HEARING DATE AND TIME: March 26, 2020 at 2:00 p.m.

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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 BRIEF BY GENERAL MOTORS LLC TO OBJECTION TO MOTION TO ENFORCE THE BANKRUPTCY COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION, AND THE RULINGS IN CONNECTION THEREWITH, WITH RESPECT TO ROBERT RANDALL BUCHANAN

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General Motors LLC ("**New GM**") submits this reply brief ("**Reply**") in response to *Robert Randall Buchanan's Objection To 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 Robert Randall Buchanan*, dated March 12, 2020 [ECF No. 14684] ("**Objection**") filed by Buchanan,[1] and in further support of the relief requested in the Buchanan Motion to Enforce.

PRELIMINARY STATEMENT

Buchanan's Amended Complaint violates the Sale Order and, in particular, the Second Circuit's 2019 Opinion, which incredibly, was not even cited, let alone addressed by Buchanan in the Objection. Simply put, Buchanan's so-called Independent Claim for "failure to warn" is nothing more than a failure to warn claim against the manufacturer (*i.e.*, Old GM) of the Subject Vehicle. If recognized by applicable state law, such a claim is part of the Assumed Liability which Buchanan concedes cannot bear punitive damages.[2]

The Second Circuit 2019 Opinion specifically dealt with a post-363 Sale accident involving a Used Car Purchaser,[3] the same paradigm as Buchanan. The Second Circuit held that the Sale Order would be enforced against a Used Car Purchaser, except for Assumed Liabilities which do

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[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Motion By General Motors LLC To Enforce The Bankruptcy Court's July 5, 2009 Sale Order And Injunction And The Rulings In Connection Therewith, With Respect To Robert Randall Buchanan*, filed by New GM on February 4, 2020 [ECF No. 14667] ("**Buchanan Motion to Enforce**"). Capitalized terms not defined in this Preliminary Statement or in the Buchanan Motion to Enforce are defined in subsequent sections of this Reply.

[2] *See* Objection, ¶ 5 (referencing that Counts I and II in the Amended Complaint are Product Liabilities, that Count III is a failure to warn claim allegedly based on New GM conduct, and that Count V asserts a claim for punitive damages allegedly based on New GM conduct).

[3] *See In re Motors Liquidation Co.*, 943 F.3d 125, 127 (2d Cir. 2019) ("New GM assumed the liability of Old GM with respect to post-Sale accidents involving automobiles manufactured by Old GM; the claims thus assumed include those by persons who did not transact business with Old GM, such as individuals who never owned Old GM vehicles (but collided with one) and (hypothetical) ***persons who bought Old GM cars used after the Sale***." (emphasis added)).

not bear punitive damages.[4] For non-Assumed Liabilities, paragraph 46 of the Sale Order explicitly holds that New GM shall not be deemed to have de facto merged or be considered a mere continuation of Old GM, ***or its enterprise***. In particular, New GM shall have no successor, transferee, derivative or vicarious liabilities of any kind for any claim, including ***under any product liability***, whether known before or after the 363 Sale. Moreover, any actions taken by New GM in connection with the Sale Agreement cannot be used as a basis for a successor/transferee type claim against New GM.[5]

Under the Sale Agreement, New GM agreed, among other things, (a) to perform Old GM's "glove box" warranty claim, (b) agreed to comply with Old GM's recall obligations under federal law with respect to Old GM vehicles, and (c) agreed to hire the majority of Old GM's employees. Those actions cannot form the foundation of a new and separate claim against New GM (*i.e.*, an Independent Claim).[6] Essentially, the Second Circuit clarified that an Independent Claim cannot be based on the fact that New GM purchased the majority of Old GM's assets and, in that capacity,

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4 *See Motors Liquidation Co.*, 943 F.3d at 133 ("Here, punitive damages are not an Assumed Liability in the Sale Agreement, and the Sale Order's free and clear provision bars punitive damages claims under a theory of successor liability.").

5 The text of paragraph 46 of the Sale Order is as follows: "Except for the Assumed Liabilities expressly set forth in the MPA, none of the Purchaser, its present or contemplated members or shareholders, its successors or assigns, or any of their respective affiliates or any of their respective agents, officials, personnel, representatives, or advisors shall have any liability for any claim that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser shall not be deemed, as a result of any action taken in connection with the MPA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchased Assets from and after the Closing); (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated."

6 *See, e.g.,* Sale Order, ¶ 46, June 2017 Opinion, August 2017 Opinion.

is viewed by certain state courts, in certain situations, as a "successor" to Old GM.[7] Nor can an Independent Claim be based (in whole or part) on duties and obligations that New GM agreed to perform under the Sale Agreement. Rather, an Independent Claim against New GM must be based solely on New GM's post-363 Sale, newly-incurred duties, in its capacity as a non-successor, and a non-manufacturer/non-seller of an Old GM vehicle.

Paragraph 48 of the Sale Order is also highly relevant to this issue. It provides that for non-Assumed Liabilities, New GM shall have ***no responsibility or obligation*** of Old GM relating to the purchased assets. That means if New GM assumed Old GM's duty to warn as part of its assumption of Product Liabilities, it did not also incur its own separate duty to warn an Old GM vehicle owner as an Independent Claim, unless post-363 Sale, New GM incurred a new duty, in its capacity as a non-successor, and a non-manufacturer/non-seller of an Old GM vehicle.[8]

Here, Buchanan is transparent in what he is trying to do. He told the Georgia Court both orally, and in writing, that he is seeking punitive damages based on a failure to warn claim against New GM, but that duty is premised on a ***manufacturer's*** (*i.e.*, Old GM's) duty to warn under Georgia law.[9] That type of claim is at best an Assumed Liability and not an Independent Claim.

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[7] *See* n.14 *infra*.

[8] The text of paragraph 48 of the Sale Order is as follows: "Except for the Assumed Liabilities, or as expressly permitted or otherwise specifically provided for in the MPA or this Order, the Purchaser shall have no liability or responsibility for any liability or other obligation of the Sellers arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided in this Order and the MPA, the Purchaser shall not be liable for any claims against the Sellers or any of their predecessors or Affiliates, and the Purchaser shall have no successor, transferee, or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor, or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to the Sellers or any obligations of the Sellers arising prior to the Closing."

[9] *See* Excerpt from Buchanan's PowerPoint presentation, used in the Georgia Court, which is attached to the Buchanan Motion to Enforce as Exhibit "I." While that PowerPoint presentation references an investigation performed by New GM with respect to the Buchanan accident, such investigation occurred ***four years after the accident*** (in 2018), and there is no causal link between that investigation and any alleged failure to warn Mrs. Buchanan four years earlier. Moreover, Buchanan's argument—quoted below—is that a manufacturer has the duty to warn—but here, the manufacturer was Old GM, not New GM. *See also* Georgia Court January 27, 2020 Hr'g Tr., at 37:8-10 ("What's the law in Georgia on that? A manufacturer has a duty to warn months, years or

Notably, Buchanan has never corrected these misstatements in the Georgia Court even though he has had multiple opportunities to do so.

Even Buchanan's Amended Complaint highlights the fallacy of his argument. Buchanan acknowledges that Count I of his Amended Complaint asserts an Assumed Liability.[10] Paragraph 35(c), which is in Count I of the Amended Complaint, states that there was a failure to warn Buchanan of the defects in her vehicle.[11] Since Buchanan's wife was a Used Car Purchaser having purchased her Old GM vehicle after the 363 Sale, the only one who could have warned her was New GM (not Old GM). That means if there was a breach by New GM of a failure to warn obligation it was a breach of an Assumed Liability, which Buchanan concedes is not a separate Independent Claim and cannot bear punitive damages.

Buchanan's discussion of the imputation doctrine is an irrelevant side-show. Knowledge (by a former employee of Old GM that is hired by New GM as contemplated by the Sale Agreement) is not actionable, as a separate claim, unless it is coupled with a separate legal duty incurred after the 363 Sale.[12] Buchanan has linked that legal duty to a manufacturer's duty to warn, which again is, at most, an Assumed Liability but not an Independent Claim.

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even decades after the date of the first sale of the product."). A copy of the Georgia Court's January 27, 2020 hearing transcript is attached hereto as **Exhibit "A."**

[10] *See* Objection, ¶ 5 ("Counts I and II assert Product Liability claims assumed by New GM in the Sale Agreement.").

[11] The full text of paragraph 35(c) of the Buchanan Amended Complaint is as follows: "35. The defects in the Trailblazer include, but are not limited to, the following: . . . (c) A failure to adequately warn Mrs. Buchanan and other owners and operators of Subject Vehicles, or the public in general, about the unsafe and defective condition and design of the Subject Vehicles so that individuals like Mrs. Buchanan could make informed and prudent decisions regarding traveling or riding in such vehicles[.]"

[12] *See Holland v FCA US LLC*, Case No. 1:15 CV 121, 2015 WL 7196197, at *4 (N.D. Ohio Nov. 16, 2015) ("While the [post-sale] TSB may serve as evidence that FCA had knowledge of the potential existence of rust and corrosion on 2004-2005 Pacificas, knowledge alone is insufficient to establish a duty on the part of FCA to warn Plaintiffs that their vehicles may be affected. Plaintiffs must allege a relationship between FCA and Plaintiffs that gave rise to a duty to warn.").

Buchanan's discussion of the *Pitterman* case fares no better. *First*, Pitterman specifically withdrew any request for punitive damages so that issue was not relevant in that case.[13] *Second*, *Pitterman* was decided before the Second Circuit 2019 Opinion which recognized the full application of the Sale Order, including the provisions relating to no-successor/transferee liability; that Opinion clarified and defined the landscape going forward of how Independent Claims should be construed for post-363 Sale product liability cases.[14] *Third*, Pitterman originally did not get through the bankruptcy gate because of the same type of infirmities that, as described herein, are present in Buchanan's Amended Complaint. And, *fourth*, unlike Pitterman, Buchanan expressly linked his New GM duty to warn claim to the duty to warn that a manufacturer (Old GM) of the Subject Vehicle has; at most, that is an Assumed Liability which does not encompass punitive damages.

Significantly, it is indisputable that Buchanan's Original Complaint violated applicable rulings from this Court. Indeed, Buchanan's immediate amendment to that complaint, after receipt of a demand letter from New GM, was tantamount to an admission of his misconduct. But try as he might, Buchanan cannot allege a facially valid Independent Claim against New GM. Buchanan's Independent Claim is based solely on the following alleged facts: (a) a statement by New GM's CEO noting the importance of a safety feature in New GM vehicles, (b) Old GM and New GM allegedly shared a common component supplier, (c) Old GM received warranty claims, and ***allegedly*** attempted to seek reimbursement from the component supplier, (d) New GM hired

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[13] *See In re Motors Liquidation Co.*, 568 B.R. 217, 229 (Bankr. S.D.N.Y. 2017) ("The Pitterman Plaintiffs have amended their complaint to remove any claim for punitive damages.").

[14] Restatement (Third) of Torts: Prod. Liab., § 13, and the cases that rely on it which discuss liability of a "successor," do not apply here because of the Second Circuit 2019 Decision. Specifically, if a liability is based on rights contemplated by the Sale Agreement, or if the foundational basis of the liability is based on the defendant being a purchaser of the debtor's assets, that is a form of transferee liability proscribed by the Sale Order as upheld by the Second Circuit 2019 Decision.

employees of Old GM as contemplated by the Sale Agreement, and (e) Old GM and New GM never warned Buchanan of alleged issues relating to the component. Even assuming these allegations are true, they cannot form the factual predicate of an Independent Claim. They clearly are not based ***solely*** on New GM conduct. Essentially, they are allegations that support a claim based on Old GM's alleged duty to warn. As noted, that would be an Assumed Liability which cannot bear punitive damage. Importantly, Buchanan asserts ***no*** conduct or interaction of any kind between New GM and the owner of the vehicle. Without that conduct, New GM, as a non-successor to Old GM, and as non-manufacturer/non-seller of the Subject Vehicle, could not have incurred a new and separate duty to the owner of the Subject Vehicle. In sum, those alleged facts do not allege a facially valid Independent Claim.

Finally, it bears noting that even though the Second Circuit and this Court came to the same conclusion that Post-Sale Accident Plaintiffs cannot seek punitive damages against New GM based on a successor/transferee theory of recovery, the reasoning was different. The Second Circuit based its ruling on a full application of the provisions of the Sale Order, while this Court premised its holding based on the provisions of the Bankruptcy Code (an insolvent debtor would not be liable for punitive damages so neither should its alleged successor). Importantly, the Second Circuit never held this Court's reasoning was incorrect; it just never had to reach the issue this Court ruled on. Under this Court's analysis (which remains valid), Old GM, as the manufacturer of the Subject Vehicle would never be liable for punitive damages based on a failure to warn. It logically follows that New GM, as the purchaser of Old GM's assets, who had no relationship or interaction with Buchanan, would not have a greater liability (*i.e.*, punitive damages) under a failure to warn claim than the manufacturer of the Subject Vehicle had.

Accordingly, by its Buchanan Motion to Enforce, New GM requests this Court's assistance in enforcing important Sale Order limitations against the unwarranted and improper punitive damages request in the Amended Complaint. Until these issues are appropriately addressed, Buchanan should be stayed from further litigation in the Georgia Court, as it is New GM's position that, without the necessary changes cited herein being made by Buchanan, his continued litigation there is in violation of this Court's Sale Order and other rulings.[15]

ARGUMENT

A. The Independent Claim/Punitive Damages Landscape Has Changed Since 2015

In its recent Opinion, the Second Circuit conclusively stated that Used Car Purchasers are bound by the Sale Order and Sale Agreement. Specifically, the Second Circuit held:

> There is a single question on this appeal. New GM assumed the liability of Old GM with respect to post-Sale accidents involving automobiles manufactured by Old GM; ***the claims thus assumed include*** those by persons who did not transact business with Old GM, such as individuals who never owned Old GM vehicles (but collided with one) and (hypothetical) ***persons who bought Old GM cars used after the Sale***. The question on appeal is whether New GM is liable for punitive damages with respect to such claims. We conclude, as a matter of contract interpretation, that New GM is not.

Motors Liquidation Co., 943 F.3d at 127 (emphasis added). The Second Circuit further ruled that "punitive damages are not an Assumed Liability in the Sale Agreement, and the Sale Order's free and clear provision bars punitive damages claims under a theory of successor liability." *Id*. at 133. Thus, Mrs. Buchanan—who purchased the Subject Vehicle after the closing of the 363 Sale—is bound by the Sale Order and the rulings prohibiting punitive damages claims against New GM.

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[15] While Buchanan has cured some of the improper allegations in his Original Complaint, Buchanan is seeking – through his Amended Complaint – to add an improper successor liability allegation in violation of the Sale Order and the Bankruptcy Court's December 2015 Judgment. *See* Amended Complaint, ¶ 11 ("Pursuant to the Agreement and other orders of the Bankruptcy Court, New GM ***emerged out of bankruptcy*** and continued the business of Old GM . . ." (emphasis added)). New GM was never in bankruptcy; it was a new and distinct company that purchased the assets of Old GM.

Moreover, after the November 2015 Decision, this Court has clarified what type of allegations are not sufficient to allege an Independent Claim. For example, this Court held in the June 2017 Opinion that it "is not acceptable . . . to base allegations ***on generalized knowledge*** of both Old GM and New GM. To pass the bankruptcy gate, a complaint must clearly allege that its causes of action are based solely on New GM's post-closing wrongful conduct." *Motors Liquidation Co.*, 568 B.R. at 231 (emphasis added). The Buchanan Amended Complaint fails to meet this standard.

Subsequently, this Court reiterated the holding in the August 2017 Opinion, finding that "conclusory allegations and generalities" are insufficient to properly allege an Independent Claim. *In re Motors Liquidation Co.*, 576 B.R. 313, 320 (Bankr. S.D.N.Y. 2017). This Court further held:

> [Reichwaldt's] Proposed FAC does not identify any specific New GM conduct upon which to base an Independent Claim. The New GM conduct to which the Proposed FAC refers are a series of public statements from New GM CEO Mary Barra, made to Congress in the context of the ignition switch scandal. While the merits of the case are appropriately decided by the Georgia Federal Court, general statements such as that New GM will "do the right thing" and "accept responsibility for our mistakes" do not satisfy this Court's requirement that Independent Claim plaintiffs "clearly allege that its causes of action are based solely on New GM's post-closing wrongful conduct." Permitting a complaint through the bankruptcy gate on the basis of general public statements such as these would completely end-run this Court's gatekeeping function. The Proposed FAC's allegations that New GM purchased Old GM's books and records and has profited from maintenance, repair, and selling parts for Old GM vehicles—without a specific tie to the truck model or alleged design defect at issue here—are impermissible bases for an Independent Claim.

Id. at 322-23 (citations omitted). Contrary to Buchanan's arguments, the holdings in the June 2017 Opinion and the August 2017 Opinion are directly applicable to the inadequate allegations for an Independent Claim made in the Buchanan Amended Complaint.

It is ironic that Buchanan asserts that New GM's reliance on the *Pitterman* decision with regard to his improperly pled Independent Claim is "unavailing" (*see* Objection, ¶¶ 17, 19) since he specifically relies (albeit wrongly) on *Pitterman* to support his flawed argument. *See* Objection,

¶ 9. In any event, *Pitterman's* holding regarding improperly pled Independent Claims is on point and binding on Buchanan. In contrast, Buchanan's reliance on other rulings made in *Pitterman* are misplaced because of the distinctions regarding Pitterman cited on pages 5 above, including that, in *Pitterman*, the plaintiff dropped his claim for punitive damages.

B. The Allegations Buchanan Identifies in Support of His "Independent Claim" are Insufficient to Allow Such Claim to Pass Through the Bankruptcy Gate

The Buchanan Lawsuit has been pending for almost four years and, during that time period, Buchanan has taken significant discovery. Despite these facts and the opportunity to amend the Original Complaint, Buchanan can only point to a few allegations in support of his so-called Independent (failure to warn) Claim. And, as demonstrated below, none of these allegations are sufficient to allow Buchanan's alleged Independent Claim to pass through the bankruptcy gate.

Buchanan's identified allegations, and New GM's explanations below, demonstrate why Buchanan has not pled a facially valid Independent Claim:

> **Buchanan's Allegation:** "Despite its knowledge of the high failure rates of the SWAS in the Subject Vehicles, including Mrs. Buchanan's vehicle, and that the SWAS had well-known technology issues, New GM chose not to warn Mrs. Buchanan of the defective SWAS in her Trailblazer on or before November 10, 2014." Objection, at pp. 6-7.
>
> **New GM Response:** This is a conclusory and general allegation that is legally insufficient to allege an Independent Claim. *See* June 2017 Opinion; August 2017 Opinion. In addition, as stated in another allegation identified by Buchanan below, these alleged "high failure rates" began "almost immediately upon the first sale of the 2006 model year vehicles[.]" This clearly demonstrates that this allegation concerns, and at a minimum is based upon, Old GM knowledge and not solely New GM knowledge. As this Court has held, it is inappropriate "to base allegations on generalized knowledge of both Old GM and New GM. To pass through the bankruptcy gate, a complaint must clearly allege that its

causes of action are based ***solely*** on New GM's post-closing wrongful conduct." *Motors Liquidation Co.*, 568 B.R. at 231.

Buchanan Allegation: "Old GM's and New GM's component supplier, Alps Electric (North America), Inc. ("Alps") manufactured the SWAS in Mrs. Buchanan's Trailblazer," (¶ 20), and the Subject Vehicles. (¶ 21). Objection, at p. 7.

New GM Response: Again, it is inappropriate to allege an Independent Claim based on ***both*** Old GM ***and*** New GM conduct, which this allegation clearly does. Further, whether or not Alps was a New GM supplier, is not germane to establishing whether New GM incurred a new post-363 Sale duty to warn Buchanan.

Buchanan Allegations: "[A]lmost immediately upon the first sale of the 2006 model year vehicles[,]" "Old GM began receiving high rates of warranty claims for SWAS failures in the Subject Vehicles[.]" (¶ 22). "The warranty claims were so high that Old GM attempted to get Alps to reimburse GM for the cost of these warranty claims." (¶ 23). Objection, at p. 7.

New GM Response: This allegation ***only*** concerns Old GM conduct, which is clearly insufficient to allege an Independent Claim.

Buchanan Allegation: "New GM emerged out of bankruptcy and continued the business of Old GM with many, if not most, of Old GM's employees [sic], and on information and belief, with most of the same senior-level management, officers, and directors, as well as its records, tests, and documents generated in the creation of the defective steering wheel angle sensors." (¶ 11). Objection, at p. 7.

New GM Response: In addition to this allegation inappropriately asserting that New GM "emerged" out of bankruptcy (which it did not), it is nothing more than a general, successor liability allegation that is barred by the Sale Order for establishing an Independent Claim. *See Motors Liquidation Co.*, 576 B.R. at 323 ("allegations that New GM purchased Old GM's books and records and has profited from maintenance, repair, and selling parts for Old GM vehicles—without a specific tie to the truck model or alleged design defect at issue here—are impermissible bases for an Independent Claim").

Buchanan Allegation: "The Design Release Engineer for the SWAS, Paul Shaub, as well as other Old GM employees, knew that the technology had "well known issues," meaning the SWAS in the Subject Vehicles were failing at a high rate and disabling the StabiliTrak system." (¶ 23). Objection, at p. 7.

New GM Response: Again, this allegation ***only*** concerns Old GM conduct, which is clearly insufficient to allege an Independent Claim.

Buchanan Allegation: "Mr. Shaub, as well as numerous other Old GM employees, became New GM employees. After becoming New GM employees, New GM also chose not to warn owners and operators of the Subject Vehicles that these sensors were failing at high rates and that these failures disabled the StabiliTrak in their vehicles." (¶ 25). Objection, at p. 7.

New GM Response: Buchanan identifies no, new independent conduct by Mr. Shaub (or any other New GM employee) which would support an Independent Claim. This allegation is based (at least in major part) on what Mr. Shaub is alleged to have learned as an ***Old GM employee***. Permitting an Independent Claim to pass through the bankruptcy gate based on this type of general, conclusory allegation "would completely end-run this Court's gatekeeping function." *Motors Liquidation Co.*, 576 B.R. at 323. Furthermore, an important factor why the U.S. government agreed to participate as the purchaser in the 363 Sale was to preserve the jobs of Old GM employees. The knowledge that came with the hiring of Old GM employees was therefore a natural by-product of the 363 Sale. That knowledge might have some relevance to establish an Assumed Liability against New GM. But it does not, standing alone, create a new duty for New GM, especially because the Sale Order expressly holds that (a) New GM is not a successor to Old GM, (b) New GM is acquiring Old GM's business free and clear of successor/transferee liability, (c) New GM is not liable for actions taken in connection with the Sale Agreement, and (d) New GM is not acquiring Old GM's obligations (*i.e.*, failure to warn) unless it is in the context of an Assumed Liability.

In addition, in his Objection, Buchanan asserts that Count III in his Amended Complaint is an Independent Claim (Objection, ¶ 5). But a review of the allegations in that Count unquestionably demonstrates that it is not. Paragraphs 43 to 45 (which do not incorporate by reference previous paragraphs in the Amended Complaint) merely assert in general and conclusory fashion that New GM failed to warn Mrs. Buchanan of the SWAS and the allegedly disabled StabiliTrak. Buchanan's request for punitive damages similarly asserts, in conclusory and general fashion, that "New GM, through its conduct in failing to warn of a known defect in the Subject Vehicle, including the Trailblazer . . . ." Amended Complaint, ¶ 52. Significantly, no New GM volitional conduct of any kind is alleged. No specific interaction between New GM and the owner of the Subject Vehicle is alleged. Buchanan does not try and allege that a non-successor, and a non-manufacturer/non-seller of the Subject Vehicle somehow has a duty to him (which it does not). Rather, Buchanan is clear. As explained to the Georgia Court, the failure to warn claim against New GM comes from duties imposed on the manufacturer (Old GM). As referenced in his own Amended Complaint, the failure to warn Buchanan (a Used Car Purchaser) is an Assumed Liability, which, by definition, cannot be an Independent Claim.[16] Thus, not only are Buchanan's allegations general and conclusory and therefore legally insufficient to plead an Independent Claim, but they also are based either on the conduct of Old GM or an improper successor liability theory, which disqualifies the claim from being considered an Independent Claim and bars any viable path for seeking punitive damages against New GM.

[16] *See* December 2015 Judgment, at p. 2 n.3 (defining "Independent Claim" as "a claim or cause of action asserted against New GM 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").

C. Buchanan's So-Called Independent Claim Is Impermissibly Based on "Wholesale Imputation," and Violates Previous Decisions Of This Court

Buchanan bases his so-called Independent Claim on conclusory and wholesale imputation allegations. As the U.S. Supreme Court explained in *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009), allegations (like Buchanan's) that are "conclusory" are "*not* entitled to be assumed true." And even assuming *arguendo* that some of Buchanan's allegations are non-conclusory (they are not), they still must "*plausibly* suggest an entitlement to relief." *Id.* But there is nothing inherently "plausible" about an allegation that New GM "continued the business of Old GM" with "many of Old GM's employees . . .," and somehow those facts created a new and independent duty from New GM to the Old GM vehicle owner.[17] In short, the fact that Buchanan alleges wholesale imputation in a complaint does not automatically elevate those allegations to any status that is entitled to deference.

The imputation doctrine does not, by itself, allow Buchanan to assert an Independent Claim. Knowledge without a legal duty does not create a new claim. *See Holland*, 2015 WL 7196197, at *4. Buchanan is essentially attempting to transfer an alleged Old GM obligation, based on Old GM conduct, to New GM as an Independent Claim (and not as an Assumed Liability), which is contrary to the "free and clear" aspects of the Sale Order. In this regard, Buchanan is asserting a successor liability claim against New GM "dressed up" to look like something else, as Judge Gerber warned. Thus, Judge Gerber expressly cautioned other courts dealing with this issue to be wary of this improper litigation tactic. *See In re Motors Liquidation*

[17] Other courts have afforded no deference to "wholesale imputation" allegations in other contexts. *See, e.g., Wayne Cty. Emps.' Ret. Sys. v. Dimon*, 629 F. App'x 14, 16 (2d Cir. 2015); *F5 Capital v. Pappas*, 856 F.3d 61, 83 (2d Cir. 2017); *In re JPMorgan Chase & Co. Derivative Litig.*, No. 12 CIV. 03878 GBD, 2014 WL 1297824, at *5 (S.D.N.Y. Mar. 31, 2014) (rejecting wholesale imputation allegations and stating: "Plaintiff's conclusory allegations are insufficient.") (citing *Guttman*, 823 A.2d at 499 (courts should not "accept cursory contentions of wrongdoing as a substitute for the pleading of particularized facts.")).

Co., 529 B.R. 510, 528 (Bankr. S.D.N.Y. 2015), *aff'd in part, vacated in part, rev'd in part*, 829 F.3d 135 (2d Cir.), *cert. denied*, 137 S.Ct. 1813 (2017) ("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 LLC)*, 492 B.R. 392, 405 (Bankr. S.D.N.Y. 2013)).

Buchanan's argument is also contrary to this Court's July 10, 2017 Order regarding the *Pitterman* lawsuit. There, this Court, in exercising its gate-keeping function, specifically held that New GM's motion to enforce was granted to the extent that *Pitterman* was relying on a 2006 Technical Service Bulletin to support an alleged "failure to warn" Independent Claim. The Court precluded *Pitterman* "from relying on conduct of Old GM in support of their alleged Independent Claims against New GM[.]"[18] The Court stated: "I don't think I should permit you to rely on Paragraph 25 [relating to the 2006 Technical Services Bulletin] in support of an independent claim against New GM." June 29, 2017 Hr'g Tr., at 4:3-5.[19] In response, *Pitterman* argued that "New GM, after 2009, was aware of its existence." *Id.* at 4:13. But the Court was unpersuaded and rejected that argument, ruling instead that:

> Mr. Hirsch, I am precluding you from relying on the allegation in Paragraph 25 in support of a failure to warn independent claim against New GM. You can call New GM witnesses and show that they had knowledge of this alleged defect. That's going to be up to Judge Hall. Okay?
>
> But what I'm not going to do is -- this is exactly what I wrote the opinion to prevent you from doing, to bootstrap your independent -- your purported independent claim by relying on conduct of Old GM. If you have witnesses from New GM who are going to testify at your trial that they had knowledge of this alleged defect, you know, Judge Hall will decide whether that testimony is

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[18] *Order Granting In Part And Denying In Part General Motors LLC's Motion To Enforce The Ruling In The Bankruptcy Court's June 7, 2017 Opinion With Respect To The Pitterman Plaintiffs*, dated July 10, 2017 [ECF No. 13991] ("**July 2017 Order**"), at 1-2. A copy of the July 2017 Order is attached hereto as **Exhibit "B."**

[19] A copy of the June 29, 2017 Hearing Transcript is attached hereto as **Exhibit "C."**

> admissible or not, but you're not -- I'm not permitting you -- you're attempting to do exactly what I precluded you from doing. Okay?

Id., at 5:5-18; *see also id.* at 6:11-13 ("What I am precluding is the plaintiff from relying on conduct of Old GM in support of its alleged independent claim against New GM."). The July 2017 Order entered in connection with the *Pitterman* motion to enforce held, in relevant part:

> ORDERED that the Motion is granted with respect to Paragraph 25 of the Amended Complaint to the extent that the Pitterman Plaintiffs are hereby enjoined and may not use the 2006 Technical Service Bulletin to support their alleged Independent Claims against New GM; and it is further
>
> ORDERED that the Pitterman Plaintiffs are precluded from relying on conduct of Old GM in support of their alleged Independent Claims against New GM . . . .

July 2017 Order, at 1-2.

Buchanan similarly should be precluded from improperly relying on Old GM conduct—like, for example, warranty data that Old GM obtained "almost immediately upon the first sale of the 2006 model year vehicle"—to establish an Independent Claim.

Importantly, in July 2016, the Second Circuit stated that viable Independent Claims must be based ***solely*** on New GM post-363 Sale conduct, and not Old GM conduct.[20] The Buchanan Amended Complaint fails to satisfy that standard. The allegations therein are either conclusory or general, or are based specifically on Old GM conduct. That is not a validly-pled Independent Claim, but an assumed Product Liability that cannot support a request for punitive damages.

[20] *See In re Matter of Motors Liquidation Co.,* 829 F.3d 135, 157 (2d Cir. 2016) ("independent claims are claims based on New GM's own post-closing wrongful conduct. . . . These sorts of claims are based on New GM's post-petition conduct, and are not claims that are based on a right to payment that arose before the filing of petition or that are based on pre-petition conduct.").

D. As Buchanan's Independent Claim is Inappropriate, His Request for Punitive Damages Based on Such Claim Should be Stricken

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 based solely on alleged wrongful post-363 Sale New GM conduct. Since Buchanan has not done so, and his failure to warn claim should at most be viewed as an alleged assumed Product Liability, his punitive damage request fails and should be stricken from the Amended Complaint.

E. The Buchanan Lawsuit Should Be Stayed Until All Infirmities Are Addressed

Contrary to Buchanan's allegation, New GM did not file the Buchanan Motion to Enforce to "gain perceived leverage" in seeking to block the deposition of Mary Barra in the Buchanan Lawsuit.[21] The Buchanan Motion to Enforce was precipitated by Buchanan's improper request for punitive damages—which violates rulings by this Court and the Second Circuit. The punitive damages request ***was*** the basis for Mary Barra's deposition.[22] New GM sought interlocutory review of that ruling by the Georgia Court of Appeals, which was recently granted. New GM's interlocutory appeal seeks to overrule the Georgia Court's order allowing this deposition to take place. Separately, New GM is seeking in this Court a ruling that Buchanan's request for punitive damages is improper. If New GM is successful on the Buchanan Motion to Enforce, and Buchanan

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[21] Buchanan appears to contend that bankruptcy issues were not raised in the Georgia Court until the discovery dispute that precipitated the Buchanan Motion to Enforce. *See* Objection, at ¶ 13. This is simply wrong. In its Answer ***filed almost four years ago*** (on June 3, 2016), New GM asserted that Buchanan's punitive damages claim violated the Bankruptcy Court's rulings and the Original Complaint must be amended to remove that request. Specifically, New GM's Answer asserted the following defense: "GM LLC . . . affirmatively asserts that Plaintiff must amend the Complaint to remove the punitive damages claim or be in violation of the New York Bankruptcy Court's Sale Order and Injunction and recent decisions and judgments entered by the Bankruptcy Court." *See* New GM's Answer, ¶ 35 (citations omitted). A copy of New GM's Answer is attached hereto as **Exhibit "D."** To suggest that New GM raised these issues for the first time following the hearing on its Motion for a Protective Order in the Georgia Court, or that this was in any way a surprise to Buchanan, is simply false.

[22] The Georgia Court—***by agreement of both parties***—entered an order staying the execution of the court's order directing New GM's CEO, Mary Barra, to sit for a deposition until resolution of New GM's appeal of that order to the Georgia Court of Appeals. By order dated March 13, 2020, the Georgia Court of Appeals granted New GM's application for interlocutory review.

is directed to strike his request for punitive damages, that will be relevant to whether Ms. Barra's deposition should go forward as the request for punitive damages was, indeed, the basis for the deposition.[23] This is not "gaining leverage"; it is an appropriate way to enforce this Court's rulings and its injunction in the Sale Order (as New GM has done many times before) and, specifically, to require Buchanan to comply with this Court's Orders and to play by the same rules as other plaintiffs (something he blatantly did not do in the Georgia Court).

The rule is "well-established" that "'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.'" *Celotex Corp. v. Edwards* 514 U.S. 300, 306 (1995). Continuation of the Buchanan Lawsuit without regard to and in violation of existing Bankruptcy Court rulings and its injunction in the Sale Order constitutes a violation of the Sale Order, and the other Bankruptcy Court rulings. Since Buchanan refuses to recognize the previously-issued injunctions, the only way to compel compliance with the Sale Order is to enforce those Orders by expressly staying Buchanan from proceeding with his Georgia lawsuit until all bankruptcy-related

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[23] Buchanan asserts that "[a]lthough the Plaintiff raised the punitive damages issue at the discovery hearing before the State Court, the punitive damages issue was not the primary basis for requiring Ms. Barra's deposition." Objection, at 14 n.9. Buchanan is attempting to now rewrite history and to backtrack on the unequivocal statements he made at the hearing before the Georgia Court, which resulted in the order directing Ms. Barra's deposition. The problem with his argument is that there is a transcript of what he said and argued, which transcript shows that his arguments are untrue. Thus, statements at the hearing on New GM's motion for a protective order that refute Buchanan's assertions here include: (i) "Why depose Ms. Barra? Her deposition is reasonably calculated to lead to admissible evidence. That's the bottom line. How is it relevant? ***It's relevant to Mr. Buchanan's punitive damages claim.*** There's a punitive damages claim under Georgia law, and the conduct even after the incident is admissible in certain circumstances, and particularly in this circumstance." (Georgia Court January 27, 2020 Hr'g Tr., at 18:15-21 (emphasis added)), and (ii) "Why depose her? Again, it's reasonably calculated to lead to the discovery of admissible evidence, ***testimony relevant to punitive damages claims***, and she's the only witness who can answer certain questions." (*Id.* at 36:10-15 (emphasis added)).

In reality, it is Buchanan that sought to gain perceived leverage in the Georgia Court by first referring to Old GM conduct to obtain Ms. Barra's deposition on the punitive damages claim. Then, after obtaining authority to take Ms. Barra's deposition under such barred circumstances, Buchanan then sought to cover his tracks by amending his complaint, albeit unsuccessfully, to cure the infirmities therein.

issues are addressed and resolved. Like all litigants, Buchanan and his counsel do not have the option of simply ignoring or defying the Orders of this Court.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in the Buchanan Motion to Enforce, New GM respectfully requests that this Court enter the proposed order attached to the Buchanan Motion to Enforce as Exhibit "J," granting the relief sought in the Buchanan Motion to Enforce, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 23, 2019

Respectfully submitted,

/s/ Arthur Steinberg

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Exhibit A

STATE COURT OF COBB COUNTY

STATE OF GEORGIA

ROBERT RANDALL BUCHANAN INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF GLENDA MARIE BUCHANAN	)	CIVIL FILE NUMBER 16-A-1280
vs.	)	
GENERAL MOTORS, LLC	)	

****

Transcript of the proceedings had in the above-styled case before THE HONORABLE CARL BOWERS, State Court Judge, at the Cobb County Courthouse, Marietta, Georgia, commencing the 27th day of January, 2020, before Lisa Bergeron, Certified Court Reporter, commencing at 10:03 a.m.

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P R O C E E D I N G S

THE COURT: All right. At this time, the Court will call the case of Robert Randall Buchanan, Individually and as Administrator of the Estate of Glenda Marie Buchanan; versus General Motors, LLC. Case number 16-A-1280.

We are here today on the Defendant's Motion for a Protective Order. And you're Mr. Marsh, correct?

MR. COONEY: Mr. Cooney, Your Honor.

THE COURT: Mr. Cooney. Excuse me, I apologize.

MR. COONEY: May I have a seat?

THE COURT: You may.

MR. COONEY: All right, thank you, Your Honor.

As you said, Your Honor, this is GM's Motion for a Protective Order under Rule 26C, to prevent the deposition of Mary Barra, GM's Chairman and Chief Executive Officer.

There's good cause for entry of the order, Your Honor. Ms. Barra has no information, much less relevant information regarding the product that's at issue in this product liability suit. And the order is necessary to protect her from annoyance, embarrassment, oppression and undue burden.

As established by Ms. Barra's sworn affidavit, she has no information related to the design, the performance, or any investigation into safety of the steering wheel

angle sensor that's at issue in this case, to the extent there is an issue about whether there's some conduct of GM that gave rise to an allegedly poor design, a failure to be aware of that allegedly poor performance, or some examination of the safety of that component on the road.

It's undisputed, she has no information regarding any of those topics, can not add any relevant information to that inquiry.

The Plaintiff's have seemed most focused on deposing Ms. Barra about a 2018 decision by GM Safety Group not to conduct a field recall with regard to the component at issue, because they concluded it wasn't justified. And there's plenty of people that were involved in that decision, plenty of people that could be deposed, but Ms. Barra's not one of them because as she said, she's not involved in that process and has no relevant information about the process.

The Plaintiff's contention essentially is well, as Chief Executive Officer of the company, and someone who has spoken about GM's commitment to safety, she has to answer for the decision of that commitment. And as Plaintiffs point out at page, I think, 20 of their Response, this safety group that they're talking about has, since 2014, reviewed something like 25,000 submissions.

So under Plaintiff's kind of view of what the law should be, any time -- and of those 25,000, by the vast majority of them, do not result in field actions.

Plaintiff's ultimate position here is as CEO, any time a litigant disagrees with the decision of General Motors and the Safety Group about any of those submissions, the CEO is fair game for a deposition. Of course, if that were the law, that's how it works out, she'd be a full-time deponent, not a CEO.

Your Honor, a little bit of background, I know we've covered it in the Briefs, but so this arises out of a -- this incident arises out of a November, 2014 car wreck. Glenda Buchanan was driver, single-vehicle accident. Vehicle gets off the right-hand side of the road in a curve, she jerks the wheel, over-corrects, whatever, but the vehicle ends up careening across the roadway into a deep ravine, hits a tree, and unfortunately she suffers a fatal injury.

Plaintiffs claim that that happened because the -- an electronic stability control system on the vehicle was disabled, and that it would've made a difference. GM disagrees. GM says stability controls can do various things, but it doesn't make a difference in this kind of accident. But that's the claim. And the allegations -- the reason the stability control was not operating was

because a component of the system, this steering wheel angle sensor was bad, and the system senses that and disables the system.

So as you've read, GM, in 2018, four years after the crash, as a result of this lawsuit, submits this incident and this allocation to its Speak Up for Safety program, which is a new program begun in 2014. So it comes into 2018 after this lawsuit. And the Speak Up for Safety process is intended to evaluate potential claims and make decisions about whether or not they support a field action or product recall. And Your Honor, I don't have a screen, but may I approach with a --

THE COURT: Yes, sir.

MR. COONEY: -- couple -- couple documents.

THE COURT: I won't bite you, I promise. Now, Stephanie might, I don't know.

MR. COONEY: And Your Honor, this is just -- this is a little schematic that I made, and it's just intended to demonstrate that this is a formal process, with various levels of review. They get progressively higher in terms of seniority of people that look at it. Company employees are encouraged to submit issues of potential vehicle or workplace safety. There's an initial safety and compliance and categorization team, which is made up of some senior investigators, engineers, that kind of make a

first call. Does it merit investigation or is it really not something that's appropriate for that? And there's another potential investigation review team that again does this analysis: Does this issue, based on the data we've collected, support a formal, open investigation? Then it get's their further review, which is an open investigation. It's a bunch of senior GM engineers and managers. And then finally the last group, the Safety and Field Action Decision Authority is the group of senior vice presidents from around the Corporation who make decisions whether to have a safety recall.

My point, again, is this submission went through this process. There's various people at each phase of this process who are knowledgeable about what was investigated and the basis for the decision.

To date, none of the people who've made the decision that's at issue here, that Plaintiff takes disagreement with, have been deposed. Those are the people that have information about the decision. Those are the people who can support a claim, if that's the argument, that GM made the wrong decision.

Instead, Plaintiff wants to depose, as we know, Ms. Barra. And in reading their response, they offer just a couple explanations for why they want to do that, that I'd like to talk to Your Honor about just -- just briefly.

They say at the very beginning of the Response that Ms. Barra has discoverable information about GM's efforts to find and fix the steering wheel angle sensor issue in this case. There's no citation, there's no facts, there's no deposition testimony, there's no documents that they offer to support that assertion. All we have is her affidavit that says, "I know nothing about any of that."

It's -- it's -- I understand what they want it to say, but the facts are, as we sit here today, that there's no evidence in this case anywhere that she has or should have information about this particular component on this particularly vehicle.

Plaintiff goes on to say they want to depose Ms. Barra, as GM's CEO, about GM culture that has allowed this sensor defect to remain -- to remain and linger, is kind of a phrase used. And then, as you saw in the response, and this is the part we're gonna hear about here this morning, this is about GM's investigation of a different part, a different component called an ignition switch. Which Mr. Cooper undoubtedly knows a lot about, and some decisions and some conclusions that were reached about corporate activity that led to a product that ended up in some vehicle recalls. And he wants to argue in this case, which I appreciate, that that same conduct must have led to GM making poor decisions on other products, and

maybe this is one of them.

Maybe I should be able to demonstrate that the same Corporate conduct that led to this bad part, this ignition switch, is the same conduct that led to, you know, this, what he claims, is a defective steering wheel angle sensor.

And, you know, I understand the argument, but of course, the only way you could make that connection is to talk to someone who knows about the activity that led to the design, the analysis of the performance of the sensor, that evaluated the safety of the sensor. Unless somebody has some knowledge about the activity, the corporate conduct that gave rise to the part at issue in this case, there's not much to be gained from that deposition. But that's what they're asking to do.

The appropriate person deposed would be someone who has knowledge about the design and performance. And whether the Corporate conduct Mr. Cooper wants to cite from this ignition switch issue existed here. Well, it turns out Plaintiff understands that. They've already asked for that deposition.

The second page I gave you, Your Honor, is a copy of a -- Plaintiff's -- a paragraph from Plaintiff's second amended Corporate Deposition Notice of GM. And they've asked for, in that notice, that very witness. Someone who

knows about whether -- to what extent the Corporate conduct and Corporate culture and practices, including those discussed in the Lucas Report, played a role in the design of this sensor. That deposition's been scheduled, Your Honor, I think it's for February 4th.

My point is, that's the appropriate path for discovery on that issue, not talking to a CEO who, based on the record before us, knows absolutely nothing about it.

The argument that Plaintiffs make about this desire to get into corporate culture is premised on the assertion the Plaintiff makes in their Brief, that there was this -- that this sensor, like the ignition switch, remained and lingered as a problem at General Motors. That's an assertion. They say in their Brief, or Plaintiff says in his Brief, that this sensor was on GM's fix it plate for years, had been before various committees, perplexed GM for years. That GM has investigated the matter slowly and for many years.

I appreciate attorney argument, Your Honor, but that's all that is. There's no citations to any of those assertions. There is no evidence that anybody at General Motors ever concluded that there was a problem in the sensor. That we needed to fix it. But that they should have known about it and failed fix it.

Now, that's all game for discovery. That's all open for discovery in the case. I get that. But I want to be clear that Plaintiff is kind of implying that he's already created a record of -- that this has been on GM's fix it plate for years, and now he should be able to ask Mary Barra about it. He hasn't even gotten to the first step of establishing that anybody at GM ever concluded that this product was an issue that needed to be fixed.

Plaintiff's next argument, just got a couple more, Your Honor, is that, this shows up on page 10 of the Brief, that he should be able to depose Ms. Barra about GM's specific failures and the new safety program. In other words, he wants to ask her about why GM, he thinks, made the wrong decision when they reviewed this issue in 2018. He wants to -- he wants to have her answer for what he thinks is a wrong decision.

A couple of points. There's -- implied in Plaintiff's argument is this idea that what he thinks was GM's wrong decision about this sensor in 2018, somehow let to this accident. Led to Ms. Buchanan's unfortunate death. That time line doesn't work.

The accident occurred in 2014. Whatever allegedly wrong decision GM made in 2018 could not be a proximate cause of whatever cause of action he would be hoping to support, such as a failure to warn theory. Whatever GM

did in 2018 can't be the basis of a failure to warn -- an issue in 2014. That seems to be kind of implied in his argument, that it would've made a difference. I want to be clear that that's not where we are. But again, Your Honor, ultimately, Ms. Barra has no information about the point at issue.

Plaintiff is alleging the failure by GM to do certain things. To fix, to identify the dealer component. But he hasn't established anybody at GM ever thought they should have done or did, and then he wants to ask her about it, recognizing going in that she knows nothing about it.

Finally, Your Honor, kinda last, thrown into Plaintiff's brief is the idea that even if Ms. Barra doesn't know anything, we should be able to depose her just to establish that fact.

Well again, that kind of goes and takes me back to my initial statement. If that's the standard for taking CEO depositions, then any time, you know, a CEO does what CEOs do: They make comments about commitments to safety, the environment, anti-harassment, workplace safety, those statements would subject them to deposition if somebody, a litigant, disagrees with their -- with something the company did that the litigant claims is inconsistent with that general concept. And -- again, Your Honor, if that's the standard, CEOs would spend their time giving

depositions.

I'm not saying that CEOs should never be deposed. I'm not claiming that there'd not be circumstances where a CEO has direct, relevant knowledge of an issue. Clearly, make them subject to deposition. But in a case here where there is absolutely no connection between the CEO and the product defect being alleged, the Plaintiff cannot stand. Basis under Rule 26, that discovery seeking relevant information, rather than an opportunity to put a CEO on a hot seat, ask questions the CEO doesn't have an answer to, with the goal of trying to attempt to embarrass, attempt to belittle, attempt to make suggestions about what a CEO should or shouldn't do, that are not -- that have no basis in fact.

The information about this claim is available from lots of other people, and that would -- should be the proper and directed scope of discovery.

Briefly on the law, Your Honor, which I know you have on our Briefs, there is no Georgia law that stands for the proposition that a high-ranking official who has no role and information, that's been undisputed based on sworn evidence does not have relevant information, should be deposed merely because of their roles as CEO, and an allegation that the company has acted inconsistent with some policy or issue adopted by the CEO.

The Plaintiff -- I guess ultimately, there's been a lot of debate in the papers about State versus Federal Court. Ultimately, Your Honor, our point, if I had to bring it down to one, the conclusion is that both Georgia Courts and the Federal Courts recognized that while everyone can be subject to deposition, there has to be a relevancy connection. And that high-ranking executives fully create a tremendous potential for abuse and harassment, and that they, as a result, there has to be a showing or some evidence that justifies a deposition. For all the reasons that I've said here probably more than a couple times, that showing doesn't exist here, and good cause is to prevent the deposition.

Your Honor, there's been a suggestion that the standard this Court is to apply comes under this Bridges decision, and that it's on us to show substantial evidence of bad faith. That comes, again, only from this Bridges decision. And if you followed the citations in the Bridges decision, it takes you back to a 1961 Federal Court case out of Connecticut, which says the same thing. But like the Bridges decision, it doesn't say a word about it. Of course, the Federal Courts today certainly don't apply that standard.

The standard's what's in the Court rule. Good cause shown for protection. And showing that the discovery is

not seeking relevant information.

There's no explanation, Bridges or any other decision, as to how a court might apply a substantial evidence of bad faith standard, what the factors are to address that. And again, ultimately Your Honor, our point is it's not important. But if that were the standard, Your Honor, it's hard to imagine a case that doesn't fit it better. We have a Plaintiff seeking the deposition of a CEO who because I've probably said it, again, too many times, undisputed, doesn't have any relevant information about the product at issue.

I think the Court can conclude that, you know, what's the reason for that deposition? It's to put the CEO in a position, not to get relevant information, but to attempt to harass and abuse.

Finally, Your Honor, the Plaintiff cites a variety of cases where courts have allowed the depositions of CEOs. And again, no doubt that there are lots of circumstances under which a CEO might justify being deposed. But in all the cases that Plaintiff cites, they fall into one of two categories. One is that there was just a bald statement that the witness didn't know anything. No sworn affidavit, no evidence, and the Courts took exception with a lawyer standing up, saying, "You can't depose this person because they don't know anything." Or evidence

that the CEO or other high-ranking executive actually had relevant information as to a specific incident.

Neither of those circumstances exist here. We made a showing of a lack of knowledge through her affidavit, and there's been no showing that she has any connection to any of the incidents or issues alleged here.

I anticipate that you'll hear a lot about a ignition switch, the safety investigation program. GM's new safety program. GM's commitment to safety. None of that, again, changes. But ultimately, it's really a fundamental premise of our argument, Your Honor. And that is Plaintiff is trying to prove a defect in this steering angle sensor, both in it's original design, it's performance, and GM's failure to recall it.

He points to -- the only thing he points to is what he claims is high warranty data. There's no evidence that anybody at GM ever concluded that warranty data was because of some particular problem that it was high, or more importantly, that it -- evidence in a defect in the product.

And I should -- I guess I should add, Your Honor, that the reason that GM's safety group closed this investigation is stated in the paperwork. It's not a mystery. Their conclusion was that there had not been any other reports of -- on the steering wheel angle sensor

failure causing an accident, much less an injury or death. And they also recognized that kind of consistent with where -- the way these systems operate, electronic stability control, it is a feature that is intended to work in certain particular driving circumstances. The vast majority of the time while driving a vehicle, it's not engaged.

But if it's disabled, the vehicle retains all of its normal control systems. Braking, steering. I mean, vehicles for decades before did reduction of ESC. In the '90s and 2000s, we drove for years without ESC. Even in this vehicle, you have the option to turn off the ESC.

The point is, the GM people concluded that it -- the lack of this feature doesn't make a vehicle unsafe, and -- and as soon as it's disabled, the driver gets two warning signs, dashboard warning signs. A light indicates it's disabled, and then a digital message that says, "ESC Disabled. Seek Service."

So because the vehicle was not unsafe to drive and there's a -- two signs telling the driver go get service, they concluded that the vehicle shouldn't -- it didn't merit a safety recall.

And my point is Plaintiff can take issue with that. They can dispute whether GM made the right decision about that, again, four years after this crash. But what they

can't establish is that Mary Barra has any information about the investigation that led to that decision, or whether it was the right decision.

Thank you.

THE COURT: Thank you, Mr. Cooney. Mr. Cooper?

MR. COOPER: Thank you, Your Honor.

May it please the Court, again, Lance Cooper here on behalf of Mr. Buchanan.

We are not asking for this deposition to harass Ms. Barra, or to do anything other than obtain relevant information to the issues in the case.

And as I said, we've prepared a short PowerPoint here to streamline the argument, and hopefully add to what's already in the Briefs.

Why depose Ms. Barra? Her deposition is reasonably calculated to lead to admissible evidence. That's the bottom line. How is it relevant? It's relevant to Mr. Buchanan's punitive damages claim. There's a punitive damages claim under Georgia law, and the conduct even after the incident is admissible in certain circumstances, and particularly in this circumstance.

And finally, she is the only witness who can answer certain questions that the jury must consider. In looking at these questions, this is the background in the case.

Ms. Buchanan is driving a 2007 Chevrolet Trailblazer.

And as Counsel talked about, it was offered with Stabilitrak as a standard safety feature. What is Stabilitrak? Stabilitrak, according to GM, is a technology that helps the driver avoid collisions. And in particular, a document produced by GM in this case, GM brags about Stabilitrak as being life-saving technology, is a milestone in taking crash-avoidance to a new level. The best crash is the crash you avoid. And this is the most important statement in the document produced by GM, "Stabilitrak is the most significant safety feature since the development of the safety belt." In other words, it's critical, it's a critical safety feature.

How does it work? It's real simple. For example, in this case, the driver's driving down the road, say he swerves to avoid a deer and he begins to slide out. Braking on the vehicle allows the vehicle to stay in the path of travel, as opposed to slide out and go off the road and cause a crash. That's essentially how it works.

It's a critical safety feature, and this is a document produced by General Motors in this case. "It reduces the risk of fatal rollover crashes by up to 80 percent." In other words, you see here, here's the crashes without Stabilitrak, here's the crashes with Stabilitrak, and that's the difference between life and death. It's an incredible safety feature that General

Motors rightly put on this vehicle in order to protect Ms. Buchanan from exactly what happened to her. And that is losing control, rolling over and being killed.

It works -- you don't need to get into all the details other than this, there's a steering angle sensor in the steering wheel, that if you -- the angle hits a certain position, the Stabilitrak kicks in. And then the vehicle knows "I've gotta brake because I've gotta keep this driver under control." And that's how it works.

The sensor's a critical component to the Stabilitrak system. And all it is, it's a sensor that's in the steering wheel column, and it monitors the steering wheel angle, and critically, if it fails for some reason, Stabilitrak will not work on that vehicle.

THE COURT: Is electronics stability control and Stabilitrak the same thing?

MR. COOPER: Yes, Your Honor. I apologize. I should have made that point clear. That's GM's trade name for electronic stability control is Stabilitrak. It's the same thing.

This is background on the -- the steering wheel angle sensor, because that's really the focus of this case, the sensor itself was made by a company called ALPS. It was submitted -- sent to Delphi, who assembled it into the steering system. And then GM ultimately put all this in

the vehicle which ended up being the 2007 Trailblazer.

This kind of an overview of how it works. You got your vehicle dynamics, your vehicle trajectory gets into a certain position. The sensors kick in and the ESC system kicks in, and among the sensors is the steering angle sensor. So we get to the 2007 Trailblazer, and one question is, "Well, what's the relevant scope of vehicles? Is this -- is this one of a few vehicles, or how many vehicles have this type of sensor?" And then again, another GM-produced document, 777,809 vehicles have this exact same sensor. They were made between 2006 and 2009, and it's a variety of GM SUVs.

And what has GM learned? GM learns from the beginning this steering wheel angle sensor, the acronym is SWAS here in the -- both in the Brief and here in the PowerPoint, fails miserably from the beginning.

Counsel talked about warranty data as being inconclusive. It's not conclusive. This is when Ms. Buchanan's -- and this is all in attachments to the Brief, Ms. Buchanan's vehicle was built on March 1st of 2007. For that month, GM analyzed it and determined that 100 vehicles out of every thousand had a steering wheel angle sensor fail. Ten percent of the vehicles made her month failed.

In other works, in ten percent of those vehicles, the

Stabilitrak was inoperable for a period of time. These vehicles came in as warranty claims and they paid the claims because there was a defect in the sensor. It goes up to almost three -- over 300, in 2007, for the same sensor, for this model year, for this -- this particular month in 2007. It's a model year 2008, but they made it in 2007.

In other words, there's no dispute that these numbers are extraordinarily high. Thirty percent failure rate for a particular model year. Extraordinarily high. And that's what GM knows. They have all of these -- they have these warranty claims back in the -- in the early -- late 2000, early 2010, timeframe. Tens of thousands of them.

Ms. Buchanan, Mrs. Marie Buchanan and her husband Randall, she's born on August -- in August of '72. She's married to Randall. She works in -- worked at service at Home Depot. That's Ms. Buchanan and her husband.

What about her Trailblazer? She buys it in February 2011. It has 30,000 miles. GM knows at that time they have paid on tens of thousands of warranty claims for this sensor. And they've never done a thing to notify customers about these defects. What they do is they wait until a complaint happens, and then they pay the warranty claim. But they don't proactively tell anybody about these sensor failures.

By the date of the accident, November 10th, 2014, she had about 87,000 miles on the vehicle. They still had never told her anything about these tens of thousands of claims involving these defective sensors.

So what happens on November 10th of 2014, she's driving on Friendship Church Road in Douglasville. She stops to talk to Randall's mother. And her husband lived next door. She's traveling to visit her Nan, a relative. She's properly belted. And there's a witness, Kristen King, that was following her the whole way for about five miles, that says she was driving normally. Nothing unusual about what was happening.

Unfortunately, she gets two -- for some unknown reason, because she's passed away, she gets two tires off the right side of the road, and she steers to get back on the road, and what happens? Her Stabilitrak's not working. And because her Stabilitrak's not working, she slides off the other side, goes down into a ravine, and she's killed.

This is GM's marketing document, as far as what Stabilitrak's supposed to do. When this starts to happen, it kicks in and the vehicle straightens out. What happened to her? This is a police diagram. It didn't kick in, and she lost control and died as a result.

This is the location of the crash. It's a two-lane

road. Pretty typical. She got two tires off, unfortunately. And she died as a result. She ends up -- she's belted in the vehicle, she goes down a ravine, her airbags don't work, there's something wrong with the vehicle. She can't tell us what it is because she passed away.

So we filed a lawsuit on May 3rd of 2016. We served discovery. But critically, we get -- our engineers get together with the GM engineers and they do what's called a download using a scan tool on the vehicle. And what does it show? CO455, steering wheel angle sensor performance. In other words, there's a failure code in this vehicle. The steering wheel angle sensor failed at the time of the incident, which caused her Stabilitrak not to work.

Now this is where Mary Barra's involvement in this case becomes important. GM has in-house counsel investigating the case. And Scott Paxton, Scott Paxton, who's General Counsel, on May 21st of 2018, submits the Buchanan case to this Speak Up for Safety program, as Counsel talked about a moment ago.

What is the SUSP program, as it's known as? The SUSP program is a safety program created. It wasn't just a part of -- they say in their Brief it was created during Mary Barra's time as CEO. It wasn't created -- it was not only created during her time as CEO, she created it.

She's the CEO in 2014. She created this program. She's the one that had a personal knowledge of the program, how it was set up, and how it was supposed to work. And it arose, as Counsel talked about -- why did she create the program? It arose out of the GM ignition switch defect cover-up that we were very involved in with a case in front of Judge Tanksley.

Now let's talk about the cover up in a nutshell, because it's critical to this case. March 10th, Brooke Melton was driving her 2005 Cobalt in Paulding County. A defective ignition switch turned her car off, causing her to lose control. She's killed when her Cobalt crashes into another car. GM knew about the ignition switch is turning cars off since the early 2000s, just like they've known about the steering sensors failing since the mid-2000s.

GM investigated and decided this is not a safety issue. Just like in this case, they've investigated and decided it's not a safety issue. GM denied there were any other lawsuits or complaints, just like in this case, where they've denied there are any lawsuits or complaints. Judge Tanksley entered an Order, and then GM produces dozens of lawsuits and complaints.

The Melton's experts exposed the defect, and then GM was forced to recall ultimately close to 30 million cars

as a result.

So what happens here is that GM is in crisis mode, once this was all uncovered. GM is in crisis mode, and so Mary Barra turns to Antonin Valukas, an attorney up in Chicago, I believe, who had worked with GM in the past, to do an independent investigation of the ignition switch problem. And he concludes that there are all sorts of problems within GM's culture. They had a resistance to raising safety issues, there's this GM salute.

In other words, you had these meetings, but you decide not to do anything. A GM nod, the same thing. Silos, one person doesn't know what the other person is doing. And this is what's critical in this case. He specifically says in his investigation, "GM has this obsessive focus on finding root cause before acting." In other words, if we don't find the specific, exact root cause, we're just not gonna act in a particular case, which they have done for years in the ignition switch problem.

And here's Ms. Barras, and we have this in the Brief, as far as statements that she made. She then took the Valukas report and realized we need to use this in order to do two things: One is address the issues with the press and Congress, which were going on. But also, to talk to our employees about how we're gonna change our

culture. And so these are the statements she makes, talking about the ignition switches and the recalls: "GM must embrace a safety culture where safety and quality come first," Barra said at a company Town Hall meeting. Which she's launched this SUSP program in a Town Hall with employees. "GM employees should raise safety concerns quickly and forcefully and be recognized for doing so."

In other words, "We're gonna be different, we're gonna proactively be involved with this." And this is her words about her program and how her program is supposed to work within GM. And as she put it also, "The lack of action was a result of broad, bureaucratic problems and the failure of individual employees from several departments to address the safety problem. Repeatedly, individuals failed to disclose critical pieces of information that could have fundamentally changed the lives of those impacted by a faulty ignition switch."

Then she goes on, and this is probably -- these are the most important statements. She tells employees, "If you are aware of a potential problem affecting safety or quality, and you don't speak up, you are part of the problem. And that is not acceptable. If you see a problem that you still don't believe is being handled properly, bring it to the attention of your supervisor. If you still don't believe it's being handled properly,

contact me directly." In other words, "I'm gonna be involved with this SUSP program."

And then Mr. Paxton, and this is frankly unique. I've never had this in a case, where an in-house lawyer who's working on the case for GM, and defending GM in the case, he's so concerned about what's going on here, he submits the case to SUSP, because he wants it investigated to determine what happened here. And he submits it to SUSP, and so what does GM do? And this, again, is relevant to Ms. Barra, because what we need to look at is did GM do what Mary Barra promised the public, including the citizens of Cobb County, what they would do when faced with a circumstance like this? So they -- Ms. Zilincik is the investigator for SUSP.

The way it works is Mr. Paxton submitted the SUSP program to some sort of source on the Internet -- I mean on the in-house directory, and it was forwarded to her, and she becomes the official investigator of the SUSP program. What's Ms. Zilicik's involvement with this? This is a critical safety program, a lawyer submitted it to be investigated, it's involving Stabilitrak. So I deposed Ms. Zilincik. And she was a rookie. I said,

Q: "Have you ever worked on a case before this, as a product investigator, which related to electronic stability control in a GM vehicle?"

A: "No, this is the only case I've had."

They put a lady on it who is not --

THE COURT: You deposed her in this case?

MR. COOPER: Excuse me?

THE COURT: You deposed her in this case?

MR. COOPER: Yes.

THE COURT: All right.

MR. COOPER: Yes. This is a deposition we took last April, I believe --

THE COURT: All right.

MR. COOPER: -- in this case.

This a document she prepared, which talks about she acknowledges -- she recognizes the way this -- in which the crash happened, and again, also, there's a recognition that the crash should've got a -- there should never have been a crash if Stabilitrak had been working.

Ms. Zilincik then, when asked about her role in this case, and evaluating the electronic stability control, because that was her evaluation, she doesn't understand it's a primary safety feature.

Q: "ESC is not a main safety feature?"

A: "Right, not a primary safety feature."

This is the lead investigator who's been assigned by GM, who testifies it's not even a primary safety feature. No wonder it got closed without doing anything. She

didn't understand -- it said -- I showed her the chart that GM produced. It says, "The effect of ESC on rollovers per single vehicle crash event," what does this chart show? She says, "This is not my expertise. I'm not sure where this, you know, where he got this data. So I wouldn't be able to explain it." Didn't understand the data produced by GM.

But she does know, this is critical, she and GM know when she calculated the data, there were 78,176 steering wheel angle sensor failures. There were 777,000 vehicles made, over a 10 percent failure rate for these sensors. Every one of these is a sensor failure, including warranty claims, including customer complaints in addition to warranty claims, TREAD (phonetic), which is data submitted to the Federal Government, and then legal claims.

And what does GM do? Again, this goes back to Mr. Valukas and the SUSP program Mary Barra set up. Ms. Zilincik met with the experts who are evaluating this. And I asked him -- excuse me, I asked Mr. -- Ms. Vilicik.

Q: "Did any of the technical experts ever confirm there was a bad sensor in this vehicle?"

A: "They never communicated that to me."

Q: "Did you ever ask them?"

A: "Yes, I did ask them."

Q: "And what did they tell you?"

And this is five years -- excuse me, four years after the crash.

A: "They told me they were in the middle of working on it at the time."

In other words, they're still investigating. What specifically Mr. Valukas was critical of, and Ms. Barra said would never happen, and that is we're not gonna just investigate to investigate, we're gonna come to conclusions and take actions, which they didn't do. And they still haven't done.

Now, Counsel said, let me be sure I get this right, in his argument said, "We argue in our Brief that the sensor issue remained and lingered," and he said, "There is no conclusion about a problem with the sensor." In other words, that no one has ever concluded there was a problem with the sensor within GM.

Well, this is an e-mail produced by Ms. Zilincik where she went out and talked to the original engineers who were involved with the sensor. And she went out in August of 2018 and talked to these gentlemen. I don't know if it was via the phone or in person. She was trying to figure out what's the background on this sensor and these warranty claims, because they are high. And she said Mr. Abram and Mr. Shaub, this is Mrs. Zilincik saying she spoke to Mr. Abram and Mr. Shaub. "They told me they

always knew SAS [sic] warranty was high, and even tried to do some cost recovery from the supplier with no success." In other words, they've known from the beginning that these things are failing, they're failing at a high rate, and we're trying to get -- we tried to get our money back from ALPS. Why? Because the technology at the time -- excuse me. They say it was the technology at the time with known issues. In other words, the engineers at GM told Ms. Zilincik, "Yes, the warranty claims were high. We tried to get our money back from the supplier because we knew there were problems with technology at the time."

They've known about it since 2006 and 2007, just like they knew about the ignition switch problem for all that time. It's not -- it's not as what they say, us falsely saying the sensor remained and lingered. It -- it's remained since the two -- early-to-the-mid 2,000s, excuse me. And then this is where Ms. Zilincik does exactly what Ms. Barra and Mr. Valukas said they should never do again.

This is her presentation where it says, "Root Cause: Based on information that is available today, the root cause of the SUSP vehicle accident is inconclusive as to whether unavailability of the stability control system contributed to the cause of the accident." Is that right? Yes, that's right.

So contrary to Counsel's argument where he says, "GM

has determined that Stabilitrak would not have made a difference," it disagrees that it would have made a difference. It believes it would not have made a difference. At best, the testimony from GM right now is it's inconclusive. They didn't find a root cause, it's inconclusive. So what do they do? They close the investigation without doing anything. Exactly what Ms. Barra said shouldn't happen under these circumstances. And again, Mr. Valukas -- GM did not learn from Mr. Valukas. Mr. Valukas in the report says, "But the search for a root cause became the basis for doing nothing to resolve the problem for years." This is Mr. Valukas' report, that Ms. Barra took and said, "This is never gonna happen again under my watch. I'm gonna be involved with this."

"The lengthy search for root causes diverted GM from it's obligations and failed to produce the required urgency to bring the matter to fast closure," exactly what's happening here. As Ms. Zilincik said, they're still investigating this. And then there's no one responsible to determine whether the SWAS is defective. I asked her, I said.

Q: "Isn't it one of the responsibilities of you in this OIR to determine, based on the evidence you present, whether there is a defect in the vehicle, and the OIR is

just one of the investigating committees? Don't you have one of those responsibilities?"

A: "Not necessarily, no."

And she says, "That's not the main objective. The main objective is to define a condition, and the effect of the vehicle -- an effect to the vehicle performance. That's the key thing."

So this is the objective: To find the condition and what's the effect on vehicle performance? Well, the condition is, the SWAS failed. We know that because that's in the DTC.

The effect is the Stabilitrak won't work when the SWAS fails. Yet GM says, as we say in our Brief, they continue to fail. As of today, they continue to fail.

Now, the affidavit of Ms. Barra is important.

Excuse me, Your Honor. I'm gonna get a glass of water.

GM had Ms. Barra sign an affidavit which says she implemented the Speak Up For Safety program. It was implemented, she implemented it. She says, "I don't conduct these SUSP investigations, nor have I ever, and do not receive individual reports about each investigation conducted on the part of SUSP." She says she wasn't involved in this SUSP investigation. In other words, and she says, "I don't have any direct, unique knowledge about

this, either the Trailblazer, SWAS -- I don't have any direct," excuse me, "any unique specialized or superior knowledge regarding a SUSP investigation of the SWAS."

What this shows is GM has done what Valukas criticized, they've siloed Ms. Barra. In other words, you have a situation here where she knows that she set up a program, and GM has shut -- has closed the investigation without going forward. And then she has now -- she knows about this incident because she's aware of the incident, because she signed the affidavit. And yet, she's aware of this incident, she promised consumers back in 2014, "I'm gonna," you know, "GM's gonna do the right thing when these investigations occur." And then apparently she hasn't done anything in response to this. In other words, Ms. Barra knows now -- now knows and has done nothing.

Again, if you are aware of what the essential safety -- problem affecting safety or quality and don't speak up, you're a part of the problem. She's aware of this now. She's aware of this problem and has not done anything. Or -- and she needs to answer questions regarding what she knows and when she knew it. And in particular she can answer these types of questions, and that is: You set up this program, you made certain representations to the public about the program, it's not working in this case. And she needs to be aware of that

and asked questions about it.

As we say in our Brief and just reference here, Melton and Buchanan are eerily similar. Young woman -- Melton is a young woman killed in Paulding County, '05 Cobalt, defective part, investigation, no root cause. Buchanan, young woman killed in Paulding County, 2007 Trailblazer, defective parts, steering angle sensor, investigation and no root cause is found. That's where we are as of today's date.

Why depose her? Again, it's reasonably calculated to lead to the discovery of admissible evidence, testimony relevant to punitive damages claims, and she's the only witness who can answer certain questions. She made the commitment, she needs to answer the questions why this investigation was closed with no root cause.

And this final part of the argument goes to Counsel's argument about, "Well, evidence after 2014 is not relevant because that's when the crash occurred." And the relevance of Ms. Barra's testimony goes to the punitive damages claim, and the jury will be charged in this case on punitive damage pattern instruction. Among other things, they're to consider the nature and egregiousness of the Defendant's conduct. This is the critical one, the extent and duration of the Defendant's wrongdoing and the likelihood of its reoccurrence. And the profitability of

the Defendant's wrongdoing.

Those will all be factors to consider and the extent and duration of the wrongdoing is today. There are tens of thousands, if not hundreds of thousands of these vehicles on the road, and GM has done nothing -- and with defective steering wheel angle sensors, and GM's done nothing to warn consumers about that.

What's the law in Georgia on that? A manufacturer has a duty to warn months, years or even decades after the date of first sale of the product. And that's not just warn Ms. Buchanan, that's warning all consumers, because that's relevant to the punitive damage claim. And finally, post-incident conduct is admissible.

THE COURT: Do you have any other pending cases filed at this time that assert a problem with the steering wheel angle sensor case?

MR. COOPER: I do not.

THE COURT: Are you aware of any pending, period?

MR. COOPER: We're aware --

THE COURT: Across the country.

MR. COOPER: We are aware of other incidents where rollovers have occurred, and we're taking a deposition on that in a couple of weeks on other similar incidents. So that discovery is ongoing.

THE COURT: Yes, sir.

MR. COOPER: And I'll make the point, I think it's an important point, that was the same argument GM made to Judge Tanksley in Melton. Same exact argument. There are no other lawsuits. The Plaintiff should not be entitled to this discovery.

Mary Barra has superior knowledge of the SUSP program and how it's supposed to work, she has to answer -- she should answer questions as to why it hasn't worked in this case.

To go through the law, briefly. It's in the Brief. The Bridges quote is -- you've got it in the Brief, but I think that the most important quote is from Judge Land, as we say in page 31 of our Brief, and when he says, "The Court is unpersuaded by Defendant's implication that we have a caste litigation system which divides witnesses into two classes: A privileged class that must be protected from the inconveniences associated with litigation, and everyone else who must put aside private matters temporarily for the administration of justice."

We are not asking to depose Ms. Barra to harass her, we're simply deposing her to ask her about why it's taken place this way. In other words, the ignition switch problem occurred, you recognized it, you said you were gonna change your business practices. Your safety culture. And it hasn't changed.

Even if there was only one incident. Say this is the only incident ever. There are tens of thousands of cars on these roads. What happens tomorrow when a mother's driving her daughter, and the Stabilitrak doesn't work? And she hasn't been told, and there's a fatal crash. And we come back and say, "Well, there was only one incident before, now we're gonna do something, because now there's two. And two is double one." I suggest that one is plenty. And that Ms. Barra should answer questions regarding this matter because she made promises to the consumers back in 2014. "This is the way we're gonna do business." And in this case it's undisputed they haven't done business this way, Your Honor. They have not done business the way she promised.

We have an investigation into a fatal accident that was closed not because they determined it's conclusive that sensor had nothing to do with this, it was closed because, "We don't know. And if we don't know, then we're gonna close it." That's what happened here.

Now, they come in and say now, "Well, we do believe it didn't work," but according to the investigation and according to Ms. Zilincik, she acknowledged, "We don't know, it was inconclusive."

And so for that reason, we respectfully request we should be at -- we should be permitted to depose Ms.

Barra.

THE COURT: Thank you, Mr. Cooper. Mr. Cooney, are you aware of any other pending litigation -- pending litigation involving the assertion that there's a problem with the steering wheel angle sensor?

MR. COONEY: No, Your Honor. And I should add there was a comment made about some ongoing discovery, and it's not taking place in this case. There've been no -- there've been no notices to General Motors of an allegation such as made in this case, Your Honor. So I'm not sure what Counsel is referring to. But it's not discovery about this case, or any case that we're aware of.

Your Honor, he said that the basis for the deposition was punitive damages. Not to get too far into the weeds, but the Defendant in this case is General Motors, LLC, sometimes referred to as New GM. The company that built this truck is Old GM. And the Second Circuit has held that New GM cannot be on the hook for punitive damages based on vehicles produced and sold by Old GM. And it's a defense. We're certain the case hasn't been Briefed because until this hearing, that wasn't the basis for why he was claiming he was deposing Ms. Barra. It doesn't show up in their Response anywhere, so I apologize if I didn't anticipate that and address it ahead of time.

But if -- even if that weren't the case, he's premising the deposition on a defect he has yet to prove. He's making these allegations that GM has concluded that high warranty led them to conclude that the lack of ESC or a disabled ESC is a safety detail, it makes vehicles unsafe. Well we can debate that, but GM's safety folks have concluded that the lack of an ESC does not make a vehicle unsafe to drive, and a driver was given immediate notice continuous notice of that condition.

Now that might -- people may debate, and that's what this case is gonna be about. But to the extent he's proposing here that GM has concluded that this was a mistake that we missed, and therefore Mary Barra should be asked about it, he's kinda putting the cart before the horse. He's hasn't even talked to the people who designed the product, and looked at the warranty data at the time. Did they conclude it was a problem? He hasn't talked to the decision-makers in the safety investigation process, who concluded that it wasn't the basis for a recall.

He's deposed one person on this issue, the investigator, this Ms. Zilincik, who's job it was, as she's testified, "My job is only to collect and report. I'm not the decision-maker. I'm not an expert in ESC. There's others on the committee that have that expertise. I present the facts to them and note what they decide."

He hasn't talked to those people about the basis for their decision. He hasn't established that they concluded rightly or wrongly that this condition is a defect. This decision -- this issue has not been the subject of any meaningful discovery in the case, yet he wants to conclude there's a defect, and then depose Ms. Barra about why GM didn't take certain action that he says they should've done.

To the extent, if you take punitive damages off the table, Your Honor, it's a point I made before, all of this activity that he wants to hook Ms. Barra into takes place after this crash. He -- I guess he's withdrawn the implication that that decision would give rise to a cause of action for failure to warn, because it would come too late. But still, if he wants to talk about the people who designed the product and prior to this accident knew or should've known something about it's performance, that's the claim. They should've known this warranty rate was too high. They should've done something about it, and they didn't. He hasn't even begun to do that in the case.

Instead, he wants to jump to the CEO, who knows nothing about it, to say that -- and again, she wasn't CEO at the time of the design and this high warranty claim he's talking about. He's trying to bring her into this only as a result of the post-crash investigation process.

Your Honor, to kinda get back to the theme I started with, the Plaintiff has a claim in this case that GM got it wrong. I get that. And there's people he can talk to about, you know, to try to prove that up. He hasn't done that. He wants to depose a CEO purely on the basis that he thinks he has evidence of a product defect, that he thinks he can demonstrate that GM should have done something differently. That he thinks, sitting here today, or in 2018, that what GM decided was different than what Ms. Barra promised.

But he hasn't talked to the people about the basis for that decision. All he's gonna get from her is that, "I don't know about this. I wasn't a part of this investigation." What's the purpose of that deposition? To, you know, to attempt to belittle her in a video deposition about topics she wasn't involved in, without first doing any of the underlying discovery to determine, you know, whether -- whether the facts are such that she would've done something. Or anyone else should've done something.

Thank you, Your Honor.

THE COURT: Thank you, sir.

MR. COOPER: Your Honor, can I make --

THE COURT: No --

MR. COOPER: Can I make one point, just to --

THE COURT: No, he's got the last word. But I will ask you to prepare an order for me in a few moments.

This is the Court's ruling: Apex Rule does not apply here. Though it's not been directly asserted that it does, it does not apply. There is no corollary for that Federal rule applicable in the state of Georgia.

The Plaintiff here has asserted relevance, this Court finds, to the taking of the deposition of Ms. Barra, and the Court further finds that the Defendant has not shown good cause why a protective order should issue today. It's not really a close call for this Court, to be perfectly candid.

So I will respectfully deny the Motion. And Mr. Cooper, if you'll prepare an Order of the finding and submit it to the Court for signature.

MR. COOPER: Yes, Your Honor.

THE COURT: Thank you.

MR. MARSH: Your Honor, could I be heard? Brad Marsh. Would you consider a Certificate?

THE COURT: I'll consider whatever you file, sure.

MR. MARSH: Say it again?

THE COURT: I'll consider whatever you file.

MR. MARSH: Revenue file?

THE COURT: I'll consider whatever --

MR. MARSH: Oh, okay.

THE COURT: -- you file.

MR. MARSH: So once the Order's in, can we submit that by just paper? Send it in a letter to you?

THE COURT: If you want to file a Motion for Certificate of Review, you need to file that with the Clerk of Court.

MR. MARSH: Right. Thank you, Judge.

THE COURT: Sure.

MR. COONEY: Thank you.

MR. COOPER: Thank you, Your Honor.

(Court was in recess.)

C E R T I F I C A T E

GEORGIA: COBB COUNTY

The foregoing proceedings were taken down by me as a Certified Court Reporter in the State of Georgia, and the questions and answers thereto were recorded by me, reduced to typewriting and proofed by me, personally.

I further certify that I am neither kin nor counsel to any party, am not in the regular employ of counsel for any party and am in nowise interested in the outcome of said case.

This certification is expressly withdrawn and denied upon the disassembly or photocopying of the foregoing transcript of proceedings or any part thereof, including exhibits, unless said disassembly or photocopying is done by the undersigned certified court reporter and the signature and original seal is attached thereto.

This 10th day of March, 2020.

Lisa Bergeron-Berg

Digitally signed by Lisa Bergeron-Berg
Date: 2020.03.11 15:07:28 -04'00'

_____

LISA BERGERON
Certified Court Reporter
Certificate Number 2881

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 (MG)
Debtors.	:	(Jointly Administered)

ORDER GRANTING IN PART AND DENYING IN PART GENERAL MOTORS LLC's MOTION TO ENFORCE THE RULING IN THE BANKRUPTCY COURT'S JUNE 7, 2017 OPINION WITH RESPECT TO THE PITTERMAN PLAINTIFFS

Upon the Motion, dated June 20, 2017 of General Motors LLC to enforce this Court's rulings in its Memorandum Opinion and Order, dated June 7, 2017 with regard to the lawsuit captioned *Bernard Pitterman, Administrator of the Estate of M.R.O., et. Al. v. General Motors LLC*, Case No. 3:14-CV-00967-JCH, pending in the United States District Court for the District of Connecticut (the "Motion,"[1] ECF. No. 13965); and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be given; and a hearing (the "Hearing") having been held with respect to the Motion on June 29, 2017; and upon the record of the Hearing and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that the Motion is GRANTED IN PART and DENIED IN PART as provided herein; and it is further

ORDERED that the Motion is granted with respect to Paragraph 25 of the Amended Complaint to the extent that the Pitterman Plaintiffs are hereby enjoined and may not use the 2006

[1] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Technical Service Bulletin to support their alleged Independent Claims against New GM; and it is further

ORDERED that the Pitterman Plaintiffs are precluded from relying on conduct of Old GM in support of their alleged Independent Claims against New GM; and it is further

ORDERED that except as otherwise provided herein, the Motion is denied. In particular, the Connecticut District Court will determine whether paragraphs 27 and 28 of the Amended Complaint properly state claims against New GM; and it is further

ORDERED that the time period to appeal this Order shall commence on the same day that the Bankruptcy Court enters an order determining the 2016 Threshold Issues (other than the Late Claims Issue); and it is further

ORDERED, that this Court shall retain exclusive jurisdiction, to the fullest extent permissible under law, to construe and/or enforce this Order.

IT IS SO ORDERED.

Dated: July 10, 2017
New York, New York

/s/ Martin Glenn
Martin Glenn
UNITED STATES BANKRUPTCY JUDGE

Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	.	Case No. 09-50026-mg
	.	Chapter 11
MOTORS LIQUIDATION COMPANY, et al., f/k/a GENERAL MOTORS CORP., et al,	.	(Jointly administered)
	.	One Bowling Green
	.	New York, NY 10004
Debtors.	.	
	.	Thursday, June 29, 2017
. . . . .	.	3:10 p.m.

TRANSCRIPT OF HEARING RE: ORDER TO SHOW CAUSE
BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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www.accesstranscripts.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

(Proceedings commence at 3:10 p.m.)

THE COURT: Motors Liquidation Company, 09-50026. I'm sorry, Mr. Steinberg.

Is anybody on the phone for this?

MR. HIRSCH: Yes, Your Honor. It's Attorney Joram Hirsch.

THE COURT: Okay, Mr. Hirsch. Hang on. I apologize about the time. Let me just write myself a note here.

Let me ask first, Mr. Steinberg, was there a hearing before Judge Hall today?

MR. STEINBERG: Yes.

THE COURT: And when --

MR. STEINBERG: We went yesterday.

THE COURT: Was it yesterday?

MR. STEINBERG: Yes, sir.

THE COURT: Okay. I wasn't in the country. What did she do?

MR. STEINBERG: Your Honor, we filed a reply this morning. I'm not sure if you've had a chance to read it or not. Attached to that reply was the transcript of yesterday's hearing as it relates to this issue. Judge Hall determined that the plaintiffs can assert a direct post-sale duty to warn and duty to recall claim against New GM, but Judge Hall said that she was only ruling on that matter as a matter of Connecticut state law --

THE COURT: Right.

MR. STEINBERG: -- which she deemed as something of first impression and she recognized that somewhere along the line it may get very well certified to the Connecticut Supreme Court, all of which is contained in the transcript. But she expressly acknowledged that Your Honor would have a hearing today and would be exercising your gatekeeping function with regard to whether the amended complaint that was filed is in compliance with bankruptcy court rulings.

THE COURT: All right. And let me -- Mr. Hirsch, let me tell you what my problem with your amended complaint is. It's -- I agree with you that it's Judge Hall, and only Judge Hall, who is going to determine whether your amended complaint states a cause of action under Connecticut law. The once piece of your amended complaint that gives me pause is Paragraph 25, which refers to the technical bulletin that Old GM issued when -- I think it was in 2006 -- I don't have it in front of me -- in 2006.

I can't tell from reading the amended complaint whether you're seeking to rely on Paragraph 25 for purposes of your claim against New GM. That would seem to completely run afoul of my prior ruling. I think you can properly rely on -- and here's what gave me the confusion. I think because the duty to warn is an assumed liability, I think you can rely on Paragraph 25 for purposes of the assumed liability claim,

failure to warn, because that focuses on conduct of Old GM.

What I couldn't tell, and I don't know what you -- what, if anything, you told Judge Hall, I don't think I should permit you to rely on Paragraph 25 in support of an independent claim against New GM. Whether your complaint states a claim without it, that's for Judge Hall to determine.

So what's your position, Mr. Hirsch?

MR. HIRSCH: My position is, Your Honor, that New -- that that paragraph and that piece of evidence is clearly relevant to the duty to warn as against Old GM. My --

THE COURT: We agree. I agree with you.

MR. HIRSCH: Of course. And my second position is that New GM, after 2009, was aware of its existence.

THE COURT: Okay. I'm -- Mr. Steinberg, let me hear you.

MR. STEINBERG: Your Honor, in connection with your June 7th ruling, you had said that the plaintiffs had actually not properly pled an independent claim, and therefore those claims did not get through the gate, and they moved to amend their complaint. Vis-à-vis the New GM allegations, they were originally contained in one paragraph, and all that happened is that they broke out that one paragraph and put it into two paragraphs, essentially saying the same words, but saying that Old GM had knowledge available to it or was aware of a defect creating a duty to warn, and then saying the same thing for New

GM separately. We believe just doing that doesn't set forth an independent claim.

THE COURT: Well, let me cut through this because I know you're getting ready for trial.

Mr. Hirsch, I am precluding you from relying on the allegation in Paragraph 25 in support of a failure to warn independent claim against New GM. You can call New GM witnesses and show that they had knowledge of this alleged defect. That's going to be up to Judge Hall. Okay?

But what I'm not going to do is -- this is exactly what I wrote the opinion to prevent you from doing, to bootstrap your independent -- your purported independent claim by relying on conduct of Old GM. If you have witnesses from New GM who are going to testify at your trial that they had knowledge of this alleged defect, you know, Judge Hall will decide whether that testimony is admissible or not, but you're not -- I'm not permitting you -- you're attempting to do exactly what I precluded you from doing. Okay?

MR. HIRSCH: Your Honor, if I --

THE COURT: No, stop. Don't. Stop.

MR. HIRSCH: Okay.

THE COURT: Okay. Just so the rule --

Mr. Steinberg, you can prepare an order that, having read the briefs and heard argument, the Court determines that the allegation contained in Paragraph 25 of the amended

complaint may not be used to support an independent claim against New GM for duty to warn. Whether Mr. Hirsch can offer testimony about New GM's knowledge, that's not before me. Okay? But it's not going to be that 2006 technical bulletin.

MR. STEINBERG: Your Honor, I appreciate that ruling, but we do have other arguments as to why we think Paragraphs 27 and 28 should be stricken.

THE COURT: The objection is overruled. Okay? It seemed to me that Judge Hall will have to determine whether those additional paragraphs are sufficient to state a claim under Connecticut law. What I am precluding is the plaintiff from relying on conduct of Old GM in support of its alleged independent claim against New GM. So the motion is granted in part and denied in part.

MR. STEINBERG: Your Honor, there is something about how Judge Hall ruled on this matter which we think is important and important for the gatekeeping function that we'll be asking Your Honor to exercise. Judge Hall determined that New GM was a product seller under the Connecticut Product Liability Act because of three facts. All of those facts have nothing to do with establishing an independent claim. Those facts are intended to establish a successor liability.

THE COURT: Mr. Steinberg, your objection is sustained in part and overruled in part. You've heard my ruling.

Judge Hall is the trial judge. She will determine -- I understand the importance under Connecticut law of is New GM a product seller with respect -- this is an old vehicle. I've read some of those cases. Judge Hall is presiding. She's going to determine, and maybe she already has, and we'll see what -- you'll see what the outcome of the trial is. I may be right; I may be wrong.

I've read the three paragraphs at issue. The only one that runs afoul of my earlier ruling is Paragraph 25. If Judge Hall thinks that the additional paragraphs are sufficient to state a claim, you know, she'll hear the evidence. What I'm saying is that Paragraph 25, it can be used -- and the evidence in support of it can be used in support of the assumed duty to warn claim. It can't be used in connection with the independent claim.

That's my ruling. Prepare an order accordingly. We're adjourned.

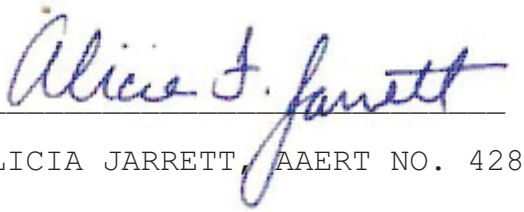
MR. STEINBERG: Thank you.

(Proceedings concluded at 3:19 p.m.)

* * * * *

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

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



ALICIA JARRETT, AAERT NO. 428 DATE: June 30, 2017

ACCESS TRANSCRIPTS, LLC

Exhibit D

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

ROBERT RANDALL BUCHANAN, Individually and as Administrator of the ESTATE OF GLENDA MARIE BUCHANAN,	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION FILE NO.: 16-A-1280-7**
GENERAL MOTORS LLC and TERRY REID GROUP, INC.,	)	
Defendants.	)	

DEFENDANT GENERAL MOTORS LLC'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

Defendant GENERAL MOTORS LLC (GM LLC), by and through its attorneys, Swift, Currie, McGhee & Hiers, LLP, hereby Answers Plaintiff's Complaint for Damages and Demand for Jury Trial ("Complaint") as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint, in whole or in part, fails to state facts sufficient to support a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's injuries and damages may have been due to or caused by intervening and superseding acts or omissions of others over whom GM LLC had no control.

THIRD AFFIRMATIVE DEFENSE

Based on facts that may be developed during discovery in this case, GM LLC may show that Glenda Marie Buchanan had knowledge of and assumed all risks by reason of the manner in

which the subject vehicle was being operated, maintained, serviced, or driven. Therefore, Plaintiff's claims for damages against GM LLC may be barred or reduced.

FOURTH AFFIRMATIVE DEFENSE

The subject vehicle was designed, manufactured, engineered, assembled, and inspected in compliance with all applicable statutes, regulations, requirements, standards, and industry customs.

FIFTH AFFIRMATIVE DEFENSE

The subject vehicle was state of the art and did not present unreasonable risk to Glenda Marie Buchanan.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff and Glenda Marie Buchanan's injuries and damages may have been due to or caused by abuse, misuse, or improper, unforeseeable, or unintended use of the subject vehicle.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff and Glenda Marie Buchanan's injuries or damages may have been due to or caused by modification or alteration of the subject vehicle.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred by contributory fault.

NINTH AFFIRMATIVE DEFENSE

Plaintiff may have failed to properly mitigate his damages.

TENTH AFFIRMATIVE DEFENSE

There may be a lack of joinder of one or more indispensable parties who should or must be joined and, without the joinder of these proper parties, complete relief cannot be accorded among those already attempted to be made parties to this action.

ELEVENTH AFFIRMATIVE DEFENSE

The alleged dangers, if any, may have been known to Glenda Marie Buchanan or were so open and obvious that she should have reasonably discovered them.

TWELFTH AFFIRMATIVE DEFENSE

Some of Plaintiff's claims and/or requests for damages may be barred, preempted and/or precluded by applicable federal law and/or Orders, Judgments and/or Decisions of the United States Bankruptcy Court for the Southern District of New York ("New York Bankruptcy Court") entered in the bankruptcy case captioned *In re Motors Liquidation Company, et al.*, Case No. 09-50026, which is pending before the New York Bankruptcy Court.

THIRTEENTH AFFIRMATIVE DEFENSE

GM LLC's conduct does not give rise to liability for punitive damages under the laws controlling this action. Additionally, the imposition of punitive damages would violate the equal protection, due process, and excessive fines clauses of the United States and Georgia Constitutions. With respect to Plaintiff's demand for punitive damages, GM LLC specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damages awards which arise in the decisions of *BMW v. Gore,* 517 U.S. 559 (1996), *Cooper Ind., Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424 (2001), and *State Farm Mut. Auto. Ins. Co. v. Campbell*, 123 S.Ct. 1513 (2003).

FOURTEENTH AFFIRMATIVE DEFENSE

GM LLC has not yet completed its investigation of Plaintiff's allegations and gives notice of its intent to assert any further affirmative defenses that its information-gathering process may indicate are supported by fact and law. GM LLC thus reserves the right to amend this Answer to assert any such defenses.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred by laches and estoppel.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred by release, payment, accord and satisfaction, and discharge.

ANSWER TO PLAINTIFF'S COMPLAINT

Responding to the specific enumerated paragraphs of Plaintiff's Complaint for Damages, Defendant shows as follows:

PARTIES, JURISDICTION AND VENUE

1.

GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of Plaintiff's Complaint and therefore, denies same.

2.

GM LLC asserts that it is a Delaware Limited Liability Company with its principal place of business in the State of Michigan and that it is authorized to do business, and does do business, throughout the United States including the State of Georgia and that it has a registered agent in Cobb County, Georgia. GM LLC denies the remaining allegations contained in Paragraph 2 of Plaintiff's Complaint.

3.

GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of Plaintiff's Complaint which are directed at another defendant, and therefore, denies same.

4.

GM LLC denies the allegation in Paragraph 4 of Plaintiff's Complaint that GM LLC and other defendants in this matter are joint tortfeasor or obligors. At this time, GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegation that venue is proper in Cobb County.

The Product

5.

At this time, GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of Plaintiff's Complaint and therefore, denies same.

The Incident

6.

At this time, GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of Plaintiff's Complaint and therefore, denies same.

7.

At this time, GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of Plaintiff's Complaint and therefore, denies same.

8.

At this time, GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of Plaintiff's Complaint and therefore, denies same.

COUNT 1

ALLEGATIONS OF STRICT LIABILITY OF DEFENDANT GENERAL MOTORS LLC

9.

GM LLC incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

10.

GM LLC denies the allegations in Paragraph 10 of Plaintiff's Complaint. GM LLC denies that it designed, selected, inspected, tested, manufactured, assembled, equipped, marketed, distributed and sold the subject vehicle. GM LLC did not exist at the time the subject vehicle was designed, tested, manufactured, marketed, distributed, sold, or placed in the stream of commerce. GM LLC acquired substantially all of the assets of General Motors Corporation (later known as Motors Liquidation Company) on July 10, 2009 in a transaction pursuant to a sale agreement ("Sale Agreement") executed under the jurisdiction and pursuant to approval of the New York Bankruptcy Court. *See generally In re General Motors Corp.,* 407 B.R. 463 (Bankr., SDNY 2009) ("Sale Opinion") (approving sale transaction). In acquiring these assets, GM LLC assumed responsibility for certain Product Liabilities (as defined in the First Amendment to the Sale Agreement) involving products assembled or sold by General Motors Corporation but only for claims arising from incidents that occurred after the July 10 closing date. *Id.,* 407 B.R. at 499-507.

11.

GM LLC denies the allegation in Paragraph 11 of Plaintiff's Complaint that it sold the subject vehicle for the same reasons set forth in its response to Paragraph 10, above. To the

extent this paragraph intends to assert that General Motors Corporation sold the subject TrailBlazer less than ten (10) years prior to the filing of this action, at this time, GM LLC is without knowledge and information sufficient to form a belief as to the truth of that allegation and therefore, denies same.

12.

GM LLC denies the allegation in Paragraph 12 of Plaintiff's Complaint for the same reasons set forth in its response to Paragraph 10, above. The subject vehicle was never in GM LLC's possession, custody or control. To the extent this paragraph intends to assert that the subject TrailBlazer left the control of General Motors Corporation in the same condition as it was at the time of the subject crash, at this time, GM LLC is without knowledge and information sufficient to form a belief as to the truth of that allegation and therefore, denies same.

13.

GM LLC denies the allegations in Paragraph 13 of Plaintiff's Complaint.

14.

GM LLC denies the allegations in Paragraph 14 of Plaintiff's Complaint.

15.

GM LLC denies the allegations in Paragraph 15, including all subparts, of Plaintiff's Complaint.

16.

GM LLC denies the allegations in Paragraph 16 of Plaintiff's Complaint.

COUNT II

ALLEGATIONS OF NEGLIGENCE OF DEFENDANT GENERAL MOTORS LLC

17.

GM LLC incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

18.

GM LLC denies the allegations in Paragraph 18 of Plaintiff's Complaint.

19.

GM LLC denies the allegations in Paragraph 19 of Plaintiff's Complaint.

20.

GM LLC denies the allegations in Paragraph 20 of Plaintiff's Complaint.

COUNT III

ALLEGATIONS OF NEGLIGENCE OF DEFENDANT TERRY REID GROUP, INC.

21.

GM LLC incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

22.

GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of Plaintiff's Complaint, which are directed at another defendant, and therefore, denies same.

23.

GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of Plaintiff's Complaint, which are directed at another defendant, and therefore, denies same. GM LLC specifically denies, however, any allegations or assertions in this paragraph that the subject TrailBlazer was defective.

24

GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of Plaintiff's Complaint, which are directed at another defendant, and therefore, denies same. GM LLC specifically denies, however, any allegations or assertions in this paragraph that the subject TrailBlazer was defective.

25.

GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of Plaintiff's Complaint, which are directed at another defendant, and therefore, denies same.

COUNT IV

ALLEGATIONS OF INJURIES AND DAMAGES

26.

GM LLC incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

27.

The allegations in Paragraph 27 of Plaintiff's Complaint assert a legal conclusion or legal basis for the Complaint to which no response is required. To the extent a response is required,

GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of Plaintiff's Complaint.

28.

The allegations in Paragraph 28 of Plaintiff's Complaint assert a legal conclusion or legal basis for the Complaint to which no response is required. To the extent a response is required, GM LLC is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of Plaintiff's Complaint.

29.

GM LLC denies the allegations in Paragraph 29 of Plaintiff's Complaint.

30.

GM LLC denies the allegations in Paragraph 30 of Plaintiff's Complaint.

31.

GM LLC denies the allegations in Paragraph 31 of Plaintiff's Complaint.

32.

GM LLC denies the allegations in Paragraph 32 of Plaintiff's Complaint.

33.

GM LLC denies the allegations in Paragraph 33 of Plaintiff's Complaint.

COUNT V

ALLEGATIONS OF PUNITIVE DAMAGES

34.

GM LLC incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

35.

GM LLC denies the allegations in Paragraph 35 of Plaintiff's Complaint and affirmatively asserts that Plaintiff must amend the Complaint to remove the punitive damages claim or be in violation of the New York Bankruptcy Court's Sale Order and Injunction and recent decisions and judgments entered by the Bankruptcy Court. *See In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y 2015); Judgment entered by the Bankruptcy Court on June 1, 2015; *In re Motors Liquidation Co.*, 541 B.R. 104 (Bankr. S.D.N.Y. 2015); and Judgment entered by the Bankruptcy Court on December 4, 2015.

Any allegations in Plaintiff's Complaint not heretofore specifically responded to by GM LLC, including all allegations in the Wherefore Paragraph, are hereby denied. GM LLC further denies that Plaintiff is entitled to recover from this Defendant in any sum or manner whatsoever.

WHEREFORE, having fully answered Plaintiff's Complaint, GM LLC prays that Plaintiff take nothing for his Complaint, that the Court dismiss Plaintiff's Complaint with prejudice, that GM LLC be awarded its costs, that GM LLC have a trial by twelve (12) jurors, as the law provides, and attorneys' fees to the extent permitted by law, and for such other and further relief as the Court deems just and proper.

Respectfully submitted, this 3rd day of June, 2016

SWIFT, CURRIE, McGHEE & HIERS, LLP

By: _____

C. Bradford Marsh
Georgia Bar No. 471280
Myrece R. Johnson
Georgia Bar No. 940301
ATTORNEYS FOR DEFENDANT GENERAL MOTORS LLC

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **DEFENDANT GENERAL MOTORS LLC'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed as follows:

Lance A. Cooper
THE COOPER FIRM
531 Roselane Street
Suite 200
Marietta, GA 30060

This 3rd day of June, 2016.

SWIFT, CURRIE, McGHEE & HIERS, LLP

By: _____
C. Bradford Marsh
Georgia Bar No. 471280
Myrece R. Johnson
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