitive Damages, and Other No-Strike and No-Dismissal Pleadings Issues*, entered on November 9, 2015 ("**Decision**"),[1] it is hereby ADJUDGED as follows:

1. Knowledge of New GM personnel, whenever acquired, may be imputed to New GM consistent with nonbankruptcy law. But knowledge of Old GM personnel may not be imputed to New GM except (a) on assumed Product Liabilities Claims (to the extent consistent with nonbankruptcy law), or (b) ~~to the extent that~~, after such Old GM personnel were hired by New GM if it can be shown (*e.g.*, because it is the knowledge of the same employee or because it was communicated to a New GM employee) that New GM had such knowledge too as a matter of nonbankruptcy law. Further, to the extent, as a matter of nonbankruptcy law, the knowledge may be imputed as a consequence of documents in a company's files, ~~D~~documents in New GM's files may be utilized as a predicate for such knowledge, even if they first came into being before the sale from Old GM to New GM. Allegations of that knowledge or notice, even if alleged in

Comment [SA1]: The insertion of this clause here and in the following two sentences in this paragraph is intended to remind other courts that imputation between an employee and its employer is not automatic and must be permitted under nonbankruptcy law.

[1] Unless otherwise defined herein, capitalized terms shall have the meanings assigned to them in the Decision.

general terms, can be asserted by the plaintiffs with nonbankruptcy courts determining the extent to which such allegations have been alleged with sufficient~~ly~~ specificity ~~specifically~~ to warrant findings of imputation.

2. Any acts by New GM personnel, or knowledge of New GM personnel (including knowledge that any of them might have acquired while previously working at Old GM) may, consistent with the April Decision and Judgment, be imputed to New GM to the extent such is appropriate under applicable nonbankruptcy law. Likewise, to the extent, as a matter of nonbankruptcy law, knowledge may be imputed as a consequence of documents in a company's files, documents in New GM's files may be utilized as a predicate for such knowledge, even if they first came into existence before the sale from Old GM to New GM. Those general principles may be applied in courts other than this one in the context of particular allegations that rely on those principles—without the need for the bankruptcy court to engage in further examination of particular allegations beyond the extent to which it has done so in the Decision.

3. The propriety of imputation turns on the specifics of the situation. Imputation must be found in the context of the imputation of identified individuals or identified documents, for particular purposes. New GM may not be saddled with imputation of Old GM knowledge by successorship alone, as a substitute for showing that a fact was actually known to a New GM employee or could be ascertained from New GM's files. In actions alleging Product Liabilities Claims and Independent Claims, allegations that New GM's knowledge may be imputed to it starting with the first day of its existence may be asserted, with the ultimate determination being made by the court hearing the case. Plaintiffs asserting such Claims may make allegations starting with "New GM knew . . ." or "New GM was on notice that . . . ."

Comment [SA2]: Added to show that knowledge is relevant only if it is an element of a viable Independent Claim and that this Court was not deciding whether the so-called Independent Claims asserted against New GM after the entry of the Sale Order(as modified by the April 15 Decision) were viable under nonbankruptcy law.

4. Punitive damages with respect to Product Liabilities ~~Claims~~ or Economic Loss

claims involving Old GM manufactured vehicles may be sought against New GM to the extent—but only to the extent—they rely solely on New GM knowledge or conduct. Those claims may not be based on Old GM knowledge or conduct. But they may be based on knowledge of New GM employees that was "inherited" from their tenure at Old GM (or documents inherited from Old GM), and may be based on knowledge acquired after the 363 Sale by New GM personnel, to the extent otherwise permitted under nonbankruptcy law.

5. New GM may be held liable for compensatory damages on Product Liabilities Claims based on Old GM conduct, New GM conduct or both. However, Post-Closing Accident Plaintiffs in Old GM Vehicles with the Ignition Switch Defect (as defined in the April Decision) can base their claims for punitive damages only on New GM conduct or knowledge.

Comment [DS3]: The only modification to the Sale Order for Old GM vehicles are those with the Ignition Switch Defect. These are the Independent Claims.

6. Independent Claims against New GM cannot be based, for either compensatory or punitive damages purposes, on Old GM knowledge and conduct. Damages of any character on Independent Claims must be based solely on New GM's knowledge and conduct.

7. In actions alleging Product Liabilities Claims with the Ignition Switch Defect and Independent Claims with the Ignition Switch Defect, New GM may be held responsible, on claims for both compensatory and punitive damages, for its own knowledge and conduct. New GM might have acquired relevant knowledge when former Old GM employees came over to New GM or New GM took custody of what previously were Old GM records. Reliance on that, for punitive damages purposes, is permissible.[2]

8. To the extent New GM employees actually had knowledge relevant to post-Sale accident claims or Independent Claims (even if it was inherited) that was acquired in fact rather than by operation of law (such as any kind of successorship theory), plaintiffs in actions

[2] Knowledge New GM might have acquired in this manner is referred to herein as "inherited" information.

asserting such Claims are free to base punitive damages claims on evidence of such knowledge to the extent nonbankruptcy law permits.

9. Information obtained by New GM after the Sale may be used for punitive damages purposes as well. The extent to which such after-acquired information is relevant to punitive damages claims is a matter of nonbankruptcy law, as to which the Court expresses no view. Evidence of information obtained by New GM after the sale may be relied upon, for punitive damages purposes, to the extent otherwise appropriate in the underlying actions.

10. To the extent Ignition Switch~~Economic Loss~~ P~~p~~laintiffs (or, for that matter, State Cases Plaintiffs alleging the Ignition Switch Defect) make allegations based upon inherited information or information obtained by New GM after the Sale, evidence introduced using those pathways is permissible, but it is up to the judges hearing those cases to decide the propriety of reliance on such evidence to punitive damage claims.

New GM's Four Contexts

1) Personal Injuries in Post-Sale Accidents Involving Vehicles Manufactured by Old GM

11. Product Liabilities compensatory damages claims involving vehicles manufactured by Old GM were contractually assumed by New GM (and thus are permissible under the Sale Order, April Decision, and Judgment); punitive damages claims were not assumed by New GM. Thus punitive damages in such actions may not be premised on anything Old GM knew or did.

12. Nevertheless, punitive damages may still be sought in actions based on post-Sale accidents involving vehicles manufactured by Old GM with the Ignition Switch Defect to the extent the punitive damages claims are premised on New GM action or inaction after it was on notice of information "inherited" by New GM or information developed by New GM post-Sale.

2) Personal Injuries in Post-Sale Accidents Involving Vehicles Manufactured by New GM

13. Personal injury compensatory damages claims against New GM involving vehicles manufactured by New GM never were foreclosed under the Sale Order and remain permissible under the April Decision and Judgment.

14. Claims against New GM for punitive damages involving New GM manufactured vehicles likewise were never foreclosed under the Sale Order and likewise remain permissible under the April Decision and Judgment.

15. The underlying allegations and evidence used to support punitive damages claims involving New GM manufactured cars can be anything appropriate under nonbankruptcy law—including, if otherwise appropriate, not just information "inherited" by New GM or developed by New GM post-Sale, but also evidence of Old GM's pre-Sale knowledge and conduct. Except as provided in the June Judgment and the April Decision on which it was based, the provisions in the Sale Order shall remain unmodified and in full force and effect, including without limitation paragraph AA of the Sale Order, which states that, except with respect to Assumed Liabilities, New GM is not liable for Old GM's actions or inactions (*i.e.*, Old GM conduct). The Sale Order never professed to affect claims against New GM with respect to New GM manufactured cars in any way.

Comment [DS4]: This addition is intended to demonstrate that paragraph AA of the Sale Order was not amended by the previous statement.

3) Non-Product Liabilities Claims (in both personal injury and economic loss complaints) *I*nvolving *V*ehicles *M*anufactured *by Old GM "and/or" New GM*

(a)(i) Personal Injury Actions-Old GM Manufactured Vehicles

16. Because only Product Liabilities claims were assumed by New GM, other claims involving Old GM manufactured vehicles—including claims for compensatory damages on other causes of action and, as discussed above, for punitive damages—are Retained Liabilities.

New GM is not responsible for Retained Liabilities. New GM is only liable for viable Independent Claims.~~them except to the extent that they are premised solely on its own conduct.~~

Comment [SA5]: Retained Liabilities are by definition not New GM liabilities. The only liabilities that certain plaintiffs can assert against New GM with respect to Old GM Vehicles after the Sale Order are viable Independent Claims under nonbankruptcy law.

17. With respect to post-Sale Non-Product Liabilities claims asserted in actions involving personal injuries suffered in vehicles manufactured by Old GM with the Ignition Switch Defect, punitive damages may be assessed to the extent, but only the extent, they are premised on New GM knowledge and conduct. Plaintiffs may refer to inherited knowledge and to knowledge acquired after the 363 Sale with respect to post-Sale Non-Product Liabilities claims. But punitive damages sought as an adjunct to claims in this category may not rely on the conduct of Old GM and this is true, as always, with respect to both allegations in pleadings and any evidence of such.

(a)(ii) Personal Injury Actions-New GM Manufactured Vehicles

18. For claims involving vehicles manufactured by New GM, plaintiffs do not need the Court's permission to assert claims for Non-Product Liabilities compensatory damages claims any more than they need the Court's permission to assert claims for Product Liabilities compensatory damages claims. The Sale Order did not foreclose claims against New GM involving New GM manufactured vehicles, and compensatory damage claims (on whatever theory) with respect to New GM manufactured vehicles may proceed against New GM without interference from this Court. Nor, do plaintiffs need the Court's permission to assert punitive damages claims incident to Non-Product Liabilities Claims involving New GM manufactured vehicles.

19. With respect to the evidence used to support punitive damages claims in actions involving New GM manufactured vehicles, evidence of inherited knowledge and knowledge acquired after the 363 Sale may be asserted and used; that is simply knowledge New GM had before the accident took place. Relevant evidence of Old GM knowledge and conduct may be

asserted and used, as well. Except as provided in the June Judgment and the April Decision on which it was based, the provisions in the Sale Order shall remain unmodified and in full force and effect, including without limitation paragraph AA of the Sale Order, which states that, except with respect to Assumed Liabilities, New GM is not liable for Old GM's actions or inactions (*i.e.*, Old GM conduct).

(b)(i) Economic Loss Actions-Old GM Manufactured Vehicles

20. Because claims only for Product Liabilities were assumed by New GM, other claims involving Old GM manufactured vehicles are Retained Liabilities. New GM is not responsible for those other claims that are Retained Liabilities. ~~except t~~To the extent that such claims~~they~~ relating to vehicles manufactured by Old GM with the Ignition Switch Defect are premised solely on New GM's own conduct, they~~and hence~~ may be regarded as Independent Claims. The same is true for punitive damages claims just as it is for compensatory damages claims—and for both the assertion of claims for punitive damages and the evidence that might support them.

21. Thus claims for punitive damages arising from Economic Loss actions involving Old GM manufactured vehicles with the Ignition Switch Defect cannot be asserted except for any that might be recoverable in connection with Independent Claims, and then based only on New GM knowledge and conduct. The same is true with respect to the evidence that might be offered to support those punitive damages claims.

22. For vehicles already manufactured and sold before New GM came into existence, whether Independent Claims for Economic Loss relating to the Ignition Switch Defect can be asserted against New GM is matter of nonbankruptcy law, and not for this Court to decide. This question is better decided by the judge(s) hearing the nonbankruptcy claims that have passed through the bankruptcy court gate..

(b)(ii) Economic Loss Actions-New GM Manufactured Vehicles

23. Economic Loss Claims with respect to New GM manufactured vehicles—which by definition were manufactured after New GM came into being—are not proscribed by the Sale Order. Nor does the Sale Order proscribe punitive damages claims sought in actions against New GM for Economic Loss involving New GM vehicles.

24. The evidence used to support such punitive damages claims may include evidence of inherited knowledge; of knowledge acquired after the 363 Sale; and, if nonbankruptcy courts regard such as appropriate, any relevant Old GM knowledge and conduct, as well. Except as provided in the June Judgment and the April Decision on which it was based, the provisions in the Sale Order shall remain unmodified and in full force and effect, including without limitation paragraph AA of the Sale Order, which states that, except with respect to Assumed Liabilities, New GM is not liable for Old GM's actions or inactions (*i.e.*, Old GM conduct. With respect to any punitive damages claims in Economic Loss actions involving New GM vehicles, those claims may be asserted against New GM.

4) Assertedly Independent Claims that Are In Reality Retained Liabilities of Old GM

25. To the extent that any claims against New GM involving Old GM manufactured vehicles are for Product Liabilities Claims involving the Ignition Switch Defect or genuinely Independent Claims involving the Ignition Switch Defect, claims for punitive damages against New GM may be sought in connection with them, but the evidence supporting such claims can be based only on New GM's knowledge and acts. That evidence can include inherited knowledge and knowledge acquired after the 363 Sale, but not any acts, or non-inherited knowledge, of Old GM. This issue does not arise in connection with claims against New GM involving vehicles New GM itself manufactured.

26. Plaintiffs cannot proceed with "purportedly Independent Claims" that really are "Retained Liabilities" of Old GM. To the extent particular claims or allegations have not yet been brought to this Court's attention, but New GM wishes objections to such to be heard, those objections can be heard by the judges hearing the nonbankruptcy cases.

Particular Allegations in Marked Pleadings

A. The Bellwether Actions Complaints

27. New GM identified five categories of allegations in the Bellwether Marked Complaints, highlighted by color, that New GM contended were violative of the Sale Order, the April Decision, the Judgment, or some combination of them. Taking them by color and by New GM's stated objection to them, the Court rules as follows:

1) Pink—"Allegations that wrongly assert New GM is the successor of Old GM"

28. Allegations referring to New GM as "successor", de facto successor and, especially, as a "mere continuation," must be stricken or removed, and the affected complaints remain stayed unless and until they are amended consistent with this Court's rulings.

Comment [SA6]: November Decision at p. 36,n 62

29. Likewise, allegations that do not distinguish between Old GM and New GM, and that continue to refer to "General Motors" or "GM" must be stricken or revised so that it is clear whether the reference is to Old GM or New GM. Complaints using that generic formulation of "General Motors" or "GM" will remain stayed unless and until they are amended to cure violations of that character.

30. Allegations that New GM engaged in activities before the closing of the 363 Sale (*i.e.*, that New GM designed a vehicle that was manufactured and sold by Old GM) must be stricken or revised, and complaints that contain this type of allegation will remain stayed unless and until they are amended to cure violations of that character.

31. As noted in the April Decision, plaintiffs' complaints may say, *inter alia*, that New GM purchased the assets of Old GM; that New GM assumed product liability claims from Old GM; and that New GM acquired specified knowledge from Old GM.

2) Orange—"Allegations related to punitive damages, which were not assumed by New GM"

32. Claims against New GM for punitive damages with respect to Old GM manufactured vehicles—even where compensatory damages might legitimately be sought for Product Liabilities Claims—were not assumed. Thus, punitive damages in such cases cannot be based on pre-Sale Old GM conduct, or evidence of such.

33. But New GM may still be liable for punitive damages based on knowledge it inherited from Old GM, and any knowledge it developed after the 363 Sale. Punitive damages may be sought against New GM for post-closing accident cases involving Old GM manufactured vehicles with the Ignition Switch Defect to the extent the factual allegations and evidence supporting the punitive damages claims are consistent with this Court's rulings herein and in the Decision.

3) Blue—"[A]llegations seeking to impute wholesale Old GM's knowledge to New GM"

34. Imputation is context specific, but this Court assumes that under nonbankruptcy law which will be applied in the actions pending against New GM, the acts and knowledge of employees will often be imputed to the principal. This Court also assumes that likewise to be true with respect to notice of documents within a company's files. But these nonbankruptcy law issues are inappropriate for this Court's determination.

35. This Court also holds that allegations of imputation to New GM premised on the knowledge of New GM employees, or documents in New GM's files, may be asserted against New GM. After that, issues as to the propriety of imputation in particular contexts in particular

cases are up to the judges hearing those cases.

4) Green—"[A]llegations involving Claims that are Old GM Retained Liabilities"

36. With respect to claims involving vehicles manufactured by Old GM other than Product Liabilities claims, such as fraud, negligent representation, duty to warn after the vehicle's sale, and violation of consumer protection statutes at the time of sale, insofar as Old GM manufactured vehicles are concerned, New GM did not assume such claims. New GM is liable for Product Liabilities only.

Comment [SA7]: Intended to make the ruling explicit and clear.

37. However, if Old GM had a duty, under nonbankruptcy law, to warn of the danger of driving a motor vehicle with a known defect, the violation of that duty to warn, when coupled with subsequent death or injury, might reasonably be argued to have had a causal effect on any death or personal injury that could have been avoided by the warning. Violations of any duty to warn by Old GM could be said to provide further support for any claims for death or personal injury that would be actionable even as classic Product Liabilities Claims. This Court expresses no view as whether, as a matter of nonbankruptcy law, failures to warn are actionable, or whether the requisite duties exist. But these allegations may be asserted against New GM as an assumed Product Liability Claim, and it will be up to the Judge hearing the case to determine whether it is a viable claim.

38. In addition, some allegations highlighted in green are not subject to the above analysis because they charge New GM with violations of alleged duties that they assert New GM had to purchasers of earlier purchased vehicles with the Ignition Switch Defect. New GM can argue before other courts that such duties do not exist (or assert any other merits-based defenses to these allegations), but claims of this character that are based on New GM's own conduct and knowledge may be asserted against New GM and it will be up to the Judge hearing

the case to determine whether it is a viable claim.

5) Yellow—"[A]llegations based on New GM's conduct relating to a supposed failure to warn after the vehicle sale"

39. Here, the allegations concern alleged failures to warn by New GM prior to any accidents, as contrasted to alleged failures by Old GM. The Court does not need to determine whether such claims were assumed, as they rest on conduct allegedly on the part of New GM itself. This issue is one of nonbankruptcy law—whether New GM, as an entity that did not manufacture or sell the vehicle, had a duty, enforceable in damages to vehicle owners, to notify people who had previously purchased Old GM vehicles of the Ignition Switch Defect. The Court does not decide this issue of nonbankruptcy law either, and does not block the claim based on predictions as to how another court might decide it. This Court leaves the issue to the court hearing the Bellwether actions.

40. New GM agreed to comply with the Motor Vehicle Safety Act under Section 6.15(a) of the Sale Agreement. New GM notes properly that this covenant was not an Assumed Liability, and that vehicle owners were not third party beneficiaries of the Sale Agreement. But Plaintiffs nevertheless argue, though without any support in this Court, that they have a state law right of action for conduct of that character. Here too the Court leaves this issue to the judge or judges hearing the underlying claims.

Comment [SA8]: Language omitted from the November Decision. See page 41, n67. Provides context.

B. The MDL Complaint

1) Blue—"[N]amed plaintiffs and plaintiff classes/subclasses asserting claims based on Old GM vehicles"

41. The Economic Loss Claims in the MDL Complaint asserted by the Ignition Switch Plaintiffs that once appeared in the Pre-Sale Consolidated Complaint may be asserted

against New GM so long as they are genuinely Independent Claims[3]—and where they then will be subject, of course, to determination in the MDL Proceeding as to the nature and extent of New GM duties to purchasers of Old GM manufactured vehicles, and whether MDL plaintiffs state causes of action under applicable nonbankruptcy laws.

42. With respect to vehicles manufactured by Old GM, the Ignition Switch Plaintiffs recognize that they cannot premise their claims on anything done by Old GM. Plaintiffs allege claims crafted on the premise that, after the 363 Sale Order, New GM still had duties to owners of cars manufactured by Old GM. To the extent New GM had the requisite duties, the claims are in fact Independent Claims. This Court does not rule on this issue and defers on such nonbankruptcy matters to the MDL Court.

2) Yellow—"[A]llegations based on Old GM conduct that supported claims for Retained Liabilities"

43. The claims and allegations asserted in the MDL Complaint containing references to "GM" alone that merge references to Old GM and New GM are not permitted. However, the MDL Complaint may refer to "GM-branded vehicles" when the context is clear that they can refer only to New GM—and where they do not, by words or implication, blend the periods during which vehicles were manufactured by Old GM, on the one hand, and New GM, on the other.

44. New GM's objection to allegations by which conduct of Old GM employees is imputed, "automatically and wholesale," into the MDL Complaint is overruled from a bankruptcy perspective. The Court agrees with New GM that imputation matters must be

Comment [SA9]: Footnote 3 language, as modified herein, is taken from the November Decision at page 44, n72. The Court did not rule those causes of action were Independent Claims. Rather, it held that those causes of action are nonbankruptcy matters and the viability of such claims under nonbankruptcy law should be made by the MDL court.
Plaintiffs language implies that the Court had ruled that such causes of action were viable Independent Claims under nonbankruptcy law, which is contrary to the November Decision.

Comment [SA10]: Intended to clearly provide that New GM acquired assets through a "free and clear" Sale Order, and plaintiffs so-called Independent Claims must be viewed through that bankruptcy prism.

[3] Claims against New GM that involve the determination of the existence of duties under state and federal law, like claims ~~Independent Claims include, but may not be limited to, claims against New GM~~ for violations of the Safety Act; of other statutory or common law requirements imposing a duty to recall; of consumer protection statutes; for fraud; for breach of implied warranties of merchantability and violations of the Magnuson Moss Warranty Act; and for unjust ~~enrichment~~enrichment are nonbankruptcy issues and the Court defers to the MDL Court to decide these issues.

determined in context, and if imputation is to be found, it must be found in the context of the imputation of identified individuals or identified documents for particular purposes. But the Court decided that there is nothing wrong with another court deciding imputation matters, and that other courts will have a better sense of imputation's propriety in context than this Court would.

45. Plaintiffs' claims in the MDL Complaint may include allegations of Old GM conduct prefaced by words like "New GM knew that . . ." because those four words are of critical importance, and, if proven, transform the basis for imposing liability from successorship to knowledge that is one of the predicates to imposition of liability. Those four words, which now require a showing of New GM knowledge, are essential to establishing New GM's culpability—all apart, of course, from establishing any necessary duties, private rights of action, and any other requirements for stating causes of action against New GM for cars manufactured by Old GM. As a condition subsequent to getting through the gate, the plaintiffs will have to prove the New GM knowledge they allege, on the part of identified human beings, and by identified documents, to the satisfaction of the MDL court or any other court hearing these claims, and by competent proof, not on theories that New GM was a "successor" to Old GM. But that is a matter best handled by other courts.

Comment [SA11]: November Decision p47. The omitted language from the Decision provides relevant context.

3) Pink—"[C]laims alleging that New GM committed fraud in connection with Old GM's bankruptcy"

46. The claims in the MDL and Adams Complaints seeking to hold New GM responsible for Old GM's failure to give plaintiffs notice in the Old GM chapter 11 case cannot proceed under the April Decision and Injunction because they seek to impose liability based, in material part, on Old GM conduct, and assert forbidden successor liability claims dressed up to look like something else. And they rest on duties that do not exist under bankruptcy law.

~~47. As stated in the April Decision, plaintiffs could assert otherwise viable claims against New GM for any causes of action that might exist "arising solely out of New GM's own, independent, post-Closing acts, so long as those plaintiffs' claims do not in any way rely on any acts or conduct by Old GM.~~ This Court makes clear that the plaintiffs, who have missed the claims bar date are enjoined from looking for their recovery for that to New GM.

~~48.~~47. The prohibited claims and allegations are deemed stricken before ~~and/or inoperative so the prosecution of~~ the affected actions may continue.

4) Orange—"[C]laims alleging plaintiffs are entitled to contractual damages as third-party beneficiaries of the Sale Agreement."

~~49.~~48. The Sale Agreement provides that plaintiffs are not third party beneficiaries of the Sale Agreement. Plaintiffs do not dispute that. Plaintiffs further agree they are not asserting a private right of action under the Safety Act. Nevertheless, plaintiffs' assert they have potential claims under state law relating to the Safety Act. Though Plaintiffs have not told the Court the basis for such a cause of action, their contention, if true, calls for a determination of nonbankruptcy law which shall be done ~~may proceed against New GM in the MDL Complaint. The basis of such causes of action calls for a determination of nonbankruptcy law and this Court does not rule on the extent to which claims of this character are actionable as a matter of nonbankruptcy law. However, the asserted rights of action under the Safety Act are Independent Claims and may proceed for determination~~ by the MDL Court.

C. The State Complaints

1) Yellow—Allegations based on Old GM conduct

50. ~~Allegations in the State Complaints may impute to New GM knowledge inherited from Old GM and knowledge developed by New GM, to New GM to the extent permissible under nonbankruptcy law.~~ The Court's rulings as to Imputation in other actions

Comment [SA12]: New GM's language is a summary of the Court's ruling from p52 of the November Decision. The Adams lawsuit was improperly premised on the language from the April Decision (the stricken language). Plaintiffs reference to a proposition rejected by the Court is intended to lay the predicate for reasserting this claim once their case leaves the bankruptcy gate. The Court should provide for the dismissal with prejudice of this type of claim.

Comment [SA13]: Since the Adams type claim was also included in the Second Amended Complaint in MDL 2543, this additional paragraph which refers to deleting a cause of action (as contrasted to the dismissal of the Adams lawsuit relating to Pre-Sale Accident Claims) is included.

Comment [SA14]: This is more aligned to the Court's statements from the November Decision at pages 52-53.
Significantly, the Court did not rule that asserted rights under the Safety Act were viable Independent Claims which is what plaintiffs proposed language suggests. The ambiguity raised by their language must be eliminated by adhering much more closely to the language of the November Decision.

Comment [SA15]: A cross –reference eliminates any ambiguity created by trying to short-hand the Court's imputation ruling into one sentence.

apply to the States Cases, as well.

51. New GM's objection to allegations of pre-Sale conduct in the State Complaints, blending allegations relating to both Old GM and New GM without distinction, and referring to "GM-branded vehicles" are sustained.

52. In the California complaint, the use of the catch-all "GM-branded vehicles" is impermissible. The allegations contained in the following paragraphs impermissibly allege Old GM conduct: paragraphs 46 (speaking of acts in 2001), 47 (speaking of DeGiorgio's alleged concealment "while working for Old GM"), 48-54, 58-60, 71, 95-96, 112-114, 189-190, and 200-202. Additionally the following paragraphs contain impermissible blending of Old GM and New GM conduct, and must be clarified; they will pass through the bankruptcy gate only to the extent they intended to make reference to New GM: paragraphs 192, 195, 196, 198, 199, 203-206, and 211. However, the following paragraphs which allege that New GM knew of safety issues (even if from the time of its inception), acquired inherited knowledge of such, or gained new knowledge of such, are benign and thus permissible: paragraphs 9, 11, 16, 18, 22, 32, 43, 44, and 45.

53. In the Arizona complaint, which includes many identical allegations to those contained in the California complaint, allegations which make reference to plainly Old GM conduct are not permissible. The following paragraphs which include allegations of Old GM conduct are not permissible: paragraphs 92, 93, and 357; as are the paragraphs which make it impossible to tell whether it is Old GM or New GM conduct which is alleged: paragraphs 136, 139-180 and 289-310. However, the Arizona complaint's allegations that New GM knew of matters (even if from its inception) are benign and thus permissible, including paragraphs: 19, 81, 135, 137, 138, 139, 335, and 499.

54. Thus the State Complaints may proceed if, but only if, they are amended to fix the deficiencies in the Yellow Category noted above; but remain stayed only until such amendments occur.

2) Blue—Allegations relating to vehicles manufactured by Old GM

55. New GM cannot be held monetarily liable to the States (any more than it could be held liable to any other plaintiffs) for any violations (necessarily by Old GM) that took place before the 363 Sale. The extent to which New GM can be held liable under nonbankruptcy law for an Old GM manufactured vehicle with the Ignition Switch Defect for acts or omissions after the 363 Sale (which by definition is after the vehicle sale to the consumer) is a matter of ~~The claims in the State Complaints regarding vehicles manufactured by Old GM may proceed to the extent to which New GM can be held liable under~~ nonbankruptcy law which the Court leaves to the courts hearing the cases to decide. ~~for acts or omissions after the 363 Sale—*i.e.*, after sales of vehicles to consumers.~~ Although this Court defers this determination to the courts hearing such cases, to the extent nonbankruptcy law imposes duties at the time of a vehicle's sale only, and the relevant vehicle sales took place when New GM had not yet been formed and only Old GM was in existence, claims premised on any breaches of such duties are barred by the Sale Order, the April Decision, and the Judgment.

Comment [SA16]: Omitted language from page 56 of the November Decision that provides proper context.

D. The Elliott, Sesay and Bledsoe Complaints

1) Blue—Allegations Involving Old GM manufactured vehicles

56. The economic loss claims asserted in the *Elliott*, *Sesay*, and *Bledsoe* Complaints are not a model of clarity. To the extent they are actionable as matters of nonbankruptcy law, those claims asserted by Ignition Switch Plaintiffs are Independent Claims. The Court leaves this issue to nonbankruptcy courts after these complaints are amended to address their more egregious violations.

Comment [SA17]: Language from p57-58 of the November Decision.

57. The claims of Ignition Switch Plaintiffs who purchased used Old GM manufactured vehicles after the closing of the 363 Sale are barred in the same manner as Ignition Switch Plaintiffs who purchased Old GM vehicles before the 363 Sale. To the extent there is an issue as to whether Independent Claims have been asserted by them against New GM, that matter will be decided by other courts.

Comment [SA18]: The Court's ruling from p58 of the November Decision which was omitted from the Plaintiffs Proposed Judgment.

~~56.~~58. Non-Ignition Switch Plaintiffs are barred from asserting Independent Claims with respect to Old GM Vehicles. Until those deficiencies are cured, the Peller Complaints remained stayed. To the extent the Peller complaints allege claims for non-Ignition Switch matters against New GM for New GM manufactured vehicles, the Sale Order, April Decision and Judgment do not forbid them. ~~New GM's objections are overruled with respect to ignition switch claims and sustained with respect to non-ignition switch claims.~~

Comment [SA19]: The Court's ruling from page 59 of the November Decision is made explicit so other courts and plaintiffs can more readily understand and follow.

2) Green—Claims Premised on Old GM conduct

~~57.~~59. The successor liability claim in the *Bledsoe* complaint violates the Sale Order and may not proceed. The Peller complaints will remain stayed until they are amended to unambiguously remove any reliance on wrongdoing of Old GM.

Comment [SA20]: Part of the Court's ruling from page 59 of the November Decision.

~~58.~~60. References to conduct by Old GM, and references to "New GM" as "GM" violate the Sale Order. Plaintiffs may not rely on Old GM conduct as a predicate for claims against New

GM. Until these provisions are removed from the Peller complaints, the Peller actions remain stayed.

Comment [SA21]: Part of the Court's ruling from page 60 of the November Decision.

3) Yellow—Claims Seeking "to automatically impute" Old GM's knowledge to New GM

~~59.~~61. ~~Allegations in *Elliott*, *Sesay* and *Bledsoe* Complaints may impute to New GM knowledge inherited from Old GM and knowledge developed by New GM, to the extent permissible under nonbankruptcy law.~~ The Court's rulings as to imputation in other actions apply to these cases, as well.

4) Pink—Claims Seeking Punitive Damages from New GM with respect to Old GM manufactured vehicles.

~~60.~~62. Allegations in *Elliott* and *Sesay* Complaints for punitive damages are to be dealt with consistent with the principles set forth in this judgment. ~~permissible to the extent that they are asserted in connection with Independent or retained Product Liability claims. Such allegations related to non-ignition switch claims violate the Sale Order.~~

Comment [SA22]: Where cross-referencing makes sense, it eliminates the need to summarize a lengthier ruling, thus avoiding ambiguity.

5) ~~Other claims~~

~~61. Allegations in the *Elliott*, *Sesay* and *Bledsoe* Complaints relating to Independent Claims against New GM for negligent infliction of economic loss, negligent infliction of increased risk of personal injury, breach of duty to warn, civil conspiracy, and joint action depend on whether New GM had such duties under nonbankruptcy law and the Court leaves such issues to the nonbankruptcy court hearing these cases.~~

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Comment [SA23]: This is in the Other Complaints section of the Plaintiffs Proposed Judgment.

~~62. The *Elliott*, *Sesay* and *Bledsoe* Complaints will remain stayed until they are amended in accordance with this Order.~~

E. Other Complaints

1) "Failure to Recall/Retrofit Vehicles"

63. Obligations, if any, that New GM had to recall or retrofit Old GM vehicles were not Assumed Liabilities, *and* *New GM is not a successor to Old GM and* ~~*New GM*~~ *is not responsible for any failures of Old GM to do so.* But whether New *GM had* an independent duty to recall or retrofit previously sold Old GM vehicles with the Ignition Switch Defect that New GM did not manufacture is a question of nonbankruptcy law. The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law for such Old GM vehicles, but allows this claim to be asserted by the Ignition Switch ~~p~~Plaintiffs and the Post-Closing Accident Plaintiffs (such as has been asserted by the plaintiff in *Moore v. Ross*) with the Ignition Switch Defect, leaving determination of whether this is a viable Independent Claim~~the duty issue~~ to the court hearing this action. For the avoidance of doubt, claims referred to in this section may not be asserted by Plaintiffs in Old GM Vehicles without the Ignition Switch Defect and/or Pre-Closing Accident Plaintiffs against New GM.

2) "Negligent Failure to Identify Defects or Respond to Notice of a Defect"

64. Obligations, if any, that New GM had to identify or respond to defects in previously sold Old GM Vehicles were not Assumed Liabilities, and New GM is not a successor to Old GM and is not responsible for any failures of Old GM to do so. But ~~W~~whether New GM had an independent duty to identify or respond to defects in previously sold Old GM vehicles that New GM did not manufacture is a question of nonbankruptcy law. The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law for such Old GM Vehicles, and allows this claim to be asserted by the Ignition Switch ~~p~~Plaintiffs and Post-Closing Accident Plaintiffs with the Ignition Switch Defect, leaving determination of whether this is a viable Indpendent Claim ~~that issue~~ to the court hearing that action. For the avoidance of

Comment [SA24]: Language is intended to show that New GM got the benefit of this finding from the Sale Order and that Plaintiffs so-called Independent Claims must ultimately not circumvent this provision. The Court stated this proposition on page 47 of the November Decision when it discussed, as a condition subsequent for getting through the bankruptcy gate, that successor liability claims dressed up to look like something else cannot be asserted against New GM.

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Comment [SA25]: This is inserted to make explicit the Court's ruling as to who can assert an Independent Claim, and who cannot. See page 42, n70. Helps other courts and plaintiffs synthesize the Court's rulings.

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Comment [SA26]: The Court incorporated by reference the findings it made on Failure to Recall cause of action. See page 61-62 of the November Decision.

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doubt, claims referred to in this section may not be asserted by Plaintiffs in Old GM Vehicles without the Ignition Switch Defect and/or Pre-closing Accident Plaintiffs against New GM.

3) "Negligent Infliction of Economic Loss and Increased Risk"

65. Claims that New GM had a duty to warn consumers owning Old GM manufactured vehicles of the Ignition Switch Defect but instead concealed it, and by doing so, the economic value of the plaintiffs' vehicles was diminished (such as been raised by the plaintiffs in *Elliott* and *Sesay*) were not Assumed Liabilities, and New GM is not a successor to Old GM and is not responsible for any failures of Old GM to do so. But whether ~~are permissible to the extent, but only the extent, that~~ New GM had an independent "duty to warn" consumers owning~~ers of~~ previously sold Old GM manufactured cars of the defect is a matter of nonbankruptcy law. The Court does not decide whether there is the requisite duty for New GM under nonbankruptcy law to warn for such Old GM Vehicles with the Ignition Switch Defect, and allows this claim to be asserted by the Ignition Switch Plaintiffs to the extent, but only the extent, that New GM had an independent "duty to warn" owners of Old GM Vehicles of the Ignition Switch Defect (as relevant to situations *in which no one is alleged to have been injured* by that failure, but where the vehicles involved are alleged to have lost value as a result). ~~This is a question of nonbankruptcy law,~~ Determination of whether this is a viable Independent Claim will be left ~~which the Court leaves~~ to the nonbankruptcy court(s) hearing the underlying actions. For the avoidance of doubt, claims referred to in this section may not be asserted by Plaintiffs in Old GM Vehicles without the Ignition Switch Defect and/or Pre-Closing Accident Plaintiffs against New GM.

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Comment [SA27]: The language makes explicit that the Court's ruling for this cause of action is similar to how it treated the failure to recall cause of action.

~~64.~~66.

4) "Civil Conspiracy"

De Los Santos v. Ortega, in Texas state court, and the Peller Complaints in the District of Columbia, involve claims that New GM was involved "in a civil conspiracy with others to conceal the alleged ignition switch defect." Claims of this character were not Assumed Liabilities. The extent to which they might constitute Independent Claims requires a determination of nonbankruptcy law~~, beyond that, t~~The Court leaves the determination of the nonbankruptcy issue as to whether claims of this sort are actionable, with respect to vehicles previously manufactured and sold by a different entity, to the nonbankruptcy court hearing the underlying action. For the avoidance of doubt, claims referred to in this section may not be asserted by Plaintiffs in Old GM Vehicles without the Ignition Switch Defect and/or Pre-Closing Accident Plaintiffs against New GM.

~~65.~~67.

5) "Section 402B—Misrepresentation by Seller"

~~66.~~68. Claims based on "Section 402B-Misrepresentation by Seller" fall within the definition of assumed Product Liabilities, and such claims may be asserted against New GM, *provided however*, whether New GM is liable for such claims shall be determined by the non-bankruptcy courts overseeing such lawsuits.

6) Claims Based on Pre-Sale Accidents

69. All ~~C~~claims brought by Pre-Closing Accident Plaintiffs~~ased on *pre* Sale accidents, (~~like the *Coleman* action in the Eastern District of Louisiana), involving, by definition, Old GM manufactured vehicles should have been dismissed, or should at least be stayed pending

the resolution of the appeal of the April Decision and June Judgment. These cases are currently impermissible under the Sale Order, April Decision and June Judgment, and cannot proceed.

~~67.~~70. Jurisdiction. The Court shall retain exclusive jurisdiction to the fullest extent permissible under law, to construe or enforce the Sale Order, this Judgment and/or the Decision on which it was based. The Judgment shall not be collaterally attacked, or otherwise subject to review or modification, in any Court other than this Court or any court exercising appellae authority over this Court.

Comment [SA28]: This provision was in the Court's June 1 Judgment and should be included in the Judgment relating to the November Decision..

7) Amended Complaints

~~68.~~71. For the avoidance of any doubt, complaints amended in compliance with this Judgment may be filed in the non-bankruptcy courts with jurisdiction over them, without violating any automatic stay or injunction or necessitating further Bankruptcy Court approval to file same. It will be up to the other courts (including the MDL court which has stayed many actions) to decide when it would be appropriate to file such amendments.

Comment [SA29]: Many cases are stayed by MDL 2543 and this clause is intended to let those courts control their docket as to when amendments should be permitted.

Dated: New York, New York
December __, 2015

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit C

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September 23, 2015

VIA E-MAIL TRANSMISSION
AND ECF FILING
The Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004

Re: In re Motors Liquidation Company, *et al.*
Case No. 09-50026 (REG)

Dear Judge Gerber:

Pursuant to page 5 of Your Honor's September 3, 2015 *Scheduling Order* (Dkt. No. 13416), we submit this Letter regarding the claims made in Other Plaintiffs' Complaints against New GM that violate the Sale Order and Judgment, but are not raised by the Bellwether Complaints, the MDL Complaint or the States' Complaints (collectively, the "**Main Cases**").[1] Because of the large volume of papers already submitted (and to be submitted) to the Court pursuant to the Scheduling Order, for efficiency purposes, New GM is only identifying at this time the specific claims in the Other Plaintiffs' Complaints that violate the Sale Order and Judgment. New GM believes that submitting marked-up versions of the Other Plaintiffs' Complaints is not necessary for the Court to rule on the issues raised in this Letter. If the Court decides it would be helpful to have marked-up versions of the Other Plaintiffs' Complaints, we will promptly submit them.

Set forth below are claims in Other Plaintiffs' Complaints that violate the Sale Order and Judgment, with an explanation of New GM's position and references to representative cases where the issue is raised.[2]

[1] The issues raised by the Other Plaintiffs' Complaints are found in multiple cases filed against New GM. Pursuant to the Scheduling Order, New GM was permitted to identify "representative cases" that raise these issues. New GM's arguments are applicable to all such cases, and any rulings by the Court should be binding on all plaintiffs in such cases.

[2] New GM reserves the right to supplement this Letter if it becomes aware of other claims, not in the Main Cases or referenced in this Letter, that violate the Sale Order and Judgment.

Failure to Recall / Retrofit Vehicles (*e.g. Moore v. Ross, et al.*, No. 2011-CP-42-3625, 4th Am. Complaint at p. 3 ¶¶ f, g (S.C. 7th Cir. Ct. Com. Pl.) (**Exh. "A" hereto**)): These claims allege that New GM had a duty to recall or retrofit Old GM vehicles. But such claims, if they exist as a matter of law at all, are Retained Liabilities. Once New GM purchased Old GM's assets free and clear of claims and obligations relating to Old GM vehicles, New GM (an entity that did not manufacture or sell the Old GM vehicles at issue) did not have any ongoing duties to Old GM vehicle owners (other than specific Assumed Liabilities). Although New GM had obligations under the Motor Vehicle Safety Act and to the U.S. Government based on a covenant in the Sale Agreement ("**Recall Covenant**"), this covenant was not an Assumed Liability. Vehicle owners were not third party beneficiaries under the Sale Agreement, and did not have a private right of action relating to any breach of the Recall Covenant. *See New GM's Opening Brief With Respect to the Imputation Issue*, Dkt. No. 13451 at 17-18; *New GM's Letter Brief re Bellwether Complaints*, Dkt. No. 13456, at 3. Thus, claims for failure to recall or retrofit the vehicles violate the Sale Order.

Negligent Failure to Identify Defects Or Respond To Notice of a Defect (*e.g., Benbow v. Medeiros Williams, Inc., et al.*, No. 14 789, Complaint ¶ 16 (Mass. Hampden Cty. Super. Ct.) (**Exh. "B" hereto**)): These claims purport to allege that New GM should have identified the defect earlier and taken some sort of action in response. These are Retained Liabilities for the same reasons as the claims based on an alleged failure to recall or retrofit Old GM vehicles. Such duties with respect to Old GM vehicles remained with Old GM.

Negligent Infliction of Economic Loss and Increased Risk (*e.g., Elliott v. General Motors LLC*, No. 1:14-cv-00691, 1st Am. Complaint ("***Elliott* Complaint**") ¶¶ 79-86 (D.D.C.) (**Exh. "C" hereto**)):[3] This claim alleges that New GM had a duty to warn consumers about the alleged defect but instead concealed it, and by doing so, the economic value of plaintiffs' vehicles was diminished. This claim violates the Sale Order for the reasons set forth in New GM's Bellwether Complaints letter relating to post-vehicle failure-to-warn claims and fraud claims. Dkt. No. 13456 at 2-3; *see also* the forthcoming *New GM Marked MDL Letter*. Such claims are economic loss claims that relate to Old GM conduct at the time the vehicle was sold. They do not "arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents," and are not otherwise Assumed Liabilities.

Civil Conspiracy (*e.g., De Los Santos v. Ortega, et al.*, No. 2014CCV-6078802, 1st Am. Petition ¶¶ 50-51 (Tex. Nueces Cty. Ct.) (**Exh. "D" hereto**)):[4] These claims allege that New GM was involved in a civil conspiracy with others to conceal the alleged ignition switch defect. Such claims are based on representations, omissions, or other alleged acts relating to the supposed concealment rather than, as set forth in the Sale Agreement, being "caused by motor vehicles," "aris[ing] directly out of" personal injury or property damages, and being "caused by accidents or incidents." *See also* Dkt. No. 13451 at 18-19; Dkt. No. 13456, at 2-3. As such, these claims are not Product Liabilities, and thus not Assumed Liabilities under the Sale Agreement.

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[3] The same claim is asserted in *Sesay et al. v. General Motors LLC*, No. 1:14-md-02543, Complaint ("***Sesay* Complaint**") ¶¶ (69-76).

[4] Claims for "Civil Conspiracy, Joint Action or Aiding and Abetting" are also asserted in the *Elliott* Complaint (¶¶ 114-123), *Sesay* Complaint (¶¶ 85-94), and the complaint filed in *Bledsoe v. General Motors LLC*, No. 1:14-cv-07631 (S.D.N.Y.), ¶¶ 115-121.

Section 402B – Misrepresentation by Seller (*e.g.*, *Rickard v. Walsh Const. Co. et al.*, No. GD-14-020549, Am. Complaint ¶¶ 73aaa-73ccc (Pa. Allegheny Cty Ct. Com. Pleas) (**Exh. "E" hereto**)):[5] These types of claims are based on alleged representations or omissions, and do not satisfy the definition of Product Liabilities because such claims are not "caused by motor vehicles," but are instead caused by statements or omissions. They also do not "arise directly out of" personal injuries or property damages and are not "caused by accident or incidents." Instead, they arise from and are caused by statements, omissions or other Old GM conduct. Such representation or omission-based claims were not assumed by New GM.

Claims Based on Pre-Sale Accidents (*e.g.*, *Coleman v. General Motors LLC, et al.*, No. 1:15-cv-03961, Complaint (E.D. La.) (**Exh. "F" hereto**)): The Judgment authorized New GM to send letters to plaintiffs who filed lawsuits asserting claims based on accidents that occurred prior to the 363 Sale, and set forth procedures with respect to such letters and potential responses. The Scheduling Order superseded certain procedures in the Judgment. As a result, New GM includes herein a representative example of complaints that assert claims based on pre-363 Sale accidents. For the reasons set forth in the Sale Agreement, the Decision and the Judgment, New GM is not liable for claims based on accidents that occurred prior to the closing of the 363 Sale. The Sale Agreement is clear that Retained Liabilities (as defined in Section 2.3(b) of the Sale Agreement) of Old GM specifically include "all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date[.]" Sale Agreement, § 2.3(b)(ix); *see also Judgment*, ¶ 7. Thus, lawsuits filed against New GM that are based on accidents or incidents occurring prior to the closing of the 363 Sale should be dismissed as provided by the Judgment.

Respectfully submitted,

/s/ Arthur Steinberg

Arthur Steinberg

AJS/sd

cc: Edward S. Weisfelner
Howard Steel
Sander L. Esserman
Jonathan L. Flaxer
S. Preston Ricardo
Matthew J. Williams
Lisa H. Rubin
Keith Martorana
Daniel Golden

[5] Plaintiff filed with this Court a *No Dismissal Pleading Of Carolyn Rickard, Administratrix Of The Estate Of William J. Rickard, Deceased*, dated September 4, 2015 [Dkt. No. 13423]. This letter, and New GM's other letters and pleadings filed pursuant to the Scheduling Order should be deemed its response to the *Rickard* No Dismissal Pleading.

Honorable Robert E. Gerber
September 23, 2015
Page 4

Deborah J. Newman
Jamison Diehl
William Weintraub
Steve W. Berman
Elizabeth J. Cabraser
Robert C. Hilliard
Gary Peller